

TERMS AND CONDITIONS FOR SALE OF GOODS

1. INTERPRETATION

1.1. In these Terms and Conditions the following words have the following meanings:

"**Buyer**" means the person(s), firm or company whose order for the Goods is accepted by the Company;

"**Company**" means any affiliate and/or subsidiary company of Sims Metal Management Limited which is selling the Goods to the Buyer;

"**Contract**" means any contract between the Company and the Buyer for the sale and purchase of the Goods formed in accordance with condition 2;

"**Goods**" means any goods which the Company is to supply/supplies to the Buyer (including any of them or any part of them) under a Contract;

"**Terms and Conditions**" means the standard Terms and Conditions of sale set out in this document together with any special terms agreed in writing between the Buyer and the Company.

1.2. The headings in these Terms and Conditions are for convenience only and will not affect their interpretation.

2. FORMATION AND INCORPORATION

2.1. Subject to any variation under condition 14.3, the Contract will be on these Terms and Conditions to the exclusion of all other terms and conditions, including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document whether or not such document is referred to in the Contract.

2.2. Each order (including by way of a purchaser order) for Goods will be deemed to be an offer by the Buyer to purchase Goods upon these Terms and Conditions. The Contract is formed when the order is accepted by the Company in writing. No contract will come into existence until the Company issues a written acknowledgement of the order incorporating these Terms and Conditions.

2.3. If applicable, any quotation is valid for a period of 30 days only from the date of issuance, provided the Company has not previously withdrawn it.

2.4. The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate in all respects. The Company will not be responsible for any inaccuracies in the Buyer's order or specification.

2.5. Acceptance of delivery of the Goods will be deemed to be conclusive evidence of the Buyer's acceptance of these Terms and Conditions.

2.6. Subject to condition 4.4, the Buyer may not cancel the Contract except with the written agreement of the Company and on terms that the Buyer will indemnify the Company in full against all losses (including loss of profit), costs, damages, charges and expenses suffered or incurred by the Company as a result of such cancellation. The Company may cancel the Contract at any time prior to delivery.

3. GOODS

3.1. The quantity, description and specification of the Goods are outlined in the acknowledgement by the Company incorporating these Terms and Conditions.

3.2. If no description and/or specification of the Goods is given in the acknowledgement to the Buyer, then the description will be as communicated to the Buyer prior the formation of the Contract or as communicated from time to time.

3.3. The Goods are sold as refurbished/used products and any specifications given to the Buyer contrary to this is invalid. The Buyer must fully satisfy itself with the condition of the Goods prior to accepting the Goods.

3.4. On occasion, the Company may sell new products to the Buyer. For the avoidance doubt, such Goods, although new, will be considered second hand products and the Buyer understands that the Company is neither the manufacturer of or the authorized distributor of any Goods it sells to the Buyer.

3.5. **FOR THE AVOIDANCE OF DOUBT THE COMPANY, TO FULLEST EXTENT PERMITTED UNDER THE LAW, DISCLAIMS ANY AND ALL WARRANTIES AND THE GOODS ARE AT ALL TIMES SOLD ON AN 'AS-IS' BASIS. WHERE POSSIBLE THE COMPANY WILL EXTEND ANY AND ALL WARRANTIES THAT IT BENEFITS FROM AS PROVIDED BY THE MANUFACTURER OF THE GOODS.**

3.6. The Company may make any changes to the specification, design, materials or finishes of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements.

4. DELIVERY

4.1. Delivery of the Goods will be Ex Works (Incoterms 2010) at the Company's premises as informed to the Buyer prior to formation of the Contract ("**Delivery**").

4.2. For the avoidance of doubt, unless otherwise agreed, the Buyer will be responsible for all costs associated of moving the Goods after the Delivery has occurred.

4.3. The Company will use all reasonable endeavours to deliver each of the Buyer's orders for the Goods within the time agreed when the Buyer places an order and, if no time is agreed, then within a reasonable time, but the time of delivery will not be of the essence. If, despite those endeavours, the Company is unable for any reason to fulfil any delivery on the agreed date or at the agreed time, the Company will be deemed not to be in breach of these Terms and Conditions, nor (for the avoidance of doubt) will the Company have any liability to the Buyer for any losses (including pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) or damages howsoever caused (including as a result of negligence) by any delay or failure in delivery except as set out in condition 4.4.

4.4. Any delay in delivery will not entitle the Buyer to cancel the order unless and until the Buyer has given 90 days' written notice to the Company requiring the delivery to be made and the Company has not fulfilled the delivery within that period. If the Buyer cancels the order in accordance with this condition 4.4 then:

4.4.1. the Company will refund to the Buyer any sums which the Buyer has paid to the Company in respect of that order or part of the order which has been cancelled; and

4.4.2. the Buyer will be under no liability to make any further payments under condition 7 in respect of that order or part of the order which has been cancelled.

