

# Simms International Plc

## STANDARD CONDITIONS OF SALE

### 1. CONTRACT:

- 1.1 These Terms and Conditions apply to any contract for the sale of Goods by Simms International Plc ("the Supplier") to a customer ("the Purchaser"). Where the Purchaser is dealing as a consumer, these terms and conditions do not seek to limit your consumer rights.
- 1.2 Subject to any variation agreed in writing by the Supplier, the Contract shall be on these Terms and Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Purchaser purports to apply under any purchase order, confirmation of order, specification or other document).

### 2. OFFER AND ACCEPTANCE:

- 2.1 The submission of an order by the Purchaser constitutes an offer to purchase the Goods specified in the order. Any acceptance of an estimate provided by the Supplier shall be deemed an offer by the Purchaser to purchase the Goods stated in the estimate. A contract shall be made only when the Supplier accepts an order. A Contract once made cannot be cancelled by a Purchaser.

### 3. PRICES:

- 3.1 Prices stated in a catalogue or sales literature issued by the Supplier are indicative prices and may be altered without notice. The price stated in the Supplier's current price guide at the date of receipt of an order shall be the contract price exclusive of VAT unless otherwise agreed by the Supplier in writing.
- 3.2 All prices are ex works prices. Where the Supplier agrees to deliver the Goods to an address notified by the Purchaser ("Delivery Address") the Supplier shall charge in addition for such delivery at the Supplier's applicable standard rates.

### 4. PAYMENT:

The Purchaser shall pay the contract price in consideration of the supply of the Goods in accordance with these Terms and Conditions. The Supplier shall invoice the Purchaser, containing all appropriate references, requesting payment of the contract price plus any delivery charges and VAT. Where the Purchaser is not a credit account holder with the Supplier, the Purchaser shall make payment for the Goods by cleared funds before the Supplier dispatches the Goods to the Purchaser.

### 5. CREDIT ACCOUNT HOLDERS:

- 5.1 Where the Purchaser is a credit account holder with the Supplier, the contract price, plus any delivery charges and VAT, shall be charged to the Purchaser's credit account. The Supplier shall send a statement of account to the Purchaser each month. The Purchaser shall make payment of any invoice not later than 30 days after the date of the invoice or such other times as may be agreed in writing by the parties. If the Purchaser fails to make payment by the due date, the Supplier shall have an absolute discretion to close the credit account and withhold delivery of any orders without liability to the Purchaser until such time as moneys for outstanding invoices are received by the Supplier in full and cleared funds.
- 5.2 In the event that an order puts the Purchaser over any agreed credit limit applicable to the Purchaser's credit account, the Purchaser shall immediately make payment to the Supplier to bring the account below such credit limit or shall make payment for Goods in accordance with Condition 4 and, for the avoidance of doubt, the Supplier may withhold delivery and/or performance of its obligations pursuant to any order without liability to the Purchaser until such time as payment shall have been made by the Purchaser in cleared funds to regularise the credit account, as stated in this condition 5.2.

### 6. NON-PAYMENT:

In any case where the Purchaser fails to make any payment by the due date, then, without prejudice to any other rights or remedies, interest shall accrue from that date until the date of payment, at a rate 5 per cent above the Bank of England base rate from time to time in force. The Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. In addition, the Supplier reserves the right to engage the services of a debt recovery agent to collect any unpaid invoices after the due date for payment and the Purchaser shall be subject to a surcharge of 15% plus vat of the amount outstanding to cover the collection costs incurred.

### 7. DESCRIPTION:

Descriptions of products in any catalogue or sales literature issued by the Supplier are given for advertising and providing a means of reference. They shall not form part of the description of Goods for a sale by description. The Goods are described in the order form which forms part of the contract. The Goods supplied to the Purchaser shall conform to the description specified in the contract, subject to the following qualifications:

- 7.1 The Supplier shall have the right to change any detail as to the construction, design or specification of products as advertised provided that the product so changed is substantially similar and compatible for all purposes in respect of its use. The Purchaser shall accept such products as so changed in fulfilment of the order notwithstanding that they do not correspond exactly with the advertised descriptions;
- 7.2 The Supplier shall have the right, if the Goods specified in the order are unavailable, to provide similar Goods in substitution, provided that the substituted Goods are of equivalent standard and price and are compatible for all purposes in respect of their use. The Purchaser shall accept such substituted products in fulfilment of the order notwithstanding that they do not correspond exactly with the description specified in the order.

