

# Measurement Solutions Limited - Standard Terms and Conditions of Sale

## 1. General :

### 1.1. Definitions in these conditions :

- a) "Seller" means Measurement Solutions Limited
- b) "Goods" means any item (including software licenses) or service to be provided by the Seller
- c) "Buyer" means any person, company or organisation which has agreed to buy the Goods

### 1.2. **These Conditions shall apply to all contracts for the sale of Goods by the Seller unless otherwise agreed in writing by the Seller prior to order placement**

## 2. Acceptance of Order :

### 2.1. The placing of an order by the Buyer, whether or not based on a quotation, shall not be binding on the Seller until accepted by the Seller

### 2.2. The Buyer's order must be accompanied by :

- a) enough information about the Buyer's requirements to enable the Seller to proceed with the order
- b) satisfactory evidence of any license or consent required for the sale or delivery
- c) instructions as to the place and time or day of delivery
- d) relevant deposit payments in accordance with the agreed payment terms

### 2.3. No representations or undertakings made or given on the Seller's behalf prior to contract shall be binding on the Seller, unless incorporated expressly in writing in the contract

### 2.4. The Seller has no obligation to accept return of Goods which are surplus to the Buyer's requirements or ordered in error. Any decision by the Seller to accept return of Goods for credit does not affect the Buyer's obligation to pay the price thereof on the due date of payment, and such credit shall not exceed 80% of the price of the Goods and shall be conditional upon the Goods and packaging being returned without any damage or marking within 10 days of the Seller's invoice

## 3. Specification :

### 3.1. Specifications and data supplied by the Seller are approximate only unless stated otherwise

### 3.2. The Seller reserves the right to effect modifications and design changes and to discontinue the manufacture of Goods as part of a continuous development programme, without prior notice

### 3.3. The Buyer is responsible for determining that Goods are suitable for its purpose prior to purchase

### 3.4. The Seller has no liability for the failure of the Goods to perform in accordance with specification when such failure is caused by operation in conditions which are unsuitable, unless the Buyer has stated such conditions in its order and the Seller has accepted such stipulations

## 4. Delivery :

### 4.1. Unless otherwise agreed, delivery shall be effected at the Buyer's premises and the method of carriage and choice of carrier shall be determined by the Seller

### 4.2. In all cases, statements regarding delivery dates are reasonable estimates, but not guaranteed. All such periods run from the Seller's receipt of information under 2.2 and the deposit due under 6.1(a)

### 4.3. Upon the Seller notifying the Buyer that the Goods are ready for delivery, the Buyer shall agree to accept the delivery and make payments in accordance with 6.1

### 4.4. The Buyer shall be responsible for the cost of delivery, unless otherwise agreed in writing

### 4.5. The Buyer shall be responsible for providing good access to the delivery site and appropriate lifting and/or other assistance for unloading. If the Buyer should fail to provide proper assistance, it shall be liable for all additional costs incurred by the Seller

### 4.6. If the delivery is delayed at the request of the Buyer, the Seller may place the Goods in store at the Buyer's risk and the Buyer shall pay for such storage and other costs incurred by the Seller. The Buyer must also accept the Goods as having been delivered and agree to make payments in accordance with 6.1

### 4.7. If the Seller, having used its reasonable endeavours fails to deliver the Goods by the stated date(s) such failure shall not constitute a breach of the contract. The Buyer shall not be entitled to treat the contract as repudiated or to rescind it or any related contract in whole or part or claim compensation for such failure or for any consequential loss or damage

### 4.8. Disposal of packaging is the responsibility of the Buyer

## 5. Prices :

### 5.1. Prices quoted by the Seller shall remain valid for a period not exceeding 30 days from quotation date unless otherwise agreed in writing

### 5.2. Prices quoted by the Seller are based upon its prices at the date of quotation, and the Seller reserves the right to adjust its prices at the time of acceptance of the order to reflect any increase in monetary exchange rates or the cost of supplying the Goods

