

**Specialised Engineering Products
Terms and Conditions of Purchase**

1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following definitions apply:

“Bribery Laws” means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption and any similar or equivalent legislation in any other relevant jurisdiction;

“Business Day” means a day other than a Saturday, Sunday or bank or public holiday in England;

“Conditions” means SEP’s terms and conditions of purchase set out in this document;

“Confidential Information” means any commercial, financial or technical information relating to the Goods, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;

“Contract” means the agreement between the Supplier and SEP for the sale and purchase of Goods incorporating these Conditions and the Order;

“Force Majeure” means an event or sequence of events beyond any party’s reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required for performance of the Contract; strike, lockout or boycott or other industrial action including strikes or other industrial disputes involving SEP’s or its suppliers’ workforce, but excluding SEP’s inability to pay or circumstances resulting in SEP’s inability to pay;

“Goods” means the goods and related accessories, spare parts and documentation and other physical material set out in the Order or understood by the parties to be included in the Goods and to be supplied by the Supplier to SEP;

“Intellectual Property Rights” means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case:

- (a) whether registered or not;
- (b) including any applications to protect or register such rights;
- (c) including all renewals and extensions of such rights or applications;
- (d) whether vested, contingent or future;
- (e) to which the relevant party is or may be entitled, and
- (f) in whichever part of the world existing;

“Location” means the address(es) for delivery of the Goods as set out in the Order;

“**Order**” means SEP’s order for the Goods from the Supplier;

“**Price**” has the meaning given in clause 3.1;

“**Seller**” means the person who sells the Goods to SEP and whose details are set out in the Order;

“**Specialised Engineering Products**” or “**SEP**” means Specialised Engineering Products Limited, a company registered in England and Wales with company number 04372736 and a registered office at C2-C7 The Premier Centre, Abbey Park Industrial Estate, Romsey, Hampshire, SO51 9DG;

“**Specification**” means the description, any samples, or specification of the Goods and their packaging set out or referred to in the Order; and

“**VAT**” means value added tax under the Value Added Tax Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods.

1.2 In these Conditions, unless the context requires otherwise:

1.2.1 any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;

1.2.2 a reference to a ‘party’ includes that party’s personal representatives, successors and permitted assigns;

1.2.3 a reference to a ‘company’ includes any company, corporation or other body corporate, wherever and however incorporated or established;

1.2.4 a reference to a gender includes each other gender;

1.2.5 words in the singular include the plural and vice versa;

1.2.6 any words that follow ‘include’, ‘includes’, ‘including’, ‘in particular’ or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;

1.2.7 a reference to ‘writing’ or ‘written’ includes email; and

1.2.8 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time.

2 APPLICATION OF THESE CONDITIONS

2.1 These Conditions apply to and form part of the Contract between the Supplier and SEP. They supersede any previously issued terms and conditions of purchase or supply.

2.2 No terms or conditions endorsed on, delivered with, or contained in the Supplier’s quotation, sales conditions, confirmation of order, specification or other document shall form part of the Contract except to the extent that SEP otherwise agrees in writing.

2.3 No variation of these Conditions or to an Order or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of SEP.

- 2.4 Each Order by SEP to the Supplier shall be an offer to purchase Goods subject to these Conditions.
- 2.5 An Order may be withdrawn or amended by SEP at any time before acceptance by the Supplier. If the Supplier is unable to accept an Order, it shall notify SEP promptly.
- 2.6 Acceptance of an Order by the Supplier shall take place when it is expressly accepted or by any other conduct of the Supplier which SEP reasonably considers is consistent with acceptance of the Order.

3 PRICE

- 3.1 The price for the Goods shall be as set out in the Order or, in default of such provision, shall be calculated in accordance with the Supplier's scale of charges as advised by the Supplier and received and acknowledged by SEP before the date the Order is made (**Price**). No increase in the Price may be made after the Order is placed.
- 3.2 Unless otherwise agreed, the Price includes export and import costs packaging, delivery and unloading.

4 PAYMENT

- 4.1 The Supplier shall invoice SEP for the Goods no sooner than completion of delivery of the Goods or, if later, SEP's acceptance of the Goods.
- 4.2 SEP shall pay each validly submitted invoice of the Supplier within 30 days after the end of the month in which the invoice was received.
- 4.3 Time of payment is not of the essence. Where sums due under the Contract are not paid in full by the due date, to compensate the Supplier for all loss from SEP's breach, SEP shall pay on the sum overdue interest (before and after judgment) on a daily basis until payment in full at the rate of 2 per cent per annum above the Official Bank Rate from time to time of the Bank of England. The Supplier acknowledges that this is a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.4 VAT shall be charged by the Supplier and paid by SEP at the then applicable rate.

