

# Terms and Conditions of Business

## 1 Definitions

In these Terms and Conditions certain phrases shall be understood to have the following meanings:

"the Seller" means Mitutoyo (UK) Limited

"Goods" means any product, Software\* and/or technology which is to be sold (or licensed out) by the Seller.

"the Buyer" means any person, company or organisation which buys or has agreed to buy Goods from the Seller.

"Contract" means the written agreement between the Buyer and the Seller specifying the offer under which the Buyer agrees to buy and the Seller agrees to sell Goods.

\*Software is supplied on the basis of an End-User Licence Agreement (EULA) where title does not pass and use is non-transferable. In relation to all other conditions herein Software is treated the same as purchased/sold "Goods".

## 2 Acceptance of order

- 2.1 These Terms and Conditions shall form part of every Contract of sale of Goods entered into by the Seller and no alteration shall be effective unless in writing, signed by an authorised officer of the Seller and referring to these Terms and Conditions.
- 2.2 The placing of an order by the Buyer, whether or not based upon a quotation, shall not be binding on the Seller, unless accepted by the Seller in writing.
- 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 into the Contract.
- 2.4 Goods ordered by the Buyer which are out of stock will be placed on back-order unless the Buyer shall specify Ex-stock or Cancel the order.
- 2.5 The Seller shall have no obligation to accept the return of Goods which shall be surplus to the Buyer's requirements or ordered in error. Any decision by the Seller to accept the return of Goods for credit shall not affect the Buyer's obligation to pay the price thereof on the due date for payment and such credit shall not exceed 90% of the price of the Goods and shall be conditional upon the Goods and packaging before returned without any damage or marking within 30 days of the Seller's invoice.
- 2.6 If the Buyer shall require any change in the terms, conditions or arrangements for the performance of the Contract the Buyer shall inform the Seller promptly and shall not implement any change without the Seller's written consent.

## 3 Specification

- 3.1 All specification, drawings and data contained in the Seller's catalogues or otherwise supplied by the Seller are approximate only, unless otherwise stated in writing.
- 3.2 The Seller reserves the right without prior notice to effect modifications and design changes and to discontinue manufacture of any Goods as part of a continuous programme of product development.

## 4 Selection/Representation

- 4.1 The Buyer shall be responsible for determining whether the Goods ordered are suitable and sufficient for the intended purpose.
- 4.2 The Seller shall have no liability for the failure of the Goods to perform in accordance with specification when such failure shall be caused by their operation in environmental conditions that shall be unsuitable, unless the Buyer shall have stated in its order that such environmental conditions would apply and the Seller shall have accepted such stipulation in writing.
- 4.3 The Seller shall offer support to representing buyer Distributors in ensuring correct product specifications are furnished to satisfy End-user invitations to tender for the supply of Goods within its scope. However, the seller is not obliged to support a buyer Distributor if it shall fail to professionally present the Seller's Goods, in all essential features, particularly against an alternative offer and thus give cause to place a business opportunity at risk. In such circumstances the Seller reserves the right to facilitate direct End-user supply.

## 5 Prices

- 5.1 Prices quoted by the Seller are based upon its prices ruling at the date of quotation and the Seller reserves the right to adjust its prices at the time of acceptance of order to reflect any increase in the cost of supplying the Goods or the publication of a new price list occurring after quotation.
- 5.2 Unless otherwise stated in writing, prices quoted by the Seller are exclusive of the cost of packaging and delivery and VAT.
- 5.3 The minimum order value (excluding packaging, delivery and VAT), shall be £75.00 nett.
- 5.4 The Buyer shall not be entitled to make any deduction from the price by way of set-off or counterclaim.

