

MEASUREMENT DEVICES LIMITED

("MDL")

TERMS AND CONDITIONS OF SALE

1. Definitions

In these Terms and Conditions the following words and expressions shall have the following meanings: -

"MDL"

means Measurement Devices Limited, a company registered in Scotland, number 84301 whose registered office is at Silverburn Crescent, Bridge of Don Industrial Estate, Aberdeen, AB23 8EW;

"the Customer"

means the company, corporation, firm, person or body who is purchasing the Equipment pursuant to the Contract;

"the Contract"

means the contract between MDL and the Customer for the purchase and sale of the Equipment evidenced by a Quotation and/or an Order and acceptance by MDL (as the case may be) and including these Terms and Conditions;

"the Equipment"

means the equipment sold by MDL to the Customer (including any instalment of the Equipment or any parts thereof) under the Contract as detailed therein;

"Invoice"

means an invoice of MDL;

"Order"

means an order of the Customer;

"Quotation"

means a quotation of MDL;

"Terms and Conditions"

otherwise requires) includes any special terms and conditions agreed in writing between the Customer and MDL; and

"Warranty Period"

means the warranty period specified by MDL in a Quotation or acceptance by MDL of any Order or as otherwise specified by MDL in writing, as appropriate.

2. General

1.2 Any reference in these Terms and Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.

2. Basis of Sale

2.1 MDL agrees to sell and the Customer agrees to purchase the Equipment in accordance with the Contract.

2.2 All Quotations are and the acceptance by MDL of any Order is on the understanding that the Customer accepts these Terms and Conditions. These Terms and Conditions shall form the basis of the Contract notwithstanding anything to the contrary in any other terms and conditions of or referred to by the Customer and may only be varied in writing by an authorised representative of MDL.

2.3 Subject to clause 2.2 hereof, no employee, agent or other representative of MDL shall be empowered to waive the rights of MDL hereunder or vary these Terms and Conditions orally or otherwise.

2.4 MDL's employees or agents are not authorised to make any representations concerning the Equipment unless confirmed by MDL in writing. In entering into the Contract the Customer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature, Quotation, price list, acceptance of offer, Invoice or other document or information issued by MDL shall be subject to correction by MDL without any liability on the part of MDL.

3. Orders and Specifications

3.1 Orders whether received as a result of a Quotation or otherwise are subject to acceptance by MDL in writing.

3.2 The Customer shall be responsible to MDL for ensuring the accuracy of the terms of any Order (including any applicable specification), and for giving MDL any necessary information relating to the

Equipment within a sufficient time to enable MDL to perform the Contract in accordance with its terms.

3.3 The quantity and description of and any specification for the Equipment shall be those set out in the Quotation (if accepted by the Customer) or the Order (if accepted by MDL), subject to any amendment in writing which may be agreed between MDL and the Customer.

3.4 If the Equipment is to be manufactured or any process is to be applied to the Equipment by MDL in accordance with a specification submitted by the Customer, the Customer shall indemnify MDL against all loss, damages, costs and expenses awarded against or incurred by MDL in connection with or paid or agreed to be paid by MDL in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from MDL's use of the Customer's specification.

3.5 MDL reserves the right to make any changes in the specification of the Equipment which are required to conform with any applicable statutory or EC requirements or, where the Equipment is to be supplied to MDL's specification, which does not materially affect its quality or performance.

3.6 No Order which has been accepted by MDL may be cancelled except with the agreement in writing of MDL and on terms that the Customer shall indemnify MDL in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by MDL as a result of cancellation.

4. Price of the Equipment

4.1 The price of the Equipment shall be MDL's quoted price in pounds sterling or US dollars (as appropriate) or, where no price has been quoted (or a quoted price is no longer valid), the price listed in MDL's published price list current at the date of acceptance of the Order. Where the Equipment is supplied for export from the United Kingdom, MDL's published export price list shall apply. Except as otherwise stated by MDL, all prices quoted are valid for thirty days only or until earlier acceptance by the Customer, after which time they may be altered by MDL without giving notice to the Customer.

4.2 MDL reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Equipment to reflect any increase in the cost to MDL which is due to any factor beyond the control of MDL (such as, 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 specification for the Equipment which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give MDL adequate information or instructions.

