

# Standard Terms and Conditions of Sale

**South West Partnerships Ltd**

**Trading as SWP Machining**



## **1. DEFINITIONS**

1.1 In these conditions "The Company" means SOUTH WEST PARTNERSHIPS LTD., "The Buyer" means any company, firm or individual from whom the Company received an order which the Company has accepted, "the Goods" means the products, materials and/or services to be supplied by the company.

## **2 APPLICABILITY OF CONDITIONS**

2.1 The Company accepts orders for the supply of Goods subject only to these conditions. The Buyer accepts that these conditions shall govern relations between himself and the Company to the exclusion of any other terms including without limitation, conditions and warranties (written or oral, expressed or implied) even if contained in any of the Buyer's documents which purport to provide that the Buyer's own terms shall prevail. No variation or qualification of these conditions or of any quotation or order arising therefrom shall be valid unless agreed in writing between the parties.

## **3 PRICE**

3.1 Unless fixed prices have been specifically agreed by the Company, notwithstanding any offer, quotation, tender price or price list all prices are subject to alteration without notice and Goods will be invoiced at prices ruling at the date of despatch.

3.2 All prices are quoted exclusive of Value Added Tax ("VAT") and VAT will be added to all invoices at the rate applicable on the tax point date which date shall be the date of invoice. Where before delivery or the date of the invoice, whichever is the earlier, the Goods become subject to any additional duty, VAT or any other tax or surcharge, in excess of the sum specified for such liabilities in the Company's quotation or invoice, the Buyer shall be charged and will pay such extra duty, tax or surcharge.

## **4 TEST CERTIFICATE**

4.1 The Company shall not be required to supply test certificates unless the same are requested a reasonable time before delivery and the Company may charge a reasonable fee for any certificates supplied.

## **5 QUANTITY TOLERANCE**

5.1 All delivered orders are subject to a tolerance of plus or minus five percent (5%) of the quantity ordered. The Company shall be deemed to have fulfilled its contract if the Goods delivered fell within this tolerance.

## **6 DELIVERY**

6.1 Delivery shall be deemed to be effective when the Goods are unloaded at the delivery address nominated by the Buyer or his agent for delivery, save where the Goods are to be collected by the Buyer or his agent, when the Goods are loaded onto the vehicle collecting them.

6.2 The Company reserves the right to deliver goods by instalments and in such event each instalment shall be treated as a separate contract provided that deliveries of further instalments may be withheld until the goods or materials comprised in earlier instalments have been paid in full.

## **7 TIME FOR DELIVERY**

7.1 Any periods of time quoted or accepted by the Company for despatch, delivery or completion of the order are to be treated as estimates only, not involving the Company in any liability to the Buyer in respect of loss suffered as a result of failure to despatch, deliver or complete within such a period of time.

## **8 STORAGE**

**8.1** If the Company does not receive forwarding instructions sufficient to enable despatch to be made within 14 days after notification that the goods are ready for despatch the Buyer shall be deemed to have taken delivery and the Company may (without prejudice to any of its other rights) dispose of the Goods ordered at the best price reasonably available or may arrange for storage of the Goods at the premises of the Company or elsewhere as the Company may so determine at the cost of the Buyer. The Company's store keeper's receipt or that of any third party warehouse or a similar depository shall be deemed valid for all purposes including without limitation claiming payments under any relevant letter of credit as if it were the Buyer's receipt for a clean bill of lading or other document as is called for to evidence or effect delivery of the Goods.

## **9 CLAIMS**

**9.1** Notice of any claim relating to shortage of or damage to the Goods shall be made to the Company in writing within 48 hours of receipt of the Goods. In the event of loss or non delivery of the Goods the Customer shall notify the Company in writing within 3 days of receiving the advice note.

**9.2** The Company will consider claims only if the above conditions are met and the claim is signed by the Customer and accompanied by full particulars giving the invoice and Company's order number and, the copy of the delivery note in respect of the Goods which, in the case of shortage or damage to the Goods must bear an appropriately qualified signature, for example "material received damaged, (signed)".

**9.3** Allowance for claims for short weight may be made if considered appropriate by the Company provided always that the Company is given an opportunity to verify the same within 3 days of the claim being made.

**9.4** The Company's liability hereunder in respect of any shortage, loss or damage to the Goods shall be limited to the proportion of the price attributable to the Goods lost or damaged.

## **10 VARIATIONS**

**10.1** If the Company makes a variation to the Goods in any way from the agreed specification at the Customer's request or pursuant to any legal requirement the Customer shall pay in addition to all other sums payable under this contract the cost of the variation insofar as the same increases the cost incurred by the Company in performing this contract.

