

## Terms & Conditions

SMC Ship Motion Control Limited, Terms & Conditions of Sale  
Issued March 2005 revised November 2017



### 1. GENERAL

- 1.1 In these Terms & Conditions: The Buyer means the person, firm, company or other organization who or which has ordered Products from SMC; SMC means SMC Ship Motion Control Limited a Maltese corporation existing under the laws of Malta; By entering a Contract, meaning that the customer has submitted a purchase order, or any other document to purchase products against an SMC quote, being accepted by SMC, the customer acknowledges its complete acceptance of the SMC's Terms & Conditions and that any terms accompanying Buyer's document related to the Contract have no effect and shall not apply. These Terms and Conditions may be superseded or amended in writing stated on SMC Order Acknowledgement, otherwise the SMC Terms and Conditions will apply to the Contract. The Goods means all items manufactured or supplied by SMC; and The Products means any Goods agreed to be supplied by SMC.
- 1.2 These Terms & Conditions shall be incorporated into each Contract and shall govern each Contract to the exclusion of any conditions of the Buyer. These Terms & Conditions may not be varied or waived except with the express written agreement of SMC inside the SMC Order Acknowledgement. The failure of SMC to enforce its rights under the Contract at any time for any period of time shall not be construed as a waiver of any such rights.

### 2. PRICES AND QUOTATIONS

- 2.1 The price of the Products will be SMC's quoted price in Euro or other currency exclusive of any customer import duties, value added or other Taxes incurred by the Buyer. All quotations issued by SMC for the supply of Products shall remain open for acceptance for the period stated in the quotation or, if none is stated, for thirty (30) days. In all other cases, prices payable are those currently in effect.
- 2.2 SMC shall not modify prices at any time between Contract and delivery to the Buyer unless agreed between the contractual parties to reflect any changes to its costs resulting from, supplier price update or any alteration in or addition to the Buyer's requirements.

### 3. PAYMENT

- 3.1 Unless otherwise agreed in writing, payment in full shall be made to SMC in the currency invoiced no later than thirty (30) days from the date of invoice.
- 3.2 In the event of late payment SMC reserves the right:
  - (i) to suspend deliveries and/or cancel any of its outstanding obligations; and
  - (ii) to charge interest at an annual rate equal to 24% on all unpaid amounts calculated on a day to day basis until the actual date of payment.
- 3.3 Customers must themselves pay their bank charges that are incurred when making the payment. Full payment instructions are set out on the invoice.
- 3.4 Delivered goods remain SMC's property until full payment has been made.

### 4. CHANGES

- 4.1 SMC reserves the right to make any changes on prior notice in the specification of the Products, which does not materially affect the performance or price thereof. The Buyer shall confirm or cancel any order promptly on receipt of such notice.
- 4.2 Products may only be returned at SMC's option, and with prior authorization. A restocking charge will be applied to shipments returned for exchange or credit.

### 5. DELIVERY

- 5.1 SMC will select the method of shipment and the carrier to be used, unless otherwise agreed. Unless otherwise agreed, shipment will be Ex Works (Incoterms 2010) SMC's shipping point. SMC will not be responsible for any loss or damage to the Products following delivery to the carrier. Damaged items cannot be returned without authorization.
- 5.2 If the Buyer fails to accept delivery of the Products within a reasonable period after receiving notice from SMC that they are ready for delivery, SMC may dispose of or store the Products at the Buyer's expense.
- 5.3 SMC will use all reasonable endeavours to avoid delay in delivery on the notified delivery dates. SMC will not be liable for any direct, indirect, consequential or economic loss due to delay in delivery.
- 5.4 The Buyer shall notify SMC within ten (10) working days in writing of any short delivery or defects reasonably discoverable on careful examination. SMC's sole obligation shall be, at its option, to replace or repair any defective Products or refund the purchase price of any undelivered Products.
- 5.5 Where delivery of any Product requires an export license or other authorization before shipment, SMC shall not be responsible for any delay in delivery due to delay in, or refusal of, such license or authorization.

### 6. RISK AND TITLE

- 6.1 The Buyer shall bear the risk of loss to the Products after delivery to the carrier. Full legal and equitable title and interest in the Goods shall pass to the Buyer on delivery to the carrier.

