



1. GENERAL in the contract and these conditions:-

"The Company" means SHL Refractories (UK) Limited.

"The Contract" means any agreement of which these conditions form a part and includes these conditions to the exclusion of any conditions or order or purchase of the Customer or any standards, specifications or particulars of or adopted by the Customer, unless expressly accepted by the Company in writing as part of the contract. "Goods" includes materials and equipment.

2. QUOTATIONS AND TENDERS

- (a) No order placed in response to the Company's quotation will be binding unless accepted by the Company in writing.
- (b) Where goods are to be supplied from stock, such supply is subject to availability of stocks at the date of delivery.
- (c) Tenders submitted by the Company shall remain open for acceptance for a period of 30 days from the date of the tender, unless some other period is specified or accepted.

3. PRICES

- (a) The price for goods or services quoted by the Company or stated in the contract is based on the cost to the Company of bought in goods, fuel, power, transport and labour at the date of quotation or acceptance of the order (whichever is earlier). If during the course of carrying out the contract there is any increase in all or any of such costs, the price may at the request of the Company be increased.
- (b) The rates to be charged by the Company for site labour to be carried out elsewhere shall be at the daily rates specified in the contract which shall be charged for every day (including travelling days, rest days, weekends and holidays) that each of the Company's employees is outside the United Kingdom and are exclusive of travelling, hotel and subsistence expenses and allowances which shall be for the Account of the Customer.
- (c) Where the price is varied in accordance with this condition the price as varied shall be binding on both parties and shall not give either party any option of cancellation.
- (d) There shall be added to the price any Value Added Tax or duty relating to the manufacture, transportation, export, import, sale or delivery of the goods or the supply of the services (whether initially charged on or payable by the Company or the Customer). Any local tax charged on the Company's employees while working outside the United Kingdom shall be for the account of the Customer.
- (e) Goods to be supplied to destinations in the U.K. will, unless otherwise provided in the contract, be delivered carriage paid either f.o.b. to the nearest suitable railway depot or, at the Company's choice, by road transport. Goods and materials to be exported will, unless otherwise provided, be delivered f.o.b. U.K. port. Upon delivery the risk shall pass to the Customer. The cost of unloading, transport from the point of delivery and shipping and insurance costs will, whether or not arranged by the Company, be for the account of the Customer. References in the contract to f.o.r., f.o.b. or other commercial terms shall (except where otherwise specified in the contract) be interpreted in accordance with INCOTERMS 1980.

4. PAYMENT

The Customer shall pay the contract price at the times and in the manner specified in the Contract or if none is specified, on 30 days account terms. Any sum payable in addition to the contract price in accordance with these conditions shall be paid on 30 days account terms. Time shall be of the essence of the contract in relation to all payments due to the Company hereunder. In the event of any failure by the Customer to pay any sum to the Company on the due date and where genuine doubts arise as to a Customer's financial position then the Company may exercise all or any of the following rights (which are in addition to and without prejudice to any rights of the Company in law):

- (a) to cancel or suspend the contract
- (b) to withhold or suspend any deliveries or services to be made or provided under the contract
- (c) to re-schedule the times for delivery or providing any labour or services
- (d) to charge interest on all overdue accounts at the rate of 2% per month
- (e) notwithstanding any credit terms previously agreed (either in the contract or elsewhere) to require payment in full or security for payment, without liability on the part of the Company, until payment or security for payment has been provided.



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5. RETENTION OF TITLE

- (a) The risk in the goods shall pass to the Customer when the goods are delivered or deemed to be delivered in accordance with the Contract
- (b) Notwithstanding subclause (a) above legal and equitable ownership of the goods shall remain with the Company until payment for the goods has been received by the Company in full or until the Customer sells the goods to its customers by way of bona fide sale at full market value whichever shall first occur.
- (c) At any time prior to full payment (whether or not payment is then overdue) the Company may (without prejudice to any of its other rights) retake possession of the goods or any part thereof and may enter on the Customer's premises by its employees or agents for that purpose.
- (d) Until the time of full payment for the goods the Customer shall be a bailee of the goods on behalf of the Company and shall store the goods in such a way that they are separately identifiable, nevertheless prior to the time of full payment the Customer is entitled to use the goods in the normal course of its business or to sell the goods to third parties in principles in *In re Hallett's Estate (1880) 13 CH D 696*.
- (e) The Customer's right to use the goods or to resell them prior to full payment may be terminated forthwith by written notice given by the Company to the Customer and shall automatically terminate with or without such notice on the appointment of any receiver or liquidator of the Customer.

