

General Terms and Conditions of Purchase of Hottinger Bruel & Kjaer UK Limited

These Purchasing Terms and Conditions (“**Terms**”) apply to purchases by Hottinger Bruel & Kjaer UK Limited (the “**Company**”) of items and services specified in a purchase order (“**Order**”) (along with accompanying materials, information and embedded software or technology) (the “**Goods**”) to the person, firm or company who accepts the Company’s Order or to which the Order is submitted (the “**Seller**”).

1. INTERPRETATION

- 1.1 In these Terms references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.2 In these Terms references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.
- 1.3 In these Terms the headings will not affect the construction of these Terms.

2. APPLICATION OF TERMS

- 2.1 These Terms are the only terms and conditions upon which the Company is prepared to deal with the Seller and they shall govern the Contract between the Company and Seller (“**Contract**”) to the entire exclusion of all other terms or conditions.
- 2.2 Each Order for Goods by the Company from the Seller shall be deemed to be an offer by the Company to purchase Goods subject to these Terms and no Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.
- 2.3 No terms or conditions endorsed upon, delivered with or contained in the Seller’s quotation, acknowledgement or acceptance of order, invoice, specification or similar document will form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.
- 2.4 These Terms apply to all the Company’s purchases and any variation to these Terms shall have no effect unless expressly agreed in writing and signed by an authorised officer of the Company.

3. QUALITY AND DEFECTS

- 3.1 The Goods shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Order and specification and/or patterns supplied or advised by the Company to the Seller. The Goods also shall be fit for the particular purposes for which they are required by the Company. By fulfilling the Order, the Seller acknowledges that the Company is relying upon the Seller's skill or judgement in providing such Goods.
- 3.2 The Company’s rights under these Terms are in addition to the statutory conditions implied in favour of the Company by the Sale of Goods Act 1979.
- 3.3 At any time prior to delivery of the Goods to the Company the Company shall have the right to inspect and test the Goods at all times.

- 3.4 If the results of such inspection or testing cause the Company to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to any specifications and/or patterns supplied or advised by the Company to the Seller, the Company shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition the Company shall have the right to require and witness further testing and inspection.
- 3.5 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract.
- 3.6 If any of the Goods fail to comply with the provisions set out in condition 3 the Company shall be entitled to avail itself of any one or more remedies listed in Section 12.
- 3.7 All warranties provided by the Seller in connection with the Goods, which arise out of this Contract or by operation of law, shall extend for the useful life of such Goods.

4. INDEMNITY

SELLER IRREVOCABLY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE COMPANY, ITS OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AGENTS, PARENT, AFFILIATES, AND SUBSIDIARIES (THE "INDEMNITEES"), FROM AND AGAINST ALL LIABILITIES, LOSSES, DAMAGES, COSTS AND EXPENSES (INCLUDING LEGAL AND OTHER PROFESSIONAL FEES AND EXPENSES), INCLUDING THOSE BASED ON NEGLIGENCE, TORT OR OTHER CLAIMS AND EVEN IF THE INDEMNITEE WAS ADVISED OF THE POSSIBILITY THEREOF, THAT MAY BE AWARDED AGAINST, INCURRED BY OR PAID BY AN INDEMNITEE IN CONNECTION WITH: (A) SELLER'S NEGLIGENCE OR WILLFUL MISCONDUCT; (B) DEFECTIVE WORKMANSHIP, QUALITY, MATERIALS, MANUFACTURE, TESTING, INSPECTION OR DELIVERY OF THE GOODS, DAMAGE TO THE GOODS DURING MANUFACTURE, TESTING, INSPECTION OR DELIVERY, OR ANY UNREASONABLY DANGEROUS OR DEFECTIVE CONDITION IN THE GOODS; (C) AN ALLEGED INFRINGEMENT OR OTHER VIOLATION OF ANY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS CAUSED BY THE DESIGN, MANUFACTURE, TESTING, SUPPLY, USE AND/OR SALE OF THE GOODS, WHETHER BY SELLER OR THE COMPANY, OR THE COMPANY'S CUSTOMERS, ALONE OR WITH OTHER PRODUCTS OR COMPONENTS THEREOF; AND/OR (D) ANY USE OF STOLEN, COUNTERFEIT OR MISAPPROPRIATED ITEMS, RESOURCES, MATERIALS, SOFTWARE OR TECHNOLOGY IN CONNECTION WITH THE DESIGN, MANUFACTURE, SUPPLY AND/OR SALE OF THE GOODS, OR OTHERWISE IN CONNECTION WITH SELLER'S BUSINESS OPERATIONS.

5. DELIVERY

- 5.1 The Goods shall be delivered, carriage paid, to the Company's place of business or to such other place of delivery as is agreed by the Company in writing prior to delivery of the Goods. The Seller shall off-load the Goods as directed by the Company.
- 5.2 The date for delivery shall be specified in the Order, or if no such date is specified then delivery shall take place within 28 days of the Order ("**Due Date**").
- 5.3 The Seller shall invoice the Company upon, but separately from, despatch of the Goods to the Company.

