

TERMS AND CONDITIONS FOR THE SALE OF GOODS

Interpretation

'CLIENT' means the person (in the case of sole trader/partnerships/individuals) or Limited Company who accepts a quotation of the Company for the provision of the Services or whose order for the Services is accepted by the Company.

'COMPANY' means Microspec Ltd (registered in England under number 05509140)

'CONDITIONS' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Client and the Company

'CONTRACT' means this contract for the provision of the services

"OUTPUT MATERIAL" means data, drawings, plans, documents, test results and other information prepared by the Company in relation to the Services

Goods : the articles which the Buyer agrees to buy from the seller

'SERVICES' means the provision of consultancy, testing, survey, training, inspection or other services for which the company undertakes to perform for The Client under the Contract.

'WRITING' includes electronic mail, facsimile transmission and comparable means of communication

Any reference in these 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.

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

Basis of the sale

The Company shall provide the Products and Services and Client shall pay for the same in accordance with any written quotation or tender of the Company which is accepted by the Client, or any written order of the Client which is accepted by the Company, subject in either case to these conditions, which shall govern the Contract to the exclusion of any other terms and conditions .

- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods from the Seller pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods shall be deemed to be conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 These Conditions may not be varied except by the written agreement of a director of the Seller.
- 2.5 These Conditions represent the whole of the agreement between the Seller and the Buyer. They supersede any other conditions previously issued.

Orders and specifications

The Client shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Client, and for giving the Company any necessary information relating to the Services within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

The company reserves the right to make any changes in the specification of the Services which are required to conform with any safety or other statutory requirements.

No order which has been accepted by the Company may be cancelled by the Client except with the Contract in Writing of the Company and on condition that the Client shall indemnify the Company 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 the Company as the result of cancellation.

Assignments and Sub-Contracting

The Company will manufacture the products and perform the Services using its own staff. However, the company reserves its right to sub-contract the whole or part of the work.

Warranties

- 5.1 The Seller warrants that the Goods will at the time of delivery correspond to the description given by the Seller in the confirmation of order. [Except where the Buyer is dealing as a consumer (as defined in section 12 of the Unfair Contract Terms Act 1977), all other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods are excluded].

Delivery of the Goods

- 6.1 Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods.
- 6.2 The Seller undertakes to use its reasonable endeavours to despatch the Goods on an agreed delivery date, but does not guarantee to do so. Time of delivery shall not be of the essence of the contract.
- 6.3 The Seller shall not be liable to the Buyer for any loss or damage whether arising directly or indirectly from the late delivery or short delivery of the Goods. If short delivery does take place, the Buyer undertakes not to reject the Goods but to accept the Goods delivered as part performance of the contract.
- 6.4 If the Buyer fails to take delivery of the Goods on the agreed delivery date or, if no specific delivery date has been agreed, when the Goods are ready for despatch, the Seller shall be entitled to store and insure the Goods and to charge the Buyer the reasonable costs of so doing.
- 6.5 Acceptance of the Goods
The Buyer shall be deemed to have accepted the Goods 48 hours after delivery to the Buyer.
- 6.6 The Buyer shall carry out a thorough inspection of the Goods within 48 hours of delivery and shall give written notification to the Seller within 5 working days of delivery of the Goods of any defects which a reasonable examination would have revealed.
- 6.7 Where the Buyer has accepted, or has been deemed to have accepted, the Goods the Buyer shall not be entitled to reject Goods which are not in accordance with the contract.

Title and risk

- 7.1 Risk shall pass on delivery of the Goods to the Buyer's address.
- 7.2 Notwithstanding the earlier passing of risk, title in the Goods shall remain with the Seller and shall not pass to the Buyer until the amount due under the invoice for them (including interest and costs) has been paid in full.
- 7.3 Until title passes the Buyer shall hold the Goods as bailee for the Seller and shall store or mark them so that they can at all times be identified as the property of the Seller.
- 7.4 The Seller may at any time before title passes and without any liability to the Buyer:
- 7.4.1 repossess and dismantle and use or sell all or any of the Goods and by doing so terminate the Buyer's right to use, sell or otherwise deal in them; and
- 7.4.2 for that purpose (or determining what if any Goods are held by the Buyer and inspecting them) enter any premises of or occupied by the Buyer.
- 7.5 The Seller may maintain an action for the price of any Goods notwithstanding that title in them has not passed to the Buyer.

Terms of payment

- 8.1 Subject to any special terms agreed in Writing between the Client and the Company, the Company shall be entitled to invoice the Client for the price of the Products and/or Services on or at any time after commencement of the same.

The Client shall pay the price of the Products and/or Services inclusive of VAT where applicable (but without any other deduction) within 30 days of the date of the Company's invoice in pounds Sterling. Receipts for payment will be issued only upon request. Any invoice queries should be notified in writing within 30 days of invoice date.

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

under The Late Payment of Commercial Debts (Interest) Act 1998, charge the Client interest (both before and after any judgement) on the amount unpaid, at the rate of 8% per annum above the Bank of England base rate 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); and

Force Majeur

Neither party shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Supply or Services, if the delay or failure was due to any cause beyond that party's reasonable control.

