

## TERMS AND CONDITIONS OF SALE

WHERE THE PURCHASER UNDER THE CONTRACT (NOT BEING A CONTRACT FOR THE INTERNATIONAL SALE OF GOODS) DEALS AS A CONSUMER WITHIN SECTION 12 OF THE UNFAIR CONTRACT TERMS ACT 1977 THEN NOTHING CONTAINED IN ANY OF THE FOLLOWING CONDITIONS SHALL RESTRICT OR AFFECT THE STATUTORY RIGHTS OF THE PURCHASER.

- 1) Formation and Interpretation of Contracts.
  - a)
    - i) All contracts of Sale made by Sherborne Sensors Limited (hereinafter called "the Company") shall be governed exclusively by the terms and conditions set out below (hereinafter called the "Contract Terms"). The Contract Terms shall override and take place of all previous oral and written representations and other terms and conditions in any document or other communication used by the Purchaser in concluding the contract with the Company whether or not the same are endorsed upon, delivered with, or referred to in any purchase order or other document delivered by the Purchaser to the Company.
    - ii) The Contract Terms may be varied only by express agreement by the Company by means of a written amendment signed by a Director of the Company or the Company Secretary and referring specifically to the terms and conditions to be amended.
  - b) The application of the Uniform Laws on International Sales shall be excluded. The construction validity and performance of all contracts shall be governed by English law.
  - c) The complete or partial invalidity or unenforceability of any provision herein for any purpose shall in no way affect the validity or enforceability of such provision for any other purpose or the remaining provisions. Any such provision shall be deemed to be severed for that purpose subject to such consequential modification as may be necessary for the purpose of such severance.
  - d) The headings used herein are for convenience only and shall not affect construction; and "Liabilities in relation to "means" all liabilities, losses, damages, costs (including without limitation legal costs on a fully indemnity basis and VAT), expenses, actions, claims, proceedings and demands whatsoever arising directly or indirectly out of or in connection with."
- 2) Prices. Unless otherwise expressly stated in writing by the Company orders are accepted on the basis that –
  - a) the price stated is the net price of the goods (after deduction of any discounts) for delivery in accordance with the contract and overrides all previous oral and written representations.
  - b) the price is exclusive of value added tax and any other impositions whatsoever, which if applicable shall be paid by the Purchaser in addition; and
  - c) the company may without prior notice adjust the price stated to take account of any change in specification made at the Purchaser's request or any change before the date of delivery in the cost to the Company of labour, materials, sub-contracted services, transport, foreign currency or import or export duties or tariffs which directly affect the cost to the Company of supplying the goods.
- 3) Payment
  - a) Unless otherwise expressly stated in writing, prices are due and payable to, and at such address or bank account as may be designated by the Company, without set off or counterclaim, in United Kingdom sterling in immediately available funds thirty days from the date of delivery, or thirty days from when each invoice relating to a contracted stage payment is sent to the purchaser. Payment by cheque or other negotiable instrument is ineffective until it is honoured and the Company's bank account is credited with the amount due. Time of payment is of the essence of every contract. On failing to make full and prompt payment, the Purchaser shall (without prejudice to any other rights of the Company) become liable to pay to the Company interest on the amount due at three percent per annum above the base rate from time to time of Barclays Bank PLC calculated from the date of due payment until the date of actual payment before and after (and as a separate continuing obligation not merging with) any judgement.
  - b) Any carriage, packing and other charges stated separately from the price are payable by the Purchaser at the same time, and shall be treated as part of the price.
  - c) If the Purchaser pays an amount to the Company without apportioning it between specific debts or liabilities it shall be apportioned as the Company thinks fit. The Company may attribute a partial payment to one or more specific items, rather than to all the items which are the subject of a particular contract.
- 4) Dispatch and Delivery
  - a) The Company will endeavour to complete the contract or deliver the goods within the time agreed (if any) but it shall not be liable for any loss or damage whatsoever caused directly by any delay in the completion of the contract or delivery of the goods.
  - b) Except insofar as the contract expressly provides otherwise, the Company may select the method, and charge the Purchaser for the cost of carriage. All export orders will unless otherwise stated be delivered Free on Board (F.O.B.) UK port which expression shall for the purposes of such orders have the meaning assigned to it by Incoterms 1980.
