SUBMARINE MANUFACTURING & PRODUCTS LTD
Unit 1 Skyways, Blackpool Business Park, Amy Johnson Way, Blackpool FY4 3RS
www.smp-ltd.co.uk • +44 (0)1772 687775 • sales@smp-ltd.co.uk

The Company provides all items and services on the following Conditions which can be varied only in writing by an Officer of the Company.

If a Customer's acceptance document, purchase order or other communication, received by the Company before or after notification of these Conditions, contains terms at variance with these Conditions, then every such term shall be of no effect.

IMPORTANT NOTE
CONDITION 3 LIMITS THE COMPANY'S LIABILITY. PLEASE READ IT CAREFULLY. It has been included to relieve the Customer of the additional amount that the Company would need to charge to recover insurance costs (or an amount in lieu to reflect risk) were its liability not limited as provided for in Condition 3.

THE COMPANY'S OBLIGATIONS
1.1. The Company will provide its services with reasonable skill and care. In the absence of prior written instruction to the Company giving sufficient warning and detail, no particular precautions nor any special treatment need be taken or provided for the Goods, nor shall time be of the essence for performance by the Company.
1.2. In the case of bulk Goods, unless the parties have agreed otherwise the Company may deal with and/or mix apparently similar goods consigned by or for the Customer without distinguishing between consignments.
1.3. In the case of carriage the Company's responsibility for the Goods starts when loading on the vehicle is complete and ends when the Goods are tendered for unloading. In the case of storage and / or processing it starts when they are accepted into store and ends when they are tendered for collection, or the Company becomes aware of the grounds for their removal under Condition 2.2 or on the expiry of notice under Condition 7.1 or 7.2. Where the Company provides storage and carriage it shall also be responsible for the Goods while they are transferred from its vehicle into its store and vice versa. In the case of forwarding, the Company's responsibility is only to engage or propose apparently competent contractors and to give them adequate instructions (on the basis of matters known to the Company) in relation to the Goods; and in this case, or where the contract is for advice, it is not responsible for the Goods themselves.
1.4. The Company's duty is to the Customer only and not to any third party. Any advice given is for the Customer only.
1.5. Unless it states otherwise in writing, where the Company provides forwarding services it operates as the Customer's agent in engaging contractors to deal with the Goods.

CUSTOMER'S UNDERTAKINGS
2.1. It is a condition of the contract, and the Customer warrants and undertakes, that:-
2.1.1 It is either the owner of the Goods, or is authorised by the owner to accept these Conditions on the owner's behalf.
2.1.2 The Goods shall be presented to the Company (and/or anyone else dealing with them) securely and properly packed in compliance with any applicable statutory regulations, recognised standards and good practice and are and will remain in a condition to be safely handled, stored and/or carried and so as not to cause injury, damage, contamination or deterioration (or the possibility of them) to any person, premises, equipment or to any other items in any way. Where the Company is performing an operation or process on the Goods, they will be delivered to the Company in a condition where that operation or process can be done without further work (other than unpacking) by the Company.
2.1.3 Before the Company assumes any responsibility for or by reference to the Goods, the Customer will inform the Company in writing of any relevant matters; including any special precautions necessitated by the nature, weight or condition of the Goods and any statutory or other duties specific to the Goods with which the Company or others may need to comply; and will promptly after invoicing pay the Company's reasonable extra charges for complying.
2.1.4 It will promptly after invoicing reimburse all duties, taxes and expenses that the Company may be required to pay in respect of the Goods including where the liability to pay them arises due to the fault, other act or omission of the Company or its employees or sub-contractors.
2.1.5 Except to the extent previously notified in detail to, and accepted by, the Company in writing none of the Goods: are hazardous or contaminated; may cause pollution of the environment or harm to human health if they escape from their packaging; require any official consent or licence to handle, possess, deal with or carry; will at any time whilst in the care or control of the Company constitute Waste.
2.1.6 Where the Company is carrying the Goods, the Customer will provide a risk assessment and/or method statement appropriate for the Goods and any location in which they are being handled. Unless otherwise previously agreed the Customer will provide suitable facilities and equipment for, and will procure, safe and prompt loading and unloading of the Goods.
2.1.7 It will comply with any reasonable regulations of the Company relating to handling, packing, carriage, storage or forwarding of Goods (and ancillary matters) which are notified in writing from time to time.
2.1.8 Information given by or on its behalf shall be materially correct and complete.
2.2 The Customer will indemnify the Company against any loss or damage it suffers as a result of carrying out the Customer's instructions or which is related to any breach of the Customer's obligations, and will pay all costs and expenses (including professional fees) incurred in, and the Company's reasonable charges for, dealing with the breach and its consequences. The Customer will pay an extra charge equal to the amount of any fine or penalty payable by the Company wholly or partly as a result of a breach by the Customer. If the Company suspects a breach of Condition 2, it may refuse to accept the Goods, demand their immediate removal, or itself arrange their removal without notice, at the Customer's expense.

