



EM Systems Support Ltd
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TERMS AND CONDITIONS

General Terms of Sale and Supply, applicable from 1. January 2014

1. General

The terms and conditions set out below apply to the supply of all goods, services and quotations. In placing an order, the Customer acknowledges these general terms of contract, without any further express reference to these terms and conditions being made. Any terms of contract imposed by the Customer in contradiction of these General Terms of Sale and Supply shall not form part of the contract.

2. Quotations and entering into contract

2.1 In principle quotations are made without commitment. Unless otherwise specified, quotations are valid for 90 days from the date they are issued.

2.2 The sales contract shall come into effect only upon our order confirmation.

2.3 In the event that the Customer should withdraw from the sales and/or service contract without due legal reason, we shall be entitled - provided that we agree to the cancellation of the contract - to demand a lump sum in the amount of 15% of the value of the contract in compensation for the damages caused to us thereby. This lump sum amount may be established at a higher or lower amount if we are able to prove that the damages are higher or if the Customer is able to prove lesser damages.

3. Prices and delivery lead times

3.1 Unless otherwise agreed, our quoted prices apply ex works Alderley Park, Cheshire.

3.2 All prices stated are understood as being subject to statutory Value Added Tax at the rate applicable on the invoice date.

3.3 Delivery lead time is calculated from the date of confirmation of order. Unless otherwise agreed in a separate agreement, all delivery lead times stated are approximate only, and non-binding. In the event in a delay in delivery the Customer shall grant an appropriate extension to the delivery lead time and no liability to pay compensation shall be incurred by us. Such extension to the delivery lead time without incurring liability to pay compensation shall likewise apply in the event of Force Majeure and in the case of unforeseen events.

4. Dispatch, transfer of risk

4.1 Unless otherwise agreed, we deliver ex works Alderley Park, Cheshire, whereby the risk is transferred at our loading platform. If other terms of dispatch are agreed, Incoterms 2010 shall apply.

4.2 In the event that we undertake to ship the goods, in order that we might make a claim against the shipping insurer, we must be sent immediate notification of any damage or loss, accompanied by a damage report issued by the shipping company, immediately after delivery of the goods.

5. Terms of payment

5.1 a) The following terms of payment apply to deliveries of goods:

100% of the value of the order upon delivery payable 30 days following the date of invoice.

b) The following terms of payment apply to the supply of software:

100% of the value of the order upon delivery payable 30 days following the date of invoice.

c) The following terms of payment apply to service work, repairs and to the dispatch of spare parts:

100% of the value of the order upon delivery or execution of the work each payable 30 days following the date of invoice.

5.2 If, following a single previous reminder (30 days after the due date), the invoiced amount has not been paid, we shall be entitled to charge interest on the arrears at the rate of 8%

5.3 During the stated delivery lead times, we shall be entitled to make partial deliveries and to issue corresponding partial invoices. In all such cases the Customer will be informed in good time.

6. Erection and installation

6.1 Unless otherwise agreed, the products are erected, connected and put into operation by our own specialist staff.

6.2 Any building and installation work is not included in our service contract.

6.3 If dispatch and installation is prevented at the request of the Customer, or for reasons within the responsibility of the Customer, we shall be entitled to invoice for interest for storage at the rate of 0.5% of the value of the order, for each started month, beginning one month following the notification, unless the Customer provides evidence of lesser damages. The interest on storage shall be limited to 5% of the value of the order, unless evidence is provided that the costs are higher. If the acceptance date is not maintained at the request of the Customer, or for reasons within the responsibility of the Customer, the amount of the order remaining for payment shall become due immediately.

7. Liability for defects

7.1 We give a 12 month warranty on our new products from the date that the products are put into operation for the first time (commissioning), however this is for a maximum of 15 months following delivery; the warranty covers material and manufacturing defects. The warranty covers - at our election - repair or replacement free of charge, under the condition that:

- a. we are informed within 10 calendar days of the occurrence of an obvious defect, and
- b. the defect has not been caused by external damage, improper handling or improper attempts to repair.

7.2 During the warranty period we shall elect whether to repair faulty devices at the installation site or at our workshop. We shall bear any costs incurred.

7.3 Any devices manufactured by other manufacturers and supplied by us, shall be covered by the relevant warranty conditions issued by the manufacturer in question. We are not liable for any discrepancies with a third party supplier.

