

Roxspur Measurement & Control Limited - Terms and Conditions of Sale of Goods and/or Services

1. DEFINITIONS

In these Terms and Conditions unless the context requires otherwise:

"Company" means Roxspur Measurement & Control Limited

"Customer" means the person, firm or company named in the Order

"Goods" means the good agreed to be sold in the Contract

"Order" means a purchase order in respect of the Goods or Services issued by the Customer to the Company on the official purchase order form, together with all the documents referred to in it

"Services" means the services, (including but not limited to hirework, maintenance, calibration and work involving the use of the Company's materials), supplied by the Company to the Customer as set out in the Service Specification

"Service Specification" means the description or specification for the Services provided in writing by the Company to the Customer.

2. GENERAL

2.1 The Company's quotations are not binding on the company and a contract ("Contract") will only come into being upon acceptance in writing by the Company of the Order and the following Terms and Conditions shall be deemed to be incorporated into the Contract.

2.2 The Contract will be subject to these Terms and Conditions. These are the only terms and conditions upon which the Company will do business with the Customer, and they shall prevail against all others notwithstanding any printed or other conditions contained in any Order, purchase order, acceptance of estimate or quotation or otherwise brought to the Company's notice, or those which are implied by trade, custom, practice or a course of dealing.

2.3 Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.4 No other agreement, representation, promise, undertaking or understanding of any kind unless expressly accepted in writing by the Company, shall alter, vary, supersede or operate as a waiver of these Terms and Conditions.

2.5 Where Goods are to be supplied from stock, such supply is subject to availability of stocks at the date of delivery.

2.6 Tenders submitted by the Company shall remain open for acceptance for a period of 30 days from the date of tender, unless in the tender some other period is specified or accepted or the tender is withdrawn by the Company.

2.7 Delivery periods shall run from the date of acceptance of the tender.

2.8 All of these Terms and Condition apply to both Goods and Services, except where the application to one or the other is specified.

3. PRICES

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

3.2 Unless otherwise expressly stated the prices quoted do not include VAT, any other tax or duty relating to the manufacture, transportation, export, import, sale or delivery of the Goods or packing, insurance, carriage and delivery charges.

3.3 All prices quoted are business estimates only and are subject to revision at the absolute discretion of the Company. If there is an increase in the cost of materials, fuel and power, labour, freight, transport, any change in the parity of exchange rates, duties or other costs which arise before completion of the Order, the prices ruling for the Goods at the date of delivery shall apply and shall be paid by the Customer. Any variation in price shall be binding on both parties and shall not give either party any option of cancellation.

3.4 If work is suspended because of the Customer's instructions, lack of instructions or failure to supply specifications, extra charges may be made. An extra charge may be made if special tests, installation or inspection of the Goods are required.

3.5 All Goods are sold "ex works" unless otherwise stated. If the Company arranges or undertakes the carriage, freight, insurance and any other transport costs beyond the point of delivery, such costs shall be for the Customer's account and shall not affect the provisions of the Contract as to the passing of risk.

3.6 Quotations in a currency other than sterling are based on the rate of exchange at the time of quoting and, unless otherwise stated, the price may be subject to revision up or down if any different rate of exchange is ruling at the date of invoice.

3.7 Where the Goods are sold by reference to the Company's published price list, the price payable for the Goods shall be the ruling price as published in the price list current at the date of dispatch of the Goods from the Company's works.

4. PAYMENT

4.1 Payment shall be made as directed on the invoice not later than the end of the month following that in which the goods are despatched. All payments shall be made without deduction or set-off. When deliveries are spread over a period, each consignment will be invoiced as despatched and each month's invoices will be treated as a separate account and be payable accordingly. When deliveries are spread over a period in excess of one month, the value of work carried out shall be ascertained by the Company at the end of each month and (unless the Contract otherwise expressly provides) a sum equal to such value (or any percentage thereof specified in the Contract) shall be invoiced and such invoice shall be paid in accordance with the foregoing provisions of this condition. Failure to pay any invoice in accordance with the foregoing terms or other terms specified in the Contract shall entitle the Company to suspend further deliveries and work both on the same order and on any other order from the Customer without prejudice to any other right the Company may have. The Company also reserves the right to charge interest on overdue accounts, such interest to be calculated at the rate of three per cent above the arithmetic average for each day of the published base rate of HSBC Bank PLC. The Company reserves the right, where genuine doubts arise as to a Customer's financial position or in the case of failure to pay for any Goods or any delivery or installment as aforesaid, to suspend delivery or performance of any order or any part without liability until payment or satisfactory security for payment has been provided.

