



Standard Terms and Conditions

1. Definitions

- 1.1. "Conditions" means the standard terms and conditions of sale set out in this document and (unless the context requires otherwise) includes any special terms and conditions and/or specifications agreed in writing between MSI and the Customer
- 1.2. "Customer" means any person, partnership, unincorporated business or limited company which accepts a quotation of MSI for the sale of Goods or whose order for Goods is accepted by MSI
- 1.3. "Goods" means the goods (including any instalment of the goods or any parts for them) or services which MSI is to supply to the Customer in accordance with these Conditions
- 1.4. "Intellectual Property Rights" means any and all patents, patent applications, trademarks, trademark applications, know-how, trade names, registered design, copyright, database rights, design rights or other similar intellectual or industrial property rights created, developed, subsisting or used in connection with the Specified Service and whether in existence at the date hereof or created in the future;
- 1.5. "MSI" means MS Instruments Ltd, a company incorporated in England and Wales under the number 913499 and having its registered office at Unit 4, Ravensquay Business Centre, Cray Avenue, Orpington, Kent, BR5 4BQ ("MSI") (which expression shall include its subsidiaries, agents and assigns)
- 1.6. "MSI Software" means proprietary software owned by MSI or any other software licensed to MSI and supplied to the Customer as an integrated part of the Goods;
- 1.7. "Location" means the Customer's premises where the Goods are to be delivered as notified to MSI by the Customer in writing and approved in writing by MSI
- 1.8. "Software Licence" means any software license included with the MSI Software
- 1.9. Any reference in these Conditions to any provision of a statute shall be construed as amended, re-enacted or extended at the relevant time.
- 1.10. The headings in these Conditions are for convenience only and shall not affect their interpretation.

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 11.

2. Application of Terms

- 2.1. These Conditions shall apply to the supply of all Goods by MSI to the Customer and acceptance by MSI of a request for the supply of any Goods is conditional upon acceptance by the Customer of such Conditions which shall override all other terms and conditions inconsistent herewith whether express, implied or otherwise including but not limited to terms, conditions or stipulations contained in any form of writing or otherwise stipulated by the Customer and which are at variance with or additional to these Conditions. The same shall not be binding upon MSI unless specifically accepted in writing and signed by a director of MSI.
- 2.2. These Conditions shall supersede any arrangements made or existing between the parties prior to, simultaneously with or subsequent to these Conditions and shall constitute the entire understanding between the parties hereto. Except as otherwise provided herein, no addition, amendment or modification of the terms of these Conditions shall be effective, unless it is in writing and signed or accepted by a director of MSI.
- 2.3. MSI's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by MSI in writing. The Customer acknowledges that it does not rely on such representations which are not so confirmed.
- 2.4. Any advice or recommendation given by MSI or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by MSI is followed or acted upon entirely at the Customer's own risk, and accordingly MSI shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by MSI shall be subject to correction without any liability on the part of MSI

3. Orders

- 3.1. No order submitted by the Customer shall be deemed to be accepted by MSI unless and until confirmed in writing by MSI's authorised representative.
- 3.2. The Customer shall be responsible to MSI for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving MSI any necessary information relating to the Goods within a sufficient time to enable MSI to comply with its obligations under these Conditions.
- 3.3. The quantity, quality and description of and any specification for the Goods shall be those set out in MSI's quotation (if accepted by the Customer) or the Customer's order (if accepted by MSI).
- 3.4. MSI reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable statutory or EC requirements or, where the Goods are to be supplied to MSI's specification, which do not materially affect their quality or performance.
- 3.5. No order which has been accepted by MSI may be cancelled by the Customer except with the agreement in writing of an authorised representative of MSI and on terms that the Customer shall indemnify MSI in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by MSI as a result of such cancellation.

