

SMC CORPORATION OF AMERICA  
STANDARD TERMS AND CONDITIONS OF SALE  
INTERNATIONAL SALES

1. Definitions. "Seller" shall mean SMC Corporation of America. "Buyer" shall mean any party who contracts to purchase Goods from Seller, as indicated on a purchase order or an order acknowledgment. "Goods" shall mean those goods and/or related services ordered by Buyer from Seller pursuant to a purchase order accepted by Seller.

2. Terms of Purchase Order Acceptance and Complete Agreement.

a. Acceptance. Buyer's order for Goods is binding only when accepted in writing by an authorized representative of Seller, and is accepted subject to all of Seller's Standard Terms and Conditions of Sale, which constitute the complete agreement between the parties. Buyer's acceptance of delivery of the Goods evidences Buyer's acceptance of all of Seller's Standard Terms and Conditions of Sale.

b. No Acceptance. Seller's performance under any Buyer purchase order or order acknowledgment does not constitute an acceptance of any provision of any Buyer purchase order that is different from or additional to the Seller's Standard Terms and Conditions of Sale, and any such different or additional provisions are hereby expressly rejected and are void.

3. Shipment. All Goods are sold CIF Port of Destination. The method and route of shipment shall be as mutually agreed in each accepted purchase order. Seller shall tender delivery of all Goods to a carrier for transportation to the port of destination designated in an accepted purchase order. All costs of transportation, including, without limitation, taxes and standard insurance, shall be assessed by Seller and borne by Buyer unless otherwise agreed to in writing by Seller. Seller shall invoice Buyer for all shipping related costs. All risk of loss shall pass to Buyer when the goods are delivered to the port of destination. Delivery and acceptance shall not be affected by a delay on the part of Buyer in accepting delivery. Shipment of Goods held by reason of Buyer's request or inability to receive Goods will be at the risk and expense of Buyer. Claims for shortages in shipment shall be deemed waived by Buyer unless made in writing to Seller within thirty (30) days from date of invoice.

4. Taxes and Fees. Unless expressly stated and agreed to in writing by Seller, quoted prices do not include shipping and handling charges, sales, use, excise or similar taxes or duties. Buyer shall pay these taxes directly if the law permits or shall reimburse Seller if Seller is required to collect and pay them.

5. Changes in Cost. Any change in insurance premiums, destination, or other shipping charges, including fluctuations in freight, which may be established after the date of the Seller's order acceptance, shall be at the expense of Buyer.

6. Limited Warranty and Limitation of Remedy. Seller warrants that the delivered Goods shall conform to the grade and quantity specified in the order acknowledgment. If the sale is based upon a sample, the sample shown by Seller to Buyer was for demonstration purposes only, and Seller makes no warranty that the Goods delivered shall conform to the sample; conformity of the Goods to the sample is not a part of the basis of the bargain between Seller and Buyer. If the order includes Goods which have been fabricated in accordance with drawings approved or supplied by Buyer, those goods are only warranted to be in substantial compliance with the specifications of any such drawings. The sole and exclusive remedy of the Buyer for any liability of Seller of any kind, including (a) warranty, express or implied, whether contained in the terms and conditions hereof or in any terms additional or supplemental hereto, (b) contract, (c) negligence, (d) tort, or (e) otherwise, is limited to Seller's repair or replacement, CIF Port of Destination, of those Goods the examination of which by Seller

reveals material defects during the warranty period or, at Seller's option, a refund to Buyer of the money paid to Seller for such Goods. The warranty period shall begin on the date of purchase shown on Seller's packing list and shall continue for a period of one (1) year therefrom for all KV2 Series and TIV Series Goods, and for a period of one (1) year therefrom for all other Goods. This limited warranty shall not extend to any Goods that have been modified, disassembled, altered, changed, damaged, misused, repaired, misapplied or negligently maintained in any manner. EXCEPT FOR THE EXPRESS LIMITED WARRANTY STATED HEREIN, SELLER DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE GOODS, EXPRESS OR IMPLIED, INCLUDING ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7. Limitation of Liability. SELLER'S LIABILITY SHALL BE LIMITED TO THE COST OF REPLACING DULY REJECTED GOODS TO THE POINT OF DELIVERY AS SPECIFIED IN SELLER'S ORDER ACKNOWLEDGMENT WITHIN A REASONABLE PERIOD OF TIME FOLLOWING PROPER AND TIMELY REJECTION BY BUYER. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO BUYER FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES, OF ANY NATURE WHATSOEVER, ARISING FROM NONCONFORMITY OF GOODS, DEFECTIVE GOODS, OR DELAY IN SHIPMENT, OR ANY OTHER BREACH BY SELLER. Buyer agrees to indemnify and hold Seller harmless from and against all liabilities, claims, or demands of third parties of any kind relating to the Goods and their use arising after shipment of the Goods.

