

1. Definitions

In these conditions, unless the context requires otherwise:

- 1.1. 'Bespoke Goods' means Goods which are to be manufactured or which are to have any process applied to them by the Seller in accordance with a specification submitted by the Buyer;
- 1.2. 'Buyer' means the person firm or company who buys or agrees to buy the goods from the Seller;
- 1.3. 'Conditions' means the terms and conditions of sale set out in this document and any variation in these terms and conditions made in accordance with clause 2.3;
- 1.4. 'Contract' means the contract for the sale and purchase of Goods made between the Seller and Buyer to which these Conditions apply;
- 1.5. 'Delivery' means the time at which the goods pass from the Buyer to the Seller by the Buyer collecting the Goods from the Seller's premises or, if some other Designated Point of Delivery is agreed by the Seller, by the Seller taking the Goods to that place;
- 1.6. 'Delivery Date' means the date specified by the Seller when the Goods shall be made available for Delivery;
- 1.7. 'Designated Point of Delivery' means the place of Delivery as notified by the Buyer to the Seller and agreed in writing by the Seller;
- 1.8. 'Goods' means the goods which the Buyer agrees to buy from the Seller;
- 1.9. 'Price' means the price for the Goods excluding carriage, packing, insurance and VAT; and
- 1.10. 'Seller' means Simmal Limited whose registered office is at Units 479/480 Ranglet Road, Walton Summit Centre, Bamber Bridge, Preston, PR5 8AR (Company number 01741450).

2. Conditions applicable

- 2.1. These Conditions (together with any variations made in accordance with clause 2.3) shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.
- 2.2. All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions. No offer is a contract until accepted by the Seller in writing.
- 2.3. No variation to these Conditions (including any special terms and conditions agreed between the parties) shall be binding unless agreed in writing by the Seller.

3. Price and payment

- 3.1. The Price shall be the Seller's quoted price for the Goods at the time of the Seller's acceptance of the Buyer's order or, where no quotation is given, the Price shall be the price listed in the Seller's published price list current at the date of acceptance of the order. The Price is exclusive of carriage, packing, insurance and VAT and VAT on the Price shall be due at the rate ruling on the date of the Seller's invoice.
- 3.2. The Seller shall have the right at any time prior to the Delivery Date to revise the Price to take account of increases in costs to the Seller incurred in obtaining or manufacturing the Goods including (without limitation) costs of any goods or materials, labour or overheads, carriage, the increase or imposition of any tax, duty, surcharge or other levy or any variation in exchange rates.
- 3.3. The Seller shall be entitled to add to the Price, where applicable, a charge for packing, carriage, insurance and other costs associated with the supply of Goods. Such additions shall be set out on the Seller's invoice.
- 3.4. The Seller shall be entitled to submit its invoice with its delivery advice note or at any time afterwards save that where Delivery has been postponed at the request of or by the default of the Buyer, then the Seller may submit its invoice at any time after the Goods are ready for Delivery or would have been ready in the ordinary course, but for the request or default of the Buyer.
- 3.5. Unless otherwise specified in writing by the Seller payment for the Goods (to include the Price, VAT and any other charges made pursuant to clause 3.3) shall be made by the Buyer to the Seller without any deduction or set off by no later than the end of the month in which Delivery of the Goods takes place or where Delivery has not taken place by no later than the end of the month in which the Buyer is notified that the Goods are ready for collection notwithstanding that property in the goods has not passed to the Buyer. Time for payment shall be of the essence of the Contract.



- 3.6. Simmal reserves all of its rights under the Late Payment of Commercial Debts (Interest) Act 1998 (as amended) as to interest and other sums payable in relation to any payment not made prior to the due date. Interest on overdue payments shall therefore accrue from the date when payment becomes due from day to day until the date of actual payment at a rate of 8% (or such other figure as may be imposed in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended)) above Barclays Bank plc's base rate from time to time in force and shall accrue at such a rate after as well as before any judgment.
- 3.7. In the event of default in payment in full by the Buyer, the Seller shall be entitled, without prejudice to any other right or remedy:
 - 3.7.1. To suspend all further deliveries under this Contract and any other contract or contracts between the Seller and Buyer then current without any notice; and/or
 - 3.7.2. To serve notice on the Buyer requiring immediate payment for all Goods supplied by the Seller under all other contracts with the Buyer whether or not payment is otherwise due or invoiced.
- 3.8. If it reasonably appears to the Seller that the Buyer may be unable to pay his debts, the Seller will be entitled to demand proper security for payment of the Price prior to delivery, either by payment in cash or by any other form of security including (but not limited to) a guarantee or debenture. If the Buyer fails to give such security the Seller shall be entitled, without prejudice to its other rights or remedies, to cancel the Contract or to suspend deliveries at the Seller's option. The Seller shall not be liable in these circumstances for any damages, claims or expenses whatsoever.

