

1. Definitions

- (1) "Buyer" means Lambda Calibration Limited.
- (2) "Seller" means the seller specified as such in the Purchase Order.
- (3) "Purchase Order" means the purchase order issued by the Buyer to the Seller for Goods or Services.
- (4) "Contract" means the Purchase Order and the Seller's acceptance thereof, together with these Conditions, the Specifications, the Drawings and all other documents which are incorporated in the Contract by reference made in the Purchase Order.
- (5) "Goods" means all articles and materials to be supplied under the Contract.
- (6) "Services" means all services to be performed under the Contract.
- (7) "Specification" means the specification for the Goods and or Services incorporated in the Contract.
- (8) "Drawing" means the drawing for the Goods and or Services incorporated in the Contract.
- (9) "Contract Price" means the price for the Goods and or Services specified in the Purchase Order.
- (10) "Conditions" means these General Terms and Conditions of Purchase as amended only by the Purchase Order or by a document incorporated in the Contract by reference made in the Purchase Order.
- (11) "Authorised Representative" means the respective representatives of the Buyer and the Seller nominated in the Purchase Order or at any time by written notice to the other party.
- (12) "Change Order" means a change in the Specification or in the quantity of the Goods or Services required by Buyer's Authorised Representative in writing.
- (13) "Free Issue" means material issued free of charge by the Buyer to the Seller for the purposes of the Contract, and includes but is not limited to raw materials and test equipment.

2. Scope of Contract

- (1) No Contract shall exist without a Purchase Order, signed by the Buyer's Authorised Representative.
- (2) The Purchase Order, Specifications, Drawings and these Conditions will be deemed to have been accepted once the Seller commences performance of the Services or supply of the Goods.
- (3) The Seller shall supply and the Buyer shall accept and pay for the Goods and Services in accordance with the terms of the Contract.
- (4) The Goods and Services shall conform strictly with the Specification and Drawings.
- (5) No variation shall be made to the Contract save by a written amendment to the Purchase Order signed by the Buyer's Authorised Representatives, a Change Order.

3. Change Order

- (1) Before issuing a Change Order the Buyer shall where practicable consult with the seller as to the nature and extent of the proposed changes.
- (2) A Change Order shall constitute a formal variation to the Contract binding on the Seller subject to the following provisions of this condition 3.
- (3) No Change Order shall be issued, except with the consent of the Seller.
- (4) Where any Change Order will, in the opinion of the Seller, involve an addition to or deduction from the contract price, the Seller shall, as soon as reasonably possible, advise the Buyer's Authorised Representative in writing to that effect. The amount to be added to or deducted from the Contract Price shall be ascertained and determined in accordance with the rates specified in the schedule of prices, so far as the same may be applicable, such amount shall be such sum as is reasonable in the circumstances. Due account shall be taken of any work on the Goods or Services which is rendered useless by any Change Order.
- (5) Where any change will, in the opinion of the Seller, involve a delay in the supply of any Goods or Services, the Seller shall, as soon as reasonably possible, advise the Buyer's Authorised Representative in writing to that effect. The additional time allowed shall be such as is reasonable in all the circumstances.

4. Prices and Payment

- (1) The Contract Price shall be exclusive of Value Added Tax but inclusive of all other charges except those specified in the Purchase Order.
- (2) The Contract Price shall be fixed and not subject to variation in any respect unless specific provision is made in the Contract.
- (3) Unless specifically agreed by the buyer in writing, all quotations or estimates issued by the seller are issued free of charge.
- (4) The Price for Goods or Services will be payable not later than by the end of the calendar month immediately following the calendar month in which the Goods are accepted by the Buyer or the Services are performed, against submission of invoices to the Buyer's Authorised Representative promptly following the end of the calendar month in which the Goods are accepted or the Services are performed.
- (5) The Buyer shall be entitled to set off, against sums due under Contract to the Seller, any sums which the Seller may owe the Buyer under any contract, in tort or otherwise howsoever.