### 7. RESTRICTED USE

- 7.1 With respect to certain Products, use restrictions are a condition to the purchase which Buyer must satisfy by strictly abiding by the restriction as set forth in SMC's catalogue and/or on the Product and accompanying documentation. Any warranty granted by SMC to the Buyer shall be deemed void if any goods covered by such warranty are used for any purpose not permitted hereunder. In addition, the Buyer shall indemnify SMC and hold SMC harmless from and against any and all claims, damages, losses, costs, expenses and other liability of whatever nature that Buyer suffers or incurs by reason of any such unintended use.

## **8. WARRANTY**

- 8.1 All products are inspected prior to shipment and SMC manufactured products are guaranteed against defective material or workmanship for a period of two (2) calendar years after delivery date of purchase. SMC liabilities are limited to repair, replacement, or refund of the factory quoted price (SMC's option). SMC must be notified and provided with sufficient time to remedy any product deficiencies that require factory attention. This time period may include but is not limited to standard production lead times, travel time and raw material lead times. SMC will not be responsible for any charges related to repair, installation, removal, re-installation, or any actual, incidental, liquidated, or consequential damages. All claims by the buyer must be made in writing. All orders returned to SMC must have an issued RMA number supplied by the SMC prior to shipment. Only SMC shall have the authority to issue RMA numbers.
- 8.2 Any products manufactured by others supplied with and/or installed with SMC's products are covered by the original manufacturers' warranty and are excluded from SMC's warranty
- 8.3 SMC manufactured product must be sent to SMC for repair or replacement.

## **9. LIMIT OF LIABILITY**

- 9.1 SMC shall have no liability under the warranties contained in Condition 8 in respect of any defect in the Products arising from: specifications or materials supplied by the Buyer; fair wear and tear; wilful damage or negligence of the Buyer or its employees or agents; abnormal working conditions at the Buyer's premises; failure to follow SMC's instructions (whether oral or in writing); misuse or alteration or repair of the Products without SMC's approval; or if the total price for the Products has not been paid.
- 9.2 SMC SHALL IN NO EVENT BE LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL, OR PUNITIVE DAMAGES OR COST OF ANY KIND FROM ANY CAUSE ARISING OUT OF THE SALE, USE OR INABILITY TO USE ANY PRODUCT, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, GOODWILL OR BUSINESS INTERRUPTION. IN CASE OF FAILURE IN THE PRODUCT THE COMPANY IS NOT LIABLE TO COMPENSATE THE BUYER WITH ANYTHING EXCEEDING THE COST OF THE PRODUCT SOLD BY SMC.
- 9.3 The exclusion of liability in these Terms & Conditions shall not apply in respect of death or personal injury caused by SMC's negligence.
- 9.4 SMC shall not be bound by any representations or statements on the part of its employees or agents, whether oral or in writing, including errors made in catalogues and other promotional materials.

## **10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1 Where the Buyer supplies designs, drawings, and specifications to SMC to enable it to manufacture non-standard or custom manufactured Products, the Buyer warrants that such manufacture will not infringe the intellectual property rights of any third party. All intellectual property rights in the Products shall at all times remain vested in SMC.

## **11. INDEMNITIES**

- 11.1 Except where the claim arises as a result of the negligence of SMC, the Buyer shall indemnify SMC in respect of any claim which may be made against SMC:
  - (i) arising in connection with the Buyer's use of the Products;
  - (ii) alleging that the use to which the Products are put infringes the intellectual property rights of any third party.

## **12. INSOLVENCY**

- 12.1 In the event one party becomes bankrupt or, goes into liquidation (other than for the purposes of reconstruction or amalgamation), the other party shall be entitled immediately to terminate the Contract without notice and without prejudice to any other rights of SMC hereunder.

## **13. FORCE MAJEURE**

- 13.1 SMC shall not be liable in respect of the non-performance of any of its obligations to the extent such performance is prevented by any circumstances beyond its reasonable control including but not limited to strikes, lock outs or labour disputes of any kind (whether relating to its own employees or others), fire, flood, explosion, natural catastrophe, military operations, blockade, sabotage, revolution, riot, civil commotion, war or civil war.
- 13.2 If an event of force majeure exceeds thirty calendar days SMC may cancel the Contract without liability.

## **14. GOVERNING LAW**

- 14.1 This Contract shall be governed by and construed in accordance with the substantive laws of Malta, exclusive of its choice of law provisions, and the parties hereby submit to the non-exclusive jurisdiction of the courts of Malta.