

Terms and conditions for sale of goods

These terms and conditions shall apply to all contracts of sale entered into by SEG.

1. Definitions

"Goods Conditions" means these Terms and Conditions for Sale of Goods.

"SEG" means Simplex-Turbulo Group Limited trading as Simplex Engineering Group, whose registered office is Wherwell Priory, Wherwell, Hampshire, SP11 7JH, United Kingdom, company registration number 13332220. The definition SEG includes all companies within the Group currently Simplex-Turbulo Company Ltd, Lincoln Diesels Ltd, Dorman Diesels Ltd, Temple Propulsion Services Ltd., Simplex Converting Ltd., STW Engineering GmbH and STC Engineering Ltd. STW Engineering GmbH is established in the Federal Republic of Germany and is subject to the laws of that country. The other group companies are established in the United Kingdom and are subject to the laws of England and Wales. These Goods Conditions shall apply to all contracts for sale of goods entered into by any of the group companies.

"the Customer" means the party who has placed the Order with SEG.

"the Order" means the Customer's instructions to SEG to supply the Goods.

"the Goods" means the goods or articles which are the subject of the Order.

"the Confirmation of Order" means the written confirmation by SEG of the Order.

"the Price" means the price for the Goods (exclusive of Turnover Tax / Value Added Tax) specified in the Confirmation of Order.

"the Contract" means the contract for the sale of goods made between SEG and the Customer incorporating the Goods Conditions.

"VAT" means Turnover Tax. Turnover Tax is generally referred to as Value Added Tax, but it is technically not the same thing. VAT has been used in these terms in order to reflect common usage.

"you" and "your" refers to the person acting on behalf of the customer.

"he" and "him" shall include the feminine and the singular shall include the plural.

2. Customer's warranty

By placing an order with us, you warrant that:

- 2.1 If you are acting for a third party such as a partnership or company, you are authorised by that third party to place the order with us.
- 2.2 If you are acting as a sole trader, you warrant that you are over the age of 18.
- 2.3 The information which you provide to us during the process of placing an order is accurate, complete and not misleading and you agree that you are responsible for the consequences resulting from any inaccuracy or incomplete or misleading information.
- 2.4 You agree to be bound by these terms and conditions of sale and that all other contractual conditions are excluded unless expressly accepted in writing by SEG.
- 2.5 The contract has been entered into as a result of the offer received from SEG and has not been induced by any other representations orally or in writing made by SEG or its employees, directors or agents.
- 2.6 If you are contracting with any group company except STW Engineering, you agree to be bound by the laws of England and Wales and that any dispute will be settled exclusively within the jurisdiction of the courts of England and Wales, except in so far as it may be necessary to enforce a decision of the courts of England and Wales in another country. If you are contracting with STW Engineering, you agree to be bound by the laws of the Federal Republic of Germany that any dispute will be settled exclusively within the jurisdiction of the courts of the Federal Republic of Germany, except in so far as it may be necessary to enforce a decision of the courts of the Federal Republic of Germany in another country.
- 2.7 Each order by you will be deemed to be an offer by you to purchase the Goods subject to these terms. No contract of sale will come into existence until SEG has despatched the Goods or sent a confirmation of order. Each order placed by you will constitute a separate contract. No variation, amendment or cancellation will be valid unless agreed to in writing by SEG.

3. Acceptance of Order

- 3.1 Customer orders are subject to SEG's confirmation of order. Normally SEG will accept the order by providing a written confirmation of order. However, especially in urgent cases, SEG may confirm the order by despatching the goods. No contract of sale will come into existence until SEG has sent this confirmation of order or until SEG has despatched the Goods, whichever shall occur first.
- 3.2 An Order is accepted by SEG exclusively upon these Goods Conditions and no other conditions, terms, provisions or other representations whatever whether referred to in negotiations or set out in the Order or otherwise shall be incorporated into the Contract unless the Customer and SEG expressly so agree in written memorandum which shall refer to the Contract and be annexed to the Confirmation of Order.

