

TERMS & CONDITIONS OF SALE – MK TEST SYSTEMS

Doc ref. MKT-032-01

DEFINITIONS & INTERPRETATION

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

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

Contract means the contract between MK and the Buyer for the sale and purchase of the Products in accordance with the relevant Quotation, Order and these Conditions.

Order means the Buyer's acceptance of MK's Quotation, leading to the creation of a Contract.

Products the goods (or any part of them) set out in the Quotation.

Quotation means MK's written quotation for the supply of Products, subject to these Conditions, in response to an enquiry received from the Buyer.

1. APPLICABLE TERMS: The Contract created under these Conditions shall prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its Order on 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 Conditions.

Each party acknowledges that in entering into this Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Conditions. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

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 ancillary services subject to these Conditions and any additional special terms in the applicable Quotation.

3. CONFIDENTIALITY AND COPYRIGHT: All information included in a Quotation or otherwise incorporated into the 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, being owned by MK or its respective licensors, 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 Products (including an Order) from the 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 Contract or any other Order affected by such change then: (i) a reasonable adjustment in the price, the delivery schedule or both shall be made; and (ii) 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 2020. Shipment will, unless otherwise agreed, will be completed FCA MK's Wellington UK plant. Where delivery is offered on another basis 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 2020 is completed for any MK Product.

7. DELIVERY: Delivery will be completed within the time specified in the Quotation or, if no time is specified, within the normal lead time necessary for MK to deliver these Products. MK reserve the right to deliver individual line items forming part of a Contract 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 disclaims 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 Conditions or any Contract 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 Products shall be held by MK for period of up to 14 calendar days after the Buyer has formally acknowledged that the Products are ready for collection, unless an alternative timeline is agreed in writing when the relevant Contract is confirmed/accepted by MK. 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 as specified by MK in writing in the relevant Quotation. In the event that payments under any Contract 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; or (4) charge interest on the delinquency (whether before or after judgment), which will accrue each day at a rate of 8% a year above the Bank of England's base rate from time to time, 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 the relevant Quotation or Contract between Buyer and MK and all rights and remedies set forth herein shall be considered cumulative with all other available rights and remedies.

All amounts due from the Buyer to MK shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

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 Quotation, Buyer shall notify MK of such noncompliance in writing and give MK a reasonable opportunity to correct any such non-compliance.

Buyer shall be deemed to have accepted any Products delivered and to have waived any such non-compliance 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, or if the Buyer's financial position deteriorates to such an extent that in MK's opinion the Buyer's capability to adequately fulfil its

obligations under the Contract has been placed in jeopardy. 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 Conditions 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 Conditions.

13. TAXES: Unless otherwise specifically stated in writing by MK, prices quoted by MK (including those detailed in any Quotation) 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 Contract.

14. SET-OFF: All moneys owed under any Contract shall be due and payable in accordance with these Conditions, and Buyer is prohibited from setting off (or otherwise making any counterclaim, deduction or withholding) in respect of said sums due to MK under this order from sums, whether liquidated or not, against sums 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 Buyer;
- (b) delivery of the Products in accordance with Incoterms 2020;
- (c) the Products otherwise leaving MK's premises at the request of the Buyer;
- (d) the expiration of ten (10) Business Days from the date of notification by MK to the Buyer 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 Buyer.

16. TITLE: Title to the Products shall not pass to Buyer until full and final payment (in cash or cleared funds) of all amounts owing for said Products is made and received by MK.

Until title to the Products has passed to the Buyer, the Buyer shall:

- (a) store the Products separately from all other goods held by the Buyer so that they remain readily identifiable as MK's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
- (c) maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify MK immediately if it becomes subject to any of the events listed in clause 12 above; and
- (e) give MK such information as MK may reasonably require from time to time relating to both the Products and the ongoing financial position of the Buyer.

MK may recover Products in which title has not passed to the Buyer. The Buyer irrevocably licenses MK, its officers, employees and agents, to enter any premises of the Buyer or any relevant third party

(including with vehicles), in order to satisfy itself that the Buyer is complying with the obligations detailed above, and to recover any Products in which title has not passed to the Buyer.

