

Terms & Conditions of Sale – MK Test Systems

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“Buyer” means the person or company to whom a Quotation is addressed or who purchases Products or Services from MK Test Systems Ltd. (hereafter MK).

1. **APPLICABLE TERMS AND CONDITIONS:** These Terms and Conditions (these Terms) exclusively control any sale between MK and Buyer. MK expressly rejects any alternative terms and conditions set forth in any of Buyer’s forms. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfilment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.
2. **QUOTATIONS:** Buyer acknowledges that a Quotation will be construed as an invitation to Buyer to purchase products or services subject to the specifications and any special terms as defined in the quotation. Buyer’s order will be construed as an offer to purchase products or services subject to these terms and conditions of sale and any additional special terms in the applicable quotation.
3. **CONFIDENTIALITY AND COPYRIGHT:** All information included in a Quotation or Contract is confidential information and must not be disclosed by Buyer to any other person without the written consent of MK.

All drawings, specifications, illustrations, photographs or logos included in a Quotation or Contract are subject to copyright and must not be reproduced in whole or in part without the express written consent of MK.

4. **ORDER ACCEPTANCE:** MK reserves the right to accept or refuse, in its sole discretion, any offer to purchase or order by a Buyer.
5. **CHANGES:** If Buyer at any time makes changes within the general scope of any order and if any such changes cause an increase or decrease in the cost of, or the time required for the performance of any purchase order or any other order affected by such change, an equitable adjustment in the price, the delivery schedule or both shall be made and such order shall be modified accordingly. No change shall be actioned by MK until the adjustment to order is made by Buyer and accepted by MK.
6. **SHIPMENT:** Shipment terms are in accordance with Incoterms 2010. Shipment generally will be accomplished Ex Works MK plant. Where delivery is offered by MK, terms shall be strictly DAP. For avoidance of doubt, DAP terms require Buyer to arrange import clearance and to pay all import taxes and duties due. Delivery is accomplished when shipment under Incoterms 2010 is completed for any MK product.
7. **DELIVERY:** Delivery will be accomplished within the time specified on the face of the acknowledgment or if no time is specified within the normal lead time necessary for MK to deliver its products in question. MK reserve the right to deliver individual line items from any order where that line item can be delivered complete, Buyer agrees to accept such part shipment. Where delivery is dependent on a milestone event including but not limited to drawing approval by Buyer, specification approval by Buyer, or material delivered by Buyer, any delay in accomplishing such milestone shall result in an extension of order delivery time at least equal to that delay. MK expressly reject any liability for loss of Buyer’s production, consequential losses, or other costs caused by any delay in delivery.
8. **FORCE MAJEURE:** MK shall not be liable for, nor be deemed to have defaulted or breached these Terms or an agreement with Buyer, for any delay in, or impairment of, performance resulting in whole or in part from any force majeure event, including but not limited to acts of God, labour disruptions, acts of war, acts of terrorism (actual or threatened), governmental decrees or controls, insurrections, epidemics, quarantines, shortages,

communication or power failure, fire, accident, inability to ship products or obtain permits and licenses, inability to procure supplies or raw materials, severe weather conditions, catastrophic events, or any other circumstance or cause beyond the reasonable control of MK in the conduct of its business.

- 9. STORAGE AND HANDLING:** Completed Goods shall be held for period of up to 14 calendar days after the Buyer has formally acknowledged that the Goods are ready for collection, unless an alternative timeline is agreed in writing at time of Purchase. Beyond 14 days, MK reserves the right to charge the Buyer at its discretion, storage charges at a rate of £25.00 per day to be invoiced on the last working day of each month in which the charges have incurred.
- 10. PAYMENTS:** Payment terms shall be 100% due at 30 days from delivery, or strictly as agreed in writing by MK prior to acceptance of Buyer's order. In the event that payments under any order are not made in a timely manner MK may either: (1) declare Buyer's performance in breach and terminate any other order for default, (2) withhold future shipments or services under any order until delinquent payments are made, (3) deliver future shipments under any order on a C.O.D. or cash in advance basis even after the delinquency is cured, (4) charge interest on the delinquency at a rate of 2% per month or the maximum rate permitted by law, if lower, for each month or part thereof the delinquency in payment plus applicable storage charges or inventory carrying charges, if any, or (5) combine any of the above rights and remedies as are practicable and permitted by law. Nothing herein shall waive any other rights or remedies of MK permitted by law or set forth in this or any other order between Buyer and MK and all rights and remedies set forth herein shall be considered cumulative with all other available rights and remedies.
- 11. INSPECTION AND ACCEPTANCE:** Buyer shall inspect and accept any products delivered immediately after Buyer takes custody of such products. In the event the products do not meet the drawings, designs, and/or specifications as provided by MK and specified in the order, Buyer shall notify MK of such noncompliance in writing and give MK a reasonable opportunity to correct any such noncompliance. Buyer shall be deemed to have accepted any products delivered and to have waived any such noncompliance in the event a written notification that the products delivered do not comply with the drawings, design, and/or specifications, is not received by MK within 10 days after Buyer takes custody of the products delivered.
- 12. INSOLVENCY; ASSIGNMENT:** MK may cancel the whole or any part of any order in the event of the suspension of Buyer's business, insolvency of Buyer, declared bankruptcy of Buyer, arrangement of liquidation proceedings involving or affecting Buyer or any assignment for the benefit of creditors of Buyer or receivership that Buyer places itself in or may be placed in. Such cancellation shall be deemed a cancellation for default of Buyer. Buyer shall not assign any of its rights or delegate any of its obligations under these Terms or any contract relating thereto without the prior written consent of MK. Any purported assignment or delegation in violation of this section is null and void. No assignment or delegation relieves Buyer of any of its obligations under these Terms.
- 13. TAXES:** Unless otherwise specifically stated in writing by MK, prices quoted by MK do not include sums necessary to cover any taxes or duties including but not limited to Local Government, Regional, Federal, State, Municipal excise, sales or use taxes or import duties upon the production, sale, distribution, or delivery of equipment or furnishing of service hereunder. Any taxes or duties that are due and owing shall be paid by Buyer. Accordingly, MK reserves the right to revise any contract between itself and others to include any and all taxes or duties that may become due and MK may involve Buyer for said additional amount. This cause shall survive the acceptance and complete performance of any order.

