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OAKLEY STEEL LIMITED ("Oakley Steel") CONDITIONS OF SALE (FOR GOODS AND SERVICES)

1. INTERPRETATION

- 1.1 In these conditions of sale (unless the context otherwise requires) the following words shall have the following meanings:
"Conditions" means the conditions set out below and overleaf.
"Contract" means any contract between Oakley Steel and the Customer for the sale and purchase of any Works.
"Customer" means the company, firm, body or person purchasing the Works.
"Goods" means any goods agreed in the Contract to be provided by Oakley Steel to the Customer (including but not limited to any part or parts of them, any raw materials, finished or semi-finished materials, machinery, parts, spares, commodities and any materials, articles and commodities supplied in connection with the Services).
"Services" means any work and/or services (or any part of them) agreed to be provided by Oakley Steel to the Customer.
"Specification" means the specification set out in Oakley Steel's quotation or such other specification as may be agreed in writing between the parties from time to time.
"Works" means the Goods and/or the Services (as appropriate).
- 1.2 In these Conditions any reference to any statute or statutory provision will (unless the context otherwise requires) be construed as a reference to that statute or statutory provision as may be amended, consolidated, modified, extended, re-enacted or replaced from time to time.
- 1.3 In these Conditions the headings are for reference only and will not affect the interpretation of these Conditions.

2. QUOTATIONS

- 2.1 Any quotation is given on the basis that no contract will come into existence otherwise than in accordance with the provisions of clauses 3.5 and 3.6.
- 2.2 Unless otherwise agreed in writing any quotation is valid only for a period of 14 days from its date of issue provided that Oakley Steel has not previously withdrawn it by written or oral notice to the Customer.
- 2.3 Any quotation is based on the instructions and information provided by the Customer and Oakley Steel reserves the right to amend the quotation to cover any increase in cost which may arise as a result of additional or incomplete instructions or information.

3. APPLICATION OF TERMS

- 3.1 (Subject to clause 3.4) these Conditions are the only conditions on which Oakley Steel is prepared to deal with the Customer and they will apply to all Contracts to the exclusion of any other terms and conditions including but not limited to those which the Customer purports to apply.
- 3.2 No terms or conditions endorsed upon, delivered with, referred to or contained in any purchase order or other similar document delivered to or sent by the Customer to Oakley Steel will form part of the Contract.
- 3.3 Any reference overleaf to the Customer's purchase order or other similar document will not be deemed to imply that any terms or conditions endorsed upon, delivered with, referred to or contained in such purchase order or other similar document will have effect to the exclusion or amendment of these Conditions.
- 3.4 Any variation to these Conditions and any representation about the Works will only be effective if it is agreed in writing, contains a specific reference to these Conditions and is signed by an authorised signatory of both parties.
- 3.5 Each purchase order for Works issued by the Customer will be deemed to be an offer by the Customer to purchase Works subject to these Conditions.
- 3.6 No purchase order placed by the Customer will be deemed to be accepted by Oakley Steel until a written acknowledgement of order is issued by Oakley Steel or (if earlier) Oakley Steel supplies the Works to the Customer. In circumstances where a purchase order placed by the customer (and previously accepted by Oakley Steel) is subsequently varied no variation shall be deemed to be accepted by Oakley Steel until a written acknowledgement of the varied order is issued by Oakley Steel or (if earlier) Oakley Steel supplies the works to the customer.
- 3.7 The Customer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 3.8 All drawings, descriptive matter, specifications, technical data, advertising and other similar information issued by Oakley Steel or contained in Oakley Steel's catalogues, samples, price lists, brochures, trade literature or other similar published materials are issued or published only for the purpose of giving an approximate idea of the Works described in them and will not form part of the Contract.
- 3.9 Any purchase order which has been accepted by Oakley Steel in accordance with clause 3.5 and 3.6 may only be cancelled or varied by the Customer with the prior written consent of Oakley Steel and on terms that the Customer will indemnify Oakley Steel in full against all losses (including but not limited to loss of profit), costs, damages, charges and expenses incurred (directly or indirectly) by Oakley Steel as a result of such cancellation or variation.
- 3.10 Oakley Steel reserves the right to correct any clerical or typographical errors made by it or any of its employees at any time.