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4. Delivery and Installation

- 4.1. Delivery dates are estimates only and time for delivery shall not be made of the essence by notice, unless MSI expressly agrees in writing to be bound by a delivery date as being the essence of these Conditions. MSI shall not be liable for direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business and depletion of goodwill) costs, damages, charges or expenses caused directly or indirectly and arising from part, late or non-delivery or performance as the case may be even if caused by MSI's negligence) nor will any delay entitle the Customer to terminate or rescind the contract unless such day exceeds 180 days. Where MSI expressly agrees in writing to be bound by a delivery date, MSI's liability in respect of part, late or non-delivery or performance as the case may be shall be limited to the amount paid in respect of the relevant Goods.
- 4.2. MSI shall inform the Customer when any part or the whole of the Goods is ready for delivery and the Customer shall inform MSI of the site within the Location for delivery.
- 4.3. If the Customer shall fail to give MSI instructions for delivery within twenty one (21) days of notification by MSI that the Goods or part thereof is ready for delivery, MSI may without reference to the Customer, arrange for storage of the Goods or that part which is ready for delivery. Charges for storage shall be paid by the Customer prior to delivery of the Goods by MSI and risk in the Goods shall pass to the Customer.
- 4.4. Delivery and installation (if appropriate) shall be executed during MSI's normal working hours (08.30am to 5.30pm, Monday to Friday excluding UK public holidays). If the Customer requires delivery or installation to be executed outside such times MSI may, at its sole option, arrange this in which case an additional charge shall be payable by the Customer. MSI may, at its sole option, deliver or install outside such times at no additional cost to the Customer upon prior notification to the Customer.
- 4.5. Where MSI has agreed to install the Goods, the Customer shall prepare the area of installation with a suitable installation environment for the Goods or any part thereof and with all the facilities specified in the relevant documentation and all the local, national and international regulations as the case may be. Such facilities will include (unless otherwise advised by MSI) the provision of electrical power, space requirements and clearances and may include (if notified by MSI) air conditioning, temperature and humidity control and false flooring. Where the same has not been prepared or provided or MSI is prevented from carrying out installation at the pre-arranged day and time through no fault of MSI, the Customer shall be liable for the expenses incurred by MSI in storing that part or the whole of the Goods and in rescheduling delivery and installation at a later date including but not limited to all transportation costs.
- 4.6. The Customer will inspect the Goods upon receipt and notify MSI immediately if the Goods are defective or damaged.

5. Price

- 5.1. The price of the Goods shall be MSI's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in MSI's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom, MSI's published export price list shall apply. All prices quoted are valid for 30 days only (unless withdrawn by MSI) or until earlier acceptance by the Customer, after which time they may be altered by MSI without giving notice to the Customer.
- 5.2. MSI reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to MSI which is due to any factor beyond the control of MSI (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give MSI adequate information or instructions.
- 5.3. Except as otherwise stated under the terms of any quotation or in any price list of MSI, and unless otherwise agreed in writing between the Customer and MSI, all prices are given by MSI on an ex works basis, and where MSI agrees to deliver the Goods otherwise than at MSI's premises, the Customer shall be liable to pay MSI's charges for transport, packaging and insurance.
- 5.4. The price is exclusive of any applicable value added tax or other sales tax, which the Customer shall be additionally liable to pay to MSI.

6. Payment

- 6.1. Subject to any special terms agreed in writing between the Customer and MSI, MSI shall be entitled to invoice the Customer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods, in which event MSI shall be entitled to invoice the Customer for the price at any time after MSI has notified the Customer that the Goods are ready for collection or (as the case may be) MSI has tendered delivery of the Goods.
- 6.2. The Customer shall pay the price of the Goods without any deduction within 30 days of the date of MSI's invoice, and MSI shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 6.3. If the Customer fails to make any payment on or before the due date then, without prejudice to any other right or remedy available to MSI, MSI shall be entitled to:
- 6.3.1. cancel the contract or suspend any further deliveries to the Customer;
 - 6.3.2. appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Customer and MSI) as MSI may think fit (notwithstanding any purported appropriation by the Customer); and
 - 6.3.3. charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 2 per cent per annum above Nat West Bank's base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

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7 Title to Goods

7.1. Notwithstanding delivery, installation, acceptance and passing of risk, title to the Goods shall not pass to the Customer but shall be retained by MSI until full payment for the Goods (in cash or cleared funds) has been received by MSI from the Customer, save in respect to the MSI Software in which title is retained by MSI and the Customer granted a licence to use the MSI Software in accordance with clause 9 below.

