

# Rayleigh Instruments Limited's Terms and Conditions of Sale ("Seller")

## 1. Acceptance

- 1.1 Any order received by the Seller from any third party offering to buy goods (the "Buyer") shall be accepted entirely at the discretion of the Seller, and if so accepted, will only be accepted on these terms [and by means of the Seller's standard order acknowledgement form].
- 1.2 Each order accepted in accordance with these terms shall constitute an individual legally binding contract between the Seller and the Buyer and such contract is hereinafter referred to as an "Order".
- 1.3 These terms shall override any contrary different or additional terms or conditions (if any) contained on or referred to in any quotation made by the Seller or order form or other documents or correspondence from the Buyer, and no addition, alteration or substitution of these terms will bind the Seller or form part of any Order unless they are expressly accepted in writing by a person authorised to sign on the Seller's behalf.
- 1.4 Orders are accepted subject to the availability of goods to the Seller and to the Seller receiving any necessary licence to purchase goods or to use any required raw materials or instruments or other goods.

## 2. Goods

- 2.1 Where goods are supplied to a Buyers specification ("Specific Goods") then such specification must be supplied within a reasonable time to enable the Seller to meet any estimated delivery date and the Buyer shall indemnify the Seller against any and all damages, penalties, costs and expenses to which the Seller may become liable to a third party as a result of work done in accordance with the Buyer's specification which may infringe any intellectual property rights, letters patent or registered designs of such third party.
- 2.2 Goods sold "free on board" or "free of border" cease to be the Seller's responsibility immediately upon the goods, being placed on board the ship or aircraft notified by the Buyer, or on reaching the border in question. The Seller shall be under no obligation to give the Buyer the notice specified in section 32 (3) of the Sale of Goods Act 1893.
- 2.3 Goods **will not** be accepted for return unless prior written authority is obtained from the Seller to do so. The Seller reserves the right to refuse the return of Specific Goods and (at the Sellers sole discretion) subject all returns to a handling charge calculated as a percentage of the invoice value for the Order concerned.
- 2.4 Goods represented as defective by the Buyer shall not form the subject of any claim for work done by the Buyer or for any loss, damage or expense whatsoever arising directly or indirectly from such defects. Goods, if accepted by the Seller as defective, may at the request of the Buyer (and if practicable) be replaced as originally ordered. Defects as to quality or dimension of any delivery shall not be grounds for the Buyer to cancel the remainder of the Order.
- 2.5 Claims for damage in transit, shortage of delivery or loss of goods **will not** be accepted by the Seller unless a written notice ("Notice") has first been delivered to both the carrier concerned and the Seller followed by a full written claim detailing the damage, shortage or loss, as the case may be ("Claim"). In the case of damage in transit or shortage of delivery, a Notice must be delivered within 3 days and a Claim within 10 days of the delivery date. In the case of loss of goods, Notice must be delivered within 24 hours and a Claim within 7 days of the delivery date. If goods are accepted from a carrier without being checked by the Buyer, the delivery book of the carrier concerned must be signed as 'not examined' otherwise the Buyer will be deemed to have checked the goods on delivery.

## 3. Delivery

- 3.1 Delivery takes place at the point delivery begins. Delivery times or dates are not of the essence of any Order but given by the Seller in good faith and as estimates only.
- 3.2 The Seller shall not be held liable for any loss or damage of whatever nature suffered by the Buyer due to the Seller: (a) failing to deliver the goods (or any of them) by the delivery date; or (b) failing to deliver the goods (or any of them) at all. In the event of late delivery the Buyer shall still be bound to accept delivery and to pay for the price in full when they are eventually tendered for delivery by the Seller and the Buyer shall not be entitled to reject goods or cancel an Order for reasons of late delivery.
- 3.3 If the Seller is unable through circumstances beyond its control to deliver goods within 14 days after notification to the Buyer or its agents that goods are ready for delivery, the Seller shall be entitled to arrange storage on behalf of the Buyer and under

these circumstances delivery to the Buyer of the relevant storage receipt shall be deemed to be delivery of the goods whereupon all risk in the goods shall pass to the Buyer. All charges incurred by the Seller for storage or insurance shall be paid by the Buyer within thirty [30] days of submission of the Sellers invoice for the same.

## 4. Quotations, Price & Payment

- 4.1 Any price for goods quoted by the Seller is provisional and may be varied following acceptance for delivery in accordance with this section.
- 4.2 Where goods are accepted for delivery within six months of the Order date then the price quoted remains fixed unless the Seller is unable to obtain goods or any part of them at the price quoted on the Order date, in which case the price may be varied by any increase in the cost of goods to the Seller.
- 4.3 Where goods are accepted for delivery beyond six months of the Order date then prices quoted are not fixed and may be varied to account for any increase in the Sellers costs including the cost of the goods to the Seller.
- 4.4 All prices may be varied to account for the imposition of any tax, levy or other obligation of a like nature or (if applicable) for the fluctuation in the rates of exchange of sterling or the currency of any country from where the Seller purchases goods.
- 4.5 Unless varied in accordance with this section, the Buyer shall pay the price stated in the Order for goods within 1 calendar month from the end of the month in which the Sellers invoice is dated ("Due Date") together with VAT (if any) thereon. The Seller shall be entitled to charge the Buyer interest at the maximum statutory rate accruing daily above Bank of England base rate from time to time in force on any sum outstanding after the Due Date with respect to any invoice.
- 4.6 Unless stated otherwise in the Order, all prices quoted are exclusive of the cost of the costs of carriage, postage, packaging, delivery, insurance and shipment to the address specified in the Order. The Seller will make additional charges for these items on all Orders charged at the Sellers rate ruling on the date of despatch.

