

General Terms and Conditions

STANDARD TERMS AND CONDITIONS OF SALE FOR GOODS SOLD BY SIKA IRELAND LTD

1. FORMATION

1.1 In these Conditions the following expressions have the following meanings:

1.1.1 "we" or "us" means Sika Ireland Limited;

1.1.2 "you" or "yourselves" means the buyer who places an order for Goods;

1.1.3 "Conditions" means these terms and conditions of sale including those described as commercial terms at the front of this document;

1.1.4 "Contract" means this contract between us and you;

1.1.5 "Goods" means the products which you agree to buy from us as identified by your order (including any part or parts of them);

1.1.6 "Intellectual Property" means all patents, copyrights, registered or unregistered trademarks, design rights, utility models, business names, domain names, know-how and all other intellectual property rights of a similar nature (whether registered or not) subsisting anywhere in the world in or associated with the Goods;

1.1.7 "Working Days" means any day between Monday to Friday inclusive but excluding bank and public holidays. Unless varied in accordance with Condition 1.4.

1.2 The Contract, together with all schedules which form part of it, will be on the following Conditions to the exclusion of any other terms that you seek to impose or incorporate, whether in writing or otherwise, or which are implied by trade, custom, practice or course of dealing.

1.3 This Contract constitutes the entire agreement between you and us. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of us which is not set out in this Contract.

1.4 Additions or variations to any quotations given or to the Contract, any representations concerning the properties or qualities of the Goods, and any warranties given by us relating to the suitability of Goods shall only be binding on us if agreed in writing and signed by a person duly authorised to sign on our behalf.

2. QUOTATIONS AND ORDERS

2.1. Quotations and any promotional material produced or supplied by us (including but not limited to SikaSpec and SikaSpec Pro) are illustrative only and shall not form part of the Contract nor have any contractual force and are not offers from us capable of immediate binding acceptance, nor shall constitute representations upon which you may rely. A Contract shall come into existence only when we accept your order, and if applicable, upon our acceptance of your credit application.

2.2. A quotation shall only be valid for a period of 20 Working Days from its date of issue, unless otherwise agreed by us in writing.

2.3. An order constitutes an offer by you to purchase the Goods in accordance with these Conditions. You are responsible for ensuring that the terms of the order and any applicable specification are complete and accurate.

2.4. We may at our absolute discretion accept the cancellation of any order provided we are notified

no more than five (5) Working Days after the order has been accepted and we are indemnified by you in respect of all costs and expenses incurred prior to the cancellation being accepted, but in no circumstances are we obligated to accept any cancellations.

3. DELIVERY

3.1. You will provide a full and correct address, including postcode, for the delivery of the Goods which are deemed to be delivered when we have delivered them there. If you request changes to the delivery point, including adding additional delivery points, you shall be liable for any charges made by us or any additional costs or expenses incurred by us as a result of such a change or addition.

3.2. Unless a specified time for delivery has been agreed and you have made additional payment for such delivery, then any dates quoted are approximate only, and under this Contract, time is not of the essence. You will not be entitled to terminate the Contract as a whole if we fail to meet any given times or dates for delivery unless such a delay exceeds 40 Working Days. Where no delivery date is specified, delivery will be within a reasonable time.

3.3. If you fail or refuse to accept delivery, or you do not give delivery instructions when the goods are ready for dispatch, or delivery is delayed at your request, then you will be responsible for paying or reimbursing us any additional costs or charges (including insurance) which we incur as a result.

Furthermore, we may at our option, withhold delivery of any further Goods or treat the Contract as repudiated by you.

3.4. You must notify us in writing

immediately if a delivery is not received within ten (10) Working Days from the date we informed you that it had been dispatched.

3.5. Unless we agree otherwise, you shall provide adequate labour and other facilities at the point of delivery to enable the Goods to be safely and properly unloaded. You shall indemnify us against any claims arising from such unloading except to the extent that any such claims relate to personal injury, death or damage to property which is caused by the negligence of our employees or agents.

3.6. In the event that we deliver to you an incorrect quantity of the Goods you shall not be able to object to or reject them on that ground alone. So long as you notify us of an incorrect quantity within three (3) Working Days of delivery and provided we have agreed the amount of the incorrect quantity, we shall make reasonable arrangements for collection or redelivery as appropriate, or agree a pro rata adjustment;

3.7. The above provisions of this Condition 3 do not affect our right to recover the price of any Goods that have already been invoiced to you or in respect of which risk has passed to you.

