

# Stainless Band Limited - Terms and Conditions of Business

1 September 2016

The Customer's attention is drawn to the provisions in Condition 13.

1. **General**  
In these Conditions the following definitions apply:
  - 1.1. **Commencement Date:** has the meaning set out in Conditions 2.5;
  - 1.2. **Company:** Stainless Band Limited (company number 06128898) whose registered office is at 3 Greengate, Cardale Park, Harrogate HG3 1GY and whose main trading address is Unit G + H Castlefields Industrial Estate, Castlefields Road, Bingley BD16 2AF;
  - 1.3. **Conditions:** the terms and conditions set out in this document;
  - 1.4. **Contract:** the contract between the Company and the Customer for the purchase of Goods comprised of the Order Form and the Conditions;
  - 1.5. **Customer:** the person(s) or firm who purchases the Goods from the Company as set out in the Order;
  - 1.6. **Goods:** the goods (or any part of them) agreed in the Contract to be supplied by the Company to the Customer as set out in the Order;
  - 1.7. **IPR:** any and all patents, trade marks, service marks, registered designs, drawings, design rights, copyright (including but not limited to copyright in computer software), inventions, trade secrets, confidential information, technical information, know-how, business or trade names, goodwill and all other intellectual property rights of a similar or corresponding nature in any part of the world, whether registered or not or capable of registration or not and including all applications and the right to apply for any of the foregoing rights;
  - 1.8. **Order:** the Customer's written order for the supply of Goods by the Company, as set out in the Order Form;
  - 1.9. **Order Form:** the written Company order form which refers to and incorporates the Conditions;
  - 1.10. **Parties:** the parties to the Contract;
  - 1.11. **Sterling** and **£:** the lawful currency of the United Kingdom;
  - 1.12. **VAT:** value added tax chargeable under the Value Added Tax Act;
  - 1.13. In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced;
  - 1.14. The Conditions can only be modified in writing by the Managing Director of the Company;
  - 1.15. Any typographical, clerical or other error or omission in any quotation, Order Form, invoice or any other document issued by the Company shall be subject to correction at any time and without any liability on the part of the Company.
2. **Basis of Contract**
  - 2.1. Subject to any variation under Condition 2.3, these Conditions apply to all orders, contracts and quotations for all goods, processing and/or services sold by the Company, to the exclusion of all other terms and conditions.
  - 2.2. No terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order, confirmation of the Order, specification or other document will form part of the Contract.
  - 2.3. These Conditions apply to all the Company's sales and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by the Managing Director of the Company.
  - 2.4. The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable specification contained therein or otherwise submitted by the Customer are complete and accurate.
  - 2.5. Subject to Condition 4.4, any Order placed by the Customer shall only be deemed to be accepted by the Company when the Company confirms to the Customer in writing that it has accepted such Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
  - 2.6. The Contract constitutes the entire agreement between the Parties.
  - 2.7. A quotation for the Goods given by the Company shall not constitute an offer. A

quotation for the Goods shall remain valid for a period of seven (7) days from and including the date of the quotation.

3. **Goods**
  - 3.1. The Goods are described in the Order Form.
  - 3.2. The Customer is responsible for the provision of a full material and technical specification for the Goods.
  - 3.3. In the absence of all or part of the order specification, the Company will fulfil the Order having referred to relevant recognised specifications applicable to the product and/or service ordered.
  - 3.4. The Company reserves the right to change or modify any aspect of the Goods in order to comply with current technical, health and safety or other environmental impact legislation or any other statutory requirement.
  - 3.5. To the extent that the Goods are to be supplied in accordance with a specification supplied by the Customer, the Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses), interest, penalties and other professional costs and expenses suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's IPR arising out of or in connection with the Company's use of the specification. This Condition shall survive the termination of the Contract.
4. **Price and Payment**
  - 4.1. The price of the Goods shall be the price set out in the Order (**Price**).
  - 4.2. The Company reserves the right to increase the Price by giving notice to the Customer at any time before delivery to reflect any increase in the cost of the Goods and/or related services to the Company that is due to:
    - (a) any factor beyond the control of the Company (including foreign exchange rate fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
    - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered or their specifications; or
    - (c) any delay caused by any instructions of the Customer in respect of the Goods and/or related processing or the failure of the Customer to give the Company adequate or accurate information or instructions in respect of the Goods.
  - 4.3. Unless otherwise stated prices are quoted net, ex works and exclusive of packaging, delivery, VAT (as appropriate) and any import or export clearance charges (as appropriate). Charges for the above will be set out in the Order Form and will be payable by the Customer when it is due to pay for the Goods.
  - 4.4. The Company reserves the right to request the Customer to pay for the Goods prior to processing and delivery. Where such request is made, the Contract will come into existence on the date the payment amount requested is received by the Company as cleared funds in the account specified in the Order Form.
  - 4.5. Payment is to be made in Sterling to the Company unless specifically agreed in writing by the Managing Director of the Company.
  - 4.6. Payment of the Price is due on or before the date specified in the Order and in any event within thirty (30) days of the delivery of the Goods whichever is the earlier date. Time for payment shall be of the essence. No payment shall be deemed to have been received until the Company has received cleared funds.
  - 4.7. All payments payable to the Company under the Contract shall become due immediately on termination of this Contract despite any other Condition. The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
  - 4.8. If the Customer fails to pay the Company any sum due pursuant to the Contract, the Customer will be liable to pay interest to the Company on such sum from the date it