## 6 Payment

- 6.1 In the absence of agreed credit terms, payment shall be made in full in advance of delivery.
- 6.2 The Seller's credit terms are payment by the end of month following the month of invoice (tax point date).
- 6.3 Payment made by means of a cheque, bill or documentary credit shall be deemed to be effected when honoured and all costs of discounting and encashing shall be borne by the Buyer.
- 6.4 Time for payment shall be of the essence of the Contract.
- 6.5 In the event of delay in payment the Seller shall be entitled to charge interest at 4% per annum above Midland Bank plc base rate, without prejudice to the Seller's other rights.
- 6.6 During any such period of default and at any time when the Seller shall have reasonable grounds for doubting that any payment due from the Buyer will be made on the agreed date, the Seller shall be entitled to suspend work and withhold deliveries, without prejudice to its right to payment for Goods delivered and work done and expenses incurred in connection with undelivered Goods which shall become immediately due and payable.
- 6.7 If such default or other circumstances shall continue for a period of 14 days, the Seller shall be entitled to terminate the Contract by written notice to the Buyer, without prejudice to the Seller's other rights.
- 6.8 The granting by the Seller to the Buyer of time or other indulgence shall not prejudice or constitute a waiver of the Seller's rights under subclauses 6.6 and 6.7.
- 6.9 The Seller shall have a general lien over any Goods of the Buyer in the Seller's possession for all money due to it from the Buyer. If any lien is not satisfied within 14 days of such money becoming due, the Seller may sell the Goods as agent for the Buyer and apply the proceeds, after deducting the expenses of sale, towards the monies due and the balance (if any) shall be paid to the Buyer.

## 7 Delivery Times

- 7.1 The time for delivery shall be calculated from the date of acceptance of order by the Seller or from the date of its receipt of all information required to fulfil the order, if later.
- 7.2 The time for delivery shall not be of the essence of the Contract.
- 7.3 The Seller shall be entitled to make partial deliveries and this condition shall apply to each delivery.
- 7.4 The Seller shall endeavour to meet the Buyer's delivery requirements but shall not be liable for any loss or damage caused by delay in delivery and the Buyer shall not be entitled to cancel the Contract because of such delay.

## 8 Delivery

- 8.1 Unless otherwise agreed, delivery shall be effected at the premises of the Buyer or other place specified in the Contract for delivery and the method of carriage and choice of carrier shall be determined by the Seller.
- 8.2 The minimum carriage-paid order value (excluding VAT) shall be £150 nett for delivery in the UK mainland and £375 nett for delivery in the Republic of Ireland.
- 8.3 The Buyer shall be responsible for paying the Seller's carriage charges unless the Buyer shall make its own arrangements with the agreement of the Seller prior to the

Seller arranging carriage. If the Goods shall be collected by the Buyer or by a carrier pursuant to arrangements made by the Buyer, delivery shall be deemed to take place on collection.

- 8.4 Upon the Seller notifying the Buyer that the Goods are ready for delivery, the Buyer shall agree to accept delivery. The Buyer shall be responsible for ensuring good access to the delivery site and providing such cranes and other assistance for unloading as may be specified in the Contract. If the Buyer should fail to give proper delivery instructions or to accept delivery when tendered or to provide such access or assistance, it shall be liable for all additional costs incurred by the Seller.
- 8.5 If delivery should be 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 such storage cost and other costs incurred by the Seller as a result of such delay.

## 9 Installation

- 9.1 If the Seller shall undertake the installation of the Goods, the Buyer shall be responsible for ensuring that all necessary power, plant and labour and other facilities specified by the Seller shall be available when required and that the Seller shall be able to undertake such work, without interruption, during normal business hours.
- 9.2 Upon completion of the installation the Seller shall test the Goods. The Buyer shall be given the opportunity to attend such tests, but such test shall not be delayed in the event of the Buyer failing to attend.
- 9.3 The installation of 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.
- 9.4 The provisions of subclauses 7.4 and 12.2 shall apply mutatis mutandis in respect of delays or defects in installation.
- 9.5 The Seller shall have no liability for redecoration or repair arising from the siting or installation of the Goods.

## 10 Title and Risk

- 10.1 Title to the Goods shall remain in the Seller until payment in full is made by the Buyer.
- 10.2 The provisions of subclause 10.1 shall not prevent the Buyer from fixing the Goods to any other product or selling the Goods in the normal course of business but in the event of sale to the extent of the Buyer's indebtedness to the Seller in respect of the Goods, the Buyer shall hold the proceeds of sale or the right to receive the same on trust for the Seller and shall, at the Seller's request, either (i) place the proceeds of sale in a separate account of the Buyer in such a way as to be identifiable as in the beneficial ownership of the Seller, or (ii) assign the right to receive the proceeds of sale to the Seller.
- 10.3 If the Buyer shall default in payment for any Goods and at any time when the Seller shall have reasonable grounds for doubting that payment for the Goods will be made on due date, the Seller, without prejudice to its other rights, may enter any land or premises where the Goods may be, to detach them if fixed and to recover possession of them.
- 10.4 The risk in the Goods shall pass to the Buyer on delivery or placing in store in accordance with subclause 8.5

