

SES AUTOPARTS LTD – TERMS AND CONDITIONS OF SALES

1 APPLICABLE TERMS

- 1.1 Any quotation given by SES Autoparts Ltd of Alexandra House, Winchester Hill, Romsey, Hampshire, SO51 7ND (The “Seller”) is an invitation to the Buyer (the “Buyer”) to make an offer only and no order placed by the Buyer with the Seller in pursuance of a quotation or otherwise shall be binding on the Seller unless and until it is accepted in writing by the Seller’s acceptance of order form or despatch note or delivery note, or the goods are despatched.
- 1.2 The Seller’s acceptance for the Buyer’s order shall be conditional upon approval of the Buyer’s credit. Where such approval has not been given, cash must accompany the order.
- 1.3 Any contract made with the Seller for the sale of goods shall incorporate and be subject to these conditions and any representation or warranty, written or orally made or given prior to the contract is hereby expressly excluded and all brochures, specifications, drawings, catalogues, particulars, shapes, descriptions and illustrations, application guides and information, price lists and other advertising matter are intended only to present a general idea of the goods described therein.
- 1.4 In the event that no quotation is given by the Seller and the Seller has received an order from the Buyer then provided that the Buyer shall have notice of these conditions, in such circumstances all goods are sold subject to these conditions.
- 1.5 Unless otherwise agreed in writing, the Seller reserves the right to despatch or deliver goods of a modified design provided that any difference does not make the goods unsuitable for any purpose the Buyer has made known to the Seller.
- 1.6 The seller reserves the right to subcontract the fulfilment of the order including any delivery or installation or any part thereof.
- 1.7 The Seller will provide copies of invoices, advice notes and proofs of delivery on request from the Buyer.
- 1.8 The Seller reserves the right at its discretion and subject to prior notice to the Buyer to levy a charge for the provision of such copies.

2 THE PRICE

- 2.1 Prices payable for the goods shall be the amount shown on the Seller’s priced advice note.
- 2.2 The Seller may at any time revise prices to take into account any increase in the Seller’s costs (including but not limited to the cost of new materials, labour, transport or other overheads, any tax, duty or other law and variation in exchange rates). The Seller also reserves the right to levy a surcharge to cover increased costs arising from congestion charges, duties, fuel or other cost price increases.
- 2.3 Goods will be packed without additional charge at the discretion of the Seller, either in cartons or returnable cases. A charge in respect of the returnable cases will be invoiced unless returned to the Seller carriage paid within 20 (twenty) Business Days of delivery of the goods to the Buyer.
- 2.4 VAT will be charged at the rate applicable at the date of invoice, and unless otherwise specified any VAT and any additional duties, taxes and sales levies or surcharges will be added to the Invoice price.
- 2.5 In case of small orders the Seller shall be entitled to make a minimum order charge or to add a surcharge.

3 PAYMENT

- 3.1 Save as provided in Conditions 1, 2 and 5 hereof or unless agreed in writing by the Seller.
 - 3.1.1 Payment is due on shipment unless a buyer has been approved for credit in which case payment of invoices shall be made in full without deductions or set-off not later than the last day of the following month after the invoice date unless alternative terms have been agreed in writing by the Seller.
 - 3.1.2 The provision of any Credit Terms and any further extension of the due date for payment or acceptance of any variation to the method of payment by the Buyer from those detailed in clause 3.1.1 or agreed by the Seller may be withdrawn by the Seller at any time.
 - 3.1.3 Interest shall be payable at the option of the Seller on overdue accounts at an annual rate equivalent to 4% per annum above the published Base Rate of Barclays Bank PLC, to commence from the contractual due date for payment until receipt by the Seller of the full amount owing calculated on a daily.
- 3.2 The Buyer shall not be entitled to withhold or set-off payment, including by the issue of debit notes, for goods delivered or work done for any reason whatsoever.
- 3.3 In the event of a cheque not being cleared by the Buyer’s bank and being represented or returned to the drawer, the Seller will charge a fee of £25 for each cheque so returned to cover bank charges and administration cost.

