

SERT-MST PLC TERMS & CONDITIONS

THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 9.2

- DEFINITIONS**
Buyer, you, yours: the person, firm or company who purchases the Goods from the Company.
Company, we, us: SERT-MST PLC.
Contract, any contract: between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions.
Delivery Point: the place where delivery of the Goods is to take place under condition 4.
Goods: any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).
- APPLICATION OF TERMS**
2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which you purport to apply under any purchase order, confirmation of order, specification or other document).
2.2 No terms or conditions endorsed on, delivered with or contained in your purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
2.3 These conditions apply to all our sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by one of our Directors. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of us which is not set out in the Contract. Nothing in this condition shall exclude or limit our liability for fraudulent misrepresentation.
2.4 Each order or acceptance of a quotation for Goods by you from us shall be deemed to be an offer by you to buy Goods subject to these conditions.
2.5 No order placed by you shall be deemed to be accepted by us until a written acknowledgement of order is issued by us or (if earlier) we deliver the Goods to you.
2.6 You will ensure that the terms of its order and any applicable specification are complete and accurate.
2.7 Any quotation is given on the basis that no Contract shall come into existence until we despatch an acknowledgement of order to you. Any quotation is valid for a period of 7 days only from its date, provided that the Company has not previously withdrawn it.
- DESCRIPTION**
3.1 The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.
3.2 All samples, descriptive matter, specifications and advertising issued by us and any descriptions or illustrations contained in our catalogues or brochures 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 and this is not a sale by sample.
- DELIVERY**
4.1 Delivery takes place either:
(a) at our premises within 7 days of us giving you notice that the Goods are ready for collection if you are collecting them; or
(b) at your premises or address specified by you (if we are arranging carriage).
4.2 If we are arranging carriage then all delivery times quoted are estimates only, and shall not be made of the essence by notice.
4.3 If we fail to deliver in a reasonable time, you may (by informing us in writing) cancel the Contract, however:
(a) you may not cancel if we receive your notice after the Goods have been despatched; and
(b) you may cancel the Contract, you can have no further claim under that Contract.
4.4 If you accept delivery of the Goods after the estimated delivery time, it will be on the basis that you have no claim against us for delay (including indirect or consequential loss of increase in the price of the Goods).
4.5 We may deliver the Goods in instalments and each instalment is treated as a separate Contract.
4.6 We may decline to deliver if:
(a) we believe that it would be unsafe, unlawful or unreasonably difficult to do so; or
(b) the premises (or access to them) are unsuitable for our vehicle.
4.7 If you refuse delivery then re-delivery will be subject to a re-delivery cost.
- RISK/TITLE**
5.1 The Goods are at your risk from the time of delivery.
5.2 Until you pay all debts you may owe us:
(a) all Goods supplied by us remain our property;

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(b) the premises (or access to them) are unsuitable for our vehicle.
4.7 If you refuse delivery then re-delivery will be subject to a re-delivery cost.
- RISK/TITLE**
5.1 The Goods are at your risk from the time of delivery.
5.2 Until you pay all debts you may owe us:
(a) all Goods supplied by us remain our property;

(b) you must store them so that they are clearly identifiable as our property;

(c) you must insure them (against risks that a prudent owner would insure them) and hold the policy on trust for us;

(d) you may use the Goods and sell them in the ordinary course of your business, but not if:
(i) we revoke that right (by informing you in writing); or
(ii) you become insolvent.

6. PRICE
6.1 Unless otherwise agreed by us in writing, the price for the Goods shall be the price set out in our price list published on the date of delivery or deemed delivery.

6.2 The price quoted excludes VAT (unless otherwise stated). VAT will be charged at the rate applicable at the time of delivery.

6.3 The price quoted includes delivery (unless otherwise stated).

6.4 Minimum order value for delivery is £500 (unless otherwise stated).

6.5 At any time before delivery we may adjust the price to reflect any increase in our costs of supplying and delivering the goods.

7. PAYMENT
7.1 You must pay in cash or cleared funds prior to delivery of the Goods unless you have an approved credit account.

7.2 If you have an authorised credit account then, subject to condition 7.6, payment of the price for the Goods is due in pounds sterling 7 days from date of invoice.

7.3 Time for payment shall be of the essence.

7.4 No payment shall be deemed to have been received until we have received cleared funds.

7.5 If you fail to pay us any sum due under the Contract on the due date then we may:
(a) suspend or cancel future deliveries;
(b) cancel any discount offered to you;

(c) charge interest at the rate set under the Late Payment of Commercial Debts (Interest) Act 1998:

(i) calculated (on a daily basis) from the date of our invoice until payment;

(ii) compounded on the first day of each month; and

(iii) before and after any judgement (unless a court orders otherwise).

(d) claim fixed sum compensation from you under section 5 of that Act to cover our credit control expenditure.

7.6 All payments payable to us under the Contract shall become due immediately on its termination despite any other provision.