7.2. Until such time as title in the Goods has passed to the Customer:

7.2.1. MSI shall be entitled to repossess at any time any of the Goods in which title remains vested in MSI;

7.2.2. for the purpose specified in 7.2.1 above, the Customer grants to MSI or any of its agents or authorized representatives an irrevocable licence at any time and without notice to enter upon any premises in which the Goods or any part thereof is installed, stored or kept, or is reasonably believed so to be;

7.2.3. MSI shall be entitled to seek a court injunction or equivalent judicial order under the applicable law of this Agreement to prevent the Customer from selling, transferring or otherwise disposing of the Goods.

7.3. Until such time as title in the Goods has passed to the Customer, the Customer shall, subject to MSI's rights hereunder:

7.3.1. hold the Goods as MSI's fiduciary agent and be entitled to use the same in the ordinary course of the Customer's business; but shall not be entitled to sell or otherwise dispose of the same or part with possession thereof;

7.3.2. cause to be added to its audited accounts for each year a note that Goods supplied by MSI are subject to retention of title and shall be the property of MSI until full payment of all sums in respect thereof has been made to MSI; and

7.3.3. insure such Goods to their replacement value naming MSI as the loss payee until all payments to MSI have been made as specified in this Clause and the Customer shall forthwith, upon request, provide MSI with a Certificate of such Insurance.

8. Passing of Risk

Notwithstanding Clause 7 hereof, risk in the Goods shall pass to the Customer upon delivery by MSI or its carriers to the Customer or its agent and MSI shall not be liable for any loss or damage to the Goods from the time that the Goods are so delivered.

9. Software Licence

If the Goods include MSI Software, MSI grants the Customer a non-exclusive perpetual licence to use such MSI Software subject to the Software Licence and only as an integrated part of Goods.

10. Warranty

10.1. MSI warrants to the Customer that the Goods marketed by MSI are believed to be free from defects of workmanship and materials and MSI undertakes, subject to 10.3 and 10.4 below, to replace or, at its option, to repair Goods (other than rubber parts and/or consumable items) found to be defective within 12 months of the date of original delivery in accordance with Clause 4 above, but only where such defects are a result of faulty materials or workmanship.

10.2. Each claim of the Customer under this warranty shall be sent in writing to MSI specifying the type of Goods and nature of the defect. Upon receipt of such written notice, MSI or its agent or representative shall have the option of testing or inspecting the Goods at the Location or of having the Goods returned to MSI or such other address as may be notified to the Customer, freight pre-paid. Replacement parts, items or Goods shall be sent by MSI to the Customer ordinary freight pre-paid, subject always to 10.3 and 10.4 below.

10.3. In the event of any claim presented under warranty being found on investigation by MSI either to be outside the scope or duration of this warranty or the fault being unconfirmed, then the costs of such investigation and repair shall be borne by the Customer.

10.4. MSI shall not be liable at any time for damage or defects in the Goods or parts caused by improper use, abuse, mismanagement or by using the Goods outside the specifications detailed in the manuals and documentation (if any) relating to the Goods or outside the specific application of the Goods.

10.5. This warranty shall not be assigned without the prior written consent of MSI.

10.6. The foregoing warranty is in lieu of all other warranties and conditions, express or implied, including, but not limited to, the implied warranties of satisfactory quality and fitness for purpose. The customer's remedies are solely as stated herein.

11. Liability

11.1. MSI has insurance cover in respect of its own legal liability for individual claims not exceeding £10,000,000 per claim. MSI's liability is limited to £10,000,000 per claim and the customer is responsible for making its own arrangements for the insurance of any excess loss.

11.2. Save as set out in clause 11.1, except to the extent that by the law relating to these conditions liability may not be excluded, MSI shall not be liable to the customer for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with the contract, the goods, their use or otherwise.

11.3. Notwithstanding the generality of clause 11.2 above, MSI expressly excludes liability for consequential or direct loss or damage, including but not limited to loss or damage to other equipment or property or for loss of profit, business, revenue, goodwill or anticipated savings.

