

Swamac Ltd
Terms and Conditions

These Conditions shall apply to all quotations made and all orders and contracts for the sale of goods ("goods") accepted by us.

[1] INTRODUCTION

"The Company" means Swamac Ltd.

"The Purchaser" & "The Customer" means the Customer of the Company

"The Contract" means any contract between us and you for the sale of the goods formed in accordance with this condition.

[2] DOCUMENTS

Unless otherwise stipulated in our acknowledgement, all catalogues, descriptions, illustrations, drawings, estimates of performance, dimension or other specification published or submitted with quotations by us are approximate only, are not warranted or guaranteed, and shall not form part of the Contract.

We reserve the right at any time to correct clerical or technical errors in the contract documents.

We take no responsibility for goods manufactured, priced or delivered not in accordance with the order or the specification unless Purchaser's order and specifications are clear and correct in every particular and the said particulars are correctly set out in our acknowledgement and any drawings submitted by us, which it is Purchaser's duty to check.

[3] QUOTATIONS AND PRICES

(a) All prices in our quotations and acknowledgements are ex-works, exclusive of V.A.T.

(b) We reserve the right to increase the cost of the raw material element of goods, delivery of which has not been accepted by Purchaser for any reason.

(c) We reserve the right to increase or decrease any additional charge comprised in our selling price of goods, delivery of which has not been accepted by Purchaser for any reason.

(d) Purchaser shall pay the selling price as so increased or decreased in accordance with paragraphs (b) and (c) of this Condition.

(e) The cost of packing, carriage, insurance and freight will be charged extra where appropriate.

[4] SPECIAL TOOLS OR DIES

To manufacture or to purchase special tools or dies in order to execute a contract the purchaser will be charged with a proportion of the cost of such special tools. Any such tools remain our property even when the purchaser has been charged with part of the cost.

[5] PAYMENT

(a) Payment is due in full by the last day of the calendar month following the month in which the goods were despatched, or on the expiry of 30 days from the date on which we notify Purchaser that the goods are ready for despatch, whichever is the earlier.

(b) Where the Contract is to be or may be fulfilled in separate deliveries or parts, payment for each such delivery or part shall be made as if the same constituted a separate contract.

(c) Should Purchaser fail punctually to comply with the terms of payment, we shall be entitled to interest on any amount overdue at the rate of 2% per month compounded and reimburse to the Company all costs and expenses including legal costs incurred in the collection of any overdue amount.

[6] TIME FOR DESPATCH

(a) Times for despatch and delivery expressed in the Contract are not of the essence. We shall be under no liability for any loss or damage to Purchaser or others arising directly or indirectly out of late despatch or delivery, whether due to our default or not, nor shall such late despatch or delivery be deemed to be a breach of contract, nor entitle Purchaser to cancel the Contract.

(b) We shall be entitled, without liability on our part and without prejudice to our other rights, to terminate the Contract or any unfulfilled part thereof, or at our option to suspend or make partial deliveries, if the completion of the manufacture of goods by us or by our sub-contractors or suppliers is prevented, hindered or delayed whether directly or indirectly, by reason of Purchaser failing to furnish necessary information or instructions, war, civil commotion, governmental restrictions, transport difficulties, strikes lockouts, accidents, or stoppages to works, shortages of labour, materials, equipment, fuel or power, machinery breakdown or any other cause whatsoever beyond our or our sub-contractors or suppliers reasonable control, whether such cause exists at the date of the order or not. Any such cause shall be deemed to prevent, hinder or delay us or our sub-contractors or suppliers if we or our sub-contracts or suppliers respectively are thereby prevented, hindered or delayed from fulfilling all aggregate obligations both under the Contract and under all other contracts, whether with Purchaser or with third parties, relating to the supply of the same or similar goods.

[7] DELIVERY

(a) When delivery is arranged by us, Purchaser shall be bound to accept delivery on arrival at his works, when risk shall pass to Purchaser. Purchaser must notify us and the carrier in writing (otherwise than upon the carrier's documents) of damage in transit, mis-delivery or quantity discrepancy immediately on arrival.

(b) Where delivery is arranged by Purchaser, risk shall pass to Purchaser on delivery to his carrier.

(c) Without prejudice to our other rights, should Purchaser, for any other reason fail to collect or take delivery of goods within 30 days of our notification that they are ready for collection or despatch, we shall be entitled at Purchaser's risk and expense to store or effect storage of the goods elsewhere.

