

GENERAL CONDITIONS OF THE SALE OF GOODS AND THE SUPPLY OF SERVICES

1. **Definitions**
"Business Days" means a day (other than a Saturday, Sunday or public holiday) when banks in Taipei City are open for business.
"Buyer" means a customer of the Seller.
"Conditions" means these terms and conditions for the sale of goods or the supply of services or both.
"Contract" means a binding contract for the sale of goods or the supply of services or both made by the Seller and the Buyer.
"Emergency Call-out" means the call-out service for emergency breakdowns of the Buyer's plant or equipment provided by the Seller to the Buyer in accordance with these Conditions in connection with a Contract for the performance of the Services.
"Force Majeure Event" means an event beyond the reasonable control of the Seller including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Seller or any other party), failure of a utility service or transport network, act of God, epidemic or pandemic, war, riot, terrorism, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, default of suppliers or subcontractors.
"Goods" means the goods agreed to be sold by the Seller to the Buyer as detailed in the Order Acknowledgment.
"Intellectual Property Rights" means all copyright, database rights, semi-conductor topography rights, design rights, trade marks, trade names, patents, domain names and any other intellectual property rights of a similar nature (whether or not registered) subsisting anywhere in the world.
"Losses" means:
(a) any indirect, special or consequential loss or damage; or
(b) loss of data or other equipment or property; or
(c) economic loss or damage; or
(d) incurring of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages); or
(e) any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill.
"Seller" means Spirax Sarco Co., Ltd..
"Services" means the services agreed to be supplied by the Seller to the Buyer as detailed in the Order Acknowledgment.
"Specification for Goods" means the specification for the Goods that is agreed in writing by the Seller and the Buyer.
"Specification for Services" means the specification for the Services that is agreed in writing by the Seller and the Buyer.
2. **Interpretation of Contracts**
(a) The Uniform Law on International Sales, the United Nations Convention on Contracts for the International Sale of Goods and the international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (INCOTERMS) shall be excluded. The construction, validity and performance of all Contracts shall be governed by laws of the Republic of China (Taiwan).
(b) The complete or partial invalidity or unenforceability of any provision in a Contract shall in no way affect the validity or enforceability of the remaining provisions in a Contract. Any such provision shall be deemed to be modified to the minimum extent necessary to make it valid or enforceable. If such modification is not possible, the relevant provision shall be deemed severed subject to such consequential modification as may be necessary for the purpose of such severance.
(c) The headings used herein are for convenience only and shall not affect construction.
(d) Reference to a Condition is to a Condition of these Conditions unless the context requires otherwise.
3. **Formation of Contracts and Application of Terms and Conditions**
(a) All Contracts shall be deemed to incorporate these Conditions.
(b) Any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Seller and any variation of a Contract shall have no effect unless it is in writing and signed by the Seller and the Buyer (or their authorised representatives).
(c) A prospective Buyer shall place its order for goods or services (or both) by completing the Seller's purchase order standard form, if applicable, or by submitting its own purchase order form (in either case, such form is the "Purchase Order"). Each Purchase Order shall be deemed to be an offer by the prospective Buyer to buy the goods or services (or both) of the Seller that are identified in the Purchase Order subject to these Conditions.
(d) The Purchase Order shall only be deemed to be accepted when the Seller issues to the prospective Buyer an order acknowledgement form which indicates acceptance of the prospective Buyer's offer on these Conditions (the "Order Acknowledgment").
(e) The Contract shall constitute the entire agreement between the Seller and the Buyer and the Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller that is not set out in the Contract.
(f) The Buyer shall ensure that the description of the goods or services (or both) ordered which is contained in its Purchase Order and any applicable specifications is complete and accurate.
(g) These Conditions apply to the Contract to the exclusion of all other terms and conditions that the Buyer shall seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. These Conditions may be extended by additional terms and conditions issued by the Seller in writing and confirmed in the Order Acknowledgment.
4. **Quotations and Purchase Orders**
(a) Any quotation issued by the Seller shall not constitute an offer and is given on the basis that no Contract shall come into existence unless and until the Seller despatches an Order Acknowledgment to the Buyer.
