

TERMS AND CONDITIONS OF SALE

01. DEFINITIONS

In these terms and conditions of sale (the “Terms”) unless the contrary intention appears:

“**Additional Charges**” means all delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other governmental imposts and all money other than the Purchase Price that arises out of the sale of the Goods.

“**Company**” means Sumitomo (SHI) Hansen Australia Pty Ltd (ABN 66 096 602 183) of 181 Power Street, Glendenning, NSW 2761 Australia

“**Purchaser**” means the person whose order for the Goods is accepted by the Company.

“**Purchase Price**” means the list price for the Goods as charged by the Company at the date of delivery or such other price as may be agreed by the Company and the Purchaser prior to the delivery of the Goods.

“**Goods**” means the products sold to the Purchaser by the Company

02. GENERAL

2.1 These Terms govern all contracts for the sale or supply of Goods by the Company unless otherwise agreed in writing.

2.2 These standard trading conditions contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.

2.3 No waiver of any of these terms and conditions or failure to exercise a right or remedy by the Company will be considered to imply or constitute a further waiver by the Company of the same or any other term, condition, right or remedy.

2.4 The Purchaser must keep confidential all information including these Terms, the price of the supply of the Goods, and any information which the Company may reasonably consider is confidential, unless the Purchaser is required by law to disclose such information or the information has become public information or with prior written consent of the Company.

03. ORDERS

3.1 An order given to the Company is binding on the Company and the Purchaser, if:

- a) a written acceptance is signed for or on behalf of the Company; or
- b) the Goods are supplied by the Company in accordance with the order.

3.2 An acceptance of the order by the Company is then to be an acceptance of these Terms by the Company and the Purchaser, and these Terms will override any conditions contained in the Purchaser’s order. The Company reserves the right to accept a part only of any order by notifying the Purchaser in writing or by delivering the Goods to the Purchaser. No order is

binding on the Company until accepted by it.

3.3 An order placed with the Company and accepted in whole or in part by the Company cannot be cancelled by the Purchaser without obtaining the Company’s written consent, which it may refuse in its absolute discretion. If the Company does not refuse it will be on such terms as the Company may stipulate.

04. PRICE AND TERMS OF PAYMENT

4.1 The Purchaser must pay the Purchase Price to the Company.

4.2 The Purchase Price quoted remains firm for 60 days but is subject to change without notice. The Purchase Price may be adjusted to the Purchase Price in effect at the time of shipment.

4.3 In addition to the Purchase Price, the Purchaser must pay the Additional Charges.

05. DELIVERY

5.1 Delivery dates given by the Company are approximate only. The Company relies on prompt receipt of all necessary information regarding the order from the Purchaser.

5.2. The Company will use its best efforts to meet the estimated date but accepts no liability for failure or delay in delivery of the Goods and whatsoever.

5.3 The Purchaser is not relieved of any obligation

to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by installments at the discretion of the Company.

06. DELIVERY COSTS AND PASSING OF RISK

6.1 The Purchaser must pay for costs of the delivery of Goods to the Purchaser.

6.2 Risk in the Goods will pass to the Purchaser on the Goods being loaded to leave the premises of the Company. The Company will not in any circumstances accept liability for damage, shortage or loss during transit.

When the supply of Goods under these Terms is spare parts the following applies:

6.3 The Purchaser must pay for all costs of delivery of spare parts to the Purchaser’s premises or other location nominated by the Purchaser.

6.4 Risk in the Goods will pass to the Purchaser on the Goods being dispatched at the premises of the Company or at the premises of the originating factory or at the premises of any interstate spare parts supplier to the Company. The Company will not in any circumstances accept liability for damage, shortage or loss during transit.

07. RETURN OF GOODS

7.1. Other than in the event of a warranty or consumer guarantee claim, return of Goods will not be accepted by the Company, except by

prior agreement in writing with the Company.

7.2 To the extent where it is permissible at law for the Company to withhold its approval, the Company will only consider approving the return of the Goods to the Company in circumstances where:

- a) the Purchaser has given to the Company its notice of the intended return of the Goods within thirty (30) days from date of invoice;
- b) the Goods to be returned are in original condition and working order;
- c) the Purchaser covers all cost of transportation associated with the return of the Goods to the Company;
- d) the Purchaser covers all charges that may be levied by the Company to cover any handling, inspection or reconditioning costs.