4. Quotations

A quotation or tender by the Seller does not constitute an offer and the Seller reserves the right to withdraw or amend the same either verbally or in writing at any time prior to the Seller's acceptance of the Buyer's order and no liability whatsoever shall be incurred by such withdrawal.

5. The Goods

The quantity and description of the Goods shall be as set out in the Seller's quotation (which may be given verbally or in writing, but where there is a quotation in writing, this shall take precedence over any verbal quotation).or, if no quotation has been given, the quantity and description of the Goods shall be in accordance with the specification set out in [the Seller's published price list/ or order confirmation]. Where an order confirmation is provided to the Buyer by the Seller, the specification, quantity and Price of the Goods set out therein shall override any contradictory information contained in any previous communication between the parties.

6. Variations

- 6.1. The Seller shall not be obliged to accept variations to the order for Goods by the Buyer once the order has been accepted by the Seller but the Seller may at its option negotiate with the Buyer any such variations which may be requested by the Buyer and if any variations shall be agreed between the parties these shall only become binding once confirmed in writing by the Seller.
- 6.2. The Seller reserves the right prior to Delivery to amend any design or incorporate any modifications or improvements in the Goods which may be found reasonably necessary.
- 6.3. In the event of variation or suspension of work to complete an order in accordance with instructions given by the Buyer or occurring as a result of lack of instructions from the Buyer, the Price shall be payable by the Buyer.
- 6.4. All weights and dimensions quoted are approximate only and subject to [industry recognised tolerances] and notwithstanding any such variations in the Goods delivered the Price shall be payable by the Buyer in full.
- 6.5. Where Goods are ordered by reference to quantity, the Seller reserves the right to under or over deliver the quantity by 10% and the Buyer shall pay for the quantity actually delivered.
- 6.6. The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or E.U. requirements and, where the Goods are Bespoke Goods, the Seller reserves the right to make any changes in the specification of the Bespoke Goods which do not materially affect their quality or performance.



7. Warranties and liability

- 7.1. The Seller warrants that the Goods supplied will at the time of Delivery correspond to the specification given by the Seller in writing in all material ways. [Except where the Buyer is dealing as a consumer (as defined in the Unfair Contract Terms Act 1977 Section 12 as amended and/or the Unfair Terms in Consumer Contracts Regulations 1999 Regulation 3(1))] no other warranties, conditions or terms including but not limited to warranties relating to fitness for purpose of the Goods, whether express or implied by statute or common law or otherwise are excluded to the fullest extent permitted by law.
- 7.2. All drawings, specifications, particulars of weights and dimensions and estimated performance, whether provided by the Seller to the Buyer prior to, on or after the date of the Contract, are approximate only and the Seller does not warrant that the equipment actually delivered will correspond exactly to such drawings, specifications or particulars of estimated performance.
- 7.3. Subject to clause 7.4 the Buyer shall be deemed to have accepted the Goods 96 hours after Delivery and after acceptance the Buyer shall not be entitled to reject Goods which are not in accordance with the contract.
- 7.4. The Seller shall not be liable to the Buyer for:
 - 7.4.1. subject to clauses 6.4 and 6.5, any discrepancy in quantity or weight delivered unless the Buyer notifies the Seller of any claim of such a discrepancy within 96 hours of receipt of the Goods;
 - 7.4.2. damage to or loss of the Goods or any part thereof in transit or non-delivery of the Goods unless the Goods are carried by the Seller's own transport or by a carrier on behalf of the Seller and the Buyer notifies the Seller of any such claim within 96 hours of Delivery or, in the case of non-delivery, the scheduled Delivery Date;
 - 7.4.3. defects in the Goods caused by any act, neglect or default of the Buyer or, subject to 7.4.2, of any third party;
 - 7.4.4. other defects in the Goods unless notified to the Seller within 96 hours of receipt of the Goods by the Buyer or, where the defect would not be apparent on reasonable inspection, within one month of delivery.
- 7.5. In the event of any shortage or non-delivery and/or damage or defect notified in accordance with clause 7.3 and in respect of which the Seller accepts liability, the sole obligation of the Seller shall be at its option to:
 - 7.5.1. make good any such shortage or non-delivery; and/or
 - 7.5.2. as appropriate replace or repair any Goods found to be damaged or defective; and/or
 - 7.5.3. re-pay any part of the Price actually paid for the Goods in respect of which the complaint is made (less such allowance as the Seller may determine in respect of the scrap value of such Goods in the event that the same are retained in the possession of the Buyer).
- 7.6. The Seller shall not be liable for any delay in delivery or any losses resulting directly or indirectly therefrom howsoever caused and any delay in delivery shall not be sufficient cause for cancellation of the Contract by the Buyer.
- 7.7. The Seller shall not be liable for any delay or failure in the performance of its obligations under the Contract where such delay or failure arises from any cause not within the Seller's control including, without limitation, any act of God, national emergency, war, strikes, riots, lock-outs, labour disputes, fire, flood, tempests, delays in delivery of materials and action by any Government. In the event of any delay in performance arising from any such cause, the period for delivery and/or performance under the Contract shall be extended accordingly.
- 7.8. The Seller will not be liable in contract or tort (including, without limitation, negligence), for pre-contract or other representations (other than fraudulent misrepresentations) or otherwise for any economic losses (including without limitation loss of revenues, profits, contracts, business or anticipated savings) or any loss of goodwill or reputation or any special, consequential, direct or indirect losses suffered or incurred by any party howsoever caused arising out of or in connection with the Contract or these Conditions whether or not the likelihood of such loss was made known to the Seller prior to or during performance of the Contract.
- 7.9. Nothing in this Agreement shall exclude or limit the Seller's liability for death or personal injury resulting from its negligence or that of its agents or employees.
- 7.10. In no circumstances shall the Seller's aggregate liability to the Buyer, whether for negligence, breach of contract, misrepresentation or otherwise exceed the cost of the defective, damaged or undelivered Goods and such cost shall be determined by the Price invoiced to the Buyer in respect of any occurrence or series of occurrences.
- 7.11. The Buyer acknowledges that the limitations and exclusions of liability provided herein are reasonable in all the circumstances including without limitation the prices charged by the Seller for Goods.



