

Specialised Engineering Products Terms and Conditions of Sale

1. INTERPRETATION

1.1. The following definitions apply to these Conditions:

“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;

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

“Conditions” means these terms and conditions of sale;

“Contract” means the contract between SEP and the Customer for the purchase and sale of the Products subject to these Conditions;

“Customer” means the legal entity that purchases the Products from SEP;

“Customer Supplied Materials” means any materials which are supplied by the Customer to SEP for the performance of the Contract;

“Delivery Location” has the meaning given to it in clause 10.2;

“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 the SEP's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;

“Goods” means the goods (including any instalment of the goods) described in the Order Confirmation and which SEP is to supply in accordance with these Conditions;

“Intellectual Property Rights” means any patent, trade mark, right in respect of logos and get-up, trade name, design, domain name, copyright, database right, utility model, other intellectual or industrial property right, in each case whether registered or unregistered and including any application for registration, and any right or forms of protection having equivalent or similar effect anywhere in the world including any such right which may now or in the future subsist;

“Know-how” means all information and know how, whether relating to inventions, improvements, technical information, data and documentation, methods, ideas, concepts, discovering techniques, specifications, components lists, and whether contained in specifications, instructions, laboratory notebooks, test reports, internal reports, memoranda or other documents;

“Order” means the Customer's order of the Goods submitted to SEP;

“Order Confirmation” means SEP's acceptance of the Order submitted to the Customer;

“Price” means the price of the Goods set out in the Order Confirmation, or, if no price is quoted, the price set out in SEP's published price list in force as at the date of delivery;

“Products” means the Goods and/or Products, as applicable;

“Services” means the services set out in the Order Confirmation or understood by the parties to be supplied by SEP to the Customer;

“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; and

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

- 1.2. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3. Any reference in these Conditions to a law of the European Union shall, following the United Kingdom’s exit from the European Union, be construed as a reference to a law as it continues to apply in England.
- 1.4. The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 1.5. A reference to “writing” or “written” includes email.
- 1.6. SEP may amend these Conditions from time to time by giving notice in writing to the Customer.

2. BASIS OF SALE

- 2.1. These Conditions apply to and form part of the Contract between SEP and the Customer. 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 Customer's purchase conditions, order, 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. Each Order by the Customer to SEP shall be an offer to purchase the Products subject to these Conditions.
- 2.4. SEP may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Products shall arise, until the earlier of:
 - 2.4.1. SEP’s written acceptance of the Order; or
 - 2.4.2. SEP delivering or performing the Deliverables or notifying the Customer that they are ready to be delivered or performed (as the case may be).
- 2.5. Rejection by SEP of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 2.6. SEP shall sell and the Customer shall purchase the Products subject to these Conditions in accordance with any Order submitted by the Customer which is accepted by SEP.
- 2.7. Any Order submitted to SEP by the Customer shall be accepted entirely at the discretion of SEP.
- 2.8. SEP will confirm its acceptance of the Order by providing the Customer with an Order Confirmation at which point the Contract will come into existence.
- 2.9. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

- 2.10. SEP's employees or agents are not authorised to make any representations concerning the Products unless confirmed by SEP in writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations, which are not so confirmed.
- 2.11. Any advice or recommendation given by SEP or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Products, which is not confirmed in writing by SEP is followed or acted upon entirely at the Customer's own risk, and accordingly SEP shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.12. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance offer, invoice or other document or information issued by SEP shall be subject to correction without any liability on the part of SEP.

3. SPECIFICATION

- 3.1. The Customer shall be responsible for ensuring the accuracy of the terms of any Order and for giving SEP any necessary information relating to the Products within a sufficient time to enable SEP to perform the Contract in accordance with such terms.
- 3.2. The quantity, quality and description and any specification for the Products shall be those set out in the Order.
- 3.3. Unless otherwise agreed by SEP in writing, SEP reserves the right to make any changes to the specification of the Products which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to either SEP's or Customer's specification, which do not materially affect their quality or performance.

4. INSPECTION

- 4.1. Where SEP is required to submit proofs of the Goods (either as 3D models or digitally) to the Customer for the Customer's approval, the Customer shall be entirely responsible for ensuring that such proofs are correct, accurate and meet the Customer's requirements before the Customer approves such proofs.
- 4.2. Following approval of such proofs by the Customer, SEP shall have no liability to the Customer for any errors or inaccuracies in the Goods, or any failure of the Goods to meet the Customer's requirements.
- 4.3. Once delivered, the Customer shall examine the Goods promptly upon receipt. SEP shall not be liable for any defects in quantity or quality of the Goods unless the Customer gives written notice of the defect to SEP, in sufficient detail to enable SEP to identify the defect, within 30 days of Customer's receipt of the Goods.