4. DELIVERY

- 4.1 Any times specified or agreed by Oakley Steel for the delivery of the Works are given in good faith but are an estimate only. If no time is specified or agreed by Oakley Steel delivery will take place within a reasonable time. Unless otherwise agreed in writing time for the delivery of the Works will not be of the essence of the Contract.
- 4.2 Oakley Steel will use its reasonable endeavours to deliver the Works within the times set out in clause 4.1 but Oakley Steel will not be liable for the consequences of any delay or failure to deliver if the duration of the delay is not substantial or if the delay or failure is due to any circumstances beyond Oakley Steel's reasonable control or of an unexpected or exceptional nature.
- 4.3 (Subject to the provisions of clause 4.4) delivery will be deemed to take place when the Works are delivered to the Customer at the place stated in Oakley Steel's acknowledgement of order or such other place as the parties may agree except that delivery to a carrier for the purpose of transmission to the Customer will be deemed to be delivery to the Customer and sections 32(2) and (3) of the Sale of Goods Act 1979 will not apply.
- 4.4 If Oakley Steel agrees to permit the Customer to collect the Works from Oakley Steel's place of business then delivery will be deemed to take place when Oakley Steel notifies the Customer that the Works are ready for collection and unless otherwise agreed in writing the Customer will collect the Works within 7 days of the date of issue of such notice.
- 4.5 Oakley Steel will use its reasonable endeavours to ensure that the Works will be adequately protected against damage in normal conditions of transit of usual duration. Where the Works are packaged whether at the Customer's request or as Oakley Steel deems appropriate any costs incurred will be subject to the provisions of clause 4.6.
- 4.6 Oakley Steel will make such arrangements for the carriage and insurance of the Works as it thinks appropriate but the Customer will indemnify Oakley Steel against any costs or expenses that Oakley Steel incurs as a result of such carriage and insurance (including but not limited to export and/or import duties and any costs of packing, loading and/or unloading) such costs and/or expenses to be paid by the Customer when it is due to pay for the Works.
- 4.7 Oakley Steel may deliver the Works in instalments. Deliveries of further instalments may be withheld until the Works comprised in earlier instalments have been paid for in full. Default by Oakley Steel (howsoever caused) in respect of one or more instalments will not entitle the Customer to terminate the relevant Contract as a whole.

- 4.8 In the event of any delay in the delivery of any Goods and/or the performance of any Services which are attributable to the Customer's actions or failure to act then:
(a) delivery of the Goods and/or performance of the Services will be deemed to have taken place at the time at which but for such delay or delays such delivery or performance would have taken place and any extra costs incurred as a result of such delay or delays will be added to the Contract price and will be payable by the Customer; and
(b) Oakley Steel may sell such Goods 28 days after such delay and deduct any monies payable to Oakley Steel by the Customer from the sale proceeds and account to the Customer for any excess or charge the Customer for any shortfall.
- 4.9 Where the Works are to be supplied from stock such supply is subject to the availability of the stock at the date of delivery.
- 4.10 On delivery to the Customer all Works should be examined. Oakley Steel will not be liable for any shortages in or non-delivery of the Works (even if caused by Oakley Steel's negligence) unless the same is notified in writing by the Customer to Oakley Steel (together with all relevant details) within 7 days of the actual or anticipated date of delivery (as appropriate). Subject to such notice being provided Oakley Steel will, if it is reasonably satisfied that any Works have not been delivered as a result of Oakley Steel's fault (in its sole discretion) either arrange for delivery as soon as reasonably possible or give credit (at the pro rata Contract price) to the Customer for such Works. Any shortages in or non-delivery of part of the Works will not affect the Contract in respect of the other parts of the Works.
- 4.11 If Oakley Steel complies with clause 4.10 it will (subject to the provision of clause 8.2) have no further liability (in contract, tort (including but not limited to negligence) or otherwise) for such shortages or non delivery.
- 4.12 The Customer will provide (at its own expense) at the place where delivery of the Works is to take place adequate and appropriate equipment and manual labour for loading or off loading (as appropriate) the Works.