5. Title

- (1) Title to the Goods shall pass to the Buyer on delivery save as in this condition 5 hereinafter provided.
- (2) Where interim payments are agreed to be payable under the Contract, such interim payments shall only be made against the Seller's certificate listing the articles and materials acquired in respect of, or otherwise appropriated to, the Contract and in respect of which the interim payment is to be made ("Appropriated Goods") and certifying that all appropriated Goods have been, and will be until delivery thereof to the Buyer, fully segregated from the Seller's or any other person's property.
- (3) Forthwith on an interim payment being made, both the legal and equitable title to the Appropriated Goods listed in the certificate concerned shall thereupon automatically pass to the Buyer and the Seller shall henceforth hold such Appropriated Goods in trust for the Buyer pending delivery thereof to the Buyer.
- (4) Until such time as the Seller shall have delivered the Appropriated Goods to the Buyer, the Seller shall:
 - (a) continue to bear the risk in respect of the Appropriated Goods;
 - (b) store the Appropriated Goods at its premises in suitable conditions to protect the same against loss (for any reason), damage or deterioration;
 - (c) insure the Appropriated Goods at its expense in the joint names of the Seller and Buyer in the full replacement value thereof with a reputable insurer against loss or damage;
 - (d) keep the Appropriated Goods separate from the Seller's or any other person's property; mark clearly as being the Property of the Buyer each item of the Appropriated Goods both physically on each such item and against the entry for each such item in the Seller's records; and affix to the area of the Seller's premises where the Appropriated Goods are stored or processed clear and permanent notices stating that all articles and materials concerned within the area indicated are the property of the Buyer;
 - (e) make no alterations to Appropriated Goods, save only processing required under the Contract; and
 - (f) give possession of the Appropriated Goods to no person save only for the express and sole purpose of delivery to the Buyer in accordance with the terms of delivery hereunder and subject to putting any person who is so put in possession of the Appropriated Goods written notice that the Appropriated Goods are the property of the Buyer.
- (5) In any of the following events, namely:
 - (a) if the Seller shall not perform or observe any the terms and conditions of the Contract (other than those set out in condition 5(4) above) and shall have failed to remedy any such breach within 2 weeks after being required by the Buyer to do so; or
 - (b) if the Seller shall not perform or observe any of the terms and conditions set out condition 5(4) above; or
 - (c) if any distress or execution shall be levied on the goods of or issued against the Seller or if the Seller shall make any assignment for the benefit of, or compound with, its creditors generally; or
 - (d) if the Seller shall enter into liquidation whether compulsory or voluntary or a receiver be appointed over its undertakings or any of its assets then the Buyer may without previous notice (and whether or not the Contract or any part thereof is terminated) take possession of the Appropriated Goods and for this purpose may from time to time enter upon the Seller's premises and seize and carry away the Appropriated Goods and use all such lawful force as shall be necessary for that purpose PROVIDED that, after taking possession of any of the Appropriated Goods, the Buyer shall pay the Seller the value of any of any processing carried out pursuant to the Contract (and not already paid by the Buyer) subject always to the Buyer's entitlement to set off against such value any sums owing to the Buyer by the Seller.
- (6) Where any interim payment is made under the Contract in respect of work which the Seller has sub-contracted, such interim payment shall only be against the issue by the sub-contractor of a certificate in duplicate to the Buyer and the Seller complying with provisions identical to those of condition 5(2) above and against the sub-contractor undertaking to the Buyer to be legally bound by and to comply with provisions identical to those of condition 5(3), 5(4) and 5(5) above (save in each case for the consequential change in the identity of the Seller and save that the sub-contractor shall be entitled to deliver the Appropriated Goods concerned to the Seller on condition that the Seller shall hold all such Appropriated Goods on the terms of conditions 5(3), 5(4) and 5(5) above).
- (7) Notwithstanding the passing of title of Goods to the Buyer, the Buyer shall be entitled, prior to acceptance thereof, to reject any Goods in respect of which the Specification, the Drawings and all other requirements under the Contract are not complied with fully in all respects. On any such rejection of Goods, title and risk therein shall revert to the Seller and the Buyer shall be entitled to recover from the Seller the price thereof, pending recovery of which in full, the Buyer shall have a lien and power of sale over the Goods concerned in respect of such price.

