

## Definitions

**Contract:** The contract between the Company and the Customer for the supply of Goods and/or Services in accordance with these terms and conditions.

**Company:** ABI Equipment Limited.

**Customer:** The person, firm or company who purchases the Goods or Services from the Company.

**Ex Company factory:** The price excludes packing, loading, unloading, carriage, insurance, VAT and any other taxes and levies.

**Goods:** Any goods which are supplied to the Customer by the Company under the Contract including any components or spare parts which are supplied by the Company in the course of carrying out any Services.

**Insolvent:** Any reference to insolvency of the Customer includes the Customer being subject to: a bankruptcy order; an administrative order; an arrangement or meeting with creditors; liquidation; the appointment (or the intention to appoint) of a receiver or administrator; or a resolution or petition for the winding-up of the Customer. or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade.

**Losses:** Claims, proceedings, liabilities, damages, fines, penalties, costs or expenses.

**Services:** Any repairing or reconditioning services or other services provided to the Customer by the Company under the Contract.

**Terms:** These general terms and conditions of sale.

## 1. Application of terms

1.1 These Terms shall apply to all Contracts to the exclusion of all other terms and conditions (including any terms which the Customer purports to apply under any purchase order, confirmation, specification or other document even if that document is referred to in the Contract) unless expressly agreed in writing and signed by a Director of the Company.

1.2 Any order or acceptance of a quotation issued by the Customer shall be deemed to be an offer by the Customer to buy Goods or Services subject to these Terms. No order shall be deemed to be accepted by the Company until written acknowledgement of the order is issued by the Company or, if earlier, the Goods are delivered to the Customer or the Services performed.

1.3 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.

## 2. Quotations, estimates and price lists

2.1 Any quotation, estimate or price list shall constitute an invitation to treat. Each quotation, must be accepted within a period of 30 days from the date of the quotation, unless otherwise stated in writing on the quotation, after which the quotation shall be withdrawn. Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Customer. The Company also reserves the right to withdraw or amend the quotation at any time before the Customer places an order.

2.2 All estimates and price lists are issued to give an approximate idea of the price and are not binding. The price of the Goods or Services shall be the price specified in the agreed order and will be specified Ex Company factory. The Customer will in addition to the price pay any applicable packing, loading, unloading, carriage and insurance charges and any applicable VAT or other taxes or levies.

2.3 The Company reserves the right to increase the price by giving notice to the Customer at any time before delivery of the Goods or commencement of the Services to reflect any increase in the cost of the Goods or the Services to the Company due to foreign exchange fluctuations

2.4 All samples, drawings, descriptive matter or advertising issued by the Company and any description of the Goods and/or Services contained in the Company's brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force.

## 3. Delivery

3.1 Any dates and times specified by the Company for delivery of the Goods or completion of the Services are intended to be an estimate. The Company will make all reasonable endeavours to deliver or complete on time but time of delivery or completion shall not be of the essence and the Company shall not be liable to the Customer for any Losses incurred by the Customer arising from late delivery or performance.

3.2 Delivery of the Goods shall take place at the Company's place of business and the risk in the Goods shall pass to the Customer upon such delivery taking place. If requested the Company will arrange for the transport of the Goods to the Customer's address (the carrier shall be deemed to be the Customer's agent) and the cost of packing, loading, unloading, carriage and insurance will be paid by the Customer and will be payable on the date the Goods are due for payment.

3.3 The Customer shall take delivery of the Goods within 7 days of being

informed that the Goods are ready for delivery and will if required by the Company provide, at the Customer's expense, adequate and appropriate equipment and labour in order to take delivery of the Goods. If for any reason the Customer fails to accept delivery of the Goods or the Company is unable to deliver the Goods due to inappropriate instructions by the Customer the Company may store the Goods and the Customer shall be liable for storage, insurance and other related costs.

3.4 The Company may make part deliveries and each separate delivery shall be invoiced and paid for in accordance with the Contract. Where the Customer requests a part delivery of Goods under the Contract before all the Goods are available for delivery the Customer shall pay any additional costs of packing, carriage and insurance arising from that part delivery.

3.5 Any claim for shortages, non-delivery or Goods damaged in transit must be received by the Company, in writing and with conclusive evidence, within 7 days of the receipt of Goods or the date the Goods would in the ordinary course of events be received or (in the case of damaged Goods where the damage could not easily be discovered at the time of delivery) then the date of discovery of the defect.