8.4 For Goods that are made to order and which are approved for return to the Company by the Purchaser will be credited to the Purchaser less any cost incurred by the Company in having to convert the made to order Goods to be standard Goods.

7.3 Notwithstanding all the above, Goods returned for credit and approved will be subject to a 25% re-stocking fee.

08. CANCELLATION CHARGES

The Purchaser will be liable for any charges that may be applicable for orders cancelled.

09. TERMS OF PAYMENT

9.1 The Purchaser will pay for the Goods on the following terms of payment set out below:

- a) All payments are due within 30 days of the end of the month in which the goods were invoiced;

- b) If payment is not made punctually the Company will charge interest at the rate of 1.5% per month or part of a month from the expiry of that period until the date payment is received in full. The Company may require full or part payment in advance for any further orders to be made by the Purchaser;
- c) If the Purchaser is in default, the Company may at its option withhold further deliveries or cancel a contract without prejudice to any of its existing rights.
- d) All amounts payable by the Purchaser under these Terms must be paid without set off or counter claim of any kind.

10. PACKING COSTS

The Company will cover all standard packing the costs required to deliver the Goods within Australia. However, the Purchaser will cover the costs of any special packing requirements over and above the standard packing ordinarily provided by the Company.

11. PRODUCT SAFETY

The Company's Goods are manufactured to high standards but due to the nature of such Goods (for example geared units), they are not fail-safe. The Purchaser must always use the Goods in conjunction with a fail safe device where appropriate. To the extent permissible by law, and in accordance with the limitation of liability set out in clause 18, the Company accepts no liability or responsibility for any damage or loss whatsoever to person or property and

the Purchaser agrees that it is the entire responsibility of the Purchaser to implement such a device.

12. RETENTION OF TITLE

12.1 Ownership, title and property of the Goods remains with the Company until payment in full for the Goods and all sums due and owing by the Purchaser to the Company has been made. Until the date of payment:

- a) the Purchaser has the right to sell the Goods in the ordinary course of business; and
- b) until the Goods have been sold by the Purchaser in the ordinary course of the Purchaser's business, the Purchaser holds the Goods as bailee for the Company;
- c) the Goods are always at the risk of the Purchaser.

12.2 The Purchaser is deemed to be in default immediately upon the happening of any of the following events:

- a) if any payment to the Company is not made promptly before the due date for payment; or
 - b) if the Purchaser ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Purchaser payable to the Company is dishonoured;
- 12.3 In the event of a default by the Purchaser, then without prejudice to any other rights which the Company may have at law or under these Terms:

- a) If payment for the goods is not made by the Purchaser to the Company by the due date

then the Purchaser must deliver the goods to the Company upon demand. If the Purchaser does not comply with a demand within 48 hours of receipt, the Company or its agents may without notice to the Purchaser enter the Purchaser's premises or any premises under the control of the Purchaser for the purposes of recovering the Goods; and do all things necessary in order to take possession of the Goods. The Purchaser will be liable for all costs whatsoever associated with the exercise of the Company's rights under this condition;

- b) The Company may recover and resell the Goods;
- c) If the Goods cannot be distinguished from similar Goods which the Purchaser has or claims to have paid for in full, the Company may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of the Company and the Purchaser may be ascertained. The Company must promptly return to the Purchaser any goods the property of the Purchaser and the Company is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Purchaser's business howsoever arising from the seizure of the Goods.
- d) In the event that the Purchaser uses the Goods in some manufacturing or construction process of its own or some third party, and, then the Purchaser

must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for the Company. Such part will be an amount equal in dollar terms to the amount owing by the Purchaser to the Company at the time of the receipt of such proceeds. The Purchaser will pay the Company such funds held in trust upon the demand of the Company.

13 PERSONAL PROPERTIES SECURITIES ACT (“PPSA”)

13.1 Defined terms in this clause have the same meaning as given to them in the PPSA.

13.2 The Company and the Purchaser acknowledge that these Terms constitute a Security Agreement and give rise to a Purchase Money Security Interest (“PMSI”) in favour of the Company over the Goods supplied or to be supplied to the Purchaser as Grantor pursuant to these Terms.