4. PAYMENT AND PRICE

4.1. The price of the Goods shall be that stated or referred to in our price list, or where we agree otherwise, in the order accepted by us. Prices are stated on the basis of current costs, exclusive of VAT. You shall, on receipt of a valid VAT invoice from us, pay to us such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

4.2. Prices given in a quotation may be increased by us on giving written notice to you at any time before

delivery by such amount as is reasonably necessary to reflect any increase in the cost of manufacturing the Goods, and/or any factors beyond our control including, but not limited to, fluctuations in tax, duty, foreign exchange rates, and/or any requests by you to alter the terms of the order.

4.3. Delivery of the Goods within Ireland will be CPT Delivery Point INCOTERMS 2010.

4.4. Goods will be invoiced on or at any time after dispatch.

4.5. We shall require payment by you on or before the last day of the next calendar month from the date of invoice for the net sales of all Goods and all related expenses. Time of payment is of the essence.

4.6. We may ask you to pay money in advance or on account and if so you must pay such amounts immediately with any balance being payable in accordance with Condition 4.5 above.

4.7. If you fail to make any payment when it is due or if any event described in Condition 7.5 occurs then the price of all Goods and any other goods supplied by us to you shall immediately become due and payable and, without affecting any other remedy we may have, we may:-

4.7.1. treat this Contract and every other contract which has not yet been fulfilled between us and you as cancelled;

4.7.2. suspend any further deliveries to you;

4.7.3. appropriate any payment made by you as we may think fit;

4.7.4. charge you interest (both before and after any judgment) on all sums due and outstanding at the rate provided by the European

Communities (Late Payment in Commercial Transactions) Regulations 2012 as amended from time to time.

4.8. All payments shall be made in Euros unless we require or agree to payment in pounds sterling or any other currency.

4.9. You shall pay all amounts due under this Contract in full without any deduction or withholding except as required by law and you shall not be entitled to assert any credit, set-off or counterclaim against us in order to justify withholding payment of any such amount in whole or in part.

4.10. Any invoice queries must be communicated to us within ten (10) Working Days of receipt of the invoice by you.

5. PACKAGING

5.1. The Goods will be delivered in the product containers which we hold in stock at the time your order is processed unless otherwise agreed in writing.

5.2. The price of the Goods, unless otherwise stated, includes the costs of packaging materials.

5.3. Where it has been agreed that the packaging materials will be returned, you will be credited with the full cost of these provided that you return them at your cost to the delivery point in a satisfactory condition and by such a time as we may reasonably require.

6. RISK

6.1. Risk and responsibility for the Goods shall pass to you on delivery by us to the delivery point.

6.2. You must examine the Goods on receipt and if you believe there has been loss or damage during transit which may be our responsibility, you must notify us in writing within five

(5) Working Days of delivery. If we do not receive such written notice within the required timescale then we will not be liable to you for any loss or damage to the Goods arising during transit. If Goods have been damaged during transit then all packaging materials must be retained for examination by us, the carrier or their agents.

7. OWNERSHIP

7.1. Ownership of the Goods shall not pass to you until we have received payment in full and such funds are cleared for the Goods; and any other goods which have been supplied to you but for which payment is overdue and has not been received.

7.2. Until ownership has passed to the Buyer or you sell or use the Goods pursuant to Condition 7.3, you must:

7.2.1. hold the Goods on a fiduciary basis as our bailee;

7.2.2. store the Goods (at no cost to us) separately from all our other Goods or goods of a third party in such a way as they are identifiable as our property;

7.2.3. not remove, destroy, deface or obscure any identifying mark, logo or packaging on or relating to the Goods;

7.2.4. maintain the Goods in a satisfactory condition and keep them insured, on your insurance, for their full price against all risks (and provide us with a copy of such insurance at our request); and

7.2.5. hold the proceeds of any insurance referred to in Condition 7.2.4 on trust for us and do not mix them with any other money or pay the money into an overdrawn bank account.

7.3. You may resell or use the Goods before ownership has passed to you

in the ordinary course of your business.

7.4. We can revoke your right to sell and use the Goods at any time by written notice to you if you have failed to pay any sums due to us (whether relating to the Goods or other goods) within ten (10) Working Days of the due date or if we have genuine doubts as to your solvency.

