

CONDITIONS OF SALE

LITECHNICA LTD of Kirby House, 122 Heston Road ("the Company") draws attention to the following terms and conditions which shall apply to all orders for Equipment accepted and supplies made to the exclusion of all other terms and conditions whatsoever.

1 ACCEPTANCE OF ORDERS

No contract shall be formed until the Company has formally accepted the Customer's Order ("Order") in writing.

2 QUOTATIONS

Any Quotation issued by the Company is for information only and shall not be capable of acceptance so as to constitute a legally binding contract. The expression "Equipment" used in these Conditions of Sale refers to the Equipment as described in the Company's Quotation.

3 SPECIFICATIONS

All particulars, including specifications, requisite for the completion of the Order shall be submitted within the time stated in the Company's acceptance of the Order. If no such time has been stated all particulars shall be submitted immediately.

4 ADDITIONS/MODIFICATIONS

No additions or modifications to these Conditions of Sale shall be deemed to have been accepted by the Company or form any part of any contract between the Company and the Customer unless the Company has first agreed in writing to such additions or modifications.

5 PRICES

(a) Unless the Company states otherwise in its Quotation all prices are valid for ninety days subject to alteration without notice. Thereafter prices and any Order accepted by the Company after the ninety-day period shall be invoiced and paid for at the Company's prices ruling at the date of despatch.
(b) If, between Quotation and delivery, the exchange rate between the US Dollar and the Pound Sterling shall fluctuate in favour of the US Dollar by more than 20% the Company reserves the right to add a surcharge onto the price for the Equipment quoted by the Company in its Quotation in order to compensate the Company for such currency fluctuation.
(c) Equipment will be invoiced on date of delivery.

6 DELIVERY

(a) Any period for delivery shall be calculated from the date of the Company's written acceptance of the Order. The Company will make every reasonable effort to observe delivery date requirements but any stipulated or quoted dates or periods for delivery are estimates only and the Company shall incur no liability whatsoever for failure to observe them. The Company reserves the right to deliver earlier than any stipulated or quoted dates or periods for delivery if it should wish to do so.
(b) If the Company is delayed from delivering the Equipment due to any act or omission of the Customer, the Company may (without prejudice to any other remedy) suspend delivery to the Customer or wholly or partially cancel the contract without prejudice to the Company's rights to recover all sums due in respect of deliveries made prior to cancellation.
(c) In the event of an agreed delivery being suspended by the Customer or its agents, the Company shall have the right to increase the contract price by an amount of interest equal to the rate of one and one half per cent per month above Lloyds Bank Plc base rate for the time being on the value of the Equipment for the period of the suspension together with any additional costs of transport, storage or any other additional expenditure incurred by the Company consequent upon such suspension.
(d) If due to circumstances beyond the control of the Company delivery does not take place within four months from the date of the Company's written acceptance of the order, the Company shall have the right to amend the contract price to reflect changes or increases in the cost of Equipment to be supplied to the Company, any interest costs incurred by the Seller and increases in the cost of manufacturing processes, administration costs and generally.
(e) Equipment will be delivered to the place stated by the Customer in its Order. If that place of delivery should be a store room or a location other than the final operational site the Company reserves the right to charge for additional labour and transport if the Equipment needs to be moved from the initial place of delivery.

7 ACCEPTANCE OF EQUIPMENT

The Customer shall be deemed to have accepted the quality of Equipment delivered as being strictly in accordance with the Order unless within seventy-two hours from receipt of same the Customer has returned any such defective Equipment to the Company.

8 RISK

Risk in the Equipment shall pass to the Company when the Equipment leaves the Company's warehouse.

