

## **Conditions Of Sale**

### **1. Definitions and Interpretation**

#### **1.1. In these Conditions:**

CUSTOMER means the person who accepts a quotation of Sandvik Osprey for the sale of the Goods and / or whose order for the Goods is accepted by Sandvik Osprey

GOODS means the goods, articles, products, materials and/or items (if any) (including any instalment or samples of the goods or any parts for them) which Sandvik Osprey is to supply in accordance with these Conditions

OSPREY means Sandvik Osprey Limited (registered in England and Wales under number 1189998)

CONDITIONS means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Customer and Sandvik Osprey

CONTRACT means the contract for the purchase and sale of the Goods

WRITING includes telex, cable, facsimile transmission, email and comparable means of communication.

1.2. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3. The headings in the Conditions are for convenience only and shall not affect their interpretation.

### **2. Offer and Acceptance**

2.1. Unless otherwise stated by Sandvik Osprey, or previously withdrawn, every tender or offer from Sandvik Osprey is open for acceptance during the period of 30 days from the date upon which it is submitted.

2.2. Acceptance of a tender or offer made by Sandvik Osprey must be in Writing and accompanied by sufficient information to enable Sandvik Osprey to proceed with the order forthwith.

### **3. Basis of the Sale**

3.1. Sandvik Osprey shall sell and the Customer shall purchase the Goods in accordance with any written quotation of Sandvik Osprey which is accepted by the Customer, or any written order of the Customer which is accepted by Sandvik Osprey, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions.

3.2. No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Customer and Sandvik Osprey.

3.3. Sandvik Osprey's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by Sandvik Osprey in Writing.

3.4. 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 Sandvik Osprey shall be subject to correction without any liability on the part of Sandvik Osprey.

### **4. Orders and Specifications**

4.1. The Customer shall be responsible to Sandvik Osprey for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving Sandvik Osprey any necessary information relating to the Goods within a sufficient time to enable Sandvik Osprey to perform the Contract in accordance with its terms.

4.2. The quantity, quality and description of and any specifications for the Goods shall be those set out in Sandvik Osprey's quotation (if accepted by the Customer) or the Customer's order (if accepted without amendment by Sandvik Osprey).

4.3. If the Goods are to be manufactured in accordance with a specification submitted by the Customer, the Customer shall indemnify Sandvik Osprey against any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from Sandvik Osprey's use of the Customer's specification.

### **5. Price of the Goods**

5.1. The price of the Goods shall be Sandvik Osprey's quoted price. All prices quoted are valid for 30 days only or until earlier acceptance by the Customer.

5.2. Sandvik Osprey reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to Sandvik Osprey which is due to any factor beyond the control of Sandvik Osprey, any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Sandvik Osprey adequate information or instructions.

5.3. The price is exclusive of any applicable value added tax, which (if payable) the Customer shall be additionally liable to pay to Sandvik Osprey.

### **6. Terms of Payment**

6.1. Subject to any special terms agreed in Writing between the Customer and Sandvik Osprey, Sandvik Osprey

shall be entitled to invoice the Customer for the price of the Goods on or at any time after despatch of the Goods.

6.2. The Customer shall pay the price of the Goods (without any deduction) within 30 days of the date of Sandvik Osprey's invoice. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

6.3. If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Sandvik Osprey, Sandvik Osprey shall be entitled to:

6.3.1. cancel the Contract or suspend any further deliveries to the Customer; and

6.3.2. charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 4% per cent per annum above Barclays Bank plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

## 7. Delivery

7.1. Time for delivery shall not be of the essence of the Contract unless previously agreed by Sandvik Osprey in writing. The Goods may be delivered by Sandvik Osprey in advance of the quoted delivery date upon giving reasonable notice to the Customer. Notwithstanding any specified time for delivery, delivery may be made by instalments at the discretion and convenience of Sandvik Osprey.

7.2. If the Customer fails to fulfil its obligations or any of them within a reasonable time with regard to the supply of all necessary particulars import licences advance payments and letter of credit or if the Contract is altered or in any way varied by it or if in any other way it causes or contributes to any delay in the completion of the Contract Sandvik Osprey may postpone the time for delivery to the extent that this is reasonable having regard to any of the aforesaid causes.

7.3. In the case of a delay exceeding one calendar month by reason of any failure as aforesaid by the Customer Sandvik Osprey shall be entitled wholly or in part to cancel the Contract but with the right to recover damages in respect of any loss (including loss of profit) which it may suffer as a result.

7.4. The Customer shall accept delivery of the Goods in accordance with the Contract and shall not be entitled to refuse delivery.

7.5. Sandvik Osprey shall have a lien on the Goods in respect of all monies due to Sandvik Osprey.

## 8. Risk and Property

8.1. Risk of damage to or loss of the Goods shall pass to the Customer at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when Sandvik Osprey has tendered delivery of the Goods, but the property in the Goods shall not pass to the Customer until Sandvik Osprey has received in cash, or cleared funds, payment in full of the price of the Goods.

8.2. Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as Sandvik Osprey's fiduciary agent and bailee, and shall keep the Goods properly stored, protected and insured, but the Customer shall be entitled to resell or use the Goods in the ordinary course of its business.