4.5. The Buyer will inspect the Goods immediately after Delivery in accordance with this condition 4 for conformity with the description confirmed by the Company under condition 3.1. The Buyer will undertake such inspection with reasonable skill and care. The Buyer will immediately inform the Company if the Goods do not conform which such description. If the Buyer fails to notify the Company in accordance with this condition 4.5, the Goods will be deemed to comply with the description and the Buyer will be deemed to have accepted the Goods.

5. NON-DELIVERY

5.1. If the Buyer fails to take delivery of any of the Goods when they are ready for delivery or to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered on time (except solely on account of the Company's default) the Goods will be deemed to have been delivered and (without prejudice to its other rights) the Company may:

5.1.1. store or arrange for the storage of the Goods until actual delivery or sale in accordance with condition 5.1.2 and charge the Buyer for all related costs and expenses (including, without limitation, storage and insurance); and/or

5.1.2. following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract or account to the Buyer for any excess achieved over the price under the Contract in both accounts taking into account any charges relating to the sale and all other costs incurred by the Company in relation to the Goods arising from the Buyer's failure to take delivery.

5.2. The Company will not be liable for any total non-delivery of Goods unless written notice is given to the carrier and the Company's delivery depot within 7 days of the date when the Goods would in the ordinary course of events have been delivered. The Company will not be liable for partial non-delivery of Goods unless immediate notice is given to the carrier and the Company's delivering depot of such partial non-delivery. Subject to condition 11, any liability of the Company for the Goods under this condition 5.2 will 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.

5.3. For the avoidance of doubt, a signature of qualified acceptance on a carrier's delivery note will not constitute written notice to either the carrier or the Company for the purpose of condition 5.2.

6. RISK/OWNERSHIP

6.1. Risk of damage to or loss of Goods will pass to the Buyer in accordance with the terms of condition 4.1.

6.2. Ownership of the Goods will not pass to the Buyer unless and until the Company has received payment in full (in cash or cleared funds) of all sums due to it in respect of:

6.2.1. the Goods; and

6.2.2. all other sums which are or which become due to the Company from the Buyer on any account.

6.3. Until ownership of the Goods has passed to the Buyer, the Buyer will store the Goods (at no cost to the Company) properly and keep them safe from damage or loss. The Buyer will separate the Goods to enable them to be identified as the property of the Company and will hold such Goods as bailee for the Company.

6.4. The Buyer may use and/or incorporate the Goods in or together with any product manufactured or assembled by the Buyer before ownership has passed to it provided that such use and/or incorporation is solely in the ordinary course of the Buyer's business.

- 6.5. The Buyer may resell the Goods or any products that incorporate the Goods before ownership has passed to it solely on the following conditions:
- 6.5.1. any sale will be effected in the ordinary course of the Buyer's business at full market value and the Buyer will account to the Company accordingly; and
- 6.5.2. any such sale will be a sale of the Company's property on the Buyer's own behalf and the Buyer will deal as principal when making such a sale.
- 6.6. The Buyer's right to possession of the Goods will terminate immediately if any of the circumstances set out in conditions 12.1 or 12.2 occur;
- 6.7. The Company will be entitled to recover payment for the Goods notwithstanding that title in the Goods has not passed to the Buyer.
- 6.8. The Buyer grants the Company, 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.
- 6.9. Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer will be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 6.10. On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 will remain in effect.

7. PRICE

- 7.1. The price for the Goods will be the price agreed between the Company and the Buyer as confirmed by the Company in writing and/or as outlined in any communication prior to Delivery.
- 7.2. Unless otherwise agreed by the Company in writing, the price for the Goods is exclusive of transport, packaging and insurance, value added tax or other applicable sales tax or duty which will be added to the sum in question.
- 7.3. **THE COMPANY MAY INCREASE THE PRICE OF THE GOODS TO COVER ANY ADDITIONAL COSTS AND EXPENSES INCURRED BY OR ON BEHALF OF THE COMPANY IF THE BUYER REQUESTS A VARIATION TO THE DATE AND/OR TIME OF DELIVERY OF THE GOODS CONFIRMED BY THE COMPANY UNDER CONDITION 4,2 AND THE BUYER WILL PAY SUCH INCREASE IN THE PRICE IN ACCORDANCE WITH THIS CONDITION 7.**

