



HORIBA

Explore the future

Terms & Conditions

of Sale of Goods and Supply of Services

HORIBA UK Limited

CONDITIONS OF SALE OF GOODS AND SUPPLY OF SERVICES

1 DEFINITIONS

- 1.1. "Seller" means HORIBA UK Limited.
- 1.2. "Buyer" means the person, firm, or company whose order is accepted by the Seller.
- 1.3. "Goods" means all those goods, materials and equipment, including Software, specified on the Purchase Order and which are to be supplied to the Buyer by the Seller under these conditions.
- 1.4. "Contract" means a contract for the purchase and sale of Goods and/or supply of Services made in accordance with Clauses 2.2 and 2.3 of these conditions.
- 1.5. "Purchase Order" means a purchase order or order form provided by the Buyer placing an order with the Seller for Goods and/or Services on the terms set out in a quotation from the Seller.
- 1.6. "Services" means maintenance and related services in relation to the Goods, as specified in the Contract.
- 1.7. "Software" means any Goods which comprise a computer program or other software.
- 1.8. Any reference in these conditions to any statute or provision of a statute shall be construed as a reference to that statute or provision of a statute as amended, re-enacted or extended at the relevant time.
- 1.9. The headings in these conditions are for convenience only and shall not affect their interpretation.

2 BASIS FOR SALE

- 2.1. All Goods sold and all Services provided by the Seller are sold and provided subject to these conditions and these conditions shall be the sole terms and conditions of any sale of Goods or provision of Services by the Seller to the Buyer. Terms and conditions on the Buyer's Purchase Order or other document or otherwise shall not be binding on the Seller.



- 2.2. The following steps shall govern the formation of a Contract:
 - 2.2.1 the Buyer shall make an enquiry in respect of Goods and/or Services provided by the Seller;
 - 2.2.2 the Seller shall issue a written quotation specifying the price for the Goods and/or Services required by the Buyer;
 - 2.2.3 the Buyer shall provide the Seller with a Purchase Order in respect of the Goods and/or Services specified in the Seller's quotation which shall reference the date of the quotation and the quotation number;
 - 2.2.4 the Seller shall accept the Buyer's Purchase Order by issuing a written order of acceptance to the Buyer.
- 2.3. No Contract shall be made until the Seller has accepted the Buyer's Purchase Order by issuing a written order of acceptance. All Purchase Orders accepted by the Seller shall be subject to these conditions. The Seller shall not be obliged to accept any Purchase Order issued by the Buyer.
- 2.4. No amendment, variation or addition to any Contract or these conditions shall be binding unless accepted in writing by the Seller and signed by the duly authorized representatives of the parties.
- 2.5. No representation, undertaking or promise shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to the date of any Contract except as expressly stated in that Contract. The Buyer shall not have any remedy in respect of any untrue statement made by the Seller on which the Buyer relied in entering into a Contract (unless such statement was made fraudulently or was as to a fundamental matter, including a matter fundamental to the Seller's ability to perform its obligations under the Contract) and the Buyer's only remedies shall be for breach of contract as provided for in these Conditions. Misrepresentations as to fundamental matters shall be subject to Clause 12.

3 ORDERS AND SPECIFICATIONS

- 3.1. The prices, quantities and delivery times stated in quotations are not binding on the Seller.
- 3.2. No Purchase Order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representatives in accordance with Clauses 2.2 and 2.3 of these conditions.
- 3.3. The Seller reserves the right to make any changes in the specification of the Goods or the Services which are required to conform with any applicable law or, where the Goods or Services have to be supplied to the Seller's specification, which do not materially affect the quality or performance.
- 3.4. No Purchase Order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), cost (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- 3.5. Purchase Orders are accepted by the Seller subject to the availability of Goods for delivery or Services for performance.
- 3.6. All drawings, photographs, illustrations, performance data, dimensions, weights and other technical information and particulars of the Goods are given by the Seller in the belief that they are as accurate

as reasonably possible but are not to be treated as binding or forming part of the Contract. The Seller reserves the right to alter the design and specifications of the Goods at any time without notice.

4 SERVICES

- 4.1. The Seller shall perform the Services in accordance with these conditions.
- 4.2. The Seller reserves the right to use persons other than its employees to perform the Services. The Seller accepts full responsibility for the work done by such persons in accordance with these conditions.
- 4.3. The Seller shall perform the Services with reasonable care and skill using persons of appropriate expertise and, to this end, shall use reasonable endeavours to achieve any specified objective.
- 4.4. The Seller shall have no obligation to perform any work or undertake any activity which does not comprise part of the Services. If the Buyer requests and the Seller agrees to perform any such extra work, then such work will be charged at the Seller's prevailing commercial rates.