becomes due for payment at the annual rate of four per cent (4%) above the base lending rate from time to time of HSBC Bank plc accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. The Company also reserves the right to withhold the supply of Goods under this or any other Contract.

5. **Delivery**
    - 5.1. Delivery of the Goods shall be deemed complete upon the Good's arrival at the delivery location as specified in the Order or such other location as the Parties may agree in writing.
    - 5.2. The Customer will take delivery of the Goods within seven (7) days of the Company giving notice to the Customer that the Goods are ready for delivery.
    - 5.3. Any dates quoted for delivery are approximate only and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.
    - 5.4. Subject to the other provisions of these Conditions, the Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor will any delay entitle the Customer to terminate or rescind the Contract.
    - 5.5. In the event that the Customer fails to provide sufficient information to allow delivery to take place according to the Contract, the Company reserves the right to charge the Customer a reasonable fee for storage and any associated costs such as insurance. Such fee will be payable by the Customer in addition to the cost of Goods set out in the Order.
    - 5.6. Specific or non-standard delivery charges shall be payable by the Customer unless specifically agreed in writing between the Parties in the Order.
    - 5.7. Unless specifically agreed between the Parties in writing, normal packaging methods suitable only for the preservation of the Goods during normal transit and storage conditions shall be used for the Goods.
    - 5.8. If for any reason the Customer will not accept delivery of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided the Company with appropriate instructions, documents, licences or authorisations as required:
      - (a) risk in the Goods will pass to the Customer (including for loss or damage caused by the Company's negligence);
      - (b) the Goods will be deemed to have been delivered;
      - (c) the Company may store the Goods until delivery whereupon the Customer will be liable for all related costs and expenses (including without limitation storage and insurance); and
      - (d) the Company may sell the Goods on the expiry of thirty (30) days written notice to the Customer and any costs and expenses incurred by the Company shall be payable by the Customer.
- For the avoidance of doubt, this Condition 5.8 (a) to (d) shall not apply where the delivery of the Goods has been delayed or deferred at the Customer's request and the Company has agreed in writing to such request.
- 5.9. The Company reserves the right to make part shipments against the Customer's Order or schedule.
  - 5.10. Where the Customer requests that an Order is delivered in instalments, but fails to provide the dates for delivery of each instalment, the Company shall be entitled to determine a date for delivery of the instalments. The Company shall notify the Customer of the proposed date for delivery of the instalments and the Parties will agree dates for delivery, in good faith, acting reasonably. For the avoidance of doubt, the Company shall have no responsibility to store undelivered instalments of the Goods for more than three (3) months after the Commencement Date. If a date for delivery of any instalments of the Goods has not been agreed on the expiry of three (3)