### 8. LABELLING AND PACKAGING:

- 8.1 The Supplier shall ensure that the Goods are packed and marked in a proper manner and in accordance with any statutory requirements and any requirements of the carriers.
- 8.2 Where the Goods are to be labelled with a logo or other information provided by the Purchaser, the Purchaser shall provide the design and image approved by the Purchaser for use in such format as the Supplier may require.

### 9. DATA:

Where the Supplier has agreed to upload data supplied by the Purchaser ("Purchaser Data") for use in the Goods, the Purchaser undertakes to provide the Purchaser Data in such format as the Supplier may require. The Purchaser warrants to the Supplier that it has all necessary consents for the possession and/or use of the Purchaser Data by the Supplier in connection with the Goods.

### 10. DELIVERY:

- 10.1 The Supplier shall deliver the Goods to the Delivery Address. The Purchaser shall pay the Supplier's charge for delivery in addition to the price of the Goods. The Supplier shall use reasonable endeavours to deliver the Goods within 14 days after acceptance of the order (or such other delivery date that the parties may agree) but that time shall be treated as an estimate only and time shall not be of the essence of the Contract. Where lead times are notified to the Purchaser these are indicative only and the Supplier shall use reasonable endeavours to keep the Purchaser informed of any changes in lead times notified to the Supplier by its suppliers. The Supplier shall inform the Purchaser of any delay as soon as the Supplier becomes aware of it. The Supplier shall not be liable for any loss or damage incurred by the Purchaser by reason of delivery after the estimated delivery date or change in lead times. The Purchaser shall make all arrangements necessary to take delivery at the time notified by the Supplier. If the Purchaser is unable to take delivery at the time when the Goods are due and ready for delivery the Supplier shall store the Goods safely until their actual delivery and the Purchaser shall be liable for any reasonable additional costs, including insurance, incurred by the Supplier in doing so. Collection of Goods from the Supplier's premises shall only be permitted by the written agreement of the Supplier.
- 10.2 If the Supplier delivers to the Purchaser a quantity of Goods up to 10% more or less than the quantity specified in the Contract, the Purchaser shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such Goods at the pro rata Contract rate. The Supplier may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. In the event that the Supplier delivers Goods in error to the Purchaser, the Purchaser shall hold such Goods as bailee on behalf of the Supplier and the Purchaser shall, upon the request of the Supplier, return such Goods to the Supplier and the Supplier shall pay the pre agreed costs of such return.

## **11. TITLE AND RISK:**

- 11.1 The Goods are at the risk of the Purchaser from the time of delivery. Ownership of the Goods shall not pass to the Purchaser until the Supplier has received in full (in cash or cleared funds) all sums due to it in respect of (i) the Goods; and (ii) all other sums which are or which become due to the Supplier from the Purchaser on any account. Until ownership of the Goods has passed to the Purchaser, the Purchaser shall (a) hold the Goods on a fiduciary basis as the Supplier's bailee; (b) store the Goods (at no cost to the Supplier) separately from all other goods of the Purchaser or any third party in such a way that they remain readily identifiable as the Supplier's property; (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and (d) maintain the Goods in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks to the reasonable satisfaction of the Supplier. On request the Purchaser shall produce the policy of insurance to the Supplier. Where payment is received in advance of delivery, ownership of the Goods shall not pass until delivery.
- 11.2 The Purchaser may resell the Goods before ownership has passed to it solely on the following conditions (a) any sale shall be effected in the ordinary course of the Purchaser's business at full market value; and (b) any such sale shall be a sale of the Supplier's property on the Purchaser's own behalf and the Purchaser shall deal as principal when making such sale. The Purchaser's right to possession of the Goods shall terminate immediately if (a) the Purchaser 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 Purchaser or notice of intention to appoint an administrator is given by the Purchaser 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 Purchaser or for the granting of an administration order in respect of the Purchaser, or any proceedings are commenced relating to the insolvency or possible insolvency of the Purchaser, or (b) the Purchaser 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 Supplier and the Purchaser, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Purchaser ceases to trade; or (c) the Purchaser encumbers or in any way charges any of the Goods.
- 11.3 The Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Supplier.
- 11.4 The Purchaser grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are stored at the premises of a third party, the Purchaser shall procure such rights of access to the third party premises where the Goods are or may be stored in order to inspect them, or, where the Purchaser's right to possession has terminated, to recover them.
- 11.5 Where the Supplier is unable to determine whether any Goods are the goods in respect of which the Purchaser's right to possession has terminated, the Purchaser shall be deemed to have sold all goods of the kind sold by the Supplier to the Purchaser in the order in which they were invoiced to the Purchaser.
- 11.6 On termination of the Contract, howsoever caused, the Supplier (but not the Purchaser's) rights contained in this Condition 11 shall remain in effect.