5 PRICE

- 5.1. Unless otherwise agreed in writing by the parties, the prices of the Goods and the Services shall (where such quote remains valid at the time the Buyer places their order) be the Seller's quoted prices or, where no prices have been quoted or where the relevant quote has expired, the prices listed in the published price list current at the date of delivery or performance as the case may be. Quoted prices shall remain valid for the length of time stated on the quotation form, or, if none is stated, for thirty days from the date of the quotation form.
- 5.2. The Seller reserves the right, by giving notice to the Buyer at any time before delivery or performance, as the case may be, to increase the prices of the Goods and/or of the Services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alterations in taxation, alteration of duties, significant increase in the cost of labour, materials or other cost of manufacture, any change of delivery dates, quantities or specifications of the Goods which is requested by the Buyer, any variation to the Services which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions) .
- 5.3. Unless otherwise agreed in writing, all prices are given by the Seller on an ex works basis and, where the Seller agrees to deliver the Goods or to perform the Services otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance, and all reasonable travel, accommodation and subsistence expenses.
- 5.4. Unless otherwise agreed in writing, the Seller shall package the Goods as the Seller in its discretion considers appropriate in the light of the nature of the Goods and the method of transportation. All returnable packing cases, pallets and other containers and packing for the Goods provided to the Buyer will be charged to the Buyer additionally at the Seller's current prices, but such charge will be refunded by the Seller to the Buyer if the packing materials are returned to the Seller's designated warehouse carriage paid and in good condition within 30 days of their despatch to the Buyer. Any special packaging will be at the Buyer's expense and may delay delivery.
- 5.5. Prices quoted are exclusive of Value Added Tax and all other taxes, duties and expenses in respect of the Goods and/or the Services, all of which shall be payable by the Buyer at the prevailing rate unless otherwise stipulated in writing by the Seller.

6 PAYMENT

- 6.1. The Seller shall be entitled to invoice the Buyer for the price of any Goods and/or Services, together with any packaging, transport, insurance, VAT and other charges, taxes and duties payable, at the time specified in the Seller's written quotation or, if not so specified, at anytime on or after delivery.
- 6.2. Unless otherwise agreed in writing, for the provision of the Services, and for Goods delivered within the UK, payment by the Buyer shall be made within 30 days of the date of the invoice and for Goods exported and delivered outside the UK payment by the Buyer shall be by irrevocable letter of credit, confirmed by a first class London bank and delivered to the Seller at least 60 days prior to the scheduled delivery date.
- 6.3. The time of payment shall be of the essence of the Contract.
- 6.4. If payment is not made when due, the Seller may, without prejudice to its other rights, charge interest at an annual rate of 3% above the current base rate of HSBC to be calculated on a day to day basis on the balance outstanding until payment is made in full.
- 6.5. The Buyer shall not be entitled to and shall not purport to set off, withhold or deduct any payments claimed or due to the Buyer under this Contract or any other contract between the Buyer and the Seller.

7 DELIVERY

- 7.1. Delivery of the Goods shall be effected at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place of delivery is agreed by the Seller in writing, by the Seller delivering the Goods at that place.
- 7.2. Any dates stated for despatch or delivery of the Goods are approximate only and the Seller accepts no liability for loss or damage, either direct, indirect or consequential, resulting from such delay or failure to deliver the Goods for any reason whatsoever. Time for delivery shall not be of the essence.
- 7.3. Any delay in delivering the Goods shall not give rise to a right by the Buyer to treat the Contract as repudiated or to reject the Goods.
- 7.4. If the Buyer refuses or fails to take delivery of the Goods at the time stated for delivery the Seller shall be entitled, at its discretion, to store the Goods at the risk of the Buyer. The Buyer shall in addition pay all costs and expenses of such storage and any additional costs of carriage incurred.
- 7.5. The Seller reserves the right to deliver by instalments at its discretion. These conditions shall apply to each such delivery.
- 7.6. Where the Seller agrees to deliver the Goods at a place other than the Seller's premises:
 - 7.6.1. The Buyer shall inspect the Goods on delivery and shall notify the Seller in writing within 7 days of any shortages or any damage in transit.
 - 7.6.2. The Buyer shall also on delivery mark on the carrier's receipt note the details of any visible damage in transit.
 - 7.6.3. The Seller will not consider any claims made by the Buyer in respect of shortages or damage in transit unless these conditions are observed.

