



SEVERN-LAMB UK LIMITED  
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## TERMS AND CONDITIONS – SEVERN-LAMB UK LIMITED

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

**Acceptance Certificate:** the acceptance certificate signed by the Parties by which the Buyer acknowledges that the Goods subject to these terms and conditions have been commissioned to the satisfaction of the Buyer and are fit for purpose.

**Buyer:** the person, firm or company who purchases the Goods from the Company details of which are set out in the Confirmation Order.

**Company:** Severn-Lamb UK Limited a company registered at Companies House under registration number 5308055 and whose registered office is at Tything Road Alcester Warwickshire B49 6ET

**Contract:** any contract, including any Confirmation Order, between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions and subject to the Incoterms 2000.

**Delivery Point:** the place where delivery of the Goods is to take place as set out in the Contract.

**Goods:** any goods to be manufactured and/or supplied to the Buyer by the Company (including any part or parts of them) and any services to be supplied by the Buyer to the Company as set out in the Contract.

**Incoterms 2000:** the International terms of trade as published by the International Chamber of Commerce under publication ICC 560

**Party(ies):** the Company and/or the Buyer.

**Confirmation Order:** the written confirmation order issued by the Company to the Buyer setting out specifically the Goods to be delivered to the Buyer and any special conditions agreed.

**Warranty Period:** one year from the date of the risk of the Goods passing to the Buyer under clause 6.1.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

### 2. APPLICATION OF TERMS

The Contract shall be subject to:

2.1 these Terms and Conditions;

2.2 the Incoterms 2000;

and to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document) and any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.

### 3. DESCRIPTION

The quantity and description of the Goods shall be as set out in the Contract.

### 4. DELIVERY

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods is in accordance with the Contract.

4.2 The Buyer may inspect the Goods at the Company's place of business following notice by the Company to the Buyer that the Goods are ready for delivery.

4.3 The Buyer shall have the right at his own cost to inspect the manufacturing progress of the Goods.

- 4.4 Time for delivery shall be of the essence.
- 4.5 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract.
- 4.6 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- 4.6.1 the Goods shall be deemed to have been delivered; and
- 4.6.2 the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.7 If the Company delivers the Goods by separate instalments, each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 4.8 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.
- 4.9 Without prejudice to the provisions of clause 9, the Goods shall be accepted by the Buyer on the date that the Buyer signs the Acceptance Certificate.

## 5. **NON-DELIVERY**

Subject to the Incoterms 2000 the Company shall not be liable for any non-delivery of Goods.

## 6. **RISK/TITLE**

- 6.1 Risk in the Goods shall pass to the Buyer upon collection from the Company's place of business or in accordance with the Incoterms 2000 as the case may be.
- 6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 6.2.1 the Goods; and
- 6.2.2 all other sums which are or which become due to the Company from the Buyer on any account.
- 6.3 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- 6.3.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- 6.3.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale; and
- 6.3.3 the Buyer's right to possession of the Goods shall terminate immediately if the Buyer is subject to any arrangement under the Insolvency Act 1986, or any equivalent arrangements in the Buyer's jurisdiction of residence.
- 6.4 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.5 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

## 7. **PRICE**

Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Contract.

## 8. **PAYMENT**

- 8.1 Subject to condition 8.4, payment of the price for the Goods is due in pounds sterling, in accordance with the terms of the Contract (which shall include value added tax or other sales tax where applicable) and upon production by the Company of a valid invoice.
- 8.2 Time for payment shall be of the essence and all payments shall be made by telegraphic transfer to the Company's bank account, details of which are set out in the Contract.
- 8.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 8.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

- 8.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 8.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 6% above the base lending rate from time to time of Lloyds TSB Bank, accruing on a daily basis until payment is made, whether before or after any judgment.
- 8.7 The Company shall have the right to cancel the Contract in the event of any non-payment by the Buyer of amounts due and owing to the Company under the Contract which remain unpaid for a period of 7 days after written notice of such non-payment by the Company to the Buyer.
- 8.8 If the Contract is terminated as a result of the Buyer's fault, the Buyer shall be obliged to pay to the Company a reasonable sum for the work carried out up to the termination date. Such amount shall include a reasonable profit element and shall be calculated by the ratio that the completed proportion of the work bears to the Contract as a whole. Any deposit or any sum paid in accordance with the Contract shall be forfeited by the Buyer in the event of any material breach by the Buyer.

