



Standard Terms and Conditions

(Last Updated 10 May 2006)

1.0 DEFINITIONS

'Validity Period' means the period of 30 days from the date of the Quotation or such other date as may be advised in writing by the Seller.

'Buyer' means the person, firm or corporation to whom the Quotation is issued.

'Contract' means the agreement between the parties for the supply of the Goods constituted by the Quotation, these Terms and Conditions and the Buyer's firm order as confirmed by the Seller.

'Delivery Date' means the date specified in the Quotation.

'Delivery Point' means the address nominated as the place for delivery of Goods mentioned in the Quotation, or if no address is nominated then ex Seller's works.

'Goods' means the products to be designed, sold, manufactured, supplied, engineered or tested as described in the Quotation.

'GST' means Goods and Services Tax

'Quotation' means the Seller's quotation for the supply of Goods or Services incorporating these Terms and Conditions.

'Seller' means Structural Monitoring Systems Ltd ABN 94 067 556 245.

'Services' means all work and services to be provided to the Buyer by the Seller under this contract.

'Terms and Conditions' means these terms and conditions.

2.0 QUOTATIONS

A Quotation (prior to receipt of the Buyer's firm order by the Seller) is not an offer by the Seller to sell and may be withdrawn without notice.

These Terms and Conditions (which can only be waived in writing signed by the Seller) shall prevail over all conditions of the Buyer's order to the extent of any inconsistency.

These Terms and Conditions should be read in conjunction with the Quotation, and in the case of any inconsistencies between the provisions thereof, the Quotation shall prevail.

The Seller reserves the right to change any of the terms of a Quotation that is accepted by the Buyer outside the Acceptance Period.

Where an extant formal agreement exists between Buyer and Seller for the provision of goods and services described in the quotation or contract (such as a development agreement, licence agreement or supply agreement) then the Terms and Conditions of the extant formal agreement shall have precedence over these Terms and Conditions to the extent they are inconsistent.

3.0 ACCEPTANCE of QUOTATION

The Buyer may accept the Seller's quotation to sell good and services by any written notice, including but not limited to: telegraphic, email or facsimile communications which specifically refer to the Seller's quotation. Any such acceptance shall result in an agreement for the sale of goods and services specified in the quotation under these Terms and Conditions.

4.0 DELIVERY

The Delivery Date is the Seller's best estimate at this time and is subject to change prior to receipt of the Buyer's firm order by the Seller. The Seller will confirm the estimated Delivery Date then effective with its acknowledgment of the order.

If the Buyer after being informed that the Goods are ready for delivery fails to give appropriate instructions and to take delivery within seven (7) days of being so informed, then the Buyer shall pay for the Goods and the Seller shall be entitled to charge a reasonable sum for continued storage thereof or the costs incurred if the Goods are stored otherwise than at the Seller's premises.

The Seller shall not be liable for any delay in delivery of the Goods or for any loss or delay caused to the Buyer or its customers by late delivery and the Buyer shall not be entitled to rescind the Contract due to any delay in supply.

All Goods shall be delivered by the Seller to the Delivery Point and if the Seller or its servants or agents obtains from any person at the Delivery Point a receipt or signed delivery docket for the Goods then the Seller shall be conclusively presumed to have delivered the Goods in accordance with the Quotation.

5.0 PAYMENT

Unless otherwise agreed to in writing, payment for the Goods and Services shall be made within thirty (30) days of the date of the Seller's invoice. Payments due under this Contract shall be paid by the Buyer by direct bank deposit or telegraphic transfer in Australian dollars to the Seller at Perth, WA, Australia or as per the Seller's subsequent written instructions. If any such payments are in arrears for more than fifteen (15) days, in addition to any other actions the Seller may take to enforce prompt payment, the Buyer shall pay interest at a rate 5% percentage points above the overdraft indicator rate as recommended by the Commonwealth Bank of Australia from the date that the payments were due until the same are received by the Seller. All payments due under this Contract shall be made in full without any deduction for any and all present and future taxes, withholdings, duties, fees, levies or other similar charges whatsoever imposed on the Seller by any governmental authority of the country in which the Buyer is domiciled or any sub-division thereof (and shall be made by the Buyer from the country in which it is domiciled).

6.0 PRICES

The prices in the Quotation are for the Delivery Date and include an allowance for anticipated increases in costs. If on receipt of the Buyer's order the anticipated date of delivery is later than the then current Delivery Date, the Seller will advise the Buyer of any consequent change in price arising and that price will then be the Contract price.

The Seller reserves the right at the time of delivery to increase the Contract price if:-

- (a) force majeure or Buyer default cause any delay in delivery; or
- (b) increases in costs exceed the amount anticipated in the Contract price.