- 7.12.** If the Goods are Bespoke Goods the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with, or paid or agreed to be paid by the Seller in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
- 7.13.** The Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

8. Delivery of the Goods

- 8.1.** Subject to clause 8.3 Delivery of the Goods shall be made to the Designated Point of Delivery on the Delivery Date. The Goods may be delivered in advance of the Delivery Date upon the giving of reasonable notice to the Buyer. The Buyer shall make all arrangements to take delivery of the Goods whenever they are tendered for Delivery.
- 8.2.** Risk in the Goods passes to the Buyer upon Delivery of the Goods by the Seller to the Designated Point of Delivery.
- 8.3.** Where Delivery dates and times are stated anywhere, the times are approximate only and while the Seller will endeavour to deliver to the Buyer within the time stated, Delivery could be delayed due to events beyond the Sellers control. Time of delivery shall not be of the essence.
- 8.4.** Where no Delivery Date has been specified, the Buyer shall make all necessary arrangements so that Delivery may take place within [7] days after the Seller has notified the Buyer that the Goods are ready for Delivery.
- 8.5.** If the Buyer refuses or fails to take Delivery of Goods tendered in accordance with the Contract the Seller shall be entitled to immediate payment in full for the Goods so tendered. The Seller shall be entitled to store at the risk of the Seller any Goods which the Buyer refuses or of which he fails to take Delivery and the Buyer shall in addition to the Price pay all costs of such storage and all costs of carriage including those incurred as a result of such refusal or failure. Refusal by the Buyer to take Delivery will relieve the Seller from the obligation to make further deliveries without prejudice to the Seller's right to recover damages for such refusal. The Seller shall be entitled after the expiration of [28] days from the date on which the Price became payable to dispose of the Goods in such manner as it may determine. Notwithstanding such disposal, the Buyer shall still be liable to pay any invoice raised by the Seller in respect of the Goods.
- 8.6.** Where the Buyer pays for the Goods within the [28] day period referred to in clause 8.5, the Seller will make the Goods available for collection by the Buyer at the Seller's premises or at an alternative location as may be agreed between the parties. The Buyer will be responsible to Simmal Limited Terms and Conditions of Sale reimburse the Seller for the cost of storing the Goods until actual Delivery takes place together with any additional costs of carriage incurred by the Seller.
- 8.7.** Any claims for non-delivery of the whole of the Goods shall be submitted in writing to the Seller within [7] days of receipt of an invoice concerning such Goods. In the absence of any such claim, the Buyer shall be deemed to have accepted the Goods or Services.