(b) Any quotation issued by the Seller is valid for a period of [INSERT NUMBER] Business Days only after the date of its issue, provided that the Seller has not previously withdrawn it by notice in writing to the Buyer.
(c) Subject to Condition 4(d), any Purchase Order accepted by the Seller shall be accepted on the basis that the price for the goods or services (or both) shall be that set out in the Seller's quotation on condition that the Seller's quotation is within its period of validity and notice of withdrawal in writing has not been issued by the Seller at the time of acceptance.
(d) The Seller reserves the right to give in writing notice of the withdrawal of a quotation at any time within the period of validity of the quotation and before the Contract is formed. In the event that the Seller changes the price of any of the goods or services (or both) offered for sale or supply, any existing quotation in respect of those goods or services (or both) shall be deemed to be automatically withdrawn and the Seller shall issue a new quotation to the prospective Buyer.
(e) The prices stated in the Seller's quotations are exclusive of VAT.
(f) All Purchase Orders placed by a prospective Buyer shall be placed by fax, post or e-mail, or, where agreed in advance in writing by the Seller, by telephone or Seller's electronic system for prospective Buyers to place orders and make payments.
- SALE OF GOODS**
5. **The Goods**
(a) The Goods are described in the Specification for Goods. The Goods shall comply with the Specification for Goods in material respects. Any stated dimension or weight set out in the Specification for Goods is an estimate only.
(b) All performance figures, descriptions (other than any description set out in the Specification for Goods), drawings and samples of Goods are approximate only being intended to serve merely as a guide. The Seller shall not be liable for their accuracy and they shall not form part of the Contract. No Contract shall be a contract by sample.
(c) The Seller may alter the Specification for Goods:
(i) for the purpose of making changes to the Goods which it can establish to the reasonable satisfaction of the Buyer constitute improvements to the Goods or;
(ii) if required by any applicable statutory or regulatory requirements.
(d) The Seller may increase the price of the Goods by giving notice in writing to the Buyer at any time before delivery, to reflect any increase in the cost of the Goods to the Seller that is due to:
(i) any factor beyond the control of the Seller (including foreign exchange fluctuations, increases in taxes and duties, and increases in the cost of acquiring or manufacturing the Goods;
(ii) any request by a Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Specification for Goods; or
(iii) any delay caused by any instructions of the Buyer in respect of the Goods or failure by the Buyer to give the Seller adequate or accurate information or instructions in respect of the Goods.
(e) All drawings, designs, and quotations for which goods are not subsequently ordered by the Buyer shall remain the property of the Seller and be treated as confidential by the Buyer and not used in any way. The Seller shall have no liability in relation to any such drawings, designs or quotation.
6. **Despatch and Delivery**
(a) For the purposes of this Condition 6, the "Goods" shall mean the Goods in their entirety where delivery is not by instalments or, where delivery is by instalments, each instalment of the Goods.
(b) Unless otherwise agreed in writing by the Seller, delivery of the Goods shall take place at the location stated by the Seller in the Order Acknowledgment (the "Point of Delivery").
(c) Any stated delivery date is an estimate and time for delivery shall not be of the essence. The Seller will use reasonable endeavours to meet any stated delivery date. If no date for delivery is specified, delivery shall be within a reasonable time.
(d) **THE SELLER SHALL NOT BE LIABLE FOR ANY LOSSES (AS DEFINED), CAUSED DIRECTLY OR INDIRECTLY BY ANY DELAY IN THE DELIVERY OF THE GOODS EVEN IF CAUSED BY THE SELLER'S NEGLIGENCE.**
(e) **ANY DELAY IN THE DELIVERY OF THE GOODS SHALL NOT ENTITLE THE BUYER TO TERMINATE OR RESCIND THE CONTRACT UNLESS SUCH DELAY EXCEEDS ONE HUNDRED AND EIGHTY (180) DAYS.**
(f) Delivery of the Goods shall be completed on the arrival of the Goods at the Point of Delivery. Risk in the Goods shall pass to the Buyer on completion of delivery of the Goods.
