



Osprey Measurement Systems Ltd. Registered No. 11836834
Office 7, 35-37 Ludgate Hill, London, EC4M 7JN

Terms and Conditions of Sale

These Conditions apply to the Contract to the exclusion of any other terms that You seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. In placing an order with Us You do so pursuant to these Conditions.

Your attention is drawn in particular to the provisions of *Clause 9 – Limitation of liability*

1. DEFINITIONS

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time and notified by Us to You.

Contract: the contract between You and Us for the sale and purchase of the Goods in accordance with these Conditions.

Force Majeure Event: an event or circumstance beyond a party's reasonable control.

Goods: the goods (or any part of them) set out in the Order.

Order: Your order for the Goods, as set out in Your purchase order form or Your written acceptance of Our quotation as the case may be.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by You and Us.

Us/We/Our: Osprey Measurement Systems International Ltd (Co. No. 10210540) whose registered address is at 6-11 Bluebell Business Estate, Sheffield Park, East Sussex, TN22 3HQ, UK.

You: The customer placing an Order with Us.

2. FORMATION OF CONTRACT

2.1 The Order constitutes an offer by You to purchase the Goods in accordance with these Conditions. You are responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.2 The Order shall only be deemed to be accepted when We issue a written acceptance of the Order, at which point the Contract shall come into existence.

2.3 Any samples, drawings, descriptive matter or advertising produced by Us are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

2.4 A quotation for the Goods given by Us shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue.

3. GOODS

3.1 The price payable for Goods shall be Our list price current at the date of Order or in the case of an order for delivery by instalments the price payable for each instalment shall be the list price current at the date of despatch of such instalment.

3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by You, You agree to indemnify Us against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Us in connection with any claim made against Us for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Our use of the Specification. This *Clause 3.2* shall survive termination of the Contract.

3.3 We reserve the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

3.4 All prices quoted are exclusive of Value Added Tax and any other tax or duty relating to the performance of the contract and do not include transport or handling costs. All Goods are sold ex-works unless otherwise stated.

4. DELIVERY

4.1 We shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, all relevant reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 You shall collect the Goods from such location as may be advised by Us prior to delivery (**Delivery Location**) within 3 Business Days of Us notifying You that the Goods are ready. Delivery is completed on the completion of loading of the Goods at the Delivery Location.

4.3 If We agree to deliver Goods to Your order then unless otherwise agreed all costs of carriage and/or insurance and/or freight shall be for Your account. Where You do not provide Your own account details for freight forwarders We may make arrangements in respect of delivery but We will quote freight based on estimates at the time of Order and charged at cost plus 5%. We shall not be liable for any delay in delivery due to a cause beyond Our control.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event, Your failure to provide Us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods, or where delay is otherwise caused by You.

4.5 Should We fail to deliver the Goods, Our liability shall be limited to the costs and expenses incurred by You in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. We shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or Your failure to provide Us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If You fail to take delivery of the Goods within 3 Business Days of Us notifying You that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Our failure to comply with Our obligations under the Contract:

4.6.1 delivery of the Goods shall be deemed to have been completed at 9am on the third Business Day after the day on which We notified You that the Goods were ready; and

4.6.2 We shall store the Goods until delivery takes place and charge You for all related costs and expenses (including insurance).

4.7 If Goods remain uncollected 10 Business Days after the deemed date of delivery We reserve the right to resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to You for any excess over the price of the Goods or charge You for any shortfall below the price of the Goods.



4.8 We may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle You to cancel any other instalment.

5. QUALITY AND FITNESS FOR PURPOSE

5.1 The Supplier warrants that on delivery the Goods shall:

5.1.1 materially conform with their description; and

5.1.2 be free from material defects in design, material and workmanship

5.2 It shall be Your responsibility to assess the suitability of the Goods for the purpose for which they are to be used and no guarantee or representation is given or to be implied as to the suitability of the Goods for any particular purpose, even when the Goods are manufactured to Your special instructions.

5.3 Subject to *Clause 5.4*, if:

5.3.1 You give notice in writing to Us within 5 Business Days that some or all of the Goods do not comply with the warranty set out in *Clause 5.1*;

5.3.2 We are given a reasonable opportunity of examining such Goods; and

5.3.3 You (if asked to do so by Us) return such Goods to Us at Our cost,

We shall, at Our option, repair or replace the defective Goods, or refund the price of the defective Goods in full. Where items are replaced or refunded, ownership of replaced or refunded property shall return to Us.

5.4 We shall not be liable for the Goods' failure to comply with the warranty set out in *Clause 5.1* in any of the following events:

5.4.1 You make any further use of such Goods after giving notice in accordance with *Clause 5.3*;

5.4.2 the defect arises because You failed to follow any oral or written instructions given by Us as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

5.4.3 the defect arises as a result of Us following any drawing, design or Specification supplied by You;

5.4.4 You alter or repair such Goods without Our written consent;

5.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

5.4.6 the Goods differ from their description or Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.5 Except as provided in this *Clause 5*, We shall have no liability to You in respect of the Goods' failure to comply with the warranty set out in *Clause 5.1*.

5.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.7 These Conditions shall apply to any repaired or replacement Goods supplied by Us.

6. TITLE AND RISK

6.1 From the time of delivery (or deemed delivery) the Goods shall be at Your risk and You shall be solely responsible for the Goods' custody and maintenance but, unless otherwise expressly agreed in writing, We shall retain title to the Goods and the Goods shall remain Our property until all payments to be made by You under the Contract and any other contract between You and Us and on any other account whatsoever have been made in full and unconditionally. Whilst Our ownership continues You shall keep the Goods labelled as belonging to Us and separate and identifiable from all other goods in Your possession as bailee for Us.