9 PROPERTY IN THE EQUIPMENT

(1) Notwithstanding delivery of the Equipment, no property in the Equipment, whether specific or unascertained, shall pass to the Customer until all sums due or owing in respect of such Equipment or on any account whatsoever by the Customer to the Company have been paid in full. In the case of payment by cheque, property in the Equipment shall not pass to the Customer until such cheque has been cleared and the amount of such cheque has been credited to the Company's bank account. Until such time as full payment for the Equipment has been made the Equipment shall remain the absolute property of the Company and the Customer shall hold the Equipment as bailee of and in a fiduciary capacity as a fiduciary agent for the Company and shall:
(i) keep the Equipment at the Customer's own premises marked and/or stored separately from other Equipment so as to be identifiable as the property of the Company;
(ii) deliver the Equipment up to the Company or its agents, upon demand;
(iii) permit the Company or its agents to enter upon the Customer's premises at any time in order to retake possession of the Equipment although such re-possession shall not affect in any way the continued existence of any contract between the Company and the Customer unless the Company has elected to rescind the same, and
(iv) keep the Equipment insured to its full market value PROVIDED ALWAYS that the risk of loss or damage to the Equipment shall pass to the Customer in accordance with Clause 8 above.
(2) The Customer shall only be entitled to sell any Equipment that remains the property of the Company on the condition that the Customer warrants and does hereby warrant and by acceptance of these Conditions the Customer's directors for the time being shall be deemed to warrant jointly and severally that:-
(i) Such sale is in the ordinary course of business.
(ii) Such Equipment is sold at arm's length on commercially reasonable terms.
(iii) At the time of concluding such sale the Customer is solvent and can pay its debts as and when they fall due and the Customer's directors are not aware of the appointment or pending appointment of any receiver or liquidator of the Customer.
(iv) To the extent of any sums due or owing by the Customer to the Company the proceeds of any such sale shall be charged by the Customer to the Company and shall be paid forthwith by the Customer to the Company.
(3) Should default be made by the Customer in paying in full any sum due under any Order as and when it becomes due in accordance with the terms quoted in the Company's invoice the Company shall have the right either to suspend all further deliveries until the default be made good or by written notice to rescind any or all the contracts between the Customer and the Company and to recover damages from the Customer for any resulting loss. The Customer shall have no right to withhold any such payments by way of set off or counterclaim where the amount claimed by the Customer from the Company has not been acknowledged in writing by the Company as being due.

10 CANCELLATION

The Customer shall not be entitled to alter or cancel any Orders which have been accepted by the Company.

11 NON-RETURNSABLE DEPOSIT

Any deposit paid by the Customer shall be paid as a token undertaking not to withdraw from this transaction and such deposit shall not be returnable in any circumstances.

12 SHORTAGES

The Customer shall be deemed to have accepted the quantity of Equipment as being strictly in accordance with the Order unless within seventy-two hours from receipt of the same the Customer has delivered to the Company a notice in writing of any shortages therefrom.

13 DESIGN ALTERATIONS

Notwithstanding acceptance of the Order the Company expressly reserves the right to alter or change at any time the design or finish of the Equipment as described in the Company's Quotation.

14 TERMS OF PAYMENT

(a) Except as provided for in Clause 14(b) below all accounts are strictly cash upon delivery of the Equipment.
(b) In the event the Company has agreed to provide the Customer with credit facilities for payment of invoices then payment shall be made within thirty days of delivery of the Equipment or (if different) within the terms specified in the Invoice. The provision of credit facilities shall be at the sole discretion of the Company. In the event that payment of the full price for the Equipment is not made to the Company by the due date the Customer shall pay interest at the rate of one and one half per cent per month from the date the Equipment is despatched from the Company's warehouse until the date full payment, plus interest thereon, has been received by the Company. In addition, the Company reserves the right to reduce the Warranty Period, as provided for in clause 18(a) by an equivalent amount of time to the time it takes for the Customer to make full payment.
(c) The Company reserves the right to deliver any one or more consignments, each consignment to be paid for in accordance with the foregoing terms. In the event of payment not being made for any one consignment the Company shall be at liberty to suspend deliveries of all subsequent consignments pending settlement of all outstanding payments.
(d) If, before delivery is made of any Equipment, the Company has reasonable grounds for doubting the Customer's intention or ability to pay, the Company reserves the right to require from the Customer security for payment and, if no Security acceptable to the Company is given, to cancel the contract or to take such other action as the Company deems suitable.
(e) In the event the Company takes legal or other action to recover any monies due from the Customer hereunder the Company in addition to the monies recovered shall also be entitled to recover from the Customer all legal costs charges and expenses (including recovering agents fees and expenses) incurred in connection with any such action.