## 9. QUALITY

- 9.1 The Company warrants that (subject to the other provisions of these conditions) on delivery, the Goods shall:
- 9.1.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
- 9.1.2 conform to the specification provided in the Contract.
- 9.2 The Company shall not be liable for a breach of any of the warranties in condition 9.1 unless:
- 9.2.1 the Buyer gives written notice of the defect to the Company within 5 days of the time when the Buyer discovers or ought to have discovered the defect; and
- 9.2.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods, at the cost of the Buyer
- 9.3 The Company shall not be liable for a breach of the warranties in condition 9.1 if:
- 9.3.1 the Buyer makes any further use of such Goods after giving such notice; or
- 9.3.2 the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or
- 9.3.3 the Buyer alters or repairs such Goods without the written consent of the Company.
- 9.4 Subject to condition 9.2 and condition 9.3, if any of the Goods do not conform with the warranties in condition 9.1 the Company shall at its option repair or replace such Goods (or the defective part of such Goods) provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.
- 9.5 If the Company complies with condition 9.4 it shall have no further liability for a breach of the warranties in condition 9.1 in respect of such Goods.
- 9.6 If operated in accordance with the Company's operating and maintenance instructions the Goods shall be fit for use as a fully operation ride, free from failure by reason of defective materials, workmanship, parts or design for the duration of the Warranty Period. In the event of any failure of the Goods within the Warranty Period, the Company agrees to repair or replace any defect in design, materials and/or workmanship, whether arising as a result of the Company's fault or of the Company's chosen sub contractors fault.
- 9.7 During the Warranty Period if the Buyer advises the Company in writing of a fault or a breakdown, the Company shall attempt, with immediate effect, to resolve such fault (if of any apparent nature) by way of the communication methods stated in clause 14.1. Only then if the fault remains or the fault is of a major nature, the Company at its own discretion shall either dispatch the appropriate maintenance and repair teams to the Buyer or appoint suitably qualified local maintenance personnel to resolve the fault.
- 9.8 If the Company fails to respond to the Buyer under clause 9.7 within 14 working days then the Buyer shall be entitled to engage such contractors necessary to remedy the defect and recover the reasonable cost thereof from the Company without prejudice to the Buyer's rights under clause 9.
- 9.9 The Company warrants that it shall be liable for the costs and expenses within the Warranty Period in connection with:
- 9.9.1 the disassembly of the Goods to correct any defects;
- 9.9.2 the removal of defective components or parts;
- 9.9.3 the installation of corrected components or new parts; or
- 9.9.4 the re-assembly of the Goods.
- 9.10 The costs and expenses in connection with return of faulty components or parts to the Company shall be at the Company's expense.

- 9.11 The Buyer warrants that it will use its reasonable endeavours to remedy any breach of clause 9.1 up to a maximum value of £2,000 (including cost of components and labour charges).
- 9.12 The Buyer shall notify the Company within 5 working days after the Buyer discovers any defect or ought to have discovered any defect in the Goods.
- 9.13 The Warranty Period shall not cover:
- 9.13.1 normal wear and tear resulting from the operation of the Goods;
- 9.13.2 maintenance parts of a minor nature including fuses, lights and lubricants; or
- 9.13.3 Goods that have not been installed, operated or maintained in accordance with the Company's instructions and operations and maintenance manual, including any technical bulletins issued by the Company, unless the Buyer proves that the claimed defect did not arise from improper installation, operation or maintenance.
- 9.14 During the Warranty Period if it shall become necessary for the Company or the Company's authorised representative to inspect the Goods, the Buyer shall afford to the Company access at a mutually convenient time to the Goods and the Buyer will co-operate fully in all respects with such inspection.

## 10. LIMITATION OF LIABILITY

- 10.1 Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 10.1.1 any breach of these conditions;
- 10.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- 10.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these conditions excludes or limits the liability of the Company:
- 10.3.1 for death or personal injury caused by the Company's negligence; or
- 10.3.2 under section 2(3), Consumer Protection Act 1987; or
- 10.3.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- 10.3.4 for fraud or fraudulent misrepresentation.
- 10.4 Subject to condition 10.2 and condition 10.3:
- 10.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price as set out in the Contract; and
- 10.4.2 the Company shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 11. ASSIGNMENT

- 11.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 11.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company such consent not to be unreasonably withheld or refused..

## 12. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 30 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

## 13. GENERAL

- 13.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 13.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness,

voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

- 13.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 13.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 13.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

#### **14. COMMUNICATIONS**

- 14.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or sent by electronic communication:
- 14.1.1 (in case of communications to the Company) for the attention of the Directors to its registered office or such changed address as shall be notified to the Buyer by the Company; or
- 14.1.2 (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.
- 14.2 Communications shall be deemed to have been received:
- 14.2.1 if sent by pre-paid first class post, six days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- 14.2.2 if sent by fax or electronic communication on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

#### **15. ARBITRATION**

- 15.1 In the event of any dispute or differences between the Company and the Buyer arising out of or in relation to or in connection with the Contract, both the Company and the Buyer shall use their reasonable efforts to settle such disputes or differences amicably by negotiation.
- 15.2 Any disputes or differences which cannot be amicably settled by negotiation between the Company and the Buyer shall be referred to arbitration to be conducted in the country of the Party who did not seek arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce.
- 15.3 The award rendered through arbitration under clause 15.2 shall be final and binding upon the Company and the Buyer.