SXS/FIN/P/005 Appendix 3 (rev. 1) – Standard Terms and Conditions of Sale

1. INTERPRETATION

1.1 In these conditions, save where the context otherwise requires, the following words and expressions shall have the following meaning :-

1.1.1. A reference to the company shall be a reference to the following company, its successors-in-title and assigns:
Company: Spirax Sarco SA (Pty) Ltd
Registration Number: 1998/008944/07
Vat Number: 4090176522

1.1.2. A reference to the customer shall be a reference to the natural or juristic person to whom or on whose behalf the company sells or manufactures any goods or provides any information, advice or service, or with whom the company does any business.

1.1.3. A reference to the goods shall include any service rendered by the company.

1.2 Expressions which denote a natural person shall include a reference to bodies corporate and other juristic persona.

1.3 Expressions which denote the masculine shall include a reference to the feminine gender.

1.4 Expressions which denote the singular shall include a reference to the plural and vice versa.

1.5 Headings are for reference purposes only and shall not be considered in the interpretation of the conditions to which they relate.

2 APPLICABILITY OF CONDITIONS

2.1 These conditions shall apply to all business undertaken by the company including, without limitation, all goods sold or manufactured, and any information, advice or service rendered, whether gratuitous or not.

2.2 These conditions shall govern all existing contractual relationships between the parties and all future contractual relationships between the parties.

3 ORDERS

3.1 All orders are subject to :-

3.1.1 The availability of necessary stock, equipment, production and design capacity, manpower and materials; and

3.1.2 Acceptance by the company, which need not necessarily be in writing; and

3.1.3 The approval by the customer, if applicable, of the proofs referred to in 3.6.2

3.2 Orders must be in writing although the company reserves the right, in its sole discretion, to accept oral orders.

3.3 Once accepted by the company, orders may not be cancelled, varied or withdrawn unless the company has agreed in writing thereto.

3.4 Where the company does so agree in writing to the cancellation or withdrawal of an order, the customer shall, in respect of an order cancelled after 48 hours of placement thereof, be liable to pay to the company a cancellation fee calculated at 15% of the contract price, in addition to reimbursing the company for its out-of-pocket expenses.

3.5 Unless otherwise agreed to by the company in writing, forward orders will be priced at the ruling price as at date of dispatch of the goods.

3.6 Where the customer places an order for custom-manufactured goods:

3.6.1 It is the sole responsibility of the customer to provide the company with all of the necessary details, specifications, and dimensions in relation to such goods.

3.6.2 The customer must approve any proofs, samples, specimens, sketches, renderings, technical drawings and the like materials produced by the company in relation to such goods.

3.6.3 Such approval shall be binding upon the customer and the company shall not be held responsible for any errors contained in such materials which may manifest itself in the goods.

3.6.4 The customer shall pay for all costs resulting from any amendments requested by the customer to such materials or to the goods themselves, save in the event that such amendments are necessitated to correct any manifest error made by the company in producing same.

3.6.5 The customer shall pay for the cost of all materials produced by the company for it, even in the event that the customer declines to proceed with the manufacture thereof or unreasonably withholds its approval of such materials.

3.6.6 Ownership and copyright in and of the materials referred to herein shall vest in the company.

3.7 Unless specifically quoted upon by the company in writing, the contract price does not include the cost of delivery, installation or commissioning or call outs, drawing approvals, any kind of certification, ancillaries like gaskets, piping, fittings, etc, all of which services will be charged for separately.

3.8 Where the company issues a quotation in writing:

3.8.1 the quotation is, unless otherwise stated, valid for a period of 30 days from date of issue;

3.8.2 the prices therein are based on prevailing rates of exchange and are accordingly subject to alteration with notice;

3.8.3 the validity of the quotation is subject to the details, specifications and dimensions provided to the company by the customer.

3.9 The company reserves the right to assign any of its rights or obligations to a 3rd party under the agreement.

4 DELIVERY

4.1 Any delivery dates or performance times given or agreed to by the company, if any, are merely estimates and the company shall not be held responsible, and shall incur no liability to the customer, in the event of the company failing to deliver or to perform on the agreed date or within the agreed period.

4.2 Where goods are delivered by a third party, such third party shall be deemed to be the agent of the customer. It is the customer's responsibility to obtain proof of delivery from such third party.

4.3 The company shall be entitled, in its sole discretion, to split the delivery of goods ordered in the quantities and on the dates that it decides.

4.4 Any delivery note signed by the customer or by a third party engaged to transport the goods shall be prima facie proof of delivery to the customer.

4.5 The customer shall not be entitled to refuse delivery of the goods when tendered by the company and shall, in any event, accept delivery or arrange for collection thereof within 7(seven) days of notification thereof by the company.

