

1.0 Definitions

- 1.1. In these general conditions of sale ("Conditions") the following words shall have the following meanings unless the context requires otherwise.
- 1.2. "Purchaser" means the company or firm who has entered into a Contract with SPP for the supply of the Goods or Services.
- 1.3. "Contract" means any contract for the supply of the Goods or Services which shall comprise SPP's quotation (if any) and any relevant current schedules of prices, rates or conditions which relate to the supply of the Goods or Services.
- 1.4. "Goods or Services" means the deliverable equipment or services stated in the Contract.
- 1.5. "Price" means the price of the Goods or Services which is stated in the Contract.
- 1.6. In these Conditions any phrase introduced by the terms "including", "include", "in particular", "for example" or the letters "e.g." or any similar expression shall be construed as illustrative and shall not limit the sense of the words that precede it.

2.0 Formation of Contract, Conditions and Precedence

- 2.1. The Contract shall be formed when (and only when) SPP confirms the Purchaser's order or purchase order in writing in which case:
 - 2.1.1. the Contract shall incorporate these Conditions; and
 - 2.1.2. unless expressly agreed otherwise in writing by SPP, these Conditions shall take precedence over any other conditions which may be proposed by the Purchaser and which may be included in requests for or acceptances of quotations or orders, purchase orders or any other document.
- 2.2. The Purchaser acknowledges that it has not relied on any statement promise or representation made or given by or on behalf of SPP which is not stated in the Contract.
- 2.3. Whilst every effort is made to ensure that the description and illustrations contained in SPP's catalogues, price lists and other advertisements are accurate and current, they shall not form part of the Contract and SPP shall not be liable in respect thereof.
- 2.4. No variation to the Contract shall be binding unless agreed in writing by the authorised representatives of SPP and the Purchaser.
- 2.5. The Purchaser by written request ("Change Request") delivered to SPP shall have the right to request changes in the Goods and Services. No Change Request shall be effective nor binding upon SPP unless specifically agreed to in writing by SPP. If a Change Request would result in a delay in delivery of the Goods/Services and/or an increase in price, SPP shall notify the Purchaser immediately and the parties shall, in good faith and using reasonable endeavours, negotiate an equitable adjustment to the delivery schedule and/or the price.

3.0 Documents and Product Design

- 3.1. Drawings and documents which are provided by SPP for the purpose of describing the Goods and/or installing and operating them shall remain the property of SPP and the Purchaser shall not copy or transmit such drawings or documents to any third party without SPP's prior written agreement.
- 3.2. Unless otherwise provided in the Contract SPP shall provide one hard copy of an operation and maintenance manual in the English language for all equipment which is included in the Goods. Further copies of operation and maintenance manuals may be supplied at additional cost.
- 3.3. Provision of manufacturing drawings shall be at SPP's sole option unless agreed otherwise in the Contract.
- 3.4. Intellectual property rights in the Goods shall remain at all times with SPP. The Purchaser may not replicate or reproduce the Goods or any part thereof without the express written permission of SPP.

4.0 Works Testing

- 4.1. If works testing is included in the scope of the Contract such testing shall be undertaken at SPP's works or at the works of SPP's supplier(s) or at any other nominated test facility during SPP's normal working hours and in accordance with SPP's published standards from time to time. The results which are obtained from such tests shall take precedence over any other testing and shall be conclusive for the demonstration of the performance of the Goods.
- 4.2. Testing in accordance with standards other than SPP's standards can be undertaken at additional cost.
- 4.3. If works testing is not included in the scope of the Goods the performance data provided by SPP shall be conclusive for the demonstration of the performance of the Goods.
- 4.4. Testing shall be unwitnessed unless otherwise specified in the Contract. In the event that witnessing of works testing is required such works testing shall be undertaken during SPP's normal working hours and SPP shall provide the Purchaser with a minimum of 7 calendar days notice that the tests are to be undertaken. If the Purchaser does not attend the works tests which it had previously ordered to be witnessed the test results shall be construed in accordance with clause 4.1 and the Purchaser shall be liable for the associated costs.