INSURANCE AND THE COMPANY'S LIABILITY
3.1 Unless expressly agreed, the Company does not insure the Goods and the Customer shall self-insure or make arrangements to cover the Goods against all insurable risks to their full insurable value (including all duties and taxes). The insurance referred to in Condition 3.5 is insurance against the Company's potential liability for breach of its obligations and not to cover the Goods themselves against loss, damage, etc .
3.2 Subject to Condition 3.3, the Company shall have no liability for Loss however arising.
3.3 If and to the extent that Loss is directly caused by negligence or wilful act or default of, or breach of duty by, the Company, its employees (acting in furtherance of their duties as employees) or sub-contractors or agents (acting in furtherance of their duties as sub-contractors or agents) and subject to Conditions 3.4, 3.7 and 3.8, the Company will accept liability for Loss assessed on normal legal principles but not exceeding the Limit fixed by Condition 3.5. Any quantification of amount or value includes duties and taxes.
3.4 In no case shall the Company be liable for any lost profit, income or savings, wasted expenditure, liquidated damages payable by or on behalf of the Customer, or indirect or consequential loss.
3.5 In no case shall any liability of the Company (including inter alia any liability in respect of duties and taxes) exceed the Limit, fixed as follows:-
3.5.1 The Customer may specify the Limit as an amount (in Sterling, US Dollars or Euros) per tonne weight of the Goods by notice in writing stating the Limit and the nature and maximum value of the Goods, including duty and taxes. The Limit nominated by the Customer shall apply in respect of any cause of action arising after the Date for so long as the nomination remains in effect. It is a condition of the contract that the Customer pays within 7 days of receipt the Company's invoices for its costs in insuring against its potential liability up to the Limit, and/or to the extent that the Company elects to carry the risk itself, its extra charge equivalent to the estimated or likely cost of such insurance.

3.5.2. If the Company having made reasonable efforts is unable to obtain insurance on reasonable terms to cover its liability up to the Limit nominated by the Customer, or if the Customer has not yet paid any invoice issued under Condition 3.5.1, the Company may give 3 working days written notice, and the Limit for causes of action arising after expiry of the notice shall be £100 sterling per tonne weight of the Goods.
3.5.3 Unless and until a higher Limit has been fixed under Condition 3.5.1 and continues in effect, the Limit shall be £100 sterling per tonne.
3.6 Without prejudice to the Company's rights under Condition 6 to be paid free from deduction or set-off, any limitation of liability on the part of the Company shall be applied to any claim by the Customer before any set off or counterclaim is asserted against money due to the Company.
3.7.1 The Company shall not be liable for any claim unless: it has received written notice of it within 10 days of the event giving rise to the claim coming to the knowledge of the Customer or consignee; and it has received, within 21 days of the event giving rise to the claim coming to the knowledge of the Customer or consignee, sufficient detail in writing to enable investigation. In the case of failure to deliver, time shall run from the first working day after the expected date of delivery.
3.7.2 No legal proceedings (including any counterclaim) may be brought against the Company unless they are issued and served within 9 months of the event giving rise to the claim.
3.8 The Company shall not be liable for any Loss to the extent that it is caused or contributed to by a breach of any of the Customer's obligations, or by a person for whom the Company is not responsible, or by any of the circumstances by virtue of which the Company is relieved of its obligations under Condition 8.