4 CREDIT

- 4.1 This contract shall be subject to the provision that if at any time thereafter the Seller is advised of circumstances casting doubt on the Buyer's creditworthiness or satisfactory security for payment is not given on request, the Seller may require payment of the whole or part of the purchase price from the Buyer in advance and pending such payment the contract shall be suspended. In the event of such advance payment not being made within a reasonable period stipulated by the Seller, the Seller may cancel the Buyer's order without liability and the Buyer shall be responsible for any resulting loss to the Seller.

5 EXPORT SALES

- 5.1 Notwithstanding the provisions of Conditions 3, 6 and 9 hereof:
- 5.1.1 In any case where goods are sold CIF or FOB or on the basis of other international trade term the meaning of such term contained in incoterms as raised from time to time shall apply except where inconsistent with any of the provisions contained in these conditions in which case these conditions shall prevail.
- 5.1.2 Unless otherwise agreed the price for the goods shall be paid in cash prior to delivery.
- 5.1.3 Should the Buyer fail when requested by the Seller and within the time specified by the Seller to take any action necessary on its part for delivery and/or shipment of the goods then:
- 5.1.3.1 The Seller shall be entitled by way of delivery to store the goods in a warehouse at the expense and risk of the Buyer;
- 5.1.3.2 The price shall become immediately payable;
- 5.1.3.3 If payment is secured by letter of credit the Seller shall be entitled to payment on presentation of the copy sales invoice and warehouse receipt; and
- 5.1.3.4 The Seller shall be entitled after the expiration of 3 months from the date upon which the price became payable to dispose of the goods in such manner as the Seller may determine without accounting to the Buyer therefore.
- 5.1.4 Section 32 (2) of the Sale of Goods Act 1979 shall not apply. The Seller shall not be required to give the Buyer the notice specified in Section 32(3) of that Act.
- 5.2 In these conditions "incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of incoterms shall have the same meaning in these conditions, but if there is any conflict between the provisions of incoterms and these conditions, the latter shall prevail.

6 RISK

- 6.1 The risk in respect of all goods sold under the contract shall pass to the Buyer when the goods are delivered to the Buyer's nominated address notwithstanding agreement by the Seller to bear the cost of delivery or to deliver the goods itself, in any event the property in the goods shall not pass to the Buyer except as provided in clause 7 hereof.

7 TITLE RETENTION

- 7.1 Until the purchase price of the goods comprised in this or any other contract between the Buyer and the Seller shall have been paid or satisfied in full (if by cheque then only upon receipt of cleared funds):
- 7.1.1 The property in the goods comprised in this contract remain with the Seller (notwithstanding the delivery of the same and the passing of the risk therein).
- 7.1.2 The Buyer shall store the goods in such a way that they can be readily identified as being the Seller's property.
- 7.1.3 The Buyer shall on request inform the Seller of the precise location of each item of the goods identified where applicable by its serial number, by supplying the Seller at its expense within 5 (five) Business Days of its request with a written schedule of the said locations.
- 7.1.4 The Buyer may sell the goods as the Seller's agent in the normal course of the Buyer's business and may pass good title to the Buyer's customer being a bona fide purchaser for value without notice of the Seller's rights on the following conditions:-
- 7.1.4.1 The Seller may at any time revoke the Buyer's said power of sale in the circumstances set out in Clauses 3 and 4 of these conditions.
- 7.1.4.2 The Buyer's power of sale shall automatically cease if any of the circumstances set out in Clause 14 of these conditions occur.
- 7.1.4.3 The Buyer shall notify the Seller without delay of any attachment of the goods or actions by third parties which might infringe the Seller's title to the goods.