## **12. DAMAGE IN TRANSIT:**

The Supplier shall without charge either repair or replace (at the option of the Supplier) the Goods if they are damaged in transit or having been placed in transit fail to be delivered, provided that: (a) in the case of damage the Purchaser shall not later than 5 days after the date of delivery give notice to the Supplier that the Goods have been damaged; (b) in the case of non-delivery the Purchaser shall not later than 5 days of the notified date of dispatch give notice that the Goods have not been delivered. This shall be the Purchaser's sole remedy in connection with the supply of damaged Goods or non delivery.

## **13. INSPECTION:**

The Supplier shall allow the Purchaser or its authorised representative to make any inspection of the Goods that it may reasonably require before the dispatch of the Goods. No failure to make complaint at the time of such inspection and no approval given during or after such inspection shall constitute a waiver of any rights of the Purchaser under these Terms and Conditions or otherwise in law.

## **14. REJECTION:**

The Purchaser may by written notice to the Supplier reject any Goods which fail to meet the requirements specified in the contract. Such notice shall be given not later than 5 days after the date of delivery. If the Purchaser rejects any Goods in accordance with this Clause which are found to be defective by the Supplier, the Supplier shall pay the actual and direct costs incurred by the Purchaser in returning the Goods or shall collect the Goods from the Purchaser at the Supplier's expense as agreed by the Supplier. The Purchaser shall be entitled, at the Supplier's option, to have the Goods replaced or to obtain a refund of any payment made by or charged to the Purchaser. In the event that Goods returned are found not to be defective, the provisions of Clause 15.6 shall apply. The provisions of Clause 14 shall be the Purchaser's sole remedy for the supply of defective Goods.

## **15. WARRANTY:**

- 15.1 The Supplier warrants that (subject to the other provisions of these Terms and Conditions) on delivery the Goods shall meet the description set out in the order. The Supplier shall not be liable for a breach of this warranty unless: (a) the Purchaser gives written notice of the defect to the Supplier within a reasonable period of delivery; and (b) the Supplier is given a reasonable opportunity after receiving the notice of examining such Goods and the Purchaser (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost for the examination to take place there.
- 15.2 The Supplier shall not be liable for a breach of warranty if: (a) the Purchaser makes any further use of such Goods after giving such notice; or (b) the defect arises because the Purchaser failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or (c) the Purchaser alters or repairs such Goods without the written consent of the Supplier.
- 15.3 If any of the Goods do not conform with the warranty the Supplier shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Supplier so requests, the Purchaser shall, at the Supplier's expense, return the Goods or the part of such Goods which is defective to the Supplier. Save as provided, the Supplier shall have no further liability for a breach of the warranty in this Condition 15 in respect of such Goods.
- 15.4 The Supplier shall supply the Goods to the Purchaser with the benefit of any warranty given by the manufacturer of the Goods, subject to the terms of such warranty.
- 15.5 Save as provided, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 15.6 Where Goods are found not to be faulty, the Supplier may, at its discretion, accept the return of such Goods provided that such Goods have not been used or altered to the Purchaser's requirements and their packaging is not damaged, the current price of the returned Goods or the Contract Price paid by the Purchaser (whichever shall be lower) shall be credited to the Purchaser's account minus a restocking charge of 20 per cent (subject to a minimum charge of £20) or returned to the Purchaser at the Purchaser's expense. Any Goods found to have had parts removed since delivery to the Purchaser shall be returned to the Purchaser at the Purchaser's expense. Where on investigation Goods are found to be defective but in the reasonable opinion of the Supplier or the manufacturer the damage or defect in the Goods could only have occurred post delivery, the Supplier shall be entitled to invoice the Purchaser for any replacement Goods supplied to the Purchaser or any Goods supplied against any credit given in respect of such defective Goods and where a refund has been made to the Purchaser in cash (in whole or in part), the value (in whole or in part, as applicable) of the defective Goods shall be invoiced to the Purchaser and the Purchaser shall pay such invoice immediately upon receipt.

