

**Subsurface Measurement Technology Ltd**  
**Terms and Conditions for the Sale of Equipment**

**TERMS AND CONDITIONS**

**Please read these terms and conditions carefully before submitting your order to us. The Customer's attention is drawn in particular to the provisions of clause 9.**

**1. Basis of contract**

- 1.1 These terms and conditions apply to the agreement to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 1.2 Any samples, drawings, descriptive matter or advertising produced or supplied by SMT and any descriptions or illustrations contained in SMT's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Equipment referred to in them. They shall not form a part of the agreement nor have any contractual force. SMT reserves the right to amend the published specification of the Equipment without notice.
- 1.3 The order constitutes an offer by the Purchaser to purchase the Equipment in accordance with this agreement. The Purchaser is responsible for ensuring that the terms of the order and any applicable specification are complete and accurate. If the Purchaser wishes to rely on any amendment or addition to the agreement, this must be confirmed in writing by one of SMT's duly authorised representatives.
- 1.4 The order shall only be deemed to be accepted when SMT signs the agreement, at which point the agreement will come into existence.
- 1.5 A quotation for the Equipment given by SMT shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue.

**2. Sale and purchase**

SMT shall transfer such title as it has in the Equipment.

**3. Equipment sold as seen**

- 3.1 The details of the Equipment in the Contract Details are given only for the purposes of identifying the Equipment and do not make this agreement a sale by description.
- 3.2 The Equipment is sold "as seen". SMT makes no representations and gives no warranties as to the quality, condition, state or description of the Equipment, or their fitness or suitability for any purpose. All implied statutory or common law terms, conditions and warranties as to the Equipment are excluded to the fullest extent permitted by law.

**4. Right to inspect equipment**

The Purchaser acknowledges that, before the date of this agreement:

- (a) SMT has given the Purchaser a reasonable opportunity to inspect the Equipment; and
- (b) the Purchaser has satisfied itself as to the quality and condition of the Equipment.

**5. Price and payment**

- 5.1 In consideration of the purchase of the Equipment, the Purchaser shall pay the Purchase Price as specified in the Contract Details. Payment shall be made in cleared funds to the bank account nominated in writing by SMT.
- 5.2 The Purchase Price:

- (a) excludes amounts in respect of VAT, which the Purchaser shall additionally be liable to pay SMT at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) excludes all costs of packaging, delivery, carriage, out-of-pocket expenses and insurance which shall be identified SMT arately if applicable.

5.3 SMT shall issue the Purchaser with an invoice for the Purchase Price plus VAT at the prevailing rate (if applicable) on signature of this agreement. SMT shall ensure that the invoice includes the date of the sale, the invoice number, SMT's VAT registration number and any supporting documentation that the Purchaser may reasonably require.

5.4 All sums payable to SMT under this agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

5.5 The time for payment is of the essence. Payment will only be affected when SMT receives the Purchase Price in cleared funds. Without prejudice to any other right or remedy that it may have, if the Purchaser fails to pay SMT any sum due under this agreement on the due date then the Purchaser shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment.

**6. Delivery**

6.1 SMT shall use reasonable endeavours to deliver the Equipment and any Records to the Purchaser at the Delivery Location on the Delivery Date during SMT's usual business hours. The parties acknowledge that any time estimate for delivery is approximate and SMT shall not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Equipment.

6.2 If the Purchaser fails to take delivery of the Equipment when due, SMT may charge reasonable costs of storage from the Delivery Date until delivery is completed.

6.3 Time of delivery is not of the essence. SMT shall not be liable for any delay in delivery of the Equipment that is caused by:

- (a) events, circumstances or causes beyond its reasonable control; or
- (b) the Purchaser's failure to provide SMT with adequate delivery instructions or any other instructions that are relevant to the sale of the Equipment.

6.4 Delivery is completed on the completion of unloading of the Equipment at the Delivery Location.

6.5 Upon delivery and unloading of the Equipment to the Purchaser, the Purchaser shall inspect the Equipment and sign an acknowledgement of receipt in SMT's standard form (from time-to-time).

**7. Title and risk**

7.1 The risk of damage to or loss of the Equipment shall pass to the Purchaser on completion of delivery.

7.2 The title to the Equipment shall pass to the Purchaser only on payment in full (in cash or cleared funds) of the Purchase Price.