(d) Purchaser warrants that any necessary unloading facilities will be available at the place of delivery.

(e) Where goods are sold f.o.b. the risk in the goods shall pass to the Purchaser immediately the goods are over the ship's rail, and we shall be under no obligation to give Purchaser the notice specified in Section 32(e) of the Sale of Goods Act 1893.

(f) We reserve the right to deliver goods to within +10% or -5% of the quantity or weight specified in Purchaser's order, and payment shall be made for the actual quantity supplied pro rata.

(g) We may deliver the Goods by separate instalments. Each separate instalment will be invoiced and paid for in accordance with the provision of this contract.

[8] HEALTH AND SAFETY AT WORK

The attention of Purchaser is drawn to the provisions of Section 6 of the Health and Safety at Work etc. Act 1974. We will make available on request, information on the design and construction of goods to ensure that, as far as is reasonably practicable, they are safe and without risk to health when properly used. It is the responsibility of the Purchaser to take such steps as are necessary to ensure that appropriate information relevant to goods is made available to its employees and any person to whom Purchaser supplies them.

[9] FAULTS AND DEFECTS AND EXCLUSION OF LIABILITY

(a) On arrival of goods Purchaser must immediately examine them and any visual faults or defects must be notified to us in writing with 3 days. Non-visual faults and defects must be notified within 30 days.

(b) We shall not replace goods or make up shortages:

(i) if faults or defects are not notified in accordance with clause 6(a) or if damage in transit, mis-delivery or quantity discrepancy is not notified in accordance with clause 6(a);

(ii) in respect of which Purchaser or any third party has without our previous written consent effected modifications or repairs;

(iii) if the faults or defects were caused by incorrect or negligent handling, disregard of operation instructions, overloading, unsuitable work, faulty erection or any other default by Purchaser or any third party;

(iv) If the faults or defects were caused by fair wear and tear, accident, or any other matter beyond our reasonable control occurring after the date of arrival.

(c) The terms of the Condition are in lieu of all conditions, warranties or other terms as to description, fitness for purpose, condition, merchantability, quantity or otherwise in respect of the goods or packing, whether expressed in the Contract or implied by Common Law, custom or statute and notwithstanding that such purpose or condition may be, may become, or may have been known to us. Apart from our obligation to replace goods in accordance with the terms of the Condition, we accept no liability either for faults or defects in goods or for any loss or damage to Purchaser or others arising directly or indirectly from any breach by us of the terms of the Contract or of the general law, and defects in quality or dimension shall not be a ground for the cancellation of the Contract or the balance of Contract by Purchaser.

(d) Without prejudice to the generality of the foregoing:

(i) We shall not be liable for any consequential loss or damage suffered by Purchaser, including but without limitations, delay, loss of production, loss of profits or loss of or damage to other property or goods, nor shall we be liable for any loss or damage capable of being covered by insurance.

(ii) We shall not be liable in damages in excess of the total price stated in the Contract, even if Purchaser's loss or damage results from a fundamental breach or repudiation and even if further performance of the Contract is frustrated. Purchaser shall also indemnify us against all actions, claims or demands by third parties in tort or otherwise directly or indirectly in connection with faults in connection with faults or defects in the goods to the extent that the same exceeds the limitations of liability aforesaid.

(e)

Goods which have been specially ordered at your request may not be returned to us for credit. We reserve the right to charge a handling fee of 15% of the value of all returned items which complied with your order with us.

[10] PROPERTY AND RISK IN GOODS

(a) Risk of damage to or loss of the goods will pass to the Purchaser on delivery (as defined in Condition 6 above).

(b) Ownership of the goods will not pass to the Purchaser until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

(i) the goods; and

(ii) all other sums which are or which become due to the Company from the Purchaser on any account.

(c) Until ownership of the goods has passed to the Purchaser, the Purchaser must:

(i) hold the goods on a fiduciary basis as the Company's bailee;

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(ii) subject to paragraphs (d) and (e) below, store the goods (at no cost to the Company) separately from all other goods of the Purchaser or any third party in such a way that they remain readily identifiable as the Company's property;

(iii) not destroy, deface or obscure any identifying mark or packaging on or relating to the goods; and

(iv) maintain the goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company, and will whenever requested by the Company produce a copy of the policy of insurance.