7.5. Your power of sale and use above shall automatically cease if any of the following events occur or we reasonably believe you are about to become subject to them and we notify you accordingly:

7.5.1. you have a petition presented for your winding up; or

7.5.2. (if you are an individual) you die or become incapacitated; or

7.5.3. you pass a resolution for voluntary winding up otherwise than for the purpose of a bona fide amalgamation or reconstruction; or

7.5.4. you compound with your creditors or have a receiver appointed over all or any part of your assets; or

7.5.5. a petition for examinership is presented or is intended to be presented in respect of you; or

7.5.6. you become bankrupt or insolvent; or

7.5.7. you enter into any arrangements with creditors; or

7.5.8. you take or suffer any similar action in consequence of debts or carry out or undergo any analogous act or proceedings under foreign law.

7.6. If your power of sale and use ends under Conditions 7.4 or 7.5 above, you will deliver up the Goods; or have them delivered up to us; and/or allow us to repossess the Goods and for the purposes of

such repossession you grant to us (our agents and employees) an irrevocable licence to enter any of your premises where the Goods are stored or that of any third party where we may reasonably believe they may be stored.

8. RETURNED GOODS

8.1. If you discover before using them that Goods which we have delivered to you did not comply with the provisions of Condition 9.1 at the time of delivery then provided that written notice has been given to us of such defect within five (5) Working Days of the date when you first could have become aware of the defect or non-conformity, and we are given a reasonable opportunity to examine the Goods and you have not in any way dealt with the Goods so as to put them in a worse condition than when they were delivered to you, we will, at our option, repair, replace or refund the price of any Goods and reimburse you for all reasonable costs incurred by you in returning the Goods to us. This Condition applies solely within a period of 12 months from the date of delivery of Goods.

8.2. The remedy provided in Condition 8.1 shall, provided it is performed by us within a reasonable time, be your only remedy for defects in Goods which have not been used by you, and for the avoidance of doubt we shall not be liable for storage costs, warehousing, processing, manufacturing, labour, or any other indirect or consequential loss.

9. THE GOODS WARRANTY

9.1. We warrant that the Goods will, at the time of delivery, display the technical properties for the approved uses set out in the relevant SIKA product data sheets and health and safety sheets.

9.2. If you intend to buy or buy and

sell Goods for a non-approved use then you do so wholly at your own risk and must satisfy yourself as to the suitability of the Goods for that use.

9.3. If we supply you with Goods manufactured to your own specification then we shall have no liability whatsoever to you for their fitness for any anticipated purpose or use.

9.4. We shall not be liable to you for any loss you may incur as a result of your failure to comply with any of our: technical; storage; safety; or any other applicable instructions and/or guidelines for the Goods, whether given in writing or otherwise.

9.5. If you sell the Goods, you shall grant no warranty greater in extent than this warranty.

LIABILITY

9.6. Save as expressly provided elsewhere in these Conditions (which other provisions shall take precedence) the following provisions of this Condition 9 set out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of any breaches of these Conditions.

9.7. All warranties, conditions or other terms (whether express or implied) as to the fitness for purpose, use, satisfactory quality, description, compliance with sample, or condition of the Goods, whether implied by statute, common law or otherwise (save for the conditions implied by section 12 of the Sale of Goods Act 1893 (as amended)) are, to the fullest extent permitted by law, excluded from the Contract.

9.8. You must inform us as soon as possible and in any event within five (5) Working Days of your becoming

aware that the Goods may have caused injury or death to any person, or caused damage to property and where appropriate allow us to inspect and at our option repair any alleged damage.

9.9. Nothing in these Conditions excludes, limits or restricts our liability for fraudulent misrepresentation, death or personal injury caused by our negligence or any matter in respect of which it would be unlawful for us to exclude, limit or restrict liability.

9.10. If we incur any liability to you as a result of any defect in the Goods once used by you as intended by these Conditions which causes personal injury (so far as not caused by our negligence) or damage to property where our liability falls within the scope of our combined product and public liability insurance policy, our liability is limited to sums recoverable under it (or which could be recovered but for any negligent act or omission by us which invalidates it) up to its maximum indemnity limit.

9.11. Subject to Conditions 9.2, 9.4, and 9.5, our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, whether such liability arises as a result of a breach or series of breaches, of a material term of the Contract or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the price of the Goods. Nor shall we be liable to you for any direct or indirect loss of profits, depletion of goodwill, use, or any indirect or consequential loss or damage, whatsoever and howsoever caused which arises under or in connection with the Contract.

9.12. Notwithstanding Condition 3.2, if we fail to deliver the Goods, our liability shall be limited to the

costs and expenses incurred by you in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.

