

SMC Terms & Conditions

The Buyer's attention is drawn in particular to the provisions of clause 15.

1. GENERAL

1.1 All quotations and tenders submitted by and all contracts made with SMC Corporation (U.K.) Limited (hereinafter referred to as the "Seller") shall be upon and subject to these terms and conditions (save as specifically varied by a director of the Seller in writing in accordance with clause 20.6 of these terms and conditions) to the exclusion of all other terms and conditions (including any terms and conditions which are implied by trade, custom, practice or course of dealing, or which the Buyer purports to apply under any order, specification or other document).

1.2 The sale and purchase of goods in accordance with these terms and conditions constitutes the contract between the parties (the "Contract"). The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that, in entering the Contract, it has not relied on any statement, promise, representation, assurance, or warranty made or given by or on behalf of the Seller which is not set out in the contract.

1.3 The goods shall be as described and set out in the quotation or tender provided by the Seller (the "Goods"). The Seller may amend the description in the quotation or tender with immediate effect by notifying the Buyer of such amendments.

1.4 The order for Goods submitted by the Buyer to the Seller constitutes an offer by the Buyer to purchase the Goods in accordance with these terms and conditions. This offer shall be deemed to be accepted when the Seller issues a written acceptance (which may be by email) of the order, at which point the Contract shall come into existence.

1.5 The Buyer waives any right it might have to rely on any term endorsed upon, delivered with or contained in any other document that is inconsistent with these terms and conditions.

2. VALIDITY

Unless withdrawn by the Seller, quotations and tenders are valid for the period stated therein or, where no period is so stated, for thirty days from (and including) its date of issue. A quotation or tender issued by the Seller does not constitute an offer for the Goods.

3. PRICES

3.1 Prices quoted are based upon costs prevailing at the date of the quotation or tender.

3.2 The Seller reserves the right to increase prices set out in any quotation or tender at any time prior to delivery by notice in writing to the Buyer.

3.3 The price for the Goods is exclusive of any VAT, and all costs and charges in relation to packaging, loading, unloading, carriage and insurance all of which amounts the Buyer will pay in addition to the price.

4. ACCEPTANCE

Any order from the Buyer must be accompanied by all such information (in a format which is readily usable by the Seller) and any other relevant items to enable the Seller to proceed with preparing the order forthwith. The Seller may amend the price to cover any increased costs to the Seller resulting from a failure by the Buyer to provide such information or may amend the delivery period dependent on production capacity.

5. PACKING

Unless agreed otherwise in writing by the Seller, all reusable packing cases, skids, drums and other packing materials must be returned to the Seller at the Buyer's expense in good condition within one month from the date of receipt and to the following address SMC Corporation (UK) Ltd, Vincent Avenue, Crownhill, Milton Keynes, MK80AN. If not so returned, the Seller shall invoice the Buyer for all the costs plus VAT of such packaging materials etc.

6. PAYMENT

6.1 The Seller may invoice the Buyer for the Goods on or at any time after completion of delivery or, if earlier, deemed delivery.

6.2 Unless expressly agreed to the contrary by the Seller in writing, the Buyer shall pay each invoice within 30 days from the date of that invoice.

6.3 All cheques and money orders should be made payable to SMC Corporation (U.K.) Limited.

6.4 No payment will be deemed to be received until the Seller has received cleared funds.

6.5 If the Buyer fails to make a payment due to the Seller, the Seller reserves the right to claim interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Buyer shall pay such interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgement.

6.6 Time shall be of the essence for payment.

6.7 The Buyer shall make all payments due under the Contract in full without deduction whether by way of set off, counter claim, discount, withholding, abatement or otherwise.

6.8 Save in the case of clause 6.10, in no case will ownership of the property or title to any of the goods pass to the Buyer until payment of the full contract price and all other sums which are payable by the Buyer to the Seller on any account have been made in full.

6.9 Until title to the Goods has passed to the Buyer, the Buyer shall:

(a) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;

(b) not remove, deface, or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery or, if earlier, deemed delivery;

(d) notify the Seller immediately if it becomes subject to any of the events listed in clause 7.1; and

(e) give the Buyer such information relating to the Goods as the Buyer may require from time to time.

6.10 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

(a) any sale shall be effected in the ordinary course of the Buyer's business at full market value;

(b) any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal and not as the Seller's agent when making such a sale;

(c) title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.

6.11 At any time before title to the Goods has passed to the Buyer, the Seller may:

(a) by notice in writing terminate the Buyer's right under clause 6.10 to resell the Goods or use them in the ordinary course of its business; and / or

(b) require the Buyer to deliver to the Seller all the Goods in its possession that have not been resold or irrevocably incorporated into another product.

