

General Conditions of Contract for Minor Contracts

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General Conditions of Contract for Minor Contracts

Conditions governing contracts to be executed by contractors on any of the premises of Outokumpu Stainless Ltd and/or any of its subsidiary companies.

1. Definition of Terms

1.1 **“The Purchaser”** means Outokumpu Stainless Ltd and its subsidiary companies and their respective successors and assigns.

“The Contractor” means the firm or company named as such in the Contract.

“The Site” means any land or premises occupied by the Purchaser and any other place provided by the Purchaser for the purposes of the Works.

“The Works” means all goods and/or services to be provided or used by the Contractor in carrying out the Contract and includes any Temporary Works and constructional aids provided by the Contractor not being Contractor’s Equipment.

“The Contract” means the agreement in writing (including schedules, appendices, specification and similar attachments) between the Purchaser and the Contractor for the execution of the Works referring to these General Conditions.

“The Contract price” means the sum named in the Contract as the Contract Price as may be altered upward or downward in accordance with any specific term of the Contract

“Contractor’s Equipment” means any plant, equipment, sheds, materials, tools, stores, machinery, apparatus, articles and other things of all kinds brought on to the Site by or on behalf of the Contractor for the execution of, but not for incorporation in, the Works.

“Completion” means the date at which the Works are handed over to and accepted by the Purchaser and/or (where appropriate) an Acceptance Certificate is issued by the Purchaser.

“The Temporary Works” means all Works of an impermanent nature used during the execution of the Works.

1.2 In these conditions the masculine shall include the feminine and the singular shall include plural and vice versa unless the context otherwise requires.

Any reference to an Act of Parliament in these Conditions shall be a reference to that Act as it may be re-enacted or modified.

Clause headings and marginal notes are inserted for convenience only and shall not affect the construction and interpretation of these Conditions.

2. Contractor’s Proper Execution of the Works

2.1 The Contractor shall execute the Works in accordance with the contract or, where execution is not there detailed, to the reasonable satisfaction of the Purchaser.

2.2 The Contractor shall ensure that the Works when executed in accordance with the Contract shall meet the performances guaranteed and shall be suitable for the purposes.

(a) indicated by or to be reasonably inferred from the specification, and

(b) as may be made known in writing by the Purchaser to the Contractor prior to the Contract being entered into such writing being specifically incorporated in the Contract.

3. Statutory and Local Regulations

3.1 Before commencing work the Contractor shall report to the Employer’s appointed representative. The Contractor and his sub-contractors in carrying out the Contract shall conform at their own expense with all applicable legislative

provisions and by-laws in particular (but without limitation) building and construction laws and regulations including the Health and Safety at Work Act 1974, the Factories Act 1961 (as these Acts may from time to time be re-enacted or modified) and the construction regulations made there-under and with any local and Site Regulations of the Employer particularly (but without limitation) those relating to health, safety and hygiene. Before beginning work on the Site the Contractor shall sign a Certificate provided by the Employer certifying that the Contractor has been made aware of the Employer's local and Site Regulations and that the Contractor will abide by them and will procure his sub-contractors' employees and all other persons having access to the Site by his authority to abide by the same.

3.2 It is a fundamental condition of the Contract and of the placing by the Employer of the business incorporated in the Contract with the Contractor that the Contractor shall have complied and shall at all times and in every respect comply with the Code of Conduct of the Employer as issued from time to time.

4. Things found on Site

All minerals, metals, objects and other things found or discovered on under or around the Site shall as between the Contractor and the Purchaser be the property of the Purchaser and shall be dealt with as the Purchaser may direct.

5. Drawings and Patterns and Software

5.1 The Contractor shall if required by the Purchaser submit copies in duplicate of all detailed drawings and arrangement drawings for comment before proceeding with the work. Such comment on being given in no way whatever relieves the Contractor of his responsibilities under the Contract. On Completion the Contractor shall if required by the Purchaser supply free of cost one reproducible copy of all final detailed drawings including arrangements drawings, electrical schematics, wiring diagrams and cable schedules.

