

**SPARES IN MOTION**

**GENERAL TERMS  
AND CONDITIONS  
OF SALES**

# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

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## Article 1 – Definitions

*In these conditions, the following definitions shall apply:*

- ✓ **Agreement** means any agreement entered into between SIM and Customer, any amendment thereof or addition thereto;
- ✓ **Conditions** means these general terms and conditions;
- ✓ **Customer** means any natural or legal person registered at the trade register of the Chamber of Commerce and with whom SIM enters into an agreement with or does an offer;
- ✓ **Day** means a calendar day;
- ✓ **Platform** means the online platform of SIM on sparesinmotion.com through which Customer may from time-to-time order Products;
- ✓ **Products** means each goods offered, supplied or to be supplied by SIM to Customer under an agreement;
- ✓ **SIM** means the company with limited liability Spares in Motion BV, registered with the Chamber of Commerce under number 54956242, and all its subsidiaries including but not limited to Spares in Motion Spain S.L., Spares in Motion Inc and Spares in Motion Asia Pvt. Ltd.

## Article 2 – Applicability Conditions

1. These Conditions apply to all offers, quotations and agreements between SIM and Customer, insofar as not explicitly deviated from in writing.
2. The applicability of any purchase or other conditions of Customer is explicitly rejected.
3. If one or more provisions in these Conditions are at any time wholly or partially null and void or should be annulled, the remaining provisions of these Conditions will remain applicable. SIM and Customer will then enter consultation to agree on new provisions to replace the invalid or annulled provisions, whereby the purpose of the original provisions will be considered as much as possible.
4. If a situation arises that is not regulated in these Conditions, that situation shall be assessed in the spirit of these Conditions.
5. If SIM does not always require strict compliance with these Conditions, this does not mean that the provisions of these Conditions do not apply, or that SIM has in any way waived its right to demand strict compliance with these Conditions in other cases.

## Article 3 - The offer

1. All Products offered by SIM are subject to availability, depending upon prior sale. SIM will endeavor, but is not obliged, to offer the requested Product.

2. Unless otherwise stated in the offer, the price in all offers made by SIM is valid for 14 days. SIM is entitled to withdraw all offers prior to acceptance by Customer.
3. Each offer contains such information to inform the Customer about its rights and obligations resulting in acceptance of the offer. This concerns in particular:
  - a. the sales price, in or excluding VAT
  - b. the method of payment, delivery or execution of the Agreement;
  - c. the warranty period;
  - d. the way in which the Agreement will be concluded, and which actions are necessary for this.
  - e. Incoterms.

*Obvious mistakes or errors in any offer do not bind SIM.*

#### Article 4 - Orders and quotations

1. Customer may accept an offer by placing an order. As all Products are subject to availability, a placed order creates an agreement only after written confirmation of the order by SIM.
2. In the event the ordered Product is not available, SIM will endeavor to offer an equivalent Product and if not available, but the Product is already paid for, credit the purchase price of the Product to Customer's account.
3. Customer may cancel an order subject to agreement with SIM and against payment of SIM's expenses made, not less than 15% of the purchase price.
4. SIM is entitled to demand advance payment and/or other securities from Customer, failing which SIM may not proceed with the order or delivery. In the event of an advance payment, the delivery time will commence at the date payment has been received by SIM.

#### Article 5 – Price and payment

1. All prices are exclusive of VAT, costs of transport, shipping, packaging, insurance and all other taxes and duties.
2. Prices stated in the pricelist may be altered by SIM without prior notice.
3. For orders below EUR 250 a handling fee of EUR 50 can be charged.
4. Unless otherwise indicated, any amounts owed by Customer shall be paid into the account of SIM along with placing an order. Customer ensures that SIM receives the total price on its bank account. All handling costs, such as bank costs, are for the account of Customer.
5. If a payment term is exceeded, SIM is entitled to charge a default interest of 1% per month on the outstanding amount plus all reasonable costs in order to obtain payment from Customer.