4.6 Where the company has tendered the goods and the customer has not accepted delivery thereof or arranged for the collection thereof, the company may, without prejudice to its rights, store the goods at the customer's sole risk and expense.

4.7 Where the company stores goods on its own premises, the customer shall pay to the company a storage fee calculated at a rate of R30.00 per kilogram per day or such amount per day as would fairly be allowable in the ordinary course of business if the goods were stored by a third party warehouseman, whichever is greater.

4.8 Should the storage of the goods by the company on its premises result in any increase in the insurance premiums payable by the company in respect thereof, the customer shall pay for such increase.

4.9 Goods may not be returned to the company for credit unless the company has agreed in writing thereto.

4.10 Where the company does so agree in writing to the return of the goods for credit:

4.10.1 such agreement is conditional upon the goods being returned unused, in their original packaging or wrapping (if applicable), in mint condition;

4.10.2 the customer shall, in the event that the goods are not returned to the company within fourteen (14) days of date of delivery thereof to the customer, be liable to pay to the company a cancellation and handling fee calculated at 20% of the contract price.

5 WARRANTY

5.1 The company provides the following warranties in relation to the goods or services supplied by it:

5.1.1 in respect of all goods manufactured by it (excluding custom-manufactured goods), that the goods will ordinarily conform to the specifications and requirements agreed to by it in writing for a period of 18 months from date of delivery thereof, or 12 months from date of installation thereof, whichever period expires first, fair wear and tear excluded. A repaired product will carry a warranty of 9 months from re-delivery or 6 months from date of installation, whichever period expires first, fair wear and tear excluded.

5.1.2 in respect of goods custom-manufactured by it, that the goods will ordinarily conform to the specifications and requirements agreed to by it in writing for an extended period as may be agreed to by the company in writing, fair wear and tear excluded;

5.1.3 in respect of all other goods supplied by it (excluding goods manufactured by it), that the goods will ordinarily conform to the specifications and requirements agreed to by the original supplier/manufacturer in writing, but subject to the specific terms and conditions of the warranty as provided by the original supplier/ manufacturer, fair wear and tear excluded.

5.2 Save as aforesaid, the company does not warrant that the goods or services supplied by it will be fit for any particular purpose, or meet any particular purpose, and it is the sole responsibility of the customer to establish that the goods or services ordered by it are suitable for its purposes.

5.3 Save to the extent set out in 5.1, the company provides no representations, warranties, guarantees or undertakings to the customer, whether express, tacit or implied.

5.4 The customer shall not be entitled to cancel any order as a result of a breach by the company of the warranty referred to in 5.1 or to claim any damages from the company as a result thereof, and the company's sole obligation shall be to repair the goods, or to deliver replacement goods, or to rectify the services within a reasonable period of time after having been notified of the breach of the warranty in question.

5.5 Where the company is called out (or elects) to perform an on-site inspection as a result of an alleged breach of the warranty referred to in 5.1, the customer shall be responsible for the cost of that call out in the event of it being established that the warranty was not so breached.

5.6 Notwithstanding anything to the contrary contained herein, the company's liability shall not, in any event, exceed the terms and ambit of the manufacturer's warranty in relation to the goods or services supplied by it, if any.

6 CLAIMS

6.1 Any claim against the company must be notified to the company in writing within 7 (seven) days of the event giving rise to the claim, failing which it shall be deemed to have been extinguished for all purposes.

6.2 In the case of short or improper delivery, the event giving rise to the claim shall be the date of delivery and in the case of non-delivery, the event giving rise to the claim shall be 30 (thirty) days after the date of the applicable invoice.

6.3 Subject to compliance with 6.1, any claim against the company shall be extinguished for all purposes 365 (three hundred and sixty five) days after the event giving rise to the claim unless, prior to the expiry of the period, a summons or other process instituting legal action has been served upon the company.

7 INVOICING

7.1 The company will not, under any circumstances, be precluded from raising or correcting any debit (and from obtaining payment thereof) in relation to any amount due to it.

7.2 The company shall be entitled to invoice split deliveries separately.

7.3 Should the customer contend that any rate, charge or amount as reflected on any invoice or statement be incorrect, then the customer shall be obliged to notify the company in writing of its contention within 30 (sixty) days of receipt of such invoice or statement, failing which the customer shall be precluded from denying the correctness of such rate, charge or amount.

7.4 The customer will pay for all costs or increases resulting from any act or omission of the customer including, without limitation, suspension of delivery, modification of requirements, failure or delay in giving particulars requisite to enable orders to proceed on schedule or requests that goods be delivered earlier or later than scheduled.