- 7.1.5 Upon determination of the Buyer's power of sale the Seller shall be entitled by itself its servants or agents to enter upon any of the Buyer's premises for the purpose of removing and repossessing such goods and the Seller shall be entitled to claim from the Buyer the costs and expenses incurred by the Seller in and ancillary to the process of such removal and repossession.
- 7.1.6 The Buyer shall insure all goods supplied by the Seller at their own expense and on behalf of the Seller against theft or damage howsoever caused, until the full price for those goods has been received by the Seller. If the Buyer shall not insure the goods or fail to supply details of its insurance policy on demand to the Seller the Buyer shall reimburse the Seller for the cost of any insurance which the Seller may reasonably arrange in respect of any of the goods during the whole or any part of the period from the date of its delivery of the goods until the date of payment to it of their full purchase price.
- 7.2 Nothing in these conditions shall:
- 7.2.1 Entitle the Buyer to return the goods or to delay payment thereof
- 7.2.2 Constitute or be deemed to have constituted the Buyer as the Seller's agent otherwise than for the purpose of this clause.
- 7.2.3 or render the Seller liable to any third party for any unauthorised representation or warranty made or given by the Buyer to such third party in relation to the goods:
- 7.2.4 Prevent the Seller from maintaining an action for the price notwithstanding that the property in the goods may not have passed to the Buyer.

8 TITLE RETENTION (SCOTLAND)

- 8.1 In the case of sales of goods in Scotland, clause 7.1 hereof shall not apply, and in place thereof there shall be substituted the following clause: "7.1 (a) until the purchase price of the goods comprised in this contract between the Buyer and the Seller shall have been paid in full."

9 DESPATCH/DELIVERY

- 9.1 Any dates given in the contract for despatch or delivery of goods shall constitute estimates of expectation only and shall not be binding unless the contract otherwise expressly provides and subject to the provisions of sub-clauses 9.4 and 9.5 below the Buyer shall accordingly accept delivery of the goods when tendered.
- 9.2 The method and route of despatch of the goods shall be selected by the Seller.
- 9.3 Unless expressly agreed the Seller may affect delivery in one or more instalments and where delivery is affected by instalments, each instalment shall be treated as a separate contract.
- 9.4 Subject to clause 2 deliveries shall be at the Seller's premises unless otherwise stipulated or agreed by the Seller in writing. Where delivery is affected otherwise than at the Seller's premises, to location in its normal delivery area, no additional charge will be made by the Seller provided delivery is affected by the Seller's normal means of distribution in its own vehicles. Where delivery is affected elsewhere or by any other means of distribution a charge for delivery will be made.
- 9.5 If not withstanding the Seller's best endeavours the Seller fails to despatch or deliver the goods by such date, such failure shall not constitute a breach of contract and the Buyer shall not be entitled to claim compensation for such failure or for any consequential loss or damage resulting there from.
- 9.6 Subject to the provisions of sub-clause 9.5 above, where despatch or delivery of the goods is delayed by more than 30 (thirty) Business Days beyond the date given in the contract, the Buyer shall grant the Seller a reasonable extension period and if upon the expiry of the extension period the goods have not been despatched or delivered, the Buyer shall be entitled to withdraw from the contract upon written notice and in such circumstances the Buyer shall pay at the contract rate for all goods sold by the Seller to the actual date of termination.
- 9.7 If at the date on which the Seller is ready to despatch or deliver the goods the Buyer delays acceptance thereof for any reason whatsoever, the goods will be stored by the Seller but the Buyer shall pay to the Seller an amount equivalent to what the Buyer would be liable to pay if the goods had in fact been despatched or delivered together with reasonable storage charges for the period of delay and the cost of any additional handling and transporting incurred. If on the expiry of 15 (fifteen) Business Days after the date on which the Seller is ready to despatch or deliver the goods the Buyer has not accepted the goods, the Seller reserves the right immediately to cancel the Buyer's order. This cancellation shall entitle the Seller to dispose of the goods and obtain from the Buyer compensation for loss of profit in addition to any other sums due to the Seller under these conditions.
- 9.8 Claims in respect of incomplete or incorrect supplies or in respect of damage or defects apparent from inspection must be notified to the carrier and to the Seller as soon as possible and in any event not later than 10(ten) Business Days after receipt of the goods at the place of destination.
- 9.9 Claims in respect of shortages of goods must be notified to the Seller as soon as possible and in any event not later than 2(two) Business Days after receipt of goods at the Buyer's premises.

