

# HYGIENIC STAINLESS STEELS LTD

## STANDARD TERMS & CONDITIONS OF SALE

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### INTERPRETATION

In these conditions:

“Buyer” means the person who receives a quotation for the purchase of Goods with the Seller or whose order for Goods is accepted by the Seller.

“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.

“CONTRACT” means a contract between the Seller and Buyer for the purchase and sale of Goods comprising (the Seller’s written quotation, provide a quotation has been prepared,) the Buyer’s order, the Seller’s written form of acceptance and these Conditions. In the event of any inconsistency between these Conditions and any of the (Seller’s written quotation, provided a quotation has been prepared), Buyer’s order, or the Seller’s written form of acceptance (these Conditions) shall prevail to the extent of the inconsistency.

“GOODS” means goods (including any instalment of goods or any parts for them) which the Seller supplies or agrees to supply under any Contract in accordance with these Conditions.

“SELLER” means HYGENIC STAINLESS STEELS LTD, (registered in England under number 2027413).

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.

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

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### FORMATION OF CONTRACT AND BASIS OF SALE

The Seller shall sell and the Buyer shall purchase the Goods in accordance with and on the basis of these Conditions (which the Buyer, in entering into a Contract, shall be deemed to have accepted and which) shall govern a Contract to the exclusion of any other terms and conditions.

A quotation by the Seller does not constitute an offer and the Seller reserves the right to withdraw or revise any quotation at any time prior to the Seller’s acceptance of the Buyer’s order.

A contract shall be formed when acceptance of the Buyer’s order is confirmed in writing, by the Seller (or when Goods are despatched, whichever is earlier).

No order which as been accepted by the Seller may be cancelled or varied by the Buyer, except on terms agreed in writing by the Seller.

In relation to any Contract these Conditions, (the Seller’s written quotation provided a quotation has been prepared), any order and the Seller’s written form of acceptance shall constitute the entire agreement between the Buyer and the Seller and supersede any previous agreement or arrangement between them relating to the subject matter of that Contract.

No representation, undertaking or promise shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to the date of any Contract except as expressly stated in that Contract. The Buyer shall not have any remedy in respect of any untrue statement made by the Seller upon which the Buyer relied in entering into a contract (unless such untrue statement was made fraudulently or was as to a fundamental matter including a matter fundamental to the Seller’s ability to perform its obligations under the Contract) and the Buyer’s only remedies shall be subject to the terms of Clause 8. 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.

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### ORDER SPECIFICATIONS

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. The quantity, quality and description of and any specification for the Goods shall be those set out in (the Seller’s quotation or the Buyer’s order if acceptance is confirmed by the Seller’s written form of acceptance).

If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all actions, claims, losses (including without limitation, loss of profit, revenue of goodwill), liabilities, damages and expenses (including legal costs and expenses) awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim of alleged infringement of any patent, copyright,

design, trade mark or other intellectual property rights of any other person which results from the use by the Seller, its employees, contractors or agents of the Buyer's specification.

The Seller reserved the right to make any changes in the specification of the Goods which are required to conform with any applicable, statutory, EC or regulatory requirement or code of practice or where the Goods are to be supplied to the Seller's specification which do not materially affect their quality or performance.

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#### **PRICE OF GOODS**

The price of the Goods shall be the price quoted by the Seller to the Buyer or as otherwise agreed in writing by the parties. All process quoted are valid only for the period quoted or until earlier acceptance by the Buyer. The Seller reserves the right by giving notice to the Buyer at any time before delivery to increase the price of the Goods and written acceptance of an order by the Seller shall not be construed as acceptance of such order at any particular price or price information or instructions.

Except as otherwise stated under the terms of any quotation and, unless otherwise agreed in writing between the Buyer and Seller, all prices are given by the Seller ex works, Unit 8, Charnley Fold Industrial Estate, Bamber Bridge, Preston, PR5 6PS, as provided in clause 7 and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance in accordance with clause 5.

All prices quoted by the Seller are, unless stated otherwise, exclusive of any applicable Value Added Tax and all other applicable taxes and duties which shall be payable by the Buyer.

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#### **TERMS OF PAYMENT**

Unless otherwise agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods together with any transport, packaging, insurance, VAT and other charges payable on or at any time after delivery of the Goods is affected or deemed effected in accordance with clause 6.

