

SPIRAX-SARCO LIMITED

GENERAL CONDITIONS OF SALE

August 2007

1. Formation of contracts and Application of terms and conditions

- (a) All contracts of sale made by Spirax-Sarco Limited ("the Seller") for the sale of Goods to customers within the United Kingdom or the Republic of Ireland shall be deemed to incorporate these terms and conditions ("the Conditions"). Any variation to these Conditions and any representations about the goods and services supplied under the Conditions shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Seller. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller that is not set out in this contract.
- (b) Each order or acceptance of a quotation issued by the Buyer to the Seller shall be deemed to be an offer by the Buyer to buy those goods of the Seller that are identified in the order or the quotation ("the Goods") subject to these Conditions.
- (c) The Seller will enter into a binding contract with the Buyer for the Goods ("the Contract") by issuing an order acknowledgement denoting acceptance and such acceptance is deemed to occur when the order acknowledgement is issued or (if earlier) when the Seller delivers the Goods to the Buyer.
- (d) The Buyer shall ensure that the description of the Goods contained in its order and any applicable specifications are complete and accurate.
- (e) Any quotation is given on the basis that no contract shall come into existence until the Seller despatches an order acknowledgement to the Buyer. Any quotation is valid for a period of thirty (30) days only after the date of the order acknowledgement, provided that the Seller has not previously withdrawn it by notice to the Buyer.
- (f) These Conditions apply to the exclusion of all other terms and conditions, including any conditions that the Buyer purports to apply, but they may be extended by terms and conditions issued by the Seller when there is any installation, commissioning, maintenance or other services provided in addition to the Goods.

2. Interpretation of contracts

- (a) The application of the Uniform Laws on International Sales and the Convention on Contracts for the International Sale of Goods and INCOTERMS shall be excluded. The construction, validity and performance of all Contracts shall be governed by English law and any claim or dispute arising from them shall, without prejudice to the Seller's other rights, be subject to the jurisdiction of and be determined by the English Courts.
- (b) The complete or partial invalidity or unenforceability of any provision herein shall in no way affect the validity or enforceability of such provision for any other purpose or the remaining provisions. Any such provision shall be deemed to be severed for that purpose subject to such consequential modification as may be necessary for the purpose of such severance.
- (c) The headings used herein are for convenience only and shall not affect construction; and "all Liabilities" means "all liabilities, losses, damages, costs (including without limitation legal costs on a full indemnity basis) and value added tax (VAT), expenses, actions, claims, proceedings and demands whatsoever arising directly or indirectly out of or in connection with".
- (d) A reference to the Sale of Goods Act 1979 or the Unfair Contract Terms Act 1977 is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- (e) Words in the singular include the plural and in the plural include the singular.

3. Prices

Any orders accepted by the Seller are accepted on the basis that the price applying shall be that set out in the Seller's quotation for its period of validity. The prices stated are exclusive of VAT.

4. Payment

- (a) Where credit is allowed by the Seller then payment shall be made on a monthly basis to the Seller's designated bank account in the UK in sterling provided that no other basis of payment is set out in a quotation or otherwise.
- (b) Time is of the essence in relation to payment.
- (c) The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.
- (d) No payment shall be deemed to have been received until the Seller has received cleared funds.
- (e) All payments payable to the Seller under the Contract shall become due immediately on its termination despite any other provision.
- (f) If the Buyer fails to pay the Seller any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Seller on such sum from the due date for payment at the annual rate of Four per cent (4%) above the base lending rate from time to time of Barclays Bank plc accruing on a daily basis until payment is made, whether before or after any judgment. The Seller reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