4. Price

- 4.1 The price(s) payable for the Goods shall be SEG's prices ruling at the date of despatch so that SEG shall have the right at any time before delivery to revise quoted prices set out in the Confirmation of Order or otherwise.
- 4.2 Unless otherwise specified in the confirmation of order, the price(s) shown for the Goods are ex Works, exclusive of packing costs, VAT and / or any other tax or duty, which may be applicable. Any such tax or duty shall be added to the price. VAT will be charged as per UK law, unless otherwise agreed by SEG.

5. Delivery

- 5.1 Any delivery date specified in the Confirmation of Order or otherwise shall be deemed an estimate only, and SEG shall not be liable for failure to deliver in accordance with that date nor for any loss, damage or expense whatsoever however caused or arising out of any loss or delay in delivery.
- 5.2 The Customer shall not be entitled to refuse to accept the Goods because of late delivery.
- 5.3 Delivery shall be in accordance with the definitions given under INCOTERMS. Unless otherwise agreed between SEG and the Customer and specifically stated accordingly in the Confirmation of Order, contractual delivery shall be EXW. Any subsequent handling of the goods following delivery EXW, such as loading of the goods, shipment of goods, insurance of goods or customs clearance of the goods which may be arranged by SEG shall, unless otherwise stated in writing by SEG in the confirmation of order, be effected either as agents for the Customer or under a separate contract of carriage or contract of insurance and shall not affect the delivery terms contained in the Contract of Sale.
- 5.4 Where delivery is made by instalments, each such instalment shall be deemed to be the subject of a separate Contract.
- 5.5 The quantity of Goods as set out in our despatch documentation will be conclusive evidence of the quantity received by you on delivery unless you can provide conclusive evidence to the contrary.
- 5.6 SEG's liability for non-delivery of Goods shall be limited to, at SEG's discretion, replacing the Goods within a reasonable time, issuing a credit note for those Goods not delivered, or a refund of the purchase price paid.
- 5.7 Any claim by you that any Goods have not been delivered to you must be notified by you to SEG within 7 days of the expected date of arrival of the Goods.

6. Payment

- 6.1 The mode of payment of the invoice, and a note of any advance payment received or required by SEG may be stated on the Confirmation of Order and unless so stated the invoice shall be paid in full by the Customer no later than thirty (30) days from the date of SEG's invoice. The currency of payment shall be the currency of the Contract or (at the election of the Customer) some other currency, provided that it is freely convertible into the currency of the Contract and is to be converted at the rate prevailing of the London Foreign Exchange Market at the time when such payment is received by SEG, and it includes in full any bank or exchange charges levied against SEG as a result of such conversion.
- 6.2 Where any advance payment is required by SEG, the Contract shall be conditional upon its receipt by SEG.
- 6.3 Time for payment as stipulated in the Confirmation of Order shall be the essence of the Contract. In the case of Goods sold or delivered by instalments, each instalment shall be paid for separately.
- 6.4 Where payment is to be made by bill(s) of exchange or cheque(s) payment shall be deemed not to have been made until the said bill(s) or cheque(s) are honoured by the Customer.
- 6.5 Where full payment has not been received by SEG on the due date SEG shall (without prejudice to its rights under the Contract or otherwise) be entitled to charge interest on the amount outstanding at a rate per annum equal to five (5) per cent above HSBC Bank PLC's Base Lending Rate for the time being in force.
- 6.6 The Customer shall in no circumstances be entitled to make any deduction from the invoice payable by way of set-off or otherwise in respect of any claim or counterclaim which it may have against SEG.

7. Passing of Risk and Property in the Goods

- 7.1 The Goods shall from delivery be at risk of the Customer PROVIDED THAT where delivery is delayed at the request of the Customer for more than one month, SEG shall be entitled to place the Goods in store at the Customer's risk and expense.
- 7.2 The property in the Goods shall not pass to the Customer whether or not the Customer has taken delivery of the Goods or any part thereof until the Customer shall have paid to SEG the whole of all sums due to SEG hereunder and the Customer shall not without prior written consent of SEG sell, assign, pledge, mortgage, charge, let, part with possession, or otherwise dispose of the Goods or any part thereof until the property in them has passed to the Customer.
- 7.3 The Customer shall so long as it is possible so to do make such arrangements for the storage and identification of the goods as to ensure that they are identifiable as the property of SEG.

