

1. INTERPRETATION

- 1.1 The following definitions apply in these Terms:
- "Seller"** Cygnus Instruments Limited (registered in England under number 1699180) whose registered office is at Cygnus House, 30 Prince of Wales Road, Dorchester, Dorset, DT1 1PW, England;
- "Buyer"** the person who accepts the Seller's Written quotation for the sale of the Products or whose Written order for the Products is accepted by the Seller;
- "Contract"** the contract for the sale and purchase of the Products;
- "Incoterms"** the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made;
- "Products"** the Products (including any instalment of the Products or any parts for them, and including (where applicable) any design or engineering work carried out by the Seller where bespoke or modified Products are to be supplied) which the Seller is to supply in accordance with these Terms;
- "Terms"** the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;
- "Writing"** and any similar expression, includes facsimile transmission, email and comparable forms of electronic communication but not text messages.

1.2 A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

1.4 A reference in these terms to a "person" includes any natural person, company, limited liability partnership (or other corporate body) or partnership.

2. BASIS OF THE SALE

2.1 The Seller will sell and the Buyer will purchase the Products in accordance with the Seller's Written quotation (if accepted by the Buyer), or the Buyer's Written order (if accepted by the Seller) and (in either case) subject to these Terms which shall govern the Contract to the exclusion of any other terms.

2.2 No variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 In entering into the Contract the Buyer acknowledges that it does not rely on any verbal representations made by the Seller's employees or agents or any other representations save for those set out in these Terms (but nothing in these Terms affects the liability of either party for fraudulent misrepresentation).

2.4 Any advice or recommendation given by the Seller to the Buyer as to the use, application and storage of the Products which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability.

3. ORDERS AND SPECIFICATIONS

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by an Order Acknowledgment issued by the Seller. The Buyer shall be responsible for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Products.

3.2 The quantity, quality and description of the Products and any specification for them shall be as set out in the Seller's quotation.

3.3 If the Products are to be manufactured or any process is to be applied to the Products by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with, or paid or agreed to be paid by the Seller in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.4 The Seller reserves the right to make any changes in the specification of the Products, which do not materially affect their quality or performance.

3.5 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller. The Buyer shall indemnify the Seller in full against all costs, charges and expenses incurred by the Seller as a result of cancellation.

4. PRICE OF THE PRODUCTS

4.1 The price of the Products shall be the price listed in the Seller's published price list current at the date of acceptance of the order (or, if applicable the Seller's quoted price). All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 Unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis and the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

4.3 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

5. TERMS OF PAYMENT

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller may invoice the Buyer for the price of the Products on or at any time after acceptance of the Buyer's order for the relevant Products.

5.2 The Buyer shall pay the price of the Products (less any discount to which the Buyer is entitled, but without any other deduction) upon receipt of the Seller's Proforma Invoice, subject to any alternative arrangements as referred to on the relevant order confirmation. The time of payment of the price shall be of the essence of the Contract.

5.3 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to the Seller, the Seller may:

- 5.3.1 cancel the contract or suspend any further deliveries to the Buyer; and
- 5.3.2 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the UK statutory default rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6. DELIVERY

6.1 Delivery of the Products shall be made by the Buyer collecting the Products at the Seller's premises at any time after the Seller has notified the Buyer that the Products are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Products to that place.

6.2 Any dates quoted for delivery of the Products are approximate only and the Seller shall not be liable for any delay in delivery of the Products however caused.

6.3 Where the Products are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4 If the Seller fails to deliver the Products (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Products to replace those not delivered over the price of the Products.

6.5 If the Buyer fails to take delivery of the Products or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without limiting any other right or remedy available to the Seller, the Seller may:

- 6.5.1 store the Products until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 6.5.2 sell the Products at the best price readily obtainable and (after deducting all reasonable storage, insurance and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7. RISK AND PROPERTY

7.1 Risk of damage to or loss of the Products shall pass to the Buyer:

- 7.1.1 in the case of Products to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Products are available for collection; or
- 7.1.2 in the case of Products to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Products, the time when the Seller has tendered delivery of the Products.

7.2 Notwithstanding delivery and the passing of risk in the Products, or any other provision of these Terms, the property in the Products shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Products and all other Products agreed to be sold by the Seller to the Buyer for which payment is then due.