**10.2** The Contract Price is based on costs current at the date of this Contract. If during the period between the contract date and the date of actual delivery such costs are increased to the Company the Customer shall pay such additional sum as incurred by the Company in performing this contract.

## **11 PAYMENT TERMS**

**11.1** Accounts are payable by the end of the month following the month in which delivery took place.

**11.2** Where only part of the Goods are despatched, payment shall be made of the contract price attributable to that part.

**11.3** In the event of any delay or delays in despatch or delivery which are attributable to the buyer's actions or failure to act, the Buyer shall make payment to the Company in accordance with the above as if the Goods had been delivered at the times at which but for such delay or delays such delivery would have taken place.

**11.4** Unless otherwise agreed, in writing, the contract price shall be paid in Pounds Sterling.

**11.5** Unless the Company's offer specifies otherwise, if the Buyer is based overseas, payment shall be made by irrevocable letter of credit established in favour of the company at the time of placing of the order by the buyer or acceptance of the Company's offer and confirmed by a first-class British clearing bank acceptable to the Company and maintained valid for cash drawings against presentation of the Company's invoice(s) until final contract payments but in any case for at least three months after scheduled completion of the contract

taking into account any agreed extension and the acceptance by the Company of the Buyer's order is conditional upon such letter of credit being received with the order.

11.6 The Buyer agrees to arrange extension of such letter of credit for such period as may be requested by the Company from time to time.

11.7 All bank charges shall be to the account of the Buyer except in the case where the Company requests extension to account for any delay on its part for reasons within its control, in which case the Company shall bear the reasonable cost of such extension.

11.8 The Company reserves the right to charge interest on late payment of four per cent per annum above the base rate quoted by HSBC plc from time to time on the daily balance from the due date until payments is made.

11.9 If any payment falls into arrears the Company shall have the right to cancel or postpone performance of the contract wholly or in part and to be paid immediately for performance of the contract to date.

11.10 No claim by the Buyer under warranty or otherwise shall entitle the Buyer to any deduction, retention or withholding of any part of any sums due for payment hereunder. The Buyer shall not be entitled to any set-off of obligations within or between contracts with the Company.

## **12 RISK AND TITLE**

12.1 Risk passes to the Buyer on delivery of the Goods.

12.2 Whilst risk in Goods supplied to the Buyer under the contract shall pass on delivery, legal and beneficial ownership of the Goods shall remain with the Company until such times as the Company has received payment in full for all Goods supplied to the Buyer or until such time as the Goods are sold to the Buyer's customers by way of bone fide sale at full market value (whichever shall be the earlier) and until such time the Buyer shall keep such Goods separate from its property and clearly identified as the property of the Company.

12.3 Notwithstanding terms of payment specified herein or elsewhere payment for all Goods supplied to the Buyer shall become due immediately upon the commencement of any act or proceeding in which the Buyer's solvency is involved (whether voluntary or upon application to any court) or upon the appointment of a receiver over the whole or any part of the Buyer's assets or undertaking and upon such occurrence the power of sale granted to the buyer above shall automatically determine.

12.4 If payment for any Goods is overdue whether in whole or in any part and any Goods have been delivered to the Buyer the Company may without prejudice to any of its other rights enter upon the Buyer's premises to recover and / or resell the Goods or such of them as the Company in its absolute discretion may designate as necessary to recover the amount of payment overdue and the Company's reasonable costs incurred in giving effects to its rights hereunder and for their purposes the Buyer hereby irrevocably authorises the Company to enter and take all necessary and reasonable steps upon the premises of the Buyer.

12.5 Until the Company is paid in full for all Goods supplied the Buyer is and shall remain a fiduciary for the Company in respect of the Goods and if the Buyer sells or allows to be sold the Goods the proceeds of sale shall be held in a separate clearly identifiable account and the beneficial interest of the Company shall attach to the proceeds of sale and the Company shall have the right to trace such proceeds of sale.

12.6 If any of the Goods are incorporated or used in other products before full payment for all Goods supplied under the contract has been made title in such products shall be and remain with the Company until full payment has been made or such products have been sold and all of the above provisions of this clause shall extend to such products.

### **13. WARRANTY**

**13.1** The Company warrants that the Goods are within its usual tolerances as to quality and finish and shall replace or at its option refund the purchase price applicable of any Goods which do not in its sole opinion comply with this warranty. Provided always any claim under this warranty is made within 3 days of delivery of the Goods alleged to be defective.