4.2 Where Goods are to be delivered outside the United Kingdom, payment must be made against delivery of the Goods or shipping documents FOB UK port Incoterms 2010 unless credit arrangements within the United Kingdom approved by the Company have been made.

5. TITLE TO GOODS

5.1 Notwithstanding that risk in the Goods shall pass to the Customer in accordance with condition 6, title to the Goods (whether separate and identifiable or incorporated in or mixed with other Goods) shall remain with the Company until payment in full has been received by the Company:

- for those Goods;
- for any other Goods supplied by the Company; and
- of any other monies due from the Customer to the Company on any account.

5.2 Until title to the Goods passes to the Customer under condition 5.1, the Customer shall:

- keep the Goods separately and readily identifiable as the property of the Company; and
- not attach the Goods to real property (without the Company's prior written consent).

5.3 The proceeds of any resale by the Customer of Goods in which property has not passed to the Customer shall (as between the Company and the Customer only) be held on trust for the Customer, and shall immediately account to the Company with the proceeds.

5.4 Goods shall be deemed sold or used in the Order delivered to the Customer.

5.5 At any time before title to the Goods passes to the Customer (whether or not any payment to the Company is then overdue or the Customer is otherwise in breach of any obligation to the Company), the Company may (without prejudice to any other of its rights):

- retake possession of all or any part of the Goods and may enter any premises for that purpose (or authorise others to do so) which the Customer hereby authorises;
- require delivery up to it of all or any part of the Goods.

5.6 The Company may, at any time, appropriate sums received from the Customer as it thinks fit notwithstanding any purported appropriation by the Customer.

5.7 Each sub-condition of this condition 5 is separate, severable and distinct and, accordingly, in the event of any of them being for any reason whatever unenforceable according to its terms, the others shall remain in full force and effect.

6. DAMAGE, SHORTAGE OR LOSS IN TRANSIT

6.1 Unless the Contract otherwise stipulates, the risk in the Goods passes to the Customer when the Goods are despatched from the Company's works and the Company accepts no responsibility for any damage or loss in transit. Claims for damage or loss in should be made on the carrier and any conditions imposed by the carrier in relation to claims for damage or loss in transit should be complied with.

6.2 Where the Contract provides for delivery elsewhere than at the Company's works, risk will pass at the point specified in the Contract.

6.3 The Company will entertain a claim by the Customer in respect of loss or damage in transit only if the Customer gives written notice to the Company within 21 days of non-delivery or within seven days of the delivery of the Goods in any other case; and where the Goods are transported by an independent freight carrier complies with the freight carrier conditions of carriage for notifying claims for loss or damage in transit.

7. DELIVERY

7.1 Unless otherwise expressly agreed by the Company, time is not of the essence for delivery or performance.

7.2 The dates for delivery of Goods are business estimates only and subject to condition 7.3, the Company shall not in any way be liable for any delay in delivery, or the consequences thereof, however the delay was caused including, but not limited to, delay or interruption of work at the Company's works before or during the delivery period, any strike, lockout, labour disputes, fire, breakdown of machinery, act of God, inclement or exceptional weather conditions, hostilities, shortage of labour, materials, power or other supplies, late delivery or performance or non-delivery or non-performance by suppliers or sub-contractors, governmental order or intervention (whether or not having the force of law) or any cause whatsoever beyond the Company's control.

7.3 Subject to condition 10.7, nothing in condition 7.2 excludes or limits the Company's liability for delay in delivery or the consequences thereof, where such delay is caused by the Company's negligence or willful default.

7.4 In any of the circumstances in condition 7.2 deliveries may be wholly or partially suspended and the delivery time extended by the length of time during which deliveries are suspended.

7.5 Where Goods are ready for delivery the Company may postpone delivery at the request of the Customer provided that the Customer pays the full price of the Goods to the Company forthwith.

7.6 The Company may store the Goods at its own premises or elsewhere at the Customer's sole risk and all storage, insurance and transport charges shall be paid by the Customer.

7.7 No delay shall entitle the Customer to reject any delivery or any further installment or part of the Order or any other part of the Order from the Customer or to repudiate the Contract or the Order.

7.8 A claim in respect of any delivery or installment of any Order or any part of it shall not entitle the Customer to cancel or refuse delivery of or payment for any other Order, delivery or installment or any part of the same Order, delivery or installment.