7.3 Until such time as the property in the Products passes to the Buyer (and provided the Products are still in existence and have not been resold), the Seller may at any time require the Buyer to deliver up the Products to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Products are stored and repossess the Products.

8. WARRANTIES AND LIABILITY

8.1 Subject to the following provisions, the Seller warrants that the Products will, at the time of delivery, correspond with their specification, be free from defects in workmanship and materials and be reasonably fit for any specific purpose made known to the Seller by the Buyer prior to the conclusion of the Contract. If the Products are bespoke or have (at the request of or by agreement with the Buyer) been modified by the Seller prior to sale, the Seller warrants (subject as aforesaid) that any design or engineering services carried out by the Seller will be supplied with reasonable care and skill.

8.2 In relation to Products manufactured by the Seller, a limited three year warranty is given by the Seller the terms of which are (where appropriate) supplied to the Buyer separately.

8.2.2 In relation to Products or equipment not manufactured by the Seller, the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller. In any such case the Seller will, if reasonably requested in Writing by the Buyer, use its reasonable endeavours to assist the Buyer in liaising with the manufacturer in connection with the enforcement of any such warranty or guarantee.

8.3 The warranties referred to above are given by the Seller subject to the following conditions:

- 8.3.1 the Seller shall be under no liability in respect of any defect in the Products arising from any drawing, design or specification supplied by the Buyer;
- 8.3.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in Writing), misuse or alteration or repair of the Products without the Seller's approval;
- 8.3.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Products has not been paid by the due date for payment;

8.4 Subject as expressly provided in these Terms, and except where the Products are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.5 A claim by the Buyer which is based on any defect in the quality or condition of the Products, or their failure to correspond with specification, or (where applicable) the supply by the Seller of design or engineering services other than with reasonable care and skill, must (whether or not delivery is refused by the Buyer) be notified to the Seller within 14 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within 7 days after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Products and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Products had been delivered in accordance with the Contract.

8.6 In the event that a valid claim in respect of any of the Products which is based on a defect in the quality or condition of the Products, or their failure to meet specification, or (where applicable) the supply by the Seller of design or engineering services other than with reasonable care and skill, is notified to the Seller in accordance with these Terms, the relevant Products must be returned (at the cost of the Buyer) to the Seller, following which the Seller may replace the Products (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Products (or a proportionate part of the price), in which case the Seller shall have no further liability to the Buyer.

8.7 Except in respect of death or personal injury caused by the Seller's negligence, or liability for defective products under the Consumer Protection Act 1987 the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract for purchase of the Products, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Products (including any delay in supplying or any failure to supply the Products in accordance with the Contract or at all) or their use or resale by the Buyer. **The entire liability of the Seller under or in connection with the Products shall not exceed the price of the Products, except as expressly provided in these Terms.**

8.8 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Products, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control: act of God, explosion, flood, pest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; or power failure or breakdown in machinery.

9. INSOLVENCY OF BUYER

9.1 This clause 9 applies if:

- 9.1.1 the Buyer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a moratorium comes into force in respect of the Buyer (within the meaning of the Insolvency Act 1986); or
- 9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 9.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 9.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

9.2 If this clause applies then, without limiting any other right or remedy available to the Seller, the Seller may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Products have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10. EXPORTED PRODUCTS

The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination and for the payment of any duties on them.

11. GENERAL

11.1 A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

11.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.3 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

11.4 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.

1. INTERPRETATION

1.1 The following definitions apply in these Terms:

"Cygnus"	Cygnus Instruments Limited (registered in England under number 1699180);
"Customer"	the person named on the Repair Quotation for whom Cygnus has agreed to provide the Service in accordance with these Terms;
"Contract"	the contract for the provision of the Service;
"Equipment"	the Equipment which is the subject of the Service;
"Repair Quotation"	the repair quotation sheet to which these Terms are appended or as separately supplied to the Customer;
"Service"	the equipment repair services to be provided by Cygnus for the Customer as described in the Repair Quotation;
"Terms"	the standard terms of repair service set out in this document and (unless the context otherwise requires) includes any special terms agreed in writing between the Supplier and the Customer;
"Writing"	and any similar expression includes facsimile transmission, email and comparable forms of communication but not text messages.

