

<b>Policy:</b>	<b>Terms and Conditions for Purchase of Goods and Services by Stuga Machinery</b>
<b>Policy/Doc#:</b>	<b>SGP-002</b>
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## 1. Interpretation

In these terms and conditions (“**Conditions**”) of Contract the following definitions shall apply:

1.1 “**Buyer**” means Stuga Machinery Limited (company registration number 05744259) or Stuga Machinery LLP (company registration number OC344221) both of Edison Way, Gt Yarmouth, NR31 0NG.

1.2 “**Business Day**” means Monday to Friday except days that are public holidays in England and Wales.

1.3 “**Contract**” means these Conditions and includes any special terms and conditions agreed in writing between the Buyer and the Seller and all specifications, patterns, Seller’s samples, plans, drawings and other documents incorporated or referred to therein.

1.4 “**Contract Price**” means the price that is payable to the Seller by the Buyer for the Goods and or the charge for the services under the Contract for the full and proper performance by the Seller of its part of the Contract.

1.5 “**Delivery Address**” means the address stated on the Order.

1.6 “**Delivery Date**” means the date specified in the Order, or, if none is specified, within 10 days of the date of the Order.

1.7 “**Goods**” means all goods (including the instalment of the Goods or any part of them), materials or articles as described in the Order that the Seller is required to supply under the Contract.

1.8 “**Intellectual Property Rights**” means patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

1.9 “**Order**” means the Buyer’s purchase order for Goods and/or Services to which these Conditions are annexed.

1.10 “**Seller**” means the person so described on the Order who undertakes to supply the Goods to the Buyer as provided for in the Contract. Where the Seller is an individual or partnership the expression shall include the personal representatives of that individual or of the partners.

1.11 “**Services**” means the Services (if any) described in the Order including all activities, functions, associated goods and parts that the Seller is required to carry out or supply under the Contract.

1.12 **“Specification”** means the quantity, quality and description and any other specification for the Goods and Services, including any related plans and drawings that is agreed in writing by the Buyer and the Seller.

## **2 Basis of Contract and variation of Conditions**

2.1 The Goods and Services shall be supplied solely in accordance with these Conditions. No variation to these Conditions shall be valid unless agreed in writing between the Buyer and the Seller.

2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Seller seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.3 The Order constitutes an offer by the Buyer to purchase the Goods and Services in accordance with these Conditions.

2.4 The Order shall be deemed to be accepted on the earlier of:

2.4.1 the Seller issuing a written acceptance of the Order by issuing a sales order acknowledgement in accordance with clause 5.1; and

2.4.2 the Seller doing any act consistent with fulfilling the Order,

at which point the Contract shall come into existence.

## **3 Specification**

3.1 The Specification shall be set out in the Order.

3.2 All Intellectual Property Rights in any specifications supplied by the Buyer to the Seller or specifically produced by the Seller for the Buyer in connection with the Contract shall be the exclusive property of the Buyer and the Seller assigns with full title guarantee to the Buyer all such Intellectual Property Rights for no further consideration subject only to the payment of the Price.

3.3 The Seller shall not disclose to any third party or use the Specification, except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract.

3.4 The Seller shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

3.5 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services. The Buyer may require the Seller to show that the Goods bear a CE mark and may ask for a copy of the EC Declaration of Conformity.

3.6 The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during the manufacture, processing, or storage at the premises of the Seller or any third party prior to despatch, the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing. The Seller shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Seller's obligations under the Contract.

3.7 If, as a result of inspection or testing, the Buyer is not satisfied that the Goods will comply in all aspects with the Contract, and the Buyer so informs the Seller within 7 days of inspection

or testing, the Seller shall take all steps as are necessary to ensure compliance. The Buyer may conduct further inspections and tests after the Seller has carried out its remedial actions.

3.8 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

3.9 Unless otherwise specified all Goods supplied shall be new, of the qualities and kinds described and equal in all respects to the descriptions, specifications, patterns and samples that are relevant for the purpose of the Contract. The Goods shall be in strict compliance with the latest relevant British Standards or equivalent EU standards where such exist.

3.10 All goods shall be clearly marked or labelled with the Buyer part number. The Buyer prefers parts to be labelled on part packaging to avoid any contamination. Specific instructions maybe provided in certain instances and will be set out on the Order.

