

All quotations and orders arising between Process Parameters Limited (“the Seller”) and the Buyer shall be governed by the following Terms and Conditions to the exclusion of any other terms and conditions and the acceptance of the contract by the Buyer shall be deemed to be an acceptance of these Terms and Conditions. **No other terms and conditions except those implied by law shall be of any effect unless the same are expressly agreed in writing by both the Seller and the Buyer.**

‘Goods’ shall mean the products supplied by the Seller to the Buyer.

1. PRICE

- 1.1 The Goods shall be invoiced at the price prevailing at the date of the despatch of Goods and the Seller may increase the price at any time prior to delivery of the Goods to reflect increases in the Seller’s costs.
- 1.2 The price stated is exclusive of value added tax and any other impositions whatsoever which if applicable shall be paid in addition to the price by the Buyer.
- 1.3 All quotations remain open to acceptance by the Buyer within 30 calendar days of their date of issue unless otherwise stated on the quotation.

2. GOODS AND PRODUCT GUARANTEES

- 2.1 Temperature probes manufactured by the Seller are guaranteed for 12 months commencing upon the delivery date.
- 2.2 Optris products supplied by the Seller are guaranteed for 24 months commencing upon the delivery date.
- 2.3 Other products not included in (2.1) and (2.2) above may be subject to different warranty periods which are available on request.
- 2.4 The Seller’s product guarantee does not apply to damages which result from misuse, incorrect installation, mechanical damage, neglect or where the product has been opened or in any way interfered with. The Seller shall investigate all guarantee claims and if it is found that in its reasonable opinion any of the aforementioned apply, any repair or replacement costs will be borne by the Buyer and the Buyer may seek an estimate from the Seller prior to proceeding with any such repair or replacement.
- 2.5 If a failure occurs during the guarantee period the product will be replaced, calibrated or repaired at the Seller’s discretion and without further charges to the Buyer.
- 2.6 All repair or replacement enquiries pursuant to the product guarantees must be directed to the Seller and include the purchase order number, invoice number, detailed description of the fault and any repair instructions.

3. ACCOUNT FACILITIES AND PAYMENT

- 3.1 Save where the Buyer has an approved account facility with the Seller, the contract price (or the proportion thereof as stated on the invoice) shall be payable on a pro forma basis in Sterling and in full at the point of ordering and prior to the commencement of work.
- 3.2 The Seller will only permit account facilities to continue to be made available to the Buyer where payment of all invoices is made within 30 days of invoice date without deductions.
- 3.3 If account facilities are unused for 24 months the Seller reserves the right to close the account facility and to require payment on a pro forma basis payable seven days before delivery on any subsequent transactions until such time as new account facilities may be agreed.
- 3.4 All overdue accounts shall be charged on a daily basis with interest at 8% above the Bank of England reference rate in force on the date the debt becomes overdue and at any subsequent rate where the reference rate changes and the debt remains unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 3.5 Full payment of invoices or applications must reach the Seller within 30 days of the date of the invoice or application unless otherwise specified in the Seller’s quotation or order acknowledgement.
- 3.6 The Buyer shall have no right of offset unless otherwise agreed in writing in advance by a Director of the Seller.
- 3.7 The Seller shall attribute payments received from the Buyer to the oldest invoice outstanding.
- 3.8 The Buyer may not make any deduction from the invoiced price.
- 3.9 All transactions are to be conducted in GBP.
- 3.10 All bank and transaction charges levied on direct credit transfers from overseas shall be borne by the Buyer.
- 3.11 The Seller will accept payment by VISA and MasterCard credit cards registered in the UK subject to a surcharge of 2.5% of the payment amount which shall be payable by the Buyer at the time of the transaction.

