

MK TEST SYSTEMS STANDARD TERMS & CONDITIONS OF PURCHASE

1. Interpretation

In these conditions “the Purchaser” means MK Test Systems whose registered office is at ATE House, Westpark 26 Chelston, Wellington TA21 9AD; “the Supplier” means any person, firm, Company or body who is entering into or considering entering into a contractual arrangement with the Purchaser; “Goods” means any goods or products that are the subject of a contract entered into or being considered between the Supplier and Purchaser; “Services” means any services or services provided or work undertaken of whatever nature that are the subject of a contract entered into by the Purchaser and the Supplier. “Special Conditions” means any additional terms as specified at Annex 1 of these standard terms and conditions. If there is conflict between these terms and conditions and any special conditions in writing, the special conditions will apply.

2. General

2.1. All orders, tenders or negotiations are entered into on these terms, which, save for any contract into which they are incorporated shall supersede any other terms appearing elsewhere, and override and exclude any other terms stipulated or incorporated or referred to by the Supplier, whether in the order or in any negotiations and any course of dealing established between the Purchaser and the Supplier or any that are customarily accepted or implied in the trade to which any order or agreement relates and/or the Supplier’s own conditions of sale. All orders hereafter made by the Purchaser shall be deemed to be made subject to these terms.

2.2. No additions, alterations or substitution of these terms (or any agreement into which they are incorporated) shall be affective unless made by an express written agreement between the parties and signed by the Purchaser. The signing by the Purchaser of any of the Supplier’s documentation shall not imply any modification of these terms and without prejudice to the foregoing generality, these terms exclude and supersede any conditions of sale which the Supplier may seek, or may attempt to apply.

3. Price

The only price payable shall be that specified in the order or agreement which is (unless otherwise expressly stated) exclusive of VAT but otherwise inclusive of all taxes, levies, duties, carriage, insurance and the like. No Goods shall be delivered, or Services performed against any order at a price in excess of that set out in the order unless prior written approval of the Purchaser has been received.

4. Payment

Payment will not be made for any Goods delivered or Services performed unless it is subject to an official MK Test Systems Purchase order. All Goods delivered must be accompanied by a delivery note and upon delivery a signature must be obtained by the Supplier from a representative of MK Test Systems; such signature will not signify that the Goods have been inspected and/or are acceptable. Upon acceptance of conforming Goods the Purchaser shall pay the price in the corresponding order within 60 days in which the invoice relating to the order is delivered or, if later, of acceptance of the goods by the Purchaser.

5. Title

Title shall pass to the Purchaser on the formal acceptance of the Goods delivered at the designated destination; this clause shall not affect the Purchasers right to reject the Goods in terms of clause 7 (Inspection).

6. Delivery

6.1. The time of delivery shall be of the essence of the contract and shall take place when the Goods or Services are received by the Purchaser at its premises (as directed to the Supplier) or if so requested by the Purchaser to a designated destination.

6.2. The Purchaser reserves the right to cancel; without notice, the whole or any part of the order if the Supplier fails to comply with this clause for whatever reason. In the event of cancellation by the Purchaser all sums payable by the Purchaser in relation to the part or whole of the order cancelled shall cease to be payable. The Supplier shall repay to the Purchaser within 5 days all sums paid by the Purchaser in relation to the part of the whole of the order cancelled.

6.3. The Purchaser shall be entitled to apply liquidated damages of 0.5% of the value of the order daily up to the value of 10% of the order value for any late deliveries where the Supplier has failed to apply and communicate reasonable mitigation measures to address the issue of late delivery. The Purchaser will recover damages from the Supplier in respect of any losses caused to the Purchaser as a result of the Suppliers ongoing failure to perform and as a result of the cancellation of the order in whole or in part. The Supplier is not entitled to suspend deliveries without reasonable prior notice to the Purchaser as a result of any sums being outstanding.