15 PACKING

The Company's Quotation includes the cost of packing provided the Customer's Quotation does not specify otherwise. However, the Company reserves the right to charge for any special method of packing required by the Customer.

16 BREACH AND LIQUIDATION

If the Customer shall make default in or commit any breach of any of its obligations to the Company or if any distress or execution shall be levied upon the Customer's property or assets or if the Customer shall make or offer to make any arrangements or composition with Creditors or commit any act of bankruptcy or if any petition or receiving order in bankruptcy shall be presented or made against it, or if the Customer shall be a limited company and any resolution or petition to wind up the Customer's business shall be passed or presented, or if a receiver of such company's undertaking, property or assets, or any part thereof, shall be appointed, the Company shall have the right forthwith to determine any contract then subsisting and to cancel any outstanding deliveries or deliveries and to stop any Equipment in transit, but all without prejudice to any remedy which the Company may have in respect of any monies due to the Company from the Customer or in respect of the consequential noncompletion of the contract. In addition to any lien to which the Company may by statute or otherwise be entitled the Company shall (in the event of the Customer's non-payment for Equipment supplied to it or in the event of the Customer's insolvency) be entitled to a lien on all Equipment in the Company's possession (notwithstanding that such Equipment or some of them may have been paid for) for the unpaid price of any other Equipment sold and delivered to the Customer by the Company under this or any other contract.

17 FORCE MAJEURE

If, in consequence of any circumstances of force majeure, including but not limited to fire, civil commotion or disturbance, strikes, labour trouble of any sort, shortage of manpower, fire, flood, shortage of fuel, power, raw materials, demands restrictions or requests of Government or similar authorities, non-delivery or delay of the Company's supplies and all other circumstances of whatever kind, which are beyond the Company's reasonable control and which affect the Company's ability to fulfil his delivery obligations, the completion of the delivery is prevented, impeded or delayed, the Company shall be absolved from all responsibility and liability whatsoever and reserves the right at his own option wholly or partly to cancel the agreement or to postpone the delivery of such part beyond the time of delivery stated as is appropriate in the circumstance. Such cancellation by the Company shall be without prejudice to the Company's rights to recover all sums due in respect of deliveries made prior to cancellation or delay.

18 WARRANTY

(a) Company warrants to the original Customer that the Equipment, delivered to the Customer by the Company will be free from defects in workmanship or material for a period (subject to Clause 14(b) above) of one (1) year from the date of delivery. This warranty specifically excludes such items as may be attached to or installed in the Equipment at the request of the Customer. This warranty shall terminate and become void if the Equipment delivered by the Company is:
(i) altered, modified, or repaired by anyone other than by the Company or by the Company's authorised repair personnel.
(ii) moved or interfered with without the Company's prior written consent.
(iii) connected to or used with items manufactured by anyone other than Company (excepting only test equipment approved by the Company).
(iv) misused.
(v) accidentally damaged.
(vi) damaged by operator error.
(b) The Company's sole liability and the Customer's sole remedy for breach of warranty shall be the replacement, repair or adjustment, at the Company's option, of defective or faulty parts and the provision of labour (including travel costs, if applicable) to undertake such replacement, repair or adjustment, of defective or faulty parts and the provision of labour. If the Customer claims a breach of warranty it shall advise the Company of such claims by written notice to be received by the Company within one year from the date of delivery of the Equipment in question. All equipment or parts claimed to be in breach of this warranty must be returned by the Customer to the Company, transportation prepaid, and will be returned to the Customer, transportation charges collect.
(c)(i) All conditions, warranties, terms, undertakings and obligations implied by statute, common law, custom, trade usage or otherwise (including, without prejudice to the generality of the foregoing, any implied condition, warranty or undertaking as to the correspondence of the Equipment with any contract description given, merchantable quality or fitness for any particular purpose) are hereby wholly excluded.
(c)(ii) The Company offers no opinion as to the suitability of the Equipment for any particular purpose and the Customer acknowledges that it does not rely on the Company's skill or judgment.
(c)(iii) In no event shall the Company shall not be liable to the Customer for any loss or damage whatsoever howsoever caused (even if such loss or damage has been caused by the negligence or breach of statutory duty of the Company, its servants or agents or in any other way whatsoever and/or by reason of the Company's breach of any express or implied condition or warranty) including but not limited to consequential loss (whether direct or indirect), loss of business, loss of profit or any liability or potential liability to third parties.
(c)(iv) Nothing contained in these conditions shall affect the Company's liability for death or personal injury caused by its proven negligence.

