

HCL Fasteners Limited
CONDITIONS OF SALE

1. Interpretation

1.1. In these Conditions:

"Buyer" means the person whose order for the Goods is accepted by the Seller.

"Goods" means the goods (including any instalment of the Goods) which the Seller is to supply in accordance with the Conditions "Seller" means HCL Fasteners Limited (Registered in England under number 2860032)

"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 Buyer and the Seller in accordance with Condition 2.3

"Contract" means the contract for the sale and purchase of the Goods "Writing" includes telex, cable, facsimile transmission 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 heading in these Conditions are for convenience only and shall not affect their interpretation

2. Basis of the Sale

2.1. The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written order of the Buyer which is accepted by the Seller subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such order is made or purported to be made by the Buyer

2.2. Quotations issued to the Buyer by the Seller may be withdrawn or varied at any time and unless otherwise specified shall be automatically withdrawn after [sixty days] 60 days. No binding contract shall in any event arise until the Buyer's written order has been accepted by the Seller and confirmed in writing by the Seller's authorised representative.

2.3. No variation of these Conditions shall be binding unless agreed in writing between the authorised representative of the Seller and the Buyer

2.4. The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing

2.5. Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage application or use of the Goods which is not confirmed in writing by the Seller, is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed

2.6. Any samples illustrations or descriptive material including but not limited to particulars of shade and pattern and other information contained in the Seller's brochures, advertising material or elsewhere shall not form part of the Contract and shall be treated as approximate and for guidance only unless specifically stated otherwise

2.7. The Seller may at its discretion from time to time vary the design of the Goods from that advertised without notice to the Buyer provided that any such variations do not constitute material alterations to the Goods

3. Orders and Specifications

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

3.2. Copyright and any other right in all specifications, sketches, origination work and initial work comprising negatives, positives, moulds, plates and cylinders and the like whether or not produced on the instructions and at the request of the Buyer shall belong to the Seller and if produced on the instructions of the Buyer shall be treated as an order and charged to the Buyer

3.3. The quantity, quality and description of any specification for the Goods shall be those set out in the Buyer's order, saving that the Seller's quantity tolerances will apply as follows: Herbie Clips, Ezycliks and Ezybond clips - bags of 5 / 10 / 20: +/- 0%, all other quantities +/- 2%; Smart Ties, Smart Protectors - all quantities +/- 1%; Smart Band – all band and buckle quantities and band lengths +/- 1%; Installation tools - all quantities +/- 1%; Distributed products (i.e. metal hose clamps) - all quantities +/- 1%; Other / bespoke products - all quantities +/- 1%.

3.4. 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 or profit) costs (including the costs of all labour and materials used) damages, charges and expenses incurred by the Seller as a result of cancellation

4. Price of the Goods

4.1. The price of the Goods shall be the price specified by the Company from time to time and shall be invoiced for payment in accordance with Condition 5.1 hereof. If payment is not made by the due date then in addition to the price payable on the invoice the Seller may add any price increase made by the Seller since the date of acceptance of the order and the Seller shall be entitled to charge interest in accordance with Condition 5.4 hereof

4.2. In addition to the rights of the Seller under Condition 4.1, the Seller reserves the right by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any significant increase in the costs of labour, materials or other costs of manufacture) any change in delivery dates, quantities or specifications for Goods which is requested by the Buyer, or any delay caused by instructions of the Buyer or failure of the Buyer to give the Seller accurate information or instructions

4.3. Unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis and where the Seller agrees to deliver the Goods otherwise then at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance

4.4. The price is exclusive of any, applicable value added tax which the Buyer shall be additionally liable to pay to the Seller

5. Payment Terms

5.1. Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer with the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods

5.2. The Buyer shall, unless there are special terms agreed in writing between the Buyer & Seller, pay the price of the Goods within 30 days of the end of the month in which delivery is made. The time of payment shall be of the essence of the Contract. All payments shall be made in full without deduction in respect of any set-off or counterclaim

5.3. If the buyer fails to make any payment on the due date, then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

(1) cancel the contract or suspend any further deliveries to the Buyer;

(2) appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

(3) charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of one per cent per annum over the base rate for the time being of Barclays Bank PLC, U.K., (such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month) until payment is made