EMPLOYEES, SUB-CONTRACTORS AND OTHERS
4.1 The Company shall be entitled to sub-contract on reasonable or industry standard terms all or any part of its obligations and in this event these Conditions shall continue to apply as between the Company and the Customer. However, except in case of emergency the Company will obtain the Customer's consent (not to be unreasonably withheld or delayed) before storage is subcontracted and will on request notify the Customer of the location of the Goods.
4.2 No Interested Party will make a claim or issue proceedings in respect of Loss against any Additional Party.
4.3 Without prejudice to Condition 4.2, if an Additional Party pays or is liable to make a payment to an Interested Party in connection with a claim for Loss, the Interested Party will fully indemnify the Company against any claim (including all costs and expenses) by the Additional Party against the Company for reimbursement of, contribution to or indemnity against that payment to the extent that it exceeds the Limit applicable at the time of the event giving rise to the claim.

CHANGE OF CUSTOMER
5. The Customer may give written authority for the Goods or any part to be transferred to the account of another party on condition that before the effective date of the transfer the other party notifies the Company in writing that it is to become the Customer and is to be bound by these Conditions and by any notice given under Condition 3 and will pay the Company's charges for the period after the effective date. The Customer will pay the charges for the period until the later of the effective date or receipt and acceptance by the Company of the other party's written notification. In any event the Customer will remain jointly liable for charges relating to Goods consigned by it to the Company until the Company releases that liability in writing. The Goods remain subject to any lien which applies at the time of transfer.

CHARGES, PAYMENTS AND LIEN
6.1 The Company's charges are subject to VAT and may be increased by prior notice to the Customer. The notice shall be at least 7 days for increases reflecting any rise in fuel costs and at least 21 days otherwise. If the Customer does not agree to the increase it shall notify the Company in writing and will remove the Goods within 21 days after receipt of the Company's notice. If the Goods are not so removed then the increased charges will apply from expiry of the Company's notice. The Company has the right to charge for storage of the Goods for so long as it has custody of or is responsible for them.
6.2 The Customer will pay demurrage at the Company's standard rate (or a reasonable rate set by the Company if there is no standard rate) if the vehicle used by or on behalf of the Company to deliver the Goods is delayed for more than 60 minutes beyond the time reasonably needed for loading or unloading; and demurrage and storage charges if delivery is refused.
6.3 The charges shall be paid free of any deduction or set-off at such periodic intervals as may have been agreed between the parties and in any event on the earlier of (a) the expiry of any agreed period of credit and (b) the time immediately before any of the Goods cease to be in the Company's care or control. The Company shall be entitled to payment for carriage at the time the Goods are loaded onto the vehicle. Absence of a delivery note shall not justify a refusal by the Customer to pay.
6.4 Interest shall be paid on money overdue to the Company at the rate of 1.5% for each calendar month during all or part of which it is overdue.
6.5 The Company shall (on its own behalf and as agent for any assignee of its invoices) have a general and particular lien on the Goods (and any associated documentation or records) as security for payment of all sums (whether due or not) claimed by the Company from, or actually or prospectively payable to the Company by, the Customer or another Interested Party on any account (relating to the Goods or not), or otherwise claimed in respect of the Goods or other property of an Interested Party. Where a lien secures sums payable to or claimed by the Company, it shall continue to cover those sums notwithstanding any transfer of ownership of Goods, or change of customer. Storage shall be charged for any goods detained under lien or where the Company is required by any competent authority to retain them.

REMOVAL AND DISPOSAL OF GOODS
7.1 The Goods shall be removed by the Customer at the time agreed between the parties. The Company may at any time by notice in writing to the Customer require the removal of the Goods within 14 days from the date of such notice or, in the case of perishable goods, 3 days.
7.2 Where the Customer fails to comply with Condition 7.1, or any payment from the Customer is overdue, the Company may, without prejudice to its other rights and remedies against the Customer, notify the Customer in writing that the Goods may be sold or otherwise disposed of if such payment is not made within 14 days from the date of such notice (or if applicable such Goods are not removed within the time stipulated by the Company). On expiry of the period, if such payment has not been made (or if applicable the Goods have not been so removed) the Company may surrender, sell or otherwise dispose of the Goods or any part at the Customer's entire risk and expense by an appropriate method at such price as it considers appropriate, and any proceeds of sale or disposal shall be remitted to the Customer after deduction of all expenses and all amounts claimed by the Company and any assignee of its invoices. The Company shall not be liable for any alleged failure to achieve a sufficient sale price for the Goods.
7.3 Notice or action by the Company under this condition shall not in itself terminate the contract between the parties unless the Company expressly states so.
7.4 The time periods in this Condition may be extended by the Company in its discretion.