5.0 Delivery and Risk

- 5.1. Time for delivery will start to run from the time that SPP is in receipt of full and sufficient information from the Purchaser to enable SPP to proceed with uninterrupted manufacture of the Goods. Delivery dates are estimates only and time for delivery shall not be of the essence of the Contract nor shall it be made of the essence by notice. SPP shall advise the Purchaser promptly of any change in the delivery time from that which was included in SPP's quotation or order acknowledgement.
- 5.2. SPP shall not be liable for any direct or consequential loss to the Purchaser which results from delayed delivery of the Goods nor shall the Purchaser be entitled to terminate or rescind the Contract on the grounds of delayed delivery. In the absence of any other agreed contract conditions relating to delivery liquidated damages shall apply at the rate of 0.25% of the undelivered portion of the Contract value for each week of delay beyond 30 days up to a maximum of 5%.
- 5.3. Delivery terms and the passing of risk shall be as stated in the Contract. If delivery terms are not stated in the Contract the delivery terms and the passing of risk shall be in accordance with Incoterms 2020 EXW (domestic contracts) or FCA (export contracts) based on the SPP premises manufacturing the Goods.
- 5.4. At SPP's option the Goods may be provided in part shipments.
- 5.5. Where SPP is responsible for delivery of the Goods SPP shall promptly give the Purchaser notice that the Goods have been dispatched along with an expected delivery date. If the Goods are not received then the Purchaser shall advise SPP within 5 days of the expected delivery date. If Goods are received in a damaged condition the Purchaser shall so advise SPP in writing within 72 hours of receipt. In the absence of such advice the Goods shall be deemed to have been received in good condition.
- 5.6. If the Goods are ready for despatch or collection and the Purchaser requires despatch or collection to be delayed SPP shall be entitled to payment for the Goods pursuant to clause 9 plus reimbursement of storage costs. Risk transfers at this point.

- 5.7. If the Contract includes a requirement for SPP to submit documents for approval by the Purchaser then the Purchaser undertakes to respond to such submissions within three days. SPP reserve the right to extend delivery and or apply prolongation charges in the event that the Purchaser takes more than 2 weeks to respond to each submission or re-submission of documents or drawings for approval where such approval forms part of the Contract. Where documents are rejected then SPP will amend these documents and resubmit. Subsequent rejections relating to items unchanged from earlier submissions but not previously commented upon shall also be considered as an extension to time and shall incur prolongation charges.
- 5.8. **Force Majeure** : Neither party shall be liable for any failure to perform its obligations where such failure is as a result of Acts of Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockage, embargo, labour dispute, strike, lockout or interruption or failure of electricity [or telephone service], and no party shall have a right to terminate this Agreement under clause 7 (Termination) in such circumstances. The party asserting Force Majeure shall have the burden of proving that reasonable steps were taken (under the circumstances) to minimize delay or damages caused by foreseeable events

6.0 Cancellation

- 6.1. The Purchaser shall not cancel the Contract except with SPP's agreement in writing and on terms that the Purchaser shall indemnify SPP in full against all costs (including the cost of all labour and materials used and all equipment which has been purchased by SPP) and all losses (including loss of profit and a contribution to overheads), damages, charges and expenses incurred by SPP as a result of cancellation.

7.0 Termination

- 7.1. Either party shall be entitled forthwith to terminate the Contract by written notice to the other if:-
- 7.1.1. the other party commits any breach of any of the provisions of the Contract and in the case of a breach capable of remedy fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or
 - 7.1.2. an encumbrancer takes possession or a receiver is appointed over any of the property or assets of that other party; or
 - 7.1.3. the other party makes any voluntary arrangement with its creditors or enters into administration; or
 - 7.1.4. the other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting there from effectively agrees to be bound by or assume the obligations imposed on that other party under the Contract);
 - 7.1.5. anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other party; or
 - 7.1.6. The other party ceases or threatens to cease to carry on business.