8. PAYMENT

- 8.1. The Company may invoice the Buyer for the Goods on or at any time after delivery unless self-billing arrangements are agreed between the Company and the Buyer.
- 8.2. Unless otherwise agreed, payment of the price for the Goods is due prior to Delivery. Time for payment will be of the essence.
- 8.3. No payment will be deemed to have been received until the Company has received cleared funds.
- 8.4. All sums payable to the Company under any Contracts formed under these Terms and Conditions will become due immediately upon termination of it.
- 8.5. The Buyer will make all payments due under the Contract without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Buyer is required by law to make any such deduction or withholding.
- 8.6. The Company may appropriate any payment made by the Buyer to the Company to such of the Goods as the Company thinks fit despite any purported appropriation by the Buyer.
- 8.7. All payments are due, in cleared funds, prior to Delivery. Delivery of the Goods to the Buyer by the Company prior to receipt of any funds due will not be deemed a waiver of its rights under this section 8.
- 8.8. If the Buyer fails to make any payment under the Contract on the due date then (without prejudice to its other rights and remedies) the Company may charge the Buyer interest (both before and after judgment) on the amount unpaid at the annual rate of 3% above HSBC Bank Plc's base rate from time to time until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest).

THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITIONS 9 AND 10

9. LIMITATION OF LIABILITY

- 9.1. This condition 9 and the provisions of condition 4.4 set out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 9.1.1. any breach of these Terms and Conditions or the Contract; and/or
- 9.1.2. any representation, statement or tortious act or omission, including negligence, arising under or in connection with the Contract.
- 9.2. Nothing in these Terms and Conditions or the Contract will exclude or limit the Company's liability for which it would be illegal to exclude, or attempt to exclude liability for.
- 9.3. **SUBJECT TO CONDITION 9.2 THE COMPANY'S TOTAL LIABILITY TO THE BUYER (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, RESTITUTION OR OTHERWISE) HOWSOEVER CAUSED ARISING OUT OF OR IN CONNECTION WITH THE CONTRACT (INCLUDING IN RELATION TO ANY USE MADE OR RESALE BY THE BUYER OF ANY OF THE GOODS OR ANY PRODUCTS INCORPORATING THE GOODS) WILL BE LIMITED TO THE PRICE OF THE GOODS.**
- 9.4. **THE COMPANY WILL BE UNDER NO LIABILITY TO THE BUYER WHATSOEVER (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, RESTITUTION OR OTHERWISE) FOR ANY FINANCIAL LOSS, ECONOMIC LOSS, LOSS OF PROFIT, LOSS OF REVENUE, LOSS OF BUSINESS OR DEPLETION OF GOODWILL OR, SUBJECT TO CONDITION 9.2, ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE, COSTS, EXPENSES OR OTHER CLAIMS FOR COMPENSATION WHATSOEVER.**
- 9.5. **THE COMPANY HEREBY EXCLUDES TO THE FULLEST EXTENT PERMISSIBLE IN LAW, ALL CONDITIONS, WARRANTIES AND STIPULATIONS, EXPRESS OR IMPLIED, STATUTORY, CUSTOMARY OR OTHERWISE WHICH, BUT FOR SUCH EXCLUSION, WOULD OR MIGHT SUBSIST IN FAVOUR OF THE BUYER.**

10. ACKNOWLEDGMENT BY THE BUYER

- 10.1. The Buyer has inspected the Goods and buys with full knowledge of their actual state and condition and will take the Goods as they stand.
- 10.2. The Buyer enters into this contract solely as a result of its own inspection and on the basis of the terms of this contract and not in reliance on any representation or warranty, either written, oral or implied, made by or on behalf of the Seller. In particular, and without limitation, any Pre-Sale Assessment is provided to the Buyer by the Company for information purposes only. The Buyer acknowledges that it is responsible for verifying the accuracy of the information contained therein.
- 10.3. The Company makes no representations and gives no warranties as to the quality, condition, state or description of the Goods or their fitness or suitability for any purpose whatsoever and all express or implied statutory or common law conditions and warranties in relation to the Goods are excluded to the fullest extent permitted by law.
- 10.4. The exclusions of liability on the part of the Company contained in this disclaimer are in addition to and not in substitution for any other right of indemnity, relief or remedy available to the Company.
- 10.5. The Buyer agrees that the terms and conditions of this contract, and the exclusions which it contains, are fair and reasonable in the context of a sale of used/reconditioned Goods, bearing in mind that the Company has specifically told the Buyer that the Buyer must rely absolutely on the Buyer's own opinion and/or professional advice concerning:
- 10.5.1. the terms of this contract, and
- 10.5.2. the description quality, state and condition of the Goods and the possibility that some or all of the Goods may have defects not apparent on inspection and examination.