(g) Except insofar as the Contract expressly provides otherwise, standard carriage and packaging is excluded in the price. Seller may select the method of delivery, and charge the Buyer for the cost of carriage. . Where the Goods are to be delivered at the Buyer's request by any special or express means, the Seller will charge the Buyer the full cost of carriage. When any special packaging is required (whether at the Buyer's request or because the Seller considers special packaging to be necessary), then the Seller will charge the Buyer the full cost of such packaging.
(h) In contracting for carriage and/or insurance of the Goods in transit, if required by the Contract, the Seller shall be deemed to act solely as agent of the Buyer.
(i) The Buyer must:
(i) examine the Goods on delivery;
(ii) notify the Seller and any carrier in writing of any shortage or damage within four (4) Business Days after the date of delivery and in respect of non-delivery within ten (10) Business Days after the Goods would in the ordinary course of events have been received; and
(iii) in the case of short or damaged delivery give the Seller a reasonable opportunity to inspect the Goods, otherwise Goods shall be deemed accepted by the Buyer.
(j) **ANY LIABILITY OF THE SELLER FOR NON-DELIVERY OF THE GOODS SHALL BE LIMITED TO EITHER DELIVERING THE GOODS WITHIN A REASONABLE TIME OR ISSUING A CREDIT NOTE AT THE PRO RATA CONTRACT RATE AGAINST ANY INVOICE RAISED FOR SUCH GOODS.**
(k) The Seller may deliver the Goods by instalments, each instalment to be deemed to be a separate Contract. Without limiting the other provisions herein, no failure or defect in delivery in respect of any Contract or instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.
(l) If for any reason the Buyer fails to accept delivery of any of the Goods within two (2) Business Days of the Seller giving notice to the Buyer that the Goods are ready, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorizations for the Goods when they are tendered by the Seller for delivery then, except where such failure is caused by a Force Majeure Event:
(i) delivery of the Goods shall be deemed to have been completed at 9.00 am on the second (2nd) Business Day after the day on which the Seller notified the Buyer that the Goods were ready;
(ii) risk in the Goods shall pass to the Buyer on completion of delivery; and
(iii) the Seller may store the Goods until delivery takes place, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance). The Buyer shall be responsible for all Losses incurred by the Seller where the Buyer fails to accept delivery of Goods.
7. **Title**
(a) The title in the Goods supplied shall not pass to the Buyer until receipt by the Seller in cleared funds of payment in full (including payment of any default interest) for:
(i) the Goods; and
(ii) any other goods or services that the Seller has supplied to the Buyer and in respect of which payment is due.
(b) Until the title in the Goods passes to the Buyer the Buyer shall:
(i) be a bailee of the Goods;
(ii) store the Goods separately from all other goods held by the Buyer so that the Goods remain readily identifiable as the Seller's property;
(iii) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
(iv) not fix or annex the Goods to or merge the Goods with any part of the Buyer's premises, plant or equipment without the Seller's prior consent in writing;
(v) maintain the Goods in satisfactory condition;
(vi) keep the Goods insured between the passing of risk in the Goods and title to the Goods against all risks with a reputable insurer which has been approved by the Seller for their full price, and ensure that the Seller's interest in the Goods is noted on the insurance policy until title in the Goods passes to the Buyer. If the Buyer fails to insure the Goods the Seller may do so instead on behalf of the Buyer, who shall reimburse the Seller on demand. Until title in the Goods passes to the Buyer, the Buyer shall hold in trust for the Seller the policy and proceeds of insurance;
(vii) notify the Seller immediately if it becomes subject to any of the events listed in Conditions 21(a)(iv) to 21(a)(x);
(viii) give the Seller such information relating to the Goods as the Seller may require from time to time; and
(ix) not dispose of, charge or encumber the Goods or any interest in the Goods or purport to do so, but the Buyer may resell the Goods to an independent third party on arm's length terms in the ordinary course of its business.