5. SAFETY TESTING

- 5.1. The Customer shall be responsible for informing SEP of any specific safety requirements or features that may be applicable or required in connection with the Goods.
- 5.2. Unless otherwise agreed by SEP in writing, the Customer shall be responsible, at its own expense, for any safety testing that is required to meet any relevant regulations.
- 5.3. SEP shall not be liable to the Customer for any losses incurred by the Customer or any third party resulting from the Customer's performance of, or failure to perform, any such safety testing responsibilities.

6. CUSTOMER SUPPLIED MATERIALS

- 6.1. Where the Customer provides Customer Supplied Materials to SEP, the Customer must do so in accordance with any instructions of SEP.
- 6.2. SEP may reject any Customer Supplied Materials if in SEP's opinion such Customer Supplied Materials are unsuitable. If SEP is required to reject any Customer Supplied Materials, any additional costs incurred by SEP in handling such Customer Supplied Materials may be payable by the Customer.
- 6.3. SEP accepts no liability or risk for any damage, loss or destruction caused to any Customer Supplied Materials in SEP's possession.
- 6.4. Notwithstanding SEP's right not to accept an Order, the Customer hereby agrees that it shall indemnify, keep indemnified and hold harmless SEP in respect of any claims, costs, damages and expenses (including all legal and other professional costs and expenses) that SEP may suffer or incur which arises out of or in connection with any proceedings or action against SEP resulting from any Customer Supplied Material.

7. PRICE

- 7.1. SEP may, by giving notice to the Customer at any time before delivery, increase the Price to reflect any increase in the cost of the Goods that is due to:
 - 7.1.1. any factor beyond SEP's control (including foreign exchange fluctuations, increases in, or information of, additional taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 7.1.2. any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Order; or
 - 7.1.3. any delay caused by any instructions of the Customer or failure of the Customer to give SEP adequate or accurate information or instructions.
- 7.2. The Price is exclusive of amounts in respect of VAT, any similar sales tax or any tax that replaces such sales taxes and import duty, all of which the Customer shall be liable to pay. The Customer shall, on receipt of a valid invoice from SEP, pay to SEP any additional amounts in respect of such taxes or any other sums as are chargeable on a supply of the Goods.
- 7.3. Unless otherwise agreed, the Price is inclusive of insurance and carriage of the Goods which shall be paid by the Customer.
- 7.4. The Customer is responsible for obtaining, at its own cost, such import and export licences and other consents in relation to the Goods or their deliveries as are required from time to time and, if required by SEP, the Customer shall make those licences and consents available to SEP prior to the relevant shipment.
- 7.5. If the Price increases after the date of the Order, SEP shall provide notice to the Customer of such increase. The Customer shall have a period of 5 Business Days from the date of SEP's notice to respond to SEP's notice. If the Customer does not accept the revised price, the Customer may cancel the Contract. If the Customer fails to respond to SEP's notice within 5 Business Days, the Customer shall be deemed to have accepted the revised price and the Customer shall be liable to pay for the Goods at the revised price.

8. TERMS OF PAYMENT

- 8.1. SEP shall invoice the Customer the Price upon delivery of the Products.
- 8.2. The Customer shall pay the invoice in full and in cleared funds within 30 days after the end of the month in which the invoice was sent to the Customer. Payment shall be made to the bank account nominated in writing by SEP. Time for payment is of the essence.

- 8.3. If the Customer cancels any Order, the Customer shall pay to SEP the cost of the materials and work done by SEP up to the point that the Order is cancelled.
- 8.4. If the Customer fails to make payment on the due date then, without limiting any other right or remedy available to it, SEP shall be entitled to cancel the Contract or suspend any further deliveries of the Goods in respect of the Order or any other orders made.
- 8.5. The Customer shall make all payments due to SEP under the Contract in full and without any set-off, counterclaim, deduction or withholding.