6. DELIVERY AND PERFORMANCE

- (a) In the case of goods sold to a customer based in the U.K. or in the case of services to be performed in the U.K. the delivery or performances dates specified in a contract to be performed in the United Kingdom are approximate only and, unless otherwise expressly stated, time is not of the essence. Delivery dates and times are dependent upon the customer providing such information and facilities as the Company requires to perform the contract. The Company will not be liable in any circumstances for the consequences of any delay in performing the Contract if the duration of the delay is not substantial or if the delay or failure is due to Act of God, fire, inclement or exceptional weather conditions, industrial action (whether by the Company's or other employees), hostilities, breakdowns, shortage of labour, materials or other supplies, late delivery or performance or force of law) or any other cause whatsoever beyond the Company's control or of an unexpected or exceptional nature.
- (b) In all other cases, time for delivery or performance of the contract shall not be of the essence, unless expressly state in the Contract and the Company shall not be liable in any circumstances for the consequences of any delay or failure in performing the Contract
- (c) Where the Contract specified the payment or liquidated damages for the delay in or failure of delivery or performance thereof the foregoing paragraphs of this condition shall not apply and the payment by the Company of liquidated damages shall be in full and final settlement of all liability howsoever arising as a result of any such delay in or failure in delivery or performance.
- (d) No delay shall entitle the Customer to repudiate the Contract or to reject any goods or any instalment or any part of the order or any other order from the Customer
- (e) The Company cannot undertake to meet any schedule of Customer's requirements supplied after the date of the Contract and will have no liability whatsoever for the delay in meeting or failure to meet any or any of such requirements (howsoever such failure or delay may arise) unless and to the extent that the Company expressly agrees to meet such requirements, in which event the above paragraphs of this condition shall apply.

7. DELAYED ACCEPTANCE

If for any reason the Customer is unable to accept delivery of the goods when the goods are ready for delivery the Company may arrange storage of the goods and the Customer shall be liable to Company for the reasonable costs (including insurance) of such storage including moving into and out of storage, and for payment purposes the goods shall be deemed to be delivered when they are put into storage. This provision is without prejudice to any other rights which the Company may have in respect of the Customer's failure to take delivery of the goods or to pay for them in accordance with the contract.

8. LOSS OR DAMAGE IN TRANSIT

The risk in the goods passes to the Customer when the goods are delivered or deemed to be delivered in accordance with the Contract, and the Company accepts no responsibility for any damage, shortage or loss during unloading or transit from the point of delivery, whether or not the Company makes the arrangements. Claims for any such damage, shortage or loss in transit should be made on the carrier, in accordance with the terms of carriage.