8. CANCELLATION FEE

In the event of the Customer requesting the cancellation of an Order the Company, if it accepts such cancellation, shall be entitled to charge the Customer a cancellation fee in respect of costs and expenses actually incurred as a result of the contract's cancellation, including loss of profits of up to 50% of the total purchase price of the Goods. This condition 8 is without prejudice to any right to claim further costs, expenses and damages whatsoever arising.

9. GUARANTEE

9.1 The Company guarantees the Goods against defects of materials or workmanship for a period of one year commencing on the date on which the Goods are despatched from the Company's works (the "Warranty Period"). The Company, insofar as it is able, will also pass on to the Customer the benefit of all other manufacturers' guarantees connected with the Goods supplied which are not of the Company's manufacture.

9.2 The Company's liability under this condition shall apply to defects in the Goods that appear during normal and proper operational use in accordance with any operating or service manuals supplied by the Company. Such liability does not apply to defects due to causes arising after the risk in the Goods has passed to the Customer in accordance with Condition 6, or to defects arising from the Customer's faulty maintenance or handling or from alterations carried out without the Company's prior authorisation in writing or from repairs which have not been carried out in accordance with any operations or service manual supplied by the Company, nor does it apply to normal wear/ and tear.

9.3 The Company's liability under this Condition is limited to either replacing or making good the defects in the Goods.

9.4 If the Company so requests, the Customer at their own expense and risk shall send the Goods or part thereof which are to be replaced or made good, to the Company or some other place nominated by the Company. Any repaired or substituted Goods may be delivered to the Customer at their own expense and risk, but the Company may, if appropriate, pay the cost of carriage.

9.5 The Company will (at the Company's choice) either repair or replace any Goods which are accepted by the Company as being defective or not in accordance with the Contract or any express description or representation given or made by or on behalf of the Company in respect to the Goods within the Warranty Period save where the defect or fault is attributable to defective materials supplied by third parties where the Customer's only remedy will be against that third party.

10. LIABILITY

10.1 The guarantee contained in condition 9 of these Terms and Conditions is given and shall be accepted in substitution for and to the entire exclusion of all conditions and warranties and liabilities whatsoever, whether expressed or implied by statute (save those implied by virtue of Section 12 of the Sale of Goods Act 1979), common law, usage or otherwise and the Company's liability shall be limited accordingly.

10.2 The Company shall be under no liability for any defects drawn to the attention of the Customer or which were or ought to have been discovered under any examination of the Goods prior to delivery by himself, his servants or agents.

10.3 Any damage to Goods or short shipment of Order must be notified in writing by the Customer to the Company immediately on discovery, but in all cases within 7 days of receipt of the Goods.

10.4 Although the greatest care is always taken to recommend the use of appropriate components and to advise and assist in the correct installation, the Company cannot accept any liability whatsoever for the incorrect functioning of these components after delivery or installation or for any consequential loss, or damage which may result from their use and the Company's liability is strictly limited to the replacement value of components which are shown to have been faulty when despatched.

10.5 Nothing in these conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence:

10.6 The Customer's remedies in respect of any claim under the express guarantee in condition 9 or any condition or warranty implied by law or any other claim in respect of the Goods or any workmanship in relation to them (whether or not involving negligence on the part of the Company) shall, subject to condition 10.5 in all cases, be limited to repair or replacement as aforesaid.

10.7 Unless otherwise expressly stated in these Terms and Conditions, and subject to condition 10.5, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total price of the Goods in that Contract, and the Company shall not be liable to the Customer for any consequential or indirect damage however caused, or any loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential which arise out of or in connection with the Contract.

11. TERMINATION

If the Customer enters into a deed of arrangement or commits an act of bankruptcy or compounds with his creditors or if a receiving order is made against him or (being a Company) it shall pass a resolution or the court shall make an order that the Customer shall be wound up (otherwise than for the purposes of amalgamation or reconstruction) or if a

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receiver (including an administrative receiver) shall be appointed of any of the assets or undertaking of the Customer or if the Customer suffers the appointment or the presentation of a petition for the appointment of an administrator or if circumstances shall arise which entitle the court or a creditor to appoint a receiver (including an administrative receiver) or a manager or which entitle the court to make a winding-up order or if the Customer takes or suffers any similar action in consequence of debt or if the financial responsibility of the Customer shall, in the opinion of the Company, become impaired or if the Customer shall commit any breach of any part of the Contract, the Company may, without prejudice to its rights and remedies under these conditions, stop all Goods in transit and suspend further deliveries and by notice to the Customer may terminate the Contract immediately.

