

Calumite Limited – Terms and Conditions of Sale

1. INTERPRETATION

1.1 In these Conditions the following words have the following meanings:

“**Buyer**” means the person(s), firm or company who purchases the Goods from the Seller.

“**Goods**” means any Goods (or any part thereof) agreed in the Contract to be supplied by the Seller to the Buyer.

“**Seller**” means Calumite Ltd

“**Conditions**” means the terms and conditions of sale set out in this document.

“**Contract**” means any contract between the Seller and the Buyer for the purchase and sale of the Goods, incorporating these Conditions.

2. BASIS OF THE SALE

2.1 Subject to any variation under Condition 2.2, the Contract will be on these Conditions to the exclusion of all other terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or any other document. No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or any other document will form part of the Contract simply by being referred to in the Contract.

2.2 These Conditions apply to all of the Seller's sales and no variation to these Conditions shall be binding unless agreed in writing between authorised representatives of the Buyer and the Seller. If the Buyer wants to add or amend the terms of these Conditions, in particular any limitations or exclusions of them it should make this known to the Seller who will consider any such request, though it reserves the right to review the Contract price in light of any such amendment.

3. ORDERS AND SPECIFICATIONS

3.1 The Seller may issue quotations from time to time detailing goods available for sale and the price per unit of those goods. Each quotation (and the prices therein) shall be valid for a period of 30 days from the date of issue unless earlier withdrawn by the Seller.

3.2 Each order for Goods and/or acceptance of a quotation for Goods by the Buyer from the Seller, which may be given orally or in writing, shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.

3.3 No order placed by the Buyer shall be deemed accepted by the Seller until an acknowledgement of order is issued by the Seller either orally or in writing or (if earlier) the relevant Goods are delivered.

3.4 The Buyer shall ensure that the terms of its order are complete and accurate.

3.5 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

3.6 The quantity and description of the Goods shall be as set out in the Seller's quotation and/or its acknowledgement of order.

3.7 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

3.8 All drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the goods described in them. They will not form part of the Contract.

3.9 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller (save with regard to any fraudulent misrepresentation).

4. PRICE OF GOODS

4.1 Unless otherwise agreed in writing, the price for the Goods shall be the price per tonne as set out in the relevant quotation (if valid) or in the absence of any quotation or where such quotation has been withdrawn by the Seller, at the Seller's price list published on the date on which the Contract is formed. The Buyer acknowledges that the Contract price is based on the assumption that the liability of the Buyer and the Seller is as set out herein.

4.2 In addition to the above, the Seller may charge an additional sum to the Buyer where (i) the supply of Goods is required outside of the Seller's normal working hours; (ii) delivery of the Goods is required in part loads rather than full loads; (iii) for any reason (other than the Seller's default) the delivery vehicle is unable to discharge its load within 30 minutes of arrival at the delivery site.

4.3 The price for the Goods is exclusive of any applicable value added tax, and any form of levy and/or taxation imposed from time to time on the Goods, all such amounts the Buyer shall pay when it is due to pay for the Goods.

5. TERMS OF PAYMENT

5.1 Unless alternative credit terms have been agreed in writing between the Buyer and the Seller, payment of the price for the Goods is due on the last day of the calendar month following the month in which the Goods were invoiced, notwithstanding that delivery may not have taken place. No payment shall be deemed to have been received by the Seller until it has received cleared funds. Receipts for payment will be issued only upon request.

5.2 All payments payable to the Seller under the Contract shall become due immediately upon termination thereof.

5.3 The Buyer shall make all payments due under the Contract without any deduction whether by way of set off, counterclaim, discount, abatement or otherwise unless it has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.

5.4 If the Buyer: (i) fails to make any payment due pursuant to the Contract then, without prejudice to any other right or remedy available to the Seller; and/or (ii) is subject to any of the scenarios set out in Condition 7.5.1, then the Seller shall be entitled to cancel the contract or suspend any further deliveries to the Buyer.

