

Sumac Precision Engineering Limited,  
26 Cambridge Road, Granby Industrial Estate, Weymouth, Dorset, DT4 9TJ  
Tel: +44 (0)1305 775535 | Email: [sales@sumac.co.uk](mailto:sales@sumac.co.uk)

## **TERMS AND CONDITIONS OF SALE**

### **Interpretation**

In these conditions the following definitions apply:

**Company:** Sumac Precision Engineering Limited (registered in England and Wales under company number 3103369), registered office situated at Mary Street House, Mary Street, Taunton, Somerset, TA1 3NW.

**Customer:** the person or legal entity who purchases the goods from the Company.

**Conditions:** the terms and conditions set out in this document and includes any special terms and conditions agreed in writing between the Customer and the Company.

**Contract:** the contract between the Company and the Customer for the sale of Goods.

**Goods:** any item, which the Company agrees to supply to the Customer as stated in the order.

**Quotation:** means the invitation to treat as delivered to the Customer in response to an enquiry.

**Order:** the Customer's order for the Goods as set out in the purchase order form completed and supplied by the customer.

**Specification:** any specification for the Goods, including related drawings, which are supplied to the Company by the Customer.

**Writing:** any reference to writing or written includes communication by fax and e-mail.

## **1. Quotation, Contract, Order and Acceptance**

**1.1** A Quotation issued by the Company will not be valid unless it is prepared by an authorised representative of the Company. The Quotation will be valid for the period stated therein but the Company reserves the right to amend or withdraw the quotation at any time by written notice to the Customer.

**1.2** The Quotation is for all of the goods for which Quotations are given by the Company. Any order made by the Customer against such a Quotation constitutes an offer by the Customer to buy the Goods. Any Order for only part of the Goods forming the subject of the Quotation may, at the Company's discretion, be subject to a revised quote.

**1.3** The Customer shall be responsible to the Company for the accuracy of any information contained in its Order.

**1.4** No Order submitted by the Customer shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company.

**1.5** The quantity, description and specification of the Goods shall be as stated in the confirmed Order.

**1.6** No confirmed Order may be cancelled by the Customer except with the written agreement of the Company and on terms that the Customer shall indemnify the Company in full against all costs (including the cost of all labour and materials used), charges and expenses incurred by the Company as a result of cancellation.

**1.7** Confirmation of an Order shall create a formal Contract between the Company and the Customer. A separate contract shall arise in respect of each confirmed Order.

**1.8** These terms and conditions apply to all contracts for the sale of Goods by the Company to the Customer. No variation will be effective unless agreed in writing by an authorised representative of the Company.

**1.9** The Customer shall be responsible for checking the Goods upon delivery. The Customer shall check the Goods within five working days and shall at that time inform the Company of any damaged items or shortages. In the absence of such notification the Customer shall be deemed to have accepted the delivery.

**1.10** With reference to detailed inspection by the Customer to ensure conformity of the Goods, refer to clause 2.4.

## **2. Quality and Warranty**

**2.1** The Company warrants (Warranty) that on delivery, the Goods shall:

- i) conform in all material respects with their description and specification;
- ii) be free from material defects in respect of materials and workmanship;
- iii) be of merchantable quality;

**2.2** Where the Company manufactures Goods to the Customer's design and/or specifications, the warranty only covers defective manufacture. It is the Customer's responsibility to ensure that the design is fit for its intended purpose.

**2.3** If modifications or alterations are made to Goods supplied to the Customer without the prior consent of the Company, the Company shall be under no liability in respect of such altered or modified Goods and the customer shall indemnify the Company against any adverse claims resulting from the use of such altered or modified Goods.

**2.4** Subject to clause 2.5, if:

- i) the Customer gives notice in writing to the Company within ten working days (excluding weekends and statutory bank holidays) after its receipt of the Goods that they do not comply with the warranty, stating the delivery note number, a description of the goods and the reason for non-conformity;
- ii) the Company is given reasonable opportunity to examine the goods;
- iii) the Customer returns the Goods to the Company's business premises and the Goods have not been damaged by the Customer,

the Company shall, at its discretion, repair or replace the defective Goods, or issue a credit note for the defective Goods in full.

**2.5** The Company shall not be liable for any failure of the Goods to comply with the warranty if:

- i) the Customer makes any further use of the Goods after giving the Company notice of non-conformity;
- ii) the defect arises because the Customer failed to follow the Company's instructions as to the storage, use and maintenance of the Goods or generally accepted best practice;
- iii) the defect arises as a result of the Company following any drawing or specification supplied by the customer;
- iv) the Customer alters the goods without prior notification to the Company;
- v) the defect arises as a result of normal wear and tear or incorrect working processes.