4.3 Except as otherwise stated under the terms of any Quotation or in any price list of MDL, and unless otherwise agreed in writing between the Customer and MDL, all prices are given by MDL on an ex works basis, and where MDL agrees to deliver the Equipment otherwise than at MDL's premises, the Customer shall be liable to pay MDL's charges for transport, packaging and any insurance. All transport charges to and from MDL will be re-charged to the Customer at cost plus ten per cent (10%).

4.4 The price is net and no deduction or settlement discounts are allowed.

4.5 The price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to MDL.

4.6 The price does not include the mobilisation of the Equipment nor time spent by MDL personnel commissioning the Equipment. Should any such mobilisation or commissioning be

required by the Customer such requirement will be notified in writing to MDL and there will be additional charges due by the Customer to MDL together with travel, accommodation and living expenses of MDL employees, agents and personnel where appropriate at cost plus ten per cent (10%).

5. Terms of Payment

5.1 Subject to any special terms agreed in writing between the Customer and MDL, MDL shall be entitled to invoice the Customer for the price of the Equipment on or at any time after delivery of the Equipment, unless the Equipment is to be collected by the Customer or the Customer wrongfully fails to take delivery of the Equipment, in which event MDL shall be entitled to invoice the Customer for the price at any time after MDL has notified the Customer that the Equipment is ready for collection or (as the case may be) MDL has tendered the delivery of the Equipment.

5.2 The Customer shall pay the price of the Equipment within thirty days of the date of MDL's invoice, and MDL shall be entitled to recover the price, notwithstanding that delivery may not have taken place and title to the Equipment has not passed to the Customer. The time of payment of the price shall be of the essence of the Contract.

5.3 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to MDL, MDL shall be entitled to:

5.3.1 cancel the Contract or suspend any further deliveries to the Customer;

5.3.2 allocate any payment made by the Customer to such of the Equipment (or the Equipment supplied under any contract between the Customer and MDL) as MDL may think fit (notwithstanding any purported appropriation by the Customer); and

5.3.3 charge the Customer interest (both before and after any decree) on the amount unpaid, at the rate of four per cent per annum above Royal Bank of Scotland plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5.4 MDL may in appropriate circumstances require a deposit or payment in advance ("the Deposit"). In the event the Deposit is taken, the Deposit shall be held in MDL's sole name. MDL shall not be bound to account to the Customer for any interest on the Deposit.

5.5 The right of the Customer to set off any sums due by MDL against any sums due to MDL is specifically excluded.

5.6 Should the Customer fail to pay to MDL the amount due under any invoice in accordance with the terms of payment contained in this clause 5, then provided the Customer has not lodged a valid claim disputing the invoice (or any part thereof) with MDL, MDL shall at its sole discretion be entitled to take whatever action it chooses to recover the amount of the invoice (together with any other sums payable by the Customer which are overdue) including legal action or action for recovery using the services of a collection agent. MDL shall be entitled to recover from the Customer any costs and charges incurred in respect of any such actions.

6. Delivery

6.1.1 Delivery of the Equipment shall be made by the Customer collecting the Equipment at MDL's premises at any time after MDL has notified the Customer that the Equipment is ready for collection or, if some other place for delivery is agreed by MDL, by MDL delivering the Equipment to that place.