6. Delivery and Risk

- (1) Unless otherwise specified in the Contract delivery of Goods shall be made at the Buyer's premises nominated in the Purchase Order or otherwise by the Buyer's Authorised Representative in writing.
- (2) The fact of delivery shall be solely evidenced by the Buyer's receipt for the Goods concerned, which receipt shall not of itself constitute acceptance of the Goods by the Buyer.
- (3) Risk in the Goods shall pass on delivery being made to the Buyer, unless otherwise specified in the Contract.
- (4) The Seller shall pack the Goods securely and properly prior despatch and shall be wholly responsible for all losses and damage in transit.
- (5) All costs of delivery shall be included in the Contract Price. Unless otherwise provided by the Contract, all packaging supplied by the Seller shall be non-returnable and its cost included in the Contract Price.
- (6) When Goods are ready for despatch the Seller shall give notice therefore to the Buyer's Authorised Representative requesting confirmation that delivery may proceed. The Buyer shall not unreasonably delay delivery of Goods tendered in accordance with the agreed delivery schedule (or at times otherwise agreed).

7. Contact Period

- (1) Goods shall be manufactured and delivered and services provided in accordance with the agreed manufacturing and

delivery schedules and work programme (or at times otherwise agreed).

(2) The agreed interim completion dates and final completion date by which all work on specified stages or batches, or under the Contract as a whole, is to be completed are of the essence of the Contract.

(3) Without prejudice to the Buyer's remedies for delay, the Seller shall promptly inform the Buyer's Authorised Representative in writing at any time that it shall become apparent that an interim completion date or the final completion date may not be met, for whatever reason.

8. Tests, Inspection and Acceptance

(1) The Buyer shall have the right to inspect and/or test the Goods at the premises of the Seller or its sub-contractors at any time during Business hours during the course of production or when completed, on giving reasonable notice to the Seller. The Seller shall maintain such records of quality control as may be required by the Buyer and shall provide documentary evidence that the agreed programme of tests/inspection has been carried out and that the Goods conform to all requirements of the Contract.

(2) The Buyer may reject any Goods or Services which on inspection do not conform with all requirements of the Contract by written notice to the Seller. If the Seller disagrees with any such rejection, the Sellers must give written notice of objection within 2 weeks after receipt of the notice of rejection.

(3) Acceptance of the Goods or Services shall take place when the acceptance tests specified in the Contract have been satisfactorily completed. If no such acceptance procedure is specified in the Contract and failing actual acceptance by the Buyer. Acceptance of the Goods and Services shall be deemed to have taken place if the Buyer has not served a written notice of rejection on the Seller within three months after delivery of the Goods or completion of the Services concerned.

(4) The Buyer may require the Seller to remove from its premises any Goods in respect of which the Buyer has served a rejection notice to the Seller and the Seller has failed to serve an objection notice on the Buyer, at any time not being less than 2 weeks after service of the rejection notice on the Seller. In the event that any payment has been made by the Buyer in respect of such rejected Goods, the provisions of condition 5(7) shall apply.

(5) The rejection of any Goods or Services shall:

(a) not excuse the Seller for any delay in meeting any interim or final completion date under the Contract; and

(b) shall entitle the Buyer (without prejudice to its other rights and remedies) to serve a notice on the Seller under condition 19(1) (b) below requiring the replacement of the Goods or Services rejected.

9. Force Majeure

(1) "Force Majeure" shall mean circumstances which result from a Specified Event and which prevent or hinder either party from carrying out its obligations under the Contract. "Specified Event" are:

(a) riot, civil commotion, rebellion, insurrection, war or invasion;

(b) earthquakes, flood, fire or other natural physical disaster, but excluding weather conditions, regardless of severity;

(c) strikes or industrial disputes at a national level; and

(d) any other event specified in the Contract.

(2) Subject to the party affected by Force Majeure giving immediate written notice to the other party of the existence and details of such Force Majeure and doing everything within its control to mitigate the effect of the Force Majeure and acting in accordance with the reasonable instructions of the other party to achieve such mitigation, the performance of such obligations as are prevented by Force Majeure shall be suspended for such time as the Force Majeure continues and neither party shall be liable for any delay occasioned thereby.

(3) If such Force Majeure circumstances continue for 30 days or more the Buyer shall have the right summarily to terminate the Contract without compensation but shall pay the Seller a fair and reasonable price for Goods and Services accepted. In the event of such termination, the Seller shall give every assistance and aid in suggesting and finding alternative means and sources of supply of the Goods and Services concerned.

