

SEW EURODRIVE LTD: STANDARD TERMS AND CONDITIONS OF SALE**1. DEFINITIONS**

- 1.1 The Company means SEW EURODRIVE LTD.
- 1.2 The Purchaser means the person, firm or company to whom goods ("Goods") are supplied subject to the following conditions ("Conditions") and to whom a quotation is addressed or whose order is accepted by the Company ("Contract").

2. EXISTENCE OF CONTRACT

- 2.1 Any written quotation or estimate provided by the Company shall constitute an invitation to treat and no binding contract shall be created by the placing of an order by the Purchaser unless and until the Company has sent an Order Acknowledgement to the Purchaser.
- 2.2 All quotations, offers and tenders are made and all orders are accepted by the Company subject to these Conditions. Except as otherwise provided herein, all other terms, conditions or warranties are excluded from any contract between the Purchaser and the Company including any terms and conditions which the Purchaser may purport to apply under any Order or similar document. All orders for Goods shall be deemed to be an offer by the Purchaser to purchase the Goods pursuant to these Conditions. Acceptance or delivery of the Goods shall be deemed conclusive evidence of the Purchaser's acceptance of these Conditions.
- 2.3 No particulars contained in any advertising matter, catalogues or other publications supplied by the Company nor any verbal representation by any employee or agent of the Company shall be part of the Contract nor shall they be treated as constituting any representation on the part of the Company.
- 2.4 Where Goods are supplied by the Company under a Blanket Order given by the Purchaser or in accordance with Delivery Schedules, Release Authorisations or any other special instruction from the Purchaser to the Company, each such Delivery Schedule, Release Authorisation or special instruction shall be deemed a separate contract to which these Conditions apply and prevail.

3. AMENDMENTS AND CANCELLATION

- 3.1 No alterations or modifications to these Conditions shall be binding on the Company unless expressly accepted or varied in writing by an officer of the Company.
- 3.2 Cancellation of any order cannot be made without the Company's consent in writing. In the event of an agreed cancellation the Purchaser shall indemnify the Company against all losses, including the Company's loss of profits, liabilities and expenses of whatever nature incurred by the Company arising directly or indirectly from such cancellation.

4. PRICE

- 4.1 Except as otherwise agreed between the Purchaser and the Company, the quoted price for the Goods shall include standard UK mainland delivery and shall not include VAT, taxes and all other applicable duties.
- 4.2 Except as otherwise agreed, the price for the Goods shall be the Company's price ruling for the Goods at the date of the Order Acknowledgement subject to any other alteration by the Purchaser before, on or at any time after delivery, collection or notification that the Goods are awaiting collection.

**Registered Office**

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Regional Sales Office

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Telephone 01527 877319 Fax 01527 575245

Bank Account / Registration / Directors

HSBC, 66 Westgate, Wakefield, West Yorkshire
GBP Account No: 81005189 Sort Code: 40-45-11
EURO Account No: 39120556 Sort Code: 40-05-15
VAT Registration No: 170-9086-56 Registered in England: 947360
Directors: R. Blicke (Chairman) M. Holmes (Managing)

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The Company shall be entitled to invoice the Purchaser for the price of the Goods in pounds sterling or in any other nominated currency at its sole discretion.

- 4.3 Where the Goods are delivered by instalments in stages the Company may invoice each instalment or stage separately and the Purchaser shall pay such invoice in accordance with these Conditions.

5. PAYMENT

Unless otherwise agreed in writing the price of the Goods shall be paid at the end of the month next following the month in which each invoice is sent to the Purchaser. Prompt payment shall be a condition precedent to any future deliveries of Goods to the Purchaser under the Contract.

6. CARRIAGE AND DELIVERY

- 6.1 Delivery of the Goods shall take place at the Purchaser's premises or at such other location as may be agreed by the Company.

- 6.2 Time for delivery is given as accurately as possible but is not guaranteed and time is not of the essence of the Contract.