4. DELIVERY

- 4.1 Delivery shall not include off loading, un-wrapping, un-packing, storage or site work attendance unless otherwise agreed in writing between the Buyer and the Seller.
- 4.2 The Seller will use its reasonable endeavours to comply with estimated despatch or delivery dates but in no circumstances will the Seller be liable for any delay in delivery or loss arising therefrom. Time shall not be of the essence of the contract but as a guidance only.
- 4.3 If payment is to be made on a pro forma basis delivery will not be made until the Seller is in receipt of cleared funds.
- 4.4 If owing to non-availability of Goods, materials or for any other reason the Seller is unable to effect delivery the Seller shall be at liberty by notice in writing to determine the contract or part thereof without thereby incurring any liability to the Buyer.

- 4.5 It is agreed that the Seller may deliver the Goods by instalments and each delivery shall be treated as a separate contract and the contract price or an appointed part shall be due and payable.
- 4.6 Where delivery is delayed by late payment of the pro forma or at the request of the Buyer, the cost of handling and storage or warehousing plus a 10% handling fee shall be paid by the Buyer to the Seller in addition to the contract price before the Seller shall be required to make delivery.
- 4.7 The Seller will accept no liability for damage to Goods occurring in transit unless notified in writing by the Buyer (by email with photographic evidence) on the day of delivery and provided only that the Goods have been signed for by the Buyer as 'damaged' on the haulier's delivery note. For the avoidance of doubt, the Seller will not accept liability for damaged goods that have been signed for but not signed for as 'damaged'.

5. ACCEPTANCE OF GOODS

- 5.1 The Buyer shall make reasonable inspection of the Goods within 24 hours of delivery and shall give written notice to the Buyer of any defects within 48 hours of delivery.
- 5.2 In the event that the Buyer has not notified the seller in writing of any defects within 48 hours of delivery, the Buyer shall be deemed to have accepted the goods and shall not be entitled to reject them.

6. TITLE AND RISK

- 6.1 Legal and equitable title to the Goods shall remain with the Seller and the Seller shall have the sole and unencumbered right to dispose of the Goods until payment in respect of the Goods has been made in full to the Seller.
- 6.2 The Seller may (without prejudice to any other rights) recover or resell the Goods or any portion of them and the Buyer hereby agrees that the Seller or its servants or agents may enter upon the Buyer's premises for that purpose.
- 6.3 The risk of damage or loss of the Goods shall pass from the Seller to the Buyer when the Goods are delivered to the Buyer or, where the Buyer elects to collect the Goods, when the Seller notifies the Buyer that the Goods are ready for collection.
- 6.4 Whilst the Goods are upon the Buyer's premises or site of works, the Buyer shall ensure that they are stored undamaged and free of charge in such a way that they are shown to be the property of the Seller and marked accordingly.
- 6.5 Until payment has been made in full the Buyer has no legal or equitable title to the Goods or authority (unless otherwise confirmed in writing by the Seller) to sell, mortgage, charge or lease any of the Goods.

7. CONTRACT VARIATIONS OR CANCELLATIONS

- 7.1 Variations and/or cancellations will only be acceptable if requested to the Seller in writing.
- 7.2 The Seller shall at its sole discretion entertain variations only if received prior to manufacture of the Goods.
- 7.3 Cancellation of an order by the Buyer must be in writing and the Buyer shall forthwith pay to the Seller by way of compensation a cancellation charge of 20% of the order value or the total amount of the actual loss to the Seller whichever shall be the higher.

8. DEFAULT IN PAYMENT AND INSOLVENCY

- 8.1 In the event that the Buyer becomes unable to pay its debts as and when they fall due, goes into liquidation, makes any composition with its creditors or if a Receiver or Manager is appointed, the Seller may withhold deliveries, cancel or suspend outstanding orders and recover Goods delivered unless payment is made in full to the Seller for the Goods.