19 INSTALLATION, REPAIR, MAINTENANCE AND OTHER SERVICES

In the event the Company provides any Services in respect of the Equipment these will be provided in accordance with the Company's "Service Conditions" in force from time to time which are incorporated herein by reference. The Company's current "Service Conditions" are set out in the Schedule hereto.

20 OBSOLESCENCE AND DISCONTINUANCE

The Company reserves the right to obsolete and/or discontinue availability of Equipment models or parts thereof sold hereunder at any time without liability to the Company.

21 WORK ON CUSTOMER'S PREMISES

In the event of any work by the Company on the Customer's premises or Customer's designated location, Customer shall take (or cause to take) all necessary precautions to prevent the occurrence of any injury to any person or property, including personnel and property of the Company during the progress of such work and shall indemnify and hold the Company harmless from all and any claims of damage, injury or death.

22 TAXES, DUTIES AND TRANSPORTATION

Applicable excise, sales value added, use and similar taxes, transportation charges and costs of insurance, demurrage or bonds of any kind are not included in the pricing and shall be paid by the Customer.

23 NON-WAIVER OF DEFAULT

The Company's delay in exercising or enforcing any of its rights against the Customer of the Company's failure to insist upon strict performance of any of the provisions contained herein shall in no way constitute a waiver of its rights as set forth herein, at law or in equity, and shall not constitute a waiver by the Company of any other provisions or prior, concurrent or subsequent default by the Customer in the performance of or compliance with any of the terms and conditions set forth herein, the Customer shall pay to the Company all expenses incurred in connection with such action, including all reasonable attorney's fees, costs, charges and expenses and all recovery agents' fees and expenses.

24 USE OF EQUIPMENT AND INDEMNITY

(a) If, at the request of the Customer or any of its personnel, the Company provides information on the treatment parameters utilising the Equipment, such information will be given on the express condition that it is given in good faith only and without any liability on the part of the Company, its employees or agents and the Customer shall use such information entirely at its own risk.
(b) The Customer accepts full responsibility for the use of the Equipment and releases the Company from all and any liability whatsoever regarding any loss, damage, illness or death resulting from any treatment utilising the Equipment or any advice given or information provided by the Company or by any of its employees or agents.
(c) The Customer shall indemnify and shall keep the Company fully indemnified from and against all and any costs, claims, demands, damages and liabilities whatsoever arising out of or in connection with the Equipment, its use or any treatment utilising the Equipment.

25 SEVERABILITY

If any provision herein shall be held to be invalid or enforceable for any reason, such provision shall, to the extent of such invalidity or unenforceability, be severed, but without in any way affecting the remainder of such provision or any other provision contained herein, all of which shall continue in full force and effect.

26 ENTIRE AGREEMENT

The Customer understands and agrees that acceptance by the Company of any Order issued by the Customer in connection with applicable quotation, offer and/or Invoice is limited to, subject to and expressly made conditional upon the Customer's assent to the terms and conditions set forth hereinabove and upon the face of the Quotation and/or Invoice. The Agreement so formed constitutes the entire agreement between the Company and the Customer concerning the subject matter hereof, supersedes all prior communications and agreements, written and oral, and is intended by the parties to be a complete and exclusive statement of the terms and conditions of the agreement between them. Any terms and conditions appearing in the Customer's Order or in any other writing received from the Customer which are different from or in addition to the terms and conditions contained hereinabove and on the face of the Company's Invoice are null and void and of no force or effect. This Agreement may only be modified by a writing signed by authorised representative of both parties.