Confidentiality and Intellectual Property

The property, and any copyright, design rights or other intellectual property rights in any Output Material shall, unless otherwise agreed in Writing between the Client and the Company, belong to the Company, but the Client shall be entitled to use the Output Material for the purposes of utilising the Services by way of an exclusive, perpetual, royalty free, licence.

Any information provided by the Client and any Output Material shall be kept confidential by the Company, and all Output Material or other information provided by the Company which is so designated by the Company shall be kept confidential by the Client; but the foregoing shall not apply to any documents or other materials, data or other information which either party is required to disclose by law or by statutory requirements or which are public knowledge at the time when they are so provided by either party, and shall cease to apply if at any future time they become public knowledge through no fault of the other party.

The Output Material is prepared exclusively for the Client for the purposes of the Contract and may not under any circumstances be used by any third party. The Company is not liable for any Output Material so used

The Company is not aware, to the best of its knowledge, that any Output Material is in infringement of any design rights, copyright or other intellectual property rights of any third party

Warranty and Limitation of Liability

11.1 The Company warrants that the Supply of products and Services will be performed with reasonable skill and care and in accordance with best commercial practices and standards in the industry for similar services;

Except as expressly provided in this Contract and so far as is permitted by statute all warranties, conditions, guarantees or representations, express or implied, statutory or otherwise are hereby excluded, and the Company shall not be liable for any loss, damage, expense or injury of any kind whatsoever, consequential or otherwise, arising out of or due to or caused by any defects or deficiencies of any sort in the Services, (including any delay in providing or failure to provide the Services) whether such defects or deficiencies are caused by the negligence of the Company or its employees or agents or otherwise.

The Company shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any instructions supplied by the Client which are incomplete, incorrect, inaccurate, or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.

Nothing in this Contract shall limit or exclude the Company's liability for death or personal injury resulting from the negligence of the Company or that of its employees or agents.

The entire liability of each party under or in connection with the Contract shall not exceed 10 times the value of goods or services supplied under the order. Each party is under a duty to mitigate any losses howsoever caused.

The Client acknowledges and agrees that the limitation of liability contained in this clause is:

fair and reasonable;

reflected in the level of charges and of insurance cover carried by the Company

just and equitable having regard to the extent of the responsibility of the Company for any loss or damage suffered, on the basis that all other consultants, the contractor and any subcontractors who have a liability shall be deemed to have provided contractual undertakings to the Client on terms no less onerous than those contained in this Contract.

Publicity

The Company's name shall not be used in connection with the Contract for purposes of publicity promotion or advertising without the prior written approval of The Company. The Company may publish or join in publishing any description or illustration of the works with the prior consent of the Client.

Non-solicitation of Staff

The Client shall not solicit or entice away or seek to entice away from the Company to work for its business, whether as principal, agent, partner, director, employee, secondee or consultant, any person who is or was employed or engaged by the Company in providing the Services.

Should the Client be in breach of 12.1 above, then it shall pay to the Company a sum to cover the Company's reasonable losses in this matter.

Data Protection Act 1998

The Company is registered under the Data Protection Act 1998.

The Company may consult or register information about the Client and the conduct of the Client's account with a licensed credit reference agency. The Company may also consult a licensed credit agency about any credit information that they hold on the Client, or the Client's principal directors. The Company will keep a record of that search either on computer or on manual records.

The Company shall comply with its obligations under the Data Protection Act 1998.

Dispute Resolution And Applicable Law

Any dispute or difference arising out of or in connection with this Contract shall be referable at the option of either party to adjudication. The person who is to act as the adjudicator shall be agreed between the Client and the Company.

The contract shall in all respects be subject to and construed in accordance with English Law and the Client submits to the exclusive jurisdiction of the English Courts.

Events of Default, Termination, Repossession, Suspension

If:

either party fails to pay any overdue sums within 14 days of being notified of the same; or

either party fails to rectify any material breach of the terms of the Contract within 14 days of being notified of the same; or

either party is, or for statutory purposes is deemed to be 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 otherwise becomes insolvent or suspends payment or threatens to do so or ceases to trade; or

either party makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the pa; or

either party ceases, or threatens to cease, to carry on business; or

outside England and Wales anything corresponding to any of the above occurs; or

either party reasonably apprehends that any of the events mentioned above is about to occur in relation to the other party

then in the above cases the defaulting party shall notify the other party forthwith in writing of such event and in all cases the non-defaulting party may (at its discretion) at any time by notice to the defaulting party do any one or more of the following:-

terminate, cancel and/or rescind the Contract and other contracts with the defaulting party;

declare immediately due, payable and interest-bearing under clause 6.3.2 above any amounts owed by the defaulting party under any contract;

if applicable, suspend the provision of any Services to the Client;

proceed against the defaulting party for any sums owing under the Contract and/or damages, as appropriate.

General

Any notice required or permitted to be given by either party to the other under these 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.

No waiver by the Company of any breach of the Contract by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.

If any provision of these 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 Conditions and the remainder or the provision in question shall not be affected thereby

17.5 The parties acknowledge that, except as specifically provided in this Contract, it is not their intention that any third party shall be entitled to enforce any term of this Contract which may confer a benefit on that third party, whether any such entitlement would, but for this provision, arise under the Contracts (Rights of Third Parties) Act 1999 or otherwise.