## 11 Damage in Transit

- 11.1 The Seller shall have no liability in respect of Goods lost or damaged in transit unless the Buyer or its agent notes such loss or damage on the delivery receipt and gives notice thereof in writing to the Seller and the carrier within 7 days of delivery or such shorter period as may be required by the carrier's conditions of carriage or, in the case of the whole consignment failing to arrive, gives notice thereof in writing to the Seller within 7 days of receipt of the Seller's invoice or despatch note or the estimated date of delivery, if later.
- 11.2 The Seller's liability in respect of Goods lost or damaged in transit shall be limited to repairing or replacing such Goods.

# Terms and Conditions of Business (cont.)

## 12 Warranty

- 12.1 Subject to Clause 3, 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.
- 12.2 The Seller will repair or replace any Goods which under proper use prove to be defective within the period of 12 months from the date of delivery due to faulty materials or bad workmanship or, subject to Clause 3, the Seller's failure to supply Goods of the specification or quality ordered, provided as follows: (i) that in the case of defects which would have been apparent on reasonable inspection on delivery, the Buyer shall notify the Seller of the defect in writing within 7 days of the date of delivery; (ii) that in the case of any other defect, the Buyer shall notify the Seller of the defect in writing within 10 days of the date when the defect became apparent and, in any event, within 12 months from the date of delivery; (iii) that the Buyer and any user of the Goods shall have complied with the instructions of the Seller or manufacturer of the Goods as to the maintenance and operation; (iv) that 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.
- 12.3 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 and, subject as aforesaid, the Seller shall have no liability, whether arising in Contract, tort or otherwise, in respect of any defect in the Goods or any injury, damage or loss resulting from such defect.

## 13 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 the result of their operation or use or otherwise and whether as the result of any defect therein or otherwise and the Buyer shall indemnify the Seller from any claim arising from any such loss or damage.

## 14 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.

## 15 Confidentiality

- 15.1 All drawings and other documents supplied by one party to the other shall remain the copyright and property of the party supplying the same and may not be copied or reproduced without its consent and such documents shall be returned in the event of the Contract not being made or completed.
- 15.2 Any trade secret or confidential information supplied by either party to the other shall be kept confidential and shall not be disclosed to any third party without the consent of the party supplying the same.

## 16 Infringement

- 16.1 The Buyer shall notify the Seller immediately of any circumstances coming to its attention which may be likely to give rise to any claim that the Goods infringe the rights of any third party and shall permit the Seller to conduct any action or negotiations in respect thereof in the name of the Buyer but at the Seller's expense.
- 16.2 In the event of any such claim being successful, the Seller shall indemnify the Buyer against any liability it may sustain to such third party, but shall have no other liability to the Buyer in respect thereof.

## 17 Notices

Any notice to be given by either party to the other shall be properly given if sent by email, 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, in the case of postal delivery, when in the normal course of post it would have been delivered.

## 18 Export/Import/Movement Control/Goods and Technologies

**Export:** the Buyer shall inform the Seller of any Goods to be purchased, or licensed, or technical information sought, that is intended for export as the Terms and Conditions herein are primarily for the UK home market. It is the responsibility of the Buyer to declare to the Seller the intended final destination, the end-user and nature of use of all such Goods. The Seller shall then offer advice on its Goods known to be subject to export controls. The Buyer is ultimately responsible for ensuring that all such exports comply fully with the UK Export Control Act 2002 (and subsequent amendments) as administered by the UK Department of Business, Enterprise and Regulatory Reform (BERR) and related EU legislation. The Seller will not entertain the service or support of any Goods that have been exported without due evidence of export control compliance. The Seller will report to the appropriate authorities any known or suspected violation of export control requirements that may come to its attention.

**Movement Control:** the Seller has certain Goods that are classed as "dual" purpose i.e. may be used for civil or military application. The Buyer shall purchase the Goods on the understanding that they are equipped with a "movement sensor" that will disable operation should excessive vibration or movement be detected. Resetting of the sensor may be undertaken, at no charge to the Buyer, subject to the Seller being afforded advanced notice of the intended move or event that may trip the sensor. In the event of the Goods relocation, the Buyer must ensure the destination and use shall not contravene applicable export controls.

