

THERMO ELECTRON CORPORATION UK TERMS AND CONDITIONS OF SALE

THE CUSTOMER'S ATTENTION IS DRAWN TO THE LIMITATION OF LIABILITY CONTAINED IN THESE TERMS AND CONDITIONS IN ADDITION TO THE SPECIFIC PROVISIONS REGARDING WARRANTIES

1. **General application and definitions**
  - 1.1 These terms and conditions ("Conditions") apply to all contracts for the sale of Goods or provision of Services between the Customer and the Company, no terms proffered by the Customer will apply. No contract and no obligation will come into existence until the Company has confirmed acceptance or has shipped Goods or commenced provision of the Services, in all cases subject to these Conditions. The headings in these Conditions are inserted for convenience only. They do not affect their interpretation or construction
  - 1.2 In these Conditions the following words shall have the meanings set opposite them:
    - 'Company' means the company identified on the invoice, order acknowledgement or as specified overleaf being the vendor;
    - 'Contract' means the order placed by the Customer subject to these Conditions
    - 'Customer' means the individual, firm or company with whom the Company contracts for the supply of Goods or Services;
    - 'Goods' means the whole or part of goods (including spare parts) to be supplied by the Company under any Contract;
    - 'Services' means any services which the Company is to provide in accordance with these terms.
  - 1.3 Nothing in these Conditions or any Contract shall restrict the statutory rights of any Customer who deals as a consumer. No variation of these terms and conditions will bind the Company unless in writing and signed by a member of its senior management team.
  - 1.4 All statements in literature or material published or delivered pre-Contract by or on behalf of the Company, either generally or in relation to any specific Contract, are for information and guidance only and shall not bind the Company unless specifically referred to in any Contract. All Goods and the provision of all Services are subject to normal operating tolerances. The Company reserves the right to make changes to Goods or to the provision of Services without notice to the Customer.
2. **Payment and prices**
  - 2.1 Unless otherwise stated on the invoice all invoices are due for payment in cleared funds within 30 days of the invoice date or, if earlier, the date on which Goods are despatched or made available for collection, or immediately on the occurrence of any event of default (as referred to in clause 3.1). The Company reserves the right to require payment in advance or by letter of credit drawn on a Bank acceptable to the Company. Time for payment shall be of the essence of the Contract. The Company shall be entitled to deliver invoices for the partial delivery of Goods and in advance of the performance of Services.
  - 2.2 Interest shall accrue on overdue payments (both before and after judgment) at 2% above Barclays Bank plc base lending rate from time to time, from the due date for payment until the date of actual receipt by the Company. The Customer will make payment in full without set off and will not be entitled to withhold or delay payment on account of any dispute.
  - 2.3 All prices are quoted exclusive of VAT, insurance, packing, dock or airport dues and delivery and any other incidental charges which the Customer will pay in addition.
  - 2.4 Prices quoted by the Company in writing remain open for acceptance for 30 days from date of issue but may be amended at any time to take account of any error or omission by the Company or any lack of information received from the Customer.
  - 2.5 Published prices for Services apply only to Services provided in mainland Great Britain, cover only the period quoted and assume that the Company does not need to take extra time to accommodate the Customer's site requirements. The Company will apply a minimum charge and will not charge in excess of 4 hours travelling time in respect of any single day on which the Services are provided.
3. **Cancellation, termination.**
  - 3.1 Without prejudice to the Company's right to receive the full purchase price, the Company may defer or cancel any deliveries of Goods or cancel or suspend the performance of Services and/or treat the Contract as determined if the Customer:
    - 3.1.1 fails to make full payment when due on any contract with the Company; or
    - 3.1.2 enters into any composition or arrangement with its creditors or otherwise becomes insolvent and/or unable to pay its debts as they fall due, or passes a resolution for winding up or suffers any court to make a winding up order; or
    - 3.1.3 breaches these Conditions or suffers any other event to occur which the Company considers may jeopardise its interest in the Goods or its prospects for being paid for Goods or Services.  
or where the Company becomes aware that the Goods and/or Services (and any related software and technology, including documents and other material containing technical data and other information) may be required in breach of export controls of the U.S. or other governments ("**events of default**").
  - 3.2 The Company may, in its absolute discretion, accept cancellation by the Customer, on such terms (including the payment of any costs and expenses incurred prior to cancellation) as the Company may require. To be effective any cancellation must be in writing and signed by a director of the Company.