- 9.10 Claims in respect of non-delivery of goods must be made as soon as possible and in any event within the 5 (five) business Days of the receipt by the Buyer of the Seller's invoice.

10 WARRANTY

- 10.1 The goods shall within 5 (five) Business Days after delivery thereof be inspected by the Buyer. The Buyer shall lodge with the Seller in writing any claims in respect of defects apparent upon such inspection within 5(five) business Days after the conclusion of the said inspection
- 10.2 Defects which are not detectable by an inspection within the said period shall be notified as soon as they are discovered but in any event no later than 12 (twelve) months unless otherwise stated by the seller or the manufacturer after the delivery of the goods to the Buyer.
- 10.3 At its option the Seller shall make good either by repair or replacement or renewal or by a refund of the purchase price of the goods defects which under proper storage and use appear in the goods within the time limits set out in Sub-Clauses 10.1 and 10.2 above and which arise solely from faulty material or workmanship provided that:-
- 10.3.1 The defective goods are returned to the Seller where the goods were delivered by the Seller's transport and in any other case, at the Buyer's expense.
- 10.3.2 Such defects exist and have not been caused by misuse, neglect, accident, improper storage, installation or handling, or by faulty repair or alteration or by the attachment or connection to the goods of any devices or accessories other than those distributed or officially recommended by the manufacturer or non-compliance with the manufacturer's instruction manual. If required by the Seller, such defects are confirmed by an appropriate technical evaluation.
- 10.4 The Seller's liability under Clause 10.3 hereof shall be in lieu of any warranties and conditions whether express or implied by statute common law or otherwise however, which warranties and conditions are hereby expressly excluded.
- 10.5 WITHOUT PREJUDICE TO THE GENERALITY OF THE FOREGOING, NOTHING HEREIN CONTAINED SHALL OPERATE TO EXCLUDE ANY WARRANTY OR CONDITION IMPLIED BY STATUTE IN THE EVENT OF THE BUYER DEALING AS A "CONSUMER" AS DEFINED BY SECTION 12 OF THE UNFAIR CONTRACT TERMS ACT 1977. IN SUCH A CASE THE BUYER'S STATUTORY RIGHTS ARE UNAFFECTED BY THESE TERMS AND CONDITIONS.
- 10.6 Save as aforesaid and save in respect of death or personal injury resulting from the negligence of the Seller its servants or agents, the Seller shall not be liable for any claim or claims for direct or indirect consequential or incidental injury loss or damage made by the Buyer against the Seller whether in contract or tort (including negligence on the part of the Seller its servants or agents) arising out of or in connection with any defect in the goods or work or any act, omission, neglect or default (whether or not the same constitutes a fundamental breach of the contract or breach of a fundamental term thereof) of the Seller its servants or agents in the performance of the contract.
- 10.7 The Seller's obligations contained in this Clause shall apply only to the Buyer but the Buyer shall not be prevented from having recourse to them solely by reason of the Buyer selling the goods in the normal course of its business to a third party.
- 10.8 The Buyer accepts as reasonable that the Seller's total liability for any goods or work which are defective shall be as set out in these conditions: in fixing that limit the Seller has had regard to the contract price of the goods, the nature of the goods the fact that the Seller is not the manufacturer and that the Buyer has selected the goods by reference to their manufacturer, the use they will receive and the resources available to each party including servicing facilities and insurance cover, to meet any liability.

11 FORCE MAJEURE

- 11.1 The Seller shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a direct or indirect result of the supply of the goods by the Seller being prevented, hindered, delayed or rendered uneconomic by reason of circumstances or events beyond the Seller's reasonable control including but not limited to act of God, or not, strike, lock-out, trade dispute or labour disturbance, accident, breakdown of plant or machinery, fire, flood, storm, difficulty or increased expenses in obtaining workmen, material or transport or other circumstances affecting the supply of the goods or of raw materials thereof by the Seller's normal source of supply or the manufacture of the goods by the Seller's normal means or the delivery of the goods by the Seller's normal route or means of delivery.
- 11.2 If a limited quantity of goods is available to the Seller by reason of such circumstances or events the Seller may apportion the available quantity to Buyers at its entire discretion.