8 PAYMENT

8.1 Unless otherwise specifically agreed to by the company in writing accounts are payable on presentation thereof, in cash;

8.2 Unless otherwise specifically agreed to by the company in writing, the company shall be entitled to present its account prior to the manufacture, dispatch or delivery of the goods or prior to the rendering of the services in question.

8.3 Should credit facilities be specifically extended to the customer by the company in writing, accounts shall, unless otherwise specifically agreed to by the company in writing, be payable 30 days from date of invoice or, where statements are sent, 30 days from date of statement, whichever is the later, with no settlement discount.

8.4 Should the company accept a cash order for custom – manufactured goods, then, unless otherwise specifically agreed to by the company in writing, the customer will be required to pay 50% of the contract price in advance, upon acceptance of order.

8.5 All accounts are payable by the customer to the company in full without deduction or set-off and the customer shall not be entitled to withhold or to defer payment because of any claim or counterclaim which it might allege or for any other reason whatsoever.

8.6 Should any account not be paid on due date, all other monies owing by the customer to the company shall immediately become due and payable.

8.7 The company shall be entitled, without prejudice to its rights, to levy and to recover from the customer, interest on all outstanding accounts at a rate of 3% above the prime lending rate of the Standard Bank of South Africa Limited from time to time, compounded monthly in advance, or at the maximum rate permitted by The National Credit Act, if applicable, whichever is the higher.

8.8 Notwithstanding any prior dealings between the parties, should the customer elect to make payment through any intermediary or service including, without limitation, the postal service, the customer does so at its risk and the responsibility of ensuring that the company actually receives the payment is that of the customer.

8.9 Unless specifically agreed to by the company in writing, the company provides no discounts to the customer including, without limitation, any early settlement discount. Should the company agree to a discount in writing, such discount will be forfeited should payment not be made in full on due date.

8.10 The company does not necessarily equate the tender of a cheque with payment in cash. No cheques will be accepted without prior arrangement with the company and the company reserves the right, in any event, to require that such cheque first clear in its account before proceeding with its obligations.

9 RETENTION

9.1 Unless specifically agreed to by the company in writing, the customer shall not be entitled to withhold the payment of any portion of the contract price from the company by way of a “retention amount” or equivalent.

9.2 Where the company has agreed in writing to a retention amount:

9.2.1 The company shall be entitled to require that the customer pay it the retention amount as against the tender by the company to the customer of an appropriate bank guarantee in replacement thereof.

9.2.2 Such retention amount shall in any event be released to the company upon the date of delivery of the goods or, where the company has agreed to commission the goods, within 30 (thirty) days from date of commissioning of the goods.

9.3 Where the company has agreed to commission the goods, commissioning shall take place on the date, or within the period, agreed to by the company in writing or, where no such date or period has been agreed to, on a date or dates to be determined by the company in its discretion.

10 CREDIT FACILITIES

10.1 The company is under no obligation to extend credit facilities to the customer and no such facilities shall be extended unless done so specifically by the company, in writing.

10.2 The nature and extent of such facilities shall at all times be in the company’s sole discretion and the company reserves the right to amend, vary, suspend or withdraw such facilities at any time.

11 OWNERSHIPAND RISK

11.1 Ownership in and of any goods supplied by the company shall remain vested in the company until such time as they have been paid for in full.

11.2 Risk in and to the goods shall pass to the customer upon delivery thereof to the customer or its agent.

12 CREDIT INFORMATION

12.1 The customer agrees that the information provided by it to the company may be utilised by the company to conduct a credit assessment or affordability assessment in respect of the customer.

12.2 The company has the customer’s consent to contact and to request from any third party including, without limitation, any credit bureau, or any credit provider, information pertaining to the credit worthiness of the customer.

12.3 The company has the customer’s consent to furnish information concerning the customer to any third party including, without limitation, any credit bureau or credit provider.

13 INSPECTIONS

13.1 Unless otherwise agreed to by the company in writing, the company shall be under no obligation to arrange for any pre- or post-shipment inspection of the goods by any third party including, without limitation, any inspection agency.

13.2 Unless otherwise agreed to by the company in writing, any such pre- or post-shipment inspection shall be for the customer’s account.

14 INSURANCE

Unless otherwise agreed to by the company in writing, the company has no obligation to insure the goods.

15 PACKAGING

The customer warrants that it will provide the company with all information relevant to the transportation of the goods and to the packaging thereof.

16 LIABILITY

16.1 The company shall not be liable to the customer for any loss, injury or damage of any nature whatsoever whether direct or consequential arising out of or in connection with any Goods.

16.2 The customer should not rely upon any representation concerning any Goods unless the same shall have been made by the company in writing.