7. Inspection of Goods

7.1. The Purchaser, shall endeavour to inspect all Goods where reasonably practicable within 2 days of delivery thereof and shall within 5 working days of delivery give notice to the Supplier of any damage to the Goods and shall within 21 days of delivery give notice to the Supplier detailing any ground on which the Purchaser identifies that Goods are not in accordance with the order or are defective. In the event that the Purchaser notifies the Supplier that the Goods are not in accordance with the order or are defective the Purchaser shall be entitled to return the defective Goods to the Supplier (at the Supplier’s expense) and receive replacement Goods of a standard acceptable. Nothing in this clause shall prevent the Purchaser from excising its right to terminate any agreement on the ground of fundamental breach for failing to comply with quality standards and specifications of the order.

7.2. All Goods must be accompanied by Certificates of Conformity and any additional verification methods as stated within the order. The order will not be deemed complete unless accompanied by the communicated verification method. Payment of the order (clause 4) will not commence until the complete order has been fulfilled.

7.3. The Purchaser and its employees, customers and representatives shall be afforded the right of entry to verify at source that the purchased product conforms in all respects of specified requirements. This action shall not absolve the Supplier of the responsibility for the quality of the delivered product nor preclude its subsequent rejection at a later date.

8. Packaging

8.1. It is the Suppliers responsibility to ensure all items are packaged in such a way to ensure that the optimum/minimum use of packaging materials is achieved without compromising its protective effectiveness whilst in transit and storage. The supplier is responsible for indicating all packaging materials identified under COSHH, REACH and SVHC regulations by supplying the appropriate Safety Data Sheets for these items.

8.2. All packaging will be disposed of/reused by the Purchaser unless the Supplier requests the return of packaging in writing prior to the order being received. The Supplier shall organise and bear all such costs for return of packaging.

9. Confidentiality and Purchasers Property

9.1. The Supplier shall keep in strict confidence all Confidential Information as defined below in confidence during and following termination or expiration of this agreement. Confidential Information includes but not limited to, all information whether written or oral, in any form, including and without limitation, all know-how (technical, commercial or otherwise), specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier In order to fulfill their duties under contract. The Supplier shall restrict disclosure of Purchaser confidential information to its employees on a need to know basis for the purpose of discharging the Supplier obligations to the Purchaser.

9.2. All materials, equipment, tools, tooling copyright, rights in design and/or any other intellectual property rights in all drawings, specifications and/or data shipped by the Purchaser to the Supplier shall at all times be and remain the exclusive property of the Purchaser.

9.3. The Supplier agrees that any information, drawings, know-how, specifications, designs, concepts, techniques, developments, inventions, technologies, works, software and/or other work products generated or developed in the course of work performed under these Terms and Conditions by the Supplier and any Intellectual Property and/or other proprietary rights therein or thereto shall vest in the Purchaser.

9.4. The Supplier agrees to assign or shall cause to be assigned to the Purchaser all right, title and interest to any and all such items and rights as are described in clauses 9.2 and 9.3 above and agrees to promptly do everything necessary to perfect such rights and to protect the Purchasers interest therein.

9.5. The items described in clauses 9.2 and 9.3 above shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until provided to the Purchaser, and shall not be disposed or used other than to fulfill an Order or otherwise in accordance with the Purchasers written instructions or authorization. All tooling, purchased or loaned in order for the Supplier to fulfill their duties under the order shall be clearly marked with Property of MK Test Systems and shall be returned immediately on the Purchasers written request.

10. Termination

10.1. The Purchaser may terminate this agreement upon written notice to the Supplier if the Supplier fails to fulfill their obligations or otherwise breaches this agreement, files a petition for bankruptcy, becomes insolvent or dissolves. In event of termination, the Purchaser shall pay the Supplier for any portion of Services satisfactory performed providing those Services conform to the requirements/specification defined within the Order.

10.2. The Purchaser reserves the right to terminate this agreement for any reason upon (30) days written notice to the Supplier. The Supplier shall cease to perform Services and/or provide Goods under this Agreement on the date of termination specified in such notice. In the event of such termination, The Purchaser shall be liable to the Supplier only for Services satisfactory performed and those conforming Goods delivered to the Purchaser through the date of termination, less any appropriate offsets.