5. RISK AND OWNERSHIP

- 5.1 Unless otherwise agreed in writing the Works are at the risk of the Customer from the time of delivery or deemed delivery to the Customer (as appropriate) and loading and off loading (as appropriate) will be at the Customer's risk. Section 20(2) of the Sale of Goods Act 1979 will not apply.
- 5.2 (Notwithstanding that risk in the Works will pass to the Customer in accordance with the provisions of clause 5.1) ownership of the Works (both legal and equitable) will only pass to the Customer when Oakley Steel has received in full (in cash or cleared funds) all monies due to it from the Customer whether in respect of the Works or otherwise or ownership is properly vested in some other person by the operation of any statute.
- 5.3 Until ownership of the Works has passed to the Customer under clause 5.2, the Customer will:
(a) hold the Works on a fiduciary basis as Oakley Steel's bailee;
(b) keep the Works free from any charge, lien or other encumbrance;
(c) store the Works (at no cost to Oakley Steel) separately from all other materials of the Customer or any third party in such a way that they remain readily identifiable as Oakley Steel's property;
(d) not destroy, deface or obscure any identifying mark on the Works or their packaging;
(e) maintain the Works in a satisfactory condition, insured on Oakley Steel behalf for their full price against all usual risks to the reasonable satisfaction of Oakley Steel and on request produce such policy of insurance to Oakley Steel;
(f) hold all proceeds of the insurance referred to in clause 5.3(e) on trust for Oakley Steel and not mix it with any other money or pay the proceeds into any overdrawn bank account; and
(g) not attach the Works to any real property without Oakley Steel's consent (such consent not to be unreasonably withheld or delayed).
- 5.4 The Customer may resell, use or otherwise dispose of the Works before ownership has passed to it only if any such sale, use or disposition will be effected in the ordinary course of the Customer's business and will be a sale, use or disposition of Oakley Steel's property on the Customer's own behalf and the Customer will deal as principal.
- 5.5 The Customer grants to Oakley Steel, its agents and employees an irrevocable licence at any time to enter any premises where the Works are or may be stored in order to inspect them, or (where ownership in the Works has not passed from Oakley Steel) in accordance with the provision of clause 5.4 to recover them.
- 5.6 Oakley Steel will be entitled to recover payment for the Works notwithstanding that ownership of any of the Works has not passed from Oakley Steel.
- 5.7 The Works will be deemed sold or used in the order delivered to the Customer.

6. PRICE AND PAYMENT

- 6.1 Where the Works are sold by reference to Oakley Steel's published price list, the price payable for the Works will be the price as published in the price list current at the date of delivery of the Works.
- 6.2 Where the Works are not sold by reference to Oakley Steel's published price list the price stated in the Contract is based on the cost to Oakley Steel of raw materials, fuel, power, transport, taxes, duties, labour and all other costs at the date of Oakley Steel's quotation or acknowledgement of order (whichever is earlier). If at the date of delivery or deemed delivery of the Works there has been any increase in all or any of such costs, the price payable for the Works may at the request of Oakley Steel be increased accordingly.
- 6.3 Quotations given in a currency other than euro are based on the rate of exchange at the time of quoting and (unless otherwise agreed in writing between the parties) the price may be subject to revision if any different rate of exchange is ruling at the date of invoice.
- 6.4 (Unless otherwise agreed in writing) the price for the Works is exclusive of any value added tax (and any other tax or duty relating to the manufacture, transportation, sale or delivery of the Works) and any costs or charges in relation to export and/or import, packaging, loading, unloading, carriage and insurance. Such costs and expenses will be paid by the Customer when it is due to pay for the Works.
- 6.5 In the case of direct sales Oakley Steel shall be authorised to modify the price for the works if the producer increases the sales price or integral parts of the sales price to Oakley Steel between acceptance of the contract and delivery.
- 6.6 Where Oakley Steel agrees (in its discretion) to bring forward the date of delivery of the Works at the Customer's request any overtime or other additional costs reasonably incurred by Oakley Steel shall be charged to the Customer in addition to the Contract price.
- 6.7 Oakley Steel may invoice the Customer for the Works at any time after the delivery of the Works or the delivery of any instalment (as appropriate). If any delivery is postponed at the request or by the default of the Customer then Oakley Steel may submit its invoice of any time after the Works are ready for delivery or would have been ready in the ordinary course but for the request or default on the part of the Customer.
- 6.8 Customers who have been granted by Oakley Steel (in its sole discretion) a credit account facility will pay the price within 30 days of the end of the month in which the Works are delivered or deemed to be delivered in accordance with these Conditions. Oakley Steel may (in its sole discretion) amend the terms of or withdraw such credit account facility at any time without notice with immediate effect and on such withdrawal all amounts due or accruing to Oakley Steel under the Contract will become immediately payable despite any other provision of these Conditions.
- 6.9 Customers who have not been granted a credit account facility will pay the price at the same time as order of the Works. Order of the works shall be deemed to be the time that customer receives the acknowledgement of the order from Oakley Steel in accordance with clause 3.6.

