

Credit Account Application

SMC Pneumatics (N.Z.) Ltd

Welcome to SMC, the world's largest manufacturer of pneumatic automation products.

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TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "SMC" shall mean SMC Pneumatics (N.Z.) Limited, or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing Goods and services from SMC.
- 1.3 "Goods" shall mean:
 - 1.3.1 all Goods of the general description specified on the front of this agreement and supplied by SMC to the Customer; and
 - 1.3.2 all Goods supplied by SMC to the Customer; and
 - 1.3.3 all inventory of the Customer that is supplied by SMC; and
 - 1.3.4 all Goods supplied by SMC and further identified in any invoice issued by SMC to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
 - 1.3.5 all Goods that are marked as having been supplied by SMC or that are stored by the Customer in a manner that enables them to be identified as having been supplied by SMC; and
 - 1.3.6 all of the Customer's present and after-acquired Goods that SMC has performed work on or to or in which goods or materials supplied or financed by SMC have been attached or incorporated.
 - 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Goods" shall also mean all goods, products, services and advice provided by SMC to the Customer and shall include without limitation the importing, exporting, household distribution and retail sale of pneumatic equipment, goods and accessories and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods by SMC to the Customer.
- 1.5 "Price" shall mean the cost of the Goods as agreed between SMC and the Customer and includes all disbursements eg charges SMC pay to others on the Customer's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by SMC from the Customer for the supply of Goods shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises SMC to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract.
- 3.2 The Customer authorises SMC to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Goods shall be deemed to be sold at the current amount as such Goods are sold by SMC at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods that is beyond the control of SMC between the date of the contract and delivery of the Goods.

5. PAYMENT

- 5.1 Payment for Goods shall be made in full on or before the 20th day of the month following the date of the invoice ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by SMC in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5 A deposit may be required.

6. QUOTATION

- 6.1 Where a quotation is given by SMC for Goods:
 - 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
 - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
 - 6.1.3 SMC reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Goods are required in addition to the quotation the Customer agrees to pay for the additional cost of such Goods.

7. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 7.1 Title in any Goods supplied by SMC passes to the Customer only when the Customer has made payment in full for all Goods provided by SMC and of all other sums due to SMC by the Customer on any account whatsoever. Until all sums due to SMC by the Customer have been paid in full, SMC has a security interest in all Goods.
- 7.2 If the Goods are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Goods shall remain with SMC until the Customer has made payment for all Goods, and where those Goods are mixed with other property so as to be part of or a constituent of any new Goods, title to these new Goods shall be deemed to be assigned to SMC as security for the full satisfaction by the Customer of the full amount owing between SMC and Customer.
- 7.3 The Customer gives irrevocable authority to SMC to enter any premises occupied by the Customer or on which Goods are situated at any reasonable time after default by the Customer or before default if SMC believes a default is likely and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated. SMC shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. SMC may either resell any repossessed Goods and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and credit the Customer's account with the invoice value thereof less such sum as SMC reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 7.4 Where Goods are retained by SMC pursuant to clause 7.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.
- 7.5 The following shall constitute defaults by the Customer:
 - 7.5.1 Non payment of any sum by the due date.
 - 7.5.2 The Customer intimates that it will not pay any sum by the due date.
 - 7.5.3 Any Goods are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods.
 - 7.5.4 Any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to SMC remains unpaid.
 - 7.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the Customer's assets.
 - 7.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
 - 7.5.7 Any material adverse change in the financial position of the Customer.
- 7.6 If the Credit Repossession Act applies to any transaction between the Customer and SMC, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

8. PAYMENT ALLOCATION

- 8.1 SMC may in its discretion allocate any payment received from the Customer towards any invoice that SMC determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by SMC, payment shall be deemed to be allocated in such manner as preserves the maximum value of SMC's purchase money security interest in the Goods.

