

Terms and Conditions of Business

Sale Engineering Products Limited (English Company 09296258) ("**SEP**") of Unit 2, Brookfield Business Park, Cheadle, Cheshire, SK8 2PN agrees with the entity ("**Business Customer**") it supplies that such provision (now and at all times in future) shall be on the terms outlined in this document ("these Terms"), and upon no other terms whatsoever.

1. Formation and period

1.1 It is intended to offer these Terms only to:

- 1.1.1 traders who are not retail consumers (within the meaning of the customer protection legislation), and
- 1.1.2 if individuals, then aged over 18 years old, and
- 1.1.3 who are permanently resident in the UK, and
- 1.1.4 for delivery within the UK.

You must contact SEP if these criteria do not fit your circumstances, since SEP may have other forms for other types of customer.

1.2 These Terms shall commence as soon as mutually agreed - which may be evidenced by SEP's acceptance ('Confirmation', such Confirmation attached to or referencing this document) of a finalised Order ('Offer') made by Business Customer, or by any indication of Business Customer's approval of or request for any supply by SEP whether before or after any such supply is made (SEP only agrees to supply anything on these Terms, and no other terms). Such Order shall be deemed incorporated into these Terms as applicable.

1.3 Once commenced these Terms shall continue until the completion of any supply under these Terms ("the Agreement Period").

1.4 During the Agreement Period SEP will provide the supplies to the Business Customer ("Supplies") in exchange for the Business Customer's payment to SEP ("Price"), either as described in the Order or in any specific written communication or otherwise in these Terms.

1.5 These Terms may not be cancelled by Business Customer other than for fundamental irredeemable breach by SEP. Where SEP's supplies are merely faulty, or do not comply with these Terms for some other reason, such breach shall not be deemed irredeemable, but SEP shall be given the opportunity to rectify supplies in accordance with the Limited Guarantee of clause 4.

1.6 Subject to clause 1.7 should either party wish to vary these Terms they may do so only by provisions mutually agreed in mutually counter-signed writing expressly indicating an intention to vary these Terms; otherwise these Terms shall be deemed to have priority over any inconsistent provision in any Order or elsewhere.

1.7 Notwithstanding clause 1.6:

1.7.1 SEP may substitute equivalent goods (in terms of quality and price) in the event that those ordered by Business Customer are unavailable.

1.7.2 SEP may cancel any part of this agreement by notice to Business Customer at any time prior to Business Customer's payment, or after Business Customer's payment provided SEP refunds Business Customer's payment for any elements which SEP cancels. For the avoidance of doubt SEP may cancel part only of this agreement without affecting the remainder.

2. Supplies, Timing, Property, and Risk

2.1 Business Customer will provide all reasonable assistance, liaison, materials, instructions and responses requested to enable SEP to provide the supplies, and shall accept responsibility for the consequences of any such provision, failure to provide, or any faults with such provisions.

2.2 The arrangements for the timing of payment, delivery or performance are as outlined in these Terms, and for the avoidance of doubt there is no inference that SEP must

perform the contract within any set period from the day Business Customer sends their order.

2.3 Any timings for delivery that may be given are given in good faith as an indication only; SEP shall not be liable for any consequential and indirect losses, expenses or damages in whatever manner caused by late delivery.

2.4 Title in ANY goods Supplied will not pass to the Business Customer until the entire price for ALL goods Supplied has been received by SEP (regardless of the timing or place of delivery whether to Business Customer or elsewhere by anyone).

2.5 Should Business Customer take SEP's goods into Business Customer's possession as a result of accepting delivery of goods for which Business Customer has not paid, then Business Customer shall look after SEP's goods for SEP free from further charge, and shall not purport to part with possession of SEP's goods to any third party. Notwithstanding this clause if the Business Customer should sell or part with possession of SEP's goods in any form (i.e. either as purchased from SEP, or forming a component part of any larger goods supplied) the Business Customer will account to SEP for the entire proceeds of such a sale up to the amount outstanding to SEP, and Business Customer declares that it holds all such proceeds on trust for SEP until due payment has been received in by SEP, and accepts SEP's reservation of the right to trace all proceeds of such sale of SEP's goods (e.g. under the principles of *Re Hallett's Estate* (1880)).

2.6 While ANY payment remains outstanding Business Customer grants SEP full authority to enter any premises that Business Customer has the right to enter, in order to retake possession of ALL SEP's goods up to the value outstanding, making allowances for any degradation or rework required to the goods supplied.

3. Price and Payment

3.1 Unless otherwise stated any price SEP offers remains available for acceptance for 28 days from the date it is offered; after that period such offer shall mutually be deemed withdrawn unless repeated.

3.2 Delivery costs will generally be shown separately when delivery is included within any order; where delivery costs are not shown separately, then unless delivery is specifically mentioned as included free from further charge, then delivery is not included in that order and will be chargeable separately.

3.3 Prices quoted will generally exclude VAT, and VAT will be shown separately, as appropriate.

3.4 Payment terms will usually be outlined in detail in any Confirmation, but where any terms are not so outlined, then these apply:

3.4.1 Payment is required in full without deduction within 30 days of the date of any invoice raised on or after the despatch of goods;

3.4.2 Payment will normally be accepted only by direct transfer into SEP's account, by cheque to the trading address, or by bank card payment which is subject to an administration fee of 2.5%. If Business Customer wishes to pay by cheque, then payment will not be deemed to have been made until such cheque has cleared with funds received in SEP's account.

3.5 If payment is not made when due then SEP shall be entitled, without limiting any other rights it may have, to

charge interest on the outstanding amount (both before and after any judgment) at the rate of 4% p.a. above the base lending rate from time to time of the Bank of England from the due date until the outstanding amount is paid in full.