11.4. Subject always to clause 11.6, in the event that any exclusion contained in these conditions is held to be invalid for any reason and MSI becomes liable for loss or damage that may be limited, such liability shall be limited to the price of the goods with respect to which loss or damage is claimed.

11.5. MSI hereby assigns to the Customer all warranties MSI receives from the manufacturers of Software, Goods or components forming part of Goods supplied under the Contract and MSI shall have no obligations under Clause 10 with respect to Software, Goods or components covered by such warranties.

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11.6. MSI does not exclude or limit its liability for fraudulent misrepresentation nor for death or personal injury to the extent that the same arises from the negligence of MSI, its employees, agents or authorised representatives.

12. Intellectual Property

12.1. The Customer acknowledges that any and all of the copyright, trademarks, and any and all intellectual property rights used or subsisting in or in connection with the Goods and the MSI Software (if any) including any part thereof are and shall remain the sole property of MSI or such other party as may be identified therein or thereon (the "Owner") and the Customer shall not during or at any time after the completion, expiry or termination of these Conditions in any way question or dispute the ownership thereof by MSI or the Owner.

12.2. In the event that new inventions, designs or processes evolve in performance or as a result of these Conditions, the Customer acknowledges that the same shall belong to MSI unless otherwise agreed in writing by MSI.

12.3. The Customer shall indemnify MSI fully against all liabilities, costs and expenses which MSI may incur as a result of work done in accordance with the Customer's specifications involving infringement of any copyright or other intellectual property right.

12.4. If any claim is made against the Customer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Customer, MSI shall indemnify the Customer against all loss, damages, costs and expenses awarded against or incurred by the Customer in connection with the claim, or paid or agreed to be paid by the Customer in settlement of the claim, provided that:

- 12.4.1. MSI is given full control of any proceedings or negotiations in connection with any such claim;
- 12.4.2. the Customer shall give MSI all reasonable assistance for the purposes of any such proceedings or negotiations;
- 12.4.3. except pursuant to a final award, the Customer shall not pay or accept any such claim, or compromise any such proceedings without the consent of MSI (which shall not be unreasonably withheld or delayed);
- 12.4.4. the Customer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Customer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Customer recovers any sums under any such policy or cover (which the Customer shall use its best endeavours to do);
- 12.4.5. MSI shall be entitled to the benefit of, and the Customer shall accordingly account to MSI for, all damages and costs (if any) awarded in favour of the Customer which are payable by, or agreed with the consent of the Customer (which consent shall not be unreasonably withheld or delayed) to be paid by, any other party in respect of any such claim; and
- 12.4.6. without prejudice to any duty of the Customer at common law, MSI shall be entitled to require the Customer to take such steps as MSI may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which MSI is liable to indemnify the Customer under this Clause.

13. Confidential Information

13.1. All information, data, drawings, specifications, documentation, software listings, source or object code which MSI may have imparted and may from time to time impart to the Customer relating to the Goods are proprietary and confidential. The Customer hereby agrees that it shall use the same solely in accordance with the terms of these Conditions and that it shall not at any time during or after expiry or termination of these Conditions, disclose the same, whether directly or indirectly, to any third party without MSI's prior written consent.

13.2. The Customer further agrees that it shall not itself or through any subsidiary, agent or third party use such confidential information to copy, reproduce, translate, adapt, vary, modify, decompile, disassemble or reverse engineer the Software nor shall the Customer sell, lease, licence, sub-licence or otherwise deal with the Software or any part or parts or variations, modifications, copies, releases, versions or enhancements thereof or have any software or other program written or developed for itself based on any confidential information supplied to it by MSI.

13.3. The provisions of clauses 13.1 and 13.2 shall not apply to information which the Customer:-

- 13.3.1. can prove to have been in its possession (other than under an obligation of confidence to MSI or to a third party) at the date of receipt or which becomes public knowledge otherwise than through a breach of any obligation of confidentiality owed to MSI; or
- 13.3.2. is necessarily disclosed under a legal obligation.