- 6.3 Whilst the Company will endeavour to complete delivery of the Goods within the agreed time and if no time is agreed, within a reasonable time, the Company shall not be liable in any way for any direct or indirect loss, damage or expense whatsoever (including without limitation loss of any profits, loss of business or turnover, all consequential loss and/or liability to third parties) suffered or incurred by the Purchaser as a consequence of any delay in delivery or completion of the Contract.

- 6.4 The Company reserves the right to deliver the Goods by instalments in any sequence. Where the Goods are delivered by instalments, the Contract shall become severable and each instalment shall be deemed to be the subject of a separate Contract. No default or failure by the Company in respect of any one or more instalments shall entitle the Purchaser to treat the Contract as repudiated or to damages.

- 6.5 Where the Company has notified the Purchaser that the Goods are awaiting collection or are ready for despatch and Purchaser fails to arrange for such collection or delivery within a reasonable time, the Company may at its discretion arrange for such Goods to be delivered to the Purchaser who shall remain at all times subject to the Conditions herein.

7. WARRANTIES

- 7.1 So far as practicable the Company may assign to the Purchaser at its discretion the benefit of any guarantee, warranty, service or maintenance commitment which it may have received from any third party in relation to the Goods.

- 7.2 The Goods supplied by the Company shall be in accordance with the specification supplied by the Company (if any) in all material respects and shall be of satisfactory quality but are not tested or sold as fit for any particular purpose unless specifically agreed in writing by the Company.

- 7.3 The Purchaser shall inspect the Goods upon delivery and shall within three days thereof notify the Company of any alleged defect, damage or failure to comply with the specifications.

- 7.4 If during the period of 24 months from the date of delivery any part manufactured by the Company for the Purchaser under the Contract is found by the Company upon its inspection to have become defective under normal conditions of service and use, the Company will at its sole discretion repair or replace the defective part. All such repair and/or replacement under this Clause 7.4 shall be undertaken by the Company solely upon Company premises and the Purchaser shall bear the costs



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of delivering the Goods to the Company together with any costs incurred by the Company in the dismantling and/or reassembling of the Goods unless otherwise agreed. The benefit of this Clause is non-assignable.

7.5 For the avoidance of doubt, the operation of Clause 7.4 above and/or any defective Goods shall remain subject to the provisions of Clause 10 below.

7.6 Clause 7.4 will not apply to any part:

7.5.1 whose identification or serial number has been altered, defaced, removed or otherwise deliberately damaged by the Purchaser's employees, agents or any third party; or

7.5.2 has in the Company's view not been maintained in accordance with its recommended maintenance procedure and/or the specifications overleaf; or

7.5.3 has been subjected to any misuse, unauthorised repair, modification or alteration; or

7.5.4 that has been incorrectly installed and/or connected by the Purchaser, its servants or agents.

7.7 The Company makes no warranty as to the condition, safe keeping or maintenance of the Purchaser's tools if such tools are utilised during to the process of manufacture and shall in no way be liable to compensate the Purchaser for any damage caused thereon.

7.8 Subject to this Clause 7 all warranties and conditions whether implied by statute or otherwise are hereby excluded PROVIDED THAT nothing herein shall restrict or exclude liability for death or personal injury caused by the negligence of the Company.

8. MAINTENANCE

8.1 The Purchaser shall at all times act in accordance with all statutory or regulatory enactments relating to the Goods. The Purchaser shall indemnify the Company against any liability incurred due to the breach of this Clause 8.1.

8.2 The Purchaser shall at all times adhere and comply with the Company's maintenance schedules and the specifications overleaf relating to the Goods.

9. INTELLECTUAL PROPERTY AND DESIGN RIGHTS

9.1 Where Goods are manufactured to the Purchaser's design and/or specifications the Company will retain all or any drawings, designs or other documents which are supplied to the Company by the Purchaser under the Contract unless agreed otherwise.