## 5. Ownership and Risk

- 5.1 Goods shall be at the Buyers risk from Delivery however, notwithstanding Delivery and risk passing to the Buyer, legal title to the goods shall remain with the Seller until such time as the Seller has received payment of the price in full and the price of any other goods or services previously or subsequently supplied by the Seller to the Buyer whereupon such title shall pass to the Buyer.
- 5.2 The Seller may recover goods at any time from the Buyer, (if in his possession) if any amount in respect of goods supplied shall remain unpaid after the Due Date has passed and for this purpose the Seller or any of its agents or authorised representatives shall be entitled (at any time and without notice) to enter upon any premises in which the goods (or any part thereof) is installed, stored, or kept, or is reasonably believed so to be.
- 5.3 The Buyer may dispose of the goods in the ordinary course of the Buyer's business for the account of the Seller (but any warranties, conditions or representations given or made by the Buyer or any third party shall not be binding on the Seller who shall be indemnified by the Buyer with respect thereto) and to pass good title to the goods to third parties being bona fide purchasers for value without notice of the Sellers rights.
- 5.4 In the event of any disposal under 5.3 above the Buyer has a fiduciary duty to the Seller to account to the Seller for the proceeds but may retain therefrom any excess over the amount outstanding under this or any other order between them.
- 5.5 The Seller has the additional right to recover the Buyer's price directly from the Buyer's customer to the extent unpaid and should the Seller avail itself of such right then the Seller will account to the Buyer for any such excess as aforesaid less any expenses incurred by the Seller in respect of such recovery.
- 5.6 If the Buyer incorporates any such goods into other products (with the addition of his goods or those of others) or uses such goods as material for other products (with or without such addition) the property in those other products is upon such incorporation or use ipso facto transferred to the Seller and the Buyer as bailee of them for the Seller will store the same for the Seller in a proper manner without charge to the Seller and in the event of such incorporation or use as is envisaged by this section 5.6 the provisions of this section 5 shall apply, mutatis mutandis, to those other products in place of the goods.

**IMPORTANT NOTICE:- THE BUYER'S ATTENTION IS DRAWN SPECIFICALLY TO THE FOLLOWING SECTION**

## 6. Warranty and Limitation of Liability

- 6.1 The Seller warrants only that it will have at delivery, good title to the goods otherwise, the Seller hereby excludes all other conditions, warranties, stipulations or other statements whatsoever concerning the goods, whether express or implied, by statute, at common law or otherwise and in particular (but without limitation of the foregoing) the Seller grants no warranties with respect to goods regarding their, fitness for purpose or use under specific conditions (whether or not such purpose or use were known or made known to the Seller prior to delivery), performance, nature, quality, life, wear or durability all of which are hereby excluded to the fullest extent permitted by law.
- 6.2 Notwithstanding anything else contained in the Order under no circumstances shall the Seller be liable to the Buyer, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof for any loss or damage suffered due to (i) any loss of profit, business, contracts, revenues, or anticipated savings; or (ii) any special indirect or consequential loss or damage, of any nature whatsoever.
- 6.3 To the extent that the Seller has any liability for loss or damage to the Buyer for any one or series of events in connection with this Order, either in contract, tort (including negligence and breach of statutory duty) or howsoever otherwise arising, then such liability shall be limited to the price paid for the goods by the Buyer.
- 6.4 No term in this Order shall operate or be construed to operate so as to exclude or restrict the liability of the Seller for death or personal injury caused to the Buyer by reason of the negligence of the Seller or any of its servants, employees or agents or to restrict or limit the Sellers liability in respect of fraud or fraudulent misrepresentation.

## 7. Dealing as Consumer

Any term in the Order that excludes or purports to exclude or limit the protection afforded to consumers by virtue of the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999 or liability in relation to a breach of the terms implied by the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 shall be interpreted so as to remove such limitation or exclusion or if appropriate shall have no effect and shall not apply.

## 8. Notice of Termination or Partial delivery

The Seller shall not be liable to the buyer for a failure to perform any of its obligations under the Order due to events outside the reasonable control of the Seller which includes but is not necessarily limited to (a) an outbreak of hostilities (whether war is declared or not) in which the United Kingdom is involved; or (b) a national emergency; (c) situations where the Seller's works become either directly or indirectly engaged on government orders or orders under priority directions so as to prevent or delay work on other orders. Following notification to the Buyer of such an event the Seller shall be allowed to make partial deliveries only or to terminate the Order, without prejudice in any case to rights accrued in respect of deliveries already made.

## 9. Termination

If the Buyer is in default or breach of it's obligations to the Seller under the Order or if any distress or execution shall be levied upon the Buyer's property or assets, or if the Buyer shall make or offer to make any arrangement 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 the Buyer it or if the Buyer is a limited company and any resolution or petition to wind up such company's business (other than for the purpose of amalgamation or reconstruction) 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 Seller shall have the right forthwith to terminate any Order then subsisting and upon written notice of such termination being posted to the Buyer's last known address any subsisting Orders shall be deemed to have been terminated without prejudice to any claim or right the Seller may otherwise make or exercise.

## 10. General Terms

- 10.1 Any dispute between the parties in connection with the Order shall be referred to an arbitrator or arbitrators to be appointed by the parties, or in default of agreement, by the President of the Law Society for the time being, and his or their decision shall be binding on both parties and this shall be a submission to arbitration within the Arbitration Act 1950, or any statutory modification thereof for the time being in force.
- 10.2 The Order shall be subject to and construed in accordance with English law.