MK may at any time after delivery elect to transfer title in Products to the Buyer, in which case the Buyer shall immediately pay the price for those Products to MK.

17. NON-WAIVER: No failure or delay by MK to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy by MK shall prevent or restrict the further exercise of that or any other right or remedy.

18. CHOICE OF LAW: This 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.

19. 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.

20. CANCELLATION COSTS: Buyer may only amend or cancel a Contract with the written agreement of MK. If the Buyer does wish to amend or cancel a Contract and MK agrees to its request, Buyer's liability to MK shall be calculated on a pro-rated basis by reference to the overall value of the work completed by MK to that point. This shall include not only payment to MK of all costs reasonably incurred by MK in fulfilling the Contract up until the date of receipt of the notice of amendment or cancellation, but also a sum in respect of all engineering and development time expended by MK in fulfilling the Contract.

21. DISPUTE RESOLUTION: If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in these Conditions, the parties shall follow the procedure set out in this clause 21:

(a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Managing Directors (or equivalent senior representatives) of each party shall attempt in good faith to resolve the Dispute;

(b) if those representatives of the parties are for any reason unable to resolve the Dispute within 28 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days service of the Dispute Notice, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (**ADR notice**) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR;

(c) if there is any point on the logistical arrangements of the mediation, other than nomination of the mediator, upon which the parties cannot agree within 14 days from the date of the ADR notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the parties having consulted with them; and

(d) unless otherwise agreed between the parties, the mediation will start not later than 28 days after the date of the ADR notice.

The commencement of mediation shall not prevent the parties commencing or continuing court proceedings.

22. RESPONSIBILITY FOR SAFETY & TRAINING: Buyer acknowledges and agrees 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. Where appropriate MK supplies written instructions on the proper use and safe operation of its Products, which can by agreement be supported by additional safety training.

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 Conditions 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 that the Products supplied to the Buyer under this Contract shall:

- (a) conform to any agreed specification;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier;
- (c) be free from material defects in design, material and workmanship and remain so for 12 months after delivery; and
- (d) comply with all applicable statutory and regulatory requirements.

MK shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the manufacture, packing, packaging, marking, storage, handling and delivery of the Products.

MK shall not be liable for the Products' failure to comply with the warranty set out above in any of the following events:

- (i) the Buyer makes any further use of those Products after giving notice to MK of its wish to reject and/or return the Products;
- (ii) the defect arises because the Buyer failed to follow MK's oral or written instructions for the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same;
- (ii) the defect arises as a result of MK following any drawing, design or specification supplied by the Buyer;
- (iii) the Buyer alters or repairs those Products without the written consent of MK;
- (iv) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (v) the Products differ from their description or any agreed specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

If the Buyer rejects any Products on the basis set out above then the Buyer shall be entitled to: require MK to repair or replace the rejected Products; or require MK to repay the price of the rejected Products in full.

Once the Supplier has complied with the Buyer's request, it shall have no further liability to the Buyer for the rejected Products' failure to comply with the warranties contained in this clause 24.

The Conditions of this Contract shall apply to any repaired or replacement Products supplied by MK.

25. LIMITATION OF LIABILITY: The limits and exclusions in this clause reflect the insurance cover MK has been able to arrange and the Buyer is responsible for making its own arrangements for the insurance of any excess liability.

Nothing in this Contract shall limit or exclude the MK's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for MK to exclude or restrict liability.

Subject to the above provisos:

(i) MK shall not be liable to the Buyer, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

(ii) MK's total liability to the Buyer for all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise, shall not exceed the greater of £20,000 or the price payable under the relevant Contract.

26. SEVERABILITY: 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.

27. NO THIRD-PARTY BENEFICIARIES: These Conditions and any Contract created under them 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 the relevant Contract.

28. NOTICE: Any notice given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office 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 by hand, or sent by pre-paid first class post or other next working day delivery service, or email.

A notice shall be deemed to have been received: if delivered by hand, when left at the address referred to above; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or, if sent by email, one Business Day after transmission.

This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

29. SURVIVAL: These Conditions 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 Conditions may only be amended or modified in writing stating specifically that it amends these Conditions, contains a specific section reference, and is signed by an authorised representative of each party.