7. TERMINATION

7.1 If any of the following events occur, the Buyer's right to possession of the goods shall terminate immediately and the Seller may, at its discretion, immediately by notice to the Buyer terminate any Contract it has with the Buyer or, without limiting its other rights and remedies, suspend provision of any other goods to the Buyer:

(a) the Buyer has a bankruptcy order made against them or makes an arrangement or composition with their creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors or (being a body corporate) convenes a meeting of creditors (whether formal or informal),

or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and / or manager, administrator or administrative receiver appointed over its undertaking or any part thereof, or any document is filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), it applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986, or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer or the Buyer suffers or allows any execution, whether legal or equitable to be levied on its property or obtained against it;

(b) the Buyer fails to observe or perform any of its obligations under or commits a material breach of any terms of the Contract;

(c) the Buyer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

(d) the Buyer ceases, or threatens to cease, to trade; and

(e) the Buyer encumbers or in any way charges any of the Goods.

7.2 The Seller shall be entitled to recover payment for the goods notwithstanding that ownership of any of the Goods has not passed from the Seller.

7.3 The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's rights to possession has terminated or the Buyer has failed to deliver up the Goods in accordance with clause 7.1(b) within a reasonable period of time, to recover them.

7.4 Without limiting its other rights and remedies, the Seller may terminate the Contract immediately by notice if the Buyer fails to pay any amount due under any Contract by the due date. On termination, the Buyer's right to possession of the Goods shall terminate and clause 7.3 shall apply.

7.5 On termination of the Contract between the Buyer and Seller, all sums due from the Buyer shall become immediately payable, including any sums which the Buyer has not yet received an invoice for.

7.6 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including any right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

7.7 So long as any payment under this Contract is overdue, the Seller reserves the right to withhold or suspend performance of any contractual obligation.

8. DELIVERY & RISK

8.1 Any time periods or dates quoted for despatch or delivery are approximate only. Time periods quoted shall commence on receipt by the Seller of a written order to proceed and all necessary information drawings and any other relevant items to enable the Seller to put the work in hand.

8.2 The Seller shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event (clause 12) or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

8.3 Time shall not be made of the essence in respect of delivery by notice. If no date for delivery is specified, delivery shall be within a reasonable time.

8.4 Subject to clause 13, the Goods are at the risk of the Buyer from delivery or, if earlier, deemed delivery.

8.5 Delivery is completed:

(a) where delivery of the Goods to the location specified by the Buyer is arranged by the Seller, at such time the Goods arrive, and are ready to be unloaded, at the location specified by the Buyer; and

(b) where the Goods are collected by the Buyer (or someone authorised by the Buyer) from an address specified by the Seller, at such time as the Goods are collected.

9. INSTALMENT DELIVERIES

9.1 The Seller shall have the right to make delivery of the Goods by instalments of such quantities and at such intervals as it may decide.

9.2 Each instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

9.3 Each instalment shall be a separate contract and no cancellation or termination of any one contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other contract or instalment.

10. GOODS LOST OR DAMAGED IN TRANSIT

10.1 Unless the Seller receives a complaint that the Goods have not been delivered from the Buyer in writing within 2 days of the notified delivery date the Goods shall be deemed to have been delivered to the Buyer on the notified delivery date.

10.2 Unless the Seller receives a complaint in writing within 14 days of the completion of delivery in accordance with clause 8.5, the Goods shall be deemed to be undamaged, in a good condition and of the quantity and description invoiced.

10.3 Any liability of the Seller for non-delivery of, or damage to, the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods and, subject to compliance with this clause, the Seller shall have no further liability in respect of the loss or non-delivery of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event (clause 12) or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

11. DRAWINGS

11.1 All descriptive and forwarding specifications drawings and particulars of weight and dimensions submitted by the Seller are approximate only and the descriptions and illustrations contained in the Seller's catalogues price lists and other advertisement matter are intended merely to present a general idea of the Goods described therein and none of these shall form part of a contract and any statement or representation made by or on behalf of the Seller is excluded to the maximum permissible extent.

11.2 The Seller reserves the right to amend any specification if required by any applicable statutory or regulatory requirement, and the Seller shall notify the Buyer in any such event.

11.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the contract.

11.4 The conditions in clause 11 shall apply to any repaired or replacement goods supplied by the Seller.

12. FORCE MAJEURE

12.1 The Seller reserves the right to defer the date of delivery or cancel the contract or reduce the volume of Goods ordered by the Buyer (without liability to the Buyer) if it is directly or indirectly prevented from or delayed in performing the contract due to circumstances beyond the reasonable control of the Seller including (without limitation) acts of God, strikes, lock-outs, riots, military or usurped power, pandemic, epidemic, war, blockade, fire, ice, government action or default of suppliers or subcontractors ("Force Majeure Event").

