

ASCOTT ANALYTICAL EQUIPMENT LIMITED TERMS AND CONDITIONS OF SALE

- 1 **Definitions**
- 1.1 In these conditions these words have the following meanings:-
- "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;
- "Contract"** any contract incorporating these conditions under which we sell Goods and/or provide Services to you;
- "Contract Price"** has the meaning given to it in clause 4.1;
- "Goods"** the whole or any part of the goods which we agree to supply to you;
- "Liability"** the liability for any and all damages, losses (including without limitation any direct or indirect consequential losses), claims, proceedings, actions; awards, expenses, costs and any other losses and/or liabilities;
- "Order"** your order for the Goods, as set out in your purchase order form or in your written acceptance of our quotation, as the case may be;
- "Services"** the whole or any part of the services we agree to provide to you;
- "Warranty"** has the meaning given in clause 12.1;
- "we", "us" and "our"** Ascott Analytical Equipment Limited (registered in England and Wales with company number 02590442); and
- "you", "your" and "yourself"** the customer to whom we supply the Goods and/or Services.
- 1.2 In these Conditions, the following rules apply:
- 1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.
- 1.2.3 A reference to a statute or statutory provision is a reference to such statute or provide as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision as amended or re-enacted.
- 2 **Basis of Contract**
- 2.1 The Contract will be governed by these Conditions to the exclusion of any other terms and conditions that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. These conditions will override any terms or conditions stipulated or referred to by you in your Order or pre-contract negotiations.
- 2.2 Unless otherwise agreed in writing by us no oral warranties, representations or variations to these Conditions or your Order shall bind us. The words "unless otherwise agreed in writing by us" in these Conditions means unless otherwise agreed in writing and signed by one of our Directors.
- 2.3 Even if it is not expressly stated, any Order placed by you and our acceptance shall still be subject to these Conditions.
- 2.4 We may correct any clerical or typographical errors made by our employees at any time and both you and we will be bound by the corrected version.
- 3 **Quotations and Orders**
- 3.1 Unless otherwise agreed in writing by us, quotations given by us to you for Goods and/or Services remain valid and capable of acceptance for a period of 60 Business Days from the date of the quotation. We reserve the right not to accept any Order.
- 3.2 The Contract between us and you will become legally binding only when you have submitted an Order to us (which shall constitute an offer by you to purchase the Goods in accordance with these Conditions) and we have notified you in writing of our acceptance of your Order or by our actions have commenced performance of your Order.
- 3.3 A quotation by us for the Goods and/or Services shall not constitute an offer.
- 4 **Prices**
- 4.1 The prices for all Goods and/or Services shall be those set out in our quotation or as agreed otherwise between you and us in writing ("**Contract Price**").
- 4.2 Unless otherwise agreed in writing by us, all prices are given on an Ex Works basis within the meaning given to that term in the ICC Incoterms 2010 ("**Incoterms**") and are exclusive of VAT and any other sales taxes and duties which may be chargeable and all costs or charges in relation to packaging, loading, unloading, carriage and insurance which may be payable by you in addition to the amount set out in our quotation.
- 4.3 While we try to ensure that all prices provided in our quotations are accurate, errors may occur. If we discover an error in the price of the Goods and/or Services you have ordered we will inform you as soon as possible and give you the option of reconfirming your Order at the correct price or cancelling it. If we are unable to contact you, we will treat the Order as cancelled. If the Order is cancelled and you have already paid for the Goods and/or Services, you will receive a full refund.
- 5 **Payment**
- 5.1 Unless otherwise agreed in writing by us, if you are a customer ordering Goods and/or Services for delivery or performance in the UK you will pay in British pounds sterling:
- 5.1.1 25% of the price of the Goods and/or Services upon placing your Order with us; and
- 5.1.2 the balance of 75% of the price of the Goods and/or Services within 30 Business Days of delivery and/or performance.
- 5.2 If you are a customer ordering Goods and/or Services for delivery or performance outside the United Kingdom you will pay in British pounds sterling:
- 5.2.1 in full upon placing your Order with us; or
- 5.2.2 by letter of credit. If paying by letter of credit you shall, as a condition of any Order for Goods and/or Services being binding upon us, open an irrevocable letter of credit in a form to be approved by us in writing which is confirmed and payable at sight at a UK bank in favour of us for the price payable under the relevant Order and remaining valid for at least 90 Business Days from the date of your Order. All costs and fees associated with the issue and confirmation of such letter of credit shall be borne by you and where any such costs and fees have to be paid by us then you shall increase the value of the letter of credit so that we will receive as a net amount the price payable under the relevant Order.
- 5.3 If you fail to make payment by the due date we may, without prejudice to any other rights or remedies we may have, charge interest (both before and after judgment) on the amount unpaid at whichever is the greater of the rate of 2.5% above the base rate from time to time of Barclays Bank plc, compounded with monthly rests, or the rate of interest prescribed by law.
- 5.4 Time for payment shall be a condition of this Contract.
- 5.5 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.
- 6 **Cancellation**
- 6.1 Orders placed cannot be cancelled except with our written consent and on terms which will indemnify us for any loss we have suffered.