8. Rejection of Goods. A rejection of the Goods for non-conformity, or a claim of shortages and/or damaged material by Buyer, shall not be effective unless it is made, and written notice thereof is given to Seller, within thirty (30) days after the Goods arrive at the destination specified in the Seller's order acknowledgment. Written notice of rejection of Goods shall be delivered to Seller pursuant to Seller's Rejection of Goods Claim Policy in effect from time to time. A current version of Seller's Rejection of Goods Claim Policy is available at [www.smcusa.com](http://www.smcusa.com). Buyer, at its sole cost and expense, shall deliver the rejected Goods to Seller at the location specified by Seller. Seller reserves the right to inspect the rejected Goods and to determine lack of conformity in its sole discretion.

9. Failure to Take Delivery. If Buyer fails to take delivery of the Goods, or any part thereof, the Goods not delivered shall be held at Buyer's sole risk in all respects. Seller, acting as Buyer's agent and at Buyer's expense, may thereafter store, insure and/or otherwise protect such Goods or may resell same for Buyer's account. The delivery date(s) quoted are based on Seller's best estimate of a realistic time when delivery to the carrier will be made, and are subject to confirmation at time of acceptance of any resulting order. Seller reserves the right to make either early shipment or partial shipments and invoice Buyer accordingly.

10. Title and Risk of Loss or Damage. Title, risk of loss and/or damage shall pass to Buyer when the Goods are delivered to the port of destination designated in the applicable accepted purchase order.

11. Payment Terms. All payments are due net thirty (30) days from date of invoice, unless otherwise specified by Seller. Buyer's failure to make payment when due will be a material breach of the order and these Terms and Conditions. Amounts unpaid after such date shall bear interest from the date of the invoice at a rate of one and one-half percent (1.5%) per month, or eighteen percent (18%) per annum. Seller shall be entitled to reimbursement from Buyer for all costs and fees, including reasonable attorneys' fees, incurred by Seller in the collection of any overdue amounts. Seller,

at its sole option and without incurring any liability, may suspend its performance until such time as any overdue payment is made or Seller receives assurances, adequate in Seller's opinion, that the payment will be promptly made. In the event of such suspension of performance by Seller, there will be an equitable adjustment made to the remaining delivery schedule and order pricing to reflect the duration and cost resulting from such suspension. Buyer may only suspend the order upon Seller's written consent. In the event of such Buyer suspension, the delivery time will be changed, taking into account the suspension, and Buyer will promptly pay Seller for all costs, including related overhead costs, resulting from such suspension.

12. Cancellation. Except as otherwise expressly provided in the Seller's order acknowledgment, the Order shall be cancelled only by mutual written consent of the parties. Notice is hereby given that Seller shall not consent to cancellation if Buyer has bound itself to purchase the Goods. If Buyer is in default by failure to pay any previous invoice within credit terms at the expected date of shipment of the Goods or any part thereof, or if Seller has received any adverse credit information about Buyer, Seller may delay shipment and/or cancel the unshipped balance of the Goods without liability. In the event of U.S. or foreign government intervention, trade restrictions, and/or quotas, which may delay or prevent delivery of the Goods or any part thereof, Seller, at Seller's option, may cancel the unshipped balance of the Goods without liability. In the event any of the Goods shall become subject to any governmental fees or duties not presently in effect or to any increase in any existing fee or duty, including any antidumping duty or countervailing duty, Seller shall have the right to cancel the unshipped balance of the Goods without liability.

