

# STANDARD LIMITED 10-YEAR WARRANTY



**SIMONSWERK NORTH AMERICA, INC.**  
Version July 1, 2011

**SIMONSWERK North America, Inc. ("Seller")** warrants that the Products purchased from Seller shall be free from defects in material and workmanship for a period of ten (10) years from date of shipment.

Seller's liability under this warranty is expressly limited to repairing or replacing, at Seller's option, any Product that, in Seller's sole judgment, does not meet the warranty set forth above. SELLER MAKES NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. Seller's liability under this warranty shall not include any transportation charges or cost of installation, replacement, field repair, or other charges related to returning Products to Seller, or any liability for direct, indirect or consequential damage or delay. Products or parts for which a warranty claim is made are to be returned transportation prepaid to Seller. Any improper use, operation beyond intended or rated usage, substitution of parts not approved by Seller, or any alteration or repair by parties other than Seller that Seller's sole judgment affects the Product materially and adversely shall void this warranty. NO EMPLOYEE OR REPRESENTATIVE OF SELLER OR ANY OTHER PARTY SHALL BE AUTHORIZED TO CHANGE ANY WARRANTY IN ANY WAY OR GRANT ANY OTHER WARRANTY UNLESS SUCH CHANGE IS MADE IN WRITING AND SIGNED BY AN OFFICER OF SELLER AT ITS HOME OFFICE. SELLER'S LIABILITY WILL IN NO EVENT BE GREATER IN AMOUNT THAN THE PURCHASE PRICE OF THE RETURNED PRODUCTS. SELLER SHALL HAVE NO LIABILITY TO ANY PERSON UNDER ANY CIRCUMSTANCE FOR SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES.

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# STANDARD TERMS AND CONDITIONS



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## **I. General Terms – Scope**

The General Terms of Sale set forth below together with the quantity, delivery date and price terms appearing on the face of any order (the "Order") constitute the complete and exclusive agreement between SIMONSWERK North America, Inc. ("we", "us", or "our") and you ("customer" or "you") pertaining to the goods and/or services identified in any Order or any other goods and/or services provided by us (collectively, the "Products" or, with respect to the goods, the "goods"). All of our deliveries and services are supplied exclusively at the General Terms of Sale below. These General Terms of Sale shall also apply to all future business between the parties to this agreement without the need to refer again to our General Terms of Sale. They shall also apply if we do not refer to them specifically in the context of future contracts, including cases in which we supply deliveries or services to the customer knowing about the customer's Terms and Conditions where these Terms and Conditions are contrary to or different from our General Terms of Sale. If there is a discrepancy or conflict between any agreement, exhibit or supplement to an Order and these terms and conditions, these terms and conditions shall control. Our acceptance of any Order is expressly conditioned on customer's acceptance of these terms and conditions, and no action by us shall be construed as acceptance of any additional or different terms in any purchase order, acknowledgement, confirmation or other document. Customer, upon placing an Order, accepts these terms and conditions without modification. Without limiting the foregoing, we expressly object to all contradictory terms and conditions specified in any other acknowledgement, purchase order, confirmation or other document pertaining to the Products. Any changes to an Order must be in writing and signed by us and customer.

## **II. Quotes and Conclusion of Contracts, Scope**

1. Our quotes to customers are non-binding. In particular, our quotes are made subject to availability of supplies and subject to typing, calculation, or other errors. Illustrations, drawings, dimensions, weights, and hues contained in our catalogues, price lists, and other printed material or on our website are approximations customary for our industry. We also reserve the right to make any changes necessary for technical reasons. This applies particularly to custom-made items.

2. The customer's order shall be deemed as a binding offer. Acceptance of such offer on our part shall be required to form a binding contract and shall be at our discretion and shall be made within four weeks by sending an order confirmation or by unconditional supply of the products or services ordered. Verbal agreements shall only be binding if we have confirmed them in writing, by facsimile, or e-mail.

3. The technical data, descriptions, measurements, weights, drawings, specifications, processes and other particulars, including in the corresponding product information or promotional material, are only approximates and do not constitute warranties of either quality or durability of the goods to be supplied by us. Such particulars do not form part of the contract, and deviations therefrom or subsequent changes in design are not grounds for nonacceptance of the Products and do not constitute a breach of this agreement.

## **III. Prices, Conditions of Payment, Delay in Payment**

1. The prices agreed upon in writing in the Order shall apply; in particular, these shall be the prices indicated on an order form or in the order confirmation. Where no price has been specifically agreed, the prices according to our price list applicable at the time of conclusion of the agreement shall apply. These prices shall be exclusive of any tax applicable on the day of delivery and the cost of packaging required for appropriate shipping, the cost of shipping ex works our warehouse, the haulage cost and – where agreed – the cost of transport insurance, which shall all be added to the list price and paid by customer. For shipments abroad, additional country-specific fees may apply.