8.0 Bonds and Guarantees

- 8.1. Unless an agreed text for a bond or guarantee is included in the Contract, the text for any bond or guarantee which SPP subsequently agrees to provide shall be in accordance with the guarantor's standard text and at such additional cost as the parties may agree.
- 8.2. SPP can provide pro forma guarantee texts on request.

9.0 Payment

- 9.1. Other than in circumstances whereby SPP requires payment for the Goods or Services in advance or where payment is to be made by irrevocable letter of credit, payment for the Goods or Services shall become due on despatch or collection or storage of the Goods or provision of the Services in accordance with the payment terms stated in clause 9.2.
- 9.2. SPP shall issue an invoice to the Purchaser at the time when the Goods are despatched or collected or stored or the Services are provided. Payment is to be made in full by the Purchaser no later than the last day of the month following the month in which the despatch or collection takes place or the Goods are placed into storage or the Services are provided.
- 9.3. Time for the payment of SPP's invoice is of the essence of the Contract.
- 9.4. If the Purchaser fails to make any payment on the due date then, without prejudice to any other right or remedy available to SPP, SPP shall (at its option) be entitled to:-
- 9.4.1. treat the Contract as repudiated by the Purchaser, claim damages from the Purchaser and charge the Purchaser interest on the amount unpaid at an annualised rate of 3% above the Bank of England interest rate (both before and after any judgment) until payment in full is made; or
 - 9.4.2. Affirm the contract, claim damages from the Purchaser and charge the Purchaser interest in accordance with clause 9.4.1 and in either case SPP shall not be liable for the rectification of defects pursuant to clause 11 in respect of the period when payment is outstanding.
- 9.5. Any credit period offered to the Purchaser by SPP shall not be contractual and may be withdrawn at any time at the sole discretion of SPP.
- 9.6. Payment may not be offset against any other contract.

10.0 Retention of Title

- 10.1. Until the Purchaser has paid SPP's invoice for the Goods in full, title to the Goods remains with SPP. In the event of non-payment of SPP's invoice pursuant to clause 9.4 SPP shall be entitled to repossess the Goods.
- 10.2. All of SPP's costs and expenses which it may incur in repossession of the Goods shall be paid by the Purchaser and the Purchaser shall remain liable to SPP for the outstanding non-payment.
- 10.3. The retention of title shall not affect the passing of risk pursuant to clause 5.3.

11.0 Liability for Defects

- 11.1. Subject to the provisions of this clause 11 SPP warrants that:-
- 11.1.1. New Goods shall be free from defects in design, manufacture and workmanship for the shorter of (a) 12 months from installation and (b) 18 months from delivery. If the daily use of the Product exceeds that which is agreed, this period shall be reduced proportionately;

