

Fieldpiece Instruments B.V. Terms of Supply

1. Interpretation

1.1 In these Terms and Conditions of Supply ("Terms"):

"Contract" has the meaning set out in clause 3.1.

"Customer" means the person or entity whose Order is accepted by Fieldpiece.

"Data Protection Legislation" means, to the extent applicable to this agreement, (i) the General Data Protection Regulation 2016 (EU) 2016/679 and all other applicable laws and regulations relating to data protection and privacy, and (ii) all related statutory codes of practice and guidance issued by any relevant data protection authority.

"Order" means an order issued by the Customer to Fieldpiece for the relevant Products.

"Products" means the goods (including any instalment of the goods or any parts for them) that Fieldpiece is to supply, pursuant to the relevant Contract.

"Fieldpiece" means Fieldpiece Instruments B.V., (registered company number 69288879) whose registered office is at Edisonstraat 65, 7006 RB, Doetinchem.

1.2 Any reference in these Terms to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

2. Basis of the sale

2.1 Fieldpiece shall sell, and the Customer shall purchase, the Products in accordance with the relevant written quotation of Fieldpiece (if any) and a written Order of the Customer which is accepted in writing by Fieldpiece, subject to these Terms, which shall govern the Contract to the exclusion of any other terms (including any terms and conditions endorsed upon or included with the Customer's purchase order), unless such terms are expressly agreed in writing between the Customer and Fieldpiece.

2.2 No variation to these Terms shall be binding unless agreed in writing between duly authorised representatives of the Customer and Fieldpiece.

2.3 All descriptions and illustrations contained in Fieldpiece's sales literature, catalogues, brochures, price lists and advertisements (collectively, "Sales Literature") or otherwise communicated to the Customer (including, without limitation, via website) are intended merely to present a general idea of the Products and nothing contained in any of the foregoing shall form part of the Contract.

2.4 Notwithstanding that a sample of any of the Products may have been shown to, or inspected by, the Customer, such sample was so shown or inspected solely to assist the Customer in forming a general impression as to the nature of the Products, and not so as to constitute a sale by sample.

2.5 Any typographical, clerical or other error or omission in any Sales Literature, quotation, Order acceptance, invoice or other document or information issued by Fieldpiece shall be subject to correction by Fieldpiece at its discretion and, subject to clause 10.6, without any liability on the part of Fieldpiece.

2.6 Fieldpiece reserves the right to make any changes, at any time, in the specification of any of the Products, provided that, if it does so after any Order has been accepted, such changes will not materially affect the quality or performance of the Products.

3. Orders

3.1 No Order submitted by the Customer shall be deemed to be accepted by Fieldpiece unless and until confirmed in writing by Fieldpiece. Each such accepted Order shall constitute a separate contract between the Customer and Fieldpiece subject to these Terms ("Contract").

3.2 The Customer shall be responsible for ensuring the accuracy of the details of any Order (including any specification) submitted by the Customer.

3.3 By submitting any Order, the Customer represents and warrants that no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, threatened) for its bankruptcy, winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator or similar officer in relation to any of its assets or revenues or anything that is equivalent or substantially similar to any of the foregoing under any applicable jurisdiction.

4. Price

4.1 Unless otherwise expressly agreed in writing by Fieldpiece, the price of the Products ("the Price") shall be Fieldpiece's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price specified in Fieldpiece's standard price list current at the date of Fieldpiece's acceptance of the relevant Order. Unless otherwise expressly stated in any quotation, prices quoted are valid for 30 days only or until earlier withdrawal of the quotation by Fieldpiece or acceptance by the Customer. Thereafter, they are subject to change without notice.

4.2 Fieldpiece reserves the right, by giving notice to the Customer at any time before the relevant Order is accepted by Fieldpiece, to increase the Price to reflect any material increase in the cost to Fieldpiece which is due to any factor beyond the reasonable control of Fieldpiece (such as, without limitation, any foreign exchange fluctuation, significant increase in the cost of labour, materials or other costs of manufacture), or any changes requested or delay caused by the Customer.

4.3 The Price is exclusive of any applicable value added tax and other sales tax, duties, imposts, levies and governmental charges of any kind (except for taxes exclusively attributable to Fieldpiece's income), which the Customer shall be additionally liable to pay to Fieldpiece.

5. Invoicing and payment

5.1 Unless otherwise expressly agreed in writing by Fieldpiece, Fieldpiece shall be entitled to invoice the Customer for the Price (plus any associated amounts payable by the Customer pursuant to these Terms), on or following Fieldpiece's acceptance of the relevant Order.

5.2 The Customer must pay each invoice in full, without deduction, set-off or withholding of any kind, in the currency of invoice.

5.3 If the Customer fails to pay any invoiced amount on the due date then, without prejudice to any other right or remedy available to Fieldpiece, Fieldpiece shall be entitled to:

(a) cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer; and/or

(b) appropriate any payment made by the Customer to such of the Products (or the goods supplied under any other contract between the Customer and Fieldpiece) as Fieldpiece may think fit (notwithstanding any purported appropriation by the Customer).