Unless otherwise stated in the Quotation, all prices quoted are net, exclusive of GST, sales tax and all other taxes and duties, which, excluding GST, will be separately invoiced at the applicable rate. If GST has application to the provision of Goods and/or Services by the Seller to the Buyer under this Contract, then the Contract price specified in the Quotation and any other amount or consideration expressed as payable elsewhere in this Contract by the Buyer shall be increased by an amount on account of the GST payable by the Seller in the respect of the Goods and/or Services, such amount to be calculated by multiplying the Contract price and any other amount or consideration by the Buyer by the applicable GST rate.

7.0 OTHER COSTS

All material and other work contributed by third parties will be charged to the Buyer.

In any case where the Seller passes on any payment made by the Buyer to a supplier to the Seller and the Goods for any reason are not supplied by that supplier, then the obligation of the Seller to return any such payment to the Buyer shall be limited to the amount (if any) which the Seller is able to recover from the supplier.

If the Seller agrees to deliver the Goods to a place designated by the Buyer, the Buyer shall pay in addition to the price of the Goods any costs or charges incurred by the Seller in effecting delivery, all prices quoted being ex-works unpacked. If packing is required, it will be charged extra.

8.0 CONFIDENTIALITY

The Seller shall hold confidential and shall not disclose to any third party without the Buyer's consent any confidential technical and commercial details related to the Contract which are received by the Seller in a permanently recorded form (eg: in writing) and clearly identified as being confidential, with the exception of information required by third parties to enable the performance of work. This obligation of confidentiality does not extend to any information which (a) is in the public domain; (b) becomes part of the public domain without breach of confidentiality obligations; (c) is in the Seller's possession and is not subject to obligations of confidentiality; (d) is independently developed by the Seller without reference to the Buyer's information; or (e) is not in documentary or permanently recorded form.

The Buyer shall observe any confidentiality requirements reasonably requested by the Seller from time to time relating to the Seller's confidential information, and the Buyer shall have no right to use such information in any manner or for any purpose.

9.0 LIABILITY AND WARRANTY

9.1 Development Products

Prototypes and other development products are sold "as is" and without any warranty whatsoever, express or implied.

9.2 Production Products

In the event of the Buyer alleging that the Goods and/or Services fail to achieve the standard or specification stated by the Seller in the Quotation, the Buyer shall forthwith give notice thereof in writing to the Seller. The Buyer shall pay for the Goods and/or Services in accordance with the terms of this Contract and the Buyer shall not be entitled to reject any such Goods until the Seller has had a reasonable opportunity to investigate and perform such further work upon the Goods as the Seller may consider necessary.

9.3 General Provisions

The Seller's liability for Goods and/or Services manufactured or provided by it is limited to making good any defects by repair, or at the Seller's option, by replacement within a period not exceeding 6 months after date of delivery, provided that:

(a) defects have arisen solely from faulty materials or workmanship;

(b) the Goods have not received maltreatment, inattention or interference; and

(c) defects are promptly brought to the attention of the Seller.

If all or any part of the Goods are sourced by the Seller from a third party the guarantee of the third party shall be accepted by the Buyer and is the only guarantee given to the Buyer in respect of the Goods. The Seller shall not be liable for and the Buyer releases the Seller from any claims in respect of faulty or defective design of any Goods supplied unless such design has been wholly prepared by the Seller and the responsibility for any claim has been specifically accepted by the Seller in writing and in any event the Seller's liability hereunder shall be strictly limited to the replacement of defective parts in accordance with the proviso referred to at the start of this clause.

Except as provided herein, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose as to design, assembly, installation, materials or workmanship or otherwise are hereby expressly excluded and, to the maximum extent permitted under any applicable law, regulation or ordinance, the Seller shall not be liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of the Seller's negligence or in any way whatsoever.

The Seller's liability for a breach of a condition or warranty implied by Division 2 of Part V of the Trade Practices Act 1974 (other than Section 69) is hereby limited to:

(a) in the case of goods, any one or more of the following:

(i) the replacement of the Goods or the supply of equivalent goods;

(ii) the repair of the Goods;

(iii) the payment of the costs of replacing the Goods or of acquiring equivalent goods;

(iv) the payment of the cost of having the Goods repaired; or

(b) in the case of services:

(i) supplying the Services again; or

(ii) the payment of the cost of having the Services supplied again.

The Seller's liability under Section 74H of the Trade Practices Act 1974 is expressly limited to a liability to pay to the Buyer an amount equal to:

(a) the cost of replacing the Goods;

(b) the cost of obtaining equivalent goods; or

(c) the cost of having the Goods repaired, whichever is the lowest amount.