13.3 The Goods supplied or to be supplied under these Terms fall within the PPSA classification of “Other Goods” acquired by the Purchaser pursuant to these Terms and Conditions.

13.4 The Company and the Purchaser acknowledge that the Company, as Secured Party, is entitled to register its interest in the Goods supplied or to be supplied to the Purchaser as Grantor under the Terms on the PPSA Register as Collateral.

13.5 To the extent permissible at law, the Purchaser:

13.5.1 waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a

Security Interest granted by the Purchaser, as Grantor, to the Company.

13.5.2 agrees to indemnify the Company on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the;

- a) registration or amendment or discharge of any Financing Statement registered by or on behalf of the Company; and
- b) enforcement or attempted enforcement of any Security Interest granted to the Company by the Purchaser.
- c) agrees that nothing in sections 130 and 143 of the PPSA will apply to the Terms or the Security under the Terms;
- d) agrees to waive its right to do any of the following under the PPSA:
 - i) receive notice of removal of an accession under section 95;
 - ii) receive notice of an intention to seize Collateral under section 123;
 - iii) object to the purchase of the Collateral by the Secured Party under section 129;
 - iv) receive notice of disposal of Collateral under section 130;
 - v) receive a Statement of Account if there is no disposal under section 132(4);
 - vi) a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.

- vii) receive notice of retention of Collateral under section 135;
- viii) redeem the Collateral under section 142; and
- ix) reinstate the Security Agreement under section 143.

14. PRODUCT WARRANTY Warranty coverage for Goods

14.1 The Company warrants that all new Goods manufactured by the Company will be free from defects in material and workmanship for the period of time applicable to the Goods as shown in Table 1 (the “Warranty Periods”), subject to the terms of this clause 15.

Warranty Coverage for Spare Parts.

14.2 The Company warrants that any spare parts manufactured by the Company will be free from defects in material and workmanship for the period remaining of the Warranty Period applicable to the Goods.

Conditions of Warranty

14.3 The conditions of this Warranty are as follows:

- a) Where defects occur within the Warranty Period, Goods and / or spare parts will be repaired or replaced subject to the terms of this Warranty and at the Company’s discretion.
- b) The Goods and / or spare parts must only be subjected to normal and proper use only.
- c) Any unauthorized dismantling, repair or modification of the Goods and / or spare parts by anyone other than the

Company invalidates this Warranty.

- d) The Company will in no case accept any charges associated with the removal of the Goods and / or spare parts from the installation, nor the re-installation of the Goods and / or spare parts.
- e) All Goods and / or spare parts returned to the Company shall be free of extraneous equipment.

Claiming under the Warranty

14.4 To make a claim under this Warranty the Purchaser must:

- a) provide satisfactory proof of purchase of the Goods and / or spare parts and notify the Company by sending the proof of purchase to the Sumitomo (SHI) Hansen Australia Pty Ltd, PO BOX 319 Doonside, NSW 2767.
 - b) deliver the Goods and / or spare parts for such repair or replacement to the designated Company service centre if requested by the Company to do so;
 - c) prepay all charges for inbound and outbound transport and for services provided by any third party of any kind, diagnostic or otherwise, excepting only the direct and actual cost of the Goods and / or spare parts repair or replacement as provided.
- 14.5 To the extent permitted by law, the Company does not warrant the repair of the Goods if the Purchaser repairs the Goods using spare parts not provided by the Company.
- 14.6. Where a person is taken to have acquired goods as a consumer as defined in the Competition and Consumer Act 2010 (Commonwealth Australia), the following paragraph applies.

In the following paragraph, “our” means the “Company” and “you” means the “Purchaser” and “goods” means the “Goods and / or spare parts”:

“Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.”

14.7 The benefits given to the Purchaser in this Warranty are in addition to other rights and remedies under a law in relation to the Goods and / or spare parts to which this Warranty applies.

Warranty Period

Warranty Period is for 12 months from start of operation or 18 months from delivery of the Goods to the Purchaser, whichever occurs first. The exception to this is for the products listed in table 1.