  - c) Where the contract is stated to be f.o.b. or c.i.f. the risk in the goods shall pass to the Purchaser when the goods have effectively passed the ship's rail at the port of shipment or have been delivered into the charge of the air carrier or his agent as the case may be in all other cases, even if the price includes carriage, risk shall pass to the Purchaser upon transfer at the company's premises on to the carrier's or Purchaser's transport. If the goods are to be transported by the Company, risk shall pass to the Purchaser on delivery at the Purchaser's premises.
  - d) In contracting for carriage and/or insurance of goods in transit, the Company shall be deemed to act solely as agent of the Purchaser and Section 32(2) and (3) of the Sale of Goods Act 1979 shall not apply.
  - e) Where goods are to be delivered at the Company's premises the contract will state the expected date of delivery. In all other cases, before dispatching of any goods for delivery, the Company will send to the Purchaser an Advice Note stating the expected date of delivery. If the goods are damaged or short on delivery the Company shall in no event be liable unless the Purchaser notifies the Company and the carrier in writing within seven days of delivery in the case of inland orders, and twenty-eight days of delivery in the case of export orders, and gives the Company a reasonable opportunity to inspect the goods. No claim for non-delivery will be considered unless the Company is notified in writing within ten days of reasonable delivery time in the case of inland orders, and twenty-eight days of reasonable delivery time in the case of export orders, in both cases taking into account date of dispatch.
  - f) The Purchaser may not reject any goods by reason of short delivery.
  - g) The Purchaser shall on demand pay the Company for, and/or indemnify the Company against liabilities in relation to, any storage, handling, insurance or other services provided or used by the Company because the Purchaser or its carrier fails to accept delivery of the goods when tendered; and the Company shall have a lien over the goods in respect thereof.
  - h) The Company may deliver the goods by instalments, each instalment to be deemed a separate contract. Without limiting the other provisions herein, no failure or defect in delivery in respect of any contract or instalment shall enable the Purchaser to repudiate or cancel any other contract or instalment.
  - i) Unless otherwise agreed in writing there shall be no refund of any charge made for packing except in the case of non-expendable pallets or containers which are charged for and for which credit shall be given on return.
  - j) The Company reserves the right to make additional charge for storage and administration costs incurred by it in respect of the goods stored or held by the Company because of a lack of or inadequate delivery instructions.
- 5) Property
  - a) Notwithstanding delivery of the goods or any document representing them, the Company reserves the right of disposal of each item of the goods, and the property therein shall not pass to the Purchaser until:
    - i) receipt by the Company of payment in full for such item plus any default interest thereon; or if earlier
    - ii) sale by the Purchaser of such item to an independent third party on arm's length terms in the ordinary course of business (which sale shall be by the Purchaser as principal and not as agent for the Company.)
  - b) Pending the passing of Property, the Purchaser shall be bailee of the goods and
    - i) shall not dispose of, charge or encumber the goods, or any interest therein or purport to do so, other than under (a) (ii) above and
    - ii) shall deal and be deemed to deal with the goods and other goods of the same type supplied by the Company and the order in which they are delivered, shall retain possession of the goods; and shall store them separately or mark them so that they may be readily identified as the Company's property; and
    - iii) hereby grants the Company an irrevocable license to enter upon any of the premises of the Purchaser for the purpose of

- repossessing goods in any sum due in respect of them is outstanding or if the Company reasonably believes that any such sum will not be paid in full when it fails due for payment.
- 6) Specifications, Descriptions, Drawings and Intellectual Property.
- a) Where the Purchaser specifies in writing goods of a particular design, performance or manufacture, such specification shall be complied with by the Company where the Company has accepted it in writing in other cases the Company may vary the goods provided that the variations are not material, or that any material variations have been agreed in negotiations with the Purchaser, and such variations shall not constitute a breach of contract or impose on the Company any liability whatsoever.
  - b) All drawings, models and similar items prepared by the Company and the copyright therein shall remain the property of the Company and shall be returned by the Purchaser on demand. All know-how, samples, models, designs and drawings relating to the goods or their development or creation shall remain the Company's property, shall be treated as confidential and shall not be copied, reproduced or disclosed to any third party without the Company's prior written consent.
  - c) No right or license is granted to the Purchaser under any patent, copyright, registered design or other intellectual property right except the right to use or resell the goods and any purported grant of Shop Rights to the Purchaser by the Company is hereby specifically excluded.