7.4 Until such time as the property in the Goods passes to the Customer, SEG shall be entitled at any time to require the Customer to return the Goods to SEG and, if the Customer fails to do so forthwith, SEG shall be entitled to enter the premises where the Goods are being held in order to repossess them.

8. Specifications

8.1 All data containing specifications of weights, dimensions, quantities and the like which are contained in SEG's website, catalogue or other literature are hereby declared to be approximate only as are also all weights and dimensions of shipments.

8.2 While SEG has taken care to ensure the accuracy of any information data or advice included in the website, any catalogue or other literature furnished to the Customer, SEG accepts no liability in respect of such information, data or advice, whether given negligently or not, or for the use of Goods in any particular way suggested thereby, and the Customer shall at the time the Contract is made be deemed to have carried out its own investigations and tests of the Goods.

8.3 Notwithstanding the provisions of clause 18 SEG reserves the right upon giving notice of its intention to the Customer to make modifications to the Goods at any time before delivery provided that upon receiving such notice the Customer shall (if the said modifications are material) be entitled to elect to terminate the Contract.

8.4 Subject to the foregoing the Customer shall inspect the Goods immediately upon arrival at its premises and shall within three days of their arrival notify SEG of any damage, shortage, loss or other particulars by reason of which it alleges that the Goods supplied do not conform with the Contract. If no such notice is received the Goods shall be deemed to have been supplied in accordance with the Contract and to have been accepted by the Customer.

8.5 Where the Customer gives notice to SEG by virtue of sub-clause 8.4 it shall preserve the Goods intact and as delivered for a period of fourteen days after receipt by SEG of the notification, during which period SEG its agents or servants shall be at liberty to attend the Customer's premises or Goods location and have unfettered access to the Goods, to investigate the complaint.

8.6 If the Customer fails to comply with either of sub-conditions 8.4 or 8.5 it shall be deemed to have waived all or any claim actions or rights or remedies it may have in respect of the non-conformity of the Goods to the Contract.

8.7 If upon inspection by SEG, the Goods are found to be damaged, short or otherwise not in conformity with the Contract, SEG shall at its absolute discretion at its own expense replace, otherwise make good the same or credit the customer with the value of the damaged or missing goods.

8.8 Damage, shortage, loss or other non-conformity with the Contract which is present only in a proportion of the Goods or, where delivery is made by instalments, in only some of the instalments shall entitle the Customer to the remedies given by this Condition only in respect of that proportion or instalment.

8.9 Notwithstanding the provisions of this Clause, SEG shall have no liability to the Customer pursuant to sub-clause 8.7 to the extent that the said damage, storage or loss occurred after risk in the Goods passed to the Customer.

9. SEG's Guarantee

9.1 In consideration of the guarantee given by SEG as set out below the Customer expressly agrees that:

9.1.1 the said warranty is given by SEG in lieu of and to the entire exclusion of every condition or warranty whether statutory or otherwise whatsoever, except to the extent that the statute prohibits such exclusion.

9.1.2 the liability of SEG howsoever arising is limited to exchange or repair (at SEG's discretion) of any part or parts of Goods to extent of and no further than as set out in the said Guarantee.

9.1.3 SEG is released from any other form of liability, whether in contract or tort, including consequential loss or damage caused or arising by reason of the Goods not being of the quantity, type or quality ordered or by reason of the Goods being delayed or by reason of any other matter whatsoever.

9.1.4 in no circumstance shall SEG be liable for any sum greater than the purchase price of the Goods in the contract of sale.