9. Title

- 9.1.** Notwithstanding that risk in the Goods shall pass to the Buyer as provided for in clause 8.2, full legal and equitable title and interest in all and any Goods supplied to the Buyer shall remain with the Seller and shall not pass to the Buyer until the Seller has received payment in cleared funds in full of all amounts howsoever accrued due and owing from the Buyer to the Seller.
- 9.2.** During such time as title in the Goods remains with the Seller, the Buyer shall store or otherwise keep the Goods separately and in such a way as clearly to indicate at all times that the Goods are owned by the Seller and the Buyer shall not remove, obscure or delete any mark placed on the Goods which may enable the Goods to be identified.
- 9.3.** During such time as title in the Goods remains with the Seller, the Buyer shall have power to deal with or use the Goods as fiduciary bailee of the Seller in the normal course of the Buyer's business and to dispose of the Goods by way of bona fide sale at full market value.
- 9.4.** Upon any such sale by the Buyer of the Goods all rights which the Buyer may have against the purchaser of them shall automatically vest in the Seller. The Buyer shall indemnify the Seller and keep the Seller indemnified in



respect of any proceedings action or claim of any nature whatever made or brought by the said purchaser against the Buyer in respect of the Goods or any of them.

- 9.5. The Buyer shall ensure that the proceeds of any sale by the Buyer of the Goods shall be held in a separate designated bank account and shall hold such proceeds as bare trustee for the Seller to the extent that any part of the Price or other amount owed remains unpaid to the Seller by the Buyer.
- 9.6. Without prejudice to any other rights or remedies arising out of any breach of contract by the Buyer, the Seller shall be entitled to repossess all or any of the Goods upon the happening of any of the following
 - 9.6.1. If the Buyer fails to make settle in full any invoice on its due date for payment; or
 - 9.6.2. If the Buyer is declared bankrupt or insolvent or a petition is presented for the Buyer's bankruptcy or winding up or any similar occurrence or analogous proceedings under any jurisdiction which affects the Buyer.
- 9.7. For the purpose of any repossession the Seller or his agent shall be entitled to enter upon any relevant land or buildings with such transport as may be necessary and for the avoidance of doubt the Seller shall be entitled to take such steps as are necessary to gain entry to any premises where the Goods are stored and take possession of them including (but not limited to) forcing entry if the Buyer does not co-operate with a request from the Seller for access to such premises. All costs incurred by the Seller or his agent in such repossession shall be borne by the Buyer.
- 9.8. The Buyer shall not create nor permit nor suffer to be created any security, charge, lien or other encumbrance of any sort over the Goods owned by the Seller and the Buyer shall at the Seller's request produce to the Seller satisfactory evidence of the acknowledgement of the Seller's title in the Goods pursuant to these Conditions by any person having the benefit of any encumbrance over any of the Goods.
- 9.9. The Buyer warrants that he is not at the time of entering into the Contract to which these Conditions relate insolvent and knows of no circumstance which would entitle any creditor to appoint a receiver or to petition for bankruptcy or winding up or to exercise any other rights over or against the Buyer's assets or to take any analogous proceedings in any jurisdiction.

10. Assignment

The Seller may assign, transfer or sub-contract any or all of the duties, obligations and benefits to a third party, at its sole discretion. In this event, the Buyer shall co-operate in making letters of credit, cheques, bank drafts, or other instruments of payment payable to such a third party, if requested to do so by the Seller. The Buyer may not assign, transfer, sub-contract or in any way transfer any of its rights or obligations under these Conditions to any third party, without the written consent of the Seller.

11. Cancellation

- 11.1. The Seller shall have the right to suspend or terminate the Contract, or any unfulfilled part of the Contract, and to cancel any outstanding orders and to stop any Goods in transit and, notwithstanding anything to the contrary contained in these Conditions, payment in respect of any Delivery made shall be immediately due if the Buyer:
 - 11.1.1. commits any breach of the Contract which is incapable of remedy, or
 - 11.1.2. fails to remedy a breach of the Contract which is capable of remedy within [7] days after receiving notice of breach, or
 - 11.1.3. commits an act of bankruptcy or insolvency, has a petition for bankruptcy or winding up presented which is not discharged within fourteen days (otherwise than a members' voluntary winding up for the purpose of amalgamation or reconstruction), enters into any arrangement or composition with its creditors or takes or suffers any similar action in consequence of debt.
- 11.2. The Buyer shall not cancel an order which has been accepted by the Seller without the written agreement of the Seller and, if such agreement is given, the Buyer shall pay to the Seller such a sum as the Seller shall consider reasonable in respect of work done and materials supplied or ordered.