4. **Liability**

THE CUSTOMER'S ATTENTION IS SPECIFICALLY DRAWN TO THE FOLLOWING LIMITATION OF THE COMPANY'S LIABILITY. THE CUSTOMER ACCEPTS THAT THESE LIMITATIONS ARE REASONABLE BEARING IN MIND THE DISPROPORTIONATELY LOW VALUE OF GOODS AS AGAINST THE POTENTIAL VALUE OF THE CUSTOMER'S LOSS AND THE CUSTOMER'S ABILITY TO PLACE INSURANCE COVER IN RESPECT OF SUCH LOSSES.

  - 4.1 Save as expressly provided herein and subject to Clause 4.2, the full extent of the Company's liability shall be as provided in this Clause 4.1:-
    - 4.1.1 the Company accepts that it will be liable for death and/or personal injury caused by its negligence without limit;
    - 4.1.2 the Company accepts that it will be liable for damage to the Customer's property or any other property situated at or adjacent to the worksite to the extent caused by the Company's negligence up to the limit specified in Clause 4.2, and the Customer agrees to release, indemnify and hold the Company harmless from and against any liability caused by the Customer's negligence; and
    - 4.1.3 where the Customer suffers loss attributable to a component part of the Goods or to a component supplied within the Services which was manufactured by a third party, the Company shall endeavour to pass on to the Customer any warranty it obtained in respect of the same.
  - 4.2 Notwithstanding anything in this Contract to the contrary and save for the liability of the Company for death or personal injury caused by its negligence, the liability of the Company under the Contract (whether by reason of breach of contract, tort or otherwise, including under indemnification provisions (if any)), but except for breach of warranty (the sole remedy for which shall be as provided in Clause 6), shall be limited to the lesser of £650,000 and the value of Goods or Services the subject of the Contract save that where such limitation would not be valid on grounds of unreasonableness by operation of law or otherwise then the entire liability of the Company under or in connection with the Contract shall not exceed the sum of £650,000 and, in any event, the Company shall not be liable for indirect loss of any kind, loss of business or revenue, loss of profits, loss of goodwill or loss of opportunity regardless of (a) the negligence (either sole or concurrent) of the Company; or (b) whether the Company has been informed of the possibility of such loss.
  - 4.3 The Company shall not be liable for any loss or damage whatsoever arising as a result of the Goods or the Services not conforming with any building, health and safety or other legislative or regulatory requirements in respect of any use to which the Goods or the product of the Services may be put unless such use has been notified to the Company and accepted by a director of the Company in writing prior to order acceptance.
5. **Delivery**
  - 5.1 Time for delivery of Goods or the provision of Services shall not be of the essence and the Customer shall not be entitled to delay or refuse payment should delivery be later than an established delivery date. The Company shall be entitled to deliver Goods early provided it has first informed the Customer.
  - 5.2 The Customer shall ensure that the Company is provided all necessary information to enable delivery and shall pay the Company's storage charges if it does not accept delivery. Risk in Goods will pass for deliveries in the UK at the Company's premises and for Goods to be delivered outside the UK on delivery FOB to the port notified.
- Goods**
6. **Goods Warranty**

THE CUSTOMER'S ATTENTION IS DRAWN TO THE SPECIFIC WARRANTY APPLICABLE TO THE GOODS, DETAILS OF WHICH ARE AVAILABLE FROM THE COMPANY, ON REQUEST. THE CUSTOMER SHOULD BE AWARE THAT DUE TO THE NATURE OF THE GOODS, SPECIALIST CONSIDERATION OF THE PERFORMANCE CHARACTERISTICS OF THE GOODS, THEIR SPECIFICATION, OPERATING CHARACTERISTICS AND THE APPLICATIONS TO WHICH THEY MAY NORMALLY BE PUT, IS ESSENTIAL. THE COMPANY DOES NOT WARRANT THAT THE GOODS ARE ERROR FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT. IN THE ABSENCE OF ANY SPECIFIC WARRANTY THE FOLLOWING WARRANTY SHALL APPLY.