8.3. Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold), Sandvik Osprey shall be entitled at any time to require the Customer to deliver up the Goods to Sandvik Osprey.

8.4. The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Sandvik Osprey, but if the Customer does so all moneys owing by the Customer to Sandvik Osprey shall (without prejudice to any other right or remedy of Sandvik Osprey) forthwith become due and payable.

## 9. Inspection of Goods

9.1. Goods shall be deemed to have been accepted by the Customer as being in conformity with the Contract (including as regards any claim for loss, shortages or damages in transit) if after 5 days from delivery of the Goods (or such longer period as is specified by Sandvik Osprey in writing) the Customer fails to notify Sandvik Osprey in Writing specifying the nature and extent of the fault. If the Customer does not lodge a complaint within the stated period it shall forfeit the right to make any monetary claims against Sandvik Osprey save as otherwise allowed by these Conditions.

9.2. The Customer shall be solely responsible for ensuring that the Goods ordered and received are fit for the purpose (or purposes) for which they are required and Sandvik Osprey shall be under no obligation or liability whatsoever in that respect.

9.3. Without prejudice to the foregoing, Sandvik Osprey shall be under no obligation or liability in respect of any defect in the Goods arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Sandvik Osprey's written instructions, misuse or alteration of the Goods.

9.4. Any claim made by the Customer regarding any fault in the Goods which has been caused by damage during transportation carried out by an independent carrier, shall be directed to the carrier. Sandvik Osprey shall not be liable.

## 10. Warranties and Liability

10.1. Subject to the conditions set out below Sandvik Osprey warrants that the Goods will correspond with their specification at the time of despatch from Sandvik Osprey.

10.2. The above warranty is given by Sandvik Osprey subject to the following conditions:

10.2.1. Sandvik Osprey shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer;

10.2.2. Sandvik Osprey shall be under no liability if the total price for the Goods has not been paid by the due date for payment.

10.3. Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall be notified to Sandvik Osprey within 5 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. If the Customer does not notify Sandvik Osprey accordingly, the Customer shall not be entitled to reject the Goods and Sandvik Osprey shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

10.4. Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to Sandvik Osprey in accordance with these Conditions, Sandvik Osprey shall be entitled to replace the Goods (or any part thereof in question) free of charge, or at Sandvik Osprey's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price), but Sandvik Osprey shall have no further liability to the Customer.

10.5. Except in respect of death or personal injury caused by Sandvik Osprey's negligence, Sandvik Osprey shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of Sandvik Osprey, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Customer, and the entire liability of Sandvik Osprey under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.

10.6. Sandvik Osprey shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Sandvik Osprey's obligations in relation to the Goods, if the delay or failure was due to any cause beyond Sandvik Osprey's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Sandvik Osprey's reasonable control.

10.6.1. Act of God, explosion, flood, tempest, fire or accident;

10.6.2. war or threat of war, sabotage, insurrection, civil disturbance or requisition;

10.6.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

10.6.4. import or export regulations or embargoes;

10.6.5. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Sandvik Osprey or of a third party);

10.6.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery;

10.6.7. power failure or breakdown in machinery.

## 11. Indemnity

Sandvik Osprey shall not be liable to the Customer, and the Customer shall indemnify Sandvik Osprey from and against all actions, costs, claims and demands of whatever nature made against Sandvik Osprey for any loss and damage including consequential loss or damage caused:

11.1. by the failure of the Customer or its employees to observe the directions and advice given by Sandvik Osprey;

11.2. by any defect in the quality of the Goods supplied or in such Goods not being fit for any purpose unless such use, quality or fitness for purpose was a special requirement in Writing in the Customer's order and accepted expressly as such by Sandvik Osprey in writing.

## 12. Export Terms

In these Conditions trade terms shall be interpreted in accordance with the rules prepared by the International Chamber of Commerce (Incoterms) as in force at the date when the Contract is made, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

## 13. Cancellation

Orders cannot be cancelled except upon terms which will indemnify Sandvik Osprey against all loss occasioned directly or indirectly thereby. Goods returned without Sandvik Osprey's consent in Writing will not be accepted for credit and shall remain at the sole risk and liability of the Customer.

## 14. General

14.1. Sandvik Osprey is a member of the group of companies whose holding company is AB Sandvik, and accordingly Sandvik Osprey may perform any of its obligations or exercise any of its rights hereunder by itself or

through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of Sandvik Osprey.

14.2. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

14.3. The Contract shall be governed by the laws of England and Wales, and the Customer agrees to submit to the non-exclusive jurisdiction of the English courts.

SANDVIK OSPREY LTD

CONDITIONS OF SALE

1 Mar-03

**Reaching Us** If you need to reach us, please email us on [cealloys.osprey@sandvik.com](mailto:cealloys.osprey@sandvik.com), alternatively, you can call on +44 (0) 1639 634121 (International +44 +44 (0) 1639 634121) or fax us on +44 (0) 1639 630100 or write to us at Millands Neath SA11 1NJ United Kingdom

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