6. Customer shall not set off any amount owed to SIM.

## Article 6 - Retention of title

1. All Products delivered by SIM remain the property of SIM until Customer has fulfilled all its obligations under the Agreement, including payment of the purchase price, interest, taxes, costs and compensation owed pursuant to the Agreement and these Conditions.
2. Products delivered by SIM that fall under the retention of title pursuant to paragraph 1 shall not be resold and not be used as a means of payment. Customer is not authorised to pledge or encumber in any other way Products falling under the retention of title.
3. Customer shall at all times do everything that can reasonably be expected to safeguard the proprietary rights of SIM.
4. If third parties seize the Products delivered under retention of title or wish to establish or assert rights to them, Customer shall inform SIM of this immediately.
5. In the event SIM wishes to exercise its proprietary rights referred to in this article, Customer grants SIM and third parties designated by SIM unconditional and irrevocable permission in advance to enter all those places where the Products are located and to recover those Products.

## Article 7 – Delivery and inspection

1. SIM shall deliver the Products to Customer in standard packaging in accordance with ICC Incoterms 2010 Ex-works at, unless otherwise agreed, the address Customer is registered with at the Chamber of Commerce. SIM may at its discretion effect part delivery and invoice Customer accordingly.
2. The risk of loss and/or damage to a Product shall pass to Customer immediately upon the Product being picked up by or on behalf of Customer.
3. All delivery dates are indicative and non-binding. If delivery is delayed, or if an order cannot be carried out or can only be carried out partially, Customer will be notified within 14 days after having placed the order. In case of delay in delivery of more than 120 days, Customer has the right to dissolve the Agreement free of charge.
4. In case of dissolution in accordance with the previous paragraph, SIM will refund the amount that Customer has paid no later than 30 days after dissolution. Customer is not entitled to costs or damages in case of delayed delivery or dissolution.
5. Customer shall, within 5 days after delivery, inspect the Product on any defects and completeness. In the event of a defect or non-completeness, Customer shall inform SIM accordingly. If SIM is not notified in writing of any defect within 5 days after delivery of the Product, Customer shall be deemed to have waived its rights regarding the order.

## Article 8 - Warranty

1. SIM warrants that the Product meets the specifications stated in the offer and shall be free from defects in material for a period indicated in the offer or Agreement.
2. Customer shall without undue delay, in any case within 7 days, notify SIM in writing of a defect that appears and shall set forth in full the details the cause and extent of the defect. If Customer fails to notify SIM within that time limit, he loses his right to have the defect remedied.
3. SIM shall assess the claim and within a reasonable term of having received such, propose a remedy for the defect and a term within which the defect is to be remedied, either by repair, replacement or credit of the purchase price of the Product to Customer's account. In case of repair or replacement Customer shall at its cost make the affected Product available to SIM at site, or at SIM's facilities if SIM determines the Product cannot be repaired at site. SIM warrants repair services for 6 months following the date of completion thereof.
4. If Customer has given such notice and the defect is not covered by warranty, SIM is entitled to remuneration for any works carried out and any costs incurred in connection with the complaint.
5. SIM's obligation to remedy defects is conditional upon Customer proving that the Product is defective. The warranty does not cover defects in the Products that have arisen as a result of (i) normal wear and tear, including effects of the environment or operation (ii) improper operation of the Products (iii) improper performance of routine or planned maintenance in accordance with original equipment manufacturer's recommended schedule (iv) improper storage and installation of Products and (v) repair or modification not in accordance with original equipment manufacturer's instructions.
6. The preceding paragraphs set forth the exclusive remedies for all claims based on defects of failure of the Product, whether a claim is based on contract, indemnity, warranty, tort or otherwise. The foregoing warranties are exclusive and are in lieu of all other warranties and guarantees whether written, oral, implied or statutory.

## Article 9 - Limitation of Liability

1. SIM disclaims all liability for and shall in no event be liable for any incidental, special, indirect or consequential damages, including damages occurred to other components as a result of a defect Product, transport costs and costs for cranes, expenses, lost savings, loss of profit or revenues, interruptions of business, loss of use of the Products or any associated equipment, cost of capital, cost of substitute equipment, facilities, services or replacement power, downtime costs, fines or penalties, or other damages of any kind or character whatsoever arising out of or related to an Agreement or resulting from the handling, marketing, sale or distribution, regardless of the form of action, whether in contract, tort, liability or otherwise, even if the losses were reasonably foreseeable or Customer has been advised of the possibility of such losses occurring.