4. (Limited) Guarantee

Subject to clause 5 SEP guarantees that:

- 4.1 goods SEP supplies under these terms which it manufactured (if any) will function reasonably under appropriate and normal use for at least twelve months from delivery, irrespective of any later date of installation or first use.
- 4.2 goods SEP supplies under these terms that were supplied to SEP by any third party shall be subject to the third party supplier's warranty. SEP's obligation in relation to such goods is itself to enforce any guarantee SEP has from such third party if required to do so by Business Customer. Where possible and applicable, SEP shall assign to Business Customer the benefit of any warranty, guarantee or indemnity given by the original supplier of the goods.
- 4.3 any services SEP provides under these terms (if any) will be provided using the reasonable skill and care of a professional in the area of services provided.
- 4.4 SEP's guarantee of services provided under this agreement by any third party (e.g. delivery, installation etc.) shall be deemed to be provided by the third party supplier. SEP's obligation in relation to such supplies is itself to enforce any guarantee SEP has from such third party if required to do so by Business Customer. Where possible and applicable, SEP shall assign to Business Customer the benefit of any warranty, guarantee or indemnity given by the person originally supplying the services.
- 4.5 All other guarantees or warranties from SEP of any nature, whether implied or otherwise expressed, are excluded to the maximum extent permitted by law.



5. Limitations on remedies and Guarantees

- 5.1 In view of the nature of the supplies, the Price, and the guarantee given in clause 4, it is agreed that SEP's supplies may not be free from individual minor defects.
- 5.2 Business Customer agrees carefully to test SEP's supplies and services as soon as possible to ensure they are fit for Business Customer's purposes and requirements. Business Customer shall have no remedy under these terms for any matter that could have been prevented if Business Customer had acted on the results of such tests, where Business Customer either fails to undertake such tests or to act on them.
- 5.3 Any guarantee is unenforceable by Business Customer if installation or maintenance has not been carried out strictly in accordance with SEP's and/or any third party supplier's instructions OR there is evidence of tampering with any part of any product which is not user-maintainable OR any product has been used for a purpose other than this for which it is designed, whether or not such action of failure of action can be directly linked to any probable cause of failure.
- 5.4 Business Customer's remedy for any breach of the guarantee of clause 4.1 shall be the *repair* of any faulty goods and/or the replacement of any faulty individual components that are returned to SEP. SEP will only seek to *replace* goods or visit the site of any allegedly faulty goods at its entire discretion and subject to Business Customer's indemnity of SEP's costs of such visit (which indemnity is agreed by this clause).

5.5 EXCEPT IN RESPECT OF DEATH OR PERSONAL INJURY CAUSED BY SEP'S NEGLIGENCE, OR OTHERWISE NOT EXCLUDABLE, OR AS EXPRESSLY PROVIDED OTHERWISE IN THESE TERMS:

5.5.1 SEP SHALL NOT BE LIABLE TO BUSINESS CUSTOMER BY REASON OF ANY REPRESENTATION (UNLESS FRAUDULENT), OR ANY WARRANTY, CONDITION OR OTHER TERM, OR ANY DUTY AT COMMON LAW, OR UNDER THE EXPRESS TERMS OF THESE TERMS, FOR ANY LOSS OF PROFIT, OR LOSS OF OPPORTUNITY, OR FAILURE TO MAKE SAVINGS, OR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL LOSS, DAMAGE, COSTS, EXPENSES OR OTHER CLAIMS (WHETHER CAUSED BY THE NEGLIGENCE OF SEP, ITS SERVANTS OR SUPPLIERS OR OTHERWISE) WHICH ARISE OUT OF OR IN CONNECTION WITH THE PROVISIONS OF THIS AGREEMENT; AND

5.5.2 THE ENTIRE LIABILITY OF SEP UNDER OR IN CONNECTION WITH THESE TERMS SHALL NOT EXCEED THE AMOUNT OF BUSINESS CUSTOMER SHALL HAVE PAID SEP UNDER THESE TERMS APPLICABLE TO ANY SUCH CLAIM.

5.6 SEP shall not be liable to Business Customer or be deemed to be in breach of these terms by reason of any delay in performing obligations under these Terms if the delay was due to any cause beyond SEP's reasonable control, or to any instructions of Business Customer.

6. General

- 6.1 This agreement is intended to contain no obligation on SEP to accept returned goods other than goods which were either not ordered, that were delivered due only to an error by SEP, or which were delivered faulty or damaged. SEP shall replace such goods with reasonably acceptable goods. However if, notwithstanding SEP has no obligation to do so, nevertheless SEP does accept the return of goods ordered under this agreement (i.e. at its discretion), then such returns shall be accepted against a credit note for future order(s) from SEP (i.e. their price shall not be repaid in cash), subject to a re-stocking charge that may be up to 35%.
- 6.2 These terms constitute the entire agreement between the parties, supersede any previous agreement or understanding. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- 6.3 If any part of these terms is held to be unenforceable such part shall be deemed to be deleted from this document and shall be of no force or effect, and the remaining terms shall remain in full force and effect as if the unenforceable part had never been included.
- 6.4 Nothing in these terms is intended for the benefit of any third parties and the provisions of the Contracts (Right of Third Parties) Act 1999 are expressly excluded.
- 6.5 This agreement is personal to the parties and may not be assigned by either party without the other party's consent, not to be unreasonably withheld.
- 6.6 English law shall apply to these terms, and the parties agree to submit all disputes between them to the exclusive jurisdiction of the English courts.