5 CANCELLATION

- 5.1 SEP shall have the right to cancel the Order for the Goods or for any part of the Goods which have not yet been delivered to SEP.
- 5.2 In relation to any Order cancelled or part-cancelled under clause 5.1, SEP shall pay for:
 - 5.2.1 that part of the Price which relates to the Goods which at the time of cancellation have been delivered to SEP; and
 - 5.2.2 the costs of materials which the Supplier has purchased to fulfil the Order for the Goods which cannot be used for other orders or be returned to the Supplier's supplier of those materials for a refund.

6 DELIVERY

- 6.1 The Supplier shall deliver the Goods to the Location on the date(s) specified in the Order. The Goods shall be deemed delivered by the Supplier only on completion of unloading of the Goods at the Location.

- 6.2 The Goods shall not be delivered by instalments unless otherwise agreed in writing by SEP.
- 6.3 Each delivery of the Goods shall be accompanied by a delivery note stating:
 - 6.3.1 the date of the Order;
 - 6.3.2 the product numbers and type and quantity of Goods in the consignment;
 - 6.3.3 any special handling and other requests; and
 - 6.3.4 if requested, a certificate of conformity / analysis.
- 6.4 Time of delivery is of the essence. If the Supplier fails to deliver any of the Goods by the date specified in the Order, SEP shall (without prejudice to its other rights and remedies) be entitled at SEP's sole discretion:
 - 6.4.1 to terminate the Contract in whole or in part;
 - 6.4.2 to purchase the same or similar Goods from a supplier other than the Supplier;
 - 6.4.3 to recover from the Supplier all costs and losses resulting to SEP, including the amount by which the price payable by SEP to acquire those Goods from another supplier exceeds the price payable under the Contract and any loss of profit; and
 - 6.4.4 all or any of the foregoing.

7 ACCEPTANCE, REJECTION AND INSPECTION

- 7.1 SEP shall not have accepted, or be deemed to have accepted, the Goods until the Acceptance Conditions are fulfilled.
- 7.2 The '**Acceptance Conditions**' are that the Goods have been delivered to or at the Location.
- 7.3 SEP shall be entitled to reject any Goods which are not in full compliance with the terms and conditions of the Contract. Any acceptance of defective, late or incomplete Goods or any payment made in respect thereof, shall not constitute a waiver of any of SEP's rights and remedies, including its right to reject. If the Goods are rejected because the volume of the Goods exceed the tolerances (if any) specified in the Order, the Supplier shall promptly and at its own cost arrange for redelivery of the correct volume.
- 7.4 Any rejected Goods must be returned to the Supplier by SEP at the Supplier's cost and risk. The Supplier shall pay to SEP a reasonable charge for storing and returning any of the Goods over-delivered or rejected.
- 7.5 SEP may require acceptance tests to be performed or to be carried out, at SEP's option, either by SEP or the Supplier, and the results of the tests shall be made available to SEP.
- 7.6 SEP may inspect and test the Goods during manufacture or processing prior to despatch, and the Supplier shall provide SEP with all facilities reasonably required.
- 7.7 Any inspection or testing of the Goods shall not be deemed to be acceptance of the Goods or a waiver of any of SEP's rights and remedies, including its right to reject.

7.8 The rights of SEP in this clause 7 are without prejudice to SEP's rights under clause 9.

8 TITLE AND RISK

8.1 Risk in the Goods shall pass to SEP on delivery and when SEP has accepted the Goods as conforming in every respect with the Contract.

8.2 Title to the Goods shall pass to SEP on the sooner of: (a) payment by SEP for the Goods; and (b) delivery of the Goods to SEP.

8.3 The passing of title shall not prejudice any other of SEP's rights and remedies, including its right to reject.

8.4 Neither the Supplier nor any other person shall have a lien on, right of stoppage in transit or other rights in or to any:

8.4.1 Goods title to which has vested in SEP; or

8.4.2 Specifications or materials of SEP,

and the Supplier shall ensure that relevant third parties accept the exclusion of such lien and rights.

8.5 The Supplier warrants and represents that it:

8.5.1 has at the time the Contract is made full, clear and unencumbered title to the Goods, and the full, clear and unencumbered right to sell and deliver them to SEP; and

8.5.2 shall hold such title and right to enable it to ensure that SEP shall acquire a valid and unqualified good title to the Goods and may enjoy quiet possession of them.