27 CONSTRUCTION

These Conditions of Sale shall in all respects and for all purposes be governed and construed in accordance with English Law and both the Company and the Customer agree to submit to the non-exclusive jurisdiction of the English Courts.

THE SCHEDULE: SERVICE CONDITIONS

A INSTALLATION SERVICE - NO CHARGE FOR LABOUR

Company shall provide free of charge the service of a qualified representative at Customer's facility, for the purposes of installing the Equipment delivered. Other charges may apply - see below.

B ALL OTHER SERVICES - LABOUR CHARGE

If any services are required to be undertaken by the Company they will be carried out at a time and place agreed by the Company with the Customer. The Customer is obligated to make any Equipment requiring installation/repair/maintenance freely available at the time and place agreed with the Company and with all requisite water and electricity connections available at the Equipment location. If such Equipment has not been made available or if such requisite water and electricity supplies have not been made available at the Equipment location a new appointment will be made and it will be charged for at the Company's rate prevailing at the date of the new appointment and the Customer shall pay the Company, at the Company's standard rates, for any abortive time spent by its representative.
(i) Any time allocated by the Company for repair/maintenance will not cover requests to visit with any of the Customer's personnel to discuss any matters concerning repair/ maintenance/operation; any such extra time will be charged for at the Company's then prevailing rates.
(ii) The Company will prepare a report on the installation/repair/maintenance undertaken and will leave it with the appropriate departmental supervisor; any queries in relation to that report must be addressed to the Company in writing.
(iii) Any installation/repair/maintenance work will be carried out during normal business hours 9.00 a.m. to 5.30 p.m. Monday - Friday. Any work which is done outside of these hours will be charged for at the Company's out of hours rates.

C OTHER CHARGES FOR SERVICES AT CUSTOMER FACILITY

(i) Travel and transportation expenses in connection with all Services undertaken at Customer's facility. The Customer shall pay actual travel and transportation expenses incurred by the Company's representative, whether under warranty or not.
(ii) Living and incidental expenses in connection with all Services undertaken at Customer's facility. If the Customer's facility is inside the British Isles, the Customer shall pay the Company's representative actual living and incidental expenses of £100.00 (plus VAT) per day or fraction thereof. This charge for living and incidental expenses shall apply for the entire time the representative is absent from the Company's offices.

D OTHER CHARGES FOR SERVICES IN THE COMPANY'S FACILITY

The Customer may, at its option and its cost, whether under warranty or not, send faulty or damaged Equipment to the Company's facility for equipment repair, maintenance check out or testing of equipment. The Company shall charge the Customer at the Company's hourly charges in force from time to time for such labour incurred in the Company's facility, excluding valid warranty repairs or replacements.

E AVAILABILITY FOR INSTALLATION/REPAIR/MAINTENANCE

(i) If any services are required to be undertaken by the Company they will be carried out at a time and place agreed by the Company with the Customer. The Customer is obligated to make any Equipment requiring installation/repair/maintenance freely available at the time and place agreed with the Company and with all requisite water and electricity connections available at the Equipment location. If such Equipment has not been made available or if such requisite water and electricity supplies have not been made available at the Equipment location a new appointment will be made and it will be charged for at the Company's rate prevailing at the date of the new appointment and the Customer shall pay the Company, at the Company's standard rates, for any abortive time spent by its representative.
(ii) Any time allocated by the Company for repair/maintenance will not cover requests to visit with any of the Customer's personnel to discuss any matters concerning repair/ maintenance/operation; any such extra time will be charged for at the Company's then prevailing rates.
(iii) The Company will prepare a report on the installation/repair/maintenance undertaken and will leave it with the appropriate departmental supervisor; any queries in relation to that report must be addressed to the Company in writing.
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