9. INTELLECTUAL PROPERTY

- 9.1. All Intellectual Property Rights and Know-how created in connection with the Products or owned by a party shall remain owned by that party and, except for the licence set out in clause 9.2, nothing in this Contract shall transfer the ownership of, or grant any other interest in, any Intellectual Property Rights or Know-how of any party to the other party.
- 9.2. The Customer hereby grants (and shall procure that its licensors grant) to SEP a royalty free, non exclusive, non transferable (except in accordance with clause 19), irrevocable, worldwide licence to use, adapt, modify, and copy all Intellectual Property Rights, which are owned by the Customer (or its licensors) as SEP may reasonably require to provide the Products.
- 9.3. In order to protect the Intellectual Property Rights and Know-how of SEP, the Customer warrants that it will not reverse engineer, disassemble, or otherwise attempt to derive the make-up of the Goods, from the Goods.
- 9.4. The Customer hereby warrants to SEP that any Customer Supplied Materials and all information provided by the Customer to SEP under the Contract, including without limitation in the Order, shall not infringe the Intellectual Property Rights or other rights of any third party.
- 9.5. The Customer shall indemnify and keep indemnified SEP in full against any losses, claims, costs, damages and expenses (including all legal and other professional costs and expenses) incurred by SEP resulting from a claim that the Customer Supplied Materials, or any other information provided by the Customer to SEP in connection with the Contract infringe the Intellectual Property Rights of any third party.

10. DELIVERY OF THE GOODS

- 10.1. SEP shall ensure that the Goods are packaged appropriately, each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, all relevant Customer and SEP reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable) and special storage instructions (if any).
- 10.2. SEP shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**").
- 10.3. Costs of delivery to Delivery Location shall be included in the Price unless otherwise agreed.
- 10.4. The Customer will ensure the Delivery Location is suitable, accessible and has the appropriate equipment, for delivery of the Goods.
- 10.5. Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 10.6. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. SEP shall not be liable for any delay in delivery of the Goods that is caused by an event outside of its control or the Customer's failure to provide SEP with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 10.7. If the Customer does not accept the Goods at the Delivery Location on the arranged date SEP may dispose of part or all of the Goods and the full Price will still be payable.
- 10.8. Without prejudice to the rights of SEP under clause 10.7, if the Customer fails to accept delivery of the Goods, SEP has the right to charge the Customer for any incidental costs it may incur, including but not limited to, costs incurred in connection with storing the Goods and the costs of transporting the Goods to the Customer's alternative delivery address.

11. TITLE AND RISK

- 11.1. The risk in the Goods shall pass to the Customer on completion of delivery.
- 11.2. Title to the Goods shall not pass to the Customer until SEP receives payment in full (in cash or cleared funds) for the Goods and any other goods that SEP has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 11.3. Until title to the Goods has passed to the Customer, the Customer shall:
 - 11.3.1. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as SEP's property;
 - 11.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 11.3.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full Price from the date of delivery;
 - 11.3.4. give SEP such information relating to the Goods as SEP may require from time to time; and
 - 11.3.5. allow SEP or its agent to enter the Customer's premises during business hours to recover the Goods.

12. ANTI-BRIBERY

- 12.1. For the purposes of this clause 12 the expressions **adequate procedures** and **associated with** shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 12.2. Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:
 - 12.2.1. all of that party's personnel;
 - 12.2.2. all others associated with that party; and
 - 12.2.3. all of that party's subcontractors;
involved in performing the Contract so comply.
- 12.3. Without limitation to clause 12.2, 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.
- 12.4. Each party shall immediately notify the other as soon as it becomes aware of a breach of any of the requirements in this clause 12.

13. PERSONAL DATA

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

14. FORCE MAJEURE

- 14.1. A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:
 - 14.1.1. promptly notifies the other of the Force Majeure event and its expected duration; and
 - 14.1.2. uses best endeavours to minimise the effects of that event.
- 14.2. If, due to Force Majeure, a party:
 - 14.2.1. is or shall be unable to perform a material obligation; or
 - 14.2.2. 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;
 - 14.2.3. the other party may, within 30 days, terminate the Contract on immediate notice.

