



# Conditions of Sale

## APPLICATION OF THESE TERMS AND CONDITIONS

1. In these Conditions of Sale:

"The Company" means Simboc Limited, "the Buyer" means the person, firm or company ordering or buying the Goods from the Company;

"The Goods" means the goods the subject matter of the relevant order or contract for sale.

2. (a) Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these conditions.

(b) No contract in respect of the Goods between the Company and the Buyer shall exist until the Buyer's order has been accepted by the Company. The Company may accept the Buyer's order by formal order acknowledgement or by despatch of the Goods to the Buyer (whichever is earlier).

(c) The Buyer shall be solely responsible for the accuracy of the Buyer's orders.

(d) The Buyer can only cancel an order (or any part of an order), which the Company has already accepted, with the Company's prior agreement in writing.

(e) The contract between the Company and the Buyer for the sale and purchase of Goods shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

(f) No conditions or terms stipulated in any other communication or document shall vary any of those conditions except insofar as the same are expressly consented to in writing by the Company.

## PRICE AND DESCRIPTION

3. Quoted prices include the cost of normal packaging but exclude delivery, transit insurance, (which are charged at extra cost), V.A.T. and installation charges (where applicable). Any work carried out additional to that specified in the relevant quotation or order, whether experimentally or otherwise, shall be charged.

4. The prices for the Goods shall be those ruling at the date of despatch and the Company reserves the right to amend its quoted prices at any time prior to the date of despatch.

5. Prices quoted are current trade prices. Prices of imported goods are subject to variances in exchange rates, and in consequence prices will be those holding at the time of delivery. Please telephone us should you wish to confirm current price.

6. The Company reserves the right to vary the specification of any item, withdraw, modify or amend any item without prior notice. Any such variation, withdrawal, modification or amendment shall not affect any order that has already been accepted by the Company, save that the Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory requirements.

## DESPATCH AND PAYMENT

7. (a) Unless otherwise specified the price quoted is packed ex our warehouse. An extra charge will be levied to cover delivery and insurance costs. A charge may

be made to cover any extra costs involved for delivery to a different address.

(b) Should expedited delivery be agreed an extra may be charged to cover any overtime or any other additional costs involved.

(c) Should work be suspended at the request of or delayed through any default of the Buyer for a period of 30 days the Company shall then be entitled to payment for work already carried out, materials specially ordered and other additional costs including storage.

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(d) The Company may deliver the Goods by separate instalments. 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.

8. If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

- (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
- (b) the Goods shall be deemed to have been delivered; and
- (c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

#### **CREDIT POLICY AND PAYMENT INFORMATION**

9. (a) If you do not have a credit account open with us, please ask for a credit application form. Accounts usually take 24hrs to set up, but this period can be reduced if this is specifically requested. Our Credit Controllers will be pleased to assist with any problems related to credit. We are pleased to offer credit terms to qualified parties.

(b) Our credit terms, where applicable, are 14 days net from date of invoice. Statements are sent out at monthly intervals to enable you to check your current invoices paid and due.

(c) Accounts with overdue balances will be placed on credit hold. This means that no further Goods will be shipped and all support and repair/warranty services withdrawn until the account is brought into order. Repeated failure to keep to our credit terms will result in the permanent loss of credit facility.

(d) Payment may also be made by credit card. We accept payment by Visa, MasterCard, Switch, Delta and American Express. A credit card surcharge may be charged of up to 3% per transaction.

(e) If the Buyer fails to pay the Company any sum due pursuant to the contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 2% above the Bank of England base rate from time to time, accruing on a daily basis until payment is made, whether before or after any judgment.

(f) 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 Company to the Buyer.