### 5.3. Unless otherwise stated in writing, prices quoted by the Seller are exclusive of the cost of packaging, delivery and VAT

### 5.4. The Buyer is not entitled to make any deduction from the price by way of set-off or counterclaim

### 5.5. If after the date of the Seller's acceptance of order any increase occurs in the costs necessarily incurred by the Seller in supplying the Goods including but not limited to materials, labour, transport, taxes, movement in foreign exchange rates, or other items including overheads which the Seller has to pay or incur in the performance of the contract, then the amount of any increase in such costs shall be added to the contract price

## 6. Payment :

### 6.1. Subject to a valid credit account with the Seller, the Buyer shall pay :

- a) for purchase of Goods (excluding service or software maintenance contracts) with a total value less than £5,000 sterling, 100% of the price and all charges payable in respect of the Goods within 30 days of delivery of the Goods
- b) for purchase of Goods (excluding service or software maintenance contracts) with a total value of £5,000 sterling or above ;
  - (i) on acceptance of the quotation, 30% of the price, plus VAT if applicable, as a deposit
  - (ii) a further 60% of the price, plus VAT if applicable, when the Goods are ready for delivery and prior to installation
  - (iii) the balance of the price and all charges payable in respect of the Goods within 30 days of delivery of the Goods
- c) for annually renewable service or maintenance contracts, 100% of the price prior to the renewal date of the contract and commencement of any work associated with said contract

### 6.2. In the event that the Buyer does not have a valid credit account with the Seller, the Buyer shall pay 100% of the price, plus VAT if applicable, immediately upon order acceptance in all cases

### 6.3. The Buyer accepts that any discounts are only valid for payment within the agreed payment terms

### 6.4. In the event of delay of payment, the Seller shall exercise the statutory right to claim interest (at 8% above Bank of England base rate) and compensation for debt recovery costs under the Late Payment Legislation, without prejudice to its other rights.

### 6.5. The Seller makes no representations that the Goods will operate in conjunction with any equipment or software supplied by the Buyer. The Seller reserves the right to charge standard service rates to

attempt to configure any Goods for operation with such equipment or software. Failure of the Goods due to customer supplied hardware / software may not be deemed reason to withhold payment.

### 6.6. At any time the Seller has reasonable grounds for doubting that payment by the Buyer will be made on time, the Seller shall be entitled to suspend all work and withhold deliveries, without prejudice to its rights to payment for Goods delivered, work done and expenses incurred in connection with undelivered Goods, which shall become immediately due and payable

### 6.7. If the Buyer wishes to pay for Goods in foreign currency, the Seller reserves the right to include an additional administration charge of 1% (and not less than £25) to be added to each invoice

### 6.8. In the case of service or software maintenance contracts, the Seller is under no obligation to provide any form of service or support until such time that payment for the said contract is received in full

### 6.9. Payment Terms shall be of the essence of the contract

## 7. Title & Risk :

### 7.1. The Goods are at the entire risk of the Buyer from the time they are despatched. Where the Seller arranges for the carriage of the Goods on behalf of the Buyer, in accordance with the provisions of Section 32 of the Sale of Goods Act 1979, delivery to the carrier will constitute delivery to the Buyer

### 7.2. The Seller shall have no liability in respect of Goods lost or damaged in transit unless the Buyer notes such damage or loss on the delivery receipt and gives notice to the Seller within 5 days of delivery or receipt of the Seller's invoice, whichever is the sooner

### 7.3. The Seller's liability in respect of Goods lost or damaged in transit shall be limited to repairing or replacing such Goods, and will be at the Seller's discretion

### 7.4. Title to the Goods remains with the Seller until all money due from the Buyer to the Seller on any account has been paid in full

### 7.5. Until title to the Goods pass to the Buyer the following provisions shall apply :

- a) If the Buyer shall default in payment for the Goods and at any time when the Seller shall have reasonable grounds for doubting that payments will be made on time, the Seller may, without prejudice to its other rights, enter upon any land or premises where the Goods may be, to recover possession of them
- b) The Buyer shall store the Goods in a proper manner without charge to the Seller and ensure that they are identified as belonging to the Seller

### 7.6. With respect to supply of Software ;

- a) The initial installation will be time limited, and the Buyer accepts that the software licence code will only be renewed upon receipt of final payment
- b) The Buyer is only entitled to become a licensed user of the software upon payment of all money due, and title remains with the relevant software author under the terms of the Software Licence General Terms and Conditions which must be accepted in order to use the software licence.