9.2 For a period of twelve (12) months from the date on which the Goods are delivered to the Customer SEG will exchange or repair (at SEG's discretion) any part or parts thereof requiring replacement or repair by reason of faulty design, workmanship or material, save that:

9.2.1 SEG will not be responsible for any expenses which the Customer and/or user may incur in removing or having removed or replacing any part or parts of the Goods sent for inspection or fitting or having fitted any replacement or new parts supplied in lieu thereof.

9.2.2 no claim for exchange or repair can be considered unless the defective part(s) are returned at sole cost of the Customer carriage paid to SEG's works stating the parts are being returned under the guarantee together with the following information:

(i) the Seller's reference on the Goods from which the part or parts were taken.

(ii) the defects claimed and the reasons for them.

(iii) the date of purchase and the source from which the Goods were purchased.

9.2.3 this Guarantee does not extend to any defect which in the opinion of SEG (which opinion shall be final) was attribute to:

(i) Any form whatsoever of improper use.

(ii) Wear and tear.

(iii) Non-compliance with any instructions issued by SEG.

(iv) Incorrect fitment howsoever caused.

(v) Neglect of others.

(vi) Abnormal corrosive or abrasive conditions.

(vii) Any alteration or modification having been made to the Goods or any parts thereof or any connected parts without the express approval of SEG given in writing.

9.2.4 for any part(s) returned under the guarantee, either to SEG's works, or a place designated by SEG, title for the Goods shall pass to SEG on delivery. SEG then have thirty (30) days to inspect test or in any way analyse the part(s) to determine why the part(s) have been returned under the guarantee. In the event it is determined the part(s) are covered under the guarantee then SEG shall, at its sole discretion, decide whether the parts shall be repaired, replaced or credited. In the event it is determined that the part(s) are not covered by the guarantee, they will be held available for collection for seven (7) days and then disposed of as SEG see fit. The proceeds and/or costs of disposal will be for the Customer's account.

9.2.5 consumables are excluded from this Guarantee.

10. Customer's Undertakings

The Customer accepts full liability for and shall at all times indemnify SEG against all actions claims demands costs charges and expenses whatsoever arising out of any loss or damage due to any person firm company or property by reason of SEG having relied on any data, documents, drawings gauges, samples, models or the like supplied to SEG by or at the instigation of the Customer in connection with the performance of the Contract.

11. Health and Safety at Work

The Customer hereby undertakes to take all steps sufficient to ensure, so far as is reasonably practicable, that the Goods will be safe and without risks to health by properly using and handling them in accordance with the recommendations of SEG. Weights given are approximate and should be confirmed before lifting, manual or mechanical.

12. Termination of the Contract by SEG

12.1 SEG may terminate the Contract forthwith by written notice to the Customer upon the happening of any of the following events:

(i) where full payment in respect of the Goods or any instalment of the Goods has not been received by SEG by the date specified as the date for payment.

(ii) where the Customer has failed to provide any Commercial Credit, Bill of Exchange, or other security required by the Contract.

(iii) where the Customer being an individual, commits any act of bankruptcy, or, being a corporation, goes into liquidation or has a receiver appointed of all or any of its assets or is deemed by SEG to be incapable of paying his or its debts.

(iv) where the Customer is in breach of any of these Goods Conditions.

12.2 The granting by SEG to the customer of time or any other indulgence forbearance or concession shall in no way prejudice or constitute a waiver of SEG's entitlement to enforce any of its rights under the Contract except and to the extent that it shall either constitute a variation of these Goods Conditions which has been made in accordance with clause 18.

12.3 If SEG terminates the Contract in accordance with this clause, then, without prejudice to any other rights SEG may have, it shall be entitled to retain any advance payment made by the Customer.

13. Cancellation by the Customer

The Contract may be cancelled by the Customer only with SEG's written consent, which shall be given or withheld at the sole discretion of SEG and upon such terms as SEG may deem fit.