10. Defects

(1) The Seller shall be responsible for ensuring that all the Goods and Services shall conform to and perform in accordance with the requirements (including any performance guarantees) of the Contract, be fit and sufficient for the purposes for which they are intended, be of a high quality and be electrically, mechanically, structurally and functionally sound.

(2) Without prejudice to any other rights of the Buyer, whether at law or otherwise, the Seller will, at the Buyer's option and the Seller's expense, either repair or replace or re-perform or refund the cost of the Goods or Services or part thereof which fail or are defective by reason of faulty design, materials or workmanship within a period of 12 months from the date of acceptance. All Goods or Services so replaced, or repaired or re-performed shall be similarly guaranteed by the Seller, the period of such guarantee being calculated from the date of its re-delivery after replacement, or repair, or its re-performance.

(3) If the Seller fails to take immediate steps to remedy any defects in the Goods or Services, then the Buyer shall be entitled to order the defect to be rectified by others or carry out such rectification itself at the Seller's risk (and for this purpose may exercise the rights contained in condition 19(2) (b) below, and all costs and expenses incurred therein shall be borne by the Seller).

(4) The warranties given by the Seller hereunder shall be without prejudice to all other rights and remedies of the Buyer in respect of any failure by the Seller to comply with the obligations imposed by the Contract.

11. Work Performed at Premises Other Than the Seller's Premises

In the case of Services (or any work in respect of Goods) to be carried out under the Contract on premises other than the Seller's premises:

- (a) the seller shall be deemed to have inspected the site and to have satisfied itself regarding local conditions, facilities and any other circumstances which may affect the performance of the Contract and any failure by the Seller to obtain such information shall in no way relieve it from its obligations under the Contract or entitle it to any additional payment;
- (b) the Seller shall comply with the factory regulations and the safety requirements applicable to the site and shall ensure that its employees and sub-contractors so comply. The Buyer shall have the right to require the removal of anyone disobeying local regulations and reserves the right to refuse entry to any person whom it considers unsuitable for any reason; and
- (c) the Seller shall take every practicable precaution and care not to damage or injure any property or persons and shall indemnify the Buyer against all such damage or injury, arising from work under the Contract.

12. Free Issues

- (1) Where the Buyer issues material free of charge to the Seller for the purposes of the Contract such material shall be and shall remain the property of the Buyer and shall be used in the execution of the Contract and for no other purpose whatsoever.
- (2) The Seller shall inspect such free issue material on receipt and unless notice to the contrary is given to the Buyer within 2 weeks of receipt it shall be deemed to have been received in good condition and in the quantities specified in the despatch note.
- (3) The Seller shall maintain all such free issues material in good order and condition subject, in the case of tooling and patterns, to fair wear and tear. Any wastage of such free issue material arising from bad workmanship or negligence of the Seller shall be made good at the Seller's expense.
- (4) The Seller shall be responsible for the safekeeping of all such free issue material and for all loss thereof or damage thereto from whatever cause until re-delivered to the Buyer and shall insure the same in the joint names of the Buyer and the Seller for its full replacement value with a reputable insurer against loss or damage.
- (5) Following completion of the Goods or Services in respect of which the free issue material was issued, the Seller shall forthwith notify the Buyer of the amount of any surplus material and shall thereupon return the same to the Buyer or dispose of it in accordance with the Buyer's instructions, at the Buyer's Discretion.
- (6) Neither the Seller nor any sub-contractor shall have a lien on such free issue material for any sum due to the Seller or sub-contractor; and the Seller shall take all such steps as may be reasonably necessary to ensure that the title of the Buyer, and the exclusion of any such lien, is brought to the notice of the subcontractor and of all other persons who may be affected by the Buyer's title.

13. Injury and Damage

The Seller shall indemnify and hold the Buyer its officers, employees and agents harmless from and against any and all losses, claims, proceedings, damages, costs, charges and expenses whatsoever in respect of:

- (a) injury to or death of any person whomsoever or damage to or loss of any property whatsoever arising out of or in the course of or caused by any act or omission of the Seller, its sub-contractors and/or their respective agents, representatives or employees in the performance of the Contract;
- (b) any loss of or damage to property of the Seller, its sub-contractors, and/or their agents, officers and employees, and any injury to or death of such persons howsoever arising, whether or not due to the negligence or alleged negligence (wholly or partly) of the Buyer, its officers, employees and agents or any of them;
- (c) failure to maintain the insurances mentioned in condition 14 below or any act or omission which invalidates any of the said insurances which causes the whole or part of any payment made thereunder to be refunded.

