

## Terms & Conditions of Sale ('Conditions')

### 1. INTERPRETATION

In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Company:** Aber Instruments Ltd (registered in England and Wales with company number 2213855).

**Contract:** the contract between the Company and the Purchaser for the sale and purchase of the Goods in accordance with these Conditions.

**Goods:** the goods (or any part of them) set out in the Order.

**Order:** the Purchaser's order for the Goods, as set out in the Purchaser's purchase order form, the Purchaser's written acceptance of the Company's quotation, or overleaf, as the case may be.

**Purchaser:** the person or firm who purchases the Goods from the Company.

### 2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Purchaser to purchase the Goods in accordance with these Conditions. The Purchaser is responsible for ensuring that the terms of the Order are complete and accurate. The Goods will only be supplied in the minimum quantities stated in the Company's price list or in multiples of those quantities.
- 2.3 The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order or on delivery of the Goods and the Company's invoice (whichever comes first), at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. The Purchaser acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract.
- 2.5 Illustrations, photographs or descriptions whether in catalogues, brochures, price lists or other documents issued by the Company are intended as a guide only and shall not be binding on the Company.

2.6 The Company reserves the right to make any changes to the Goods which are required to conform to any applicable safety or other statutory or regulatory requirements.

2.7 If at any time after acceptance of the Order (but prior to delivery of the Goods) the Company is not satisfied as to the creditworthiness of the Purchaser it may give notice in writing to the Purchaser that no further credit will be allowed in which event the Goods will not be delivered to the Purchaser other than against a cash payment made in advance of the delivery of the Goods.

### **3. EXECUTION OF ORDERS**

3.1 The Company shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Company notifies the Purchaser that the Goods are ready. Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location and/or upon the Company's notification to the Purchaser that the Goods are ready for delivery and or available for collection (as the case may be).

3.2 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. No liability is accepted for variations in the delivery times quoted by the Company. The Company will not be liable for any penalty, loss, injury, damage or expense arising from any delay or failure in delivery from any cause whatsoever nor shall any such delay or failure entitle the Purchaser to refuse to accept any delivery of the Goods or repudiate the Contract.

3.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate Contract.

3.4 If the Purchaser fails to take delivery of the Goods at the Delivery Location and/or fails to provide any instructions, documents, licences, consents or authorisations that are required to enable the Goods to be delivered as agreed, the Company shall notify the Purchaser that the Goods are ready for delivery and/or available for collection (as the case may be) and shall arrange for the storage of the Goods pending such delivery and/or collection. The Purchaser shall be liable to the Company for all costs and expenses including but not limited to storage and insurance charges arising from such failure to take delivery.

3.5 Damage to or shortage of Goods must be notified to the Company within 3 days of delivery. Any claims which are not notified within this time will not be accepted by the Company or by persons authorised by the Company to deliver the Goods.

3.6 Without limiting its other rights or remedies, the Company may cancel any incomplete Order or suspend provision of the Goods under the Contract in the event of any of the Purchaser's obligations under the Contract not being met. In the event

that it does so, the Company shall be entitled to cancellation and restocking charges, including reimbursement of direct costs incurred.

- 3.7 Cancellation by the Purchaser prior to shipment is permitted only by written notice in advance and upon payment to the Company of its reasonable cancellation and restocking charges, including reimbursement for direct costs incurred. Cancellation charges associated with orders for custom Goods, or Goods manufactured to the Purchaser's Specification, may equal the actual selling price of the Goods.

#### **4. QUALITY**

- 4.1 The Company warrants that on dispatch of the Goods, and for a period of 12 months from the date of dispatch (**warranty period**), the Goods shall:

- (a) conform in all material respects with their description; and
- (b) be free from material defects in design, material and workmanship.

- 4.2 Subject to clause 4.3, if:

- (a) the Purchaser gives notice in writing to the Company during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.1;
- (b) the Company is given a reasonable opportunity of examining such Goods; and
- (c) the Purchaser (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost,

the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 4.3 The Company shall not be liable for Goods' failure to comply with the warranty set out in clause 4.1 in any of the following events:

- (a) the Purchaser makes any further use of such Goods after giving notice in accordance with clause 4.2;
- (b) the defect arises because the Purchaser failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the Purchaser alters or repairs such Goods without the written consent of the Company; or
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.

4.4 Except as provided in this clause 4, the Company shall have no liability to the Purchaser in respect of the Goods' failure to comply with the warranty set out in clause 4.1.

4.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

## **5. TITLE AND RISK**

5.1 The risk in the Goods shall pass to the Purchaser on completion of delivery. Title to the Goods shall not pass to the Purchaser until the Company has received payment in full (in cash or cleared funds) for the Goods.

5.2 Where the Company has installed and/or commissioned the Goods, it will request confirmation in writing from the Purchaser that the installation and/or commissioning are approved. The Purchaser shall have 7 days from receipt of such request to notify the Company of any modifications that it reasonably requires to the installation and/or commissioning, failing which the installation and/or commissioning will be deemed to be approved by the Purchaser.

5.3 Where, following the installation and/or commissioning of the Goods, the Company has submitted a written request to the Purchaser for sign-off or approval, the Purchaser will be deemed to have signed off and/or approved the Goods unless it notifies the Company otherwise in writing within [7] working days of receipt of the Company's request.

