

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

1. INTERPRETATION

1.1 In these Conditions, the following definitions apply:

"Business Day"	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
"Conditions"	the terms and conditions set out in this document as amended from time to time in accordance with clause 19;
"Contract"	the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions, details of which are overleaf;
"Customer"	the person or firm who purchases the Goods from the Supplier;
"Delivery Location"	the location set out in the Order or such other location as the Parties may agree;
"Force Majeure Event"	has the meaning given in clause 13;
"Goods"	means the Machines or Spare Parts required by the Customer and as set out in the Order;
"Machines"	means the machines sold by the Supplier which include, but are not limited to, concrete pumps, placing booms, batching plants, concrete recyclers and concrete mixers;
"Order"	the Customer's order for the Goods, as set out in the Customer's purchase order form or overleaf;
"Spare Parts"	any parts or components of the Machines as required by the Customer;
"Supplier"	SCHWING STETTER (UK) LTD (a company registered in England and Wales with company number 00412041).

1.2 In these Conditions, the following rules apply:

- 1.2.1 A "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

- 1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns;
- 1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.4 Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.5 A reference to "writing" or "written" includes faxes and e-mails.

2. **BASIS OF CONTRACT**

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer shall ensure that the terms of the Order are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the Parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract. Any descriptive matter issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures or those of the manufacturer of the Goods are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or any other contract between the Supplier and the Customer for the sale of the Goods.
- 2.5 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

3. **DELIVERY**

- 3.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows all relevant Customer and Supplier reference

numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

- 3.2 The Customer shall collect the Goods from the Delivery Location at any time after the Supplier notifies the Customer that the Goods are ready.
- 3.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 3.4 Any dates quoted for delivery are given in good faith based on current information but are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or; the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods; or the Customer's failure to provide appropriate facilities to take delivery of the Goods.
- 3.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods; or the Customer's failure to provide appropriate facilities to take delivery of the Goods.

4. **FAILURE TO TAKE DELIVERY**

- 4.1 If the Customer fails to take delivery of the Goods within 3 Business Days of the Supplier notifying the Customer that the Goods are ready for collection then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
 - 4.1.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
 - 4.1.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.2 If 10 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for

any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

5. DELIVERY BY INSTALMENTS

5.1 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment or terminate the Contract.

6. SUSPENSIONS OF DELIVERY

6.1 In the event that the Customer fails to make any payment due to the Supplier under the Contract, the Supplier reserves the right to suspend any further deliveries for Orders and to terminate the Contract for non-payment by the Customer.

7. QUALITY

7.1 The Supplier is merely a reseller of the Goods and only offers such warranty as is provided by the manufacturer of the Goods and not further or otherwise.

7.2 The Customer acknowledges and agrees that it is its sole responsibility to select Goods appropriate for its requirements and to satisfy itself that the Goods are suitable. The Supplier accepts no responsibility to the Customer if the Customer selects Goods which are not suitable for its needs.

7.3 If:

7.3.1 the Customer gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the Spare Parts do not comply with any warranty provided under clause 7.1; and

7.3.2 the Supplier is given a reasonable opportunity of examining such Spare Parts; and

7.3.3 the Customer (if asked to do so by the Supplier) returns the Spare Parts to the Supplier's place of business at the [Supplier's] cost;

the Supplier shall, at its option, repair or replace the defective Spare Parts.

7.4 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8. **TITLE AND RISK**

8.1 The risk in the Goods shall pass to the Customer on delivery of the Goods at the Delivery Location.

8.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:

8.2.1 the Goods; and

8.2.2 all other sums which are or which become due to the Supplier for sales of the Goods or any other products to the Customer.

8.3 Until title to the Goods has passed to the Customer, the Customer shall:

8.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;

8.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

8.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

8.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

8.3.5 notify the Supplier immediately if it becomes subject to any of the events listed in clause 11.2; and

8.3.6 give the Supplier such information relating to the Goods as the Supplier may require from time to time;

but the Customer may resell or use the Goods in the ordinary course of its business.

8.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 11.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

9. **PRICE**

- 9.1 The price of the Goods shall be the price set out in the Contract, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
- 9.2 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 9.2.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 9.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - 9.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 9.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be paid by the Customer when it pays for the Goods.
- 9.4 The price of the Goods is expressed exclusive of VAT which the Customer will pay at the rate prescribed at the date of the invoice.

10. **PAYMENT**

- 10.1 The Supplier may invoice the Customer for the Goods at any time after the Supplier notifies the Customer that the Goods are ready for collection.
- 10.2 The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice, unless otherwise agreed by the Supplier as set out in the Order.
- 10.3 Payment shall be made to the bank account nominated by the Supplier. Time of payment is of the essence.
- 10.4 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment ("the due date"), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

10.5 Notwithstanding clause 10.4, the Supplier may in the alternative claim interest at its discretion under the Late Payment of Commercial Debts (Interest) Act 1998.

10.6 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

11. CUSTOMER'S INSOLVENCY OR INCAPACITY

11.1 If the Customer becomes subject to any of the events listed in clause 11.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

11.2 For the purposes of clause 11.1, the relevant events are:

11.2.1 any distress or execution is levied on the Customer's property or if the customer has a receiver, administrator, administrative receiver or manager appointed over the whole or any part of its assets, becomes insolvent, compounds or makes any arrangement with its creditors, is the subject of a bankruptcy petition or order, is wound up or goes into liquidation, or if the Customer suffers any analogous proceeding under foreign law; or

11.2.2 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business.

12. LIMITATION OF LIABILITY

12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

12.1.2 fraud or fraudulent misrepresentation; or

12.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

12.1.4 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

12.2 Subject to clause 12.1:

12.2.1 the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with the Contract (including any losses that may result from the Supplier's deliberate personal repudiatory breach of the Contract; and

12.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by the Supplier's deliberate personal repudiatory breach shall not exceed 100% of the price of the Goods.

13. **FORCE MAJEURE**

13.1 Neither Party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

14. **ASSIGNMENT AND SUBCONTRACTING**

14.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

14.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.

15. **NOTICES**

- 15.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail.
- 15.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.1; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by by fax or e-mail, one Business Day after transmission.
- 15.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

16. **SEVERANCE**

- 16.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 16.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

17. **WAIVER**

- 17.1 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

18. **THIRD PARTY RIGHTS**

- 18.1 A person who is not a party to the Contract shall not have any rights under or in connection with it.

19. **VARIATION**

19.1 Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Customer.

20. **GOVERNING LAW AND JURISDICTION**

20.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the Parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales.

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