3.6 In the event of any valid claim being made by the Customer under clause 3.5 the Company will replace the Goods within a reasonable time or issue a credit note at the pro-rata contract rate against any invoice for such Goods but will have no further liability to the Customer for any Losses incurred by the Customer.

## 4. Returns

4.1 Unless the Goods do not comply with the warranty in clause 7.1 the Customer will not be permitted to return Goods to the Company following delivery without the Company's written consent which may be withheld at the Company's entire discretion. If the Company does give such consent it will be entitled to charge the Customer a handling fee of such amount as it may specify at the time and the Customer will pay all costs of carriage, packing and insurance.

4.2 If the Customer supplies its goods to the Company in order that the Company can carry out Services on those goods then the Customer hereby authorizes the Company to strip and inspect those goods for the purpose of preparing a quotation. The Customer shall be liable for the costs of stripping and inspection whether or not the Customer subsequently instructs the Company to proceed with the Services.

## 5. Payment

5.1 Unless credit terms are agreed, or if the Customer's account exceeds the agreed credit terms then the full price for the Goods or Services will be payable by the Customer at the time the order is placed. If credit terms are agreed payment of the price for the Goods or Services is due in full without any deduction (including any set-off, counterclaim, discount, abatement or other deduction unless agreed in writing with a Director of the Company), in the currency specified in the invoice, 30 days from the invoice date. No funds shall be deemed to have been received until the Company has received cleared funds.

5.2 Time for payment shall be of the essence. If the Customer fails to pay the Company the sum due by the due date then (without prejudice to the Company's rights under clause 10.2) the Customer shall be liable to pay interest to the Company on the sum from the due date for payment at the annual rate of 5% above the Bank of England base rate, accruing on a daily basis until payment is made in full.

5.3 Non payment by the due date may also result in credit facilities being withdrawn.

5.4 All payments payable to the Company under the Contract shall become due immediately on the cancellation of the Contract.

## 6. Title

6.1 Ownership of the Goods shall not pass to the Customer until the Company has received in cash or cleared funds all sums due to it in respect of the Goods and all other sums which are or which become due to the Company from the Customer on any account. The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed to the Customer.

6.2 The Customer may use or resell the Goods in the ordinary course of its business.

6.3 Subject to clause 6.2 until ownership of the Goods has passed to the Customer, the Customer shall hold the Goods on a fiduciary basis as the Company's bailee, insure the Goods for their full value naming the Company as the loss payee, not charge the Goods by way of security for any indebtedness of the Customer, store the Goods carefully and separately from all other goods of the Customer, ensure they are clearly identified as belonging to the Company, not destroy, deface or obscure any identifying mark and maintain the Goods in a satisfactory condition. On request the Customer shall produce a copy of the insurance policy.

6.4 If before ownership of the Goods passes to the Customer any of the circumstances set out in clause 10.2 occur which would entitle the Company to cancel the Contract under that clause then provided that the Goods have not been resold or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Customer to deliver up the Goods to the Company.

6.5 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

#### **7. Warranty**

7.1 The Company warrants that on delivery and for a period of 12 months from the date of delivery the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979 and be reasonably fit for any particular purpose for which the Goods are being bought provided the Customer has informed the Company of their intended use and the Company has confirmed in writing that the Goods are suitable for that purpose.

7.2 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.

7.3 The Company retains the right to alter the design or specification of the Goods or discontinue them without notice or without incurring liability.

7.4 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company.

7.5 Subject to clause 7.6 provided that the Customer gives written notice within a reasonable time of discovery that some or all of the Goods do not comply with the warranty in clause 7.1, the Company is given a reasonable opportunity of examining such Goods and the Customer (if required) returns such Goods to the Company, then the Company will at its option either repair or replace the Goods or refund the price of the Goods in full.

7.6 The warranty in clause 7.1 does not extend to samples, reconditioned, refurbished or second hand Goods; Goods that have been damaged by negligence or accident or have been subject to normal wear or tear; Goods which have been used after the notification of a defect has been made; Goods which have become defective as a result of the Customer failing to follow the Company's written or oral instructions; Goods which have been altered or repaired by the Customer without the Company's consent; any defect in the Goods arising from incorrect maintenance or installation by the Customer or its employees or sub-contractors or any defect in the Goods arising as a result of materials or designs which have been provided or specified by the Customer.