(c) If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in Conditions 21(a)(iv) to 21(a)(x), or the Seller reasonably believes that any such event is about to happen and gives notice to the Buyer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Seller may have, the Seller may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, the Seller may enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.
8. **Warranty for Goods**
(a) Subject to Condition 8(b), the Seller warrants that on delivery, and for a period of [INSERT NUMBER] months from the date of delivery the Goods shall:
(i) conform with the Specification for Goods; and
(ii) be free from material defects in material or workmanship.
(b) In respect of Goods which are packages or electrically or electronically controlled or actuated Goods, the Seller warrants that on delivery, and for a period of 12 months from the date of delivery such Goods shall:
(i) conform with the Specification for Goods; and
(ii) be free from material defects in material or workmanship.
(c) Subject to the remainder of this Condition 8, the Seller warrants that if the Buyer returns the Goods within the relevant warranty period for such Goods (as set out in either Condition 8(a) or 8(b)) and on the Seller's examination such Goods prove defective as to material or workmanship or as to compliance with the relevant Specification for Goods the Seller shall:
(i) give notice to the Buyer that such Goods prove defective as to material or workmanship or as to compliance with the relevant Specification for Goods; and
(ii) following giving notice thereof to the Buyer;
(aa) with respect to Goods which have been manufactured by the Seller, make good the defect without charge by (at the Seller's option) repairing the defective Goods, replacing defective components of the defective Goods, or replacing the defective Goods (in their entirety) as the Seller in its discretion considers appropriate; or
(bb) with respect to Goods which have been supplied, but not manufactured by the Seller, and to the extent that it is entitled to do so, assign or at its discretion use its reasonable endeavours otherwise to make available to the Buyer, at the Buyer's expense and on the basis of an indemnity (secured if appropriate) against all Losses that may be incurred by the Seller in relation thereto, the benefit of any obligations and warranties which relate to such defect which the Seller may be owed by the manufacturer and/or supplier of the Goods or any part or component thereof.
(d) The above warranties shall apply except where the defect in the Goods:
(i) has been caused wholly or partly by deterioration of the Goods which is necessarily incidental to the transit of the Goods;
(ii) has been caused while the Goods were at the Buyer's risk by:
(aa) wilful default or negligence by the Buyer or its employees, agents, consultants or subcontractors;
(bb) the occurrence of an accident;
(cc) failure by the Buyer to follow the Seller's instructions in relation to the storage, use, installation, commissioning or maintenance of the Goods;
(dd) failure by the Buyer to follow good trade practice;
(ee) the Buyer altering or repairing such Goods without the consent in writing of the Seller;
(ff) fair wear and tear, negligence or by any abnormal conditions such as (without limitation) waterhammer, corrosive attack or excessive dirt in the system, RFI or electrical supply failure.
(e) Except as provided in this Condition 8, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranties set out in this Condition 8.
(f) The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Seller under Condition 8(c).
9. **Returns**
(a) The Seller shall not refund the Buyer for any amounts paid by the Buyer in the event that the Buyer returns the Goods (or part thereof) except with the Seller's prior consent in writing. Where such consent is given, the Buyer agrees to pay to the Seller a minimum handling charge of thirty per cent (30%) of the invoiced value.
(b) To qualify for any refund, the Goods must be appropriately packed to protect them from being damaged in transit and be received by the Seller in a saleable condition within twenty-two (22) Business Days of delivery to the Buyer. The term "Goods" within this Condition 9(b) has the meaning set out within Condition 6(a).
10. **Instructions and Health and Safety at Work**
(a) The Buyer shall observe strictly the provisions of the Seller's instructions in writing regarding use and application of the Goods together with any revisions thereof and shall ensure that any person other than the Buyer who acquires or has access to the Goods is furnished with and observes such instructions.
(b) The Buyer shall be solely responsible for and shall keep the Seller indemnified against all Losses incurred by the Seller in relation to any use of the Goods other than in strict accordance with the Seller's installation, operating, and maintenance instructions.