6.1.2 Where MDL arranges carriage of the Equipment to the Customer

- (i) the Customer shall obtain appropriate insurance cover for the protection of the Equipment until such time as the Equipment has been delivered to the Customer
- (ii) all claims in respect of loss of or damage to the Equipment in transit must be intimated by notice in writing to the courier within five (5) days and to MDL within ten (10) days of delivery and
- (iii) non delivery must be notified to the courier and to MDL within ten (10) days from the invoice date.
- 6.2 Any dates quoted for delivery of the Equipment are approximate only and MDL shall not be liable for any loss occasioned by or consequential upon any delay in delivery of the Equipment however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by MDL in writing. The Equipment may be delivered by MDL in advance of the quoted delivery date upon giving reasonable notice to the Customer. Where it is impractical for the Equipment to be delivered in one consignment the Customer shall be bound to accept delivery of the Equipment by instalment.
- 6.3 Where the Equipment is to be delivered in instalments, each delivery shall constitute a separate contract (to which the Terms and Conditions shall apply as they apply to the Contract, mutatis mutandis) and failure by MDL to deliver any one or more of the instalments or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 6.4 If the Customer fails to take delivery of the Equipment or fails to give MDL adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of MDL's fault) then, without prejudice to any other right or remedy available to MDL, MDL may:
- 6.4.1 store the Equipment until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
- 6.4.2 sell the Equipment at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.
- 6.5.1 where MDL delivers to the Customer a quantity of Equipment less than that ordered by the Customer, the Customer shall give MDL a reasonable time to deliver the quantity of Equipment conform to the Contract and may not reject the Equipment until the expiry of such reasonable time;
- 6.5.2 where MDL delivers to the Customer a quantity of Equipment larger than that ordered by the Customer, the Customer is bound to accept that quantity of Equipment conform to the Contract and the right to reject the whole quantity is specifically excluded; or
- 6.5.3 where MDL delivers to the Customer Equipment mixed with Equipment of a different description than that ordered by the Customer the Customer shall be bound to accept the Equipment which is conform to the Contract and the Customer's right to reject the whole Equipment is specifically excluded.
- 7. Risk and Title**
- 7.1 Risk and damage to or loss of the Equipment shall pass to the Customer:
- 7.1.1 in the case of Equipment to be delivered at MDL's premises, at the time when MDL notifies the Customer that the Equipment is available for collection; or
- 7.1.2 in the case of Equipment to be delivered otherwise than at MDL's premises at the time the Equipment is placed in transit to the Customer.
- 7.2 Notwithstanding delivery and the passing of risk in the Equipment, or any other provision of these Terms and Conditions, title to the Equipment shall remain with MDL until MDL has received in cash or cleared funds payment in full of the price of the Equipment and all other Equipment agreed to be sold by MDL to the Customer for which payment is then due, save that where the Equipment is delivered in instalments pursuant to Clause 6, property in and title to such of the Equipment as is thereby delivered shall not pass to the Customer until MDL has received in cash or cleared funds payment in full of the price of the Equipment thereby delivered.
- 7.3 Until such time as title to the Equipment passes to the Customer, the Customer shall hold the Equipment on behalf of MDL and shall keep the Equipment separate from that of the Customer and third parties and properly stored, protected and insured and identified as MDL's property, but the Customer shall be entitled to resell or use the Equipment in the ordinary course of its business.
- 7.4 Until such time as title to the Equipment passes to the Customer (and provided the Equipment is still in existence and has not been resold), MDL shall be entitled at any time to require the Customer to deliver up the Equipment to MDL and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Equipment is stored and repossess the Equipment.
- 7.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Equipment which remains the property of MDL, but if the Customer does so, all monies owing by the Customer to MDL shall (without prejudice to any other right or remedy of MDL) forthwith become due and payable.
- 8. Warranties and Liability**
- 8.1 Subject to the conditions set out below and unless otherwise specified, MDL warrants that the Equipment will correspond with its specification at the time of delivery and will be free from defects in material and workmanship for the Warranty Period. The Warranty Period shall commence from the date of delivery.
- 8.2 The above warranty is given by MDL subject to the following conditions:
- 8.2.1 MDL shall be under no liability in respect of any defect in the Equipment arising from any drawing, design or specification supplied or modification requested by the Customer;
- 8.2.2 MDL shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow MDL's instructions (whether oral or in writing), misuse or alteration or repair of the Equipment without MDL's approval;
- 8.2.3 the above warranty does not extend to parts, materials or equipment not manufactured by MDL, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to MDL;
- 8.2.4 MDL shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Equipment has not been paid by the due date for payment.
- 8.3 Subject as expressly provided in these terms and conditions, and except where the Equipment is sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.4 Where the Equipment is sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these terms and conditions.
- 8.5 Any claim by the Customer under the warranty in Clause 8.1 shall (whether or not delivery is refused by the Customer) be notified to MDL within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure.
- 8.6 Any claim by the Customer under the warranty in Clause 8.1 must be notified to MDL in writing and the Customer shall retain the Equipment and await written instructions from MDL. Following any authorised return of the Equipment to MDL (which shall be made by the Customer on a freight prepaid basis) MDL will examine the Equipment and if the Customer's claim is valid, MDL shall be entitled to replace the Equipment (or the part in question) free of charge or, at MDL's sole discretion, refund to the Customer the price of the Equipment (or a proportionate part of the price) but MDL shall have no further liability to the Customer.
- 8.7 The Customer shall not make any deduction from any invoice due to MDL, unless MDL has agreed a credit memorandum in respect of such deduction. Unless otherwise agreed by MDL, MDL shall not accept any liability if the Equipment is not returned in the original packaging supplied by MDL.
- 8.8 Except in respect of death or personal injury caused by MDL's negligence, MDL shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of MDL, its employees or agents or otherwise) which arise out of or in connection with the supply of the Equipment or their use or resale by the Customer. No undertaking is made or should be implied nor is any warranty given or to be implied that the Equipment will be suitable for any particular purpose or for any use under specific conditions notwithstanding that such purpose or condition may be known to MDL. The entire liability of MDL under or in connection with the Contract shall not under any circumstances exceed the invoiced value of the Equipment, except as expressly provided in these terms and conditions.
- 9. Force Majeure**
- 9.1 MDL shall not be liable to the Customer for any loss, damage or claim suffered by the Customer directly or indirectly as a result of MDL's failure or delay in performing any of its obligations under these terms and conditions where such failure or delay is caused by any occurrence beyond the reasonable control of MDL. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond MDL's reasonable control:
- 9.1.1 Act of God, explosion, flood, tempest, fire or accident;
- 9.1.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 9.1.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 9.1.4 import or export regulations or embargoes;
- 9.1.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of MDL or of a third party);
- 9.1.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 9.1.7 power failure or breakdown in machinery.
- 10. Insolvency of Customer**
- 10.1 This clause applies if:
- 10.1.1 the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
- 10.1.3 the Customer ceases, or threatens to cease, to carry on business; or
- 10.1.4 MDL reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

