

# Collins Reinforcements Limited Terms and Conditions 2009

## 1. INTERPRETATION

The following words shall have the following meanings:

|                 |                                                                                                                                                        |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| "Buyer"         | means the person firm or company agreeing to purchase Goods under the applicable Contract.                                                             |
| "BS"            | means British Standards and British Standards means the standards set by the British Standards Institute.                                              |
| "Conditions"    | means these terms and conditions as varied where applicable.                                                                                           |
| "Contract"      | means a contract made between Seller and Buyer for Goods                                                                                               |
| "Delivery Date" | means the date for delivery specified in the Contract.                                                                                                 |
| "Goods"         | means the Goods supplied or to be supplied under the applicable Contract.                                                                              |
| "Price"         | means the total price for the Goods as in the Contract.                                                                                                |
| "Seller"        | means Collins Reinforcements Limited Co. Reg. No. 1765087 registered office Unit 5 Dobson Park Industrial Estate, Dobson Park Way, Ince, Wigan WN2 2DY |

## 2. CONDITIONS

- 2.1 These Conditions shall apply to all Contracts for sale of the Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar document.
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

## 3. DELIVERY

- 3.1 Delivery of the Goods shall be made to the address and on the delivery date specified in the Contract and the Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery; and the point of delivery shall be via and on a macadam or metalled road having good surface and full accessibility.
- 3.2 At the time of delivery the Buyer will ensure that the Seller is able to unload the Goods from the Seller's delivery vehicle immediately on arrival and in respect of any waiting time or delay at the specified venue the Buyer shall pay to the Seller by way of liquidated damages the sum of forty five pounds plus VAT per hour or part of an hour.
- 3.3 Where the Buyer fails to accept delivery then risk shall lie with the Buyer and the Seller shall have the right (without prejudice to whatever other rights it may have):
  - To store the goods at the Buyer's expense;
  - To insure the Goods at the Buyer's expense;
  - To make additional charges for further transportation at a minimum of £45 plus VAT an hour;
  - To proceed to sell the Goods after giving reasonable notice to the Buyer.

## 4. WARRANTY

- 4.1 Except as set out in these Conditions all conditions, warranties and representations expressed or implied by statute in relation to the supply of the Goods are excluded to the extent permitted by law.
- 4.2 Goods will be supplied in accordance with the relevant British Standard.

## 5. LIABILITY

- 5.1 The Seller will accept no liability for failure to delivery correct quantities, defective Goods, damaged Goods or faulty Goods unless the Buyer shall notify the Seller in writing within 5 working days of delivery and on condition that the Goods delivered to the Buyer shall be retained by the Buyer as delivered and made available for inspection by the Seller for a reasonable time after notification and for the purpose of this condition time shall be of the essence of the Contract.
- 5.2 The Buyer agrees that a film of rust or mill scale will not constitute any grounds for rejection of the Goods.
- 5.3 The Seller shall not be liable for any representation or statement made by any person on the Seller's behalf unless it is subsequently confirmed by the Seller in writing.
- 5.4 The liability of the Seller in respect of any defective Goods in respect of which the Buyer has made a claim will be limited to delivery by the Seller to the Buyer of

Goods to replace the defective Goods and will not extend to any other damage or loss of the Buyer whatsoever including loss of profit or any expenditure incurred by the Buyer nor for any liability to any third party which the Buyer may incur.

## 6. RISK

All risk in the Goods shall pass to the Buyer on delivery including deterioration through atmospheric conditions or from any other cause.

## 7. TITLE

7.1 In spite of delivery having been made the property in the Goods shall not pass from the Seller until:

- 7.1.1 The Buyer shall have paid the Price plus VAT in full; and
- 7.1.2 no other sums whatever shall be due from the Buyer to the Seller.

7.2 Until the property in the Goods passes to the Buyer in accordance with condition 7.1 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.

7.3 Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Seller the entire proceeds of sale of otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.

7.4 The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that the property in any of the Goods has not passed from the Seller.

7.5 Until such time as the property in the Goods passes from the Seller the Buyer shall upon request deliver up to the Seller such of the Goods as have not ceased to be in existence or resold. If the Buyer fails to do so the Seller may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under condition 7.3 shall cease. The cost of collection by the Seller in these circumstances shall be £45 plus VAT per hour and the Buyer shall pay this.