## 8. Installation

### 8.1. The Buyer shall be responsible for ensuring that all necessary power, plant and labour specified by the Seller shall be available when required and that the Seller shall be able to undertake such installation, without interruption, during normal office hours

### 8.2. Upon completion of the installation, the Seller shall test the Goods, but such tests shall not be delayed if the Buyer fails to attend such tests

### 8.3. The Goods shall be deemed to be satisfactory unless the Buyer shall give notice of any fault within 3 days of the testing of the Goods

### 8.4. The Seller shall have no liability for redecoration or any other building repair arising from installation

## 9. Warranty

### 9.1. The Seller warrants that the Goods will comply with specification and will be of merchantable quality but not that they shall be fit for any particular purpose

### 9.2. The Seller will repair or replace any Goods which under proper use prove to be defective due to bad workmanship or faulty materials or, subject to clause 3, the Seller's failure to supply Goods of the specification and quality ordered, provided that :

- a) in the case of any hardware defect, the Buyer shall notify the Seller of the defect within 5 days of the date the defect became apparent and, in any event, within 12 months from the date of delivery
- b) in the case of any reproducible software defect, the Buyer shall notify the Seller of the defect within 5 days of the date the defect became apparent and, in any event, within 3 months from the date of delivery
- c) the Buyer and any user of the Goods shall have been trained by the Seller and shall have complied with the Seller's recommended operation and general maintenance of the Goods
- d) the Buyer shall give to or procure for the Seller the opportunity to inspect and test the Goods and, if requested, shall return the Goods to the Seller, carriage paid, such carriage charges to be refunded by the Seller if the defect shall constitute a valid claim under this clause
- e) the Buyer is not in default of any payment of any sum due in accordance with clause 6

### 9.3. Subject to any statutory provision to the contrary, the liability of the Seller under this clause shall be in lieu of and to the exclusion of any other condition, warranty, or other term, whether express or implied by law, as to the quality of the Goods or their fitness for any particular purpose or otherwise. The Seller shall have no liability, whether arising in contract or otherwise, in respect of any defect in the Goods or any injury, damage or loss resulting from such defect

## 10. Indemnity

Subject to any statutory provision to the contrary, the Seller shall have no liability for any loss or damage suffered by any third party caused directly or indirectly by the Goods, whether as a result of their operation or otherwise and whether as a result of any defect or otherwise, and the Buyer shall indemnify the Seller from any loss or claim arising from such loss or damage

## 11. Force Majeure

The Seller shall not be liable for any loss or damage sustained by the Buyer by reason of any act of God, war, riot, fire, strike, lock-out, governmental control or regulation, abnormal weather conditions, accident, breakdown or any other circumstances beyond the Seller's control and in such event, insofar as the contract shall not have been performed, the Seller may either terminate the contract and return any advance payment received or delay delivery for such period as may be necessary

## 12. Confidentiality

All drawings, quotations, specifications, schematics, and any other documents (including the contents therein) supplied by one party to the other shall remain the copyright and property of the party supplying the same and may not be copied, reproduced or disclosed to any third party without its consent, and such documents shall be returned in the event of the contract not being completed

## 13. Notices

Any notice to be given to either party to the other shall be properly given if sent by fax or post to the party to be served at its head office or last known address and shall be deemed to have been served no later than 3 days after despatch of the notice

## 14. Law

The contract shall be governed by English law and the English courts shall have jurisdiction to determine any dispute between the parties in relation thereto.