- 14. SET-OFF:** All moneys owed under any order shall be due and payable in accordance with these terms and conditions, and Buyer is prohibited from setting off said sums due to MK under this order from sums, whether liquidated or not, that are or may be due to Buyer which arise out of a different transaction with MK, its divisions, subsidiaries or affiliates.
- 15. RISK OF LOSS:** Risk of loss or damage to MK Products shall remain with MK only until the first to occur of the following events:
- (a) the passing of title to the Products to the Customer;
 - (b) delivery of the Products in accordance with Incoterms 2010
 - (c) the Products otherwise leaving MK's premises at the request of the Customer;
 - (d) the expiration of ten (10) Business Days from the date of notification by MK to the Customer that the Products are ready for delivery
- and thereafter risk of loss or damage to the Products from any cause shall be the responsibility of the Customer.
- 16. TITLE:** Title to the products shall not pass to Buyer until full and final payment of all amounts owing for said product is made and received by MK.
- 17. NON-WAIVER:** No course of dealing or failure of MK to strictly enforce any term, right or condition of any contract shall be construed as a waiver of such term, right or condition.
- 18. CHOICE OF LAW:** The construction, interpretation and performance of any agreements entered into by Buyer and MK and all transactions under such agreements shall be governed by the laws of England.
- 19. VENUE:** England shall be the proper and exclusive venue for any actions arising out of or because of the breach of any agreement entered into with MK, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.
- 20. CANCELLATION COSTS:** In the event of cancellation of any order by Buyer, Buyer shall be liable for reasonable cancellation costs which shall not exceed the contract price for the items cancelled.
- 21. DISPUTE RESOLUTION:** The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to the Managing Director or equivalent senior representative of each Party.
- If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in above, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "**Mediator**") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.
- 22. RESPONSIBILITY FOR SAFETY & TRAINING:** Buyer and end users stipulate and agree that tampering with, or the improper, unsafe or unapproved operation or use of MK products can cause severe bodily injury, death, or damage to property. Buyer and end users agree to assume complete and sole responsibility for fully training and continually supervising each of their operators in the proper approved use and safe operation of all products from MK.

- 23. COMPLIANCE WITH LAWS:** Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to operate or use the MK products. Buyer shall comply with all export and import laws of all countries involved in the sale of the products under these Terms or any resale of the products by Buyer. Buyer assumes all responsibility for shipments of products requiring any government import clearance.
- 24. LIMITED WARRANTY:** MK warrants each new product sold by it to be free from defects in material and workmanship under normal use and service. MK's warranty is termed "return to base". MK's obligation under this warranty is limited to the free correction or, at MK's option, the replacement of any such product which proves defective in normal service within 1 year (12 months) after delivery to the first user, provided that the product is returned to MK with all transportation charges prepaid and which shall appear to MK's satisfaction, after MK's inspection, to have been defective in material or workmanship. This warranty shall not cover any damage to any product which, in the opinion of MK, was caused by normal wear, misuse, improper operation, tampering, neglect, or accident. This warranty is in lieu of all other warranties express or implied. No warranty, express or implied, is made or authorized to be made or assumed with respect to products of MK other than those herein set forth.
- 25. LIMITATION OF LIABILITY:** MK is not liable for any consequential or special damage or loss of any nature or kind resulting from the use, misuse or unapproved use of any MK product, negligence, or misrepresentation. Owners and users of MK products assume full responsibility for instructing their employees and representatives in the proper, approved and safe use of MK products.
- 26. SEVERABILITY:** If any provision herein is held to be in violation of any National, Regional, Federal, State or Local statute or regulation or illegal or unenforceable for any reason, said provision shall be self-deleting without affecting the validity of the remaining provisions.
- 27. NO THIRD-PARTY BENEFICIARIES:** These Terms and any contract relating thereto is for the sole benefit of the parties hereto (and thereto) and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.
- 28. NOTICE:** All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the sales confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognised overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Terms, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.
- 29. SURVIVAL:** These Terms shall apply and remain in force after any termination or expiration of the associated order or agreement, except to the extent that survival of a term would, by its nature, not be possible.
- 30. AMENDMENT AND MODIFICATION.** These Terms may only be amended or modified in writing stating specifically that it amends these Terms, contains a specific section reference, and is signed by an authorised representative of each party including a Director of MK.