7.7. Where it has been agreed in writing that acceptance of Software shall be subject to an acceptance test, then:-

- 7.7.1. the test shall commence as soon as reasonably practicable after delivery to the Buyer (and in any event within 30 days thereafter, unless otherwise agreed). The Buyer shall use its reasonable endeavours to complete the test within the period of time agreed between the parties;
- 7.7.2. the Buyer shall, without charge, make available all staff, materials and facilities which the Seller deems necessary for the performance of the test;
- 7.7.3. the Seller shall be entitled to have present as many authorised representatives as it reasonably considers necessary;
- 7.7.4. the test shall be regarded as having been successfully completed on the earliest of the following events:
 - the next working day after the Seller has notified the Buyer of successful completion unless the Buyer has given written details of any material defect in the Software identified as a result of carrying out the test; or
 - in the event that the Buyer provides the Seller with written details of a material defect in the Software identified as a result of carrying out the test the next working day after the Seller has remedied the material defect, carried out the acceptance test again and notified the Buyer of successful completion of that test.

8 DAMAGED GOODS

- 8.1. If the Seller is satisfied that any damage to the Goods occurred prior to delivery, the Seller shall at its option:-
- Repair or replace any Goods or part of the Goods so damaged; or
 - Grant the Buyer credit in respect thereof in such amount as may be agreed with the Buyer, or if the parties cannot agree on an appropriate amount, as decided by the Seller at its reasonable discretion.
- 8.2. The Seller's liability shall be limited to repairing, replacing or granting credit as in clause 9.1 below.

9 SHORT DELIVERY

- 9.1. If the Seller is satisfied that some or all of the Goods forming the basis of a Contract have not been delivered in the quantities ordered, the Seller shall at its option:
- Make up any short delivery by despatching to the Buyer such Goods as the Seller is satisfied were not delivered; or
 - Grant the Buyer credit in respect thereof to the value of the Goods not delivered.
- 9.2. The Seller's liability shall be limited to making up the delivery or granting credit as in clause 9.1 above.

10 RISK AND TITLE

- 10.1. The risk of loss and damage to the Goods shall pass to the Buyer immediately upon delivery.
- 10.2. In the case of Goods other than Software, until the Seller has been paid in full for the Goods supplied to the Buyer under the Contract or any other contract between them:-
- Notwithstanding delivery and the passing of risk, the Seller shall retain legal and beneficial title to the Goods supplied which the Buyer shall hold as bailee and fiduciary for the Seller;
 - The Buyer shall store and maintain records of the Goods in such a way that they are clearly identifiable as the Seller's property;
 - The Buyer shall keep the Goods separate from those of the Buyer and third parties and shall keep the Goods properly stored, protected and insured;
 - The Buyer may not sell, part with possession of, change the character of, convert or otherwise dispose of or handle the Goods;
 - The Seller shall be entitled to trace the proceeds of any sale of Goods owned by the Seller and any insurance proceeds received in respect of Goods owned by the Seller. Such proceeds shall be paid into a separate bank account and shall be held by the Buyer on trust for the Seller;
 - The Seller shall have the right, without prejudice to any other remedies, to enter, without prior notice, any premises, and to repossess and dispose of any Goods owned by it.
- 10.3. If the Buyer enters into, or does anything to enter into, an agreement with its creditors, liquidation, receivership, administrative receivership or administration, it must give immediate written notice to the Seller and surrender possession of the Goods to the Seller.
- 10.4. Nothing in this clause shall prevent the Seller from suing for the price when due.
- 10.5. The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall without prejudice to any other right or remedy of the Seller forthwith become due and payable.

11 SOFTWARE

- 11.1. The Software and all copyright and other intellectual property rights therein shall remain the exclusive property of the Seller. On delivery of Software to the Buyer, the Seller shall grant the Buyer a non-exclusive, non-assignable, non-transferable licence in the country in which delivery was made to use the Software solely for the Buyer's own internal business purposes and solely on the equipment supplied with the Software.
- 11.2. The Buyer shall not copy any Software other than for back-up purposes, and shall keep the Seller advised of the location of any Software and back-up copy.
- 11.3. The Buyer shall not alter, merge, modify or adapt any Software, including disassembling or decompiling, and shall not incorporate the Software in any other software, without the Seller's prior written consent.