- 11.1.2. spare parts and repaired or reconditioned Goods shall be free from defects in design, manufacture and workmanship for a period of 6 months from delivery; and
- 11.1.3. The Services shall be supplied with reasonable skill and care.
- 11.2. Subject to clause 11 all conditions, warranties and representations expressed or implied by statute, common law or otherwise in relation to the Goods and Services are hereby excluded.
- 11.3. The Goods must be installed and operated strictly in accordance with SPP's instructions. During the defects liability period referred to in clause 11.1 the Purchaser shall ensure that:-
 - 11.3.1. the Goods are periodically inspected and maintained in accordance with the requirements of SPP's operation and maintenance manual;
 - 11.3.2. records of the inspection and maintenance which has been carried out shall be recorded;
 - 11.3.3. the Goods are only used for the purpose for which they were provided and only properly trained personnel operate the Goods;
 - 11.3.4. the Goods are not modified without SPP's prior written consent; and
 - 11.3.5. No attempt to repair the Goods shall be undertaken without the prior written consent of SPP. Any such repairs shall be at the Purchaser's cost.
- 11.4. SPP shall be under no liability in respect of any defect in the Goods or Services arising from or attributable to:-
 - 11.4.1. the purchaser's failure to specify its requirements clearly and accurately. While SPP may assist the Purchaser to ascertain its requirements, sole responsibility for the same remains at all times with the Purchaser and the Purchaser acknowledges that SPP relies on the Purchaser in this regard;
 - 11.4.2. any drawing, design or specification supplied by the Purchaser;
 - 11.4.3. the suitability (or non-suitability) of the Goods for the Purchaser's particular purpose including their use and operation in or as part of a wider system of goods and equipment;
 - 11.4.4. fair wear and tear;
 - 11.4.5. failure to observe clause 11.3;
 - 11.4.6. the negligent act or omission or wilful default of the Purchaser;
 - 11.4.7. use of the Goods contrary to the capacity stated in any applicable specification;
 - 11.4.8. abnormal working conditions;
 - 11.4.9. failure to follow SPP's instructions (or the instructions in any manual supplied with the Goods) as to the storage, installation, commissioning, operation and/or maintenance of the Goods;
 - 11.4.10. failure to follow good trade practice in relation to the Goods;
 - 11.4.11. alterations or repairs to the Goods without SPP's prior written consent;
 - 11.4.12. use of non-SPP sourced spares;
 - 11.4.13. changes to the Goods necessary to ensure their compliance with applicable statutory or regulatory standards; or
 - 11.4.14. the Goods having been commissioned, maintained or serviced by technicians not approved by SPP.
- 11.5. Furthermore SPP shall be under no liability in respect of any defect in the Goods or Services if:
 - 11.5.1. the total price for the Goods or Services has not been paid by the due date for payment; or
 - 11.5.2. the Purchaser fails to notify any claim based on a breach of the warranty in clause 11 within 14 days after the discovery of the breach.
- 11.6. Consumable parts (including lubricating oil and grease antifreeze filter elements and drive belts and failures caused by normal wear or deterioration) are not covered by the above defects liability provision but shall be replaced without charge if replacement is required because of another failure for which SPP is liable.
- 11.7. The warranty in clause 11 does not extend to parts, materials or equipment not manufactured by SPP in respect of which the Purchaser shall only be entitled to the benefit of any such warranty or guarantee given by the manufacturer to SPP and which SPP will, so far as possible, assign to the Purchaser upon the written request of the Purchaser.
- 11.8. Where any valid claim in respect of the Goods or Services which is based on a breach of the warranty in clause 11.1 is notified to SPP within the relevant warranty period set out in clause 11.1, SPP shall be entitled to repair or replace the Goods or Services free of charge or, at SPP's discretion, refund to the Purchaser the price of the Goods or Services (as a proportionate part of the price).
- 11.9. Parts which are removed from the Goods as a result of replacement shall become the property of SPP to facilitate an investigation into the cause of the failure or defect.
- 11.10. SPP shall require a written instruction or Purchase Order before undertaking any related work acknowledging that in the event that a fault is found not to be the responsibility of SPP or is not covered by warranty then the Purchaser shall be responsible for all the related costs of investigation and rectification undertaken by SPP. SPP shall agree with the Purchaser whether the Goods or any part thereof which require repair or rectification shall be returned to SPP's works or shall be repaired or rectified at the place of use during SPP's normal working hours. In either case if after examination of the Goods or any part thereof which is claimed to be defective it is determined by SPP that the Goods or any part thereof were not defective pursuant to clause 11.1 SPP shall issue an invoice to the Purchaser for the work which was undertaken on the Purchaser's behalf. SPP shall notify the Purchaser in writing immediately if it determines that a failure was not covered by SPP's defects liability responsibilities in order that the Purchaser can instruct SPP to cease work or continue with the work at the Purchaser's cost.
- 11.11. In the event that repair or rectification work is undertaken at the place of use the Purchaser shall provide adequate access to the Goods and if the Purchaser is unable or unwilling for the repair or rectification work to be undertaken during SPP's normal working hours SPP may with the prior written agreement of the Purchaser to pay SPP's overtime costs undertake the work in accordance with the Purchaser's requirements.
- 11.12. Any dispute between the parties as to the cause(s) of any defects in New Goods (for the purposes of clause 11.1.1) or any defects in spare parts or repaired or reconditioned Goods (for the purposes of clause 11.1.2) shall, in the absence of any other agreement between the parties be referred to an independent expert:
 - 11.12.1. who shall act as an expert and not as an arbitrator;
 - 11.12.2. whose decision shall be final and binding on SPP and the Purchaser; and
 - 11.12.3. whose expenses shall be borne equally by the parties unless the independent expert shall otherwise direct.

