

Brazil & Co. (Steel) Limited T/A Fairhouse Steel– Terms & Conditions of Trade

1. **Definitions**
- 1.1 "Seller" shall mean Brazil & Co. (Steel) Limited T/A Fairhouse Steel its successors and assigns or any person acting on behalf of any of them with the authority of Brazil & Co. (Steel) Limited T/A Fairhouse Steel.
- 1.2 "Customer" shall mean the person or entity described as such on the invoices, application for credit, quotation, work authorisation or any other forms to which these terms and conditions apply, and shall mean any person acting on behalf of and with the authority of such person or entity.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Seller to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller to the Customer.
- 1.5 "Services" shall mean all services supplied by the Seller to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Seller and the Customer subject to clause 3 of this contract.
2. **Acceptance**
- 2.1 Any instructions received by the Seller from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be amended with the written consent of the Seller.
- 2.4 The Customer undertakes to give the Seller at least fourteen (14) days notice of any change in the Customer's name, address and/or any other change in the Customer's details.
3. **Price And Payment**
- 3.1 At the Seller's sole discretion the Price shall be either:
 - a) as indicated on invoices provided by the Seller to the Customer in respect of Goods supplied; or
 - b) the Seller's quoted Price (subject to clause 3.2) which shall be binding upon the Seller provided that the Customer shall accept the Seller's quotation in writing within thirty (30) days.
- 3.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation.
- 3.3 At the Seller's sole discretion a deposit may be required.
- 3.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due on the 30th day of the month following the date of the invoice.
- 3.5 At the Seller's sole discretion;
 - a) payment shall be due on delivery of the Goods, or
 - b) payment shall be due before delivery of the Goods, or
 - c) payment for approved Customers shall be made by instalments in accordance with the Seller's payment schedule, or
 - d) payment for approved Customer's shall be due thirty (30) days following the end of the month in which an invoice is posted to the Customer's address or address for notices.
- 3.6 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and the Seller.
- 3.7 VAT and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
4. **Delivery Of Goods**
- 4.1 At the Seller's sole discretion delivery of the Goods shall take place when;
 - a) the Customer takes possession of the Goods at the Seller's address or
 - b) the Customer takes possession of the Goods at the Customer's address (in the event that the Goods are delivered by the Seller or the Seller's nominated carrier); or
 - c) the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's Seller.
- 4.2 At the Seller's sole discretion the costs of delivery are;
 - a) included in the Price, or
 - b) in addition to the Price, or
 - c) for the Customer's account.
- 4.3 Dates, or periods, for delivery are approximate and are given for information only and do not form part of the contract.
- 4.4 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.
- 4.5 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 4.6 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.7 Goods will be delivered to the kerbside adjacent to the delivery site. If at the Customer's request, the delivery vehicle leaves the road and enters the delivery site to unload the Customer is responsible for providing suitable and safe access for the Seller's delivery vehicle and agrees to indemnify the Seller and its Sellers for all damage and injury to any person and to any public or private property which may result, including any costs associated with enabling the delivery vehicle to leave the site.
- 4.8 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that;
 - a) such discrepancy in quantity shall not exceed 5%, and
 - b) the Price shall be adjusted pro rata to the discrepancy.
- 4.9 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 4.10 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
5. **Risk**
- 5.1 If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
6. **Title**
- 6.1 It is the intention of the Seller and agreed by the Customer that ownership of the Goods shall not pass until:
 - a) the Customer has paid all amounts owing for the particular Goods, and
 - b) the Customer has met all other obligations due by the Customer to the Seller in respect of all contracts between the Seller and the Customer.
- 6.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership or rights in respect of the Goods shall continue.
- 6.3 It is further agreed that:
 - a) where practicable the Goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Customer are met; and
 - b) until such time as ownership of the Goods shall pass from the Seller to the Customer the Seller may give notice in writing to the Customer to return the Goods or any of them to the Seller. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
 - c) the Seller shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - d) if the Customer fails to return the Goods to the Seller then the Seller or the Seller's Seller may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
 - e) the Customer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Seller; and
 - f) the Customer shall not deal with the money of the Seller in any way which may be adverse to the Seller; and
 - g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller; and
 - h) the Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
 - i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Seller will be the owner of the end products.
7. **Customer's Disclaimer**
- 7.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by the Seller and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.
8. **Testing and Inspection Prior to Delivery**
- 8.1 If the contract provides for testing or inspection of the Goods by, or on behalf of, the Customer prior to delivery, whether at the Seller's premises or elsewhere, then upon the Seller giving notice of availability of the Goods for testing and/or inspection the Customer shall inspect and/or test the Goods within seven (7) days of such notice. Should the Customer fail to do so, or if within fourteen (14) days of the Customer having done so, the Customer does not notify the Seller that the Goods are not in accordance with the contract specifying the matters complained of then the Customer shall be conclusively deemed to have accepted that the Goods are in accordance with the contract and shall not thereafter be entitled to reject the Goods or to claim damages or compensation from the Seller on the grounds of anything which such testing and/or inspection revealed or would have revealed if it had been carried out.
9. **Shortages, Defects, Damages and Loss in Transit**
- 9.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days notify the Seller of any alleged defect in terms of shortage in quantity, damage or failure to comply with the description or quote. Any such claim shall be accompanied by the Seller's packing list. The Customer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to replacing the Goods.