## **3. Price and Terms of Payment**

**3.1** The price of the Goods shall be the price set out in the order in advance or as agreed retrospectively. The company may, by giving notice to the Customer at any time up to ten working days before the delivery date, increase the price of the goods to allow for any increase in the cost of the Goods that is due to:

- i) any request by the Customer to change the delivery date, quantities or Goods ordered;
- ii) delays caused due to revised instructions issued by the Customer or by inadequate instructions and information.

Unless otherwise agreed in writing by the Company, the price of the Goods excludes the following costs and charges which, at the discretion of the Company, shall be passed on to and paid by the Customer when it pays for the goods:

- i) postage, packaging, carriage and freight;
- ii) insurance;
- iii) currency conversion and banking charges applied to the payment method being used, if applicable;
- iv) any import or other duties charged in respect of the sale and importation of Goods into which the Customer is resident or the delivery location is situated.

**3.2** The price of the goods excludes amounts in respect of VAT. The Customer shall on receipt of a valid VAT invoice from the Company, pay to the Company the additional amounts in respect of VAT as are due on the supply of the Goods.

**3.3** The Company may invoice the Customer for the Goods on or at any time after the date of completion of delivery, unless it has been agreed in advance that invoice will be on a pro-forma basis in which case payment will be due prior to delivery of the Goods.

**3.4** The Customer shall pay the invoice in full and in cleared funds within the terms of credit arranged and approved by prior agreement with the Company, or within 30 days of the date of the invoice if no credit terms have been formalised between the Customer and the Company.

**3.5** The payment will be in pounds sterling unless another currency has been agreed for settlement by prior agreement. The preferred method of payment is by electronic transfer to the Company's nominated bank account. Payment by cheque is acceptable but a period of five working days shall be allowed by the Customer for clearing of the cheque which will be included within and as part of the credit period.

**3.6** If the Customer fails to make any payment due to the Company under the Contract by the due date for payment, then the Company reserves the right to charge interest on overdue amounts at the rate of 8% per annum plus the Bank of England base rate at the time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount. The Customer will pay the interest together with the overdue amount.

**3.7** The Customer shall pay all amounts due under the Contract in full without any deduction or withholding. In the event of a disputed invoice in any given month, the Customer shall not withhold payment of undisputed invoices in that month.

**3.8** Any disputed invoices by the Customer shall be notified to the Company within five working days of the invoice being received by the Customer to allow for any disputes to be resolved as quickly as possible.

**3.9** In the event that the Customer does not pay to the Company monies owed under the Contract for Goods supplied, the Company reserves the right to pursue legal action, including employing the services of a third-party debt collection agency, for the recovery of the debt due and pass on any legal and debt collection costs incurred to the Customer.

## **4. Delivery**

**4.1** The Company will ensure that each delivery of the Goods is accompanied by a delivery note, which shows the date of the Order, all relevant Customer and Company reference numbers, and the type and quantity of the Goods.

**4.2** The Company shall deliver the Goods to the location set out in the Order and agreed by the Company or such other location as the parties may agree at any time after the Company notifies the Customer that the goods are ready. The customer will be responsible for any additional charges and expenses incurred as a result of a change of delivery address from the original order.

**4.3** Delivery of the Goods shall be completed upon their arrival at the agreed delivery location.

**4.4** Any dates quoted for delivery are approximate only. The Company shall not be liable for any delay in delivery of the Goods that is caused by a “Force Majeure” event or the Customer’s failure to provide the Company with adequate delivery instructions.

**4.5** If the customer fails to accept delivery of the Goods within five working days of the Company notifying the Customer that the Goods are ready for delivery, then except where the failure is due to a Force Majeure event or the Company’s failure to comply with its obligations under the contract;

- i) delivery of the Goods shall be deemed to have been completed at opening of business on the fifth working day following the day on which the Company notified the Customer that the goods were ready and;
- ii) the Company shall store the goods until actual delivery takes place and reserves the right to charge the customer for all reasonable related costs of storage.

**4.6** The Company may deliver the goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any subsequent instalment.

## **5. Risk and Title**

**5.1** The risk of ownership of the Goods will remain with the Company, including whilst being transported to the Customer in Company vehicles, and the risk of ownership will pass to the Customer upon completion of Delivery. Delivery to a third-party carrier shall be deemed to be delivery to the customer and risk of loss and damage to the goods shall pass to the Customer upon such delivery.

**5.2** The Company reserves title to the goods until such time that all sums due to the Company in respect of the Goods are settled by cleared funds in full by the Customer.

**5.3** Until such time as the title in the Goods passes to the Customer, the Customer shall hold the Goods as the fiduciary agent and bailee of the Company and shall keep goods separate from those of the Customer and of third parties and be properly stored, packaged, insured, protected and identifiable as the property of the Company.