6.2 Goods returned without our consent will not be accepted for credit. Subject to Clause 12.5, where Goods are returned with our prior written consent it shall be your responsibility (at your entire risk and expense) to return the Goods to us in good and saleable condition.

7 **Specification**

7.1 You are responsible for checking any specification provided in our quotation is accurate and adequate for the manufacture and/or provision of Goods and/or Services. We shall have no Liability for errors in any specification or details supplied by you.

7.2 Any technical literature, illustrations, descriptions or specifications in our catalogues, price lists or other advertising material are intended merely to present a general approximation of the Goods and/or Services and will not form a representation or be part of the Contract unless otherwise agreed in writing by us.

7.3 Any specification supplied by us to you, or specifically produced by us for you, all inventions, patents, copyright, design rights (whether registered or unregistered), trade marks (whether registered or unregistered) and/or know-how and/or any other intellectual property rights in the specification, in the Goods and/or arising as a result of our performing the Services and the right to apply for such rights shall be owned exclusively by us absolutely. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by us now or in the future.

7.4 You shall not disclose to any third party or use any such specification referred to in Clause 7.3 except to the extent that it is or becomes public knowledge through no fault of yours, or as required for the purpose of the Contract.

7.5 You agree that, at your cost, you will do all acts and/or execute all documents and/or deeds which are necessary or desirable to give effect to Clause 7.3.

7.6 You shall not make any modification to the Goods or their packaging, nor alter, remove, or tamper with any trade marks used on or in relation to the Goods and/or Services.

7.7 We reserve the right to make any changes to the specification for the Goods and/or Services if we are required to by law or in order to comply with applicable safety requirements or manufacturing requirements provided that such changes do not have a material adverse effect on the quality and/or performance of the Goods and/or Services.

8 **Delivery of Goods or Completion of Services**

8.1 Goods will be sold to you on an Ex Works basis within the meaning given to that term in the Incoterms as revised from time to time which shall be incorporated into the Contract. If there is any inconsistency between Incoterms and any express term of the Contract the latter will prevail.

8.2 Any dates that we give you for delivery and/or performance are estimates only and are also conditional upon us promptly receiving from you final instructions for delivery and/or performance. Time is not of the essence in relation to such dates and we will not be responsible for any failure to deliver or complete by such dates.

8.3 Unless otherwise agreed in writing, you shall be responsible (at your own cost) for all arrangements to unload the Goods when delivered to you. Delivery will be made between 9.00am and 5.00 pm on Business Days and during such hours you will make sure we are able to access the address for delivery in order to deliver the Goods.

8.4 If you refuse to take delivery of any Goods and/or to allow performance of the Services then we shall be entitled to withhold delivery and/or performance of any other Goods and/or Services and to treat this Contract as cancelled by you. We shall then be entitled to:

8.4.1 resell or otherwise dispose of part or all of the Goods; and

8.4.2 claim damages for any other costs, loss or expenses incurred by us which are in any way attributable to the your failure to carry out your obligations under the Contract.

8.5 If the parties agree that the Goods are to be collected from our premises then you shall collect the Goods between 9:00 am and 5:00 pm Monday to Thursday & 9:00 am and 12:00 noon Friday, within 7 Business Days of our notifying you that the Goods are ready for collection. If the Goods are not collected by you within this period we may despatch the Goods to you at your expense and risk and/or store the Goods at your expense and risk until despatch and/or collection.