7.7 If the Company requests the Customer to return Goods to the Company under clause 7.5 then the Customer will at its expense return the Goods to such location (which may be in the UK or elsewhere) as the Company may specify. If the Company elects to repair or replace the Goods under clause 7.5 then the Customer will pay all packing, carriage and insurance costs relating to the delivery of the repaired or replacement Goods to the Customer. If it is necessary for the Goods to be removed from another product and reinstalled following repair or replacement then the Company will be responsible for the costs of removal and reinstallation. If the Company's representatives have to travel to the Customer's premises to carry out the removal and/or reinstallation then the Customer will reimburse the Company for all travel, accommodation and subsistence costs incurred by those representatives.

7.8 Any Goods repaired or replaced shall be guaranteed on these terms for the unexpired portion of the 12 month warranty period.

7.9 Provided that the Customer gives written notice within a reasonable time of discovery or within [7 days] of the completion of the Services (whichever occurs first) that any of the Services do not comply with the warranty in clause 7.2 then the Company will at its cost re-perform the defective Services.

7.10 Except as provided in clauses 7.5 and 7.9 (and subject to clause 8.4) the Company shall have no liability to the Customer for any Losses incurred by the Customer arising from any breach of the warranties in clauses 7.1 or 7.2.

7.11 If the Company elects to repair Goods under clause 7.5 then it will have no liability to supply the Customer with free temporary replacement goods whilst the Goods are being repaired.

7.12 If the Customer notifies the Company of any breach of the warranties in clauses 7.1 or 7.2 but after investigation the Company discovers that the Goods or Services are not defective or the Company is otherwise not liable to take the remedial action under clauses 7.5 or 7.9 then the Customer will reimburse any costs incurred by the Company in investigating the alleged breach of warranty or in repairing or replacing the Goods or re-performing the Services (including any costs incurred under clause 7.7).

#### **8. Limitation of Liability**

8.1 The Company's total financial liability, (with the exception of clause 8.4), in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise for any Losses incurred by the Customer, arising in connection with the performance or contemplated performance of the Contract shall be limited to 150% of the total price (excluding VAT and delivery costs) of the Goods or Services payable by the Customer under the Contract.

8.2 The Company shall not be liable to the Customer for any Losses which comprise loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for indirect or consequential loss whatsoever (however caused) which arise out of or in connection with the performance of the Contract.

8.3 The Company shall not be liable to the Customer for any damage to the Customer's property or property owned by any third party which arises in any way out of or in connection with the performance of the Contract.

8.4 Nothing in these Terms excludes or limits the liability of the Company for the death or personal injury caused by the Company's negligence or the negligence of its employees, in respect of defective products under the Consumer Protection Act 1987; for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or for fraud or fraudulent misrepresentation.

8.5 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.

#### **9. Assignment**

9.1 The Company may assign the Contract or any part of it to any person, firm or company. The Customer shall not be entitled to assign the Contract or any part of it without prior written consent of the Company.

#### **10. Cancellation and Termination**

10.1 The Customer shall not cancel the Contract once the order has been accepted by the Company without the written consent of the Company which may be withheld at the Company's discretion. If the Company agrees to the cancellation of the Contract, the Customer will pay to the Company such sums as the Company shall consider reasonable in respect of the Goods or Services which are the subject of the cancelled Contract together with a handling charge of 10% of the invoice price and shall reimburse the Company in respect of any costs incurred by it for carriage, packing and insurance.

10.2 If the Customer breaches any term of the Contract and fails to remedy such breach within 14 days from the receipt in writing of the Company's request for remedy or the Customer is Insolvent then the Company may, in writing, cancel the Contract and any other contracts outstanding between the parties. The Company shall also be entitled to exercise its rights under clause 6.4.

#### **11. Force majeure**

The Company reserves the right to defer the date of delivery of the Goods or performance of the Services or to cancel the Contract if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, 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, provided that, if the event in question continues for a continuous period in excess of 6 months, the Customer shall be entitled to give notice in writing to the Company to cancel the Contract.

#### **12. General**

12.1 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.

12.2 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.

12.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

12.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

12.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

12.6 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.

12.7 All communications between the parties shall be in writing by hand, first class post or email to a Director at the Registered Office of the party unless an alternative contact and address is included in the Contract. Communication by hand after 4pm will be deemed delivered on the next working day. First Class post is deemed delivered after two working days and an email is only deemed delivered once it has been acknowledged by the recipient.