12. CONTRACTS FOR SERVICES

- 12.1 In the event that a Contract between the Company and the Customer shall amount to a contract for the provision of Services rather than a contract for the sale of goods then the provision of these Terms and Conditions shall apply with such modifications as may be necessary to give effect to them.
- 12.2 The Company shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 12.3 Save for where expressly agreed in writing by the Parties, or as specified in condition 12.9(d), the price for Services shall be the price set out on the relevant Order which will be quoted as a day or half day rate (inclusive of travel expenses). If no price is quoted, the price shall be that set out in the Company's price list as at the date of performance of each part of the Services.
- 12.4 If the Customer requests any services additional to those specified in the Service Specification (or if the scope of services changes due a Customer Default, as defined in condition 12.9), then the Customer and Company shall agree a written amendment to the relevant Order, which may include an additional charge payable to the Company by the Customer.
- 12.5 Any performance dates for the Services specified in the Contract shall be estimates only and time shall not be of the essence for the performance of the Services.
- 12.6 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Customer in any such event.
- 12.7 The Company shall provide the Services using reasonable care and skill.
- 12.8 The Customer shall:
- ensure that the terms of the Order and (if submitted by the Customer) the Service Specification are complete and accurate;
 - co-operate with the Company in all matters relating to the Services;
 - provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, machinery and other facilities as reasonably required by the Company to provide the Services;
 - provide the Company with such information and materials as the Company may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - prepare the Customer's premises for the supply of the Services;
 - obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
 - keep and maintain all materials, equipment, documents and other property of the Company ("Company Materials") at the Customer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation.
- 12.9 If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):
- the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
 - the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in Condition 12.8;
 - the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default; and
 - where amendments are required to the Services, the timetable for delivery or cost of delivery specified on the Order, the Company shall not be obliged to continue to provide the Services until the Customer agrees the terms of an amended Order.
- 12.10 Where the Company undertakes any Services involving work on the Customer's goods and equipment, the Company accepts no liability in respect of any distortion, fault, defect or deficiency arising from the use of such goods or equipment and the Company shall not in any circumstances be liable for damages, compensation, costs, expenses, losses or other liabilities, whether direct or consequential, and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited. The Customer is responsible for insurance whilst Customer goods and equipment are on the Company's premises or in transit.
- 12.11 Any experimental results supplied or recommendations made under a contract for Services are given in good faith within the limitations of the data available, but no warranty, expressed or implied is given as to the performance of or results obtained from such Services and the Company cannot accept any liability for the consequences of using or applying the said results or recommendation.
- 12.12 Unless it is otherwise expressly agreed in writing, any waste material resulting from the performance of the Services shall become the property of the Company but it is herein expressly agreed between the Company and the Customer that the Company may at any time order the Customer to remove any such waste material and the Customer hereby agrees that on receipt of any such order from the Company it will forthwith comply with such order.
- 12.13 The Customer agrees that it will reimburse the Company for any damage caused to any plant or machinery of the Company by any material supplied by the Customer to the Company.
- 12.14 The Company will have a lien on all the Customer's goods and materials in the possession of the Company for Services in respect of all sums owing to the Company for such Services.
- ## 13. TOLERANCES AND TESTS
- 13.1 Gauges, weights, chemical composition and analysis, quantities and sizes will, so far as possible, be adhered to but reasonable excesses and deficiencies thereof shall be accepted by the Customer, who shall not be entitled to reject any goods or to require replacement of any Goods on the ground that they are not precisely as specified.
- 13.2 Unless otherwise specifically agreed, all tests, test pieces and inspections whatever required by the Customer in relation to the Goods will be subject to additional charges as advised by the Company. All tests and inspections (whether or not being tests of chemical composition) shall take place under the Company's standard testing arrangements, and such tests shall be final. All tests are subject to analytical tolerances.

