

Terms and Conditions of Sale

1. Interpretation

The following definitions apply in these Terms:

- 1.1 **“Supplier”**: 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, UK
- 1.2 **“Customer”**: the person, firm, organisation, company or corporation who accepts in Writing the Supplier’s Quotation for the sale or Service of the Products or whose Written order for the Products is accepted by the Supplier and who is specified on an Order Acknowledgement
- 1.3 **“Quotation”**: the Supplier’s Written quotation for Products to be provided by the Supplier to the Customer, to which these Terms are appended or as separately supplied to the Customer. Quotations shall remain valid for 90 days, unless otherwise specified by the Supplier, after this period the Supplier may cancel the quotation or review the prices quoted
- 1.4 **“Products”**: the products specified in an Order Acknowledgement (including any instalment of those Products, any Service, any repair, any calibration or any parts for them, and including (where applicable) any design or engineering work carried out by the Supplier where bespoke or modified Products are to be supplied) which the Supplier is to supply in accordance with these Terms
- 1.5 **“Service”**: services described within an Order Acknowledgement, including repair or calibration of the Products
- 1.6 **“Equipment”**: the equipment which is the subject of the Service
- 1.7 **“Order Acknowledgement”**: the Supplier’s Written acceptance of the Customer’s order in the form of an order acknowledgement document sent by Supplier to Customer, at which point a Contract shall exist between those parties
- 1.8 **“Contract”**: the contract for the sale and purchase of the Products including Service, in accordance with these Terms
- 1.9 **“Terms”**: these terms and conditions of sale as set out in this document and any additional terms agreed in Writing between Customer and Supplier
- 1.10 **“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
- 1.11 **“Writing”**: and any similar expression, includes email and comparable forms of electronic communication but not text messages

2. Basis of the Sale

- 2.1 The Supplier will sell and the Customer will purchase the Products in accordance with the Supplier’s Order Acknowledgement subject to these Terms which shall govern the Contract to the exclusion of any other terms. The Supplier does not recognise any terms and conditions of the Customer differing from these terms and conditions of sale unless the Supplier has consented in Writing to the effectiveness of such terms.
- 2.2 No variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the Customer and the Supplier.
- 2.3 In entering into the Contract the Customer acknowledges that it does not rely on any verbal representations made by the Supplier’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 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 Supplier shall be subject to correction without any liability.

3. Orders and Specifications

- 3.1 No order submitted by the Customer shall be deemed to be accepted by the Supplier unless and until confirmed in Writing by an Order Acknowledgement issued by the Supplier. The Customer shall be responsible for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving the Supplier any necessary information relating to the Products.
- 3.2 In relation to Equipment Service, the Customer shall at its own expense supply the Supplier 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 the Supplier 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 the Supplier.
- 3.3 The quantity, quality and description of the Products and any specification for them shall be as set out in the Supplier’s Quotation and Order Acknowledgment.



3.4 If the Products are to be manufactured or any process is to be applied to the Products by the Supplier in accordance with a specification submitted by the Customer, the Customer shall indemnify the Supplier against all loss, damages, costs and expenses awarded against or incurred by the Supplier in connection with, or paid or agreed to be paid by the Supplier 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 Supplier's use of the Customer's specification.

3.5 The Supplier reserves the right to make any changes in the specification of the Products or to Services, which do not materially affect the quality or performance of the Products or the nature or quality of the Service.

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

3.7 Requests for additional or modified documentation may be declined. In the cases where the Supplier can meet such requests, a £25 charge will be applied.

4. Price of the Products

4.1 The price of the Products shall be as set out in the Supplier's Quotation and Order Acknowledgment.

4.2 Prices quoted will follow the Supplier's latest published pricelist and exclude any applicable value added tax, applicable local taxes, excise tax, duty, custom, or any other tax, fee or charge of any nature whatsoever imposed by any government authority on the transaction between the Supplier and the Customer, which shall be payable by the Customer in addition to the price of the Products.