5.4 If before title to the Goods passes to the Purchaser the Purchaser becomes subject to any insolvency event, or ceases trading for whatever reason, or the Company reasonably believes that any such event is about to happen and notifies the Purchaser accordingly then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Purchaser to deliver up the Goods and, if the Purchaser fails to do so promptly, enter any premises of the Purchaser or of any third party where the Goods are stored in order to recover them.

## **6. PRICE AND PAYMENT**

6.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Company's published price list in force as at the date of delivery.

6.2 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, and any import/export duties or other taxes, which shall be invoiced to or payable by the Purchaser.

- 6.3 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Purchaser shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 6.4 The Company may, by giving written notice to the Purchaser at any time before delivery, increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (including, 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 are requested by the Purchaser, or any delay caused by any instructions of the Purchaser or failure of the Purchaser to give the Company adequate information or instructions.
- 6.5 The Company may invoice the Purchaser for the Goods on or at any time after the completion of delivery or any time after the Company has notified the Purchaser that the Goods are ready for delivery or collection (as the case may be).
- 6.6 The Purchaser shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Company. Time of payment is of the essence.
- 6.7 If the Purchaser's Order has benefitted from the quantity discounts as set out in the Company's published price list in force as at the date of delivery, the Company reserves the right to withdraw the quantity discount and demand payment of the full sale price for the Goods if the Purchaser fails to pay the Company's invoice in accordance with the terms of clause 6.6.
- 6.8 If the Purchaser fails to make any payment due to the Company under the Contract by the due date for payment, then the Purchaser shall pay interest on the overdue amount at the rate of 5% per annum above Barclays plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Purchaser shall pay the interest together with the overdue amount.
- 6.9 The Purchaser shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).

## **7. LIMITATION OF LIABILITY**

- 7.1 Nothing in these Conditions shall limit or exclude the Company's liability for:
- (a) death or personal injury caused by its negligence;
  - (b) fraud or fraudulent misrepresentation; or

- (c) any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

7.2 Subject to clause 7.1:

- (a) the Company shall under no circumstances whatever be liable to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss or damage, including loss of profit, or any indirect or consequential loss arising under or in connection with the Contract;
- (b) the Company shall not be liable for any breach of any express or implied warranty or condition of the Contract; and
- (c) in the event that the Company is found to be liable, the Company's total liability to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed  
  
the limit of indemnity provided by any relevant policy of insurance held by the Company.

**8. GENERAL**

**8.1 Assignment and other dealings.**

- (a) The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Purchaser may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.

**8.2 Accounts.** Orders will only be processed for non-account customers once full payment has been received. Pro-forma invoices can be issued on request. Requests to open an account must be accompanied by two trade references and bank details.

**8.3 Copyright.** Copyright in all documents (including drawings, handbooks and software) supplied to the Purchaser, together with any other intellectual property rights, shall at all times remain vested in the Company. The contents of documents may not be used for any purpose other than that for which they were supplied without the express written consent of the Company.

**8.4 Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

**8.5 Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Company.

8.6 **Confidentiality, Publications and Endorsements**

- (a) The Purchaser will regard as confidential the Contract and all information obtained by it relating to the business of the Company and/or Goods and will not use or disclose to any third party such information without the Company's prior written consent provided that this undertaking shall not apply to information which is in the public domain other than by reason of the Purchaser's default.
- (b) The Purchaser will not use, authorise or permit any other person to use any name, trademark, house mark, emblem, symbol, patent, invention, discovery, copyright or other intellectual property right held, made or obtained by the Company and/or which the Company is licensed to use unless such use has been previously authorised in writing by the Company and (where appropriate) its licensor. In particular, no licence is hereby granted directly or indirectly.
- (c) The Buyer will use all reasonable endeavours to ensure compliance with this clause by its employees, servants and agents.
- (d) The provisions of this clause shall survive the termination of the Contract.

8.7 **Communications**

- (a) All notices under these Conditions and under the Contract shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the party giving the notice.
- (b) Notices shall be deemed to have been duly given:
  - if delivered by courier or other messenger (including registered mail) on that business day, if delivered during the normal business hours of the recipient; or
  - if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated, on that business day if a transmission report or return receipt is generated during the normal business hours of the recipient, failing which, delivery shall take place on the following business day; or
  - on the fifth business day following mailing, if mailed by Royal Mail first class post; or
  - on the tenth business day following mailing, if mailed by international airmail.
- (c) All notices under this Agreement shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

8.8 **Force Majeure.** Neither the Company nor the Purchaser shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil

unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question.

- 8.9 **Waiver.** Any failure by either the Company or the Purchaser to enforce the performance of any provision in these Conditions or under the Contract shall not constitute a waiver of the right to subsequently enforce that provision or any other provision. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.
- 8.10 **Severance.** In the event that one or more of the provisions of these Conditions or the Contract are found to be unlawful, invalid or otherwise unenforceable, such provisions shall be deemed severed from the remainder of these Conditions (and, by extension, the Contract). The remaining provisions shall be valid and enforceable.
- 8.11 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 8.12 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).