13.4. The Customer agrees that it will upon the request of MSI but at its own expense take such steps as MSI may require to enforce any confidentiality undertaking given by a director or employee of the Customer including in particular but without prejudice to the generality of the foregoing obligation the initiation and prosecution of any legal proceedings and the enforcement of any judgment obtained.

13.5. The provisions of this Clause 13 shall remain in force from the date of receipt by the Customer of any such confidential information notwithstanding termination of these Conditions.

14. Insolvency

14.1. This Clause applies if:

- 14.1.1. the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 14.1.2. an encumbrancer takes possession or a receiver is appointed, of any of the property or assets of the Customer; or
- 14.1.3. the Customer ceases or threatens to cease, to carry on business; or
- 14.1.4. MSI reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

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14.2. If this Clause applies then, without prejudice to any other right or remedy available to MSI, MSI shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

15. Export Terms

15.1. In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

15.2. Where Goods are supplied for export from the United Kingdom, the provisions of this Clause 15 shall (subject to any special terms agreed in writing between the Customer and MSI) apply notwithstanding any other provision of these Conditions.

15.3. The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

15.4. Unless otherwise agreed in writing between the Customer and MSI, the Goods shall be delivered FOB the air or sea port of shipment and MSI shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

15.5. The Customer shall be responsible for arranging for testing and inspection of the Goods at MSI's premises before shipment. MSI shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

15.6. Payment of all amounts due to MSI shall be made by irrevocable letter of credit opened by the Customer in favour of MSI and confirmed by a bank in the Customer's jurisdiction acceptable to MSI or, if MSI has agreed in writing on or before acceptance of the Customer's order to waive this requirement, by acceptance by the Customer and delivery to MSI of a bill of exchange drawn on the Customer payable 30 days after sight to the order of MSI at such branch of Bank in England as may be specified in the bill of exchange.

15.7. The Customer undertakes not to offer the Goods for resale in or any other country notified by MSI to the Customer at or before the time the Customer's order is placed, or to sell the Goods to any person if the Customer knows or has reason to believe that that person intends to resell the Goods in any such country.

16. Force Majeure

MSI shall be under no liability to the Customer in any way whatsoever for destruction, damage, delay or any other matters of that nature whatsoever arising out of war, rebellion, civil commotion, strikes, lock-outs and industrial disputes, fire, explosion, earthquake, acts of God, flood, drought, or bad weather, the unavailability of deliveries, Goods, Software or supplies or the requisitioning or other act or order by any Government department, council or other constituted body. MSI shall further be under no liability to the Customer in any way whatsoever for any other circumstances or happenings (whether of the foregoing classes or not) beyond MSI's control.

17. Notices

Any notice required or permitted under the terms of these Conditions or required by statute, law or regulation shall (unless otherwise provided) be in writing and shall be delivered in person, sent by registered mail or air-mail as appropriate, properly posted and fully pre-paid in an envelope properly addressed or sent by facsimile to the other party at its registered office or principal place of business or principal facsimile number or such other address or facsimile number as may at the relevant time have been notified pursuant to this provision to the party giving notice. Any such notice shall be in the English language and shall be considered to have been received on the next working day following delivery or facsimile or in any other event three (3) working days after it was mailed in the manner provided above.

18. Waiver

Failure or neglect by MSI to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of MSI's rights hereunder nor in any way affect the validity of the whole or any part of these Conditions nor prejudice MSI's rights to take subsequent action.

19. Third Party Rights

Nothing in these Conditions shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999. No variation of these Conditions and no supplemental or ancillary agreement to these Conditions shall create any such rights unless expressly so stated in any such agreement by the Parties. This does not affect any right or remedy of a third party which exists or is available apart from that Act.

20. Severability

In the event that any of these Conditions shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent such Condition shall to that extent be severed from the remaining Conditions which shall continue to be valid to the fullest extent permitted by law.

21. Acknowledgement

The Customer acknowledges and agrees that the terms and conditions are understood and are reasonable in the circumstances.

22. Law

The parties hereby agree that these Conditions shall be construed in accordance with Law of England and Wales and the parties submit to the sole jurisdiction of the English Courts.

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