10.3. Upon termination of this agreement each party will be released from all obligations to the other arising after the date of expiration or termination, except for those which by their terms survive such termination or expiration; and Supplier will promptly notify the Purchaser of all Confidential Information or any Work in the Suppliers possession and, at the expense of the Supplier and in accordance with the Purchasers instructions, promptly deliver all such Confidential Information, work or products.

11. Warranty

11.1. In addition to all other terms and conditions and warranties given or implied by law a condition of every order placed by the Purchaser, that all Goods or Services ordered and where relevant their packaging will comply strictly in all respects with the nature, substance, quality, description, specification and quality ordered.

11.2. The Supplier warrants that all goods will be new and will not be reconditioned, refurbished or counterfeit and that as from the delivery date, warrants all products for a minimum of 12 months or longer (as agreed) will be free from defects in design, workmanship, construction and materials.

11.3. In the event of a breach of the warranty by the Supplier, the Purchaser shall notify the Supplier of such breach advising the Supplier that it must within 14 calendar days of such notification:

11.4. Repair or replace any defective Goods (non-conforming) at the Suppliers expense; or

11.5. Credit the Purchaser for the price in which the breach relates.

11.6. In the event that the Goods are repaired or replaced in terms of clauses 11.4,11.5 the Supplier warrants the replaced Goods for a further period of 12 months from receipt of the returned delivery of the repaired or replaced item on the same terms as those which applied to the Goods originally supplied.

11.7. The Supplier warrants to the Purchaser that the Goods comply with all UK statutory and other regulatory legal requirements applicable to such goods.

12. Indemnity

12.1. The Supplier shall indemnify and hold harmless in full against all direct, indirect or consequential liabilities, all of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill, damages, injury, destruction or damage to property, contamination of the environment, costs and expenses, (including legal and other professional fees and expenses) awarded against or incurred or paid by the Purchaser as a result of or in connection with:

12.2. Defective workmanship, quality or materials

12.3. An infringement or alleged infringement of any intellectual; property rights caused by use, manufacture or supply of Goods; and

12.4. Any claim made against the Purchaser in respect of any liability, loss, damage, injury, cost or expense sustained by the Purchasers employees or agents or by any customer or third party to the extent that such liability, loss, damage injury, cost, expense was caused by, relates or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance under these Terms and Conditions by the Supplier.

12.5. If any sum is due from or payable by the Supplier as a result of a condition of clause 12, such sum may be deducted from any sum due or to become due to the Supplier under any order or transaction entered into by the Purchaser with the Supplier.

13. Insurance

The Supplier shall ensure adequate Insurance cover is maintained for any property belonging to the Purchaser in Supplier care, custody or control. Evidence of coverage shall be submitted upon request from Purchaser.

13.1. Limitation of Liability

In no event shall MK Test Systems be liable to Supplier, or Suppliers Assistants, or any third parties for any loss of profits or revenues, loss or interruption of use, lost or damaged data, reports, documentation or security or similar economic loss, or any indirect, special incidental, consequential, or similar damages, arising out of or in connection with the performance or non-performance of this agreement.

14. Force Majeure

14.1. For the purposes of this agreement, "Force Majeure Event" shall mean any event beyond the reasonable control of a party including, but not limited to, acts of God, war, riots, civil commotion, malicious damage, compliance with any law or government order, rule, regulation, accident, fire, flood, storm. For the avoidance of doubt, strikes, industrial action, third party insolvency or failure shall not be considered to be Force Majeure Events.

14.2. If the Supplier is prevented, hindered, or delayed from performing their obligations under this agreement by reason of a Force Majeure Event, the Supplier shall notify the Purchaser immediately in writing declaring the extent of the Force Majeure Event, the date of its commencement and the effects of the Force Majeure Event on the Suppliers ability to perform obligations under this agreement. The obligations of the Supplier shall thereupon be suspended for so long as the Force Majeure Event continues. The Supplier affected by the Force Majeure Event shall use its best endeavours to minimise the effects thereof and shall resume performance as soon as possible after removal of such event. If the period of non-performance exceeds 30 days from receipt of the notice of Force Majeure Event the Purchaser may terminate this agreement forthwith by serving notice of the same on the Supplier and shall be entitled for reimbursement for all expenditure incurred as a result of the termination.