- 6.10 No payment will be deemed to have been received until Oakley Steel has received cleared funds.
- 6.11 Time for payment will be of the essence of the Contract and the Customer will indemnify Oakley Steel against all expenses and legal costs incurred by Oakley Steel in recovering overdue amounts.
- 6.12 All payments payable to Oakley Steel under the Contract will become due immediately on termination of this Contract despite any other provision of these Conditions.
- 6.13 The Customer will make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by Oakley Steel to the Customer.
- 6.14 If the Customer fails to pay Oakley Steel any sum due pursuant to the Contract:
- (a) the Customer will be liable to pay interest to Oakley Steel on such sum from the due date for payment at an annual rate of 8% above the base lending rate of HSBC plc from time to time accruing on a daily basis until payment is made in full (whether before or after any judgement). Oakley Steel reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
- (b) Oakley Steel may treat the Contract as repudiated by the Customer or suspend any future performance of the Contract until all overdue sums have been paid.

7 WARRANTIES

- 7.1 The works delivered or sold to the customer shall comply with the agreed quality standards in Oakley Steel's acknowledgement of order (clause 3.6). However, and subject to article 7.2, Oakley Steel does not guarantee and shall never be deemed to have guaranteed, warranted or certified that the goods purchased are suitable for the purpose for which the Buyer wishes to treat or process them or wishes to use them or cause third parties to use them. Samples shall be provided for indication purposes only.
- 7.2 The Quality requirements or quality standards with respect to the works shall be as stated in Oakley Steel's acknowledgement of order (Clause 3.6). Minor variances and differences in quality, colour, size or finish - usual in the industry or technically unavoidable - shall not be regarded as a defect and do not constitute grounds for dissolution or compensation.
- 7.3 Where Oakley Steel is not the manufacturer of the Goods or performer of the Services Oakley Steel will use all reasonable endeavours to transfer to the Customer the benefit of any warranty, guarantee or certification given to Oakley Steel.
- 7.4 Where Oakley Steel is not the manufacturer of the Goods or performer of the Services and transfers any warranty, guarantee or certification that has been given to it by the manufacturer of the Goods or the performer of the Service then Oakley Steel shall not be liable for any defect in the Goods or non-performance of the service. Where Oakley Steel chooses to assist the Customer in pursuance of any claim against the supplier of the goods or performer of the service to Oakley Steel then such assistance shall not be an admission of liability for any defect or non-performance.

8 LIMITATION OF LIABILITY

- 8.1 All warranties, conditions and other terms implied by statute or common law (except for the conditions implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.
- 8.2 Nothing in these Conditions excludes or limits the liability of Oakley Steel for fraudulent misrepresentation or for any death or personal injury caused by Oakley Steel's negligence. THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CLAUSES 8.3 AND 8.4
- 8.3 (Subject to clause 8.1 and 8.2) Oakley Steel will not be liable to the Customer in contract, tort (including but not limited to negligence), misrepresentation or otherwise for any economic loss of any kind (including but not limited to loss of profit, business, contracts, revenue or anticipated savings), any damage to the Customer's reputation or goodwill, any product recall costs or any other special, indirect or consequential loss or damage (even if Oakley Steel has been advised of such loss or damage) arising out of or in connection with the Contract.
- 8.4 (Subject to the provisions of clause 8.1, 8.2 and 8.3) Oakley Steel's total liability in contract, tort (including but not limited to negligence), misrepresentation or otherwise arising out of or in connection with this Contract will be limited to £250,000.