9.13. You shall indemnify us against all actions, claims or demands for losses suffered or incurred by us including (without limitation) claims by third parties for fraud, in tort or otherwise arising directly or indirectly in connection with the use, functioning or state of the Goods except to the extent that the same are caused by our negligence or default.

10. CREDIT CHECKS

10.1. We may refuse to accept any order or perform any Contract if your arrangements for payment or credit appear to be or become unsatisfactory.

10.2. We may, in the event that you are not a limited liability company, make searches of your details, background and credit history with credit reference and fraud prevention agencies prior to carrying out any obligations in these Conditions. Such credit reference agencies may, at their absolute discretion, keep a record of the search and share that information with other businesses.

11. INTELLECTUAL PROPERTY RIGHTS

11.1. No right or licence is granted to you in respect of our Intellectual Property rights except the right to use or re-sell the Goods in your ordinary course of business.

11.2. You will not without our prior written consent allow the Trademark or any other of our trademarks or other words or marks applied to the Goods to be obliterated, obscured or omitted, nor will you add any additional marks or words.

11.3. You acknowledge that:

11.3.1. the Intellectual Property rights are our property;

11.3.2. nothing in these Conditions shall be construed as conferring any licence or granting any rights in favour of you (or anyone else) in relation to our Intellectual Property rights;

11.3.3. we assert our full rights to control the use of our trade marks within the European Union and you shall assist us, as required, in preventing (so far as may be permitted by law) parallel importers from diluting our rights;

11.3.4. any reputation in any trade marks affixed or applied to the Goods shall accrue to our sole benefit.

11.4. You agree:

11.4.1. not to remove any trademarks, copyright notices or other forms of identification from the Goods (save for any removal which is a necessary result of a manufacturing process), or apply any other trade mark to the Goods;

11.4.2. to promptly and fully notify us of any actual, threatened or suspected infringement of any Intellectual Property rights which comes to your attention; and

11.4.3. not to make any adaptations or additions to or variations of any of our Intellectual Property.

11.5. In the event that you make any discoveries, creations, inventions or improvements in relation to our Intellectual Property, you must, when instructed, transfer all such rights to us and effect all assignments as we may request.

11.6. We will not be liable to you for any costs, claims, damages, expenses or losses incurred by you as a result of any claim that the Goods or the use of any Goods infringes any third party Intellectual Property rights, in particular (but

not limited to) where such costs, claims, damages, expenses or losses arise from any unauthorised modification, alteration or adaption of the Goods by or for you.

12. GENERAL

12.1. Any notice or communication to be given under this Contract must be in writing, delivered or sent by email or prepaid first class letter post, and if delivered or sent to you, will be addressed to your last known trading address; or if delivered or sent to us, will be addressed to our Company Secretary at Sika House, Ballymun Industrial Estate, Ballymun, Dublin 11. Any such notice shall be deemed served if delivered by hand, at the time it was delivered at the proper address, if posted within Ireland, two Working Days after posting, and if posted from outside Ireland, fourteen Working Days after posting. Any notice given by email must be to the usual email address as otherwise notified to each other party.

12.2. We may assign, transfer, charge, sub-contract or deal in any other manner with the Contract, or any part of it to any person, firm or company. You may assign the Contract, or any part of it, only if you obtain our prior written consent.

12.3. No waiver of any condition of this Contract shall be effective except where it is in writing and signed by the waiving party. No waiver of any particular breach of the Contract by us shall be held to be a waiver of any other or subsequent breach by you. No omission or delay by us in exercising a right under this Contract shall constitute or operate as a waiver by us of any right to exercise that right in the future or of any other rights under this Contract.

12.4. If any of the terms of this Contract are found by any court or administrative body of competent

authority to be illegal, void, voidable, invalid, unreasonable or unenforceable by any reason of law they shall be illegal, void, voidable, invalid, unreasonable or unenforceable to that extent only and all other terms of the Contract shall remain legal, valid, reasonable and fully enforceable.

12.5. We will not be liable to you for any failure or delay or for the consequences of any failure or delay in performance of this Contract, if it is due to any event beyond our reasonable control including, without limitation, acts of God, war, industrial disputes (whether or not with our own workforce), protests, fire, explosion, an act of terrorism and national emergencies and the Company will be entitled to a reasonable extension of time for performing such obligations in such circumstances. All Contracts shall be deemed to be made in Ireland and shall be construed in accordance with and be governed by Irish law and shall be subject to the exclusive jurisdiction of the Irish courts.