## **4 Containers and pallets**

The Seller shall collect without charge any reusable container within 21 days of delivery. Empty containers not removed within 21 days may be returned by the Buyer at the Seller's expense, or disposed of at the Buyers discretion.

## **5 Forms**

5.1 The Seller shall provide to the Buyer within a period of 3 Business Days from the placement of an Order a sales order acknowledgement. The sales order acknowledgement shall clearly display the Buyer's Order number, the Goods ordered (including the Specification), the agreed Delivery Date for the Goods and the agreed Contract Price.

5.2 Failure to provide a sales order acknowledgement to the Buyer in the specified period will result in the Order detail becoming final and the Buyer will not accept further amendment to the Specification or the terms of the Order.

## **6 Delivery**

6.1 The Seller shall ensure that:

6.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

6.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

6.1.3 if the Seller requires the Buyer to return any packaging material to the Seller, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Seller at the cost of the Seller.

6.2 The Seller shall deliver the Goods:

6.2.1 on the Delivery Date or up to 7 days prior to the Delivery Date;

6.2.2 at the Delivery Address; and

6.2.3 during the Buyer's normal business hours, or as instructed by the Buyer.

6.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Address.

6.4 Attempted delivery of goods prior to 7 days before the Delivery Date may be rejected by the Buyer unless agreed beforehand in writing. The Seller shall be liable to reimburse the Buyer or cover the costs of return shipping, packaging and storage.

6.5 Where the date of delivery of the Goods or performance of the Services is to be specified after the placing of the Order, the Seller shall notify the Buyer within 3 Business Days of the confirmed Delivery Date.

6.6 The time of delivery of the Goods and performance of the Services is of the essence of the Contract, the Seller shall be liable to reimburse the Buyer for any losses incurred as a result of late delivery.

6.7 If the Goods are to be delivered or the Services performed by instalments, the Contract will be treated as a single contract and not severable.

6.8 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

6.9 The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and performance of the Services.

6.10 The Buyer shall not be obliged to return to the Seller any packing or packing materials whether or not any Goods are accepted by the Buyer.

6.11 The Buyer's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

## **7 Property and Risk**

7.1 The Seller agrees to repair or replace free of charge Goods lost or damaged in transit provided that such loss or damage is advised to the Seller by the Buyer as soon as the problem becomes known, or as soon as is reasonably possible. Replacement goods shall be supplied in accordance with the timescale of the original Contract or as soon as practically possible. These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.

7.2 Title and risk in the Goods shall pass to the Buyer on completion of delivery to the Buyer in accordance with the Contract.

7.3 Where the Buyer issues goods, materials, tools and/or equipment ("**Buyer's Materials**") to the Seller as part of any Contract the Seller shall maintain and store these at their own expense and maintain them in good condition. If these items are lost, damaged or otherwise rendered unusable while in the possession of the Seller the Buyer reserves the right for the Seller to replace the items or reimburse the Buyer in full for replacement. The Seller acknowledges that all rights in the Buyer's Materials are and shall remain the exclusive property of the Buyer.

## **8 Rejection of Goods and Services**

8.1 The Goods and Services shall be inspected within a reasonable time after delivery/performance and may be rejected if found to be defective or inferior in quality to or differing in form or material from the requirements of the Contract, or if they do not comply with any term, whether express or implied, of the Contract.

8.2 The Buyer shall notify the Seller of any defect within a reasonable period of its discovery and shall give the Seller all reasonable opportunity to investigate and put right the defect.

8.3 The Buyer shall notify the Seller of any shortage or damage caused in transit found on delivery within 14 days of delivery.

8.4 The whole of any consignment may be rejected if a reasonable sample of the Goods taken indiscriminately from that sample is found not to conform in every material respect to the requirements of the Contract.

8.5 The Buyer's right of rejection shall continue irrespective of whether the Goods have been signed for and accepted. Taking delivery, inspection, payment or use shall not constitute acceptance, and the right of rejection shall cease within a reasonable time from the date on which the Buyer discovers a latent defect or other relevant breach of Contract.

8.6 Rejected Goods shall be removed by the Seller at its own expense with 14 days of notification. If the Goods are not removed, the Buyer may return the Goods at the Seller's risk and expense.

## **9 Force Majeure**

9.1 Neither party shall be liable to the other for any failure to perform its obligations under the Contract where such performance is rendered impossible by circumstances beyond their control (including without limitation strikes, lock outs, industrial disputes, failure or power supplies, riots, civil disturbances, war or warlike activity, fire, explosion, flood or natural causes).