9. WARRANTY LIMIT OF RESPONSIBILITY

- (a) The Company warrants in relation to goods of the Company's manufacture that it will (at the Company's choice) either repair or replace at the original point of delivery, or refund the full purchase price of any goods which are found within a period of six months from despatch of such goods from the company's works or, in the case of goods to be installed or erected by the Company 6 months from completion of the work or 12 months from despatch from the Company's works, whichever period first expires ("the warranty period") to be defective or not in accordance with the Contract or any express description or representation given or made on behalf of the Company in respect of the goods.
- (b) The Company warrants in relation to goods not of the Company's manufacture (including but not limited to parts and components supplied by other goods manufactured by the Company) that it will so far as it is able to do so give the Customer the benefit of any express guarantee or warranty by the manufacturer or supplier of such goods and of any other rights which the Company has against the manufacturer or supplier.
- (c) In the event of any claim under any of the foregoing warranties or under any condition or warranty implied by law or under any other express condition warranty or guarantee the following provisions shall apply:-
 - (i) The Company will require a reasonable period of time to carry out any repair or replacement
 - (ii) All costs of dismantling digging out and replacement and re-assembly shall be for the Customer's account
 - (iii) The goods to be repaired and replaced shall be delivered or returned at the Customer's expense to a location specified by the Company for repair or replacement and the expenses of redelivery shall also be for the Customer's account
 - (iv) The Customer shall make such facilities (such as handling equipment tools, labour and services, etc.) as the Company reasonably requires available to the Company for the purpose of repair or replacement.
 - (v) Replaced items will become the property of the Company.
- (d) The Customer's remedies in respect of any claim under the foregoing express warranty or against any manufacturer or supplier as aforesaid or any claim under any condition or warranty implied by law or any other claim in respect of the goods or any workmanship in relation thereto (whether or not involving negligence on any part of the Company) shall in relation to goods of the Company's manufacture be limited to repaired replacement or refund of the purchase price as aforesaid and any condition or warranty implied by law shall cease to apply after the expiry of the warranty period and in all other cases be limited to the enforcement of the above mentioned liabilities of the manufacturer or supplier.
- (e) Where the Contract is for or includes the supply of labour or services, the Company gives not guarantee or warranty in respect of such work save that it will carry out the work in accordance with the Contract and, subject to availability of labour and facilities, will endeavour to correct any faults or defects attributable to the Company.
- (f) The Company shall not in any circumstances be liable for any damages, compensation costs, expenses, losses or other liabilities, whether direct or consequential, and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by any rule of law.

10. SITE PREPARATION, ETC.

Irrespective of whether the contract provides for the Company to install any goods or equipment in any building or premises and unless expressly provided in the Contract, the Customer is solely responsible for the suitability of the site for the installation of the goods or equipment, for obtaining all necessary consents and approvals under planning and building regulations and by-laws and for the preparation of the site, the construction of foundations and the provision of services so that the site is suitable to receive the goods or equipment, the Company will if requested provide drawings and specifications showing the site requirements for the goods or equipment based on normal requirements in a suitable location but does not thereby warrant that the site as prepared by the Customer will be suitable or satisfactorily prepared.

11. WORK ON SITE

The contract does not include the installation of any goods or equipment unless specified in the Contract. Where installation is included in the contract it is the responsibility of the Customer to advise the Company of prevailing site conditions with respect (inter alia) to the physical characteristics, availability of services, normal working hours, availability of labour and any local or national arrangements or practices which might affect the work, and any other relevant factors. The Customer will at its own expense (and without prejudice to condition 10 hereof) make available on site lashing tackle and cranes (with operators) heavy tools and hand tools (other than special tools to be provided by the Company) power and other services including welders and welding equipment, lock up storage security and workshop facilities. The Customer shall ensure that the work can be carried out uninterrupted during agreed working hours. Any overtime or additional cost caused by an interruption or delay not attributable to the Company or its employees shall be



charged extra to the Customer. The Contract price only includes installation services and materials (such as builders', masons', joiners' or labourers' services or time, production or other services, electric cabling, switches or other apparatus, piping or drainage, greases, oils or other consumable items or test pieces) which are specified in the Contract and if the Customer does not provide any of these facilities, services or materials at its own expense, the cost thereof to the Company (including an appropriate allowance for profit) will be charge extra to the Customer. Time spent in testing and operator training over and above any provision therefore in the Contract (including an appropriate allowance profit) will also be charged extra to the Customer. The Customer shall also be responsible for providing a safe and healthy working environment for the Company's employees and the Company's sub-contractors and their employees and shall bear (or reimburse the Company against) any loss, damage or compensation due to any person in relation to any death or personal injury or destruction or damage to property except to the extent that the same is due to the negligence of the Company and the Customer shall except as aforesaid keep the Company full indemnified in respect thereof.

All surplus materials supplied by the Company remaining on site after completion of the contract shall be the property of the Company.