2. We reserve the right to reasonably adjust our prices where external cost reductions or increases occur that have an impact on the overall cost of the product, in particular cost adjustments due to wage agreements or market price changes.

3. Bills of exchange or checks will only be accepted on account of performance and after special agreement and if they are discountable. Discount charges shall be charged from the day the invoice falls due. Any guarantee of correct presentation of the bill and of protest shall be excluded.

4. Any customer right to set off under general or specific principles of law are hereby waived and customer shall not be entitled to any such rights unless agreed in writing by both parties.

5. Deduction of any cash discount shall only be possible by separate written agreement.

6. Until customer's account and credit is established with us pursuant to our procedures and policies in establishing customer accounts and credit, customer shall pay for each Order in advance of shipment or by cash on delivery. After such time as customer's account and credit is established, all invoices for shipped Product are payable in full thirty (30) days following the invoice's date of issuance. Amounts not paid when due shall bear interest at the rate of one percent (1%) per month, not to exceed the highest rate permitted by applicable law. In addition to the purchase price, customer will pay any federal, state and local sales, excise, privilege, use or other taxes and/or duties arising from the sale or delivery of the Products or the use thereof, or, in the case of sales tax, provide us with an appropriate exemption certificate.

7. If a customer fails to pay due invoices or has exceeded a period of payment granted, or if the customer's financial circumstances deteriorate after conclusion of the contract or if we receive negative information about the customer calling into question his ability to pay or creditworthiness we shall be entitled to call in the customer's entire residual debt and requiring advance payment or security for future shipments, or immediate payment where delivery has already occurred of all our claims. This shall apply in particular where the customer discontinues payments, a customer check is rejected, a bill of exchange issued by the customer is not honored by the customer, insolvency proceedings regarding the customer or the customer's assets are initiated or a request for adjudication of bankruptcy was filed but not initiated for lack of customer assets.

## **IV. Time of Delivery and Performance, Delay of Performance**

1. Delivery times agreed shall only be approximations unless delivery by a fixed date has been expressly agreed in writing.

2. In the event of force majeure or other unforeseeable extraordinary circumstances outside our control, such as stoppages due to fire, flooding, or similar circumstances; failure of production facilities or machines; late delivery or non-delivery by our suppliers; or stoppages due to shortage of raw materials, energy, or labor; strike; lockout; difficulties with transport capacities; or interference by public authorities we shall be entitled – if we are prevented from meeting our contractual obligations on time by these circumstances – to delay delivery or performance by the duration of the impediment plus an appropriate period for renewed start-up of operations. Both parties shall be obliged to notify the other party immediately if such impediments occur. Where delivery or performance are delayed by more than one month, both we and the customer shall have the right to terminate or rescind the contract but only with respect to such volumes affected by the impediment to delivery or performance without recourse. Notwithstanding anything in this agreement or any other to the contrary, we will not be liable for loss, damage or delay resulting from causes beyond our reasonable control.

3. We shall not be responsible for damages including consequential damages for late delivery. In any case our liability any other damage under this contract shall be limited according to the stipulations of item VII of these Terms of Sale.

4. Where reasonable and within the agreed times of delivery and performance we shall have the right to deliver or perform by installments.

5. If the customer is in default of acceptance of delivery or performance or if he culpably violates other obligations we shall have the right to claim compensation for the resulting damages including any additional costs involved. We reserve the right to make any other reasonable claims.

6. For custom-made items deviations up to 10 % above or below the quantity ordered are permitted, because this is unavoidable due to technical reasons.

7. Except as stated in this Item IV, customer may not cancel all or part of the Order hereunder without our written consent. Customer in particular may not terminate any series production without six (6) months' written notification. In the event that customer changes or wrongfully cancels or terminates the Order, we may, in addition to any rights and remedies we may have at law or in equity, charge customer a restocking fee at our discretion.