5.2 Any drawings or the like provided to the Purchaser in connection with the Works shall be the property of the Purchaser but shall remain the copyright of the Contractor. Such drawings and the like may be used, copied and amended by the Purchaser for the operation, maintenance (including repair or replacement), improvement and modification of the Works including the manufacture of parts for such purposes.

5.3 Any patterns, jigs or the like made by the Contractor specifically and solely for the execution of the Works shall remain the property of the Contractor but shall be made available to the Purchaser on such terms as may be agreed for the use of the Purchaser described in Clause 5.2.

5.4 Any patterns, drawings, jigs or the like provided to the Contractor by the Purchaser for the execution of the Works shall remain the copyright and property of the Purchaser. The Contractor shall not copy or use the same for any purpose other than for the execution of the Works and shall return them to the Purchaser in good order and condition on completion of the tests on Completion.

5.5 The Contractor shall not depart from any drawing without the prior written consent of the Purchaser.

5.6 For any standard software delivered as part of the Works the Purchaser is granted a non exclusive licence to use the software. If the software is developed for the Purchaser as part of the Works the copyright (including the right to change and transfer the software) to the software is transferred to the Purchaser and the source code shall be handed over to the Purchaser.

6. Materials and Workmanship

The Purchaser shall at all reasonable times be allowed to inspect the work in progress and shall have at all reasonable times access to the Contractor's premises and shall have the right to inspect and test the materials and workmanship but irrespective of the result of any such inspection or testing all materials to be supplied by the Contractor shall be in accordance with the Contract specification or where not so specified to the reasonable satisfaction of the Purchaser and if so required shall be of a quality approved by the Purchaser. If during the progress of the Works the Purchaser gives notice in writing to the Contractor that the Purchaser is dissatisfied with any materials or workmanship or with any part of the Works on account of the same being unsoundly or improperly executed or on

account of such Works not being carried out in strict accordance with the Contract, then the Contractor shall immediately remove all the defective materials and defective Works stated in such notice and supply such materials or carry out such Works (as the case may require) in accordance with the Contract. No extension of time will be granted by reason of any such notice.

7. Assignment and Sub-letting

The Contractor shall not assign or sub-let the carrying out of the Works nor any part thereof without the prior approval of the Purchaser. Such approval must be obtained by the Contractor from the Purchaser in writing on such terms and conditions (which shall include imposition of all these Conditions on assignees or sub-contractors) as it may specify. All the Contractor's subcontracts shall contain a provision prohibiting any further subcontracts without the written consent of the Purchaser. Should the Contractor sub-let, he shall be held fully responsible in all respects for any part of the Works carried out by the subcontractor as if he himself were undertaking the same and he shall bind the sub-contractor to observe these conditions and any other conditions incorporated in the Contract so far as the same are applicable to the subcontracted work.

8. Patent and other protected rights

The Contractor shall indemnify the Purchaser against actions, claims, demands, costs, charges and expenses arising from any infringement or alleged infringement of any patent, registered design, trademark, copyright or other like right protected by law resulting from the construction, use or repair of the Works.

9. Site Conditions

- 9.1 The Contractor shall be deemed to have informed and satisfied himself fully as to the nature and extent of the Works including (but not by way of limitation) the physical condition of and around the Site so far as is practicable and the necessity for the Works meeting relevant performances and being suitable for intended purposes (including performances and purposes that may reasonably be inferred as being required) and therefore to have provided, unless expressly otherwise specified in the Contract, for all reasonably foreseeable eventualities in the Contract Price.
- 9.2 The Contractor will at his own expense provide everything necessary for carrying out the Contract except as otherwise agreed in writing. However, the Contractor may with the prior consent of the Purchaser be permitted to use such supplies of electricity, water, gas and any other services as may from time to time be available from the Purchaser, but shall make reasonable payment therefore unless the Purchaser's Site Regulations expressly provide otherwise. The Purchaser will not be liable for loss or damage caused by variations in pressure of quality or by the interruption, withdrawal or failure of such services. The Contractor shall at his own expense provide any apparatus and material necessary for utilising such services and shall be responsible for any loss or damage to persons or property caused by his use of these supplies.