1.2 The headings in these Terms are for convenience only and shall not affect their interpretation.

2. SUPPLY OF THE SERVICE

2.1 Cygnus shall provide the Service to the Customer subject to these Terms. Any changes or additions to the Service or these Terms must be agreed in Writing by Cygnus and the Customer.
2.2 The Customer shall at its own expense supply Cygnus with all necessary data or other information relating to the Equipment and to any problems or failures in performance which the Customer has experienced with the Equipment to enable Cygnus to carry out the Service. The Customer shall ensure the accuracy of all such data and information. The Customer shall, at its own expense, retain duplicate copies of all such information supplied to Cygnus.

2.3 The Service shall be provided in accordance with the Repair Quotation, subject to these Terms.

2.4 Cygnus may at any time without notifying the Customer make any changes to the Service which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Service.

3. CHARGES

3.1 Subject to any special terms agreed, the Customer shall pay the price quoted on the Repair Quotation and any additional sums which are agreed between Cygnus and the Customer for the provision of the Service or which, in sole discretion of Cygnus, are required as a result of the Customer's instructions or lack of instructions, the inaccuracy of any Input Material or any other cause attributable to the Customer.

3.2 All charges quoted to the Customer for the provision of the Service are exclusive of any Value Added Tax, for which the Customer shall be additionally liable at the applicable rate from time to time.

3.3 Cygnus shall be entitled to invoice the Customer for the Service at any time following receipt of confirmation from the Customer of its request or order for the Service, or at other times agreed with the Customer.

All sums invoiced shall be paid by the Customer (together with any applicable Value Added Tax, and without any set-off or other deduction) in accordance with the invoice terms.

3.4 If payment is not made on the due date, Cygnus shall be entitled, without limiting any other rights it may have, to:

- (a) charge interest on the outstanding amount (both before and after any judgment) at the UK statutory default rate from the due date until the outstanding amount is paid in full; and/or
- (b) retain possession of the Equipment until payment is made in full.

4. PROPERTY AND RISK

4.1 During the provision of the Service, Cygnus shall hold the Equipment as the Customer's bailee only; at no time shall the property in the Equipment pass to Cygnus.

4.2 Risk of damage or loss to the Equipment shall remain with the Customer at all times both during the provision of the Service and while the Equipment is in transit. Accordingly, it remains the Customer's responsibility to ensure the Equipment against accidental loss or damage.

5. WARRANTIES AND LIABILITY

5.1 Cygnus warrants to the Customer that the Service will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the Repair Quotation. Where Cygnus supplies in connection with the provision of the Service any goods supplied by a third party, Cygnus does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Customer the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to Cygnus.

5.2 Cygnus shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any information or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Customer.

5.3 Except in respect of death or personal injury caused by Cygnus's negligence, or as expressly provided in these Terms, Cygnus shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of Cygnus, its servants or agents or otherwise) which arise out of or in connection with the provision of the Service or their use by the Customer, and the entire liability of Cygnus under or in connection with the Contract shall not exceed the amount of Cygnus's charges for the provision of the Service, except as expressly provided in these Terms.

5.4 Any date quoted for completion of the Service and/or despatch of the repaired equipment are approximate only and the Supplier shall not be liable for any delay in such despatch. Time for despatch shall not be of the essence of the Contract unless previously agreed in Writing by the Supplier.

5.5 Cygnus shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Cygnus's obligations in relation to the Service, if the delay or failure was due to any cause beyond Cygnus's reasonable control.

6. TERMINATION

6.1 No order for the Service which has been accepted by Cygnus may be cancelled by the Customer except with the agreement in Writing of Cygnus, and on such terms as Cygnus may specify.
6.2 Cygnus may (without limiting any other remedy) at any time terminate the Contract by giving Written notice to the Customer if the Customer commits any breach of the Contract and (if capable of remedy) fails to remedy the breach within 30 days after being required by Written notice to do so; if the Customer goes into liquidation, becomes bankrupt, has a receiver appointed, makes a composition or voluntary arrangement with its creditors or enters administration, or a moratorium comes into force in respect of the Customer (within the meaning of the Insolvency Act 1986), or if any insolvency event analogous to the foregoing in any other jurisdiction arises, in relation to the Customer, or if Cygnus reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

7. GENERAL

7.1 These Conditions (together with the terms, if any, set out in the Repair Quotation) constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in Writing between the parties. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

7.2 A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

7.3 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

7.4 If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.

7.5 English law shall apply to the Contract, and the parties agree to submit to the non-exclusive jurisdiction of the English courts.