7.6 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

7.7 The Buyer shall insure and keep insured the Goods to the full Price against 'all risks' to the reasonable satisfaction of the Seller until the date that the property in the Goods passes from the Seller and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

7.8 Notwithstanding that the property in the Goods shall have passed to the Buyer where condition 7.1 has been complied with the Seller shall be entitled to repossess the Goods or such quantity of them as shall be sufficient to discharge the debt where the Buyer has failed to honour the terms of payment on any other contract between the Seller and the Buyer.

7.9 The Buyer shall promptly deliver the prescribed particulars of the Contract to the Registrar of Companies in accordance with the Companies Act 1985 Part XII or the equivalent part of the Companies Act 2006. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

7.10 The Seller shall be entitled to a general lien on all Goods of the Buyer in the Seller's possession (including goods of the Buyer which have been paid for) for the unpaid price of all Goods sold to the Buyer by the Seller under this or any other contract between the Seller and the Buyer.

## 8. PAYMENT

- 8.1 The Buyer will pay the Price together with VAT in full on demand or if different in accordance with such payment terms as are specified in the applicable quotation. Payment shall be without set off or counterclaim.
- 8.2 Where the Contract specifies instalments the Buyer will pay these on demand without set off or counterclaim.

8.3 Where the Buyer delays payment in excess of 14 days the Seller will charge interest at 8% per annum compounded every 6 months (or if more Bank of England Base Rate plus 3%) from due date until actual payment.

8.4 The Seller shall be at liberty to suspend deliveries of any part of an order where Buyer delays payment for an earlier delivery (in excess of 14 days)

8.5 The Buyer will pay value added tax at the prevailing rate on any payment due under a Contract.

8.6 The Seller may offset any sum owing from the Buyer against any sum owed by the Seller to the Buyer.

8.7 Where the Seller reasonably decides the Buyer's credit status has changed before delivery the Seller may require payment in advance of delivery.

## 9. ASSIGNMENT

9.1 The Buyer shall have no right to assign any Contract to another party.

9.2 The Seller shall have the right to assign its rights and liabilities hereunder or to subcontract the transaction.

## 10. TERMINATION

10.1 The Seller may terminate the Contract by notice in writing and treat the Buyer as being in breach of Contract in the following circumstances:

- 10.1.1 the Buyer being in breach of any term of the Contract;
- 10.1.2 a petition being presented or a resolution passed for the winding up or dissolution of the Buyer;
- 10.1.3 an application being made or resolved to be made for appointment of an administrator in relation to the Buyer;
- 10.1.4 a receiver or administrator being appointed over the whole or any part of the Buyer's assets;
- 10.1.5 the Buyer ceasing to pay any of its debts or being unable to pay its debts as they fall due within the meaning of s.123 of the Insolvency Act 1986;
- 10.1.6 a proposal being made for a composition in satisfaction of the Buyer's debts or a scheme of arrangements of its affairs including a voluntary arrangement within the meaning of Part I of the Insolvency Act 1986;
- 10.1.7 there being a material change in the Buyer's credit status;
- 10.1.8 change of control of the Buyer where the Buyer is a corporate entity.

10.2 on termination of Contract pursuant to these Conditions any indebtedness of the Buyer to the Seller shall become immediately due and payable and the Seller will have no further obligation to supply Goods to the Buyer.

## 11. NOTICES

Any notice required to be served pursuant to the Contract shall be in writing and served by first class post or by hand on the Seller at the Seller's address or such other address as the Seller may from time to time notify to the Buyer and on the Buyer at the Buyer's registered office or principal place of business.

## 12. SEVERANCE

Any provision of the Contract which is or may be void or unenforceable shall to the extent of such validity or unenforceability be deemed severable and shall not affect any other provision of the Contract.

## 13. THIRD PARTIES

Unless a right of enforcement is expressly granted it is not intended that any third party should have the right to enforce any provisions of these Terms and Conditions under the Contracts (Rights of Third Parties) Act 1999 or other statutes.

## 14. WAIVER

No waiver or forbearance by the Seller or the Buyer (whether express or implied) in enforcing any of its rights under this contract shall prejudice its right to do so in the future.

## 15. VARIATION

Any variation of the terms of the Contract shall be in writing and no other purported variation shall be enforceable.

## 16. FORCE MAJEURE

The Seller shall not be liable for default due to act of God, war, strikes, industrial action, fire, flood or other event outside the Seller's control.

## 17. JURISDICTION

This contract and all Contracts are subject to the law of England and Wales