10. Variation Orders

- 10.1 The Contractor shall not vary, add or omit any of the Works, except as directed in writing by the Purchaser, but the Purchaser shall have full power from time to time during the execution of the Contract by notice in writing to direct the Contractor to vary, add to or omit in any manner any part of the Works, and the Contractor shall carry out those variations as though those variations were stated in the Contract.
- 10.2 In any case in which the Contractor has received a direction from the Purchaser under this Clause, the Contractor shall advise the Purchaser in writing
- (a) within 7 days whether in principle there should be an increase or decrease in the Contract Price, and/or change in time schedule; and
 - (b) within 21 days of the amount of that increase or decrease and/or change in time schedule.

Within 10 working days from receiving Contractors advice according to (b) the Engineer is entitled to withdraw his directions without cost.

The amount of that increase or decrease shall be ascertained and determined in accordance with the rates specified in the Schedule of Prices, so far as the same may be applicable, and where rates are not contained in those Schedules or are

not applicable, such amount as shall be fair and reasonable in the circumstances. The same will apply to change of the time schedule. Due account shall be taken to any part taken out from the Works by any variation order.

No increase of the Contract Price or time under this Clause 10.2 shall be made unless the Contractor shall have given the advice in writing referred to in this sub-clause within the times specified.

- 10.3 If in the opinion of the Contractor; any variation is likely to prevent or prejudice the Contractor from or in fulfilling any of his obligations under the Contract, he shall so notify the Purchaser in writing, and the Purchaser shall decide with all possible speed whether or not the same shall be carried out. If the Purchaser confirms his instructions in writing those obligations shall be modified to such an extent as may be justified and agreed with the Purchaser. Until the Purchaser so confirms his instructions they shall be deemed not to have been given.

11. Contractor's Default

- 11.1 If the Contractor shall neglect to execute the Works with due diligence and expedition or shall refuse or neglect to comply with any reasonable order given him in writing by the Purchaser in connection with the Works or shall contravene any provisions of the Contract, the Purchaser may give seven days notice in writing to the Contractor to make good the failure, neglect or contravention complained of.
- 11.2 Should the Contractor fail to comply with the notice referred to in Clause 11.1 of this Clause within seven days from the date of its service, in the case of failure, neglect or contravention capable of being made good within that time, or otherwise, within such time as may be reasonably necessary for making it good, then without prejudice to any other right or remedy he may have under the Contract or at common law the Purchaser may:
- (a) employ other workmen and execute that part of the Works which the Contractor shall have neglected to execute, or
 - (b) take the Works in whole or in part out of the Contractor's hands and recontract with any other person to complete the same.
- 11.3 In the event of Clause 11.2 applying the Purchaser shall have the free use of all Contractor's Equipment without being responsible to the Contractor for fair wear and tear and to the exclusion of any right of the Contractor over the same.
- 11.4 The Purchaser shall be entitled to retain any sum which may otherwise be due to the Contractor and to apply that sum towards the payment of the cost of carrying out any work referred to in Clause 11.2. If the cost of doing this work shall exceed the sum retained, the Contractor shall pay the excess forthwith to the Purchaser.

12. Delivery and title

The Contractor will be responsible at his own expense for delivery to and for unloading on the Site all plant and equipment and other things comprised in the Works and all Contractor's Equipment. All such items shall be sited or deposited as directed by the Purchaser but shall remain in the custody of the Contractor who shall be liable for the care, safety and storage thereof. The Contractor shall on completion of the Works remove all Contractor's Equipment and rubbish and leave the Site in a clean condition.

The Works or any part thereof shall become the property of the Purchaser when delivered to Site.