12. TESTS

The Company shall only be obliged to carry out tests which are specified in the contract, reasonable excesses and deficiencies thereof shall be accepted by the Customer who shall not be entitled to reject any goods on the grounds that they are not precisely as specified. Tests and inspections shall take place under the Company's standard testing arrangements. Any additional testing which the Company expressly agrees to carry out for the customer shall be charged extra to the Customer and shall be undertaken subject to these conditions.

13. EXPERIMENTAL WORK

Where either the goods and services to be provided by the Company are of an experimental or development nature or where the Contract otherwise so provides or expressly or by implication, the Company will use all reasonable endeavour to execute the Contract but if it proves impossible, impracticable or uneconomical to carry out the same, the Company reserves the right to cancel the Contract or the uncompleted balance thereof, in which event the Customer will only be liable to pay for the work or part of the contract actually done or performed.

14. MODIFICATIONS

Extra work, requirement or modification (including but not limited to foundation work) in relation to the goods or the installation which is not expressly specified in the contract or which is expressly excluded by these conditions and which Customer requests shall, if the Company is able and willing to agree thereto, be charged extra (including an appropriate allowance for profit) to the extent that such extra work, requirement or modification increases the costs to the Company of performance of the Contract, and the Company shall be allowed a reasonable extension or postponement of performance or delivery dates required to comply with any such request

15. DRAWING AND INFORMATION

- (a) The Company is entitled to assume that all drawings, descriptions and other information supplied to the Customer by the Company, whether written or verbal, are in all respects complete, accurate and entirely suitable for Customer's requirements.
- (b) Unless otherwise expressly agreed, the Company shall have no responsibility for the performance, suitability or durability of any goods or any materials or workmanship comprised therein to the extent that the same is manufactured in accordance with Customer's details or specific designs, drawings, standards, requirements or specifications.
- (c) Goods for the handling or processing of any materials will be designed by the Company to handle or process materials in accordance with any description, specification, analysis or sample provided and only within tolerances or variations specified.
- (d) The Customer shall specify any special requirements or information regarding the environment or location in which any goods are to operate, the location and availability of fuel, power, water and other services and any requirements to comply with local health, safety and welfare regulations and any other local regulations prior to the contract being made. In the absence of any such requirements or information having been so made or provided, the Company shall only be required to ensure that the goods comply with relevant UK laws and regulations and applicable published British standard specifications, and shall be entitled to assume the availability and suitability of fuel, power, water and other services as available in the UK.

16. CONFIDENTIALITY, PATENTS, ETC.

- (a) Any drawings, specifications or other technical information supplied to the Customer by the Company in connection with the Contract are provided on the express understanding that the Customer will not give, loan, exhibit or sell such drawings, specifications or technical information to any third party and that the Customer will



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not use them in any way except in connection with the goods or services provided hereunder. The copyright in all documents provided by the Company will remain vested in the Company.

- (b) The Customer shall indemnify the Company against all actions, costs (including the cost of defending any legal proceedings) claims, proceedings, accounts and damages in respect of any infringement or alleged infringement or any patent registered design copyright trade mark or other industrial or intellectual property rights resulting from the compliance by the Company with the Customer's specific requirements designs or specifications.
- (c) The Company shall indemnify Customer against all actions, costs (including the cost of defending any legal proceedings) claims, proceedings, accounts and damages in respect of any infringement of any patents, registered design, copyright, trade mark or other industrial or intellectual property rights resulting form the use or sale by the Customer any goods designed by the Company, except where paragraph (b) of this condition applies.

17. APPLICABLE LAW

The Contract shall in all respects be governed by and construed in accordance with English law and the Customer thereby submits to the nonexclusive jurisdiction of the English Courts.

The supplier undertakes that it has disclosed to the officer of the Company with whom it is dealing any requisite information or requirements pursuant to the Health and Safety at Work Act 1974.

The supplier shall comply with, and shall ensure that its employees, agents and subcontractors comply with all applicable site regulations instructions and safety rules of the Company and with any applicable legislative provisions by-laws and the like.