14. INDEMNITY

- 14.1 The Customer shall indemnify the Company against all losses, damages, injury, costs and expenses (including the cost of defending any legal proceedings), claims, proceedings, damages and other expenses of whatever nature suffered by the Company to the extent that the same are caused by or related to:
- improper incorporation, assembly, use, processing, storage or handling of Goods by the Customer;
 - defective materials or products supplied by the Customer to the Company and incorporated by the Company in the Goods; or
 - designs, drawings or specifications given to the Company by the Customer in respect of the Goods, including, but not limited to, any infringement or alleged infringement of any patent, registered design, unregistered design, design right, copyright, trade mark or other industrial or intellectual property rights resulting from compliance by the Company with the Customer's instructions, whether express or implied.
- ## 15. NON-STANDARD ORDERS
- Where the Customer orders Goods or materials of a type, size or quality not normally produced by the Company, the Company will use reasonable endeavours to execute the Order, but if it proves impossible, impractical or uneconomical to carry out or complete the Order, the Company reserves the right to cancel the Contract or the uncompleted balance of it, in which event the Customer will only be liable to pay for the part of it actually delivered or performed.
- ## 16. PATTERNS, DIES, TOOLS, DRAWINGS AND EQUIPMENT
- 16.1 Where the Customer supplies patterns, dies, tools, drawings or equipment, the Company shall be entitled to assume that the same are in good condition, true to drawing and entirely suitable to the Company's methods of production, and for the production of the Goods in the quantities required.
- 16.2 While the Company uses reasonable endeavors to verify patterns, dies, tools, drawings and equipment supplied by the Customer, no responsibility is accepted by the Company for their accuracy.
- 16.3 All replacements, alterations and repairs to the Customer's patterns, dies, tools, drawings and equipment shall be paid for by the Customer.
- 16.4 Where the patterns, dies, tools, drawings and equipment are not supplied by the Customer, only those which are specially made by the Company and separately charged to the Customer in full, shall, when paid for by the Customer, become the property of the Customer.
- 16.5 Carriage on patterns, dies, tools and equipment supplied by the Customer will be paid by the Company in one direction only.
- 16.6 The Company will take all reasonable care of the Customer's patterns, dies, tools, drawings and equipment while in the Company's possession but does not accept liability for loss or damage thereto, however arising, except where neglect on the part of the Company or its agents was the direct cause of loss or damage and in those circumstances the Company's liability shall be limited to the actual cost of replacement or repair to the exclusion of all other expenses, consequential losses, loss of profits and other expenses, liabilities and losses however arising.
- 16.7 The Company reserves the right to destroy or otherwise dispose of patterns, dies, tools, drawings and equipment in its possession or custody (whether or not the property of the Customer) from which the Customer has not required Goods to be made for a period of 12 months or more in the case of patterns, and three years or more in all other cases.
- ## 17. PACKING
- 17.1 Unless otherwise specified, packing cases and packing materials will be charged extra but, where stated to be returnable, will be credited in full on return to the Company's works carriage paid in good condition, within one month of receipt by the Customer. Where not returnable, the Customer will dispose of all packing in accordance with all regulations (whether statutory or otherwise) relating to the protection of the environment and waste disposal.
- 17.2 The Company uses reasonable endeavours to ensure, where necessary, suitability of packing before dispatch, but no claim will be accepted by the Company for breakage or damage in transit on the ground of alleged unsuitability of packing.
- ## 18. ASSIGNMENT AND SUBCONTRACTING
- 18.1 None of the rights or obligations of the Customer under the Contract may be assigned or transferred in whole or in part without the prior written consent of the Company.
- 18.2 The Company shall be entitled to subcontract any work relating to the Contract without obtaining the consent of, or giving notice to, the Customer.
- ## 19. HEALTH AND SAFETY
- The Customer agrees to pay due regard to any information or any revised information whenever supplied by the Company (and is deemed to have been given adequate information and to have read and understood it) relating to the use for which the Goods are designed or have been tested or concerning conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, cleaned or maintained by any person at work or when they are being dismantled or disposed of, and the Customer undertakes to take such steps as may be specified by the above information to ensure that, as far as reasonably practicable, the Goods will be safe and without risk to health at all times as mentioned above. For these purposes, the Customer is deemed to have been given a reasonable opportunity to test and examine the Goods before delivery.
- ## 20. NOTICES
- 20.1 Any notice or other communication to be given under these conditions must be in writing and may be delivered or sent by prepaid first class letter post or facsimile transmission.
- 20.2 Any notice or document shall be deemed served: if delivered, at the time of delivery; if posted, 48 hours after posting; and if sent by facsimile transmission, at the time of transmission.
- ## 21. INVALIDITY
- The invalidity, illegality or unenforceability of any provision of these conditions should not affect the other conditions.
- ## 22. THIRD PARTY RIGHTS
- A person who is not party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- ## 23. LAW AND JURISDICTION
- The Contract, and all disputes and claims arising out of it (including any non-contractual disputes and claims, and any proceedings whereby one party might be entitled to join the other as a third party) shall be governed by and construed in all respects in accordance with English law and the parties to the Contract hereby irrevocably submit to the exclusive jurisdiction of the English courts for all such disputes and claims.