8.6 We will have no Liability if we are prevented or delayed from performing our obligations under the Contract due to matters beyond our reasonable control or by reason of your failure to provide to us adequate delivery instructions or any other instructions that are relevant to the supply of Goods and/or Services, and in such circumstances we may choose to suspend our performance or cancel the Contract without this suspension or cancellation affecting our right to recover all sums owing to us in respect of Orders or parts of Orders already delivered and/or costs incurred at that date. Matters beyond our reasonable control shall include but not be limited to rules, regulations, requisitions or orders of the Government or a Local Authority, war, strike, accident, fire or shortages of labour or materials or non-delivery by our suppliers or damage to or destruction of the whole or part of the Goods.

8.7 We reserve the right to despatch and invoice any part of your Order when it is available or any part of the Services when such part is completed.

8.8 We will try to accommodate you if you make a reasonable request for postponement of delivery but we shall not be obliged to do so. Where delivery is postponed for a reason other than our fault, you shall pay all costs and expenses of delay including a reasonable charge for storage and transportation.

9 **Installation and other Services**

9.1 If the presence on site of one of our authorised service engineers is required for installation and/or commissioning we shall be entitled to charge in addition to the Contract Price. In cases where the Contract Price includes the cost of installation and/or commissioning and this is delayed for a reason other than our fault any additional work caused by the delay shall be charged to and paid for by you in addition to the Contract Price.

9.2 Site visits for performance of the Services will take place at the intervals specified in our quotation and we will give you prior notice of each visit.

9.3 In addition to the cost of the Service as specified in the quotation, extra charges will be made for:

9.3.1 any materials used during the site visit;

9.3.2 any Services being performed at your request outside normal working hours on a Business Day; and

9.3.3 where applicable and agreed in advance with you, hotel accommodation.

9.4 On satisfactory completion of each maintenance visit our authorised service engineer will provide for signature a Maintenance Schedule and Report which you will ensure is signed by your duly authorised representative.

9.5 Any maintenance work to be carried out in performance of the Services shall be in accordance with our specifications.

9.6 To allow us to perform our obligations under this Contract, you will provide to us and will make sure that any other third party in control of the site where Services are to be performed provides (where applicable):

9.6.1 sufficient and suitable access to any site at which Services are to be performed;

9.6.2 a cleared, prepared, and safe site which complies with all applicable statutory or other regulations and codes of practice; and

9.6.3 all necessary information, including but not being limited to any relevant health and safety policies applicable to any of our personnel when carrying out the Services.

9.7 You will indemnify us for any Liability incurred by us as a result of you (or any applicable third party) not doing any of the things set out in Clause 9.6.

10 **Passing of Risk**

10.1 Risk in the Goods shall pass to you when the Goods are made available for delivery to you on an Ex Works basis as detailed in clause 8.1.