11. FORCE MAJEURE

The Company will not be liable to the Buyer in any manner or be in breach of the Contract because of any delay in performing or any failure to perform any of the Company's obligations under the Contract if the delay or failure is due to any cause beyond the Company's reasonable control including, without limitation, governmental actions, war or threat of war, act of terrorism, national emergency, riot, civil disturbance, sabotage or requisition; Act of God, fire, explosion, flood, epidemic or accident; import or export restrictions or embargoes; labour disputes or strikes; delays of sub-contractors or carriers; or inability to obtain or delay in obtaining supplies or adequate or suitable material, fuel, parts, machinery or labour.

12. TERMINATION

- 12.1. The Company may by notice in writing served on the Buyer terminate the Contract immediately if the Buyer is in material or persistent breach of any of the terms of the Contract and, where the breach is capable of remedy, the Buyer fails to remedy such breach within 10 days of service of a written notice from the Company, specifying the breach and requiring it to be remedied. Failure to pay any sums due in accordance with this condition 12 is a material breach of the terms of the Contract which is not capable of remedy.
- 12.2. The Company may by notice of no less than one (1) day to the Buyer in writing (notwithstanding clause 13 below, including by email) terminate this Agreement at any time.
- 12.3. The Contract will terminate immediately without notice if the Buyer:
- 12.3.1. summons a meeting of its creditors, makes a proposal for a voluntary arrangement, becomes subject to any voluntary arrangement, is unable to pay its debts within the meaning of section 123 Insolvency Act 1986, has a receiver, manager or administrative receiver appointed over any of its assets, undertakings or income, has passed a resolution for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation), is subject to a petition presented to any Court for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation), has a provisional liquidator appointed, has a proposal made for a

compromise or arrangement under Part 26 Companies Act 2006, has an administrator appointed in respect of its or is the subject of an application for administration filed at any court or a notice of appointment of an administrator filed at any court or a notice of intention to appoint an administrator given by any person or is the subject of a notice to strike off the register at Companies House; or

12.3.2. ceases or appears in the reasonable opinion of the Company likely or is threatening to cease to trade; or

12.3.3. the equivalent of any of the above occurs to the Buyer under the jurisdiction to which the Buyer is subject; or

the Company reasonably anticipates that one of the above set of circumstances is about to occur.

12.4. The Company will be entitled to suspend any deliveries otherwise due to occur following service of a notice specifying a breach under condition 12.1, until either breach is remedied or the Contract terminates, whichever occurs first.

12.5. The termination of the Contract howsoever arising will be without prejudice to the rights and duties of the Company accrued prior to termination and the conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

13. COMMUNICATION

13.1. Any notice, demand or communication in connection with the Contract will be in writing and may be delivered by hand, first class post or facsimile (but not by e-mail), addressed to the Buyer at its registered office. All notices to the Company arising under this section will be delivered to the relevant Sims' Company's registered address **and** to: Sims Recycling Solutions, FAO: Legal Department, 200 W. Madison St., Suite 3600, Chicago, IL, 60606, USA (with a copy to: SRS.Legal.Request@simsmm.com).

13.2. The notice, demand or communication will be deemed to have been duly served:

13.2.1. if delivered by hand, at the time of delivery;

13.2.2. if delivered by first class post, 48 hours after being posted or in the case of Airmail 14 days after being posted (excluding days other than business days); or

13.2.3. if delivered by facsimile, at the time of transmission;

provided that, where in the case of delivery by hand or transmission by facsimile, such delivery or transmission occurs either after 4.00pm on a business day, or on a day other than a business day, service will be deemed to occur at 9.00am on the next business day (such times being local time at the address of the recipient).

14. GENERAL

14.1. Time for performance of all obligations of the Buyer is of the essence.

14.2. Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

14.3. Any variation to these Terms and Conditions and any representations about the Goods will have no effect unless expressly agreed in writing and signed by a statutory director signatory of the Company.

14.4. If any condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract and will be ineffective without, as far as is possible, modifying any other provision or part of the Contract and this will not affect any other provisions of the Contract which will remain in full force and effect.

14.5. No failure or delay by the Company to exercise any right, power or remedy will operate as a waiver of its nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

14.6. The Company may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under the Contract.

14.7. The Contract is personal to the Buyer who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without the Company's prior consent.

14.8. The Company and the Buyer do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to the Contract.

14.9. The Contract contains all of the terms which the Company and the Buyer have agreed in relation to the Goods and supersedes any prior written or oral agreements, representations or understandings between the Company and the Buyer. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in this Contract. Nothing in this condition will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

14.10. The formation, construction, performance, validity and all aspects of the Contract are governed by the laws of England and Wales.

14.11. The English courts will have non-exclusive jurisdiction in respect of these Terms and Condition and any Contract arising hereunder.