- 11.4. The Seller does not undertake any maintenance or other service obligation with respect to any Software unless otherwise agreed in writing.
- 11.5. The aforesaid licence is without limit of period but the Seller may immediately terminate any licence to use any Software by notice in writing to the Buyer if the Buyer breaches the terms of the licence or the Contract under which the Software has been supplied, whereupon the Buyer shall, at the Seller's direction, immediately return to the Seller or destroy the Software and any back-up copy or copies, and certify in writing to the Seller that this has been done.
- 11.6. The interface information necessary to achieve interoperability of the Software with independently created computer programs will be provided by the Seller on request on payment of the Seller's reasonable costs and expenses for procuring and supplying such information.

12 WARRANTIES AND LIABILITY

- 12.1. The Seller warrants that it shall perform the Services with reasonable care and skill using persons of appropriate expertise.
- 12.2. The Seller warrants that, insofar as they have been manufactured by the Seller, the Goods will correspond with their specification at the time of delivery and will be free from defects in materials and workmanship for a period of 12 months from the date of delivery or, if relevant, acceptance, provided that, where the Goods comprise or contain Software manufactured by the Seller, the Seller warrants only that such Software will conform to specifications, and does not warrant that the Software will meet the Buyer's requirements or that its operation will be interrupted or error-free. The Seller will at its option refund the purchase price of or repair or replace free of charge part of the Goods (including Software) manufactured by it which its examination confirms are defective provided:
 - The defect was notified to the Seller within 7 days from the date of delivery, or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure, and in any event within 12 months of acceptance;
 - The defects are not caused by fair wear and tear, neglect, misuse or improper adjustment;
 - The Buyer has used the Goods strictly in accordance with any instructions or recommendations of the Seller or any tolerances, capacity limits or other specifications of the Goods laid down by the Seller whether orally or in writing;
 - Any defect in the Goods does not arise from any drawing, design or specification applied by the Buyer;
 - The total price for the Goods has been paid by the due date for payment; and
 - The Buyer has allowed the Seller reasonable opportunity to inspect the Goods and such inspection confirms that the Goods are defective.
- 12.3. In so far as the Goods are or comprise or contain equipment or components not manufactured or produced by the Seller, the Buyer shall only be entitled to such warranty or other benefit as the Seller has received from the manufacturer.
- 12.4. In no circumstance shall the Seller's liability to the Buyer for breach of any Contract exceed the price paid for the Goods or the Services under the Contract with respect to which the claim is made.
- 12.5. In no circumstance shall the Buyer be entitled to reject the Goods, delay acceptance or refuse payment of the price other than as expressly provided in these conditions.

- 12.6. These conditions set forth the full extent of the Seller's obligations and liabilities in respect of the supply of the Goods and the Services. Except as expressly provided for in these conditions, all warranties and conditions express, implied, statutory or otherwise as to the Services or as to quality or fitness of any of the Goods for any particular purposes or of any other kind except as to title are hereby excluded.
- 12.7. The Seller shall not be liable to the Buyer for any loss of profit, loss of income, loss of business, loss of revenue, loss of goodwill, or for any indirect or consequential loss or damage of any kind, in each case howsoever arising, whether such damage was foreseeable or in the contemplation of the parties and whether arising in tort (Including negligence) contract or otherwise.
- 12.8. 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 Goods or the Services, if the delay or failure was due to any cause beyond the Seller's reasonable control, including any strikes, lock-outs or other industrial action or trade disputes (whether involving employees of the Seller or of the third party).
- 12.9. Nothing in these conditions, including, for the avoidance of doubt, this Clause 12, or any Contract shall exclude or in any way limit either party's liability to the other for:
 - (a) fraud;
 - (b) death or personal injury caused by its negligence (including negligence as defined in section 1 of the Unfair Contract Terms Act 1977);
 - (c) breach of terms regarding title implied by section 12 of the Sale of Goods Act 1979 and/or section 2 of the Supply of Goods and Services Act 1982; or (d) any liability to the extent the same may not be excluded or limited as a matter of law.

13 INDEMNITY

- 13.1. The Buyer shall indemnify the Seller from and against all costs, claims, damages, expenses and losses whether direct, indirect, special, consequential or otherwise arising out of or in any way connected with the use by the Seller of the Buyer's specifications or any failure of the Buyer to comply with its obligations under the Contract in all respects or any improper use of the Goods by the Buyer.