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## V. Passing of Risk, Cost of Transport and Packaging

1. Unless otherwise agreed in writing delivery shall be ex works our warehouse in Whitewater, Wisconsin; any items to be supplied shall be picked up by the customer at his own risk and expense. The risk of loss, including accidental perishing or deterioration of a chattel shall pass to the customer upon notification of its availability or handover to the common carrier. The risk of loss shall pass to customer at such time regardless of whether carriage prepaid has been agreed or if we provide transport insurance.
2. We shall select, and customer shall pay for, the mode of shipment and of packaging unless an express agreement in this regard has been made in writing, by facsimile, or by e-mail. Any "drop shipments" or orders shipped to an address other than customer's address registered with us, or any orders for less than \$300 of products, may be subject to an additional special handling fee, which customer shall pay.
3. For catalogue items we shall only supply complete packaging units. For incomplete packaging units we may charge a reasonable extra charge, set in our reasonable discretion. Deliveries outside of the United States, Canada or Mexico shall only be pursuant to a separate written agreement.
4. For avoidance of doubt, customer shall pay all costs related to shipping, packaging, any specialized or returnable packaging (including maintenance thereof), storage and insurance and bear the risk of loss after delivery of the goods as stated above. Proper disposal of any disposable packaging shall be the customer's responsibility.

## VI. Customer Claims in the Event of Defects; Returns

1. The customer shall notify us in writing of any claimed material defects or shipment of incorrect products or volumes immediately but no later than 14 days after receipt of the shipment; such notification shall include the delivery note date and the order number. The customer shall notify us in writing of hidden defects within eight days of their discovery. The customer shall be obliged to verify – if necessary by means of a trial run – whether the goods supplied are free of defects and suitable for the purposes intended. After the time periods set forth above and in the case of hidden defects any case no later than three months after the passing of the risk to the customer under item V clause 1 of these Terms, any notification of a defect, obvious or hidden, shall be out of the question, deemed out of time, and be ineffective for the purpose of rejection of the Products or claims for liability. In the event of a defect not duly notified according to item VI clauses 1 to 4 the customer shall lose the right to make any claims on the basis of such a defect unless we have fraudulently concealed the defect. YOUR FAILURE TO MAKE ANY CLAIM WITHIN THE SPECIFIED TIME PERIOD WILL RESULT IN THE UNCONDITIONAL WAIVER OF SUCH CLAIM.
2. Our Standard Limited Warranty relating to the Products are applicable to this Order and such warranty or warranties are attached to this Order or have been separately provided by us to you in writing. WE MAKE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. If there are any defects in the goods we supply we shall only be obliged, at our discretion, to repair or replace the Products (subsequent fulfillment). Where the customer suffers damage or has expense due to defects in the goods supplied by us our liability shall be governed by Item VII.
3. The rights listed in item VI clause 2 shall not apply if the goods' properties differ only slightly from the agreed properties or if their usefulness is only slightly impaired; or in the event of natural wear and tear or of damage that occurred after the passing of the risk including on account of incorrect or negligent handling or excessive use; or that occurs because of external impacts that are not encompassed by the contract.
4. The rights listed in item VI clause 2 shall not apply for defects that result from the documentation (drawings, samples, etc.) submitted by the customer. In particular, this shall apply to the function of items that were made according to the customer's design or according to design documentation submitted by the customer.
5. Any Products subject to a claim against us shall be returned to us at customer's cost, along with a completed Return Goods Authorization form and copies of the original invoice, for inspection by us to determine whether a valid claim exists under this item VI. If delivery is made in installments, claims which you may have as

to any one installment do not relieve you of the obligation to accept delivery of the remaining installments, or permit you to cancel or rescind the remaining installments.

6. In our sole discretion, we may agree to accept returns of Products which were ordered by mistake or for other reasons. Such returns shall be subject to a 30% of invoiced order amount restocking fee and shall only be allowed upon submission by customer of the Return Goods Authorization form and acceptance of the same by us.

## VII. Liability

OUR LIABILITY WILL IN NO EVENT BE GREATER IN AMOUNT THAN THE PURCHASE PRICE OF THE PRODUCTS. WE SHALL HAVE NO LIABILITY TO YOU OR YOUR AFFILIATES, EMPLOYEES, AGENTS, CUSTOMERS OR TO ANY THIRD PARTY UNDER ANY CIRCUMSTANCE FOR SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, MACHINING OR LABOR COSTS, DAMAGE TO PROPERTY, COSTS OF SUBSTITUTE PRODUCTS, LOST PROFITS RESULTING FROM THE SALE, USE OF OR INABILITY TO USE THE PRODUCTS, THE PRODUCTS' INCORPORATION INTO OR BECOMING A COMPONENT OF ANY OTHER PRODUCT, OR FROM ANY OTHER CAUSE WHATSOEVER, WHETHER BASED ON BREACH OF WARRANTY OR OTHER CONTRACTUAL CLAIM, TORT, STRICT LIABILITY OR ANY OTHER THEORY OF LIABILITY, AND REGARDLESS OF ANY ADVICE OR REPRESENTATIONS THAT MAY HAVE BEEN RENDERED BY US CONCERNING THE SALE, USE AND/OR INSTALLATION OF THE PRODUCTS. NEITHER PARTY WILL HAVE ANY NEGLIGENCE OR OTHER TORT LIABILITY TO THE OTHER, OR TO ANY THIRD PARTY, ARISING FROM ANY BREACH OF THIS AGREEMENT.