Product	Warranty Period
Reducer Portion	2 Years
Motor Portion	2 Years
SM-CYCLO Buddy Boxes	2 Years
SM-LB CYCLO/Fine CYCLO	2 Years
SM-Helicals Paramax/Other	1 Year
SM-Compower Planetary Reducers	**
SM-Hedcon Worm Reducers	2 Years
SM-Beier Variations	2 Years
SM-Hyponic Gearmotors	1 Year
SM-AC Inverters	1 Year
SM-CYCLO Altax (Series 5000)	1 Year
SM – HSM	2 Years

** Warranty Period is 12 months from start of operation or 18 months from delivery, whichever occurs the sooner.

15. CONSUMER GUARANTEES ACT 1993

15.1 To the extent that New Zealand law applies to any transaction, the provisions of the Consumers Guarantees Act 1993 (NZ) are hereby expressly excluded in this clause 15 and shall not apply

to any Goods and / or spare parts or services supplied under the contract by the Company which the Purchaser acquires, or holds itself out as acquiring for the purposes of a business (as “business” is defined by that Act).

15.2 In circumstances where the provisions of the Consumers Guarantees Act 1993 (NZ) apply and are not excluded by these terms and conditions, the Company’s liability to the Purchaser will not exceed that determined by reference to the provisions of that Act.

16 INDEMNITY

To the full extent permitted by law, Purchaser will indemnify the Company and keep the Company indemnified from and against any liability and any loss or damage the Company may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms by Purchaser or its representatives.

17. ON-SALE

The Purchaser agrees that in the event of the on-sale of any Goods to third parties, it will:

- a) inform any third party involved of these Terms;
- b) inform any third party of the Company’s product warranties if any; and
- c) not make any misrepresentations to third parties about the Goods.

18. LIMITATION OF LIABILITY

18.1 Notwithstanding the statement set out in clause

14.6, the liability of the Company is limited to, to the extent permissible by law and at the option of the Company, to:

- a) in relation to the Goods and/or spare parts, to:
 - i) replacing the Goods and/or spare parts or the supply of equivalent Goods and/or spare parts;
 - ii) the repair of the Goods and/or spare parts;
 - iii) the payment of the cost of replacing the Goods and/or spare parts or of acquiring equivalent Goods and/or spare parts; or
 - iv) the payment of the cost of having the Goods and/or spare parts repaired;
- b) in relation to services:
 - i) the supply of the services again;
 - ii) the payment of the cost of having the services supplied again.

18.2 To the extent permitted by law, all other warranties whether express or implied or otherwise in law or fact not set out in these Terms or in specific warranties accompanying the Goods and/or spare parts, are excluded and the Company is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Purchaser for:

- a) any increased costs or expenses;
- b) any loss of profit, revenue, business, contracts or anticipated savings;
- c) any loss or expense resulting from a claim by a third party; or
- d) any special, indirect or consequential loss or damage of any nature whatsoever caused by

the Company’s failure to complete or delay in completing the order to deliver the Goods or in complying with its obligations..

18.3 Unless the terms and warranties are included in these Terms or are provided in specific warranties accompanying the Goods, all prior discussions, quotations, warranties to the extent permitted by law, are excluded or damages whether to person or property.

19. INTELLECTUAL PROPERTY

19.1 The Goods may contain Intellectual Property rights that belong to the Company. Property, right and title in that Intellectual Property will remain with the Company despite the Purchaser acquiring the Goods.

19.2 The Purchaser agrees to do all things reasonably required and execute all documents to ensure that the Company retains ownership in the Intellectual Property.

19.3 The Purchaser must not pass any Intellectual Property to third parties without the Company’s prior written approval.

19.4 The Purchaser agrees to indemnify and keep indemnified the Company against any claim for infringement of Intellectual Property where the claim arises out of information supplied by the Purchaser or as a result of the Company complying with the Purchaser’s order.

20. SEVERANCE

Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.

21. GOVERNING LAW

These Terms are to be construed in accordance with

the laws in force from time to time in the State of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the Courts of New South Wales, Australia and any courts which may hear appeals from those courts in respect

to any proceedings in connection with these Terms. In so far as the Vienna Convention for the International Sale of Goods might otherwise govern the terms of sale, its application to these Terms is excluded.