(d) The Purchaser may use and/or incorporate the goods in or together with any product manufactured or assembled by the Purchaser before ownership has passed to it provided that such use and/or incorporation is solely in the ordinary course of the Purchaser's business.

(e) The Purchaser may resell the goods or any product in which the goods are used and/or incorporated before ownership has passed to it solely on the following conditions:

(i) any sale will be effected in the ordinary course of the Purchaser's business at full market value and the Purchaser will account to the Company accordingly; and

(ii) any such sale will be a sale of the Company's property on the Purchaser's own behalf and the Purchaser will deal as principal when making such a sale.

(f) The Purchaser's right to possession of the goods will terminate immediately if:

(i) the Purchaser has a bankruptcy order made against it or makes an arrangement or composition with its creditors or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver, manager, administrator or administrative receiver appointed of its undertaking or any part thereof or a resolution is passed or a petition presented to any Court for the winding-up of the Purchaser or for the granting of an administration order in respect of the Purchaser or any proceedings are commenced relating to the insolvency or possible insolvency of the Purchaser; or

(ii) the Purchaser suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations or duties under the Contract and these Conditions or any other contract between the Company and the Purchaser, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Purchaser ceases to trade.

(g) The Company will be entitled to recover payment for the goods notwithstanding that title in any of the goods has not passed from the Company.

(h) The Purchaser grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the goods are or may be stored in order to inspect them, or, where the Purchaser's right to possession has terminated, to recover them.

[11] SCOPE OF CONTRACT

Under no circumstances shall the company have any liability of whatever kind for:

(a) Any defects resulting from improper use by the Customer in accordance with instructions or advice of the Company or the manufacturer of any Goods or neglect or from any instruction or materials provided by the Customer.

(b) Any goods which have been adjusted modified or repaired otherwise than by the Company or its agents.

(c) The suitability of any Goods for any particular purpose or use under specific conditions whether or not the purpose or conditions were known or communicated to the Company.

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- (d) Any substitution by the Company of any materials or components not forming part of any specification of the Goods agreed in writing by the Company.
- (e) Any descriptions illustrations specifications figures as to performance drawings and particulars of weights and dimensions submitted by the Company contained in the Company's catalogues price lists or elsewhere since they are mainly intended to represent a general idea of the Goods and not form part of the Contract to be treated as representations.
- (f) Any technical information recommendations statements or advice furnished by the Company its servants or agents not given in writing in response to a specific written request from the Customer,
- (g) Any variations in the quantities or dimensions of any materials Components if the variation or substitution does not materially affect the characteristics of the Goods and the substituted materials or components are of a quality equal or superior to those originally specified.

[12]EXTENT OF LIABILITY

- (a) The Company shall have no liability to the Customer (other than liability for death or personal injury resulting from the Company's negligence) for any loss or damage of any nature arising from any breach of any express or implied warranty or condition of the Contract or any negligence, breach or statutory or other duty on the part of the Company or in any other way out of or in connection with the performance or purported performance or failure to perform a Contract save in accordance with this condition.
- (b) If the Customer establishes that any Goods have not been delivered or have been delivered damaged are not of the correct quantity or do not comply with their description the Company shall at its option replace with similar Goods any Goods which are missing lost or damaged or do not comply with their description or allow the Customer credit for their invoice value or repair any damaged goods.
- (c) If the Customer establishes that any Goods are defective the Company shall at its option replace with similar Goods or repair any defective Goods or allow the Customer credit for their invoice value or to the extent that the Goods are not of the Company's manufacture assign to the Customer (so far as the Company is able to do so) any warranties given by the manufacturer of the Goods to the Company.
- (d) The delivery of any repaired or replacement Goods shall be at the Company's premises or other delivery point specified for the original Goods.
- (e) Where the Company is liable in accordance with this condition in respect of only some or part of the Goods the Contract shall remain in full force and effect in respect of the other or other parts of the Goods and no setoff or other claim shall be made by the Customer against or in respect of such other or other parts of the Goods.
- (f) No claim against the Company shall be entertained for any defect arising from any design or specification provided or made by the Customer or if any adjustments alterations or other work had been done to the Goods by any person other than the Company or its agents.
- (g) The Company shall not be liable where any Goods the price of which does not include carriage are lost or damaged in transit and all claims by the Customer shall be made against the carrier.
- (h) In no circumstances shall the liability of the Company to the Customer under the condition exceed the invoice value of the Goods.
- (i) The Customer shall indemnify the Company against all losses claims damages and actions howsoever arising as a result of an act or omission by any servant agent or employee of the Customer whilst on the Company's premises.