12.2 The Seller shall not be in breach of Contract or otherwise liable for any failure or delay in performance of its obligations if such delay or failure results from a Force Majeure Event.

13. STORAGE AND RESALE

13.1 If:

- (a) the Seller does not receive forwarding instructions from the Buyer sufficient to enable the Seller to despatch the Goods within 14 days after the date of notification that they are ready for despatch; or
- (b) the Buyer does not take or accept delivery of the Goods at such time that the Seller attempts to make delivery in accordance with clause 7, then in each instance, the risk in the Goods shall pass to the Buyer and the Goods shall be deemed to have been delivered, at such relevant time as set out above in (a) and (b) as applicable. The Seller shall be entitled to, at its discretion, arrange storage of the Goods either at its own premises or elsewhere on behalf of the Buyer and all charges for such storage, insurance and / or demurrage shall be payable by the Buyer.

13.2 If, by the date twenty working days after the Seller places the Goods in storage in accordance with clause 13.1, the Buyer has not supplied forwarding instructions sufficient to enable the Seller to despatch the Goods or taken or accepted (as relevant) delivery of the Goods, the Seller may resell or otherwise dispose of part or all of the Goods and:

- (a) (where the Buyer has paid for the Goods in full) the Seller shall, after deducting reasonable storage and selling costs, account to the Buyer for the balance of the proceeds of sale (capped at an amount equal to the price paid for the Goods by the Buyer); or
- (b) (where the Buyer has not paid for the Goods in full) the Seller may charge the Buyer for any shortfall between the proceeds of sale of the Goods actually received by the Seller and the price of the Goods the Buyer should have paid, plus an amount equal to the Seller's reasonable storage and selling costs.

13.3 The Seller's rights under clause 13.3 are without prejudice to any other right or remedy that the Seller may have against the Buyer.

14. DEFECTS AFTER DELIVERY

14.1 If:

- (a) the Buyer gives notice in writing to the Seller within 30 days of discovery of any defects which, under proper use, appear in the goods within a period of twelve calendar months after the goods have been delivered and which arise solely from faulty design (other than a design made, furnished or specified by the Buyer) materials or workmanship;
- (b) the Seller is given a reasonable opportunity to examine such Goods (if required by the Seller); and
- (c) the defective parts are returned to the Seller (if required by the Seller), the Seller will, at its option, make good such defects by repair or, at its sole discretion, replacement.

14.2 If the Seller requires the defective Goods to be returned to its premises, the Seller shall refund the cost of carriage on such returned goods.

14.3 The repaired or replacement goods will be delivered to the Buyer free of charge.

14.4 The Seller shall have no liability for defective goods if:

- (a) after notifying the Seller in accordance with clause 14.1(a) above, the Buyer continues to use such Goods;
- (b) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and / or maintenance of the Goods;
- (c) the Buyer alters or repairs or attempts to alter or repair the Goods without the written consent of the Seller;
- (d) the defect arises as a result of the Seller following any design, drawing or specification supplied by the Buyer; and / or
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.

14.5 Subject to compliance with this clause, the Seller shall have no further liability in respect of any such faulty design material or workmanship in the goods.

15. LIMITATION OF LIABILITY

15.1 Subject to clauses 10 and 14, the warranties given by the Seller in these terms and conditions are in lieu of all other warranties and conditions express or implied by common law or statute and all such warranties, conditions and other terms are to the fullest extent permitted excluded from the contract.

15.2 Nothing in these conditions excludes or limits the liability of the Seller:

- (i) for death or personal injury caused by the Seller's negligence;
- (ii) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (iii) for any matter which it would be illegal for the Seller to exclude or attempt to exclude; or
- (iv) for fraud or fraudulent misrepresentation.

15.3 Subject to clause 15.2:

- (i) the Seller's total liability to the Buyer whether in contract, tort (including negligence or breach of statutory duty) misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price;
- (ii) the Seller shall under no circumstances whatsoever be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profit, loss of contract, loss sales or business, depletion of goodwill and similar loss) costs, damages, charges or expenses caused directly or indirectly by:
 - (a) any delay in delivery of the Goods;
 - (b) any loss or failure to deliver the Goods;
 - (c) any damage to the Goods in transit;
 - (d) any defect in design or materials or workmanship of the Goods;
 - (e) any breach of the Contract; and/or
 - (f) any use made, or resale, by the Buyer of the Goods or any product incorporating the Goods.

15.4 This clause 15 shall survive termination of the Contract.

16. GOODS NOT OF THE SELLER'S MANUFACTURE

16.1 Where the Goods are not manufactured by the Seller, the Seller will endeavour (but shall be under no obligation) to transfer to the Buyer the benefit of any warranty or guarantee which the Seller may have received from the supplier of such Goods in respect thereof but not so as to impose on the Seller in respect of such Goods a liability greater than those contained in these terms and conditions.