The Buyer shall make payment of any amount invoiced by the Seller in full within (30) days of the date of the invoice unless otherwise agreed to in writing by the Seller. The time of payment of the invoiced amount shall be of the essence of the Contract. Receipts for the payment will be issued only upon request.

All amounts due under a Contract shall be paid in full by the Buyer without deduction, withholding, set-off or counterclaim for any reason whatsoever, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, save as may be required by law.

If the Buyer fails, on the due date, to make any payment due to the Seller under any Contract then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to: Terminate the Contract immediately in writing or suspend performance of the Contract until payment is made in full; and charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of (four) per cent per annum above The Bank of England prevailing base lending rate from time to time, until payment in full is made.

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#### **TERMS OF DELIVERY**

Unless otherwise agreed in writing, delivery of the Goods shall be made by the Buyer or its nominated carrier collecting the Goods at the Seller's premises no later than (30 days) after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed in writing with the Seller in writing, delivery shall be deemed to have been affected by the Seller upon the expiry of the (30 day) period.

Any dates quoted for deliver of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advanced of the quoted delivery date upon the Seller giving reasonable notice to the Buyer.

Any arrangement by the Seller for onward carriage of the Goods by any means (which shall be charged separately at cost) shall be deemed to be affected by the Seller as agent for the Buyer.

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.

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.

If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions in accordance with clause 6 (otherwise than by reason the Seller's fault) then without prejudice to any other right or remedy available to the Seller the Seller may: store the goods until actual delivery and charge the Buyer for reasonable costs (including handling and insurance) of storage: or 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 total amount payable by the Buyer under the Contract or charge the Buyer for any shortfall below the total amount payable by the Buyer under the contract.

If the Buyer wishes to make a claim for non-delivery, damage, shortage or breakage of or to goods, the Buyer shall: endorse the carrier's receipts "unexamined" and notify (in writing) the carrier and the Seller within (5) days of the date of delivery.

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#### **RISK AND TITLE**

Risk of damage to and loss of the Goods shall pass to the Buyer at the time of delivery. Notwithstanding delivery and the passing of risk in the goods, or any other provision of these conditions, the property in the Goods shall not pass to the Buyer until the Seller has received payment in full of the price of the Goods (together with any other sums due under any Contract between the Seller and the Buyer).

Until such time as the property in the Goods passes to 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 so they are identifiable as the Seller's property and keep the protected and insured at its own expense. Until that time the buyer shall be entitled to resell or use the Goods in the ordinary course of its business (but shall account to the Seller for the 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 at its own expense. The Seller may trace such proceeds that the Buyer receives in to any bank or other account which the Buyer maintains). If the Buyer sells the Goods the Seller may by notice in writing require the Buyer to assign to the Seller the Buyer's rights to recover the price from its purchaser. Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, the Buyer hereby grants an irrevocable right and licence to the Sellers's employees, agents and contractors to enter upon all or any premises of the Buyer where the Goods are stored and repossess the Goods without prior notice for this purpose. The Buyer shall not be entitled to pledge or in any way charge by the way of security for any indebtedness any of the goods which remain the property of the Seller but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

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#### **WARRANTIES AND LIABILITY**

The Seller warrants that Goods will correspond (in all material respects) with the Seller's specification at the time of delivery. The Seller shall be under no liability in respect of any defect in Goods: arising from fair wear and tear, neglect or failure to follow the Seller's instructions or if the Buyer fails to notify any claim in respect of Goods which is based on an alleged breach of the warranty in clause 8 within (7) days after the discovery of the alleged breach. Where any valid claim in respect of Goods which is based on a breach of the warranty in clause 8 is notified to the Seller with (12 months) of delivery, the Seller shall replace Goods (or any part(s) in question) free of charge or (at the Seller's sole discretion) refund to the Buyer the price of affected Goods (or a proportionate part of the price). Such replacement or refund shall be the Seller's sole liability and the Buyer's sole remedy for breach of the warranty in clause 8. Without prejudice to clause 8, the Seller shall be under no liability to the Buyer for any loss of profit, loss of income, loss of business, loss of revenue, loss of goodwill, or for any indirect or consequential loss or damage of any kind, in each case howsoever arising in tort (including negligence), breach of contract or otherwise. Subject to clause 6 and without prejudice to clause 8, the Seller's maximum aggregate liability under or in connection with any Contract, whether arising in contract, tort (including negligence) or otherwise, shall in no event exceed the total amount payable by the Buyer under that Contract. Nothing in these Conditions shall exclude or limit the Seller's liability for (i) fraud, (ii) death or personal injury caused by its negligence, (iii) breach of terms regarding title implied under the Sale of Goods Act 1979, or (iv) any other liability to the extent that the same may not be excluded or limited as a matter of law. Save as expressly provide in clause 8, all conditions, warranties, representations and terms, express or implied whether by statute, common law or otherwise in relation to Goods are hereby expressly excluded.