  - d) If the goods are manufactured to the design or specification of the Purchaser, the Company shall not be liable for any infringement of any intellectual property rights caused by the goods or their use or sale by the Purchaser. The Purchaser shall forthwith notify the Company of any allegation of any such infringement. The Company may at its own expense conduct any negotiations or proceedings arising from such allegation; and the Purchaser shall assist therein.
  - e) The Purchase shall not without the Company's prior written consent allow any trademarks of the Company or other words or marks applied to the goods to be obliterated, obscured or omitted or add any additional marks or words.
- 7) Guarantee
- a) The Company will, as far as it reasonably can, transfer or make over to the Purchaser the benefit of any guarantee or warranty which may have been given by the manufacturer in respect of any goods the subject of this Contract which are not made by the Company. In addition if during the Warranty Period (defined below) any part manufactured by the Company is found upon inspection by the Company to have proved defective in material or workmanship under normal use and service and when properly installed and connected the Company will free of cost repair or if the Company so wishes replace such part provided the Company is informed of the defect as soon as possible after discovery thereof and should the Company so require the part is returned carriage paid. Any cost or expense incurred by any persons removing or refitting the part shall be borne by the Purchaser. The Company will not however be liable to repair or replace any part if any identification or serial number thereon has been altered, defaced or removed or if the part has not been properly maintained in accordance with the Company's recommended maintenance procedure or has been subjected to any misuse, unauthorised repair, replacement, modification or alteration.
  - b) The Warranty Period applicable to any part shall be the period commencing from the date of its dispatch from the Company's factory and expiring twelve months from the date of its delivery.
  - c) Where the Company recommends the use of the particular fluids, materials or other accessories with the Company's equipment the warranty set out above shall not apply to any Company part with which other fluids, materials and accessories have been used but no such recommendation shall make the Company in any way liable for any defect in such fluids, materials or accessories.
  - d) The Purchaser agrees to indemnify and hold harmless the Company against any claims made against the Company in respect of products incorporating goods supplied by the Company where such claims relate to part or aspects of the products other than goods supplied by the Company.
- 8) Limitation and Exclusion of Liabilities
- a) The Company's obligations and liabilities to the Purchaser in respect of the goods shall be limited to –
    - i) those set out expressly herein
    - ii) those implied (as to title etc.) by s. 12 of the Sale of Goods Act 1979
    - iii) any liability for death, personal injury and loss of or damage to property under s.2 of the Consumer Protection Act 1987
    - iv) where the contract is not an international supply contract within s.26 (3) of the Unfair Contract Terms Act 1977, any liability for death or personal injury resulting from negligence (as defined in that Act). The Purchaser acknowledges that this is reasonable and reflected in the price and shall accept risk and/or insure accordingly.
  - b) Subject to and without limiting (a) above, all warranties, representations and conditions and all liabilities and obligations whatsoever and howsoever arising, whether express, implied, statutory or otherwise are hereby expressly excluded.
  - c) Subject to and without limiting (a) and (b) above –
    - i) the Company shall not be liable to the Purchaser for any loss, injury or damage of any nature whatsoever whether direct or consequential arising out of or in connection with any goods supplied;
    - ii) the Purchaser shall not rely upon any representation concerning any goods supplied unless the same shall have been made by the Company in writing and is not a printing and/or clerical error;
    - iii) the Purchaser and other persons dealing in the Company's goods has no right or authority to bind the Company in any way or to assume on the Company's behalf any obligation express or implied; and
    - iv) where goods have been manufactured to the Purchaser's design or according to his stipulations as to performance, the Purchaser agrees to indemnify and hold harmless the Company against any claims arising from the Company's compliance with the Purchaser's design or performance stipulations as the case may be.
- 9) Use of goods by the Purchaser
- a) The Purchaser shall be solely responsible for and agrees to indemnify and hold harmless the Company against all Liabilities incurred by the Company in relation to any use of the goods other than in strict accordance with the Company's instructions and for the purpose and application for which the goods were supplied by the Company.
  - b) The Purchaser undertakes with the Company
    - i) That he will acquaint himself with the requirements of all relevant Governments or statutory or other authorities, bodies or corporations relating to the goods and to the applications to which the goods are put.
    - ii) That at all times whilst the goods are in his possession or under his control he will comply with such requirements.