8. Software and software licence

8.1 Licence agreement:

The Customer shall receive a restricted licence together with a corresponding licence number entitling the Customer to use the software supplied. The Customer is granted an exclusive and non-transferable utilization right to programs and corresponding documentation and subsequent supplements thereto, for the operation in-house of the products for which the programs have been supplied. The Customer does not acquire ownership of the programs. The Customer shall not allow access to these programs, documentation or any subsequent supplements to third parties without our written consent, nor shall it make any copies or any other reproduction of them - even for its own ends. An exception to the above is the production of data backup copies. The Customer may not lease, pledge or lend the software or parts thereof. Moreover, the copying of the written material accompanying the software is likewise prohibited. Our software contains optional functionality which becomes available only by the acquisition of the relevant licence. The Customer is prohibited from reverse-developing, changing or deconstructing the software. Raith systems may contain sub-systems that are subject to other licence agreements. The relevant documentation is enclosed with the system.

8.2 Warranty:

We guarantee that the software provided to the Customer matches the program specifications, provided that the software has been installed on our corresponding systems (supplied PC) in accordance with our guidelines. A defect in the software shall be deemed to be a defect only if it can be reproduced at any time. We undertake to correct software faults that have a major effect on its contractual use, at our choice, and depending on the significance of the fault, by installing a corrective patch or by providing information as to how to eliminate or work round the effects of a fault. We make no warranty that the software will run without fault and without interruption in every combination selected by the Customer, but not specified by us. In the event that programs, software, interfaces etc. are made available to the Customer in the form of third-party products, we accept no guarantee or liability that the third-party software will operate without interruption and without error.

9. Liability and claims for compensation

9.1 We are not liable for compensation - for whatever reason in law. Particularly in the case of software supplied we are not liable for data loss or changes to data caused by program errors, nor are we under any obligation to carry out the necessary restoration of such data.

9.2 The above liability exclusion shall not apply in the following cases

- a) in the case of deliberate intent or gross negligence by us, our legal representatives or agents
- b) in the case of negligent breach of essential contractual obligations (cardinal obligations)
- c) in the case of malicious concealment of defects
- d) in the case of acquisition of guarantee
- e) in the case of culpable injury to life, body or health caused by us, our legal representatives or agents,

f) in the case of imperative liability under the terms of the Product Liability Act. In the event of negligent breach of essential contractual obligations (cardinal obligations) the claim is limited to the amount of foreseeable damage in standard contractual practice.
9.3 The regulations concerning the sale of consumer goods remain unaffected hereby; claims for compensation are excluded to the extent stated in paragraphs 9.1 and 9.2.

10. Reservation of property rights

The products and manufactured items remain in our ownership until all our claims due to us by the Customer arising from the business relationship have been settled in full. Before this time, the Customer is prohibited from assigning, transferring as security, and from reselling the items. Any intervention costs involved shall be charged to the ordering party. Any processing or re-forming by the Customer of property under retained ownership is always undertaken on our behalf. We reserve unrestricted property rights and copyright utilization rights over cost estimates, drawings and other documents. These must not be made available to third parties without our prior written consent.

11. Jurisdiction, applicable law

11.1 The place of jurisdiction for the business transaction is exclusively Alderley Park, Cheshire.

11.2 The place of performance of payment is Alderley Park, Cheshire; otherwise the place of performance is the place of delivery.

11.3 British law shall apply exclusively to the legal relationship between the parties; the UN Convention on Contracts for the International Sale of Goods shall not apply.

12. Data protection

Within the meaning of the German Federal Data Protection Act, we are entitled to process and to store data that we have received within the framework of the business relationship with the Customer, whether such data has emanated from the Customer itself, or from third parties.

13. Severability clause

In the event that a provision in these General Terms and Conditions of Sale and Supply, or one of the provisions in any other agreements should become ineffective in law, either in full or in part, or should lose its effectiveness in law at a later time, the validity of all the other provisions shall not be affected thereby. Another appropriate provision, coming closest to the commercial intent of the original provision, must be found to replace the ineffective provision.

14. Legal validity

The General Terms and Conditions of Sale and Supply shall come into effect on 1 January 2010.

The conditions of contract stated in the relevant order confirmations shall apply to orders existing prior to the date that these conditions came into effect.

For and on behalf of  *EM Systems Support Ltd.*

Agent for

RAITH
NANOFABRICATION

 **point electronic**