**Goods and Technologies:** technology is defined in terms of "information relating to controlled Goods or Software" and may be transferred by various means such as drawings, emails, manuals and instructions etc. Such transfer of technology is also subject to export control where it is required for the development, production or use of listed Goods or Software. Technical assistance for repair, training or consultancy is not deemed as technology transfer but relating documentation and "relevant use" of the technologies may be subject to licensing. The Buyer should therefore make the Seller aware of any intended or consequential overseas transfer of technology in relation to the Seller's provision of Goods and technologies. The Buyer shall be bound by the assurance (as per Clause 19) given to the Seller as an integral part of these Terms and Conditions of business. This shall cover all of the Seller's Goods and technologies, their permitted use and the strict adherence to export controls. The Seller may seek additional assurances from the Buyer as the Seller deems necessary.

**Import:** the majority of the Seller's Goods do not require an export licence from the country of manufacture or an import licence into the UK however, where such Goods do require licensing, supply will be conditional on the Buyer's ability to fulfil the criterion used by the Seller, and the appropriate authorities, to determine the ability to meet the licence conditions. This may include the completion of detailed information relative to the status of the Buyer, the end-user, destination of use and application of the Goods.

The Buyer shall be bound by the assurance (as per Clause 19) and where certain Goods do require a specific Export Licence from the country of manufacture, the Buyer may also need to furnish to the Seller an individual "Letter of Assurance" and "End user" undertaking in order to satisfy licence application requirements. Furthermore, any Buyer supplying Goods directly or indirectly to the UK Defence Industry or to any body where use is connected with a military application will need to satisfy the Seller's additional security control assessment procedures as demanded by the Export/Import Control Authorities. This shall include evidence detailing the status of the Buyer's customer, related supply approvals and details, in so far as confidentiality will permit, of the products or services to which they are contracted to supply. Disclosure of insufficient information to satisfy the requirements of the licensing authorities will result in the export licence application being declined. The Seller is unable to accept any liability in the event of this decision.

## 19 Assurance

The Buyer, in entering into a business transaction with the Seller does so on the Terms and Conditions herein including this assurance that as a Company, person or organisation, responsibility shall be accepted for ensuring strict adherence to the Seller's Export/Import control compliance procedures and the UK Export Control Act 2002 (and subsequent amendments) as well as those of the European Union (EU). The Buyer will actively support all measures to combat terrorism and promote global peace and harmony. The Buyer will not use or deliver, directly or indirectly, any Goods, Software and/or technology ("Goods") acquired from the Seller and/or any of its affiliated or subsidiary Companies to any customer and/or to any party that are, to the best of the Buyer's knowledge, involved or engaged in development, production, utilisation, application, enhancement, or distribution of nuclear, chemical or biological weapons, and/or transportation for such weapons of mass destruction. Furthermore, the Buyer commits to observing the independent embargo measures for combating international terrorism so as to ensure that it shall not deliver, directly or indirectly, the Goods to any party or any body listed by the U.S "Denied Persons List", U.S "Entity List" and EU "List of terrorists". The Buyer acknowledges that prohibitions and restrictions concerning the combating of terrorism have to be observed and followed. The Buyer, as a Company, person or organisation, shall be required to immediately inform the responsible authorities of any knowledge acquired concerning transactions involving the Goods with Companies or individuals mentioned in the above respective lists. The Buyer recognises that supply of certain Goods will be subject to the completion and verification of "end-user" and "end-use" particulars, as will be sought by the Seller. The Buyer accepts that facts to be provided must be to the satisfaction and acceptance of the Seller and the Ministry of Economy, Trade and Industry, Japan (Export Control Authority). Following installation of the Goods, the Buyer shall notify the Seller of any subsequent change of the Goods location or transfer of ownership. In accordance with Article 21 of the European Community Dual-use items and Technology Regulation 1334/2000, the Buyer is fully responsible for seeking authorisation from the UK Department of Business, Enterprise & Regulatory Reform (BERR), Export Control Organisation, in the event of the need for inter-community transfer or export from the community of the Goods. The Buyer must notify the Seller of any such requirements and the Seller will provide advice and relocation assistance (including the resetting of any applied movement sensor) when evidence of the appropriate authorisation has been attained.

## 20 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.