9.2 The Purchaser shall further warrant that any of its designs or specifications do not infringe any confidential information, patent registered design, trade mark, copyright or other intellectual property rights.

9.3 No variation undertaken by the Company to any design or specification provided by the Purchaser under the Contract shall constitute a breach of Contract.



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10. LIMITATION OF LIABILITY

- 10.1 Nothing contained in this Clause 10.1 shall limit or restrict the Company's liability for death or personal injury caused as a result of the Company's negligence, nor does the Company limit or restrict its liability for fraudulent misrepresentation under the Misrepresentation Act 1967.
- 10.2 Under no circumstances whatsoever shall the Company be liable for losses special to the particular circumstances of the Purchaser, including without limitation loss of any profits, loss of business or turnover, all consequential loss, liability to third parties, indirect loss, damage to property and/or wasted expenditure.
- 10.3 Without prejudice to the other provisions of this Clause 10, the Company's liability, whether in respect of one claim or the aggregate of various claims, shall not exceed the Contract price of the Goods.
- 10.4 The price of the Goods is based on the assumption that the liability of the Company and the Purchaser are as set out herein. The Purchaser is advised to insure against any risk not accepted by the Company.

11. RESERVATION OF TITLE & RISK

- 11.1 The risk in the Goods shall remain with the Company until delivery by the Company or collection of the Goods by the Purchaser or payment for the Goods by the Purchaser, whichever is the earlier, at which time the risk in the Goods shall be transferred to the Purchaser.
- 11.2 Title to the Goods shall only pass to the Purchaser upon the happening of any one of the following events:-
- 11.2.1 the Purchaser having paid to the Company all sums due from it to the Company under this Contract and under all other contracts between the Company and the Purchaser including any sums due under contracts made after this Contract whether or not the same are immediately payable; or
- 11.2.2 the Company serving on the Purchaser notice in writing specifying that title in the Goods has passed.
- 11.3 The Company may recover Goods in respect of which title has not passed to the Purchaser on whichever is the earliest of the following dates:-
- 11.3.1 on the expiration of any agreed period of credit in relation to the Goods;
- 11.3.2 if the Purchaser, being a Company, does anything or fails to do anything which would entitle a creditor to appoint a receiver to take possession of any of the Purchaser's assets or which would entitle any person (including the Purchaser itself) to present a Petition for winding up the Purchaser or to propose an application for an administration of or voluntary arrangement in relation to the Purchaser under the Insolvency Act 1986 or if a resolution is passed for the winding up of the Purchaser (otherwise than for the purposes of amalgamation or reconstruction whilst solvent) or if the Purchaser ceases or threatens to cease to carry on its business by reason of insolvency or approaching insolvency or otherwise or if anything analogous to any of the foregoing under the law of any jurisdiction occurs to the Purchaser in any event, if distress or execution is levied against any of the Purchaser's assets or if a judgment against the Purchaser remains unsatisfied for more than 7 days.

and the Purchaser irrevocably licenses the Company, its officers, employees and agents to enter upon any premises of the Purchaser, with or without vehicles, for the purpose either of satisfying itself



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that condition 11.4 below is being complied with by the Purchaser or of recovering any Goods in respect of which title has not passed to the Purchaser.

11.4 Until title to the Goods has passed to the Purchaser under these Conditions it shall possess the Goods as fiduciary agent and bailee of the Company. If the Company so requires, the Purchaser shall store the Goods separately from other goods and shall ensure that they are clearly identifiable as belonging to the Company. During such time as the Purchaser possesses the Goods with the Company's consent, the Purchaser may in the normal course of its business sell or hire the Goods as principal and without committing the Company to any liability to the person dealing with the Purchaser.

11.5 Notwithstanding that the property in the Goods has not passed to the Purchaser, the Company shall be entitled to maintain an action for the price of the Goods.