  - 6.1 The Company warrants that the Goods will operate substantially in conformity with the Company's published specifications, when subjected to normal, proper and intended usage by properly trained personnel, for a period of 12 months after shipment to the Customer (the "Warranty Period"). The Company agrees during the Warranty Period, provided it is promptly notified in writing upon the discovery of any material defect and further provided that all costs of returning the defective Goods to the Company are pre-paid by the Customer, to repair or replace, at the Company's option, defective Goods so as to cause the same to operate in substantial conformance with the said specifications. Replacement parts may be new or refurbished, at the election of the Company. All replaced parts shall become the property of the Company. Shipment to the Customer of repaired or replacement Goods shall be made in accordance with the provisions of Clause 5 above. All consumable or expendable items (including without limitation) lamps, fuses, bulbs are expressly excluded from the warranty under this Clause. The Company's sole liability with respect to equipment, materials, parts or software furnished to the Company by its third party suppliers shall be limited to the assignment by the Company to the Customer of any such third party supplier's warranty, to the extent the same is assignable. In no event shall the Company have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) misuse, fault or negligence of or by or on behalf of the Customer, (iv) use of the Goods in a manner for which they were not designed, (v) causes external to the Goods such as, but not limited to, power failure or electrical power surges or (vi) use of the Goods in combination with equipment or software not supplied by the Company. If the Company determines that Goods for which the Customer has requested warranty services are not covered by the warranty hereunder, the Customer shall pay or reimburse the Company for all costs of investigating and responding to such request at the Company's then prevailing time and material rates. If the Company provides repair services or replacement parts that are not covered by the warranty provided in this Clause, the Customer shall pay the Company therefor at the Company's then prevailing time and material rates. Any installation, maintenance, repair, service, relocation or alteration to or of, or other tampering with, the Goods, performed by any person or entity other than the Company without the Company's prior written approval, or any use of replacement parts not supplied by the Company, shall immediately void and cancel all warranties with respect to the affected Goods.
  - 6.2 The obligation created by Clause 6.1 to repair or replace defective Goods shall be the sole remedy of the Customer in the event of defective Goods.
  - 6.3 The Company does not warrant that the Goods are fit for any particular purpose or intended use by the Customer, and it is for the Customer to satisfy itself that the Goods are so fit.
  - 6.4 The Customer hereby represents that it is a competent user of the class of Goods to be supplied hereunder, that it has satisfied or is able to satisfy itself that the Goods are safe to use, and that it will institute a safe system of working for the use of the Goods. The Customer shall indemnify the Company against any claim by any third party that the third party (or any fourth party on whose behalf the third party is acting) has suffered any loss, damage, personal injury or death by reason of or resulting from any negligence by the Customer or any defect in the design, specification or manufacture of the Goods.
  - 6.5 Where the Company agrees to repair or replace Goods or rectify Services any time specified for delivery or performance under the Contract will be extended for such period as the Company may reasonably require to accommodate such repair, replacement or rectification

- 6.6 The Company's warranty and Customer's remedies in these Conditions are in substitution for any other warranties, rights, obligations, representations, undertakings, liabilities, terms and/or conditions (whether they are express or implied, or arise in contract, tort or otherwise and irrespective of the negligence of Company, its employees or agents) in connection with the Goods and/or Services (including without limitation any relating to condition, performance, satisfactory quality, fitness for purpose, conformity with description or sample, care and skill or compliance with representations, but excluding implied statutory warranties relating to title) and all such warranties, rights, obligations, representations, liabilities, terms or conditions are hereby expressly excluded.
- 7 Customer's Duties**
- 7.1 The Goods, especially chemicals, may be dangerous if not properly used or stored and the appropriate precautions taken. The Customer accordingly agrees that it shall take all such steps as are reasonably practicable or usual to eliminate or reduce any risk to health and/or safety to which use of the Goods may give rise and acknowledges that where the Goods are manufactured to a design supplied by the Customer, the Company will not undertake any research as to the risks to health and/or safety which may arise from use or storage of the Goods. Where the Goods are manufactured to a design supplied by the Customer, the Customer shall comply with all the duties which may be implied at law on a designer and/or manufacturer of the Goods.
- 7.2 The Customer shall indemnify the Company against any claim, proceedings, costs, loss, damage or liability suffered by the Company as a result of any failure by the Customer, or any other person involved with the Goods, to take such steps or ensure compliance with the duties referred to in Clause 7.1 above.
- 8 Intellectual Property/Tools**
- 8.1 The Customer shall not use or deal with the Goods or the Company's catalogues, brochures, leaflets or lists so as to infringe, interfere with or weaken any rights of the Company under or in respect of any patents, processes, proprietary information, trademarks, registered designs, logos, artwork or copyright for or in connection with the Goods. The Company shall have no liability for the infringement of any rights of any third party arising from the use of the Goods in combination with other Goods, trademarks or processes not supplied by the Company. In particular, and without prejudice to the generality of the foregoing the Customer's use of any software supplied as part of or in connection with the Contract shall be subject to the Company's standard software licencing terms which are available on request.