7.7 You must make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless you have a valid court order requiring an amount equal to such deduction to be paid by us to you.

7.8 In addition to any other of our rights under these terms and conditions if a cheque that you send to us is returned unpaid by your bank or a direct debit we request is unpaid you will indemnify and keep us indemnified against all charges and costs that we may in respect of such returned cheque or direct debit.

8. WARRANTIES

8.1 We warrant that the Goods shall:

(a) comply with their description on our acknowledgement of order form; and
(b) be free from material defect at the time of delivery (as long as you comply with condition 8.3).

8.2 We give no other warranty (and exclude any warranty, term or condition that would otherwise be implied) as to the quality of the Goods or their fitness for any purpose.

8.3 If you believe that we have delivered goods which are defective in material or workmanship, you must:

(a) inform us in writing with full details as soon as possible; and
(b) allow us to investigate (we may need access to your premises and product samples).

8.4 We shall not be liable for a breach of any of the warranties in condition 8.1 if:
(a) you make any further use of such Goods after giving such notice; or
(b) the defect arises because you failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

(c) you alter or repair such Goods without our written consent.

8.5 If the Goods are found to be defective in material or workmanship (following our investigations) and you have complied with the conditions in clause 8.3 in full we will (at our option) replace the goods or refund the price.

8.6 If the Company complies with condition 8.5 it shall have no further liability for a breach of any of the warranties in condition 8.1 in respect of such Goods.

9. LIMITATION OF LIABILITY

9.1 Nothing in these conditions excludes or limits the liability of the Company:
(a) for death or personal injury caused by the Company's negligence; or
(b) under section 2(3), Consumer Protection Act 1987; or
(c) for any matter which it would be illegal for us to exclude or attempt to exclude our liability; or

(d) for fraud or fraudulent misrepresentation.

9.2 Subject to condition 9.1:
(a) our 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 Contract price; and
(b) we shall not be liable to you 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.

10. FORCE MAJEURE

10.1 If the Company is unable to perform its obligations to the Buyer (or able to perform them only at unreasonable costs), it may cancel or suspend any of its obligations without liability.

10.2 Examples of those circumstances include act of God, accident, explosion, war, terrorism, fire, flood, transport delays, strikes and other industrial disputes and difficulty in obtaining supplies.

(b) we shall not be liable to you 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. CANCELLATION

11.1 You may not cancel a Contract unless we agree in writing (and clauses 4.3(b) and 11.3 then apply).

11.2 If your Contract is cancelled (for any reason) then you must pay us for all stock that we may then hold (or to which we are committed) for the Contract.

11.3 We may suspend the Contract by written notice if:
(a) you fail to pay us any money when due (under the Contract or otherwise); or
(b) you or any item of your property becomes the subject of:

(i) any formal insolvency proceedings (examples of which include but are not limited to receivership, liquidation, administration, voluntary arrangements (including a moratorium) or bankruptcy);

(ii) Any application for any formal insolvency procedure;

(iii) Any application or procedure in another jurisdiction with similar effect or purpose; or
(c) you fail to honour any of your obligations under these terms.

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12. GENERAL

12.1 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.

12.2 If any of these terms are unenforceable as drafted:
(a) it will not effect the enforceability of any other of these terms; and
(b) if it will be enforceable if amended, it will be so amended.

12.3 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.

12.4 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.

12.5 No Contract will create any right, enforceable (by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not identified as the Buyer or Seller.

12.6 English Law is applicable to any contract made under these terms. The English and Welsh courts have non-exclusive jurisdiction.

12.7 Any notice which is to be served by a party under these terms shall be in writing and served by leaving it at or by delivering it to (by first class post or fax) the other party's registered office or principal place of business. All notices must be signed.

13. OFFICERS BOUND

13.1 If the Buyer is a company or a limited liability partnership then these terms and conditions will also be deemed to bind the officers of the company or the members of the limited liability partnership (as the case may be) and will be enforceable against those officers and members (as the case may be) as a separate collateral contract.

(b) you must store them so that they are clearly identifiable as our property;

(c) you must insure them (against risks that a prudent owner would insure them) and hold the policy on trust for us;

(d) you may use the Goods and sell them in the ordinary course of your business, but not if:
(i) we revoke that right (by informing you in writing); or
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(b) the defect arises because you failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

(c) you alter or repair such Goods without our written consent.

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4.5 We may deliver the Goods in instalments and each instalment is treated as a separate Contract.
4.6 We may decline to deliver if:
(a) we believe that it would be unsafe, unlawful or unreasonably difficult to do so; or
(b) the premises (or access to them) are unsuitable for our vehicle.
4.7 If you refuse delivery then re-delivery will be subject to a re-delivery cost.
- RISK/TITLE**
5.1 The Goods are at your risk from the time of delivery.
5.2 Until you pay all debts you may owe us:
(a) all Goods supplied by us remain our property;