FORCE MAJEURE
8. The Company shall be relieved of its obligations to the extent that their performance is prevented or delayed by, or their non-performance results wholly or partly from, the act or omission of the Customer or its agent or an Interested Party (including any breach by the Customer of these Conditions) or by storm, flood, fire, explosion, civil disturbance, governmental or quasi-governmental action, breakdown or unavailability of premises, equipment or labour, or other cause beyond the reasonable control of the Company.

DATA AND CONFIDENTIALITY

9.1 The Company may use data supplied by or on behalf of the Customer for any purpose appropriate in connection with the performance of the Company's obligations, the exercise of the Company's rights or for business planning by the Company;. The Company may share that data with any party providing services to the Company relevant to the provision of services to the Customer, and with any government authority where appropriate.

9.2 Subject to 9.1, the Company and the Customer shall each keep confidential information or data supplied by or on behalf of the other which is expressed to be confidential or which is of such a nature that it should clearly be regarded as confidential by a reasonable person.

TUPE AND SERVICE PROVISION CHANGE

10. Where there is a TUPE Transfer, the Customer will indemnify the Company against all liability and expense which the Company may incur in connection with:

10.1 the employment or the termination of employment, before the Effective Time, of any Employee;

10.2 any failure by the Transferor to comply with its legal obligations in respect of any of the Employees;

10.3 the transfer to the Company, by virtue of TUPE, of the employment of any person or the applicability of terms of employment, other than those previously notified in writing to, and previously accepted by, the Company;

10.4 any act or omission of the Transferor, or before the Effective Time, for which the Company becomes liable by virtue of TUPE; or

10.5 the Transferor's failure to comply with its obligations under regulation 13 of TUPE.

GENERAL

11.1 Each exclusion or limitation in these Conditions exists separately and cumulatively.

11.2 Signature on a delivery note is evidence that the Goods have been received in apparently good order save as noted

11.3 The Company may open up packaging to inspect Goods

11.4 Any notice shall be duly given if left at or sent by first class prepaid post to the last known address of the other party or by facsimile to the last notified number evidenced by a successful transmission record, or by email to the last address notified for the purpose of service; and shall be deemed to have been received if posted 2 working days after posting, and if sent by facsimile or email, one working day after sending subject to confirmation of successful transmission (fax) or delivery (email).

GOVERNING LAW

12 All contracts between the Company and the Customer and any claims relating to the Goods shall be governed by the law of England and disputes dealt with exclusively by the English courts.

DEFINITIONS

13 Terms used in these Conditions have the following meanings:

"Additional Party" means any employee, agent or sub-contractor of the Company, or anyone entitled to an indemnity, reimbursement or contribution from the Company in respect of a claim by an Interested Party.

"Company" means the party agreeing to provide the services and/or items under the contract

"Customer" means the party requesting the services and/or items under the contract (and if different, also the person to whom they are supplied).

"Date" means the 10th working day after the relevant notice is actually received by the Company

"Effective Time" means the time at which the employment of any person (or liabilities relating to that person) are transferred to the Company under TUPE

"Employee" means a person employed or previously employed by the Transferor and who is, or whose rights are, affected by the TUPE Transfer

"Goods" means goods (including any associated documents, packaging and equipment) to which the contract relates or which are in the possession of the Company.

"Interested Party" means the Customer and/or anyone with an interest in the Goods; any obligation of the Interested Party is borne jointly and severally.

"Limit" means a limit per tonne gross weight of that part of the Goods in respect of which a claim arises.

"Loss" includes (without limitation) loss (including theft), destruction, damage, unavailability, contamination, deterioration, delay, non-delivery, mis-delivery, unauthorised delivery, noncompliance with instructions or obligations, incorrect advice or information, loss or corruption of data, interference with or disruption of computer systems, breach of duty; and any event giving rise to any liability of an Interested Party to any other person or authority.

"Officer" includes a Director, Company Secretary, Partner, or member of an LLP

"Subcontractor" means a party engaged at the behest of the Company to perform some or all of the Company's obligations

"Transferor" means a transferor as defined by TUPE

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006

"TUPE Transfer" means a situation where the Company is a transferee as defined by TUPE as a result of providing services to or for the benefit of the Customer (or intending to do so)

"Waste" bears its general meaning and also means "Waste" and "Directive Waste" as defined legislatively.