#### **RETENTION OF TITLE**

10. The Company and the Buyer expressly agree that until the Company has been paid in full for the Goods comprised in this or any other sales contract between them and all outstanding amounts due to the Company from the Buyer or any associated or subsidiary or holding company of the Buyer or from any director or shareholder of the Buyer or any other such company:

(a) The Goods shall remain the property of the Company, and the Buyer, as bailee of them for the Company, will store the same for the Company in a proper manner without charge and in such a way that the goods are clearly identified as being the property of the Company, notwithstanding that the risk therein shall pass to the Buyer as provided herein;

(b) At any time the Company may recover from the Buyer the Goods remaining in the Buyer's possession, and may repossess and resell the Goods if the Buyer's right to possession of the Goods has terminated under paragraph (f) below or if any sum due to the Company as referred to at the beginning of this clause is not paid when due, and for the purposes thereof may enter upon any premises of or occupied by the Buyer or any third party (with the consent of that third party);

(c) The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company;

(d) The Buyer has the right to dispose of the Goods in the course of its business for the account of the Company and to pass good title to the Goods to their customers being bona fide purchasers for value without notice of the Company's rights;

(e) In the event of such disposition the Buyer or its Director(s) (if a Limited Company) has the fiduciary duty to account to the Company for proceeds thereof but may retain therefrom an excess of such proceeds over the amount outstanding

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to the Company under this or any other sales contract between them and for all outstanding amounts due to the Company from the Buyer or any associated or subsidiary or holding company of the Buyer or from any director or shareholder of the Buyer or any other such company.

(f) The Buyer's right to possession of the Goods shall terminate immediately if:

- (i) The Buyer has a bankruptcy order made against him or makes an arrangement or composition with his 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 of its undertaking or any part thereof, or documents are 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), 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
- (ii) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- (iii) the Buyer encumbers or in any way charges any of the Goods.

11. Notwithstanding the preceding condition, all risk in respect of the Goods shall be assumed by the Buyer upon delivery of the same to him.

#### **Buyer's PROPERTY**

- 12. (a) The Buyer's property supplied to the Company by or on behalf of the Buyer shall, while it is in possession of the Company or in transit to or from the Buyer, be deemed to be at the Buyer's risk and the Buyer shall insure accordingly.
- (b) The Company shall be entitled to make a reasonable charge for the storage of any of the Buyer's property left with the Company before receipt of the order or after notification to the Buyer of completion of the work.

#### **SHORTAGES, OR DAMAGE IN TRANSIT**

- 13. (a) The Buyer shall examine the Goods immediately they are delivered to him. The Company shall have no liability in respect of claims in respect of shortages or picking errors or damage in transit unless the Buyer notifies the Company's Customer Services department by telephone on 0333 1500 135, followed by written notice within 5 working days after delivery. In any event, the Buyer shall have no liability in respect of claims in respect of shortages or damages in transit if the Buyer or its representative has signed for the Goods as being received in good condition.
- (b) Any liability of the Company for shortages or picking errors or damage in transit shall be limited to replacing the missing or wrongly picked or damaged Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods. The Buyer shall return to the Company, promptly upon request, and in accordance with the Company's returns policy set out in condition 18, any Goods that have been incorrectly delivered.

#### **NON-DELIVERY**

- 14(a) The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer notifies the Company's Customer Services department by telephone on 0333 1500 135, followed by written notice to the Company of the non-delivery within 5 working days of the date when the Goods would in the ordinary course of events have been received.
- (b) Any liability of the Company 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.

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#### **LATE DELIVERY**

15. Whilst the Company will use its best endeavours to deliver the Goods in accordance with the Buyer's requirements, the Company will not be liable for any consequences of late delivery howsoever caused.

#### **LIABILITY FOR DEFECTIVE PRODUCTS**

16. The Company's liability (in contract, tort (including negligence), misrepresentation or otherwise) in respect of defects in the Goods shall be limited to the replacement or repair of faulty items or material, or the issue of credit notes in respect thereof, or the granting of a refund or other such compensatory measures as the Company at its discretion considers appropriate in the circumstances, and shall be conditional upon the Buyer complying with the conditions of the manufacturer's warranty (where applicable). Such measures shall relate only to the actual faulty items or their value.

17. The Company shall not in any circumstances be under any liability to the Buyer in respect of any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with any contract between the Company and the Buyer for the sale and purchase of Goods, PROVIDED that these conditions do not exclude or restrict the Company's liability for fraudulent misrepresentation or for death or personal injury arising from its negligence.