4.3 The Customer shall be liable to pay the Supplier's charges for delivery, packaging and insurance in addition to the price of the Products. Delivery charges will be quoted and charged by the Supplier on the basis of the Incoterms stated on the Order Acknowledgment.

4.4 Additional charges for certificates and international bank handling fees will be applied.

4.5 Minimum order value applies to all orders, as stated in the Order Acknowledgment.

5. Terms of Payment

5.1 Subject to any special terms agreed in Writing between the Customer and the Supplier, the Supplier may invoice the Customer for the price of the Products and any costs, tax, fees or charges referred to in section 4 at any time before or after acceptance of the Customer's order. VAT will be charged at the ruling rate at the time of invoicing, when Products are delivered to a UK address or where no proof of export is provided.

5.2 Standard payment terms are in advance, in which case the Customer shall pay the price of the Products (less any discount to which the Customer is entitled, but without any other deduction) and any other sums due, upon receipt of the Supplier's Proforma Invoice, subject to arrangements set out in the Proforma Invoice. Once payment is received in full by the Supplier, an Order Acknowledgment will be issued by the Supplier. A tax or Sales Invoice will be issued by the Supplier following despatch. The time of payment of the price shall be of the essence of the Contract.

5.3 For approved credit accounts, the Customer shall pay all sums due to the Supplier under the Contract within thirty (30) days of date of the Supplier's Sales Invoice relating to such sums, subject to arrangements set out in the Sales Invoice. The Sales Invoice will normally be issued by the Supplier following dispatch, but may be issued earlier. The time of payment of the price shall be of the essence of the Contract.

5.4 In relation to Equipment Service, subject to any special terms agreed, the Customer shall pay the price quoted on the Supplier's Proforma Invoice or Sales Invoice and any additional sums which are agreed between the Supplier and the Customer for the provision of the Service or which, in sole discretion of the Supplier, are required as a result of the Customer's instructions or lack of instructions, inaccuracy of any information or data provided or any other cause attributable to the Customer.

5.5 If the Customer fails to make any payment on the due date then, without limiting any other right or remedy available to the Supplier, the Supplier may:

5.5.1 cancel the Contract or suspend any further deliveries to the Customer; and

5.5.2 charge the Customer interest on any late payments due under the Contract at the rate specified by the Late Payment of Commercial Debts (Interest) Act 1998 at the date of the invoice relating to the Products;

5.5.3 in the case of Equipment Service, retain possession of the Equipment until payment is made in full.

6. Delivery

6.1 Unless the parties agree otherwise, the Supplier will arrange carriage for the Products or Serviced Equipment, and for insurance of the Products against loss or damage during transit, to the place specified in the Supplier's Order Acknowledgment and on the basis of the



Incoterms stated therein. It is the Customer's responsibility to ensure the delivery address is correctly specified in the Supplier's Order Acknowledgement.

6.2 The Customer 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.

6.3 Although the Supplier will make every effort to deliver the Products and Services in line with the delivery indication given in the Order Acknowledgement, such indications are approximate only and represent dispatch dates not customer receipt dates and the Supplier shall not be liable for any delay in delivery of the Products however caused. Time of delivery shall not be of the essence of the Contract.

6.4 Where the Products are to be delivered in instalments, each delivery shall constitute a separate Contract and in that event each such instalment shall be invoiced and paid for separately. Failure by the Supplier to deliver any one or more of the instalments in accordance with these Terms or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

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

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

6.6.1 store the Products until actual delivery and charge the Customer for reasonable costs (including insurance) of storage; or

6.6.2 sell the Products at the best price readily obtainable and (after deducting all reasonable storage, insurance and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

7. UK Sanction and Anti-Bribery & Corruption Laws

7.1 The Customer must have transparency to the end-user, end destination and end use of the Products, agrees to promptly notify the Supplier of any changes to the end use, end user, or destination after placing an order, and warrants:

7.1.1 the Products will not be directly or indirectly sold or supplied into, or used or supported in: Belarus, Crimea, North Korea (the Democratic People's Republic of Korea), Russia (the Russian Federation), Syria or non-government-controlled regions of Ukraine;