    - iii) That at all times whilst the goods are in his possession, or under his control he will comply with the instructions contained in any manual or documentation supplied with the goods, and it is an express term of the sale contract that the goods are used in accordance with the instruction manual.
    - iv) That he will procure that any purchaser of the goods from him will also acquaint itself with, and will comply with such requirements. That he will indemnify the Company against any liability resulting from a breach of any such requirements.
- 10) Force Majeure
- a) Whilst the Company intends to use all reasonable endeavours to perform, if by reason of any cause of any kind whatsoever beyond the Company's control or which it could not with reasonable diligence have avoided, the completion of the contract or delivery of the goods is in the Company's opinion rendered impracticable the Company may terminate, cancel, rescind or suspend the contract by delivering to the Purchaser a notice in writing to the effect and the Company shall not be liable for any resulting loss or damage to the Purchaser. Any dispute between the parties as to the interpretation of this clause shall be settled by an expert to be appointed by agreement between the parties or, in default of agreement, by the President for the time being of the Law Society, and such person shall act as expert and not as arbitrator and his decision shall be binding on the parties.
- 11) Assignment
- a) The Purchaser shall not assign, mortgage, charge, sub-let or otherwise dispose of any contract or any rights there-under in whole or in part without the Company's prior written consent. Any of the same purported to be effected without such consent shall be void.
  - b) The Company shall be entitled to assign, sub-contract or sub-let this contract or any part thereof.
- 12) Events of Default, Termination, Repossession, Suspension
- a) If –
  - b) the Purchaser fails to pay the price promptly or otherwise breaches any contract with the Company and the breach, if remediable and previously notified to the Purchaser, is not remedied within seven days;
  - c) the Purchaser is, or for statutory purposes is deemed or appears to be, unable to pay its debts as they become due, or the value of its assets is less than the amount of its liabilities (including contingent and prospective liabilities), or the Purchaser otherwise becomes insolvent or suspends payment or threatens to do so;
  - d) steps are taken to
    - i) propose any composition, scheme of arrangement, compromise or arrangement involving the Purchaser and its creditors generally;

- ii) obtain an administration or appoint any administrative or other receiver or manager in relation to, or put in force any legal process against, the Purchaser or any of its property;
  - iii) enforce any charge or other security over the Purchaser's property;
  - iv) repossess any goods in the Purchaser's possession under any agreement; or
  - v) wind up or dissolve the Purchaser:
- e) where the Purchaser is an individual or partnership, he or any partner dies or any steps are taken with a view to making a bankruptcy order against him or any partner; or
- f) outside England and Wales, anything corresponding to any of the above occurs; then the Purchaser shall notify the Company forthwith and shall be deemed to have repudiated each contract with the Company, who may (at its discretion and without prejudice to its other rights hereunder or otherwise) by and/or following written notice to the Purchaser do any one or (to the extent not inconsistent with one another) more of the following –
- i) terminate, cancel and/or rescind the contract and any other contracts with the Purchaser;
  - ii) revoke any express or implied authority to sell, use or consume any goods the property in which has not passed to the Purchaser ("relevant goods");
  - iii) require the Purchaser to deliver to the Company any relevant goods and the Purchaser shall do so, failing which the Company may repossess them and enter the premises where they are or are thought to be and sever them there-from, without liability for any resulting damage, and the Purchaser shall indemnify the Company against all liabilities in relation thereto;
  - iv) re-sell any relevant goods or transfer the property in them to the Purchaser;
  - v) declare (whereupon there shall forthwith become) immediately due, payable and interest-bearing under Condition 3(b) above any amounts owed by the Purchaser to the Company under any contract;
  - vi) suspend any deliveries to be made under any contract with the Purchaser;
  - vii) proceed against the Purchaser for the price of the goods and/or damages;
  - viii) require the Purchaser to indemnify the Company against loss, damage or claim resulting from any purported cancellation or failure to take delivery, including the payment of license fees or other fees incurred by the Company in the course of its business together with the cost of any material, plant or tools used, or intended to be used, for the Purchaser's order(s), the cost of labour and other overheads, and redundancy payments primarily attributed to such purported cancellation.
- 13) Forbearance
- a) The Company's rights shall not be prejudices or restricted by any indulgence or forbearance extended to the Purchaser and no waiver by the Company in respect of any breach shall operate as a waiver in respect of any subsequent breach.