9 TOLERANCES AND TESTS

- 9.1 Unless otherwise agreed in writing gauges, weights, chemical composition and analysis, quantities and sizes will, so far as possible, be adhered to but reasonable excesses and deficiencies will be accepted by the Customer, who will not be entitled to reject any Works on the ground that they are not precisely as specified.
- 9.2 Unless otherwise agreed in writing, all tests, test pieces and inspections required by the Customer and agreed by Oakley Steel will be charged extra. All tests and inspections will take place under Oakley Steel's standard testing arrangements, and such tests will be final (except in the case of manifest error). All tests are subject to analytical tolerances.
- 9.3 Unless otherwise agreed in writing all tests that require an independent third party body to undertake them shall be charged to the customer at cost plus 10%. By requesting a test by an independent third party body the Customer agrees to pay all charges irrespective of the performance of the goods being tested.
- 9.4 The Customer may attend (at its own cost) all tests provided that it notifies Oakley Steel in writing of its intention to do so. The Customer will then be given not less than 5 day's prior notice of the proposed date and time of any test and, if the Customer fails to attend, the test will proceed in its absence although it will be deemed to have been made in its presence.

10 PACKING CASES AND PACKING MATERIALS

- 10.1 Unless otherwise agreed in writing packing cases and packing materials will be charged extra but, where stated to be returnable, will be credited in full on return to Oakley Steel's place of business (carriage paid) in good condition, within one month of receipt by the Customer. Where not returnable, the Customer will dispose of all packing in accordance with all regulations (whether statutory or otherwise) relating to the protection of the environment.

11 CONFIDENTIALITY

- 11.1 The Customer will keep confidential all technical data, commercial information, know-how, specifications, inventions, processes, initiatives and other information which is of a confidential nature and which has been disclosed to the Customer by Oakley Steel or its agents and any other confidential information concerning Oakley Steel's business or its products which the Customer may obtain ("**Confidential Information**").
- 11.2 The Customer will restrict disclosure of the Confidential Information to such of its employees, agents or subcontractors as need to know the same and will ensure that such employees, agents or subcontractors are subject to equivalent obligations of confidentiality as bind the Customer.
- 11.3 The Customer will not without the prior written consent of Oakley Steel publish or disclose the Confidential Information to any third party or make any use of the Confidential Information except to the extent necessary to implement the Contract.

12 INTELLECTUAL PROPERTY

- 12.1 The Customer will keep Oakley Steel indemnified in full against all liability, loss, damage, injury, claim, action, demand, expense or proceeding in respect of any infringement or alleged infringement of any patent, registered design, unregistered design, design copyright, trade mark or other industrial or intellectual property rights resulting from any use by Oakley Steel of the Customers Property or any compliance by Oakley Steel with the Customer's instructions, whether express or implied.
- 12.2 (Unless otherwise agreed in writing) ownership in all intellectual property rights subsisting in, resulting from or relating to the Works or any associated plans, descriptions, blue prints, designs, technical information, drawings, documents or specifications (except where these relate solely to the Customer's Property) will vest in or be assigned to Oakley Steel. If the Customer in any way acquires any such rights it will promptly inform Oakley Steel and take such steps as Oakley Steel may reasonably require to assign such rights or vest such title in Oakley Steel.
- 12.3 Nothing in these Conditions will be construed as any representation or warranty by Oakley Steel that the design, manufacture, use or sale of the Works is not an infringement of any third party intellectual property rights.