14. Insurance

- (1) Without prejudice to any of its liabilities under the Contract, the Seller shall at its own cost maintain the following insurances to the Buyer's satisfaction:
 - (a) Employer's Liability insurance in accordance with statutory requirements; and
 - (b) Public Liability insurance with a limit of not less than £5,000,000 any one occurrence and covering liability arising under condition 11 above; and
 - (c) Products Liability insurance with a limit of not less than £5,000,000 any one occurrence; and
 - (d) Insurance to cover the loss of or damage to any equipment or goods at the Seller's premises or the premises of its subcontractors with a limit of not less than £200,000 any one occurrence; and
 - (e) Insurance to cover equipment or goods in transit with a limit of not less than £25,000 any one occurrence.
- (2) All such insurances shall include cover indemnifying the Buyer against any claim for which the Seller or any of its sub-contractors may be liable.
- (3) The Buyer's Authorised Representative shall be entitled to inspect the Seller insurances covering its liability under the Contract and to be furnished with satisfactory evidences of payment of premiums at any time.
- (4) The Buyer's Authorised Representative shall be entitled at any time to require the Seller to increase any of its insurance cover to a minimum figure reasonably regarded by the Buyer's Authorised Representative as being appropriate in respect of the Contract. No minimum figure of insurance cover required under the Contract or by the Buyer's Authorised Representative shall in any way be construed as limiting the liability of the Seller or its sub-contractors under the Contract.

15. Health and Safety at Work Act

(1) The Seller shall comply with the provisions of the Health and Safety at work Act 1974 and the duties imposed on manufactures and suppliers as regards goods for use at work (Section 6) and shall ensure that each of its sub-contractors so complies.

(2) The Seller shall be responsible in particular (without prejudice to the generality) for the obligations imposed on supplies by the said Act to ensure so far as is reasonably practicable that goods are made and installed so as to be safe and without risks to health when properly used. In particular full details of guarding and fencing requirements or any additional safety measures required by any statutory authority and of any effect on supply shall be notified to and agreed with the Buyer as soon as possible.

(3) The Seller shall give the Buyer adequate information about the use for which the Goods have been designed and tested and about any conditions necessary to ensure that, when installed, commissioned and put to use, the Goods will be safe and without risks to health (Section 6(1)c and 6(4)c of the said Act).

16. Confidentiality of Information

(1) Except with the consent in writing of the Buyer, the Seller shall not disclose any details of the Contract or Goods or Services (for any purpose including publicity or in connection with exhibition) to any person other than a person employed by the Seller in the carrying out of the Contract or any sub-contractor of the Seller accepting a like obligation. Such disclosure shall be made in confidence and shall extend so far only as may be necessary for the purpose of the Contract.

(2) All documents and information, including (with out prejudice to the generality) specifications, drawings, plans, documents or any other data, supplied by the Buyer for the purposes of the Contract shall remain the property of the Buyer and shall be returned to the Buyer on completion of the Contract. The Seller shall use such documents and information for the purposes of the Contract only for no other purpose whatsoever.

(3) The Buyer shall be entitled to claim from the Seller any income receivable by the Seller or the Seller's sub-contractors in respect of the Seller's or the Seller's sub-contractors unauthorised use of any such documents and information, as referred to in condition 16(2) above.

17. Patents

(1) The Seller shall indemnify the Buyer against all losses, claims, demands, charges, fees, payments, royalties, damages, costs and expenses of any kind arising from the infringement or alleged infringement of any industrial property rights whether in the form of letters Patent, Registered Design, Trade Mark, Copyright or other protected rights whatsoever made by a third party in relation to the work done under the Contract or to the use or purchase or sale of the Goods.