17. REPAIR WORK

17.1 Quotations for repair work are made on the basis of a preliminary examination by the Seller of the Goods to be repaired. To ensure a satisfactory repair it is frequently necessary to carry out additional work to that originally quoted for. The Seller therefore reserves the right to invoice repair work on the basis of actual costs incurred.

17.2 If, following receipt of a quotation for the repair of Goods, the Buyer decides not to proceed, the Seller reserves the right to charge for dismantling and installation. If within 21 days from receipt of a quotation for the repair of Goods the Buyer does not give any instructions the Seller will not therefrom accept any liability for loss of or damage to any of the Buyer's property remaining in its hands. Any parts replaced in the course of any repair work undertaken by the Seller shall become the property of the Seller.

18. CREDIT TERMS ON RETURNED GOODS

It is not the policy of the Seller to accept Goods returned as incorrectly ordered for credit. In exceptional circumstances, and at the Seller's sole discretion, Goods may be accepted for credit, subject to a handling charge calculated on a case by case basis at the Seller's discretion. In these instances, the original order

number or invoice number will be required as proof of purchase and such other conditions shall apply as notified by the Seller from time to time. The Seller reserves the right to reject any previously agreed return for credit where the Goods returned to the Seller are not in a resaleable condition or are otherwise not deemed acceptable by the Seller upon inspection. All returns for credit are therefore subject to the Seller's final approval upon inspection of the relevant Goods.

19. INTELLECTUAL PROPERTY

19.1 In the event of any claim being made or action being brought or threatened against the Seller in respect of any claim that Goods manufactured according to the designs and/or specifications of the Buyer infringe any intellectual property or other proprietary rights of any third party the Seller shall notify the Buyer as soon as reasonably possible of any such claim being made or action being brought or threatened and the Seller shall be at liberty (with the full assistance of the Buyer if required) at the Buyer's expense to conduct all negotiations for the settlement of the same and / or any litigation that may arise therefrom.

19.2 The Buyer shall indemnify the Seller against all costs, losses, claims, expenses, damages, charges or liability whatsoever (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Seller in respect of or in connection with any claim threatened or made against the Seller for actual or alleged infringement of intellectual property or other proprietary rights of a third party relating to any Goods supplied to the design and/or specification of the Buyer or following the instructions of the Buyer.

20. GENERAL

Assignment and dealings

20.1 The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights and obligations under the contract or any part of it, to any person, firm or company.

20.2 The Buyer shall not be entitled to assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights and obligations under the contract or any part of the contract without the prior written consent of the Seller.

Waiver

20.3 Failure or delay by the Seller in enforcing or partially enforcing any provision of the contract shall not be construed as a waiver of any of its rights under the contract nor shall it prevent or restrict further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

20.4 Any waiver by the Seller of any breach of, or any default under, any provision of the contract by the Buyer is only effective if made in writing signed by a director of the Seller and shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the contract.

Third Party Rights

20.5 The contract between the Buyer and the Seller does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the contract.

Variation

20.6 Except as set out in these terms and 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 a director of the Seller.

Severance

20.7 If any provision or part-provision of the contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, enforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be 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, the Buyer and the Seller shall negotiate in good faith to agree a replacement that, to the greatest extent possible, achieves the intended commercial result of the original provision and the remaining provisions of the contract and the remainder of such provision shall continue in full force and effect.

Governing Law and Jurisdiction

20.8 The formation, existence, construction, performance, validity and all aspects of any quotation, tender or contract (including non-contractual disputes or claims) shall be governed by English law and the parties irrevocably agree to submit to the exclusive jurisdiction of the English courts to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the contract or its subject matter or formation.

Notices

20.9 Any notice given to a party under or in connection with these terms and conditions and the contract for the sale and purchase of goods shall be in writing and shall be delivered by hand or by pre-paid first class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

20.10 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address; and
- (b) if sent by pre-paid first class post or other next working day delivery service, at 9:00 am on the second working day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside business hours (meaning 9am to 5pm on any day other than a Saturday, Sunday or public holiday in England when banks in London are open for business) in the place of receipt, when such business hours resume.

20.11 Clauses 20.9 and 20.10 do not apply to the service of proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

Confidentiality

20.12 The Buyer undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the Seller, except as permitted by clause 20.13.

20.13 The Buyer may disclose the Seller's confidential information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the Buyer's rights or carrying out its obligations under the Contract. The Buyer shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the Seller's confidential information comply with clauses 20.12 to 20.14 (inclusive); and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 20.14 The Buyer shall not use the Seller's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.