15. Assignment Waiver

The failure of either party in any one or more instances to enforce one or more of the terms and conditions of this agreement or to exercise any of its rights or privileges, or the waiver of any breach of such terms or conditions, shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred.

16. Assignment and Subcontracting

The Supplier shall not assign, sub-contract or transfer the order or part thereof to any third party without the written consent of the Purchaser. The Supplier shall remain responsible for the sub-contractors acceptance, delivery, quality and omissions.

17. Obsolescence

The Supplier guarantees for all the products covered by this order, that if at any time during the supply of the Goods, the continuity of supply becomes compromised or is affected by obsolescence, that the Supplier will advise the Purchaser within 5 calendar days or sooner written notice of any issue in the continuity of supply and advise the Purchaser of any prospective alternative supply for approval. The Purchaser may within 30 calendar days following receipt of such notice, notify the Supplier in writing of its intention to return any or all products so discontinued or rendered obsolete which remain the inventory of the Purchaser and the Purchaser

shall receive a credit for the products equal to the price paid by for the same items provided on condition that the products are returned within 35 calendar days to the Supplier.

18. Governing Law

These terms and any agreement into which they are incorporated, and any noncontractual obligations shall be governed by and interpreted in accordance with English Law and the Purchaser and Supplier irrevocably submit to exclusive jurisdiction of the English Courts.

19. Retention of Records

All records relating to the manufacture of any goods supplied to the Purchaser will be stored in such a way as to prevent degradation/damage and will be made available upon request by the Purchaser. Records include any relevant drawings, work instructions specifications Certificate of Conformity and verification documents used to verify compliance of product this includes all sub-contractor and Sub-Supplier verification documents used in the manufacture of supplied products. All records must be retained for a minimum of 5 years after dispatch to the Purchaser.

20. Trade Compliance

The Supplier shall abide by and be in full compliance with all applicable export control laws and regulations. No information or materials shall be transferred to the Purchaser unless in full compliance with all applicable export control laws and regulations. The Supplier shall provide export documentation including tariff codes when requested.

21. Ethical Behavior

The Supplier shall:

21.1. Ensure ethical behaviour is a core value within the organisation. This shall include but not limited to: comply with all applicable laws (inclusive of Suppliers outside of UK), statues and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and not engage in any activity, practice, or conduct which could constitute an offence under the Bribery Act 2010.

21.2. Promptly report to the Purchaser any request or demand which if compelled with would amount to a breach of this clause.

21.3. Ensure that any person or Supplier associated with it who is providing goods or services in connection with this order does so only based on a formal agreement which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause .

21.4. Indemnify the Purchaser against any losses suffered as a consequence of any breach by the Supplier of this provision, which shall be deemed a material breach entitling the Purchaser to terminate this order immediately.
Comply with all applicable anti-slavery and human trafficking laws, statues and regulations in force including but not limited to the Modern Slavery Act 2015 and have and maintain throughout the term of this agreement its own policies and procedures to ensure its compliance.

21.5. Ensure that all Subcontractors and Suppliers shall comply with the Anti-Slavery policy and with all applicable anti-slavery and human trafficking laws, statues and regulations and codes in force including but not limited to the Modern Slavery Act 2015 and indemnify the Purchaser against any losses suffered as a consequence of any breach by the Supplier of this provision, which shall be deemed a material breach enabling the Purchaser to terminate this order immediately.

22. Amendment

These Terms and Conditions may be subject to amendment/revision. The Purchaser will provide reasonable notice to the Supplier of the amendment. If the Supplier does not confirm acceptance of the amendment within 5 working days; the Purchaser will deem that the Supplier has accepted the amendment.

23. Flow Downs and Special Conditions

Supplier Flow Downs and any special conditions additional to these standard Terms and Conditions will be communicated separately as part of the procurement process at time of RFQ and detailed within ANNEX A Flow Downs and Special Conditions.