7.1.2 the Products will not be used for any purpose connected with chemical, biological or nuclear weapons, missiles capable of delivering such weapons, or other military use, in the countries listed in 7.1.1 above or in: Afghanistan, Myanmar (Burma), Central African Republic, China (People's Republic other than the Special Administrative Regions) and Hong Kong, Democratic Republic of the Congo, Iran, Iraq, Lebanon, Libya, Somalia, South Sudan, Sudan, Venezuela, Yemen;

7.1.3 the Products will not be directly or indirectly provided to any sanctioned person, entity, organisation or ship (or being used on any ship) contained in the UK sanctions list (<https://www.gov.uk/government/publications/the-uk-sanctions-list>);

7.1.4 that all information provided in connection with the order is complete and accurate.

7.2 The Supplier reserves the right to request information from the Customer to verify the end use, user, and ultimate destination of the Products; or completion and return of CF202 "Cygnum end-use due diligence request" form. The Supplier may, at its sole discretion, refuse to accept any order; or suspend, delay, or cancel any order already accepted; where there is insufficient confirmation about end use, user, or destination, or where the Supplier reasonably suspects that fulfilling the order may breach applicable UK export control or sanction laws. The Supplier shall not be liable for any loss, cost, or damage arising from the refusal, suspension, delay, or cancellation of an order under this clause where such action ensures legal compliance. If required, the Supplier reserves the right to report unlawful activity to UK authorities.

7.3 The Supplier adheres to the UK Bribery act 2010. The Supplier's policy is reviewed annually and is available on request.

8. Risk and Property

8.1 Risk of damage to or loss of the Products shall pass to the Customer in accordance with the Incoterms stated in the Supplier's Order Acknowledgement.

8.2 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 Customer until the Supplier has received in cleared funds payment in full of the price of the Products and all other Products agreed to be sold by the Supplier to the Customer for which payment is then due, together with any interest due on such payments.

8.3 During the provision of Equipment Service, the Supplier shall hold the Equipment as the Customer's bailee only; at no time shall the property in the Equipment pass to the Supplier. In such cases, risk of damage or loss to the Equipment shall remain with the Customer at all

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times both, and while the Equipment is in transit. Accordingly, it remains the Customer's responsibility to insure the Equipment against accidental loss or damage.

9. Use of Products

9.1 The Customer or any third parties shall comply with any instructions provided by the Supplier relating to the use of the Products and shall not misuse the Products in any manner.

9.2 Any suggestion by the Supplier regarding use, application or suitability of the Products shall not be construed as an express warranty. Any advice or recommendation given by the Supplier to the Customer as to the use, application and storage of the Products which is not confirmed in Writing by the Supplier is followed or acted upon entirely at the Customer's own risk, and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.

9.3 The Customer shall be responsible for verifying the hazards beyond those stated in safety data sheets and conducting any further research necessary to learn these additional hazards, involved in using the Products. The Customer shall warn any third parties, which may come into contact with the Products of any risks involved in use or handling of the Products.

10. Returned Products

10.1 The Customer shall inspect the Products, or any instalment of the Products, immediately upon receipt. If the Products are damaged or do not comply with the warranty in paragraph 11.1, the Customer shall:

10.1.1 provide the Supplier with details of the problem with the Products in Writing; and

10.1.2 store the Products until it receives the Supplier's Written instructions in relation to the Products.

10.2 If the Supplier does not receive Written notice from the Customer within fourteen (14) days of receipt of Products by the Customer, such Products shall be deemed to comply in all respects with the Terms.

10.3 The Suppliers' only liability and the Customer's sole right and remedy in respect of Products which at the time of delivery are damaged or do not meet the warranty in section 11 shall be at the Supplier's option either the supply of replacement Products (or the part in question) or a refund of the price paid (or a proportionate part of the price) to the Supplier in respect of such Products, in which case the Supplier shall have no further liability to the Customer. For the avoidance of doubt, the Supplier shall not be liable to the Customer for any damage to the Products, which occurs after the time of dispatch, however the Customer may make a claim in respect of any such damage under the appropriate insurance policy.