12.0 Limitation

- 12.1. The Purchaser hereby acknowledges and agrees that in consideration of the price, SPP's liability for defective material, faulty workmanship or otherwise howsoever arising shall in no event exceed the price payable under the Contract.
- 12.2. SPP shall not be liable for any loss of production, loss of use, loss of profits, sales or revenues, loss of contracts or business opportunities, loss of anticipated savings or damage to goodwill, any consequential, economic or indirect loss whatsoever which may be incurred by the Purchaser in relation to the Contract.
- 12.3. Nothing in these Conditions shall exclude or limit SPP's liability for fraud or for death or personal injury caused by the negligence of SPP.
- 12.4. SPP shall not accept any liability towards third parties save for liabilities imposed by law.

13.0 Dispute Resolution

- 13.1. If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it ("Dispute") then the parties shall follow the procedure set out in this clause 13:
 - 13.1.1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with relevant supporting documents. On service of the Dispute Notice, the parties by their respective nominated personnel shall attempt in good faith to resolve the Dispute;
 - 13.1.2. if the parties' respective nominated personnel are for any reason unable to resolve the Dispute within 10 days of service of the Dispute Notice, the Dispute shall be referred to director level and the parties' respective directors shall attempt in good faith to resolve it; and
 - 13.1.3. if the parties' respective directors are for any reason unable to resolve the Dispute within 10 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing ("ADR Notice") to the other party to the Dispute, requesting a mediation. A copy of the ADR Notice should be sent to CEDR Solve. The mediation will start not later than 10 days after the date of the ADR Notice.
- 13.2. The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 14.2 which clause shall apply at all times.

14.0 Governing Law and Jurisdiction

- 14.1. The Contract shall in all respects be governed by and interpreted in accordance with the laws of England.
- 14.2. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

15.0 General

- 15.1. Failure by SPP to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.
- 15.2. Each party agrees and undertakes that it will keep confidential and will not use for its own purposes nor without the prior written consent of the other party disclose to any third party any information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other unless such information is public knowledge (other than by breach of this clause 15.2) or is required to be disclosed by a court of competent jurisdiction.
- 15.3. The Purchaser shall, at SPP's request, supply to SPP such financial data and related information as may be required to permit an on-going determination of the financial status of the Purchaser. If at any time during the performance of the Contract the Purchaser fails to provide adequate assurances to SPP of its financial ability to perform the Contract, SPP may at its sole option treat the Contract as repudiated or amend payment terms.
- 15.4. If any provision or part of a provision of these Conditions shall be, or is found by any court of competent jurisdiction to be, invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or parts of such provisions of these Conditions, all of which shall remain in full force and effect.
- 15.5. Any notice hereunder shall be deemed to have been duly given if sent by prepaid first class registered post or by facsimile to the party concerned at its registered office or principal place of business or such other address as may have been notified pursuant to this provision to the party giving the notice. Notices sent by first class registered post shall be deemed to have been given 7 days after despatch and notices sent by facsimile shall be deemed to have been given on the date of despatch, even if confirmed by post.