6. Delivery

6.1 Delivery of the Products shall be made, unless otherwise expressly agreed in writing by Fieldpiece, EXW (Incoterms 2020) Fieldpiece's registered office (in Doetinchem). The Products shall be at the risk of the Customer from the point of delivery in accordance with that term.

7. Title

7.1 Notwithstanding delivery and the passing of risk in the Products, or any other provision of these Terms, title to the Products shall not pass to the Customer until Fieldpiece has received in cleared funds payment in full of the Price of the Products (together with all associated invoiced amounts) and all other goods agreed to be sold by Fieldpiece to the Customer for which payment is then due.

7.2 Until such time as title to the Products passes to the Customer, the Customer shall hold the Products as Fieldpiece's fiduciary agent and bailee, and shall keep the Products separate from those of the Customer and third parties and properly stored, protected and insured (for their full replacement value) and clearly identified as Fieldpiece's property (without removing, defacing or obscuring any identifying mark, labelling or packaging), but shall be entitled to use or re-sell the Products in the ordinary course of its business.

7.3 Until such time as title to the Products passes to the Customer (and provided the Products are still in existence and have not been re-sold), Fieldpiece shall be entitled, at any time, to require the Customer to deliver up the Products to Fieldpiece and, if the Customer fails to do so forthwith, to enter, or instruct its third party agents to enter, upon any premises of the Customer or any third party where the Products are stored and repossess the Products.

7.4 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of Fieldpiece, but if the Customer does so all monies owing by the Customer to Fieldpiece shall (without prejudice to any other right or remedy available to Fieldpiece) immediately become due and payable.

8. Intellectual property

8.1 All intellectual property rights in the Products, their design, manufacture, labelling and packaging, are reserved to Fieldpiece or its licensors. The Customer shall not remove, alter or obscure any intellectual property rights acknowledgment or marking included by Fieldpiece on the Products, their labelling or packaging.

9. Data protection

9.1 Each party will, at all times during the performance of each Contract, comply with the Data Protection Legislation and will not, whether by any act or omission, cause the other party to be in breach of any of its obligations under the Data Protection Legislation.

10. Warranties and liability

10.1 Subject to the other provisions of this clause 10, Fieldpiece warrants that the Products will, at the date of delivery and for a period of twelve months thereafter, comply, in all material respects, with Fieldpiece's published specification for the Products and be substantially free from defects in material and workmanship. If the foregoing warranty is breached, the Customer must notify Fieldpiece as soon as possible. The Customer must give Fieldpiece a reasonable time to fix the problem, including (in Fieldpiece's discretion) by repairing or replacing the Products (or the part in question). This will be done without any additional charge to the Customer.

10.2 In respect of any Products, parts or components not manufactured by Fieldpiece, the Customer is only entitled to the benefit of such warranty as Fieldpiece is itself entitled to from the original manufacturer.

10.3 Any advice, instruction and/or recommendation relating to the Products and/or their use, whether written or oral, given by any of Fieldpiece's personnel is given in good faith, but Fieldpiece only warrants that written advice (if any) is given with reasonable care and skill. Subject to clause 10.6, no further duty or responsibility is accepted by Fieldpiece in relation to any such advice, instruction and/or recommendation.

10.4 Whilst the Products have been designed and manufactured, in compliance with all relevant standards required by law and regulation in the European Union, Fieldpiece does not warrant that the Products will comply with the laws or regulations of any other country to which they are delivered and the Customer assumes full responsibility for complying with these.

10.5 Except as expressly set out in these Terms and subject only to clause 10.6, no implied conditions, warranties or other terms, including any implied terms relating to satisfactory quality or fitness for any purpose, will apply to Products or to anything supplied or provided by Fieldpiece under the Contract or these Terms.

10.6 Nothing in these Terms shall exclude or limit Fieldpiece's liability: (a) for death or personal injury caused by its negligence; (b) for fraudulent misrepresentation or for any other fraudulent act or omission; (c) for breach of any statutorily-implied term as to title to the Products; or (d) for any other liability which may not lawfully be excluded or limited.

10.7 Subject to clause 10.6, Fieldpiece shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, under any indemnity or otherwise, for any: (a) loss of profit; (b) loss of sales, turnover, revenue or business; (c) loss of customers or contracts; (d) loss of or damage to reputation or goodwill; (e) loss of opportunity; (f) loss of anticipated savings; (g) loss or waste of management or other staff time; or (h) indirect, special or consequential loss; arising under or in connection with the Contract, whether or not such loss was foreseeable or if Fieldpiece was advised of its possibility.

