

1. Contract

- (i) A Contract between SMC Euroclamp Ltd. (hereinafter referred to as S.M.C) and the Buyer is formed only upon S.M.C. receiving the Buyer's written order and the Buyer's receipt of SMC's written order acknowledgement. The terms detailed on the order acknowledgement and the terms set out below are conditions of the Contract.
- (ii) No additions to or modifications thereof shall form part of the Contract unless agreed in writing by S.M.C.
- (iii) In the event of conflict these terms and conditions shall prevail over any terms and conditions stipulated by the Buyer.
- (iv) Notwithstanding the foregoing terms, in the case of new attachments the Buyer is obliged to provide to S.M.C. any information, deemed by S.M.C., necessary to ensure that the attachment to be supplied under the Contract is suitable and fit for the purpose intended.
This information shall include, but not be restricted to:
 - The Forklift Truck (FLT) Model.
 - Carriage Details
 - Pressure and flow of oil to the attachment.
 - Full details of the load(s) to be lifted and carried.
 - End user's name and site.
 - Terrain Details.
 - Shift Cycles.

2. Guarantee

- (a) After delivery to the Buyer of the goods specified in the order acknowledgement, all liability on the part of S.M.C. under the Contract shall cease save that in the event of any of the goods becoming defective due to bad workmanship or faulty materials within a period of 24 months or other periods specified by S.M.C. in (d) below, from the date of delivery to the first user in respect of a new attachment or 6 months from the date of delivery of spare parts from S.M.C.'s works provided that:
 - (i) The Buyer gives written notice to S.M.C. of the occurrence of the defect within seven days of such occurrence coming to the Buyer's knowledge.
 - (ii) The Buyer has complied with S.M.C.'s instructions as to the installation, use and maintenance of the goods.
 - (iii) No parts other than those supplied by S.M.C. have been installed on the goods.
 - (iv) The Buyer delivers the defective goods or parts thereof, carriage paid, to S.M.C.'s works or to such other place as S.M.C. may direct within one month after the date of such occurrence coming to the Buyer's knowledge. Then S.M.C. shall, subject to inspection, provide without charge at its works, or such other place as S.M.C. may direct a replacement for the defective goods or parts thereof. S.M.C. will charge the Buyer for any necessary labour and will not be liable for any labour charges incurred by the Buyer.
- (b) Replacement goods which become defective due to bad workmanship or faulty materials within six months after despatch from S.M.C.'s works shall be replaced on the same terms (so far as applicable) as set out in (a) above.
- (c) The responsibility of S.M.C. is limited to the obligations set out in paragraph (a) and (b) above which replace and exclude every guarantee warranty and/or conditions (including any conditions as to quality or fitness for a particular purpose) whether expressed or implied by statute or common law in respect of goods sold to the Buyer under his order or any replacement thereof.
- (d) The guarantee period of 24 months specified in 2(a) above applies to a user operating a single shift cycle.
- (e) This guarantee will not apply should the Buyer or user carry out repairs on the goods within the guarantee period without the expressed authorisation of S.M.C.

3. Prices

Prices for goods are those applicable on the date of despatch. The Buyer shall pay any duties and taxes levied on the sale, delivery and storage, consumption or transportation of the goods.
Packing cases and packing materials used for the supply of goods shall be charged extra.
All prices quoted by S.M.C are on an ex-works basis. Delivery and installation can be arranged and charged at SMC's standard rates.

TERMS & CONDITIONS

4. Minimum Order Value

All orders are subject to a minimum order value.

5. Variations/Cancellation

Variations, cancellation and re-scheduling are subject to agreement in writing by S.M.C. The Buyer hereby expressly agrees to make good to S.M.C. all lost costs, damages, charges and expenses arising out of or in connection with the variation, cancellation or re-scheduling of the order.

6. Delivery Dates

Any delivery date given is approximate only and whilst every effort will be made to meet such date S.M.C. will not accept responsibility or liability for any delay in delivery howsoever caused or occasioned.

7. Performance

S.M.C shall be wholly excused from performance of this contract if performance is rendered impossible by differences with workmen, strikes, work stoppages, delays in transportation, inability to obtain labour or materials, and also by any cause beyond the reasonable control of S.M.C. including, but not restricted to act of God, flood, fire, storm, act of civil or military authorities, war and insurrection.

8. Risk/Damage, Shortage or Loss

Unless otherwise expressly stated the goods are for delivery ex-works and the risk in the goods shall pass to the Buyer when the goods are despatched or collected from S.M.C.'s works. S.M.C. will on the written request of the Buyer act as the Buyer's agent for the hire of a carrier to transport the goods from S.M.C.'s works to the destination stipulated, by the Buyer. If so requested S.M.C. may bind the Buyer to any normal haulage contract and shall be under no liability for any damage, shortage or loss in transit to the goods. The Buyer shall look to the carrier only in any claim for such damage, shortage or loss and then only to the extent that such damage, shortage or loss is recoverable under the haulage contract. In any event the Buyer must notify the haulier and S.M.C. within three days of the receipt of the goods or in case of non-delivery within seven days of receipt of the invoice.