9. INDEMNITY

- 9.1 The Buyer shall be solely responsible for and shall keep the Seller indemnified against any and all losses, damages, liability, costs (including legal fees) and expenses which the Seller may suffer or incur directly or indirectly from the Buyer's breach of any of its obligations under the Contract and not excluding the liability in relation to the use of the Goods.
- 9.2 The Buyer recognises that any breach or threatened breach of the Contract may cause the Seller irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Seller, the Buyer acknowledges and agrees that the Seller is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.
- 9.3 The Buyer undertakes not to export the Goods either directly or indirectly where to do so would be in contravention of any law, statute or regulation or without first obtaining all required licences and permits from all relevant governmental departments or agencies.

10. RETURNED GOODS

- 10.1 The Seller will not accept returned Goods for credit or rectification unless such return has been authorised in writing by the Seller and the Goods are returned back to the Seller's place of business at the expense of the Buyer in stock condition including with undamaged original packaging, accessories, and manuals.
- 10.2 All items for return must be accompanied by the original purchase order number, invoice number, a detailed description of the fault, and any repair instructions.
- 10.2 The Seller shall retain the sole discretion as to whether to accept return of Goods and, if so, whether to rectify, replace or credit the Goods.
- 10.3 The Seller reserves the right to levy a re-stocking charge to cover inspection, testing and handling.

11. SELLER'S LIABILITY TO BUYER

- 11.1 The Seller shall under no circumstances be liable to the Buyer whether in contract, tort, breach of statutory duty or otherwise for any loss of profit, or any indirect or consequential loss arising under or in connection with the contract between them.
- 11.2 The Seller's liability to the Buyer for any default or breach whatsoever and howsoever arising shall in no case exceed the invoice value of the Goods.
- 11.3 This clause 11 shall survive termination of the contract.

12 INTELLECTUAL PROPERTY

- 12.1 All plans, drawings, specifications and details prepared by the Seller are the copyright of the Seller and the Buyer shall not reproduce or otherwise use such documentation in any manner which would constitute a breach of that copyright.

13 FORCE MAJEURE

- 13.1 In the event that the Seller is unable to perform its obligations to the Buyer (or only able to perform them at unreasonable cost) because of circumstances beyond the Seller's control, the Seller may cancel or suspend any of its obligations to the Buyer without liability.

14 GENERALLY

- 14.1 All descriptions and samples are approximate only and intended to be a guide. The Seller accepts no liability for their accuracy. The Seller may alter Goods to introduce improvements and no such variation shall entitle the Buyer to rescind the contract or shall be the subject of any claim against the Seller.
- 14.2 If any of these Terms and Conditions shall be found to be unlawful it shall not vary or affect the validity or enforceability of the remainder of the terms and conditions.
- 14.3 No waiver by the Seller of any breach of these terms and conditions shall constitute a waiver of any subsequent breach of the same or other condition.
- 14.4 A person who is not a party to the contract between the Buyer and the Seller shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 14.5 The contract is entered into between the Seller and the Buyer as principals and the Buyer shall not be entitled to assign the benefit or burden of it without the prior written consent of the Seller. The Seller shall be entitled to sub-contract the whole or part of its obligations under the contract and to assign its interest in the contract.
- 14.6 Nothing in this contract shall establish a partnership or agency between the Seller and the Buyer. The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.
- 14.7 This contract is and shall be deemed to have been made in England and shall in all respects be governed by English Law.

15 Dispute resolution

- 15.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 15.
- 15.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 15.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
 - 15.3.1 Within 7 days of service of the notice, the contract managers of the parties shall meet to discuss the dispute and attempt to resolve it.
 - 15.3.2 If the dispute has not been resolved within 7 days of the first meeting of the contract managers, then the matter shall be referred to the chief executives (or persons of equivalent seniority). The chief executives (or equivalent) shall meet within 7 days to discuss the dispute and attempt to resolve it.
- 15.4 The specific format for the resolution of the dispute under clause 15.3.1 and, if necessary, clause 15.3.2 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.
- 15.5 If the dispute has not been resolved within 14 days of the first meeting of the chief executives (or equivalent) under clause 15.3.2 then the matter may be referred to mediation.