9 WARRANTY

9.1 Unless otherwise agreed, the Supplier warrants and represents that, for a period of 24 months from acceptance (the **Warranty Period**), the Goods shall:

9.1.1 conform any sample, their description and to the Specification;

9.1.2 be free from defects in design, material and workmanship;

9.1.3 comply with all applicable laws, standards and best industry practice;

9.1.4 be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and

9.1.5 be fit for purpose and any purpose held out by the Supplier and set out in the Order and as otherwise required to meet SEP's needs.

9.2 The Supplier agrees that the approval by SEP of any design or Specification provided by the Supplier shall not relieve the Supplier of any of its obligations under this clause 9.

9.3 The Supplier warrants and represents that it understands SEP's business and needs.

9.4 The Supplier shall, without prejudice to SEP's other rights and remedies, repair, replace, correct or refund the price of defective Goods provided that SEP serves a

written notice on Supplier during the Warranty Period that some or all of the Goods do not comply with clause 9.1.

- 9.5 The provisions of these Conditions shall apply to any Goods that are repaired, replaced or corrected with effect from delivery of the repaired, replaced or corrected Goods.
- 9.6 SEP's rights under these Conditions are in addition to, and do not exclude or modify, the rights and conditions contained in sections 13 to 15 of the Sale of Goods Act 1979.
- 9.7 SEP shall be entitled to exercise its rights under this clause 9 regardless of whether the Goods have been accepted under the Acceptance Conditions and notwithstanding that the Goods were not rejected following their initial inspection under clause 7.3

10 ANTI-BRIBERY

- 10.1 For the purposes of this clause 10 the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 10.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and ensure that:
 - 10.2.1 all of that party's personnel;
 - 10.2.2 all others associated with that party; and
 - 10.2.3 all of that party's subcontractors,involved in performing the Contract so comply.
- 10.3 Without limitation to clause 10.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 10.4 Each party shall immediately notify the other as soon as it becomes aware of a breach of any of the requirements in this clause 10.

11 INDEMNITY AND INSURANCE

- 11.1 The Supplier shall indemnify SEP from and against any losses, damages, liability, costs (including legal fees) and expenses which SEP may suffer or incur directly or indirectly from the Supplier's breach of any of the Supplier's obligations under the Contract.
- 11.2 The Supplier shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom insuring the Goods and any of SEP's materials in the Supplier's possession against the usual risks, including accident, fire and theft, for their full replacement value until the risk in them passes to SEP, and insuring against all other risks that a prudent supplier should consider reasonable. On request, the Supplier shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable. The Supplier shall on request assign to SEP the benefit of such insurance.

12 LIMITATION OF LIABILITY

- 12.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 12.
- 12.2 Subject to clauses 12.5 and 12.7, SEP's total liability shall not exceed the sum of £1,000,000.
- 12.3 Subject to clauses 12.5 and 12.7, SEP shall not be liable for consequential, indirect or special losses.
- 12.4 Subject to clauses 12.5 and 12.7, SEP shall not be liable for any of the following (whether direct or indirect):
- 12.4.1 loss of profit;
 - 12.4.2 loss of data;
 - 12.4.3 loss of use;
 - 12.4.4 loss of production;
 - 12.4.5 loss of contract;
 - 12.4.6 loss of opportunity;
 - 12.4.7 loss of savings, discount or rebate (whether actual or anticipated); or
 - 12.4.8 harm to reputation or loss of goodwill.
- 12.5 The limitations of liability set out in clauses 12.2 to 12.4 shall not apply in respect of any indemnities given by the Supplier under the Contract.
- 12.6 Except as expressly stated in the Contract, and subject to clause 12.7, all warranties and conditions whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 12.7 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 12.7.1 death or personal injury caused by negligence;
 - 12.7.2 fraud or fraudulent misrepresentation;
 - 12.7.3 any other losses which cannot be excluded or limited by applicable law; or
 - 12.7.4 any losses caused by wilful misconduct.

13 INTELLECTUAL PROPERTY RIGHTS

- 13.1 All Specifications provided by SEP and all Intellectual Property Rights in the Goods made in accordance with such Specifications shall vest in and remain at all times the property of SEP and such Specifications may only be used by the Supplier as necessary to perform the Contract. The Supplier assigns (or shall procure the assignment) to SEP absolutely, with full title guarantee, all right, title and interest in any such Intellectual Property Rights, and the Supplier shall do all such things and sign all documents necessary in SEP's opinion so to vest all such Intellectual Property Rights in SEP, and to enable SEP to defend and enforce such Intellectual

Property Rights, and the Supplier shall at SEP's request waive or procure a waiver of applicable moral rights.