5.5 Overdue accounts will be charged interest (both before and after any judgement) by the Buyer on the amount unpaid, at the rate of 4 per cent per annum above National Westminster Bank base rate from time to time, from the due date for payment until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest). The Seller reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

6. DELIVERY AND NON-DELIVERY

6.1 Delivery of the Goods shall take place either:

6.1.1 on discharge of the Goods into the Buyer's vehicle at the Seller's premises or

6.1.2 on discharge from the Seller's vehicle at the Buyer's premises, or as otherwise agreed between the parties.

The method of delivery shall be agreed by the parties prior to the formation of the Contract.

6.2 If the Goods are to be collected from the Seller's premises then:

6.2.1 the Buyer will arrange for collection of the Goods from the Buyer's premises in suitable vehicles during normal working hours and at a time to be agreed with the Seller;

6.2.2 the Buyer will take delivery of the Goods on the same working day that the Seller gives notice that the Goods are ready for collection;

6.2.3 subject to Condition 6.6, delivery shall be effected once the Goods have been loaded onto the Buyer's collection vehicle;

6.2.4 subject to Condition 9.2, the entry of personnel and/or vehicles onto the Seller's premises for collection of the Goods shall be the Buyer's responsibility and at its risk. The Buyer shall ensure that any such personnel or vehicles comply with the requirements of the Seller relating to any health and safety and/or security in respect of the site.

6.3 Where the Goods are to be delivered to the Buyer's premises (or any other agreed premises) the Buyer shall provide, at its expense, all necessary manpower or equipment to safely off-load the Goods and safe and adequate access to the point of discharge of the Good, including adequate manoeuvring space for the delivery vehicle. The Buyer shall be responsible for and shall indemnify and hold the Seller harmless from and against all damage and loss suffered by the Seller by virtue of the Buyer's failure to comply with this Condition 6.3.

6.4 On delivery (howsoever effected) the Buyer must (i) satisfy itself as to the condition of the Goods; (ii) sign the delivery note; (iii) sign any record produced by the Company or its drivers in respect of any delay after the arrival of the Goods at the relevant point of delivery, standing time, authorised day work or other records.

6.5 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. If the Seller has not given a date, then delivery will be within a reasonable time. Time for delivery shall not be of the essence of the Contract. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.6 If for any reason the Buyer fails to take delivery of the Goods, or fails to give the Seller appropriate delivery instructions, documents or authorisations at the time stated for delivery then, without prejudice to any other right or remedy available to the Seller:

6.6.1 risk in the Goods will pass to the Buyer;

6.6.2 the Seller reserves the right to terminate the Contract and sell the Goods to a third party;

6.6.3 the Goods will be deemed to have been delivered; and

6.6.4 the Seller may charge delivery handling and administrative costs up to a maximum of 50% of the Contract price for the Goods.

6.7 The quantity of Goods as recorded by the Seller upon despatch from its place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence to the contrary.

6.8 Subject to the other provisions of these Conditions the Seller will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss), costs,

damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Seller's negligence). The Buyer is referred to Condition 6.9.

6.9 Any liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6.10 Stamping and testing shall be carried out in accordance with the appropriate standard (if any) specified in the relevant quotation or as otherwise agreed between the parties in writing. Compliance with any relevant stamping and testing obligations shall be discharged by the Seller at the time of delivery of the Goods and on the basis that the Seller is the supplier and not the user of the Goods.

7. RISK AND PROPERTY

7.1 The Goods are at the risk of the Buyer from the earlier of the time of actual or deemed delivery.

7.2 Ownership of and title to the Goods shall not pass to the Buyer until the Seller has received in cleared funds all sums due in respect of the Goods.

7.3 Until ownership of the Goods passes to the Buyer, the Buyer shall hold the Goods on a fiduciary basis as the Seller's bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property.

7.4 The Buyer may resell the Goods before ownership has passed to it, provided that:

7.4.1 any such sale is effected in the ordinary course of the Buyer's business at full market value; and

7.4.2 any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale; and

7.4.3 the Buyer shall hold such part of the proceeds of sale as represent the amount owed by the Buyer to the Seller on behalf of the Seller and the Buyer shall account to the Seller accordingly.

