

# Spirax-Sarco Limited

## General Conditions for the Supply of Services

### 1. Formation and interpretation of contracts

- (a) All contracts made by Spirax-Sarco Limited ("the Company") for the supply of Services shall be deemed to incorporate these Conditions. The Company will enter into a binding contract by issuing to the customer, a written order confirmation or acknowledgement denoting acceptance and such acceptance is deemed to occur when the order confirmation or acknowledgement is issued.
- (b) These Conditions override any terms or conditions used or issued by the Customer, but they may be extended by terms and conditions issued by the Company when the Company supplies goods in the form of spare or replacement parts or consumables.
- (c) The construction, validity and performance of all contracts entered into by the Company shall be governed by English Law and any claim or dispute arising from them shall, without prejudice to the Company's other rights, be subject to the jurisdiction of, and be determined by, the English Courts.
- (d) The complete or partial invalidity or unenforceability of any part of these Conditions shall in no way affect the validity or enforceability of such Condition or part thereof for any other purpose or the remaining Conditions. Any such Condition shall be deemed to be severed for that purpose subject to such consequential modifications as may be necessary for the purpose of such severance.
- (e) The headings used herein are for convenience only and shall not affect construction; and "Liabilities" means "all liabilities, losses, damage, costs (including without limitation legal costs on a full indemnity basis) and value added or any similar tax ("VAT"), expenses, actions, claims, proceedings and demands whatever, whether arising directly or indirectly".
- (f) References to "writing" or any cognate expression shall be deemed to include references to facsimile or electronic mail.
- (g) "The Services" means the services agreed to be supplied by the Company to the Customer as detailed in the written proposal or quotation address by the Company to the Customer

### 2. Prices

Orders for the supply of Services are accepted by the Company on the basis that the price payable by the Customer shall be that set out in the Company's written proposal or quotation for the period of validity stated. All prices stated are exclusive of VAT which shall be payable by the Customer at the rate in force at the time of supply of the Services.

### 3. Payment

Where credit or payment by instalments is allowed by the Company, then payment shall be made without any right of set off on a net monthly basis, or on such other basis set out in the Company's quotation or proposal, to the Company's designated bank account in the UK in pounds sterling or such other currency as the Company may from time to time agree in writing. Time is of the essence in relation to all payments.

### 4. Period of supply

Unless otherwise specified in the Company's quotation or proposal, the agreement for the supply of the Services shall be for a period of one (1) year from the date the Company issues an order confirmation or acknowledgement to the Customer in accordance with Condition 1 (a) above.

### 5. Scope of services

- (a) The Company agrees to provide the Services, and to supply as necessary spare or replacement goods and/or consumables, to the Customer's plant and/or equipment at the site(s) specified in the Company's quotation or proposal.
- (b) If the Company agrees to supply spare or replacement goods and/or consumables, such supply will be strictly on the basis of the Company's General Conditions of Sale in force from time to time. A copy of the Company's General Conditions of Sale in force at the date of this agreement is attached to the Company's quotation or proposal and is deemed to form part of these Conditions.
- (c) The Customer reserves the right, at the Company's discretion, to employ sub-contractors to perform all or any part of the Services (including, without limitation, to commission, install, maintain or repair any goods or equipment) on behalf of the Company.
- (d) The Company warrants that in providing the Services it will exercise due care and attention and that it will comply with all applicable laws, regulations or codes of practice. However the Company accepts no Liabilities arising out of any failure or diminution in performance of the Customer's plant or equipment caused by the plant or equipment, or any part thereof:-
- (i) being used or operated otherwise than in accordance with any applicable installation, maintenance or operational instructions; or
  - (ii) being used or operated otherwise than in accordance with the Company's written instructions or recommendations; or
  - (iii) having been adjusted, changed or altered in any way by the Customer or any third party since the date of installation or commissioning of the plant or equipment or the date of the immediately preceding visit by the Company's employee or sub-contractor.
- (e) The Customer warrants to the Company that the Customer's plant and equipment is supplied with water at a quality that complies with BS2486 and any additional written recommendations made by the Company to the Customer. Any Liabilities on the part of the Company for failure or diminution in performance of the Customer's plant or equipment or any part thereof due to poor water quality or chemical attack or corrosion are expressly excluded.
- (f) With regard to the testing of safety and relief valves as part of the Services, the effective seat area must be determined to carry out the test. This information shall be provided either by the Customer or calculated by the Company based on data obtained from engineering drawings supplied by the valve manufacturer (if not the Company). All reasonable steps will be taken to ensure the accuracy of this data as it is critical to test accuracy. No Liabilities will be accepted by the Company for erroneous results caused through incorrect data being provided.
- (g) The Company reserves the right to replace any part of the Customer's plant or equipment which is unserviceable or inefficient as the Company considers reasonably necessary in order to fulfil its obligations to provide the Services in accordance with the specification set out in the Company's quotation or proposal.
- (h) Alternatively, the Company may charge for the reconditioning of any part of the Customer's plant or equipment that, in the reasonable opinion of the Company, cannot be suitably or economically repaired on site. The Company will provide the Customer with an estimate of reconditioning charges for each item and if the Customer does not elect to have the item(s) reconditioned, such items will be deemed to be excluded from the scope of the Services.