9. Property

Property in the goods shall not pass to the Buyer until the same have been wholly paid for, or in the case of S.M.C. accepting any cheque, bill of exchange or promissory note, until the same has been honoured, provided that nothing herein shall prevent the goods from either being legitimately used in the course of the Buyer's business or resold to a third party.

10. Returns

Goods shall not be returned without written permission of S.M.C. which it shall be under no obligation to give.

11. Payment Terms

Thirty Days net. Should the Buyer default in any payment when due, S.M.C. reserve the right, without prejudice to any other remedy which it may have, to cancel this contract and/or any other contract between the Buyer and S.M.C. and/or to suspend delivery until the payment has been made and/or to exercise a lien on goods remaining to be delivered under this or any other contract between the parties. S.M.C. will charge interest at the rate of 4% over the Bank of England's Minimum Lending Rate on accounts which are not settled on the due date.

12. Limitation

- (a) S.M.C. shall in no circumstances be liable for any incidental or consequential loss or damage suffered by the Buyer, including, without limitation, delay, detention, loss of production or loss of profit.
- (b) S.M.C. shall in no circumstances be liable to the Buyer for any injury, loss or damage however caused arising directly or indirectly out of or in connection with the use, functioning or state of the goods. In respect of installations or applications of the goods as parts or components of other goods or machinery the Buyer. Shall be solely responsible for compliance with safety regulations issued by competent authorities and in force at the place of operation.

TERMS & CONDITIONS

- (c) S.M.C. hereby undertakes to indemnify the Buyer and hold the Buyer harmless in respect of damages claimed by any third party from the Buyer arising out of a defect within the meaning of the Consumer Protection Act 1987 in the goods supplied by S.M.C. directly giving rise to injury, loss or damage to person or property sustained by the third party provided always that S.M.C. shall under no circumstances be liable for any other damages whatsoever. S.M.C. shall under no circumstances be obliged to indemnify the Buyer in respect of damages insofar as such damages must be attributed to:
- (i) the design of the product of which the goods supplied by S.M.C. form a part;
 - (ii) instructions or specifications given by the Buyer to S.M.C. in connection with the order for the goods supplied by S.M.C.;
 - (iii) the fact that the Buyer has given incorrect instructions to the users of the product of which the goods supplied by S.M.C. form part or has neglected to pass on S.M.C.'s product information to the users.

13. Limitation

- (d) S.M.C. shall in no circumstances be liable for any incidental or consequential loss or damage suffered by the Buyer, including, without limitation, delay, detention, loss of production or loss of profit.
- (e) S.M.C. shall in no circumstances be liable to the Buyer for any injury, loss or damage however caused arising directly or indirectly out of or in connection with the use, functioning or state of the goods. In respect of installations or applications of the goods as parts or components of other goods or machinery the Buyer. Shall be solely responsible for compliance with safety regulations issued by competent authorities and in force at the place of operation.
- (f) S.M.C. hereby undertakes to indemnify the Buyer and hold the Buyer harmless in respect of damages claimed by any third party from the Buyer arising out of a defect within the meaning of the Consumer Protection Act 1987 in the goods supplied by S.M.C. directly giving rise to injury, loss or damage to person or property sustained by the third party provided always that S.M.C. shall under no circumstances be liable for any other damages whatsoever. S.M.C. shall under no circumstances be obliged to indemnify the Buyer in respect of damages insofar as such damages must be attributed to:
- (iv) the design of the product of which the goods supplied by S.M.C. form a part;
 - (v) instructions or specifications given by the Buyer to S.M.C. in connection with the order for the goods supplied by S.M.C.;
 - (vi) the fact that the Buyer has given incorrect instructions to the users of the product of which the goods supplied by S.M.C. form part or has neglected to pass on S.M.C.'s product information to the users.

14. Patents, Etc.

- (a) S.M.C. does not undertake that the goods when delivered or any plans, information, designs or specifications supplied in connection therewith will not infringe or result in any infringement of any letter patent, registered design, trademark or other industrial property right.
- (b) The Buyer undertakes that any design or instruction furnished or given by him shall not be such as will cause S.M.C. to infringe any letters patent, registered design, trademark or other industrial property right in execution of the contract and the Buyer shall indemnify S.M.C. against all loss, actions, damages, penalties, costs and expenses to which S.M.C. may become liable in connection with any work required to be done in accordance with such design or instruction.

15. Errors

Typing and clerical errors or omissions are subject to correction.

16. Arbitration

If at any time any question, dispute or difference whatsoever shall arise between the Buyer and S.M.C. upon, in relation to, or in connection with the contract, either may give to the other notice in writing of the existence of such question, dispute or difference and the same shall be referred to the arbitration of a person to be mutually agreed upon, or falling agreement within 30 days of receipt of such notice, of some person appointed by the President for the time being of the Institution of Mechanical Engrs.

17. Legal Construction

Unless otherwise agreed in writing the Contract shall in all respects be construed and operate as an English Contract and in conformity with English Law.