- 8.2 Where the Goods are manufactured to the design or specification of the Customer, the Customer warrants that such design or specification does not infringe the rights of any third party.
- 8.3 Tools used in the manufacture of the Goods remain the property of the Company unless the Customer is invoiced for and pays the entire cost of tooling. The use, safekeeping and maintenance of the Customer's tools (even if in the Company's possession) shall be at the Customer's risk. If, after reasonable notice the Customer fails to remove any tools in the Company's possession the Company shall be entitled to destroy or otherwise dispose of the tools without payment or compensation to the Customer.
- 9 Passing of title**
- 9.1 The Goods shall remain the Company's property until all payments to be made by the Customer under the Contract and any other contract between the Company and the Customer and on any other account whatsoever have been made in full and unconditionally. Whilst the Company's ownership continues the Customer shall keep the Goods labelled as belonging to the Company and separate and identifiable from all other goods in its possession as bailee for the Company. The Customer shall where any sums remain payable to the Company, permit the Company (and anyone acting on its behalf) to enter onto any premises in which Goods (or any products incorporating Goods) are located to recover them
- 9.2 Prior to the payment of the full amount for such Goods, the Customer may only re-sell the Goods to the Customer's customers in the ordinary course of its business as a fiduciary and trustee for the Company. In the event of any resale by the Customer of the Goods the Company's beneficial entitlement shall attach to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefor shall be assigned to the Company and until such assignment shall be held on trust in a separate identified account for the Company by the Customer and such proceeds shall not be mingled with other moneys or paid into any overdrawn bank account and shall at all times be identifiable as the Company's moneys.
- 9.3 Without prejudice to the equitable rules as to tracing, in the event of failure to pay the price in accordance with the Contract the Company shall have power to re-sell the Goods, such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise and for such purpose the Company and its servants and agents may forthwith enter upon any premises or land occupied or owned by the Customer to remove the Goods.
- 9.4 Pending payment of the full purchase price of the Goods the Customer shall at all times keep the Goods comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business carried on by the Customer in an amount at least equal to the balance of the price for the same from time to time remaining outstanding. The policy shall bear an endorsement recording the Company's interest.
- Services**
- 10 Service Warranty**
- THE CUSTOMER'S ATTENTION IS DRAWN TO THE SPECIFIC WARRANTY APPLICABLE TO THE PROVISION OF SERVICES UNDER THE CONTRACT, DETAILS OF WHICH ARE AVAILABLE FROM THE COMPANY, ON REQUEST.  
IN THE ABSENCE OF ANY SPECIFIC WARRANTY THE FOLLOWING WARRANTY SHALL APPLY.
- 10.1. The Company warrants that the Services provided under this Contract will comply with the requirements expressly set forth herein and will otherwise be performed in accordance with generally accepted industry practice by competent personnel. In the event that any Services fail to comply with the foregoing standard, the Company will, at its option, provided it is promptly notified in writing upon the discovery of such failure, either repeat such non-complying Services at no additional charge or refund to the Customer all fees paid by the Customer with respect to such non-complying Services. Notwithstanding the foregoing, the cost of any such repeat of Services which generates results consistent with the original results will be at Customer's expense.
- 10.2. The Company's obligation to repeat any Services with respect to a given sample will be contingent upon the Customer providing (at the Customer's sole cost and expense) such additional sample(s) facilities, access and resources as may be reasonably requested by the Company. The foregoing warranty is the sole and exclusive warranty given by the Company in connection with the Services performed hereunder, and is in lieu of all other warranties of any kind, whether express or implied, oral or written.
- 11 Loan/Hire Equipment**
- Should the terms of any current Contract entitle the Customer to possession of equipment or Goods on loan or hire supplied by the Company, the Customer shall ensure that such equipment or Goods are covered by all risks insurance and that such equipment or Goods are returned to the Company at the end of the loan or hire period, suitably packed and insured. Carriage costs for the return of such equipment or Goods will be borne by the Company.