9.2 Nothing shall limit the obligations of the Seller to use its best endeavours to fulfil its obligations under the Contract.

## **10 Price and Payment**

10.1 The price of the Goods and Services shall be as stated in the Order and, unless otherwise so stated shall be:

10.1.1 exclusive of an applicable value added tax (which shall be payable by the Buyer subject to a VAT invoice);

10.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax; and

10.1.3 no increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuations in rates of exchange or otherwise) without the prior consent of the Buyer in writing.

10.2 The Buyer shall be entitled to any discount for prompt payment, bulk purchase, or volume of purchase customarily granted by the Seller, whether or not shown on its own terms and Conditions of sale.

10.3 The Buyer will pay the price amount stated on the Order plus the applicable VAT.

10.4 All invoices must to be raised in arrears following completion of delivery. The Seller shall ensure that the invoice includes the date of the Order, the invoice number, the Buyer's Order number, the Seller's VAT registration number and any supporting documents that the Buyer may reasonably require.

10.5 The Buyer's preferred method of payment is via BACS into the Seller's nominated bank account.

10.6 The Contract Price shall include all royalties, licence fees or similar expenses in respect of the making, use or exercise by the Seller of any invention or design for the purpose of performing the Contract.

## **11 Assignment and sub-contracting**

11.1 Neither party shall assign the whole or any part of the Contract. The Seller shall not subcontract the productions or supply of any Goods without the previous consent in writing of the Buyer, such consent not to be unreasonably withheld or delayed.

11.2 Any act or omission of sub-contractor of the Seller shall, for the purposes of the Contract, be deemed to be the act or omission of the Seller and the Seller shall be liable to the Buyer thereafter as if such act or omission had been committed by the Seller itself.

## **12 Warranties, liability and insurance**

12.1 The Seller warrants to the Buyer that the Goods:

12.1.1 correspond with their description and any applicable Specification or sample;

12.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller or made known to the Seller by the Buyer expressly or by implication, and in this respect the Buyer relies on the Seller's skill and judgement;

12.1.3 will be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and

12.1.4 will comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

12.2 The Seller warrants to the Buyer that their Services shall be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to accept in all the circumstances.

12.3 Without prejudice to any other remedy, if the Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled to:

12.3.1 require the Seller to repair the Goods or supply replacement Goods or Services in accordance with the Contract within 5 Business Days or;

12.3.2 at the Buyer's sole option, and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.

12.4 The Seller shall indemnify the Buyer in full against all liability, loss, damage, costs, claims and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with;

12.4.1 breach of any warranty given by the Seller in relation to the Goods or Services;

12.4.2 any claim that the Goods infringe, or their use or resale infringes the Intellectual Property Rights of any other person except to the extent that the claim arises from compliance with any specifications supplied by the Buyer;

12.4.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;

12.4.4 any act or omission of the Seller's or its employees, agents, or sub-contractors in supplying, delivering, and installing the Goods;

12.4.5 any act or omission of any of the Seller's personnel in connection with the performance of the Services; and

12.4.6 any claim made against the Buyer by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Seller, its employees, agents or subcontractors.

12.5 During the term of the Contract and for a period of 10 years thereafter, the Seller shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Buyer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

12.6 This clause 12 shall survive termination of the Contract.

### **13 Confidentiality**

13.1 The Seller, the Buyer, their employees and agents at all times shall keep confidential and secret all information and other matters acquired by them in connection with the Contract (save to the extent that such information is required to be disclosed by law or is already in the public domain other than by reason of breach of this condition either by the Seller or the Buyer).

13.2 The Buyer is authorised by the Seller to disclose confidential information to persons and may be notified to the Seller from time to time to the extent only as is necessary for the purposes of auditing and collating information so as to ascertain a realistic market price for the Goods, such exercise being commonly referred to as "benchmarking".