**13.2** The Buyer assumes responsibility for the capacity or performance of the Goods being sufficient and suitable for their intended use.

**13.3** No warranty, condition or representation is given or made as to the quality of the Goods supplied hereunder their condition or their fitness for any particular purpose and any such warranty, condition or representation whether expressed or implied whether by statute, by collateral agreement or from otherwise is hereby excluded.

### **14. CANCELLATION BY THE BUYER**

**14.1** The Buyer may cancel or suspend the contract only with the Company's prior written consent following agreement by the Buyer to reimburse the Company in an amount to be determined by the Company.

### **15. TERMINATION BY THE COMPANY**

**15.1** The Company shall (without prejudice to any of its other rights hereunder) be entitled to terminate any contract forthwith by written notice to the Buyer if the Buyer shall:

- a) become insolvent
- b) fail to pay any amounts falling due (whether under these conditions or otherwise) to the Company within 28 days of the payment is due
- c) suffer the appointment of a Receiver
- d) pass a resolution for winding-up (other than for purposes of bona fide amalgamation or bona fide reconstruction)
- e) commit a breach of any item of the contract or any other contract with the Company.

### **16. LIMITATIONS OF LIABILITY**

**16.1** The Company shall not be liable for any expenditure loss (including without limitation economic indirect and consequential loss) damage or injury (other than personal injury arising out of negligence for which we must accept liability in accordance with the Unfair Contract Terms Act 1977 where you are a UK Customer for UK supply) arising out of any use or dealing with the Goods howsoever such expenditure loss damage or injury shall arise and whether from any defect in the Goods or otherwise.

**16.2** The Buyer shall indemnify the Company against all and any claims costs actions or demands whatsoever and howsoever arising made by any third party (including the Buyer's employees) whether direct or indirect including without limitation those relating to the use of the Goods and those arising because of the operation of the Consumer Protection Act 1987.

### **17. FORCE MAJUERE**

**17.1** In the event of the Company being delayed in or prevented from performing its obligations hereunder owing to any cause whatsoever beyond the Company's control including without limitation act of God, war, strikes lockouts, trade disputes, difficulty in obtaining workmen or materials, breakdown of equipment, or any other cause, the Company will not be liable for any loss damage or expenses incurred and shall be at liberty to cancel or suspend the contract without incurring and liability arising therefrom, and the Customer shall not be entitled to terminate the contract.

## **18. LEGAL DISCLAIMER**

**18.1** Any machined parts provided for use in vehicles are intended solely for vehicles used in off-road or competition settings. These parts are not designed or approved for use on public highways or any roads governed by vehicle codes. Installation and use of these parts on public roads may violate local laws and regulations. The purchaser assumes all responsibility for ensuring compliance with applicable laws and regulations. The manufacturer and any distributor are not liable for any damages or legal consequences resulting from the misuse of these parts.

**18.2** The company supplies parts that are designed and fabricated for motorsports and off-road use only. Use of these products is at the purchaser's own risk and in no event will the company be liable for any incidental, consequential or indirect damages.

**18.3** Modification to any vehicle by installing parts sold by the company could alter its on-road performance in the event of a crash, resulting in bodily harm or property damage. In purchasing from the company, the purchaser hereby assumes full responsibility in any property damage or personal injury that may occur while using products sold by the company.

**18.4** The company will not take responsibility for personal injury or property damage arising from failure of parts sold by SWP Machining.

**18.5** Do not purchase or install any part sold by the company if you do not agree with clauses 18.1 to 18.4, and/or that you do not feel competent in installing and using safely and correctly. Improper installation can lead to personal injury or death, or property damage; a qualified professional should install all products and only skilled individuals should complete installation.

## **19. LAW AND INTERPRETATION**

**19.1** This contract represents the entire agreement between the parties and supersedes all earlier warranties representations or statements (whether oral or in writing) and may only be varied or amended in writing between the parties.

**19.2** The headings of each provision are intended to be for convenience only and do not affect the interpretation thereof.

**19.3** The contract shall be deemed to be a contract made in England and shall be construed according to the law of England. Any dispute shall be referred to an English court which shall have sole jurisdiction.

**END**

**SWP Machining® is a trading name for South West Partnerships Limited**  
**South West Partnerships Limited is a Private Limited Company registered in England and Wales**  
**Company number: 07620807**  
**Registered office: 7 Killams Green, Taunton, Somerset TA1 3YQ**  
**VAT number: 267180687**