13. Access to the Site

The Contractor shall have access (but not exclusive access) only to such parts of the Site as are reasonably necessary for the purpose of carrying out the Works and to such other parts as the Purchaser may from time to time authorise. The contractor shall be responsible for ensuring that his employees do not enter any other part of the Site and that they make use only of such roads, routes and facilities as the Purchaser may from time to time authorise.

14. Interference with Other Operations and Rights

The Contractor in carrying out the Works shall ensure that there shall be no interference with the operations of the Purchaser or of other contractors or with the use and enjoyment of any public rights or with any easement or property

whether of the Purchaser's or not unless the Contract unavoidably so requires and then the Contractor shall ensure that any such unavoidable interference is as limited as possible.

15. Care of the Works

- 15.1 The Contractor shall at his own expense make good and/or indemnify Purchaser in respect of::
- (a) except as provided by Clause 15.2 any loss of or damage to the whole or any part of the Works or of the Temporary Works or of the Contractor's Equipment which in the case of the whole or any part of the Works occurs before Completion or in the case of the Temporary Works or the Contractor's Equipment occurs before the same are finally removed from the Site.
 - (b) any loss of or damage to the whole or any part of the Works which occurs after Completion but before the end of the period of defects liability under Clause 19 and which results from any act or omission of the Contractor or his sub-contractors or any employee or representative of the Contractor or his sub-contractors.
- 15.2 The Contractor shall not be liable to make good at his own expense any loss or damage that may result from any of the following excepted causes:
- (a) riot and radio-active contamination (in so far as it is uninsurable) war, invasion, act of foreign enemies, hostilities (whether or not war be declared) civil war, rebellion, revolution, insurrection, military or usurped power except Contractors Equipment (for which the Contractor always is liable)
 - (b) loss or damage directly caused by design or information made available by the Purchaser for which the Contractor has before acting thereon disclaimed responsibility in writing;
 - (c) loss or damage directly caused by any act or omission of the Purchaser or any employee or representative of the Purchaser; The Contractor shall nevertheless comply with any variation order properly made under Clause 10 (variation Orders) for making good loss or damage resulting from any of the excepted causes listed above.
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16. Insurance of the Works

- 16.1 The Contractor shall insure in the joint names of the Contractor and the Purchaser the whole and every part of the Works and the Contractor's Equipment at full replacement value against all loss or damage from any cause arising (other than any of the excepted causes referred to in Clause 15.2 (a)) with insurers and in terms approved by the Purchaser and shall maintain that insurance in full force and effect until subject to Clause 16.3 the Works shall have been accepted.
- 16.2 The Policy of Insurance shall be shown to the Purchaser whenever he requests together with satisfactory evidence of payment of premiums. If any Insurance is not effected or any premium not paid the Purchaser may effect or pay the same and deduct the cost of so doing from the Contract Price.
- 16.3 In particular the Contractor shall ensure that the Insurance Policy covers:
- (a) loss or damage occurring during any defects liability period after Completion but from a cause occurring prior to Completion, and
 - (b) loss or damage occurring during any defects liability period of the kind referred to in Clause 15.1(b).
- 16.4 The provisions of this Clause shall not limit the obligations and liabilities of the Contractor under Clause 15 (Care of the Works).
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17. Liability

- 17.1 The Contractor shall indemnify and keep the Purchaser fully indemnified against all actions claims proceedings liabilities costs expenses and losses (including but not limited to direct, indirect and consequential loss of profit or loss of production whether foreseeable or not) suffered or incurred by the Purchaser in relation to death or injury to persons (including but not limited to any employee of the

Employer) or loss of or damage to property (including but not limited to property of the Employer) or breach of contract by the Purchaser to the extent that such death injury loss damage or breach is attributable to the acts or omissions of the Contractor its officers employees agents or sub-contractors.

The remedies contained in this Clause are without prejudice to and in addition to any warranties indemnities remedies or other rights provided by law and/or statute and/or under any other provision of this Contract for the benefit of the Purchaser.