- 13.2 The Supplier shall indemnify SEP from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by SEP as a result of or in connection with any action, demand or claim that use of any of the Intellectual Property Rights, infringes the Intellectual Property Rights of any third party.

14 CONFIDENTIALITY AND ANNOUNCEMENTS

- 14.1 The Supplier shall keep confidential all Confidential Information of SEP and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:

14.1.1 any information which was in the public domain at the date of the Contract;

14.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;

14.1.3 any information which is independently developed by the Supplier without using information supplied by SEP; or

14.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

- 14.2 This clause shall remain in force in perpetuity after termination of the Contract.

- 14.3 The Supplier shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

15 PERSONAL DATA

Each party shall comply with its obligations under relevant data protection laws.

16 FORCE MAJEURE

- 16.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:

16.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and

16.1.2 uses best endeavours to minimise the effects of that event.

- 16.2 If, due to Force Majeure, a party:

16.2.1 is or shall be unable to perform a material obligation; or

16.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 14 days or total of more than 30 days in any consecutive period of 60 days,

the other party may, within 30 days, terminate the Contract on immediate notice.

17 TERMINATION

- 17.1 SEP may terminate the Contract or any other contract which it has with the Supplier at any time by giving notice in writing to the Supplier if:

- 17.1.1 the Supplier commits a material breach of the Contract and such breach is not remediable;
 - 17.1.2 the Supplier commits a material breach of the Contract which is not remedied within 14 days of receiving written notice of such breach; or
 - 17.1.3 any consent, licence or authorisation held by the Supplier is revoked or modified such that the Supplier is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
- 17.2 SEP may terminate the Contract at any time by giving notice in writing to the Supplier if the Supplier:
- 17.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
 - 17.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986, or if SEP reasonably believes that to be the case;
 - 17.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
 - 17.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
 - 17.2.5 has a resolution passed for its winding up;
 - 17.2.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
 - 17.2.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
 - 17.2.8 has a freezing order made against it;
 - 17.2.9 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title those items;
 - 17.2.10 is subject to any events or circumstances analogous to those in clauses 17.2.1 to 17.2.9 in any jurisdiction; or
 - 17.2.11 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 17.2.1 to 17.2.10 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 17.3 If the Supplier becomes aware that any event has occurred, or circumstances exist, which may entitle SEP to terminate the Contract under this clause 17, it shall immediately notify SEP in writing.
- 17.4 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of SEP at any time up to the date of termination.

18 NOTICES

18.1 A notice under or in connection with the Contract:

18.1.1 must be in writing;

18.1.2 must be in the English language; and

18.1.3 must be delivered personally or first class post to the party due to receive the notice to the address specified in the Order.

19 CUMULATIVE REMEDIES

The rights and remedies provided in the Contract for SEP only are cumulative and not exclusive of any rights and remedies provided by law.

20 FURTHER ASSURANCE

The Supplier shall at the request of SEP, and at the Supplier's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

21 ENTIRE AGREEMENT

21.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

21.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any statement, representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

21.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

22 ASSIGNMENT

The Supplier may not assign, subcontract, declare a trust of, or encumber any right or obligation under the Contract, in whole or in part, without SEP's prior written consent.

23 SET OFF

23.1 SEP shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Supplier under the Contract or under any other contract which SEP has with the Supplier.

23.2 The Supplier shall pay all sums that it owes to SEP under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

24 NO PARTNERSHIP OR AGENCY

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

25 EQUITABLE RELIEF

The Supplier recognises that any breach or threatened breach of the Contract may cause SEP irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to SEP, the Supplier acknowledges and agrees that SEP is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

26 SEVERANCE

26.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

26.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

27 WAIVER

27.1 No failure, delay or omission by SEP in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

27.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by SEP shall prevent any future exercise of it or the exercise of any other right, power or remedy by SEP.

28 COMPLIANCE WITH LAW

The Supplier shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

29 CONFLICTS WITHIN CONTRACT

If there is a conflict between the terms contained in the Conditions and the terms of the Order, the terms of the Order shall prevail.

30 THIRD PARTY RIGHTS

A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

31 GOVERNING LAW

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England.

32 JURISDICTION

The parties irrevocably agree that the courts of England shall have non-exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).