- 5.4 The Seller shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 5.5 Time for delivery shall be of the essence.
- 5.6 Unless otherwise stipulated by the Company in the Order, deliveries shall only be accepted by the Company in normal business hours.
- 5.7 If the Goods are not delivered on the Due Date then, without prejudice to any other rights which it may have, the Company reserves the right to:
- 5.7.1 cancel the Contract in whole or in part;
- 5.7.2 refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;
- 5.7.3 recover from the Seller any expenditure reasonably incurred by the Company in obtaining the Goods in substitution from another supplier; and
- 5.7.4 claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Seller's failure to deliver the Goods on the Due Date.
- 5.8 If the Seller requires the Company to return any packaging material to the Seller that fact must be clearly stated on any delivery note delivered to the Company and any such packaging material will only be returned to the Seller at the cost of the Seller.
- 5.9 Where the Company agrees in writing to accept delivery by instalments the Contract will be construed as a single contract in respect of each instalment. Nevertheless failure by the Seller to deliver any one instalment shall entitle the Company at its option to treat the whole Contract as repudiated.
- 5.10 If the Goods are delivered to the Company in excess of the quantities ordered the Company shall not be bound to pay for the excess and any excess will be and will remain at the Seller's risk and will be returnable at the Seller's expense.

6. RISK/PROPERTY

The Goods shall remain at the risk of the Seller until delivery to the Company is complete (including off-loading and stacking) when ownership of the Goods shall pass to the Company.

7. PRICE

- 7.1 The price of the Goods shall be stated in the Order and unless otherwise agreed in writing by the Company shall be exclusive of value added tax but inclusive of all other charges.
- 7.2 No variation in the price nor extra charges will be accepted by the Company.

8. PAYMENT

- 8.1 The Seller shall provide an invoice to the Company upon, but separately from, delivery of the Goods to the Company. The Company shall pay the price of all properly invoiced Goods within thirty (30)

days of delivery of the Goods to the Company, but time for payment shall not be of the essence of the Contract.

- 8.2 Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Seller to the Company against any amount payable by the Company to the Seller under the Contract.

9. CONFIDENTIALITY

The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Company or its agents and any other confidential information concerning the Company's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to the Company and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller.

10. THE COMPANY'S PROPERTY

Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Company to the Seller or not so supplied but used by the Seller specifically in the manufacture of the Goods shall at all times be and remain the exclusive property of the Company but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Company and shall not be disposed of other than in accordance with the Company's written instructions, nor shall such items be used otherwise than as authorised by the Company in writing.

11. TERMINATION

- 11.1 The Company shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice whereupon all work on the Contract shall be discontinued and the Company shall pay to the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

- 11.2 The Company shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith if:

11.2.1 the Seller commits a breach of any of the terms and conditions of the Contract;

11.2.2 any distress, execution or other process is levied upon any of the assets of the Seller;

11.2.3 the Seller enters into any compromise or arrangement with its creditors, commits any act of bankruptcy or if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company) or if a petition is presented to court, or if a receiver and/or manager, receiver, administrative receiver or administrator is appointed in respect of the whole or any part of the Seller's undertaking or assets;

11.2.4 the Seller ceases or threatens to cease to carry on its business; or

- 11.2.5 the financial position of the Seller deteriorates to such an extent that in the opinion of the Company the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy.
- 11.3 The termination of the Contract, however arising, will be without prejudice to the rights and duties of the Company accrued prior to termination. The Terms which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

12. REMEDIES

- 12.1 Without prejudice to any other right or remedy which the Company may have, if any Goods are not supplied in accordance with, or the Seller fails to comply with, any of the terms of this Contract the Company shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Company:

12.1.1 to rescind the Order;

12.1.2 to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller;

12.1.3 at the Company's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

12.1.4 to refuse to accept any further deliveries of the Goods but without any liability to the Seller;

12.1.5 to carry out at the Seller's expense any work necessary to make the Goods comply with the Contract; and

12.1.6 to claim such damages as may have been sustained in consequence of the Seller's breaches of the Contract.

13. ASSIGNMENT

- 13.1 The Seller shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

- 13.2 The Company may assign the Contract or any part of it to any person, firm or company.

14. INSURANCE

Seller shall, at its expense, secure and maintain insurance providing coverage for bodily injury (personal injury) and damage to property in amounts sufficient to protect the Company in the event of any injury or damage, and will be in compliance with any and all laws, regulations or orders addressing the liabilities of an employer to its employees for injuries and disease suffered in connection with employment. Supplier further will maintain such additional types and limits of insurance as is customary for a company of similar size and similar operations to the Seller in the jurisdiction or jurisdictions in which Supplier's operations take place.

15. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic,

lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

16. GENERAL

- 16.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 16.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 16.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 16.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Seller will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 16.5 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.