13. Returns. Returns for credit are not allowed without SMC Corporation's prior written consent. Only unused standard products (as defined by SMC) in original packaging and suitable for resale will be considered for credit. Requests to return product must be submitted within 120 days of the original invoice date. Special order products (including but not limited to non-stocked items, specifically designed products, non-standard length cylinders, etc.) are not returnable for credit. Credit will be based on price at the time of original invoice. All returns will be assessed a 20% restocking fee, however SMC reserves the authority to adjust to a higher restock percentages if needed due to various concerns, such as higher than normal inventory levels, discontinued series, or weak invoice history. A minimum dollar amount of \$10 per invoice line will be required. All return shipping charges must be prepaid by the Buyer. Product not accepted for credit (such as used or damaged products, or products with missing accessories or packaging materials) will be returned freight collect to the Buyer.

14. Default. If Buyer breaches or is otherwise in default under the order acknowledgment or under any other contract between the parties hereto, Seller at its sole option, may defer delivery of the Goods until the default is cured, or may treat the default as a repudiation by Buyer of the Order in its entirety, resell the Goods and hold Buyer liable for such damages as Seller may incur, including consequential and incidental damages. For purposes hereof, Buyer's insolvency shall be a default.

15. Seller's Lien. Until the unpaid contract price and any other amounts payable by Buyer to Seller under the order acknowledgment are paid in full, Seller shall have a lien on the Goods for the unpaid amounts. Buyer hereby grants to Seller a security interest in the Goods to secure payment of such amounts.

16. Force Majeure. Seller shall be free from any liability for delay or failure in shipment arising from strikes, lockouts, labor troubles of any kind, accidents, perils of the sea, fire, earthquake, civil commotion, terrorist acts, war or consequences of war, government acts, restrictions or requisitions, failure of manufacturers or suppliers to deliver, bankruptcy or insolvency of manufacturers or suppliers, suspension of shipping facilities, act or default of carrier or any other contingency of whatsoever nature

beyond Seller's control affecting production, transportation to boarding point, loading, forwarding or unloading at destination of the Goods, including disturbances existing on the date of the order acknowledgment. In such a situation, if shipment or delivery is not made during the period contracted for, Buyer shall accept delivery under the order acknowledgment when shipment is made; provided, however, Buyer shall not be obligated to accept delivery if shipment is not made within a reasonable time after the cessation of the aforementioned impediments or causes.

17. Integration. The Seller's order acknowledgment, packing slip and these Standard Terms and Conditions of Sale supersede all prior negotiations, representations, agreements, quotes and catalogues, whether written or oral, and shall not be modified, supplemented or interpreted by evidence of course of dealing, course of performance or usage of trade. To the extent the provisions hereof conflict with any prior or subsequent agreement of the parties, these Standard Terms and Conditions of Sale will control.

18. Assignment. Buyer acknowledges that no purchase order or order acknowledgement, nor the obligations represented thereby, may be assigned or delegated, in whole or in part by Buyer, without the prior written consent of Seller. Buyer's unauthorized attempt to assign or delegate any rights or obligations shall serve as grounds for termination of the order.

19. Severability. The Parties agree that each and every paragraph, sentence, clause, term and provision of these Terms and Conditions of Sale is severable and that, in the event any portion hereof is adjudged to be invalid or unenforceable, the remaining portions shall remain in full force and effect to the fullest extent permitted by law.

20. Governing Law; Venue. All matters involving the validity, interpretation and application of these Standard Terms and Conditions of Sale will be controlled by the laws of the State of Indiana, United States of America, without regard to the United Nations Convention on International Sales of Goods. Notwithstanding the foregoing, all terms and conditions herein relating to transportation costs and risks shall be governed by Incoterms 2000. Any dispute relating to this Agreement will be referred to, and finally determined by, binding arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce in force at the time. The arbitration panel shall consist of three arbitrators. The place of arbitration shall be Indianapolis, Indiana, USA. The language to be used in the arbitration shall be English. The arbitration decision shall be final and binding upon the parties and any award granted pursuant to such decision may be entered forthwith in any court of competent jurisdiction. This arbitration clause and any award rendered pursuant to it shall be governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitration Awards signed in New York on 10 June, 1958.

1223065\_2