### 6. Access to Customer's Site(s)

- (a) The Customer shall permit the Company and its employees and sub-contractors full and free access to the Customer's site(s) and to the Customer's plant and equipment which is the subject of the agreement, subject to the Company and its

employees and sub-contractors complying with the Customer's reasonable requirements as to site safety and security. If, at the time of any pre-arranged visit the Company's employees or sub-contractors are unable to gain access to the Customer's plant or equipment in order to supply the Services, the Company reserves the right to charge for the time spent attending at the Customer's site(s) and for the cost of carrying out any subsequent visit.

- (b) If reasonably required by the Company, the Customer shall make available to the Company a secure storage area at the Customer's site(s) for storage of the Company's service equipment.
- (c) Prior to any visits by the Company's employees or sub-contractors, the Customer will:
- (i) strip back any pipe lagging
  - (ii) supply and erect suitable scaffolding (if required) to allow working access to the Customer's off plant and equipment; and
  - (iii) supply any necessary lifting equipment
- The Customer shall be responsible for the reinstatement of any pipe lagging after a visit by the Company's employees or sub-contractors.
- (d) The Customer will provide the Company's employees or sub-contractors with any specialist safety clothing or equipment as may be necessary to meet the Customer's health and safety and environmental rules (excluding hard hat, safety glasses, overalls and protective shoes which will be provided by the Company).
- (e) The Customer will procure that the Company's employees or sub-contractors are covered by the Customer's third party liability insurance policy whilst such employees or sub-contractors are on the Customer's site(s).
- (f) Emergency Callout cover is intended for genuine emergency breakdown only and will be charged at the appropriate daily rate specified in the Company's proposal or quotation; each Emergency Callout will be treated as additional to the days specified in the Company's proposal or quotation for the normal supply of the Services.
- (g) The Customer acknowledges and agrees that the Company shall at no time own, occupy or control (or be deemed to control) any part of the Customer's site(s) and/or hold or be fixed with any duties or liabilities under health and safety laws or regulations or common law (current or future) in relation to any part of the Customer's site(s).

### 7. Limitation and exclusion of liabilities

- (a) The Company's obligations and liabilities to the Customer in respect of the provision of Services shall be limited to those expressly set out herein, excepting liability for death or personal injury caused by the negligence of the Company.
- (b) Subject to, and without limiting (a) above, (i) the Company shall not be liable to the Customer for any loss, injury or damage whatsoever whether direct or consequential arising out of or in connection with the supply of the Services; and (ii) the Customer shall not rely upon representation concerning any part of the Services supplied unless the representation has been made by the Company in writing.
- (c) The Customer shall be solely responsible and shall keep the Company indemnified against all Liabilities incurred by the Customer in relation to any use the Customer makes or purports to make of any information provided by the Company as part of any quotation or proposal to provide the Services which is not subsequently accepted by the Customer.

### 8. Force majeure

The Company shall have the right to cancel or delay in whole or in part the supply of the Services without liability to the extent that the Company is prevented from or delayed or hindered in supplying the same (by normal routes or means) through any circumstances which are beyond the Company's control or which the Company could not reasonably have been expected to control or prevent.

### 9. Events of default, termination, repossession, suspension

- (a) If the Customer fails to pay the price or any instalment thereof when the same is due or otherwise breaches any contract with the Company and the breach, if remediable and previously notified in writing to the Customer, is not remedied within seven days; or
- (b) If the Customer is or otherwise becomes insolvent (as defined in the Insolvency Act 1986) or suspends payment or threatens to do so; or
- (c) If the Customer 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 outside England and Wales, anything corresponding to any of the above occurs, then the Customer shall notify the Company forthwith and shall be deemed to have repudiated each contract with the Company who may (at its discretion and without prejudice to its other rights hereunder or otherwise) by and/or following written notice to the Customer do any one or (to the extent not inconsistent with one another) terminate, cancel and/or rescind the contract and any other contracts or suspend any Services to be supplied under any contract with the Customer.

### 9. Miscellaneous

- (a) No person other than the Company or the Customer shall have any rights to enforce any contract between them or to benefit from or rely upon any rights created by or arising out of such a contract.
- (b) The Company's rights under these Conditions are in addition to any other rights which the Company may have under the general law or otherwise.
- (c) If the Customer comprises two or more persons, their obligations are joint and several.
- (d) The Customer shall not assign, mortgage, charge, sub-let or otherwise dispose of any contract or any rights thereunder in whole or in part without the Company's prior written consent. Any of the same purported to be effected without such consent shall be void.

### 11. Notices

- (a) Any notice under these Conditions or any relevant contract to be sent to the Company shall be in writing and sent by recorded delivery, facsimile, electronic mail or hand delivered to Spirax-Sarco Limited, Charlton House, Cheltenham, Gloucestershire, GL53 8ER for the attention of the UK Sales Director or to such other address or for the attention of such person as the Company may notify to the Customer.
- (b) Any notice under these Conditions or any relevant contract to the Customer shall be in writing and sent by recorded delivery, facsimile, electronic mail or hand delivered to any address from which the Company has received communications from the Customer in connection with these Conditions.
- (c) Any notice which is sent by facsimile transmission shall be deemed to be received on the next following working day following the date of transmission as evidenced by the sending producing a valid answerback transmission; electronic mail transmission shall, in the absence of the sending receiving an error message, be deemed to have been received on the next following working day following the date of sending. Notices sent by hand or recorded delivery shall be deemed to have been delivered on the actual day of receipt.