13 TERMINATION

- 13.1 Oakley Steel may terminate the Contract immediately if:
- (a) the Customer fails to pay the price on the due date;
- (b) the Customer is in breach of any term of the Contract and has failed to remedy such breach within 28 days of receipt of written notice specifying the breach and requiring it to be remedied;
- (c) there is a material change in the ownership or control of the Customer; or
- (d) the Customer enters into any composition or arrangement with its creditors or is wound up or becomes insolvent or has a receiver or administrative receiver appointed or suffers the appointment or the presentation of a petition for the appointment of an administrator or any equivalent or analogous event occurs.
- (e) the Customer's acts or failure to act are detrimental to the ability of Oakley Steel to supply the good or perform the service agreed. The customer shall have liability for any and all costs incurred by Oakley Steel in performance of the contract prior to termination. Oakley Steel shall have no liability for any direct or indirect costs incurred by the customer as a result of termination.
- 13.2 The termination of the Contract (howsoever arising) will be without prejudice to any rights and remedies which may have accrued to either party.
- 13.3 Any Conditions which impliedly have effect after termination or expiry will continue to be enforceable notwithstanding termination or expiry.

14 EXPORT SALES

- 14.1 Where the Works are supplied for export from the United Kingdom the provisions of this clause 14 will (subject to any special terms agreed in writing between the parties) apply despite any other provision of these Conditions.
- 14.2 The Uniform Laws on International Sales Act 1967 will not apply.
- 14.3 The provisions of the UN Convention on Contracts for the International Sale of Goods (Vienna Sales Convention) shall not apply, nor shall any existing or future international regulations for the sale of goods the applicability of which can be excluded by the parties.
- 14.4 Unless otherwise agreed in writing the currency will be euro. The Customer will establish and maintain in favour of Oakley Steel an irrevocable and confirmed letter of credit in English with a UK clearing bank payable on drafts drawn at sight on presentation to the bank by Oakley Steel of a certified copy of Oakley Steel's invoice. All bank charges and other expenses in relation to the letter of credit will be borne by the Customer.
- 14.5 Unless otherwise agreed in writing Works will be sold EXW (as defined in INCOTERMS 2000 Edition).
- 14.6 Unless specifically stated in Oakley Steel's written acknowledgement of order (Clause 3.6) all shipping and delivery charges shall be considered indicative and may be revised with the actual charges incurred by Oakley Steel at time of shipment. Where such charges are revised Oakley Steel shall provide evidence of the costs incurred and shall not charge any additional fee for its services in providing for the delivery or shipping of the goods.
- 14.7 The Customer will be responsible for complying with any legislation or regulation governing the export of the Works from the United Kingdom or such other location when the works may be stored and the importation of the Works into the country of destination and for payment of any relevant duties or taxes.

15 LIEN

- 15.1 Oakley Steel will have in respect of unpaid debts due to it from the Customer a general lien on all property of the Customer which is in Oakley Steel's possession for whatever reason and whether worked upon or not.

16 ASSIGNMENT AND SUBCONTRACTING

- 16.1 The Customer will not without the prior written consent of Oakley Steel assign or transfer the Contract or any part of it to any other person.
- 16.2 Oakley Steel may without the prior written consent of the Customer assign, transfer or subcontract the Contract or any part of it to any other person.

17 GENERAL

- 17.1 Each right or remedy of Oakley Steel under these Conditions is without prejudice to any other right or remedy which Oakley Steel may have under these Conditions or otherwise.
- 17.2 Any notice or document shall be deemed served, if delivered at the time of delivery, if posted, 48 hours after posting and if sent by facsimile transmission, at the time of transmission.
- 17.3 The illegality, invalidity or unenforceability of any provision of these Conditions will not affect the legality, validity or unenforceability of any other provisions of these Conditions.
- 17.4 Failure or delay by either party in exercising any right or remedy provided by the Contract or by law will not be construed as a waiver of such right or remedy or a waiver of any other right or remedy.
- 17.5 A person who is not a party to the Contract will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This clause 17.5 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 17.6 The Customer agrees that it will have no remedy in respect of any untrue statement innocently or negligently made by or on behalf of Oakley Steel prior to the Contract upon which the Customer relied in entering into the Contract whether such statement was made orally or in writing.
- 17.7 The Contract will be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.