(2) This indemnity shall not apply to any infringement which is due to the Seller having followed a design or instruction furnished or given by the Buyer or to the use of the Goods in an exceptional manner or in a country other than the United Kingdom not specified by or disclosed to the Seller, or to any infringement which is wholly due to the Goods being used in association or combination with any other equipment not supplied by the Seller.

18. Termination for Cause

(1) In the event that the Seller:

(a) becomes bankrupt or insolvent, makes an arrangement with its creditors, has a receiver appointed over, or distress or execution levied in respect of any of its assets or commences to be wound-up (not being a member's voluntary winding-up for the purpose of amalgamation or reconstruction); or

(b) fails to perform or observe any of the terms of the Contract and fails to remedy the same within 2 weeks after receipt of written notice from the Buyer requiring the same to be remedied: or

(c) fails to supply Goods and Services by the relevant interim completion date or final completion date or is in breach of any other condition of the Contract then the Buyer may by written notice to the Seller forthwith terminate the Contract or any specified part thereof.

(2) On termination as aforesaid and in respect of that part of the Contract terminated:

(a) no further sums shall become due to the Seller save in respect of Goods or Services supplied prior to termination, payment wherefore shall be postponed until such time as the Buyer's claims against the Seller under the Contract shall have been finally established and quantified; and

(b) the Buyer shall be entitled to procure the supply of Goods and Services not supplied prior to the termination from any alternative source satisfactory to it; and any additional costs incurred by the Buyer in obtaining such Goods and Services from such alternative source and all expenses incurred by the Buyer in finding and arranging such alternative source shall be sums due and owing by the Seller to the Buyer.

(3) The provisions of this condition 18 shall be without prejudice to any other remedy which the Buyer may have under the Contract or at law.

19. Termination by the Buyer

The Buyer shall be entitled at any time, by written notice to the Seller, to terminate the Contract or any part thereof whereupon the Seller shall cease all work except to the extent specifically directed by the Buyer (and shall instruct its subcontractors similarly). The Buyer shall pay a fair and reasonable sum for work done under the Contract but shall not be liable for any loss or profit, use or trading revenue and the sum payable shall not in any event exceed the Contract Price.

20. The Waiver

Failure of the Buyer to insist upon strict performance of any of the terms and conditions of the Contract or failure, or delay, to exercise any rights or remedies provided herein shall not constitute a waiver of any such condition, right or remedy unless waiver is evidenced by a properly executed document.

21. Assignment and Sub-Contracting

- (1) The Seller shall not without the prior written approval of the Buyer assign, or place any sub-contract in respect of, the Contract.
- (2) If such written approval is given, the Seller shall furnish the Buyer with copies of all documents relating to any sub-contract.
- (3) No such approval shall relieve the Seller from its obligations under the Contract.
- (4) The Buyer reserves the right to assign any or all of its rights and obligations deriving from the Contract without the prior written consent of the Seller.

22. Buyer's Employees

- (1) The Seller agrees not to employ any of the Buyer's employees for 6 months after the employee leaves the employment of the Buyer except with the written permission of the Buyer.
- (2) In the event that the Seller engages (either directly or indirectly) any of the Buyer's employees earlier the Seller shall pay a finders fee to the Buyer the equivalent of fifty two weeks of the engaged person's remuneration.

23. Law

- (1) The Contract shall be deemed to have been made in England and all matters relating directly thereto or arising directly or indirectly therefrom shall be governed in all respects by the laws of England.
- (2) The Seller submits to the jurisdiction of the Courts of Law in England and in the event of proceedings being commenced service of documents at such address as is an authorised address under the provision of condition 23 below shall be good service.

24. Notices

Any notice consent or other communication authorised or required to be given hereunder or for the purpose hereof shall be in writing and shall be deemed to be duly given if given by any of the following means namely by hand delivery in person, or by mail, or by fax, or by email, addressed to the Authorised Representative of the party concerned at the address specified in the Purchase Order or the Seller's acceptance or at such other address as he may have nominated in writing and shall be deemed to be given if by hand or fax or email at the time of delivery and if by mail forty eight hours after posting.

25. Headings

The Headings in these Conditions being for convenience only shall not affect the construction thereof.

26. Severance

If any of the above Conditions or part of any Condition is held to be invalid or unenforceable it is intended and understood by the parties that such invalidity and unenforceability will not affect the remaining Conditions or remaining part Conditions.