7.3 Until title to the Equipment has passed to the Purchaser, the Purchaser shall:

**Subsurface Measurement Technology Ltd**  
**Terms and Conditions for the Sale of Equipment**

- (a) store the Equipment SMTarately from all other goods held by the Purchaser so that they remain readily identifiable as SMT's property;
- (b) not remove, deface or obscure any identifying mark on or relating to the Equipment;
- (c) maintain the Equipment in satisfactory condition and keep it insured against all risks for its full price from the date of delivery; and
- (d) provide SMT promptly with such information and records as SMT may reasonably request concerning the Purchaser's ongoing financial position.
- 7.4 SMT may recover Equipment in which title has not passed to the Purchaser. The Purchaser irrevocably licenses SMT, its officers, employees and agents, to enter any premises of the Purchaser (including with vehicles), in order to satisfy itself that the Purchaser is complying with the obligations in clause 7.3 and to recover any Equipment in which property has not passed to the Purchaser.
- 8. Manufacturer's warranties**
- 8.1 To the extent that the benefit of any warranties made by the manufacturer or previous seller of the Equipment to SMT can be assigned to the Purchaser, SMT shall, if requested by the Purchaser and at cost of the Purchaser, assign them to the Purchaser.
- 9. Limitation of liability**
- 9.1 Nothing in this agreement shall limit or exclude SMT's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) any matter in respect of which it would be unlawful for SMT to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- (a) SMT shall under no circumstances be liable to the Purchaser, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the agreement; and
- (b) SMT's total liability to the Purchaser for all other losses arising under or in connection with the agreement, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise, shall be limited to the Purchase Price.
- 10. Termination**
- 10.1 Without limiting its other rights or remedies, either party may terminate the agreement with immediate effect by giving written notice to the other party if:
- (a) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (b) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.
- 10.2 Without limiting its other rights or remedies, and before full payment is received by SMT for the Equipment, SMT may suspend provision of the Equipment under the agreement and / or recover any Equipment already delivered if the Purchaser becomes subject to any of the events listed in **Error! Bookmark not defined.**10.1 or SMT reasonably believes that the Purchaser is about to become subject to any of them, or if the Purchaser fails to pay any amount due under this agreement on the due date for payment. In such circumstances, SMT may charge a fee for possession of / use of the Equipment which is payable on demand and reflects the use which the Purchaser has had of the Equipment and/or any reduction in value of the Equipment which has occurred whilst the Equipment has been in the Purchaser's possession.
- 10.3 Without limiting its other rights or remedies, SMT may terminate the agreement with immediate effect by giving written notice to the Purchaser if the Purchaser fails to pay any amount due under the Contract on the due date for payment. In such circumstances, SMT shall be entitled to retain any sums paid by the Purchaser under the agreement, which represents a real and fair pre-estimate of the costs and / or loss of profit which SMT will incur. In such circumstances, SMT may charge a fee for possession of / use of the Equipment which is payable on demand and reflects the use which the Purchaser has had of the Equipment and/or any reduction in value of the Equipment which has occurred whilst the Equipment has been in the Purchaser's possession.
- 10.4 Termination of the agreement, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this agreement which existed at or before the date of termination.
- 10.5 Any provision of the agreement that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
- 11. General**
- 11.1 Force majeure.** SMT shall not be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 11.2 Confidentiality.**
- (a) Each party undertakes that it shall not at any time during this agreement and for a period of two years after termination or expiry of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 11.2(b).
- (b) Each party may disclose the other party's confidential information:
- (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.2; and
- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.
- 11.3 Entire agreement.**
- (a) This agreement constitutes the entire agreement between the parties and supersedes and

**Subsurface Measurement Technology Ltd**  
**Terms and Conditions for the Sale of Equipment**

- extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.
- 11.4 Variation.** No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.5 Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
- (a) waive that or any other right or remedy; or
- (b) prevent or restrict the further exercise of that or any other right or remedy.
- 11.6 Severance.** If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this agreement is deemed deleted under clause 11.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 11.7 Further assurance** Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.
- 11.8 Notices.**
- (a) Any notice given to a party under or in connection with this agreement shall be in writing and shall be:
- (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (ii) sent by email to the address specified in the Contract Details.
- (b) Any notice shall be deemed to have been received:
- (i) if delivered by hand, at the time the notice is left at the proper address;
- (ii) if sent by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; or
- (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 11.8(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 11.9 Third party rights.** No one other than a party to this agreement shall have any right to enforce any of its terms.
- 11.10 Governing law.** This agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.
- 11.11 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.
- 12. Interpretation**
- 12.1 Definitions:**
- Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- Records:** all documents of title and certificates for the lawful operation and use of, and all service documents relating to, the Equipment as set out in the Contract Details.
- VAT:** value added tax chargeable in the UK or elsewhere.
- 12.2 Clause and paragraph headings shall not affect the interpretation of this agreement.
- 12.3 A person includes a natural person, corporate or unincorporated body (whether or not having SMTarate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 12.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 12.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 12.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 12.7 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 12.8 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provisions.
- 12.9 A reference to writing or written includes email.
- 12.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 12.11 A reference to this agreement or to any other agreement or document is a reference to this agreement or such other agreement or document, in each case as varied from time to time.
- 12.12 References to clauses are to the clauses of this agreement.
- 12.13 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.