- 17.2 Except in respect of claims for personal injury or death or loss of or damage to third party property or willful misconduct or intent by the Contractor the liability of the contractor arising under Clause 17.1 for any one act or omission shall not exceed 200 % of contract value or £10 Million whichever is the greater.
- 17.3 The Contractor shall during the period of contract hold adequate insurance policies to cover the full amount of the Contractors potential liability under Clause 17.1 and 17.2. Satisfactory evidence of such insurance and payment of the premium shall be shown to the Purchaser upon request. If insurance is not effected or premiums not paid, the Purchaser may effect or pay the same and may deduct the cost of so doing from the contract Price.
- 17.4 The contractor shall during the period of contract hold employers' liability insurance in respect of his employees of at least a minimum of £10 Million (ten million pounds sterling) in respect of any one event or series of connected events.
- 17.5 The Contractor will insert appropriate conditions in his subcontracts reflecting the provisions of Clauses 15 to 17 inclusive.

18. Completion and Payment

The Contractor shall arrange for the plant and equipment supplied to be operated for reasonable periods as may be provided for in the Contract by way of (a) preliminary tests, and (b) final tests. The Purchaser may refuse Completion until all such tests have been satisfactorily passed. The risk for loss or damage to the Works will pass from the Contractor to the Purchaser on the day of Completion.

If not agreed otherwise the Purchaser shall pay the contractor 90 % of the Contract Price for the Works after completion. The remaining 10 % shall be paid after the end of the Defects Liability Period (see Section 19). Payment shall be made the 30th day of the second calendar month following the month of Completion and the end of Defects Liability Period respectively provided the invoice contains the Purchaser's purchase order number and reaches the Purchaser on or before the fifth day of the first calendar month following the month of Completion and the end of Defects Liability Period respectively.

19. Defects Liability Period 19.1

For twelve months after Completion the Contractor shall be responsible for making good with all reasonable speed any defect or damage to the same or any other issue where the Works are not operating according to contract that may develop under the conditions provided for by the Contract and under proper use arising from:

- (a) defective design (other than a design made, furnished or specified by the Purchaser and for which the Contractor has disclaimed responsibility in writing within a reasonable time after the receipt of the Purchaser's instructions), materials or workmanship, or
- (b) any act or omission of the Contractor done or omitted during the defects liability period.
- 19.2 If any defect or damage or other issue as in Clause 19.1 shall occur the Purchaser shall inform the Contractor of it in writing stating its nature. If the Contractor replaces or renews any part of the Works, the provisions of this Clause shall apply to that part until the expiration of the period referred to in Clause 19.1 from the date of that replacement or renewal.
- 19.3 If any defect or damage be not remedied within a reasonable time the Purchaser may do the work at the Contractor's risk and expense, but without prejudice to any other rights which the Purchaser may have against the Contractor in respect of the failure of the Contractor to remedy that damage or defect.
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- 20. Contractor's Workmen**
- 20.1 The Contractor shall in respect of all persons employed by him in the execution of the Works pay rates of wages and observe hours and conditions of labour in accordance with either local or national agreement between the contractor(s) and the trade union(s) which shall reflect the general level of wages, hours and conditions observed by other employers in the locality whose general circumstances in the trade or industry in which the Contractor is engaged are similar.
- 20.2 All persons directly or indirectly working for the Contractor under this Contract shall have the necessary skills and experience to the best professional standards and have sufficient and well maintained equipment, (including but not limited to safety clothing and safety equipment) to carry out the Works. The Purchaser shall be entitled if he so requires to have suitable certificates of competence from the Contractor for any person employed in connection with the Works.
- 20.3 The Contractor shall not without the consent of the Purchaser or of the contractor concerned knowingly take into employment workmen or other employees from the Purchaser or from any other contractor employed in connection with the Works by the Purchaser.
- 20.4 The Purchaser shall be at liberty to object to any representative or person employed by the Contractor in the execution of the Works on the Site or in any other place who shall in the opinion of the Purchaser misconduct himself or be incompetent or negligent. The Contractor shall remove that person from the Works and he shall not be employed again by the Contractor in connection with the Works without the permission of the Purchaser. Any removal of labour under this Clause shall not constitute a valid reason for the Contractor's failure to complete the Works in accordance with the Contract.
- 20.5 The Contractor shall during all working hours have upon the Site a competent supervisor and all orders, directions and notices given by the Purchaser to him shall be as binding on the Contractor as though given to the Contractor.
- 20.6 The Contractor shall abide by the Purchaser's site harmonisation procedures.
- 20.7 Unless the Contract otherwise provides the Contractor will provide during the period of the Contract all proper welfare and amenity facilities for his employees.
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21. Photographs, Advertisements