7.5 The Buyer's right to possession of the Goods shall terminate immediately if:

7.5.1 an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the Buyer; or the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order, or goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganisation and provided that the Seller resulting from the reorganisation effectively agrees to be bound by or to assume the obligations imposed on the Buyer under this Agreement); or the Buyer ceases, or threatens to cease, to carry on business;

7.5.2 or the Buyer encumbers or in any way charges any of the Goods.

7.6 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.

7.7 The Buyer hereby grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated to recover them.

8. WARRANTIES AND LIABILITY

8.1 Subject to the conditions set out below, the Seller hereby warrants that the Goods will be substantially in compliance with the standards (if any) set out in the relevant quotation as at the time of delivery.

8.2 It is the responsibility of the Buyer to ensure that the Goods are suitable for its purposes and, for the avoidance of doubt, no warranties are given by the Seller that the Goods are suitable for any particular purpose or use.

8.3 The Seller shall be under no liability in respect of any breach of the warranty in Condition 8.1 unless the Buyer notifies the Seller of the defect in writing within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure and the Seller is given a reasonable opportunity after receiving such notice to examine the Goods.

8.4 The Seller shall be under no liability in respect of any breach of the warranty in Condition 8.1 if:

8.4.1 the Buyer makes any further use of the Goods after giving notice in accordance with Condition 8.3; or

8.4.2 the defect in the Goods arises from any specification or instructions supplied by the Buyer; or from fair wear and tear, willful damage, negligence on the part of the Buyer or its servants, agents or employees, abnormal working conditions, failure to follow the Seller's instructions whether oral or in writing (or if there are none, good trade practice), misuse or alteration of the Goods without the Seller's approval.

8.5 Subject as expressly provided in these Conditions (and except where the Goods are sold under a consumer sale as defined by the Sale of Goods Act 1979), all warranties, conditions, or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.6 Subject to Conditions 8.3 and 8.4, if any of the Goods are in breach of the warranty in Condition 8.1 then, the Seller shall at its option replace the Goods (or the defective part) or refund to the Buyer the price of such Goods at the pro rata Contract rate provided that, if the Seller so requests, the Buyer shall, at the Seller's expense, return the Goods (or the defective part) to the Seller.

8.7 If the Seller complies with Condition 8.6 it shall have no further liability for a breach of the warranty in Condition 8.1 in respect of such Goods.

9. LIMITATION OF LIABILITY

9.1 Subject to conditions 6.8 and 8.4, the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of any breach of these Conditions; and/or any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and/or any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

9.2 Nothing in these Conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or for fraudulent misrepresentation or for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability. In addition, in the event of a transaction with a consumer (as defined in Condition 8.5 above), the consumer's statutory rights are not adversely affected by any term of the Contract.

9.3 Subject at all times to Condition 9.2:

9.3.1 the Seller's total liability in contract, tort, misrepresentation or otherwise arising in connection with this Contract shall be limited to twice the Contract price; and

9.3.2 the Seller shall not be liable in contract, tort or otherwise howsoever arising from any claim, damage, loss or costs (regardless of whether or not the Seller has been advised of the possibility of such a loss) in respect of:

(a) any indirect or consequential loss or damage howsoever caused; and/or

(b) any pure economic loss, loss of profit; loss of anticipated profit including loss of profit on contracts; loss of business; loss of opportunity; loss of goodwill; and/or loss of reputation (and in each case whether direct or indirect).

9.4 This Condition 9 shall continue with effect after termination of the Contract.

10. FORCE MAJEURE

The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller. If the event in question continues for a continuous period in excess of 30 days, the Buyer shall be entitled to give notice in writing to the Seller to terminate the Contract.

11. GENERAL

11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall (save with regard to orders which may be placed and accepted orally between the parties) be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

11.2 The Buyer shall not be entitled to assign the Contract or any part of it without the Seller's prior consent in writing. The Seller may assign the Contract or any part of it.

11.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.4 The parties do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Right of Third Parties) Act 1999 by any person that is not a party to it.

11.5 If any provision of the Contract is held by any competent authority to be illegal, invalid, void, voidable, unenforceable or unreasonable, in whole or in part, it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected thereby.

11.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.