6. Delivery

6.1. Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place

6.2. The Seller shall endeavour to deliver the Goods by the date quoted for delivery, but such date is not guaranteed, nor shall the time for delivery be of the essence, unless previously agreed by the Seller in writing. The date quoted for delivery shall be extended by a reasonable period if there is any delay caused by industrial dispute or by any cause beyond the reasonable control of the Seller. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer

6.3. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated

6.4. If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods

6.5. If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller, the Seller may:

- (1) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- (2) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7. Risk and Property

7.1. Risk of damage to or loss of the Goods shall pass to the Buyer:

- (1) in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
 - (2) in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods
- 7.2. Notwithstanding delivery and the passing of risk, property in and title to the goods shall remain with the seller until the seller has received payment of the full price of (a) all Goods and/or Services the subject of the Contract and (b) all other goods and/or services supplied by the seller to the buyer under any contract whatsoever. Payment of the full price shall include, without limitation, the amount of any interest or other sum payable under the terms of this and all other contracts between the seller and the buyer.
- 7.3. Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and 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. Until that time the Buyer shall be entitled to resell the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, including insurance proceeds, and keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured
- 7.5. Until such time as the property in the Goods passes to the Buyer and (provided that the Goods are still in existence and have not been resold) the Seller or its duly authorised representative, shall be entitled at any time to require the Buyer to deliver up to the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods
- 7.6. The Buyer 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 the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable

8. Warranties and Liability

- 8.1. The Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of their initial use.
- 8.2. The above warranty is given by the Seller subject to the following conditions:-
- (1) the Seller shall be under no liability in respect of any defect in the Goods arising from any instructions drawing, design or specification supplied by the Buyer
 - (2) the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, failure to follow the Seller's instructions (whether oral or in writing) misuse, alteration, or repair of the Goods without the Seller's approval
- 8.3. The Seller shall not be liable to the Buyer in any way in the following cases:-
- 8.3.1. Where the Buyer has specified the chemical composition of, or the nature of the raw materials to be used in the manufacture of the Goods, whether by directly so specifying, or by expressly excluding the use of materials
 - 8.3.2. Where the Seller notifies the Buyer at any time (whether before or after delivery of the Goods) that the Goods will not, in the opinion of the Seller, comply with statutory requirements for the packaging of foodstuffs or are otherwise unsuitable therefore
 - 8.3.3. HCL Fasteners warrant performance of its products to its claimed specifications as laid out in its technical data sheets. Customers must satisfy themselves with their own tests that products purchased from HCL Fasteners are suitable for Customer's particular applications. HCL Fasteners cannot and does not warrant suitability of its products for Customer's end applications.
- 8.4. Subject as expressly provided in these Conditions all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law
- 8.5. Where the Goods are sold under a consumer sale (as defined by the Sale of Goods Act 1979) the statutory rights of the Buyer are not affected by these conditions
- 8.6. Any claim which is based on any defect in the quantity, quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery of damaged Goods is refused by the Buyer) be notified to the Seller in writing within fourteen 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, delivery is not refused, and the Buyer does not notify the Seller of any claim in accordance with the provisions of this Condition, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defects or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract
- 8.7. Where any 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 the Seller in accordance with these Conditions, the Seller shall, at its discretion and at its own expense, replace the Goods (or the part in question) free of charge or refund to the Buyer the Price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer
- 8.8. Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise), costs expenses, or any other claims for consequential compensation whatsoever "(and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their resale by the Buyer, except as expressly provided in these Conditions
- 8.9. The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control: Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockage, embargo, labour dispute, strike, lockout, polymer supply chain issues caused by plant maintenance or raw material feedstock shortage, interruption or failure of electricity or telephone service.
- If the Contract shall become impossible to perform or shall otherwise be frustrated the Buyer shall be liable to pay to the Seller all costs which the Seller has incurred in connection with the contract up to the time of frustration or impossibility of performance provided that the Seller has taken all reasonable steps to mitigate any loss

9. Insolvency of Buyer

9.1. This condition applies if:

- (1) the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- (2) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- (3) the Buyer ceases, or threatens to cease, to carry on business; or
- (4) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly

9.2. If this condition applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary

10. General

- 10.1. Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the 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
- 10.2. 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
- 10.3. 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 thereby
- 10.4. These Conditions shall be governed by and construed in all respects in accordance with English Law.