9. DISPUTES AND RETURN OF GOODS

- 9.1 No claim relating to the Goods will be considered unless made within seven (7) days of delivery.
- 9.2 No Goods will be accepted for return without prior consent from SMC. The Goods will only be accepted if they are in a resalable condition (and be free of cost into SMC's store). The despatch number and/or invoice number must be quoted by the purchaser, as well as identifying the defect or reason for the return. SMC may at its discretion charge a restocking fee of up to 30% of the price of the Goods returned. However Goods specifically purchased, fabricated or machined at the Customer's request are not returnable.

10. LIABILITY

- 10.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon SMC which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on SMC, SMC's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 10.2 Except as otherwise provided by clause 10.1 SMC shall not be liable for:
 - 10.2.1 Any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods provided by SMC to the Customer; and
 - 10.2.2 The Customer shall indemnify SMC against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of SMC or otherwise, brought by any person in connection with any matter, act, omission, or error by SMC its agents or employees in connection with the Goods.

11. WARRANTY AND FACTORY SERVICE WARRANTY

- 11.1 SMC warrants the equipment manufactured by it to be free from defects in material and workmanship. Upon return to SMC, within one year of original shipment, SMC will repair or replace, at its option, any equipment which it determines to contain defective material or workmanship and will return said equipment to the Customer, FOB SMC delivery point. SMC shall not be obligated however to repair or replace equipment which has been repaired by others, abused, improperly installed, altered, or otherwise misused or damaged in any way. SMC will not be responsible for any dismantling, re-assembly or re-installation charges. This warranty is in lieu of other warranties, expressed or implied. SMC shall not be liable for any special, indirect, incidental or consequential damages, including damages claimed in connection with any rescission of this agreement by the Customer. SMC may, if specified, reduce or extend the period of warranty.
- 11.2 SMC warrants the parts, components and control cabinets and items manufactured by SMC and supplied in the performance of factory service (hereinafter called "replacement product"), to be free from defects in material and workmanship. SMC shall not be obligated however, to replace or repair any of the said replacement product which has been repaired by others, abused, improperly installed, altered or otherwise misused or damaged in any way. SMC will not be responsible for any dismantling, re-assembly or re-installation charges. Goods repaired by SMC or supplied to replace defective Goods, will continue the original warranty period, but will not extend the original warranty beyond the period of one year. Although SMC will endeavour to restore to operating condition Goods to be processed in accordance with a factory service agreement, it cannot warrant the effectiveness of such processing performed by it except as specifically provided for herein with respect to replacement equipment. SMC shall not be liable for any special, indirect, incidental or consequential damages, including damages claimed in connection with any rescission of a factory service agreement by the Customer.

12. CONSUMER GUARANTEES ACT

- 12.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods from SMC for the purposes of a business in terms of section 2 and 43 of that Act.

13. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 13.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for SMC agreeing to supply Goods and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to SMC the payment of any and all monies now or hereafter owed by the Customer to SMC and indemnify SMC against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

14. DELIVERY

- 14.1 SMC shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 14.2 All claims for errors or short delivery must be made within 7 days of delivery.
- 14.3 Shipping dates quoted by SMC are approximate only. Partial shipments may be made and invoiced upon completion of manufacture. If delivery is delayed at the request of the Customer, SMC may invoice Goods when it is prepared to make the shipment.
- 14.4 All Goods are supplied ex warehouse or factory at the Customer's risk. Insurance is at the Customer's risk.

15. CHANGE OF TERMS OF TRADE

- 15.1 SMC has the right to change any or all of its terms of trade at any time by giving (7) days notice in writing to the Customer.
- 15.2 Any credit limit approved by SMC may be reviewed by SMC from time to time at its sole discretion. The credit limit may be increased or reduced by SMC following the review and SMC will endeavour to inform the customer of any increase or reduction in their credit limit.
- 15.3 SMC may at any time, at its sole discretion, without notice to the Customer terminate the credit contract. Upon termination all amounts outstanding for Goods previously supplied to the Customer will become immediately due and payable by the Customer.

16. MISCELLANEOUS

- 16.1 Failure by SMC to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations SMC has under this contract.
- 16.2 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.3 The Customer is liable to notify SMC in writing of any change in the trading entity of the Customer and will be liable to complete a new application for credit.