**5.4** The buyer shall be entitled to re-sell or to use the goods in the ordinary course of business but shall account to the Company for the proceeds of sale or otherwise of the Goods and in the meantime shall hold such proceeds on trust for the Company.

**5.5** Until such time as the title in the goods passes to the Customer, and provided the goods are still in existence and have not been re-sold, the Company shall be entitled to enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **6. Sub-contracting and Assignment**

**6.1** The Company may sub-contract the whole or any part of the Contract (unless specifically instructed otherwise in writing by the customer at or prior to the time the Contract is made). The Company may also store all or any part of the Goods on premises other than the Company’s premises.

**6.2** The Company may assign, delegate, licence or hold on trust all or any part of its rights or obligations under the Contract.

**6.3** The Customer may not assign, transfer, dispose of, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Company.

## **7. Insolvency and Bankruptcy**

**7.1** In the event of the customer becoming insolvent, going into liquidation or entering into a formal arrangement with its creditors or in the event of any proceedings in which the Customer’s solvency is involved including the appointment of an official receiver over all or part of the Customer’s net assets,

payment in respect of all goods delivered by the Company to the Customer and in respect of any other sums owed by the Customer to the Company whether under the Contract or any other Contract shall forthwith become due and payable.

**7.2** The Company shall, in the circumstances set out in 7.1, be entitled to cancel the Contract by notice in writing to the Customer.

**7.3** The Customer shall inform the Company immediately of any event occurring such as stated in clause 7.1 and shall supply to the Company sufficient details thereof to enable the Company to exercise its rights.

## **8. Force Majeure**

**8.1** If the performance of the contract shall be delayed by any circumstances or conditions beyond the reasonable control of the Company which by their nature could not have been foreseen or, if they could have been foreseen were unavoidable, including, but not limited to, industrial disputes, strikes, lock-outs, war, riots, fire, storm, accidents, acts of God, non-availability or shortage of materials or labour, any rule, law, bye-law or statute made or issued by any Government or Government Department, local or other duly elected authority, then the Company shall have the right to suspend further performance of the contract until such time as the cause of the delay shall no longer be present.

## **9. Limitation of Liability**

**9.1** The Company shall not be liable to the Customer, whether in contract, breach of statutory duty or otherwise, for any loss of actual or anticipated profit, revenue, business or goodwill, special or consequential loss arising under the Contract or for any loss or damage of any nature whatsoever suffered by third parties;

**9.2** The company's total liability to the Customer in respect of all other losses arising under the Contract shall not exceed the aggregate price of all the Goods supplied under the Contract.

**9.3** Nothing in these Conditions shall limit or exclude the Company's liability for any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

## **10. Intellectual Property Rights and Indemnity**

**10.1** The Customer acknowledges that any Intellectual Property Rights vested in Goods by the Company, remain the Company's property;

**10.2** Nothing in these Conditions shall be construed as conferring any licence or granting any rights in favour of the Customer relating to any Intellectual Property Rights;

**10.3** The Customer shall indemnify the Company against all claims in respect of any loss, injury or damage sustained by a third party arising from the sale of Goods to the Customer howsoever caused and also against all actions, proceedings, costs, claims and expenses made or claimed against the Company in respect of the infringement of any patent, trade mark, registered design arising from the manufacture or supply of any goods or the carrying out of any work or the use of any article or material by the Company to design or specification upon the instruction of the Customer;

**10.4** The Customer agrees to take all such actions as may be reasonably required to assist the Company in taking or resisting any proceedings in relation to any infringement or claims.

## **11. Severability**

**11.1** If any court or authority finds that any provision of the contract, or any part provision is invalid, illegal or unenforceable, that provision or part provision shall to the extent required be deemed to be deleted and the validity and enforceability of the other provisions of the Contract shall be unaffected;

**11.2** If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal and enforceable.

## **12. Governing Law and Jurisdiction**

**12.1** The Contract and any dispute or claim arising out of it shall be governed by and construed in accordance with English Law.

**12.2** The parties submit to the exclusive jurisdiction of the courts of England and agree that process may be served on either of them in the manner specified in clause 12.3.

**12.3** Any notice or other communication given to a party under or in connection with the Contract shall be in writing and in the English language. The notice will be addressed to the relevant party at its registered office if it is a company or its principal place of business in any other case.

**12.4** Any notice or communication shall be deemed to have been received:

- i) if delivered personally to the address as stated in 12.3;
- ii) if sent by prepaid-first class post or recorded delivery, the following working day;
- iii) if delivered by commercial courier, on the date and time that the courier's delivery receipt is signed;
- iv) if sent by FAX or e-mail, the following business day after transmission.
- v) The provisions of this clause shall not apply to the service of any proceedings or documents in any legal action.