5. Despatch and delivery

- (a) Unless otherwise agreed in writing by the Seller, delivery of the Goods shall take place at the location stated by the Seller in the order acknowledgement as the point of delivery.
- (b) Any stated delivery date is an estimate and time for delivery shall not be made of the essence by notice. The Seller will use reasonable endeavours to meet any stated delivery date. If no date for delivery is specified, delivery shall be within a reasonable time.
- (c) Subject to the other provisions of these Conditions the Seller shall not be liable for any direct, indirect, or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Seller's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- (d) Except insofar as the Contract expressly provides otherwise, the Seller may select the method, and charge the Buyer for the cost, of carriage. Standard carriage and packaging is included in the price except for larger products such as, but not exclusively, Spirax Condensate Recovery Units, Feed Tanks and Blowdown Vessels. In cases where products are larger and when Goods are to be delivered at the Buyer's request by any special or express means, or by air or to any destination outside the United Kingdom the Seller will charge the Buyer the full cost of carriage. When any special packaging or carriage is required, then the Seller will charge the Buyer the full cost.
- (e) In contracting for carriage and/or insurance of the Goods in transit, the Seller shall be deemed to act solely as agent of the Buyer and Section 32(2) and (3) of the Sale of Goods Act 1979 shall not apply.
- (f) The Buyer must (a) examine the Goods on delivery, (b) notify the Seller and any carrier in writing of any shortage or damage within four days after the date of delivery and of non-delivery within 14 days after the Goods would in the ordinary course of events have been received, otherwise Goods shall be deemed accepted by the Buyer.
- (g) Any liability of the Seller for non-delivery of 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.
- (h) The Buyer shall be responsible for all costs incurred by the Seller where the Buyer fails to accept delivery of Goods and the Seller shall have a lien over such Goods.
- (i) Any stated dimension or weight is an estimate only.
- (j) The Seller may deliver the Goods by instalments, each instalment to be deemed to be a separate contract. Without limiting the other provisions herein, no failure or defect in delivery in respect of any contract or instalment shall enable the Buyer to repudiate or cancel any other contract or instalment.
- (k) If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorizations for the Goods when they are tendered by the Seller for delivery then:
 - (i) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Seller's negligence);
 - (ii) the Goods shall be deemed to have been delivered; and
 - (iii) the Seller may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

6. Property

The property in the Goods supplied shall not pass to the Buyer until receipt by the Seller of payment in full. Until such payment the Buyer shall be bailee of the Goods.

7. Specifications, descriptions and drawings

- (a) All performance figures, specifications, descriptions, drawings and samples of Goods are approximate only being intended to serve merely as a guide. The Seller shall not be liable for their accuracy and they shall not form part of the Contract. The Seller may without limitation alter the Goods to introduce improvements, and no contract shall be a contract by description and/or sample.

- (b) All drawings, designs and quotations for which Goods are not subsequently ordered by the Buyer shall remain the property of the Seller and be treated as confidential by the Buyer and not used in any way. The Seller shall have no liability in relation to any such drawings, designs or other information.

8. Warranty

- (a) The Seller warrants that if the Buyer returns Goods manufactured by the Seller and on the Seller's examination such Goods prove defective as to material or workmanship or as to compliance with any specifications expressly agreed in writing within three years from date of delivery (except in the case of packages or electrically or electronically controlled or actuated Goods which are guaranteed for 12 months from the date of delivery) the Seller shall make good the defect without charge by repair or (at the Seller's discretion) by supplying replacement components or complete units as the Seller in its discretion considers appropriate.
- (b) With regard to Goods supplied, but not manufactured by the Seller and to the extent that it is entitled to do so, the Seller shall assign or at its discretion use its reasonable endeavours otherwise to make available, to the Buyer, at the Buyer's expense and on the basis of an indemnity (secured if appropriate) against all Liabilities that may be incurred by the Seller in relation thereto, the benefit of any obligations and Liabilities in respect of such defect which the Seller may be owed by the manufacturer and/or supplier of the Goods or any part or component thereof.
- (c) The above warranty is applicable provided that the warranty shall not apply in circumstances caused wholly or partly by deterioration necessarily incidental to transit or, while at the Buyer's risk by wilful default, accident, improper storage or use, failure to follow instructions, excessive wear or failure caused by faulty installation or by any abnormal conditions such as waterhammer, corrosive attack or excessive dirt in the system, RFI or electrical supply.

9. Limitation and exclusion of liabilities

- (a) The Seller's obligations and liabilities to the Buyer in respect of the Goods shall be limited to those set out expressly herein and those implied by section 12 of the Sale of Goods Act 1979 and, where the Contract is not an international supply contract within section 26(3) of the Unfair Contract Terms Act 1977. Notwithstanding any other terms of these Conditions the Seller does not limit or exclude its liability for fraud or for death or personal injury resulting from its negligence (as defined in that Act). The Buyer acknowledges that all limitations and exclusions of liability set out in these Conditions are reasonable and reflected in the price and shall accept risk and/or insure accordingly.
- (b) Subject to and without limiting (a) above, (i) the Seller shall not be liable to the Buyer for any loss, injury or damage of any nature whatsoever whether direct or consequential arising out of or in connection with any Goods; (ii) and the Buyer shall not rely upon any representation concerning any Goods unless the same shall have been made by the Seller in writing.
- (c) Seller shall have no responsibility for any loss or claim in the event that the information in any quotation or advice is applied in connection with products other than the Goods.