- 11 **Title**
- 11.1 Despite delivery in accordance with Clause 8 and the passing of risk in the Goods, ownership of the Goods shall not pass to you until we have received in cash or cleared funds payment in full for the Goods and the Services and/or all other goods and services agreed to be provided by us to you for which payment is due.
- 11.2 Until title to the Goods has passed to you, you shall:
- 11.2.1 hold the Goods on a fiduciary basis as our bailee;
- 11.2.2 store the Goods separately from all other goods held by you so that they remain readily identifiable as our property;
- 11.2.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 11.2.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 11.2.5 notify us immediately if you become subject to any of the events listed in clause 14.1.4; and
- 11.2.6 give us such information relating to the Goods as we may require from time to time, but you may resell or use the Goods in the ordinary course of your business.
- 12 **Standard Warranty – All customers**
- 12.1 Subject to Clauses 12.2 and 13 below, we warrant to you (the “**Warranty**”) that the Goods (excluding consumable items) and/or Services will be free from material defects in design, materials and/or workmanship for a period of 12 months from:-
- 12.1.1 in the case of Services, the date of completion of the performance of the Services; and/or
- 12.1.2 in the case of Goods, the date of delivery of the Goods to you, (each referred to as the “**Warranty Period**”).
- 12.2 Subject to Clause 13 below, we shall have no Liability under the Warranty in respect of:
- 12.2.1 any defects in the Goods and/or Services arising from or due to our compliance with any instructions, drawings, design and/or Specification supplied by you;
- 12.2.2 any defects in the Goods and/or Services arising from or due to the incorporation, exchange and/or use of any materials and/or components supplied by you into the Goods and/or Services;
- 12.2.3 any defects in the Goods and/or Services arising from or due to the alteration by you or a third party without our prior written approval of the settings of the equipment control system (save controls designed for customers use);
- 12.2.4 any faults arising after risk in the Goods has passed to you which are caused by any subsequent mechanical, chemical, electrolytic and/or other damage which is not due to a defect in the Goods and/or Services as appropriate;
- 12.2.5 any faults arising after risk in the Goods has passed to you which are caused by a failure to store the Goods appropriately or otherwise than in accordance with any instructions or guidance issued by us at or prior to their delivery;
- 12.2.6 any faults and/or defects caused by wilful damage, abnormal working conditions, failure to follow our operating, maintenance and installation instructions, misuse, alteration, modification and/or repair of the Goods and/or Services without our prior written approval and/or improper maintenance or negligence on your part and/or by a third party; and
- 12.2.7 any Goods and/or Services where we have stated to you prior to your Order in respect thereof or our acceptance of that Order, will not carry the Warranty.
- 12.3 If any Goods and/or Services prove to be defective and are covered by the Warranty, we may at our sole option either repair or replace such Goods or reperform such Services. The repair and/or replacement and/or re-performance of the defective Goods and/or Services shall be your sole remedy in respect of claims under the Warranty. For non-UK customers, we will provide replacement parts in exchange for any that have become genuinely faulty during the Warranty Period. We accept no liability for any labour charges for non-UK customers during the Warranty Period. For small and/or relatively inexpensive* parts, replacements will generally be sent by express courier service. If we do not require the original faulty parts to be returned to us in exchange, we will specify this. For large and/or relatively expensive* parts, we reserve the right to have these returned to our factory in the UK for repair. The cost of returning any parts to us will only be reimbursed if we have agreed to this in writing, in advance. We will not reimburse any customer incurred costs, unless these have been authorised by us in writing, in advance.
- *Note: we will determine and apply these definitions on a case by case basis.
- 12.4 Any Services provided by us which do not carry the Warranty will be charged at our current charging rates for such Services.
- 12.5 To enable us to assess whether the alleged defect in Goods and/or Services are within the scope of the Warranty given by us, you shall (at our request) either allow us access to your premises to enable us to view the defective Goods and/or Services and/or send the defective Goods or parts of the Goods to us for inspection. If you are required to send the defective Goods or parts of the Goods to us for inspection and the defect is within the scope of the Warranty, we shall refund the costs reasonably incurred by you in delivering the defective Goods to us.
- 12.6 We shall have no Liability to you under the Warranty unless any defect is notified to us within 14 Business Days of the defect becoming apparent or suspected or when it should reasonably have become apparent to or suspected by you.
- 12.7 The Warranty above will not apply if you have not paid in full for the relevant Goods and/or Services on the due date for payment.
- 13 **Liability**
- 13.1 Our Liability for defective Goods and/or Services is limited as set out in Clause 12 and this Clause 13.
- 13.2 We shall have no Liability to you for any:-
- 13.2.1 loss of profits and/or damage to goodwill;
- 13.2.2 pure economic and/or other similar losses;
- 13.2.3 special damages;
- 13.2.4 aggravated, punitive and/or exemplary damages;
- 13.2.5 consequential losses and/or indirect losses;
- 13.2.6 loss and/or corruption of data; and/or
- 13.2.7 business interruption, loss of business, loss of contracts, loss of opportunity and/or loss of production.
- 13.3 Our total Liability to you for acts and/or omissions in connection with these Conditions in any relevant 12 month period shall not exceed £2,000,000.
- 13.4 The limitations and exclusions in these Conditions shall be deemed to be repeated and apply as a separate provision for each of:
- 13.4.1 Liability in contract (including fundamental breach);
- 13.4.2 Liability in tort (including negligence);
- 13.4.3 Liability for breach of statutory duty; and
- 13.4.4 Liability for breach of Common Law and/or under any other legal basis;
- except that the limitation in Clause 13.3 above placing a financial cap on our Liability shall apply once in respect of all of the said types of Liability.
- 13.5 Nothing in this Contract shall exclude or limit our Liability for:
- 13.5.1 death or personal injury due to our negligence; or
- 13.5.2 any Liability which results from our fraud;
- 13.5.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- 13.5.4 defective products under the Consumer Protection Act 1987; or
- 13.5.5 any other Liability which we are not permitted to exclude or limit as a matter of law.