Any Goods or parts replaced will be sent to the Buyer, if in the Australia carriage paid, or if outside Australia, FOB Australia port. Without limiting the Seller's obligations under relevant statutes, the Buyer shall at its own cost and expense indemnify, defend, save and hold harmless the Seller and its directors, officers and employees, and suppliers against any and all actions, claims, suits, product liability, expense or demands arising or which might be asserted at any time in the future, directly or indirectly, as a result of the testing, manufacture, sale, distribution or use by the Buyer of any results of the Seller's work performed under the Contract.



If the Goods are to be exported by the Seller, then the Buyer shall be deemed to have satisfied itself that they comply with any safety regulations which may be applicable to the Goods in the country where they will be used and the Buyer shall keep the Seller indemnified from the consequences of any breach of such regulations.

10.0 PROPERTY AND RISK IN GOODS

The risk of loss or damage to Goods shall pass to the Buyer when the Goods are delivered to the Buyer at the Delivery Point. Any shortage or damage must be notified to the Seller and the carriers within seven (7) days of delivery, failing which no claim will be entertained by the Seller.

Until all amounts owed by the Buyer to the Seller are fully paid: (a) the Seller retains legal and equitable ownership of the Goods;

(b) the Buyer is the fiduciary agent and bailee of the Seller, but such agency shall not extend to the giving of any warranties or conditions in respect of the Goods on behalf of the Seller;

(c) the proceeds of any sale shall be the property of the Seller and shall be paid to the Seller on request;

(d) the Buyer shall keep the Goods separate from its own, adequately stored and insured and shall not add to, modify or attach any other item to the Goods;

(e) the Buyer shall account to the Seller for all insurance proceeds in the event that the Goods are damaged or destroyed;

(f) the Seller shall have the right to enter the premises of the Buyer (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and

(g) the Seller may keep or resell any Goods repossessed under paragraph (f) of this clause.

11.0 ENGINEERING, TESTING OR DESIGN WORK

These Terms and Conditions apply to any engineering, design or testing work conducted by the Seller on behalf of the Buyer and the description of Goods and/or Services includes all drawings, specifications, test results and all other like information produced by the Seller for the Buyer.

Unless otherwise stated in the Contract or agreed to in writing by the Seller, all design rights, copyright and patent rights for all designs, specifications or products shall be and remain the property of the Seller and the Buyer shall have no right or licence to modify, adapt, manufacture, use and sell any products, or use any processes, which infringe upon any of the Seller's design rights, copyright and patent rights.

12.0 EXCUSABLE DELAYS

Neither the Seller nor the Buyer shall be liable for failure to perform under this Contract by reason of force majeure. For the purpose of these Terms and Conditions, force majeure means any act, omission or circumstance over which the party pleading force majeure could not reasonably have exercised control. However an obligation to make payments is never excused by force majeure.

13.0 TERMINATION

This Contract can be terminated by either party upon providing written notice of termination to the other party if that other party:

(a) fails to make any payment which pursuant to this Contract it is required to make to the other party and does not make that payment within thirty (30) days after being requested in writing by the other party to do so;

(b) commits or allows to be committed any breach or non-observance of any of the other obligations on its part to be performed and/or observed hereunder, and fails to remedy or to take effective action to remedy that breach or non-observance, so far as reasonably practical, within ninety (90) days after being requested in writing by the other party to do so; or

(c) threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration or ceases or threatens to cease conducting its business in the normal manner.

Termination is without prejudice to any rights of the parties accruing prior to termination.

14.0 OBLIGATIONS UPON TERMINATION

In the event that the Seller receives a notice of termination from the Buyer, the Seller shall, unless otherwise directed by the Buyer, immediately terminate all work under the Contract and duly submit to the Buyer its termination claim.

The Buyer shall pay to the Seller any amounts then due and owing to the Seller for Goods and/or Services delivered in accordance with the Contract, the Quotation price for further completed Goods and/or Services to be delivered to the Buyer in accordance with the termination of the Contract, and any other relevant costs which the Seller has incurred up to and resulting from the termination of the Contract in respect of the provision of the Goods and/or Services including the cost for any work in progress by the Seller or by any supplier to the Seller.

Upon settlement by the Buyer of the Seller's termination claim, the Seller shall deliver to the Buyer all work for which the Seller has received payment.

15.0 GENERAL

15.1 Governing Law - This Contract is governed by, and shall be construed and interpreted in accordance with, the laws in force in Western Australia. Notwithstanding the above, this Contract is based on a climate of mutual confidence. Both parties hereto will make every effort to reach an amicable settlement of any differences of opinions that may arise. In the event that understanding proves impossible to reach, recourse may be had to an ordinary court of law as specified above.

15.2 Waiver - A waiver by the Seller of a breach of any provision of the Contract shall not constitute a waiver of any other breach of that provision or any other provision.

15.3 Severance - If any provision of the Contract is determined to be void by any court then that determination shall not affect any other provision of this Contract which shall otherwise remain in full force and effect.

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