12 **LIEN**

The Seller retains a general lien on any of the Buyer's equipment or other goods on the Seller's possession for any unpaid balance the Buyer may owe to the Seller.

13 **RETURNS**

The Seller may in its absolute discretion accept returns of goods from the Buyer for credit and returns of Old Core in respect of surcharges attached to the sale of goods. Subject always to the terms of the Seller's Returns Policy, a copy of which is available on request.

14 **INSOLVENCY AND BREACH OF CONTRACT**

In the event of any breach of these conditions not being remedied by the Buyer within 5 (five) Business Days of the Seller's written notice requesting such remedy or upon the buyer entering into any composition or arrangement with its creditors or passing a resolution for winding up the entering into liquidation (whether voluntary or compulsory) or any similar arrangement or a Receiver is appointed of the Buyer's assets, the seller shall be entitled without prejudice to its other rights hereunder to suspend all further deliveries and/or determine the contract or any unfulfilled part thereof and the Buyer shall be responsible for any resulting loss to the Seller.

15 **INTELLECTUAL PROPERTY**

15.1 Notwithstanding any implied warranty or condition as to title or otherwise in relation to the goods supplied hereunder, the Seller shall not be liable to indemnify the Buyer in respect of any claim made or threatened against the Buyer by a third party whether by legal proceedings or otherwise based on a right claimed under letters, patent, trade-mark, copyright (whether registered as a design or not) or breach of confidence unless the Seller shall have been promptly notified of the claim or threat and no admissions shall have been made by the Buyer such as would prejudice the defence of any such claim or threat.

15.2 In any event the Seller's liability shall be limited to damages and costs awarded by a court of competent jurisdiction in proceedings conducted in accordance with the wishes of the Seller or such sum as may be paid in compromises of such proceedings with the assent of the Seller.

15.3 The Buyer shall not do any act which is likely to cause confusion or to dilute or damage the reputation or image of the Seller or the Seller's goods and shall indemnify the Seller against any loss, damage and costs incurred as a direct or indirect result of a breach of this clause.

15.4 The Buyer shall indemnify the Seller against any and all liabilities, claims and costs incurred by or made against the Seller as a direct or indirect result of carrying out any work required to be done on or to the goods in accordance with the requirements or specifications of the Buyer involving any infringement or alleged infringement of any rights of any third party.

16 **GENERAL**

16.1 **Notices**

Any notice to be served under these conditions may be given orally in person or by telephone but must be confirmed in writing as soon as possible and in any event within 24 hours to the intended recipient either within the United Kingdom by prepaid first class post (when it will be deemed served at noon on the first Business Day after it was posted); or by facsimile transmission or electronic mail between the hours of 9.00 a.m. and 3.00 p.m. on a Business Day, (when it will be deemed served twelve hours after it was transmitted); or by personal delivery (when it will be deemed served when it is delivered). The address for service of notices shall be the party's address as shown in the contract or as subsequently notified in writing.

16.2 **Business Day**

For the purpose of these conditions "Business Day" means any day (other than a Saturday or Sunday) on which banks are generally open for business in the City of London.

16.3 **Waiver**

The waiver by the Seller of any breach of any term hereof shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any subsequent breach.

16.4 **Severance**

Should one clause hereof be invalid the provisions of the remainder hereof shall not be affected and In such case the parties hereto shall co-operate to agree replacement terms which are legally valid in order to achieve as nearly as possible the original intentions of the parties particularly regarding the economic effect of such clause.

16.5 **Titles**

The titles of the clauses hereof shall not be taken into account in the construction hereof.

16.6 **Governing Law**

Any contract in which these terms relate shall be governed by laws of the United Kingdom and the parties shall submit to the sole jurisdiction of the English Courts.

SUBJECT TO CHANGE WITHOUT NOTICE.