11.6 Each paragraph and sub-paragraph of this Clause 11 is separate, severable and distinct.

12. TERMINATION

12.1 The Company shall be entitled forthwith to terminate any Contract between it and the Purchaser by written notice if the Purchaser fails to pay any invoice in accordance with these Conditions or the Purchaser commits any continuing or material breach of these Conditions or makes any composition with its creditors or suffers any distress or execution to be levied upon its assets or is wound up either compulsorily or voluntarily or suffers a receiver of any of its assets to be appointed or otherwise ceases or threatens to cease to carry on business.

12.2 If for any reason the completion of the Contract or the delivery of the Goods is in the Company's view rendered impracticable the Company may terminate the Contract by written notice to that effect. Thereupon the Purchaser will pay to the Company such proportionate sum under the Contract of any Goods delivered prior to such notice.

13. FORCE MAJEURE

The Company shall not be liable for failure to deliver or delay in the delivery of the Goods for any reason whatsoever outside the reasonable control of the Company, (including, without limitation, strikes, riots, lock-outs or other industrial action, war, government requisitions of any kind, suspension or loss of means of transport, non-availability to the Company of supplies, legislation or regulations of any kind or Act of God). Any such failure or delay shall not affect the obligation of the Purchaser to pay for the Goods already delivered.

14. RESALE

Unless otherwise agreed the Goods are sold for the purpose of fabrication. The Company shall not be liable for any Goods which are resold by the Purchaser and the Purchaser shall indemnify the Company against any loss, damage, injury, expense, cost (including legal costs) and/or damages arising directly or indirectly from any actual or alleged fault in such resold Goods.

15. RETURN OF GOODS

Subject to Clause 7.4 above, no Goods delivered in accordance with the Contract will be accepted for return without the prior approval of the Company in accordance with the Company's official returns authorisation procedure and on the terms to be determined at the absolute discretion of the Company. Goods returned without the prior written approval of the Company may at the Company's absolute discretion be returned to the Purchaser or retained at the Purchaser's cost without any prejudice to any rights and remedies available to the Company.



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16. SET OFF AND COUNTERCLAIM

The Purchaser shall not be entitled to withhold payment of any invoice by reason of any right of set-off or counterclaim which the Purchaser may have or allege to have or for any reason whatsoever.

17. NOTICES

Any notice required to be served pursuant to this Contract shall be served on the Company at Beckbridge Industrial Estate, Normanton, West Yorkshire, WF6 1QR or such other address as the Company may from time to time notify to the Purchaser and on the Purchaser at the address notified to the Company by first class registered post, registered air mail or by telex or facsimile. (Any such notice shall be deemed to have been served in the case of a destination in the UK two days after the date of despatch and seven days after the date of despatch to any other destination and in the case of despatch by telex or facsimile when the addressee's telex or fax machine acknowledges receipt thereof).

18. SEVERANCE

Any provision or term of these Conditions which is or may be void or unenforceable shall to the extent of such invalidity be deemed severable and shall not affect any other provision or term hereof.

19. WAIVER

Failure by the Company at any time to enforce any of these Conditions shall not be construed as a waiver by the Company of such Conditions or any other Conditions and the Company shall be entitled to enforce any such breach at any time. Waiver of one or more of these Conditions by the Company shall in no way affect the validity and/or enforceability of any other Condition herein.

20. ASSIGNMENT

The Purchaser may not assign, sub-contract or in any way dispose of its rights or obligations under the Contract without the prior written consent of the Company.

21. PRIVACY OF CONTRACT

This Contract is intended and agreed to be for the benefit solely of the parties hereto and their lawful successors and permitted assigns and is not intended to create any right enforceable by any other person.

22. LAW AND JURISDICTION

The Contract shall be governed and interpreted according to the laws of England and shall be subject to the jurisdiction of the English courts. Nothing in this clause shall limit the right of the Company at its sole discretion to bring proceedings in connection with this Contract in any other Court of competent jurisdiction.



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