#### **RETURN OF GOODS**

18. (a) A Returns Authorisation Number must first be obtained from our Customer Service department either by telephone, letter or email.

(b) The Company will not accept any returns unless they are notified to the Company within 14 days of the date of delivery and returned within 14 days of the date of issue of the Returns Authorisation Number. The notification shall include the reason for the return, eg whether the Goods are defective or have been wrongly picked. The Buyer has no right to return Goods which have been delivered in accordance with the contract.

(c) Goods returned must be in the original packaging and in a clean resalable condition (subject only to any defects, which have been notified to the company in accordance with condition 18(b) above). The returns authorisation number must be written on a label attached to the packaging. Any goods not meeting these criteria may, at our discretion, be refused and returned to the buyer and/or a handling charge (equal to a minimum of 15% of the order value of the goods involved) will be levied to the buyer's account to cover the additional costs involved (such as, without limitation, repackaging costs and/or the carriage and associated costs of returning the goods to the buyer). In addition, the buyer will be charged for any damage caused to the goods whilst they were in the buyer's custody or control.

(d) If the Buyer fails to make Goods ready for collection on the return date agreed with the Company, the Company reserves the right to charge the Buyer a handling fee.

(e) If, upon examination by the Company or the manufacturer, the returned Goods are found not to be defective, the Company reserves the right to return the Goods to the Buyer and to charge the Buyer a handling fee equal to a minimum of 15% of the order value of the relevant Goods. In addition, the buyer shall be deemed to have purchased the replacement goods on these terms and conditions and the company shall be entitled to invoice the buyer for the replacement goods.

19. The Company shall not be responsible for the loss in transit of any Goods where the Buyer makes its own arrangements to return the Goods to us.

20. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the contract between the Company and the Buyer for the sale and purchase of Goods.

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**EXPORT CONTROL**

21. The Buyer shall not resell outside the UK any of the Products covered by the Export of Goods (Control) Order 1987 (or any re-enactment thereof) or the Export Administration Act 1979 (as amended) of the USA (or any re-enactment thereof) without obtaining all necessary licences there under and will not resell such goods within the UK to a purchaser knowing (or being given reasonable grounds to suspect by the purchaser) that the purchaser intends to export such goods without first obtaining either such licences or a copy of such licences obtained by the purchaser.

**FORCE MAJEURE**

22. The Company reserves the right to cancel, vary or suspend the operation of a contract of sale if events occur which are in the nature of force majeure including (without prejudice to the generality of the foregoing) fire, floods, storm, explosion, epidemic, plant breakdown, strikes, lockouts, riot, hostilities, governmental actions, war or national emergency, acts of terrorism, protests, non-availability of materials or supplies or any other event outside the reasonable control of the Company; and the Company shall not be held liable for any breach of contract resulting from such an event.

**THE Company's REMEDIES**

23. The Company may withhold or cancel further or any deliveries under the contract of sale and may recover all losses resulting there from if the Buyer:

- (a) fails to make payment on the due date under any contract with the Company, or
- (b) suffers any of the circumstances set out in condition 10 (f), or
- (c) is in breach of any of the terms and conditions contained herein (notwithstanding that on a former occasion or occasions it has waived its rights).

The exercise of rights under this condition 23 shall be without prejudice to the Company's other rights or remedies.

**GENERAL**

24. If any provision of the Contract is found by any court or body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable that part of the provision shall be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

**THIRD PARTY RIGHTS**

25. The Company and the Buyer do not intend that any term of the contract between us shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

**LAW**

26. The contract between the Company and the Buyer to which these terms and conditions apply shall be governed by the laws of England and the parties agree to submit to the non-exclusive jurisdiction of the English Courts.

I confirm that I have read your terms and conditions and agree to abide by them and that the information given by the undersigned and me is correct:

Full Name:.....

Position in which authorised to sign:.....

Signature:.....

Company Name:.....

Date:.....

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