(6)

[13] CANCELLATION

Contracts for Goods shall be charged in full and the Customer will be Liable for the full Contract price in the event of cancellation.

[14] FORCE MAJEURE

The Company shall not be liable for any failure in the performance of any of its obligations under the Contract caused by factors outside of its control.

[15] LAW AND CONSTRUCTION

(a) The Contract shall be governed by English law and the Customer shall consent to the exclusive jurisdiction of the English Courts in all matters regarding the Contract except to the extent that the Company invokes the jurisdiction of the Courts in any other country.

(b) The headings of conditions are for convenience or reference only and shall not affect the interpretation of the substance.

[16] BREACH OF CONTRACT

In the event of the Customer occasioning a breach of Contract which includes failure to pay in the Company's payment terms then all monies whatsoever due from the Customer to the Company whether invoiced or not will become due and payable forthwith and the Company shall have the right to terminate the Contract and any other Contract between the Company and the Customer.

[17] INDEMNITY

We shall not be liable for, and Purchaser shall indemnify us against all claims by any person in tort or for infringement or alleged infringement, of patents, registered designs or other industrial property rights directly or indirectly connected with goods manufactured by us.

[18] TITLE

(a) For the purpose of Section 12 of the Sales of Goods Act 1979 the Company shall transfer only such title rights in respect of the Goods as the Company has and if the Goods are purchased from a third party shall transfer only such title or rights as that party had and has transferred to the Company.

(b) Notwithstanding the earlier passing of risk title in the Goods shall remain with the Company and shall not pass to the Customer until the amount due under the invoice for them has been paid in full.

(c) Until title passes the Customer shall not hold the Goods as bailey for the Company and shall store or mark them so that they can at all times be identified as the property of the Company.

(d) The Company shall be entitled at any time before title passes to repossess (without being liable for any damage caused by so doing) and use or sell all or any of the Goods and so terminate (without any liability to the Customer) the Customer's rights to use sell or otherwise deal in the demand for that purpose or determining what if any Goods are held by the Customer and inspecting them to enter any premises of the Customer.

For the purposes of this clause the Company shall be entitled to enter into any premises and repossess any or any part of the Goods supplied to the Customer under this or any other Contract between the Company and the Customer and the Customer shall indemnify the Company against all claims actions losses damage and costs which may be brought against or suffered by the Company as a result of such action being taken by the Company.

(e) Until title passes the entire proceeds of sale of the Goods shall be held in trust for the Company and shall not be mingled with other monies or paid into any overdrawn bank account and shall be at all times identifiable as the Company's money.

(f) The Company shall be entitled to maintain an action for the price of any Goods notwithstanding that title within them has not passed the Customer.

[19]GENERAL

(a) The company may sub-Contract the performance of the Contract in whole or in part.

(b) The Contract is between the Company and the Customer as principles and shall not be assignable by the Customer without the express written consent of the Company.

(c) The Company may at its discretion suspend or terminate the supply of any Goods if the Customer fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract of any other agreement with the Company or becomes insolvent has a receiver appointed of its business or is compulsorily or voluntarily wound up or the Company bona fide believes that any of those events may occur and in case of termination shall be entitled to forfeit any deposit paid.

(d) If the Goods are manufactured in accordance with any design or specification provided or made by the Customer the Customer shall indemnify the Company from and against all claims costs expenses and liabilities of any nature in connection with them including any claim whether actual or alleged that the design or specification infringes the rights of any third party.

(e) Where any extra costs are incurred by the Company on account of delays interruptions or suspension of work due to the Customer's instructions or lack of instructions the Company reserves the right to increase the Contract price accordingly.

(f) All materials owned by the Company and used in the production of the Goods shall remain the Company's property.

(g) The Contract and its subject matter are confidential and shall not be disclosed or used for any purposes whatsoever.

(h) By submitting your order you allow us to use your personal detail for the purposes of supplying goods(including passing your detail on to couriers and other subcontractors) and for marketing purposes. We will not use your details for other purpose without asking your consent.

(i) The formation, construction, performance, validity and all aspects of the Contract are governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