## VIII. Reservation of Title

1. The goods shall remain our property until the purchase price and all current and future claims resulting from this business relationship with the customer have been paid in full. Inclusion of the purchase price claim against the customer in a current account and recognition of a balance shall not affect our reservation of title.
2. The customer shall be obliged to treat the goods purchased with care; in particular, he shall be obliged to insure them at his own expense against loss, damage, or destruction, e.g. by fire, flooding, or theft. The insurance coverage shall be new for old. The customer hereby cedes his claims from these insurance contracts to us with immediate effect. We hereby accept such cession of claims.
3. The customer shall not be entitled to pledge or transfer by way of security any of the goods that are still our property. He shall, however, be allowed to resell, in the normal course of business, the goods supplied, subject to the following stipulations: the above-mentioned right shall not apply if the customer has – in a legally effective manner – yielded or pledged the claim resulting from the resale transaction against his customer to a third party or has agreed on a prohibition to assign.
4. In order to secure the fulfillment of all our claims listed in item VIII clause 1 the customer hereby assigns to us all claims, including all future and conditional claims, resulting from resale of the goods supplied by us and all subsidiary rights to the extent of the value of the goods supplied and with priority over all other claims against him. We hereby accept such cession of claims.
5. In order to secure our claims, the customer hereby also assigns to us, to the extent of the value of the goods supplied by us, his claims against third parties resulting from the installation of our goods in third party premises.
6. If the customer is in breach of contract, in particular if he has been in arrears with payments by more than 10 per cent of the invoice total for a significant time we shall have the right to rescind the contract and demand restitution of the goods supplied by us without prejudice to any additional claims (for damages) that we may have. We shall have the right to use the returned goods as we deem fit. The proceeds generated by such use – minus appropriate costs – shall be deducted from the customer's debt with us.
7. For avoidance of doubt, customer hereby grants to us and we hereby accept and retain a security interest in all the Products and accessories and additions thereto sold by us and held by customer, whether presently upon your premises or hereafter acquired, and shall join with us in executing financing statements pursuant to the Uniform Commercial Code in a form satisfactory to us. In the event you shall be in default under this agreement, we shall have the remedies of a secured party, and we may thereupon enter the premises of customer and remove the Products and make them available to us for repossession and resale.

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## **IX. Tooling Costs**

Where new tools need to be made for goods commissioned and a corresponding, separate agreement has been entered into by the parties, we shall invoice the agreed share in our manufacturing costs. Payment of a share of the cost does not give rise to any customer rights in the tools themselves. Instead, these shall remain our property at all times. Unless agreed otherwise, the tools shall be payable without any deduction upon submission of the type samples. We hereby commit ourselves to keeping the tools for a minimum period of one year after the last shipment to the customer. If the customer notifies us within this period that another order will be placed within another year, the period for keeping the tools shall be extended by another year. At the end of this period and if no further orders are placed we shall enjoy the exclusive right to use the tools.

## **X. Prohibition to Assign**

Without our express written consent, the customer shall not have the right to assign this Agreement or any of his rights or claims against us hereunder, including particular those due to defects in the goods supplied by us or due to violations of obligations on our part, in total or in part to third parties or pledge such rights or claims to third parties.

## **XI. Exclusive Venue, Applicable Law, Foreign Trade Legislation**

1. The exclusive venue for any litigation brought by you against us shall be the state and federal courts located in or encompassing Walworth County, Wisconsin. We shall, however, have the right to bring an action against a customer at his legal venue. You hereby consent to the exclusive jurisdiction and venue in such courts and waives any applicable defense of lack of personal jurisdiction.
2. Only the laws of the state of Wisconsin, without giving effect to its conflict of laws principles, shall apply to the legal relationship between us and the customer. Application of the stipulations governing international sale of goods (CISG – Convention on the International Sale of Goods) and of German private international law is expressly ruled out.

## **XII. Final Provisions**

1. We will store customer data acquired in the context of our mutual business relationship and in accordance with the provisions of applicable law.
2. No remedy provided herein shall be exclusive of any other remedy hereunder or provided by any applicable law
3. The invalidity or unenforceability of any provision of this agreement shall not affect the validity or enforceability of any of the other provisions of this agreement;
4. Our failure to insist on performance of any of the terms of this Order, its failure to exercise any right or privilege or its waiver of any breach hereunder shall not effect a waiver of any other right or privilege, whether of the same or similar type.

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