14. Force Majeure

In the event of:

riots, civil disturbance, strikes, lock-outs, industrial disputes, fire, floods, heat, frost, storm or other intemperate weather, Act of God, Act of Queen's enemies or war (whether declared or not) or other hostilities carried on by any parties whatsoever, restraints or rulers of peoples including interferences by departments of governments in the United Kingdom or abroad, perils of the sea, breakdown in machinery, shortages of raw material or fuel or labour, shortages or breakdown of shipping or other means of transport, failure or delay by customary suppliers or sub-contractors of SEG (whether their involvement in SEG's performance of the Contract is known to the Customer or not) to provide materials required in the production of the Goods or any other unforeseen or exceptional circumstances whatsoever affecting or hindering the performance of the Contract by SEG – SEG may in its discretion either:

- (i) terminate the Contract and return any advance payment made in respect thereof of the Customer; or
- (ii) delay delivery for such period or periods as it shall consider necessary (in which case the provisions of sub-clause 5.1 and 5.2 shall apply) and in either case the Customer shall have no claims whatsoever howsoever arising against SEG in respect of such termination or delay.

15. Confidentiality

15.1 Any drawings or technical documents intended for use in the manufacture or construction of the Goods and submitted to the Customer prior or subsequent to the formation of the Contract remain SEG's exclusive property. Such drawings or technical documents may not without SEG's consent be utilised by the Customer or copied, reproduced, transmitted or communicated to a third party. The said drawings and documents shall become property of the Customer only if it is expressly so agreed in writing by SEG.

15.2 In the event that an Order or Contract is not proceeded with for any reason whatever, each party shall upon demand return to the other all such material as is referred to in the preceding sub-clause and undertake to destroy any copies thereof which may have been made by it.

16. Assignment and rights of third parties

The Contract is personal to the Customer, which shall not assign or charge the benefit thereof in any manner whatsoever without SEG's express written consent. For the avoidance of doubt all third-party rights which might otherwise have been created under the 1999 The Contracts (Right of Third Parties) Act are specifically excluded. The Contract does not confer any rights or benefits to any third party whatsoever.

17. Law

With the exception of a contract with STW Engineering GmbH, the Contract shall in all respects be constructed and operate in accordance with the laws of England and Wales. All disputes shall be subject to the exclusive jurisdiction of the courts of England and Wales, except in so far as it may be necessary to enforce a judgement of the courts of England and Wales in another country, and the customer accepts that he will have no right to bring any action in any other jurisdiction irrespective of the terms of the EU regulation 1215/2012 or any other law or regulations which might otherwise apply to this contract. In the case of a contract with STW Engineering this shall in all respects be constructed and operate in accordance with the laws of the Federal Republic of Germany except in so far as it may be necessary to enforce a judgement of the courts of the Federal Republic of Germany in another country, and the customer accepts that he will have no right to bring any action in any other jurisdiction irrespective of the terms of the EU regulation 1215/2012 or any other law or regulations which might otherwise apply to this contract.

18. Variation

Except as provided in clause 8.3 hereof after formation of the Contract any alterations amplifications modifications limitations or additions thereto must be agreed by the parties, made in writing, refer to the Contract, and be annexed to the Confirmation of Order.

19. Waiver

The granting by SEG to the Customer of time or any other indulgence forbearance or concession shall in no way prejudice or constitute a waiver of SEG's entitlement to enforce any of its rights under the Contract except and to the extent that it shall either constitute a variation of these Goods Conditions which has been made in accordance with clause 18.

20. Notices

20.1 Notices shall be made in writing and posted in a first-class pre-paid envelope to the Customer's address as shown respectively on the Order and Confirmation of Order or failing those to the address at which one party reasonably believes the other to be carrying on business.

20.2 A notice shall be deemed to have been given forty-eight hours after posting (or ninety-six hours after posting where the notice is sent from and/or addressed to an address outside the United Kingdom)

21. General

21.1 The clause headings hereto shall not affect the construction of these Goods Conditions.

21.2 SEG's rights are cumulative and not exclusive.

21.3 If any provision or part of a provision of this agreement shall be, or held to be by any authority or court of competent jurisdiction, invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or