2. SIM's total aggregate liability in respect of all damages and losses on all claims of any kind, whether as a result of breach of contract, warranty, indemnity, tort (including negligence), liability, or otherwise, incurred by Customer in connection with an event (whereby a coherent series of events applies as a single event) shall not exceed the greater of (i) the actual invoice amount paid by Customer to SIM giving rise to the claim or (ii) the amount of fifty thousand euro (€ 50.000).
3. SIM is not liable for damage of any kind caused by the fact that SIM has relied on incorrect and/or incomplete information provided by or on behalf of Customer.
4. No action, regardless of the form, arising out of or related to an Agreement may be brought by Customer more than six months after Customer has knowledge of the (legal) facts and factual basis for such cause of action.
5. Neither Party limits its liability for fraud or fraudulent misrepresentation and any liability to the extent it cannot be limited or excluded by law.

## Article 10 - Indemnification

1. Customer indemnifies SIM against any claims from third parties who suffer damage in connection with the execution of the Agreement and whose cause can be attributed to parties other than SIM.
2. If SIM is held liable by third parties for this reason, Customer is obliged to assist SIM both in and out of court and to immediately do everything that may be expected of him in that case. Should Customer fail to take adequate measures, SIM is entitled to do so itself, without any notice of default being required. All costs and damages incurred by SIM and third parties as a result of this will be entirely at the expense and risk of Customer.

## Article 11 - Force majeure

1. SIM is not obliged to fulfil any obligation towards Customer if it is hindered to do so because of a circumstance not caused by negligence and for which SIM is not responsible by virtue of the law, a legal act or generally accepted practice.
2. In these Conditions, force majeure is understood to mean, in addition to what is understood in this respect by law and jurisprudence, all external causes, foreseen and unforeseen, over which SIM has no influence, but as a result of which SIM is unable to fulfil its obligations. SIM also has the right to invoke force majeure in a circumstance that occurs after it should have fulfilled its obligation that prevents (further) fulfilment of the Agreement.
3. Insofar as, at the time of the commencement of force majeure, SIM has already partially fulfilled its obligations under the Agreement or will be able to fulfil them, and the respective part to be fulfilled has independent value, SIM is entitled to invoice the part already fulfilled or still to be fulfilled separately. Customer is obliged to pay this invoice as if it were a separate agreement.

## Article 12 - Applicable law and disputes

1. Agreements between SIM and Customer to which these Conditions apply shall be governed exclusively by Dutch law, even if an obligation is wholly or partly performed abroad. The applicability of the Vienna Sales Convention is excluded.
2. All disputes arising from offers or agreements, however named, will be submitted to the competent courts in Rotterdam, the Netherlands.
3. SIM and Customer will only appeal to the court after they have made substantial efforts to settle a dispute in mutual consultation.

## Article 13 - Compliance with Export Control Laws.

SIM follows a strict export compliance policy and therefore certain countries are restricted from business. The company is not doing ANY business (either as a supplier or customer) with the countries that are on the EU sanction list for exporting the related Products.

Accordingly, we hereby agree that the Customer will not sell, export or re-export, directly or indirectly any Products purchased from Spares in Motion:

1. To any location or party listed as prohibited from receiving Products in accordance with EU law.
2. To the following countries but not limited to: Russia, Belarus, Iran, North Korea, Iraq, Libya, Myanmar (Burma), Syria, the Crimea Region, the so-called Donetsk People's Republic (DNR) and the Luhansk People's Republic (LNR).

## Article 14 - Amendment of conditions

1. SIM reserves the right to change these Conditions unilaterally.
2. The version of the Conditions in force at the time of the establishment of the relevant legal relationship with SIM shall always apply. Customer is advised to regularly check the Conditions for changes.

[Last update: April, 2024]