11. **Export Sales**
(a) Where goods are supplied for export from Taiwan, R.O.C. the following additional Conditions shall apply, and where there is any conflict between the provisions of this Condition 11 and any other Conditions, the provisions of this Condition 11 shall prevail.
(b) Charges for the cost of export deliveries and documentation shall be as stated in the Contract.
(c) Unless otherwise agreed between the Seller and the Buyer in writing, payment shall be made by the Buyer by an irrevocable letter of credit satisfactory to the Seller, established by the Buyer in favour of the Seller immediately upon receipt of the Order Acknowledgment and confirmed by a Taiwan, R.O.C. bank acceptable to the Seller. The letter of credit shall be for the price payable for the Goods (together with any tax or duty payable) to the Seller and shall be valid for six months. The Seller shall be entitled to immediate cash payment on presentation to such Taiwan, R.O.C. bank of the documents set out in the letter of credit.
(d) Except where specifically agreed in writing to the contrary, delivery to a Buyer outside Taiwan, R.O.C. will be in accordance with the "Ex Works" rule from the international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (INCOTERMS). In the case of deliveries outside Taiwan, R.O.C. the Seller does not accept any liability for damage to the Goods during transit, or marine or war risks unless otherwise specifically agreed by the Seller.
(e) The party which is exporting, in the case of exports, or the party which is importing, in the case of imports, will be responsible for obtaining all necessary licences, or other governmental authorisations required in connection with any export, re-export, or imports, as the case may be, under the Contract. The parties will co-operate with each other in securing any such licenses or authorisations as may be required and each will provide such statements, certificates and assurances regarding transfer, use, disposition, end-use, source of supply, nationalities and re-export of the Goods as may be required in connection with each party's application for any required license or governmental authorisation.
(f) Any government fees or charges in connection with obtaining such licenses or authorisations will be the responsibility of the party which is exporting, in the case of exports, and the party which is importing, in the case of imports, the Goods.
(g) The Buyer undertakes not to:
(i) offer the Goods for resale in any country where the Buyer knows the export of the Goods is prohibited by the US Government, the UK Government, the UN, the EU or any other relevant organisation; or
(ii) offer to sell the Goods to any person the Buyer knows or suspects will subsequently resell the Goods into a country where export of the Goods is prohibited by the US Government, the UK Government, the UN, the EU or any other relevant organisation.
(h) The Buyer will indemnify the Seller for all liabilities, loss, damages, costs and expenses awarded against or incurred by the Seller arising out of in connection with any breach of the Buyer's obligations contained in Condition 11(g).
(i) The Buyer agrees to provide the Seller with any information the Seller reasonably requires concerning the destination and use of the Goods, to allow the Seller to comply in full with any relevant export legislation.
- SUPPLY OF SERVICES**
12. **Period of Supply**
(a) Unless otherwise specified in the Order Acknowledgment, the agreement for the supply of the Services shall be for a period of one (1) year from the date the Seller issues an Order Acknowledgment to the Buyer in accordance with Condition 3 (d) (the "Term for Services").
(b) The Seller reserves the right to increase its price for the Services at any time during the Term for Services. The Seller will give the Buyer notice in writing of any such increase not less than eight (8) weeks before the proposed date of the increase. If such increase is not acceptable to the Buyer, it shall notify the Seller in writing within two (2) weeks of the Seller's notice and the Seller shall have the right, without limiting its other rights or remedies, to terminate the Contract by giving four (4) weeks' notice in writing to the Buyer.
13. **Performance of Services**
(a) The Seller agrees to provide the Services in accordance with the Specification for Services in all material respects, and to supply as necessary spare or replacement parts and/or consumables, to the Buyer's plant and/or equipment at the sites(s) specified in the Seller's Order Acknowledgment.
(b) If the Seller agrees to supply spare or replacement parts and/or consumables, such supply will be strictly on the basis of these Conditions.
(c) Any stated performance date is an estimate only and time for performance of the Services shall not be of the essence. The Seller shall use reasonable endeavours to meet any stated performance date. If no date for performance is specified, the Services shall be performed within a reasonable time.