10.8 Subject to clause 10.8, Fieldpiece shall not be liable, whether in contract, tort (including negligence), breach of statutory duty, under any indemnity or otherwise, for any loss, damage, expense or liability incurred or sustained as a result of:

- (a) the use of any Product except for its normal intended purpose;
- (b) any adaptation, modification or repair of any Product, or integration or combination with any other product or material not supplied by Fieldpiece, in each case carried out by anyone other than Fieldpiece or without Fieldpiece's express written consent;
- (c) any defect arising in any Product as a result of fair wear and tear, or misuse, wilful damage, negligence on the part of anyone other than Fieldpiece, or abnormal storage or working conditions;
- (d) the compliance by Fieldpiece with any design, specification or instructions provided by or on behalf of the Customer; and/or
- (e) any materials provided by on behalf of the Customer.

10.9 Subject to clauses 10.6 and 10.7, Fieldpiece's total liability to the Customer arising under or in connection with the Contract or its subject matter and to anything which it has done or not done in connection with the same, whether in contract, tort (including negligence), breach of statutory duty, under any indemnity or otherwise, shall be limited, in aggregate for all claims arising, all amounts payable (whether or not yet paid) by Customer under the Contract.

11. Insolvency of Customer

11.1 This clause 11 applies if:

(a) the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction);

(b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer;

(c) the Customer ceases, or threatens to cease, to carry on business;

(d) the Customer is subject to any proceedings or circumstances which are equivalent or substantially similar to any of the foregoing under any applicable jurisdiction; or

(e) Fieldpiece reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

11.2 If this clause 11 applies then, without prejudice to any other right or remedy available to Fieldpiece, Fieldpiece shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer and, if the Products have been delivered but not paid for, the Price (together with all associated invoiced amounts) shall become immediately due and payable, notwithstanding any previous agreement or arrangement to the contrary.

12. Force majeure

Fieldpiece will not be liable to the Customer for any failure or delay in performing its obligations under the Contract which arises because of any circumstances which it cannot reasonably be expected to control (which shall include Act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, import or export regulations or embargoes, strikes, lock-outs or other industrial actions or trade disputes (whether involving personnel of Fieldpiece or a third party), difficulties in obtaining raw materials, labour, fuel, parts or machinery or breakdown in machinery, or interruption or failure of the Internet or of any network, telecommunications, power supply or infrastructure, or any provider of any of the foregoing).

13. General

13.1 The Customer shall maintain and preserve all confidential and commercially sensitive information concerning Fieldpiece, its business and the Products (including, without limitation, its price lists), howsoever disclosed to or obtained by the Customer, whether orally or in writing and whether or not expressly stated to be confidential or marked as such.

13.2 The Customer may not sub-license or assign, sub-contract or delegate any or all of its rights or obligations under the Contract without the prior written consent of Fieldpiece.

13.3 All notices relating to the Contract must be in writing. Notices must be sent to the registered office or principal place of business of the recipient or otherwise notified by the relevant party in accordance with these Terms. Notices shall be sent by hand or by certified or registered mail.

13.4 No omission, forbearance or delay on the part of either of the parties to enforce fully any provision of the Contract or any other right, power, privilege or remedy otherwise available to it shall be construed as a waiver of such provision, right, power, privilege or remedy or of a right thereafter to enforce the same or any other provision, right, power, privilege or remedy.

13.5 If at any time any provision of the Contract is or becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction then such provision shall be treated in such jurisdiction as severed from the remaining provisions and neither the validity legality or enforceability of the remaining provisions nor the validity legality or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired.

13.6 No term of the Contract is enforceable by a person who is not a party to the Contract.

13.7 It is a condition of the Contract that, in pre-contract negotiations and in the exercise of its rights or the performance of its obligations under the Contract, each party shall at all times ensure that it complies with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption ("Anti-bribery Laws") and that it does not commit (or procure the commission of) any breach of any Anti-bribery Laws or do anything which would cause any other party to commit an offence under any Anti-bribery Laws.

13.8 In connection with this Contract, each party will comply with all applicable import, re-import, sanctions, anti-boycott, export, and re-export control laws and regulations, including all such laws and regulations that apply to either party or any US, EU or UK company and specifically will not sell any Products to any person in breach of any such applicable laws. The Customer represents and warrants that it and its financial institutions, or any party that owns or controls it or its financial institutions, are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government (e.g., the Specially Designated Nationals List and Foreign Sanctions Evaders List of the U.S. Department of Treasury, and the Entity List of the U.S. Department of Commerce), the European Union or its Member States, or other applicable government authority.

13.9 The Contract contains the entire agreement and understanding of the parties with respect to its subject matter and supersedes all prior agreements written or oral and each of the parties acknowledges that it has not been induced to enter into the Contract by reason of any representation made by or on behalf of the other party. Nothing in this clause 13.8 will operate to limit or exclude any liability for fraud or fraudulent misrepresentation.

13.10 The Contract is governed by Dutch law. Both parties submit to the exclusive jurisdiction of the Dutch courts in relation to any dispute, but Fieldpiece is also entitled to apply to any court worldwide for injunctive or other remedies in order to protect or enforce its intellectual property rights and/or confidential information.