15. SUSPENSION AND TERMINATION

- 15.1. This clause applies if the Customer:
 - 15.1.1. fails to pay any undisputed amount due under these Conditions on the due date for payment; and remains in default not less than 30 days after being notified in writing to make such payment;
 - 15.1.2. commits a material breach of any other term of these Conditions which breach is irremediable or and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - 15.1.3. repeatedly breaches any of the terms of these Conditions in such a manner as reasonably to justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
 - 15.1.4. threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 but disregarding the references in that section to proving it to the court's satisfaction;
 - 15.1.5. commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - 15.1.6. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the Customer;
 - 15.1.7. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
 - 15.1.8. the holder of a qualifying floating charge over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;
 - 15.1.9. a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;

- 15.1.10. a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 15.1.11. any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.1.4 to clause 15.1.10 (inclusive); or
 - 15.1.12. the other party ceases, or threatens to cease, to carry on all or substantially the whole of its business.
- 15.2. If this clause applies then, without prejudice to any other right or remedy available to SEP, SEP shall be entitled to cancel the Contract or suspend any further deliveries under the Contract or any further deliveries it has under any other contracts it has with the Customer, without any liability to the Customer, and if the Goods have been delivered but not paid for the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and SEP may enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 15.3. Notwithstanding any action taken by SEP under this clause, the Customer shall remain liable to pay for all Goods ordered.

16. EXCLUSION AND LIMITATION OF LIABILITY

- 16.1. Nothing in these Conditions limits or excludes SEP's liability for:
- 16.1.1. death or personal injury caused by SEP's negligence;
 - 16.1.2. fraud or fraudulent misrepresentation; or
 - 16.1.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession).
- 16.2. Subject to clause 16.1, SEP will under no circumstances be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract for any:
- 16.2.1. loss of profits, sales, business, or revenue;
 - 16.2.2. loss or corruption of data, information or software;
 - 16.2.3. loss of business opportunity;
 - 16.2.4. loss of anticipated savings;
 - 16.2.5. loss of goodwill; or
 - 16.2.6. indirect or consequential loss.
- 16.3. The Customer's exclusive remedy for any defective Goods is expressly limited to the replacement or repair of the defective Goods or, if replacement or repair is not practicable, damages not exceeding the Price of such defective Goods.
- 16.4. Subject to clause 16.1, 16.2 and 16.3, SEP's total liability to the Customer in respect of all losses arising under or in connection with the Contract, will be limited, in respect of all claims (connected or unconnected) in any consecutive 12 month period, to £1,000,000.

17. WARRANTIES

- 17.1. Except as expressly stated in these Conditions, SEP does not give any representations, warranties or undertakings in relation to the Products. Any representation, condition, warranty or undertaking which might be implied or incorporated into these Conditions by statute, common law or otherwise is excluded to the fullest extent permitted by law. In particular, SEP will not be responsible for ensuring that the Goods are suitable for the Customer's purposes.
- 17.2. Subject to the conditions set out below, SEP warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship from the date of delivery until the Goods are used in any way.
- 17.3. The above warranty is given by SEP subject to the following conditions:
- 17.3.1. SEP shall be under no liability in respect of any defect in the Goods arising from any drawing, design, Customer Supplied Materials, or specification supplied by the Customer;
- 17.3.2. SEP shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow SEP's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without SEP's approval;
- 17.3.3. SEP shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment; and
- 17.3.4. the above warranty does not extend to parts, materials or equipment not manufactured by SEP, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer or SEP so far as SEP is reasonably able to pass on the benefit thereof to the Customer.
- 17.4. Except as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

18. SEVERANCE

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

19. ASSIGNMENT

- 19.1. SEP may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 19.2. The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of SEP.

20. VARIATION

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by SEP.

21. CONFLICTS WITH THE CONTRACT

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

22. GENERAL

- 22.1. The Contract constitutes the entire agreement, and supersedes any previous agreement, between the parties relating to the subject matter of the Contract.
- 22.2. Each party acknowledges that it has not relied on or been induced to enter the Contract by a representation, warranty or undertaking (whether contractual or otherwise) other than those expressly set out in the Contract.
- 22.3. Except as expressly provided in the Contract, any failure to exercise or delay in exercising (whether fully or at all) a right or remedy provided by the Contract or by law does not constitute a waiver of the right or remedy or a waiver of any other rights or remedies.
- 22.4. A notice under or in connection with the Contract:
 - 22.4.1. must be in writing;
 - 22.4.2. must be in the English language; and
 - 22.4.3. must be delivered personally or first class post to the party due to receive the notice to the address specified in the Order.
- 22.5. A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.
- 22.6. This Contract and all non-contractual obligations arising out of or in connection with it are governed by English law and subject to the exclusive jurisdiction of the English courts.