- 9.2 Where the goods are transported by an independent freight carrier the Customer has complied, in all respects, with the freight carrier's conditions of carriage for notifying claims for loss or damage in transit.
- 9.3 No Goods shall be accepted for return except in accordance with 9.1 and 9.2 above.
10. **Non Prime Goods**
- 10.1 Goods sold as "non-prime" or uncertified Goods which the Seller and the Customer agree to be "non-prime" are sold in their actual state, as seen, with all faults whether or not the Goods have been inspected by the Customer prior to delivery.
- 10.2 Statements, specifications, descriptions and/or other information provided by the Seller relating to "non-prime" Goods are given in good faith however the Seller will not, under any circumstances whatsoever, accept responsibility for the accuracy of such information.
- 10.3 If the Customer purchases "non-prime" Goods the Customer must ensure that a similar provision to this condition is incorporated in the contract for such resale unless the Goods, or such part thereof, as the Customer resells have been caused to comply with a recognised specification or standard.
11. **Warranty**
- 11.1 To the extent permitted by statute, no warranty is given by the Seller as to the quality or suitability of the Goods for any purpose and any implied warranty is expressly excluded. The Seller shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
12. **Sale of Goods Act 1893 and Sale of Goods and Supply of Services Act 1980**
- 12.1 This agreement is subject to the provisions of the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980 in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded).
- 12.2 Notwithstanding clause 12.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Sale of Goods Act 1893 (in particular sections 12-15), or the Sale of Goods and Supply of Services Act 1980, or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts laws or legislation.
- 12.3 In particular where the Customer buys Goods as a consumer the provisions of Clauses 9 and 11 above shall be subject to any laws or legislation governing the rights of consumers.
13. **Default & Consequences of Default**
- 13.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 13.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own Customer basis and the Seller's collection agency costs.
- 13.3 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment); the Seller may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller exercised its rights under this clause.
- 13.4 If any account remains overdue after thirty (30) days then an amount of the greater of €20.00 or 10.00% of the amount overdue (up to a maximum of €200) shall be levied for administration fees which sum shall become immediately due and payable.
- 13.5 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
 - a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to meet its payments as they fall due; or
 - b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
14. **Security And Charge**
- 14.1 Despite anything to the contrary contained herein or any other rights which the Seller may have however:
 - a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or the Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own Customer basis.
 - c) The Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.
15. **Cancellation**
- 15.1 The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall repay to the Customer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 15.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.
16. **Data Protection Act 1988 & Data Protection Act 2003**
- 16.1 The Customer and the Guarantor's (if separate to the Customer) authorises the Seller to:
 - a) collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and
 - b) to disclose information about the Customer, whether collected by the Seller from the Customer directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or of listing (whether before or after judgement) a default by the Customer on publicly accessible credit reporting databases.
- 16.2 Where the Customer is an individual the authorities under (clause 16.1) are authorities or consents for the purposes of the Data Protection Act 1988 & Data Protection Act 2003.
- 16.3 The Customer shall have the right to request the Seller for a copy of the information about the Customer retained by the Seller and the right to request the Seller to correct any incorrect information about the Customer held by the Seller.
17. **Intellectual Property**
- 17.1 Where the Seller has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Customer at the Seller's discretion.
- 17.2 The Customer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Customer's order
18. **Tolerances, Specifications and Certification**
- 18.1 All customary industry mill tolerances shall apply to the weight, dimensions, measurements quality and finish of the Goods rendered unless the Seller and the Customer agree otherwise in writing.
- 18.2 The Seller shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer.
- 18.3 If the giving of an estimate or quotation for the supply of Goods involves the Seller estimating measurements, weights and quantities, it shall be the responsibility of the Customer to verify the accuracy of the Seller's estimated measurements, weights and quantities, before the Customer places an order based on such estimate or accept such quotation.
- 18.4 Should the Customer require any change to the Seller's estimated measurements, weights and quantities, the Customer shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.
- 18.5 The Seller shall not provide test certificates unless the Customer has requested such certificates, in writing, a reasonable time in advance of delivery. The Seller shall be entitled to charge a reasonable fee for each such certificate.
19. **General**
- 19.1 Each clause of this contract is severable and distinct from the others. If any provision of these terms and conditions is or becomes invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Ireland and are subject to the jurisdiction of the courts of Ireland.
- 19.3 The Seller shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions.
- 19.4 In the event of any breach of this contract by the Seller the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.
- 19.5 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Seller.
- 19.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 19.7 The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Customer of such change. Except where the Seller supplies further Goods to the Customer and the Customer accepts such Goods, the Customer shall be under no obligation to accept such changes.
20. **Force Majeure**
- 20.1 Neither party shall be liable for any failure to perform its obligations where such failure is as a result of any act of God, including but not limited to, war, terrorism, strike, lockout, industrial action, government sanction, interruption or failure of electricity or telephone service, fire, flood, drought, drought, storm or other event beyond the reasonable control of either party.
- 20.2 Any party asserting Force Majeure as an excuse shall have the burden of proving that reasonable steps were taken to minimize delay or damages caused and that the other party was timely notified of the likelihood, or actual occurrence, which would justify such an assertion so that prudent precautions could be contemplated.