- 12 Intellectual Property**
- 12.1 The property and any copyright or other intellectual property rights in any information, reports, drawings, designs or written or electronic information or other products generated or used by the Company in the course of the provision of the Services (hereinafter referred to as the "Materials") shall be and remain vested in the Company. Subject to the Company receiving payment of all monies due under the Contract, the Company grants to the Customer the right to use the Materials for the purposes of utilising the Services.
- 12.2 The Customer shall not use the Materials for any other purpose without the prior written consent of the Company and upon such terms as may be agreed by the Company. The Company shall not be liable for the use by any person of the Materials for any other purpose other than that for which the same were prepared by or on behalf of the Company.
- Miscellaneous**
- 13 If the Company is delayed or prevented from delivering the Goods or supplying the Services due to circumstances beyond its control including, without limitation, war, governmental or parliamentary restrictions, civil commotion or insurrection, strike, lock-out, fire, flood, tempest or abnormal weather conditions, explosion, labour disturbances, trade disputes, damage to or destruction of the Goods, breakdown of machinery, shortages of labour or of raw materials or Act of God or due to any other cause beyond the control of the Company, the Company may cancel or suspend delivery of Goods or the supply of Services comprised in the Customer's order without notice and without liability.
- 14 The Company may deliver Goods or supply Services in parts or in instalments and the Customer shall be obliged to pay for each such part or instalment as provided herein.
- 15 These Conditions and any Contract shall be governed by and construed in accordance with English Law. Customer hereby agrees, for the Company's exclusive benefit, that the English Courts shall have sole jurisdiction to hear all claims or proceedings connected with the Goods, the Services and any Contract. The Company may nevertheless bring claims in any other courts of competent jurisdiction.
- 16 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the remaining provisions and the remainder of the provision in question shall not be affected.
- 17 Failure by the Company to enforce strict compliance with these Conditions by the Customer will not constitute a waiver of any of these Conditions.
- 18 Notices must be in writing to the Company's or the Customer's address and shall be deemed delivered on the first working day after sending by hand or (subject to confirmation of transmission) or facsimile, or, within the UK, on the third working day after being placed prepaid in the first class post to the Company's or the Customer's address in the United Kingdom.
- 19 The Company may assign any Contract without the Customer's consent. The Contract may not be assigned by Customer without the Company's prior written consent. No term of this agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.
- 20 Export Restrictions**
- 20.1 It is the obligation of the Customer to obtain and maintain, at its own expense, any non-United States governmental consents, authorisations, approvals, filings, permits or licenses required for it to export the Goods and for each of the Customer and the Company to exercise its rights and to discharge its obligations under the Contract including, without limitation, all consents and filings with any non-United States governmental body.
- 20.2. The Customer acknowledges that the Goods and all related technical information, documents and materials may be subject to export controls under the U.S. Export Administration Act of 1969, as amended, and the rules and regulations promulgated from time to time thereunder and under the laws of other countries including the United Kingdom (collectively, the "Export Act"), restricting exports and re-exports of software media, technical data and direct products of technical data. The Customer (i) shall comply strictly with all legal requirements established under the Export Act, (ii) shall cooperate fully with the Company in any official or unofficial audit or inspection related to the Export Act, and (iii) shall not distribute or supply the Goods to any person if there is reason to believe that such person intends to export, re-export or otherwise take such Goods to, or use such Goods in, any country in violation of the Export Act. Without limitation to the foregoing, the Customer agrees to commit no act that, directly or indirectly, would violate any United States law, regulations, treaty or agreements, to which the United States adheres or complies or those of any other country including the United Kingdom, relating to the export or re-export of any Goods.
- 20.3. The Customer agrees not knowingly to export or re-export Goods or any part thereof, directly or indirectly, without first obtaining permission to do so from the United States Office of Export Administration and other appropriate governmental (including the Governments of other countries including the United Kingdom) agencies, into any of those countries listed from time to time at the time of any shipment of the Goods in Title 15 of the code of Federal Regulations of the United States of America (or any successor or additional provision) as "prohibited or restricted" countries or any other country to which such exports of re-exports may be restricted (collectively, the "Prohibited Countries"). The Customer agrees not to distribute any Goods or any part thereof to any person if the Customer has reason to believe that such person intends to export, re-export or otherwise take the same to, or to use the same in, any of the Prohibited Countries; and the Customer agrees to seek reasonable written assurances in the form of binding covenants from customers as may from time to time be requested by the Company. The Customer agrees to indemnify and to hold the Company harmless from, or in connection with, any violation of the provisions of this clause by the Customer or its customers.