16.3 A reference to the company in this clause includes a reference to its officers, agents and servants.

17 ARBITRATION

At the option of the company, all disputes arising out of or in connection with any contractual relationship or other business dealings between the parties shall be referred for arbitration in Johannesburg under the Rules of the Arbitration Foundation of South Africa or under the Rules of Arbitration of the International Chamber of Commerce, as the company may elect, by one or more arbitrators appointed in accordance with the said rules, whose award shall be binding upon the parties.

18 FORCE MAJEURE

No failure by the company to perform any of its obligations shall constitute a breach of such obligations nor give rise to any claim or remedy by the customer in the event that such failure arose as a result of force majeure, including acts of God, war, revolution, riot, civil unrest, strikes or other labor action, sanctions, natural disasters, changes in law, regulations, ordinances or the like or as a result of any other circumstance wholly beyond its control.

19 ADDRESS

19.1 In the event that these conditions are annexed or attached to, or incorporated by reference in, a document in which the customer’s physical address or addresses are reflected, then the customer agrees to accept delivery of any notice or service of any court process or other documentation at such address or any of such addresses.

19.2 Any notice will be deemed to have been duly delivered to the customer :-

19.2.1 within 30 (thirty) days of postage by prepaid registered mail to any postal address of the customer as reflected in any document to which these conditions are annexed or attached or incorporated by reference;

19.2.2 within 1 (one) hour of being faxed to any fax number of the customer as reflected in any document to which these conditions are annexed or attached or incorporated by reference;

19.2.3 upon being delivered by hand to any physical address of the customer as reflected in any document to which these conditions are annexed or attached or incorporated by reference.

20 LITIGATION

20.1 A certificate under the hand of any director or manager of the company in respect of any indebtedness of the customer to the company or in respect of any other fact, matter or thing, including, without limitation, that goods were delivered or services rendered, shall be prima facie evidence of the customer’s indebtedness to the company and prima facie evidence of the delivery of such goods or rending of such services.

20.2 In the event of the company taking legal action against the customer because of a breach by the customer of its obligations to the company including, without limitation, its failure to pay any account, the customer shall pay for all legal costs incurred by the company on the scale as between attorney and client including, without limitation, collection fees, tracing agents fees and fees of counsel as on brief.

21 CONSENT TO JURISDICTION

21.1 The parties consent to the jurisdiction of the Witwatersrand Local Division of the High Court of South Africa in relation to any legal action arising out of, or in connection with, these conditions or any legal relationship between the parties to which these conditions apply.

21.2 The company shall, at its election, be entitled to institute action out of any Magistrates Court exercising jurisdiction over the customer’s person, notwithstanding that the amount of its claim or the nature of the relief sought would otherwise have exceeded the jurisdiction of that court.

22 NON VARIATION

22.1 No amendment, alteration, variation, deletion, addition or termination to or of these conditions or the contract to which these conditions are annexed, attached or incorporated, whether consensual or unilateral, shall be of any effect unless reduced to writing and signed by both parties.

22.2 These conditions supersede, and will apply in the future to the exclusion of, any provision contained in any purchase order, enquiry, remittance, trading conditions, purchase conditions or other documents of the customer.

23 NON WAIVER

No latitude, indulgence or extension of time granted by the company to the customer shall in any way prejudice the rights of the company nor be construed as a waiver of the company’s rights.

24 SEVERABILITY

Each of these conditions shall be considered to be a separate provision, distinct from the others. In the event of any of these conditions being found to be illegal, invalid, prohibited or unenforceable, such conditions shall be ineffective only to the extent of that illegality, invalidity, prohibition or unenforceability and the remaining conditions shall remain of full force and effect.

25 APPLICABLE LAW

These conditions and any contract to which these conditions are annexed or attached or incorporated by reference, shall be governed by, and interpreted in accordance with, the laws of the Republic of South Africa, notwithstanding the place of conclusion hereof or the residence or domicile of the parties.

26 VALUE ADDED TAX

Unless the contrary is stated by the company in writing, all prices quoted by the company to the customer are exclusive of Value Added Tax, which tax is payable by the customer in addition to the said price.

27 CISG

The parties hereby expressly exclude the application of the United Nations Convention on Contracts for the International sale of Goods to their business dealings.

28 DUTY TO INFORM

The customer shall be obliged to timeously notify the company in writing whenever there is a change to the customer’s physical address(es), delivery address(es), postal address(es), e-mail address(es), bank account(s) and the like and before all or any part of its business or its major assets are disposed of to a third party.

29 WHOLE AGREEMENT

This contract constitutes the complete understanding between the parties and save in respect of fraud supersedes all previous representations, negotiations and agreements in respect thereof. Neither party shall be bound by any terms other than as expressly provided in this contract or as subsequently agreed between the parties in writing.