13.3 This clause 13 shall survive termination of the Contract.

### **14 Termination**

14.1 The Buyer may at any time, terminate the Contract immediately by giving notice to the Seller, without compensation to the Seller in any of the following events:

14.1.1 if the Seller being an individual (or where the Seller is a firm, any partner in that firm) shall at any time become bankrupt or shall have a receiving order, administration order or interim order made against him, or shall make any composition or scheme of arrangement with or for the benefit of his creditors, or shall purport to do so;

14.1.2 if the Seller being a company shall pass a resolution, or the courts shall make an order, that the company shall be wound up (except for the purposes of amalgamation or reconstruction), or if an administrative receiver on behalf of a creditor shall be appointed, or if the courts shall make an administrative order, or if circumstances shall arise that entitle the courts or a creditor to appoint an administrative receiver, or which entitle the courts to make a winding-up order or administration order provided always that such termination shall not prejudice or affect any right of action or remedy that shall have accrued or shall accrues thereafter to the Buyer;

14.1.3 if the Seller is in breach of any of the these Conditions and shall have failed to remedy the breach within 30 days of receipt of a request in writing from the Buyer to remedy the breach, such request indicating that failure to remedy the breach may result in termination of this Contract;

14.1.4 if the Seller does anything which in the reasonable opinion of the Buyer brings or in its opinion is reasonably likely to bring the Buyer's reputation into disrepute.

14.2 On termination or expiry of the Contract, the Seller shall immediately return all Buyer's Materials. If the Seller fails to do so, then the Buyer may enter the Seller's premises and take possession of them. Until they have been returned or delivered, the Seller shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

14.3 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

14.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## **15 Publicity**

The Seller shall not advertise or publicly announce that it is supplying goods or undertaking work for the Buyer without the prior written consent of the Buyer, such consent not to be unreasonably withheld or delayed.

## **16 Law and jurisdiction**

16.1 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

16.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

## **17 Communications and notices**

17.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

17.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

17.1.2 sent by email to the address specified in the Order or sales order acknowledgement.

17.2 Any notice or communication shall be deemed to have been received:

17.2.1 if delivered by hand, at the time the notice is left at the proper address;

17.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

17.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 17.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.



17.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

17.4 All written and oral communications, all documents and the labelling and marking of all packages shall be in English.

## **18 Sales information**

The Seller shall keep at its normal place of business, accurate and up to date records of the amounts and value of Goods and/or Services sold by it to the Buyer under the Contract. These records will be made available to the Buyer upon request.

## **19 Computer equipment**

19.1 It is a condition of this Contract that all computer hardware, systems, plant and equipment containing embedded chips and processor employed in connection with the supply of Goods and/or Services is and will be capable of continuing to supply the Goods and/or Services in accordance with the Contract without any delay or interruption attributed to such programmes, hardware, systems plant and equipment.

19.2 Any failure by or delay in the Seller fulfilling its obligation under this Contract by reason of computer programs, computer hardware, systems, plant and equipment containing embedded chips and processors shall not constitute an event of Force Majeure.

19.3 The Seller indemnifies the Buyer against all actions, claims, demands, losses, liabilities, damage, costs and expenses incurred or sustained by the Buyer arising from any breach of this clause 19.

## **20 Data protection**

20.1 The Seller must protect personal data in accordance with the provisions and principles of all applicable laws relating to data protection and in particular the Seller must ensure compliance with the Buyers security arrangements and ensure the reliability of its staff that have access to any personal data held by the Buyer. In addition, if the Seller is required to access or process personal data held by the Buyer, the Seller shall keep all such personal data secure at all times and shall only process such data in accordance with instructions received from the Buyer.

20.2 The Seller shall indemnify the Buyer against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith made or brought by any person in respect of any loss, damage or distress caused to that person as a result of the Seller's unauthorised and/or unlawful processing or the Sellers destruction and/or damage to any personal data held by the Seller, its employees or agents.

## **21 Mediation**

If any dispute arises out of these Conditions the parties will use all of their respective reasonable endeavours to resolve it by negotiation. If negotiations fail to resolve such disputes the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. To initiate mediation a party shall give notice in writing to the other party requesting mediation of the dispute and shall send a copy thereof to CEDR asking CEDR to nominate a mediator. The mediation shall commence within 28 days of the Mediation Notice being served. Neither party will terminate such mediation until each party has made its opening presentation and the mediator has met each party separately for at least one hour.

Thereafter paragraph 14 of the CEDR Model Mediation Procedure will apply. Neither party will commence legal proceedings against the other until 30 days after such mediation of the dispute in question has failed to resolve the dispute.

## **22 Third Party Rights**

The Contract is intended and agreed solely for the benefit of the Buyer and the Seller and no third party shall acquire any benefit, claim or right of any kind whatsoever pursuant to, under, by or through this Contract.

## **23 Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 23 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **24 Entire agreement**

The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

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