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- months after the Commencement Date, the Company may, at its option, apply the terms of Condition 5.8 and/or invoice the Customer for the Price (as defined in Condition 4.1).
- 5.11. The Customer is deemed to have examined the Goods on delivery.
6. **Non-Delivery**
- 6.1. The quantity of a consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 6.2. The Company shall not be liable for any shortages in, or non-delivery of, Goods (even if caused by the Company's negligence) unless written notice is given to the Company within seven (7) days of the date on which the Goods in the ordinary course of events would have been received.
- 6.3. Any liability of the Company for shortages in, or non-delivery of, the Goods shall 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.
7. **Risk**
- 7.1. Any risk in respect of the Goods shall pass to the Customer upon departure of the Goods from the Company's place of business.
8. **Title**
- 8.1. Notwithstanding delivery and the passing of risk in the Goods or any other relevant provision, the title to the Goods shall not pass to the Customer until the Company has received payment in full in cash or cleared funds for the Goods and any other goods that the Company has supplied to the Customer in respect of which payment has become due, in which case the title to the Goods shall pass at the time of payment of all such sums.
- 8.2. Until such time as the title to the Goods passes to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or related to the Goods;
  - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - (d) notify the Company immediately if it becomes subject to any of the events listed in Condition 20.1; and
  - (e) give the Company such information relating to the Goods as the Company may reasonably require from time to time.
- 8.3. At any time before the title to the Goods passes to the Customer, the Company reserves the right to require the Customer to deliver up all Goods in its possession that have not been resold or irrevocably incorporated into another product and if the Customer fails to do so promptly the Company may enter the premises of the Customer or of any third party where the Goods are stored in order to recover them.
9. **Cancellation**
- 9.1. The Customer shall not be entitled to cancel an Order unless such cancellation is expressly agreed in writing with the Managing Director of the Company.
- 9.2. If the Company agrees to such cancellation, the Customer will be liable for the Cancellation Costs as defined in Condition 9.3.
- 9.3. Any cancellation costs shall be calculated by the Company on the basis of all reasonable costs and expenses incurred by the Company under the Contract up to and including the date on which the cancellation request is received by the Company. Such costs may include but will not be limited to the cost of raw materials, cost of processing, all loss of profits and any other loss of revenue or damage to the Company arising as a result of the cancellation (**Cancellation Costs**).
- 9.4. Cancellation Costs are payable by the Customer within thirty (30) days of receipt of notice from the Company of Cancellation Costs due.
- 9.5. In the event of cancellation of an Order pursuant to Condition 9.1 the Company reserves the right to sell the Goods.
10. **Size and Weight**
- 10.1. Unless agreed in writing between the Parties in the Order, size tolerances are governed by the applicable relevant ISO or British Standard specifications.
- 10.2. Where the weight of the material contained in the Order cannot be met exactly due to the nature of the manufacturing process, the tolerances shall be agreed in writing between the Customer and the Company in accordance with normal industry practices and standards.
11. **Quality**
- 11.1. The Company warrants that on delivery the Goods shall:
- (a) conform in all material respects with the specifications submitted by the Customer contained in the Order;
  - (b) be free from material defects in design, material and workmanship;
  - (c) be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
  - (d) be fit for any purpose held out by the Company.
- 11.2. If:
- (a) the Customer gives notice in writing with full details to the Company within seven (7) days of receipt of the Goods that some or all of the Goods do not comply with the warranty set out in Condition 11.1;
  - (b) the Company is given a reasonable opportunity to examine the Goods and investigate the complaint and no use is made of, alteration made to, or interference made with the Goods before such inspection;
  - (c) in the reasonable opinion of the Company the Goods do not comply with the warranty set out in Condition 11.1; and
  - (d) the Customer (if asked to do so by the Company) returns the Goods to the Company's place of business at the Customer's cost
- the Company shall, at its option, repair or replace the defective Goods within a reasonable time-scale upon a free of charge basis or refund the price of the defective Goods in full.
- 11.3. The Company shall not be liable for the Goods' failure to comply with the specifications set out in the Order in any of the following events:
- (a) the Customer makes any further use of the Goods after giving notice in accordance with Condition 11.2;
  - (b) the defect arises because the Customer has failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or good trade practice regarding the same;
  - (c) the defect arises as a result of the Company following any drawing, design or specification supplied by the Customer;
  - (d) the Customer alters or repairs such Goods without the prior written consent of the Company;
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal storage or working conditions; or
  - (f) the Goods differ from the specifications as a result of changes made to ensure compliance with applicable statutory or regulatory requirements.
- 11.4. If the Company carries out repairs in accordance with Condition 11.2, the Customer is bound to accept such work.
- 11.5. Except as provided for in this Condition 11, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Condition 11.1.
- 11.6. Goods sold as non-prime or goods accepted as such by the Customer and the Company are sold in their actual state and condition without warranty and with all faults whether or not the Customer has inspected the goods.
- 11.7. Any statement, description or detail provided by the Company covering non-prime goods is given in good faith and without liability.
12. **Sub-Contracting**
- 12.1. The Company reserves the right to sub-contract all or part of the Order as appropriate or necessary at the discretion of the Company in order to best fulfil the Customer's Order.
- 12.2. In the event of such sub-contracting, the Company contracts on behalf of itself and the sub-contractor only.
13. **Limitation of Liability**
- 13.1. Nothing in these Conditions shall limit or exclude the Company's liability for:
- (a) death or personal injury caused by its negligence or the negligence of its employees, agents or subcontractors (as applicable);
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
  - (d) defective products under the Consumer Protection Act 1987; or
  - (e) any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- 13.2. Subject to Condition 13.1 the Company shall not be liable to the Customer in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof (i) for any economic loss of any kind whatsoever, including without limitation loss of profit, business or anticipated savings, or (ii) for damage to the Customer's reputation or goodwill, or (iii) for any loss resulting from any claim made by a third party, or (iv) for any special, indirect or consequential loss or damage of any nature whatsoever.
- 13.3. Without prejudice to Conditions 13.1 and 13.2, the Company's liability in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with the Contract shall be limited to the Price.
14. **Indemnities**
- 14.1. The Customer shall be liable for and shall indemnify the Company against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Company whether direct or indirect, consequential (including but without limitation any economic loss or other loss of profits, business or goodwill) arising out of:
- (a) any claim made under the Consumer Protection Act 1987 in respect of Goods supplied to the Customer;
  - (b) recall of the Goods or goods incorporating the Goods where the defect is due to the specifications set out in the Order and/or is not due to fault on the part of the Company;
  - (c) any claim made by a supplier of the Company in respect of work-in-progress in relation to Goods ordered by the Customer and where the Customer cancels an order in whole or in part pursuant to Condition 9.1; and
  - (d) any claim made or threatened against the Company that its processing of the Goods infringes any rights of third parties.
15. **Confidentiality**
- 15.1. A party (receiving party) shall keep in strict confidence all technical or commercial know-how, inventions, specifications, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this Condition as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of a competent jurisdiction.
- 15.2. This Condition 15 shall survive termination of the Contract.
16. **Severance**
- 16.1. If any provision or part-provision of the Contract shall be found by any judicial or other competent authority to be invalid,