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#### **INTELLECTUAL PROPERTY RIGHTS**

Notwithstanding delivery of and the passing of title in any Goods, nothing in any Contract shall have the effect of granting or transferring to, or investing in, the Buyer any intellectual property rights, or any other right, title or interest in or to any Goods.

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#### **FORCE MAJEURE**

Notwithstanding anything to the contrary in these Conditions, the Seller shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a direct or indirect result of the sully of Goods by the Seller being prevented, hindered, delayed or rendered uneconomic by reason of circumstances or events beyond the Seller's reasonable control. If due to such circumstances or events the Seller has insufficient stocks to meet all its commitments the Seller may apportion available stocks between its customers at its sole discretion.

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#### **CONFIDENTIALITY**

Each party agrees and undertakes that it will keep confidential, will not use for its own purpose and will not without prior written consent of the other party disclose to any third party, any information of a confidential nature belonging or relating to the other party which may become known to it unless such information is or becomes public knowledge (other than by breach of this clause) or is required to be disclosed by order of a competent authority.

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#### **INSOLVENCY OF BUYER**

This clause applies if:

The Buyer is, or is deemed to be insolvent or unable to pay debts as the fall due, 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 purposes of amalgamation or reconstruction) or passes a resolution for its voluntary winding up or has a petition for its compulsory winding up presented against it; or an encumbrancer takes possession or a receiver or administrative receiver is appointed of any of the property, or assets of the Buyer; or the Buyer ceases or threatens to cease to carry on business; or 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; or any equivalent of analogous event or proceeding occurs in any other applicable jurisdiction. If this clause applies then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to treat any Contract as repudiated and/or withhold any further delivery of Goods without any liability to the Buyer and, if the Goods have been delivered but not paid for, the total amount payable shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

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#### **EXPORT TERMS**

In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions but if there is any conflict between the provisions of Incoterms and these Conditions the latter shall prevail. Where the Goods are supplied for export from the United Kingdom the provisions of this clause 13 shall apply notwithstanding any other provisions of these conditions. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods not the country of destination and for the payment of any duties there on. Unless otherwise agreed in writing between the Buyer and the Seller the Goods shall be delivered ex works and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979. The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment or in respect of any damage during transit.

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#### **GENERAL**

No variation to here Condition or any Contract shall be effective unless agreed in writing signed by the duly authorized representatives of the Buyer and the Seller. Failure by the Seller to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter. The Contracts (Rights of Third Parties) Act 1999 shall not apply to any Contract. No person other than a party to a Contract shall be entitled to enforce any term of it save that where an agreement is entered into pursuant to which any rights contained in the Contract are assigned to a third party, nothing in this clause 14 shall, of itself, operate to prevent the assignee from taking the benefit of, and enforcing, any rights so assigned. If any provision or part of these Conditions is held by any court of competent jurisdiction to be invalid or enforceable in whole or in part, such invalidity or unenforceability shall not affect the other provisions of parts of such provisions of these Conditions of which shall remain in full force and effect. All contracts and these Conditions will be construed in accordance with the laws of England and the Buyer hereby irrevocably agrees that the English courts shall have exclusive jurisdiction in relation to any claim brought by the Buyer against the Seller but that the Seller shall be entitled to bring claim against the Buyer in any court of competent jurisdiction. Buyer may not assign, transfer, novate or otherwise dispose of all or any of its rights or obligations under any Contract without the prior written consent of the Seller. Any notice to be given pursuant to these Conditions shall be sent to the intended recipient's registered office address or any other address as notified from time to time. Notice shall be regarded as properly given if sent in writing and shall be deemed to have been served on delivery if sent by hand 48 hours after despatch if sent by post, and on confirmation of transmission if sent by facsimile.