The Contractor may not without the previous written consent of the Purchaser and Notices take or permit to be taken or publish or consent to the publication of any photographs or written description of the Works or any part thereof or erect any advertisement or notice-board on the Site (except for those required by Law or by the Contract).

22. Safety

The Contractor shall at all times adopt safe working practices and at the proper time supply and install within the original Contract Price such guards and safety devices as may at the time of Completion be necessary to comply with the provisions of all health and safety legislation (including the Factories Act, 1961, the Health and Safety at Work etc. Act, 1974, and any Orders and Regulations made under these) and the requirements of the Factory Inspectorate under such legislation.

23. Liquidated Damages

If liquidated damages are agreed the Contractor will not be liable for loss of profit or loss of production due to breach of contract to the extent the loss is caused solely by a delay compensated by liquidated damages.

24. Statutory Payments

The Contractor shall be responsible for collection, deduction (where appropriate) and payment to the responsible authority of all statutory payments (including National Insurance Contributions and Training Levy) in respect of all persons employed by or taken on or directed by the Contractor or by his sub-contractors in connection with the execution of the Works. The Contractor shall indemnify the Purchaser against all actions, claims, demands, costs, charges and expenses related to such statutory payments and suffered or incurred by the Purchaser.

25.	Bankruptcy	<p>If the Contractor shall have a winding up or bankruptcy petition presented or enter into any form of voluntary arrangement with its creditors or become bankrupt or insolvent or have a receiving order made against him or compound with his creditors or enter into administration or being a corporation commence to be wound up, not being a members' voluntary winding up for the purpose of reconstruction or amalgamation, or carry on its business under a receiver for the benefit of its creditors or any of them the Purchaser shall be at liberty and at no cost to him, either:</p> <ul style="list-style-type: none"><li data-bbox="716 359 1529 520">(a) to terminate the Contract forthwith by notice in writing to the Contractor or to the receiver or liquidator or to any person in whom the Contract may become vested and to act in the manner provided in Clause 11 (Contractor's Default) as though the last mentioned notice had been the notice referred to in Clause 11 and the Works had been taken out of the Contractor's hands, or<li data-bbox="716 548 1529 653">(b) to give such receiver, liquidator or other person the option of carrying out the Contract subject to his providing a guarantee in a form and from a guarantor acceptable to the Purchaser for the due and faithful performance of the Contract up to an amount to be agreed.
26.	Acceptance of Conditions	<p>The Contractor's acceptance of the Purchaser's order to carry out the Works includes acceptance of these Conditions and any special conditions attached hereto and of the Purchaser's local and Site Regulations which can only be varied with the written authority of the Purchaser. No term or condition attached to, or incorporated in, the Contractor's tender or quotation, nor any standard or printed terms or conditions of the Contractor shall apply unless and to the extent that they are accepted in writing by the Purchaser.</p>
27.	Law	<p>The Contract shall be governed and construed in accordance with English Law.</p>
28.	Arbitration	<p>If the Contractor is a company registered in United Kingdom any dispute arising out of or in connection with the is Contract, including any question regarding its existence, validity or termination, shall be referred to the resolution of the High Court, in Sheffield, England.</p> <p>If the Contractor is a company registered in a country outside United Kingdom any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules (London Court of International Arbitration), which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three. The seat, or legal place, of arbitration shall be Sheffield, England. The language to be used in the arbitral proceedings shall be English.</p> <hr/>