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illegal or unenforceable it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification or deletion pursuant to this Condition shall not affect the validity of the remainder of the Contract which shall remain in full force and effect.

## 17. Notice

17.1. Any notice or other communication given to one of the Parties under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this Condition and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, pre-paid airmail, fax or email.

17.2. Communications addressed to the Company shall be marked for the attention of the Managing Director.

17.3. Any notice or other communication given under or in connection with the Contract shall be in the English language.

## 18. Governing Law

18.1. The Contract shall be governed by and interpreted according to English Law and shall be subject to the sole jurisdiction of the English Courts.

## 19. Alternative Dispute Resolution

19.1. If any dispute arises in connection with the Contract, the Parties agree to enter into mediation to settle such a dispute and will do so in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the Parties within fourteen (14) days of notice of the dispute, the mediator will be nominated by CEDR.

19.2. If the dispute is not settled by mediation within fourteen (14) days of the commencement of the mediation process, or such further period as the Parties shall agree in writing, the dispute shall be referred to and finally resolved by the London Court of International Arbitration Rules, which rules are deemed to be incorporated by reference into this Condition 19.2. In any arbitration commenced pursuant to this Condition 19.2:

- (a) the number of arbitrators shall be one; and
- (b) the seat or legal place of the arbitration shall be Leeds.

19.3. The language used in the mediation and arbitration shall be English.

## 20. Termination

20.1. Without limiting its other rights or remedies under the Contract, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within fourteen (14) days after receiving notice to do so;
- (b) the Customer has a bankruptcy order made against him or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstructions or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer;
- (c) the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its

obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade;

(d) any event occurs, or proceeding is taken with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Conditions 20.1(b) or 20.1(c);

(e) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or

(f) the Customer's financial position deteriorates to such an extent that in the Company's reasonable opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

20.2. Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

## 21. Miscellaneous

21.1. This Contract is drafted in English. If the Contract is translated into any other language, the English-language text shall prevail.

21.2. All other documents provided under or in connection with this Contract shall be in the English language or accompanied by a certified English translation. If any such document is translated into any other language, the English-language text shall prevail.

21.3. The Company reserves the right to defer the date of delivery and to invoice the Customer for such reasonable charges as are incurred by such delay or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraint or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

21.4. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company. The Company may assign the Contract or any part of it to any person, firm or company.

21.5. The Contract constitutes the entire understanding between the Parties with respect to the subject matter of the Contract and supersedes all prior agreements, negotiations and discussions between the Parties relating to them.

21.6. The failure on the part of either of the Parties to exercise or enforce any right conferred upon it under this Contract shall not be a waiver of any such right nor operate to bar the exercise or enforcement thereof of any other right under this Contract at any time or times thereafter.

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