10. Instructions and Health and Safety at work

- (a) The Buyer shall observe strictly the provisions of the Seller's written instructions regarding use and application of the Goods together with any revisions thereof and shall ensure that any person other than the Buyer who acquires or has access to the Goods is furnished with and observes such instructions. The Buyer shall indemnify the Seller against any loss or liability resulting directly or indirectly from any breach by the Buyer of its obligations hereunder.
- (b) The Buyer shall be solely responsible for and shall keep the Seller indemnified against all Liabilities incurred by the Seller in relation to any use of the Goods other than in strict accordance with the Seller's installation, operating and maintenance instructions.

11. Force majeure

- (a) The Seller shall have the right to cancel or delay deliveries or to reduce the quantity delivered without liability to the extent that the Seller is prevented from or delayed or hindered in manufacturing the Goods or supplying them (by normal routes or means of delivery) through any circumstances which are beyond the Seller's reasonable control or which the Seller could not reasonably have been expected to control or prevent.

12. Events of default, termination, repossession, suspension

- (a) If the Buyer fails to pay the price when the same is due or otherwise breaches any contract with the Seller and the breach, if remediable and previously notified to the Buyer thereof, is not remedied within seven days; or
- (b) If the Buyer is or otherwise becomes insolvent (as defined in the Insolvency Act 1986) or suspends payment or threatens to do so; or
- (c) If the Buyer or any of its assets become subject to any form of winding up, administration, receivership, insolvency proceedings, arrangements with creditors generally, enforcement of security or legal process or repossession; or
- (d) If the Buyer outside England and Wales, anything corresponding to any of the above occurs. Then the Buyer shall notify the Seller forthwith and shall be deemed to have repudiated each Contract with the Seller, who may (at its discretion and without prejudice to its other rights hereunder or otherwise) by and/or following written notice to the Buyer do any one or (to the extent not inconsistent with one another) more of the following:
 - (i) terminate, cancel and/or rescind the Contract and any other contracts or suspend any deliveries to be made under any contract with the Buyer;
 - (ii) revoke any express or implied authority to sell, use or consume any Goods the property in which has not passed to the Buyer ("Relevant Goods");
 - (iii) require the Buyer to deliver to the Seller any Relevant Goods; and the Buyer shall do so, failing which the Seller may repossess them, enter the premises where they are or are thought to be and sever them therefrom, without liability for any resulting damage and the Buyer shall indemnify the Seller against all Liabilities in relation thereto.

13. Miscellaneous

- (a) The Seller's rights under these Conditions are in addition to any other rights which the Seller may have under the general law or otherwise.
- (b) If the Buyer comprises two or more persons, their obligations are joint and several.
- (c) The Buyer shall not assign, mortgage, charge, sub-let or otherwise dispose of any Contract or any rights thereunder in whole or in part without the Seller's prior written consent. Any of the same purported to be effected without such consent shall be void. The Seller may assign its rights under the Contract or any part of it to any person, firm or company.
- (d) Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract by the Seller shall not be construed as a waiver of any of its rights under the Contract.
- (e) Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall no way affect the other terms of the Contract.
- (f) No term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14. Industrial property

- (a) The Seller shall not be liable for any infringement of any industrial or intellectual property rights caused by the Goods or their use or sale by the Buyer. The Buyer shall forthwith notify the Seller of any allegation of any such infringement. The Seller may at its own expense conduct any negotiations or proceedings arising from any such allegation; and the Buyer shall assist therein.
- (b) The Buyer shall have no rights in any industrial or intellectual property owned by the Seller other than to re-sell the Goods under the trade mark the Goods are marked with. The Buyer shall not without the Seller's prior written consent allow any trade marks of the Seller or other words or marks applied to the Goods to be obliterated, obscured or omitted or add any additional marks or words.

15. Notices

- (a) Any notice under these Conditions or any relevant contract to the Seller shall be in writing and given by first class post or hand delivered to Spirax-Sarco Limited, Charlton House, Cheltenham, Gloucestershire, GL53 8ER for the attention of the Company Secretary or to such other address or for the attention of such person as the Seller may notify to the Buyer.
- (b) Any notice under these Conditions or any relevant contract to the Buyer shall be in writing and given by first class post or hand delivered to any address from which the Seller has received communications from the Buyer in connection with these Conditions.
- (c) Notices shall be deemed to have been received:
 - (i) if sent by first class post, two days (excluding Saturdays and Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
 - (ii) if delivered by hand, on the day of delivery.