12. Intellectual Property

The Seller shall retain the exclusive property and reserve the copyright in all documents supplied or produced to the Buyer in connection with any Contract and it shall be a condition of such supply or production that the contents of such documents and any part thereof shall not be communicated either directly or indirectly to any other person, firm or company without the Seller's prior written consent. Furthermore, the rights to all designs and techniques embodied within the Goods (unless the Goods are Bespoke Goods in which the Buyer owns such rights), whether or not represented in drawings, shall remain permanently with the Seller. Any invention, discovery or improvement, whether patentable or not, made by the Seller, its servants or agents, in connection with the Contract, shall belong wholly and exclusively to the Seller.

13. Confidentiality

Both during and after termination of the Contract, the Buyer shall treat secret ideas or information, which have been disclosed by the Seller, as confidential and shall use its reasonable endeavours to ensure that its agents and employees shall treat the same as confidential.

14. Notices

- 14.1.** Except as otherwise provided in these Conditions, every notice given pursuant to these Conditions shall be in writing and shall be deemed to be duly given if it (or the envelope containing it) identifies the intended recipient as the addressee and:
- 14.1.1.** it is delivered by being handed personally to the addressee (or, where the addressee is a corporation, any one of its directors or its secretary);
 - 14.1.2.** it is delivered by being left in a letter box or other appropriate place for the receipt of letters at the addressee's authorised address (as defined below); or
 - 14.1.3.** the envelope containing the notice is properly addressed to the addressee at the addressee's authorised address and duly posted by the recorded delivery service (or by international recorded post if overseas) or the notice is duly transmitted to that address by facsimile transmission; and, in proving the giving or service of any such notice, it shall be conclusive evidence to prove that the notice was duly given within the meaning of this clause 14.1.
- 14.2.** A notice sent by post (or the envelope containing it) shall not be deemed to be duly posted for the purposes of clause 14.1.3 unless it is put into the post properly stamped or with all postal or other charges in respect of it otherwise prepaid
- 14.3.** For the purposes of this clause 14 the authorised address of the Seller shall be the address appearing in these Conditions or such other address within the United Kingdom as it shall notify or (in the case of notices transmitted by facsimile transmission) the facsimile number at that address and the authorised address of the Buyer shall be the address of its registered office for the time being or (in the case of notices transmitted by facsimile transmission) its facsimile number at that address.
- 14.4.** Any notice duly given within the meaning of clause 14.1 shall be deemed to have been both given and received:
- 14.4.1.** if it is delivered in accordance with clauses 14.1.1 or 14.1.2, on that delivery;
 - 14.4.2.** if it is duly posted or transmitted in accordance with clause 14.1.3 by any of the methods specified in that clause, on the second (or, when sent by airmail, fifth) business day after the day of posting or (in the case of a notice transmitted by facsimile transmission) on receipt by the sender of a transmission report showing the successful transmission of the whole of the relevant notice or (if that transmission is not made during normal working hours on a business day) at 9.00 am on the next business day.
- 14.5.** For the purposes of this clause 14 "notice" shall include any request, demand, instruction, communication or other document.



15. Waiver

The failure of either party at any time or times to require performance of any provision hereof shall not affect that party's right to enforce such provision at a later time. No waiver by either party of any conditions or the breach of any term covenant representation or warranty contained in these Conditions in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or be deemed to be or construed as a waiver of the breach of any other term covenant representation or warranty in these Conditions.

16. Severance

In the event that any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or indications of the same are received by either of the parties from any relevant competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or at the Seller's discretion it may be severed from these Conditions in which event the remaining provisions of these Conditions shall remain in full force and effect.

17. Third Parties

It is the intention of the parties that no person not a party to these Conditions shall have any rights in relation to them under the Contracts (Rights of Third Parties) Act 1999.

18. Jurisdiction

- 18.1. These Conditions shall be governed by English law in every particular including formation and interpretation and shall be deemed to have been made in England.
- 18.2. Any proceedings arising out of or in connection with these Conditions may be brought in any court of competent jurisdiction in England and Wales.
- 18.3. The submission by the parties to such jurisdiction shall not limit the Sellers right to commence any proceedings arising out of these Conditions in any other jurisdiction the Seller may consider appropriate.
- 18.4. Any notice of proceedings or other notices in connection with or which would give effect to any such proceedings may without prejudice to any other method of service be served on any party in accordance with clause 14.
- 18.5. In the event that either party is resident outside England its address for service in England shall be the address set out in the Order and any time limits in any proceedings shall not be extended by virtue only of the foreign residence of that party.