10.4 Products may not be returned to the Supplier for credit except with the Written permission of the Supplier and then only in strict compliance with the Supplier's return shipment instructions at the cost of the Customer.

10.5 Products returned for credit or exchange within twenty (20) days of receipt of the Products by the Customer will be accepted with no handling fee. If returned after twenty (20) days and within 6 months of receipt of the Products by the Customer, Products may be accepted, at the discretion of the Supplier, provided they are still in a saleable condition (including the original packaging) and are accompanied by a copy of the Supplier's Order Acknowledgement, Sales Invoice or delivery note. In this event a handling charge of minimum £100 (100 GBP) and maximum up to 10% of the price paid for the Products will be imposed.

10.6 The Supplier reserves the right to refuse to accept the return of bespoke or modified Products.

11. Warranty

11.1 Subject to paragraph 10.3 and the following provisions, the Supplier warrants that:

11.1.1 the Products manufactured by it will correspond with their specification and be free from defects in material and workmanship for a standard period of three (3) years from the date of purchase from the Supplier;

11.1.2 except for batteries, probes, leads, microphones, telescopic extensions, which are warranted for six (6) months;

11.1.3 in the case of Products or equipment manufactured by a third party, the Supplier shall assign to the Customer the benefit of any warranty, guarantee or indemnity given by the company supplying those goods to the Supplier;

11.1.4 except for consumables, which are not warranted at all;

11.1.5 in the case of Equipment Service, the service will be provided using reasonable care and skill;

11.1.6 in the case of bespoke Products or which have (at the request of or by agreement with the Customer) been modified by the Supplier prior to sale, the Supplier warrants (subject as aforesaid) that any design or engineering services carried out by the Supplier will be supplied with reasonable care and skill.

11.2 The warranties referred to above are given by the Supplier, who shall, at its option, repair, replace or refund the price of the defective Products in full, provided:



- 11.2.1 the Customer gives notice in Writing during the warranty period within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in paragraph 11.1;
- 11.2.2 the Customer returns such Products to the Supplier's place of business at the Customer's cost;
- 11.2.3 the Supplier is given a reasonable opportunity of examining such Products.
- 11.3 The Supplier shall be under no liability for the Products' failure to comply with the warranties if:
- 11.3.1 any defect in the Products arises from any drawing, design, specification information or instructions supplied by the Customer, or arises from their late arrival or non-arrival, or any other fault of the Customer;
- 11.3.2 the Customer integrates into any system, alters, modifies or repairs such Products without the prior written consent of the Supplier;
- 11.3.3 the defect arises because the Customer failed to follow the Suppliers oral or written instructions as to the storage, installation, calibration, integration into a system, commissioning, use or maintenance of the Products or (if there are no such instructions) good trade practice;
- 11.3.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- 11.3.5 the total price for the Products has not been paid by the due date for payment.
- 11.4 The warranty in this section 11 is the only warranty provided by the Supplier to the Customer in relation to the Products. All other statements, conditions, representations, warranties, whether express or implied, including any implied warranty of fitness for any particular purpose or satisfactory quality, are expressly excluded.

12. Product Registration

- 12.1 The Supplier collaborates with all its resale partners, but resale of the Products by the Customer risks loss of traceability to end users of the Products. Manufacturer's support for the Products, including but not limited to firmware updates or product recall requirements, can only be provided by the Supplier with contact details of the end user, since support communication cannot be guaranteed via a resale partner or any other third party. The Supplier guarantees provision of proactive support and transfer of warranties for the Products to end users of the Products who register their Products at: <https://cygnus-instruments.com/service/product-registration/>
- 12.2 The Supplier stipulates that Product Registration as set out in paragraph 12.1 is a mandatory requirement for the Cygnus 1 Ex Ultrasonic Thickness Gauge in accordance with manufacturer responsibilities under the ATEX/IECEX/UKEX certification requirements.
- 12.3 All information relating to an individual person provided to the Supplier will remain confidential and protected under privacy policy terms found at: <https://cygnus-instruments.com/privacy-policy/>