6.2 You may only re-sell the Goods to Your customers in the ordinary course of Your business as a fiduciary and trustee for Us. In the event of any resale by You of the Goods Our beneficial entitlement shall attach

to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefore shall be assigned to Us and until such assignment shall be held on trust in a separate identified account for Us by You and such proceeds shall not be mingled with other moneys or paid into any overdrawn bank account and shall at all times be identifiable as Our moneys.

6.3 Without prejudice to the equitable rules as to tracing, in the event of failure to pay the price in accordance with the Contract We shall have power to re-sell the Goods, such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise and for such purpose.

6.4 Pending payment of the full purchase price of the Goods You shall at all times keep the Goods comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business carried on by You in an amount at least equal to the balance of the price for the same from time to time remaining outstanding. The policy shall bear an endorsement recording Our interest.

6.5 We are hereby licensed to enter upon any premises in Your ownership, possession or control at any time to recover the Goods.

6.6 Ownership of the Goods shall remain with Us and We reserve all rights to dispose of or recapture all Goods until payment is received in full, at which time title shall pass to You. If the payment is overdue, in addition to Our other rights hereunder and as a matter of law, We may recover or resell the Goods and may enter upon the Your premises for that purpose. If any of the Goods are incorporated in or used as material for other goods before such payment, the ownership of the Goods supplied shall be and remain with Us and Our rights in the products shall extend to identifying the Goods within the other goods and recovering or reselling the Goods either as part of those other goods or separating them from the other goods and recovering or reselling them after separation.

6.7 Ownership of all intellectual property rights (including, without limitation, patents, registered designs and any rights to apply for the same copyright, design rights, database rights, rights in and to confidential information and know-how) and any rights analogous to the same anywhere in the world and subsisting at any time in the Goods or arising out of or relating to the design and/or manufacture of the Goods or the provision of the Services shall belong to and remain vested in Us at all times and shall not be transferred to You. All specifications, drawings, designs, computer software, documents and other information disclosed to You by Us shall not be disclosed by You to a third party and shall be used by You only to the extent necessary for You to use the Goods provided. You shall use all reasonable measures to maintain the confidentiality and secrecy of such items.

7. PAYMENT

7.1 You shall pay any invoices in full and in cleared funds within the payment terms set out in the invoice. Payment shall be made to the bank account nominated in writing by Us. Time for payment is of the essence.

7.2 If You fail to make any payment due to Us under the Contract by the due date for payment, then You shall pay interest on the overdue amount at the rate of 3% per annum above National Westminster Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. You shall pay the interest together with the overdue amount.

7.3 You shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). We may at any time, without limiting any other rights or remedies We may have, set off any amount owing to Us by You against any amount payable by Us to You.

7.4 Save where *Clause 5.3* applies Goods supplied in accordance with the Contract cannot be returned without Our prior written authorisation. In the event that a return is authorised then Goods must be returned to Us at Your expense and standard stock items returned will normally be subject to a 25% restocking charge. Goods manufactured to order shall be paid for in full.



8. TERMINATION

8.1 Without limiting Our other rights or remedies, We may terminate this Contract with immediate effect by giving written notice to You if:

8.1.1 You commit a material breach of any term of the Contract and (if such a breach is remediable) fail to remedy that breach within 10 days of being notified in writing to do so;

8.1.2 You take any step or action in connection with entering into administration, provisional liquidation or any composition or arrangement with Your creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of Your assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

8.1.3 You suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of Your business; or

8.1.4 Your financial position deteriorates to such an extent that in Our opinion Your capability to adequately fulfil Your obligations under the Contract has been placed in jeopardy.

8.2 Without limiting Our other rights or remedies, We may suspend provision of the Goods under the Contract or any other contract between the You and Us if Your becomes subject to any of the events listed in Clause 8.1 above, or We reasonably believe that You are about to become subject to any of them, or if You fail to pay any amount due under this Contract on the due date for payment.

8.3 Without limiting Our other rights or remedies, We may also terminate the Contract with immediate effect by giving You written notice if You fail to pay any amount due under the Contract on the due date for payment.

8.4 On termination of the Contract for any reason You shall immediately pay to Us all of Our outstanding unpaid invoices and interest.

8.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

8.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

9. LIMITATION OF LIABILITY

9.1 Nothing in these Conditions shall limit or exclude Our liability for:

9.1.1 death or personal injury caused by Our negligence, or the negligence of Our employees, agents or subcontractors (as applicable);

9.1.2 fraud or fraudulent misrepresentation; or

9.1.3 any statutory provisions which may not be excluded or limited by law.

9.2 Subject to *Clause 9.1*:

9.2.1 We shall under no circumstances whatsoever be liable to You, whether in contract, tort (including negligence), 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; and

9.2.2 Our total liability to You in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

10. FORCE MAJEURE

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 6 months, the party not affected may terminate this Contract by giving 7 days' written notice to the affected party.

11. ENTIRE AGREEMENT

11.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

11.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

12. SEVERENCE

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

13. NOTICES

13.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.

13.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 13.1; if sent by pre-paid first class post or other next working day delivery service, at 9am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.

13.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14. THIRD PARTY RIGHTS

No one other than a party to this Contract shall have any right to enforce any of its terms.

15. GOVERNING LAW

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

16. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