- 13.6 All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law.
- 14 **Termination**
- 14.1 If you:-
- 14.1.1 fail to make any payment to us when due;
- 14.1.2 breach any of these Conditions (and, if the breach is capable of being put right you have not put it right within 10 Business Days of receiving a notice from us asking you to put it right);
- 14.1.3 persistently breach any one or more terms of these Conditions;
- 14.1.4 stop or threaten to stop carrying on business, are declared or become insolvent or bankrupt, have a moratorium declared in respect of any of your indebtedness, enter into administration, receivership, administrative receivership or liquidation or threaten to do any of these things, take or suffer any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by you or by any other person in respect of any of these circumstances;
- 14.1.5 appear to us to be financially unable to meet your obligations under the Contract; and/or
- 14.1.6 appear reasonably to us to be about to suffer any of the above events;
- then we may, without prejudice to any other remedies, exercise any or all of the rights set out in Clause 14.2 below.
- 14.2 If any of the events set out in Clause 14.1 happen to you, then, without limiting any other right or remedy we may have:-
- 14.2.1 we may enter, without prior notice, any of your premises (or premises of third parties with their consent) where Goods owned by us may be and repossess and dispose of or sell any Goods found which are owned by us so as to discharge any sums due to us under this Contract or any other agreement we have with you;
- 14.2.2 you will automatically no longer be entitled to re-sell, use or part with the possession of any Goods owned by us until you have paid in full all sums due to us under this Contract or any other agreement you have with us unless we give our express written agreement to such use and/or disposal of the Goods;
- 14.2.3 we may withhold delivery of any undelivered Goods and stop any Goods in transit;
- 14.2.4 we may withhold the performance of any Services and cease any Services in progress;
- 14.2.5 we may cancel, terminate and/or suspend without Liability to you any Contract with you; and/or
- 14.2.6 all monies owed by you to us shall become immediately due and payable.
- 14.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 15 **Waste Electrical & Electronic Equipment (WEEE)**
- 15.1 You shall exclusively finance the collection and delivery of waste electrical and electronic equipment (WEEE) to us or Technowaste Ltd, as required by the UK WEEE Regulations 2006 SI 3289.
- 15.2 This clause applies to all new electrical and electronic equipment (EEE) put on the UK market by us after 13 August 2005 (known as new WEEE), as well as all EEE put on the UK market before 13 August 2005 (known as historic WEEE) which becomes waste as a result of a purchase of new EEE from us after August 2005.
- 15.3 If you resell the EEE to a third party, you will ensure that this clause in its entirety is included in the contractual arrangements governing the sale to the third party. You agree to indemnify and keep indemnified and hold harmless us and B2BWEEE-Scheme from and against all costs and expenses which we or B2BWEEE-Scheme incurs or suffers in the UK as a result of a direct or indirect breach or negligent performance or failure in performance by you of your obligations in this clause.
- 16 **Assignment and subcontracting**
- 16.1 We may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of our rights or obligations under the Contract.
- 16.2 You may not assign, transfer, charge, subcontract or deal in any other manner with all or any of your rights or obligations under the Contract without our prior written consent.
- 17 **Notices**
- 17.1 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, recorded delivery, commercial courier, fax or e-mail.
- 17.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am 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 fax or e-mail, one Business Day after transmission.
- 17.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 18 **Severance**
- 18.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 18.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 19 **General**
- 19.1 Neither party shall use and/or disclose any confidential information which is acquired by it about the other party's business and/or given by one party to the other party and/or generated by either party from the other party's confidential information except in the proper performance of this Contract.
- 19.2 You agree to indemnify us and keep us indemnified against any and all Liability and legal costs on a full indemnity basis suffered and/or incurred us and arising from or due to any breach of contract, any tortious act and/or omission and/or any breach of statutory duty by you.
- 19.3 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. The invalidity, illegality or unenforceability of any of the provisions of this Contract shall not affect the validity, legality or enforceability of the remaining provisions of this Contract.
- 19.4 None of the terms and conditions of this Contract shall be enforceable by any person who is not a party to it.
- 19.5 The 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 irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.