10.2 If this clause applies then, without prejudice to any other right or remedy available to MDL, MDL shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Equipment has been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11. Export Terms

11.1 Where the Equipment is supplied for export from the United Kingdom, the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Customer and MDL) apply notwithstanding any other provision of these terms and conditions.

11.2 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Equipment into the country of destination and for the payment of any duties on them.

11.3 Unless otherwise agreed in writing between the Customer and MDL, the Equipment shall be delivered fob the air or seaport of shipment and MDL shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

11.4 The Customer undertakes not to offer the Equipment for resale in any country notified by MDL to the Customer at or before the time the Order is placed, or to sell the Equipment to any person if the Customer knows or has reason to believe that that person intends to resell the Equipment in any such country.

12. General

12.1 Any notice required or permitted to be given by either party to the other under these terms and conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Without prejudice to any other effective mode of delivery a notice shall be deemed validly served if sent by recorded delivery post to the address of the party for which it is intended and notice so served shall be deemed to have been served ninety-six (96) hours after the same is put in the post and in proving such service it shall be sufficient to prove that the notice was properly addressed and posted as aforesaid.

12.2 No waiver by MDL of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

12.3 If any provision of these terms and conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these terms and conditions and the remainder of the provision in question shall not be affected.

12.4 Any dispute or difference arising out of or relating to the Contract, the interpretation or the breach thereof, shall be settled by arbitration before an arbiter selected and appointed by the President or Vice-President for the time being of the Law Society of Scotland from the panel of arbiters maintained by the Law Society of Scotland and conducted in accordance with the arbitration rules of the Law Society of Scotland current at the date of the appointment of the arbiter.

12.5 The Customer shall not assign or novate the Contract without the prior written consent of MDL. Any such assignment or novation (whether permitted or otherwise) shall not relieve the Customer of any of its obligations under the Contract.

12.6 Subject to Clause 12.4 hereof, these terms and conditions and the Contract shall be governed and construed in accordance with the laws of Scotland and the Customer submits to the jurisdiction of the Scottish courts in so far as not already subject thereto.