## **16. INTELLECTUAL PROPERTY RIGHTS:**

- 16.1 The Supplier warrants that the sale of the Goods to the Purchaser will not infringe any third party Intellectual Property Rights, namely any patents, trade marks, service marks, design rights, applications for any of the above rights, copyright, trade or business names or other similar rights or obligations whether registrable or not in any country including but not limited to the United Kingdom.
- 16.2 The Purchaser undertakes to:-
- 16.2.1 inform the Supplier promptly in writing of any claim from a third party in breach of Clause 16.1;
  - 16.2.2 not to make any admission or settlement without the prior consent in writing of the Supplier;
  - 16.2.3 give to the Supplier all information and assistance that the Supplier may require;
  - 16.2.4 at the request of the Supplier, permit the Supplier full conduct of any such claim.

16.3 In the event that a claim is made that the Goods infringe a third party's Intellectual Property Rights or, in the Supplier's reasonable opinion such a claim is likely to be made, the Supplier may, at its sole option and expense:-

16.3.1 procure for the Purchaser the right to continue using the Goods;

16.3.2 modify the Goods so that they cease to be infringing;

16.3.3 replace the Goods with non-infringing goods;

16.3.4 require the Purchaser to return the Goods to the Supplier and repay to the Purchaser all sums which the Purchaser has paid to the Supplier for such Goods.

16.4 The Purchaser shall indemnify the Supplier against all claims proceedings, damages, costs, expenses and any other liability or loss incurred by the Supplier in connection with the possession and use of the Purchaser's Data and/or in connection with any logo or design or other information supplied by the Purchaser to be applied to or used in connection with the Goods.

#### **17. LIMITATION OF LIABILITY:**

Nothing in these Terms and Conditions or the Contract shall cease to have effect to limit and/or exclude liability in connection with personal injury or death arising in connection with the negligent act or default of the Supplier, fraudulent misrepresentation or for any matter which it would be illegal for the Supplier to exclude or limit or attempt to exclude or limit its liability. The Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price of the Goods. The Supplier shall not be liable to the Purchaser for loss of profit, loss of data, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for indirect or consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

#### **18. LOSS OF DATA:**

It shall be the responsibility of the Purchaser to backup any software or data that may be affected by the installation or use of the Goods in any computer system. The Supplier shall not be liable for any loss or corruption of software or data arising from the installation or use of the Goods by the Purchaser.

#### **19. FORCE MAJEURE:**

The Supplier reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Purchaser (without liability to the Purchaser) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Supplier including, without limitation, default or failure of a supplier (including couriers and carriers), acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 60 days, the Purchaser shall be entitled to give notice in writing to the Supplier to terminate the Contract.

#### **20. SERVICE OF NOTICE:**

Any notice to be given to either Party under these Terms and Conditions shall be sent by pre-paid recorded delivery or registered post or by facsimile transmission or electronic mail and shall be deemed to have been received within 72 hours of posting or within 24 hours of being sent to the correct fax number or e-mail address.

#### **21. SEVERABILITY:**

If any provision of these Terms and Conditions is declared by any court or other competent authority to be illegal or otherwise unenforceable, the Parties shall amend that provision so as to achieve the intention of the Parties without illegality. Alternatively, at the absolute discretion of the Supplier, such a provision may be severed from these Terms and Conditions and the remaining provisions shall remain in full force and effect.

#### **22. WAIVER AND VARIATION:**

A failure by either Party to enforce any of these Terms and Conditions shall not constitute a waiver and shall not prevent that Party from subsequently enforcing any of these Terms and Conditions. These Terms and Conditions shall not be varied unless such variation is agreed by the Parties in writing.

#### **23. JURISDICTION:**

The contract shall be governed by and interpreted in accordance with the law of England and Wales and shall be subject to the jurisdiction of the courts of England and Wales.

Company registered in England and Wales under company number 02653692

Registered Office: Montague Place, Quayside, Chatham Maritime, Chatham, Kent ME4 4QU