13. Liabilities

- 13.1 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.
- 13.2 Except in respect of death or personal injury caused by the Supplier's negligence or liability for defective Products under the Consumer Protection Act 1987 the Supplier 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 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 Supplier, 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 Customer. The entire liability of the Supplier under or in connection with the Products shall not exceed the price of the Products, except as expressly provided in these Terms.
- 13.3 The Customer shall notify the Supplier within fourteen (14) days of the Customer's receipt of knowledge of any accident involving the Products resulting in personal injury or damage to property, and the Customer shall fully cooperate with the Supplier in the investigation and determination of the cause of such accident and shall make available to the Supplier all statements, reports and tests made by the Customer or made available to the Customer by others. The furnishing of such information to the Supplier and any investigation by the Supplier shall not constitute an assumption of any liability by the Supplier.

14. Force Majeure

The Supplier 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 the Supplier obligations in relation to the Products, if the delay or failure was due to any cause beyond the Supplier's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Supplier reasonable control: act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition;

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RELIABLE ULTRASONIC MEASUREMENT

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acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind by 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 Supplier or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; or power failure or breakdown in machinery.

15. Indemnity for Third Party Claims

The Customer shall indemnify the Supplier against all claims for personal injury, loss or damage to property brought against the Supplier by third parties arising from the use of the Products including without limitation any losses arising from defective products which shall have been caused directly or indirectly by the Customer and the cost of any legal action or associated proceeding unless such injury, loss or damage is solely attributable to the negligence of the Supplier.

16. Intellectual Property

16.1 The Customer shall not claim ownership of and shall not take any action which might infringe any patents, trademarks, trade names, copyrights, designs or other form of protection for any invention, discovery, improvement, design mark or logo in relation to the Products and the Customer shall indemnify the Supplier and keep it indemnified from and against all costs, claims, liabilities, proceedings, damages and expenses arising directly or indirectly as a result of any breach of the foregoing obligation by the Customer.

16.2 The Customer shall notify the Supplier immediately of any infringement or apparent or threatened infringement of or any actions, claims or demands in relation to any patent, trade mark, trade name, copyright, design or other form of protection for any invention, discovery, improvement, design mark or logo in relation to the Products and the Customer shall provide the Supplier (at the Supplier's expense) with all assistance which the Supplier may reasonably require in connection therewith including but not limited to the prosecution of any actions which the Supplier may deem necessary for the protection of any rights in relation to the Products and if so requested by the Supplier in relation to any claim or action brought against the Customer shall authorise the conduct of the same and of all negotiations for the settlement of the same by the Supplier.

16.3 The Customer shall indemnify the Supplier against all claims for infringement or alleged infringement of third parties patent or other intellectual property rights, and all costs and expenses incurred in connection therewith, arising from the execution of the Customer's order or otherwise in relation to the fulfilment by the Supplier of its obligations under the Contract.

17. Termination

17.1 If either party should go into liquidation or should do or suffer any similar act or thing under any applicable law, the other party may, by Written notice, forthwith terminate the Contract without prejudice to any right of action or claim accrued at the date of termination.

17.2 If the Supplier has any reason whatsoever to doubt the continuing ability of the Customer to perform its obligations under the Contract the Supplier may suspend deliveries without any liability to the Customer until the Customer has either agreed to make payment in advance for future deliveries or has provided such other security as the Supplier, in its absolute discretion, may require. 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.

17.3 If the Customer should fail to pay the whole of the price of the Products as provided in the Contract, the Supplier may on Written notice to the Customer forthwith suspend all or any supplies of the Products until the Customer has paid any such amount owing, or may, at its option, on Written notice to the Customer forthwith terminate the Contract without prejudice to any right of action or claim accrued at the date of termination.

18. General

18.1 These Terms constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be valid 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.

18.2 No waiver by the Supplier of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

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

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

18.5 The Customer and the Supplier will attempt in good faith to resolve any dispute arising under or in connection with these Terms. However if a dispute is not resolved through negotiation the parties will attempt in good faith to resolve the dispute through mediation or other dispute resolution technique recommended by the Centre of Dispute Resolution of London.