14 INTELLECTUAL PROPERTY

- 14.1. Notwithstanding the delivery and the passing of title in any Goods, nothing in any Contract shall have the effect of granting or transferring to, or vesting in the Buyer, any intellectual property rights in or to any Goods or Services, other than rights to use Software as described in Clause 11.
- 14.2. All technical data, drawings, reports, documents and information whatsoever which the Seller submits to the Buyer in connection with the Contract (and the copyright therein) shall remain the Seller's property and must not be copied or shown to any third party without the Seller's express consent being obtained in advance and in any event upon the condition of a similar condition being imposed upon any third party.
- 14.3. So far as the Seller is aware, the Goods do not infringe any existing patent or designs or any other intellectual property rights but no warranty express or implied is given in respect of such infringement. However, in the event of any claim being made or action being brought against the Buyer in respect of any infringement of patents or designs or other intellectual property rights by the use or sale of the Goods the Buyer shall notify the Seller immediately and the Seller may at its own expense conduct

through its own lawyers and experts all negotiations in settlement of the same or any litigation that may arise therefrom.

- 14.4. This Clause 14 states the entire obligation and liability of the Seller and the sole remedy of the Buyer in respect of any infringement or alleged infringement of any intellectual property rights arising from the purchase, use or resale of any Goods.

15 THIRD PARTY RIGHTS

- 15.1. The Contracts (Rights of Third Parties) Act 1999 shall not apply to any Contract.

16 TERMINATION

- 16.1. The Seller shall, without prejudice to any other right or remedy available to the Seller, and by giving notice in writing to the Buyer, be entitled to suspend or cancel any Services or any uncompleted part of the Contract or stop any Goods in transit or require any payment in advance or satisfactory security for further deliveries under the Contract in the event that:

- 16.1.1. The Buyer defaults in any payment or is otherwise in breach of its obligations to the Seller under the Contract or under any other contract with the Seller; or
- 16.1.2. The Buyer makes a voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation; or
- 16.1.3. An encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Buyer; or
- 16.1.4. The Buyer ceases, or threatens to cease, to carry on business; or
- 16.1.5. The Seller has reasonable cause to believe that any of these events is likely to occur and notifies the Buyer accordingly.

17 ASSIGNMENT

- 17.1. The Buyer shall not assign, novate or transfer or purport to assign, novate or transfer its rights and/or obligations under any Contract it to any other person without the prior written consent of the Seller.
- 17.2. The Seller may assign, novate or transfer its rights and/or obligations under any Contract without the Buyer's consent

18 PERFORMANCE

- 18.1. The Seller shall be entitled to arrange for its obligations under these conditions to be performed by a subcontractor or other representative.

19 WAIVER

- 19.1. The failure of the Seller to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right and shall in no way affect the Seller's right to enforce such rights later.

20 SEVERABILITY

20.1. 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 other provisions of these conditions and the remainder of the provision in question shall not be affected thereby.

21 CONFIDENTIALITY

21.1. Each party agrees that it will keep confidential, will not use for its own purposes and will not, without the prior written consent of the other party, disclose to any third party, any information of a confidential nature belonging or relating to the other party which may become known to it unless such information is or becomes public knowledge (other than by breach of this Clause) or is required to be disclosed by order of a competent authority.

22 GOVERNING LAW

22.1. These conditions and the construction, validity and performance of each Contract and any non-contractual obligations arising under or in connection with them shall be governed by English law and the parties shall accept the jurisdiction of the English courts

23 MEDICAL REAGENTS RETURNS POLICY (applies specifically to our Medical segment product range)

Purchasers of HORIBA UK Limited's reagents must report all products that are damaged or defective upon delivery, for full replacement.

The Purchaser should contact HORIBA UK Limited's Medical Sales Administration team (sales.hduk@horiba.com) within seven (7) calendar days from the day the Purchaser receives the Products.

A return authorisation must be obtained from HORIBA UK Limited for all returns. No returns will be accepted, and no credit can be issued, unless a return has been authorised.

Upon safe receipt of any Products authorised for Return, a Credit Note for the original purchase price or a replacement issued.

For any Product ordered in error but maintained in the appropriate manner HORIBA UK Limited may agree to a Credit Note being issued provided the Product has been kept in the prescribed manner, suitable for resale and returned in good condition within seven (7) calendar days of receiving a return authorisation. The Credit Note for any Product ordered in error will be subject to a deduction of 10% to cover the additional administration costs. Delivery charges will not be reimbursed.

If an error by HORIBA UK Limited result in the shipment of incorrect Product, HORIBA UK Limited will re-ship the correct products per Purchaser's Order. No extra charges will apply.

If any error by the Purchaser results in the shipment of incorrect Products and such error is reported to us within seven (7) calendar days, the Purchaser may obtain a return authorisation and return the incorrect Products for Partial Credit provided the product is suitable for resale.

Where the integrity of perishable Products cannot be confirmed, HORIBA UK Limited does not issue full credit unless the reason for the error is attributable to a mistake on the part of HORIBA UK Limited or a designated carrier.