



1. Conditions

1.1 The following expressions shall have the following meanings unless the context otherwise requires

- 'Company' Ex-i Flow Measurement Ltd.
'Contract' the contract between the Company and the Customer for the sale and purchase of the Goods and/or Services in accordance with these conditions.
'Customer' the person who accepts a quotation from the Company for the sale of Goods and/or Services or whose order for the Goods and/or Services is accepted by the Company.
'Goods' the goods which the Company is to supply in accordance with these conditions.
'Services' the services supplied by the Company to the Customer in accordance with these conditions.

2. Formation of Contract

- 2.1 Quotations, unless previously withdrawn, shall be valid for a period not exceeding 60 days from their date. No order shall be deemed accepted until the Company's written acceptance thereof has been made. Variations in these terms will not be recognised, unless the Company has specifically accepted them in writing.
- 2.2 No servant or agent of the Company has power to vary these conditions orally or to make representations or promises about the condition of the goods, their fitness for any purpose or any other matter whatsoever. In entering the Contract, the customer acknowledges that it does not rely on and waives any claims of breach of any such representations, which are not confirmed in writing.
- 2.3 These conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.4 Any samples, drawings, descriptive matter or advertising produced by the Company are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.5 The Customer's order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these conditions. When the Company issues written acceptance of the order, the Contract shall come into existence.
- 2.6 All of these conditions shall apply to the supply of both Goods and Services except where application to one or other is specified.

3. Quantities

- 3.1 The prices quoted for Goods are for the stipulated quantities named in the quotation. Any variation in quantity shall be subject of a new quotation.

4. Price and Charges

- 4.1 The price of the Goods shall be the quoted price. The Company reserves the right to renegotiate the price at any time prior to delivery if there are major changes in material prices.
- 4.2 The charges for the Services shall be the price agreed in the order or, if no fixed price has been agreed, shall be calculated on a time basis in accordance with the Company's hourly fees rates, as provided by the Company to the Customer from time to time.

5. Delivery of Goods

- 5.1 Unless otherwise agreed in writing all quotations and estimates assume delivery in full loads. The Company reserves the right to charge extra for delivery in part loads where requested by the Customer or where the Customer has special or unusual delivery requirements and the failure of any one delivery shall not affect the performance of the Contract as to other deliveries as each delivery shall constitute a separate contract.
- 5.2 Delivery times given by the Company are estimates and shall not be considered as binding unless acknowledged as such in writing by both parties and will date from the acknowledgement and acceptance of a written order or from the date of receipt or full information enabling the manufacture to begin whichever shall be later.
- 5.3 Delivery shall be as arranged between the parties. Damage due to inadequate site access or careless unloading shall be at the Customer's risk.
- 5.4 Delivery is completed on the completion of unloading of the Goods at the delivery location.
- 5.5 Delivery notes bearing the signature of the Customer, his servant, agent or representative shall be conclusive evidence of receipt of Goods described thereon unless claims for investigation are made in writing to the Company:
- 5.5.1 for shortage of quantity or damage in transit within 10 days from the delivery date; or
- 5.5.2 for rejection within the provisions of clause 8 and clause 15 of these conditions.
- 5.6 If short delivery occurs the Customer undertakes not to reject the Goods but to accept the Goods delivered as part performance of the Contract.
- 5.7 Time of delivery shall not be of the essence of the Contract unless expressly so stipulated in writing. A reasonable extension of time for delivery shall be granted if delivery is delayed by strikes, lockouts, fire, accident, defective materials, delays in receipt of raw materials or bought in goods or components or any other cause beyond the reasonable control of the Company and the Company shall not be liable for any such delay.
- 5.8 If the Company fails to deliver the Goods for any reason other than any cause beyond the Company's reasonable control or Customer's fault the Company's liability, if any, shall be limited to the excess of the cost to the Customer of similar goods (of a similar description and quality in the cheapest market available) to replace those undelivered over the price of the Goods.
- 5.9 Where the Goods are not delivered by the Company or collected by the Customer but are delivered by an independent carrier, delivery to the carrier shall be deemed to be delivery to the Customer.
- 5.10 If the Customer fails to accept delivery of the Goods then, except where such failure or delay is caused by the Company's failure to comply with its obligations under the Contract or an event beyond the reasonable control of both parties:
- 5.10.1 delivery of the Goods shall be deemed to have been completed at the time of the failed delivery; and
- 5.10.2 the Company shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 5.11 If ten days after the day on which the Company notified the Customer that the Goods were ready for delivery the Customer has not taken actual delivery of them, the Company may resell or otherwise dispose of part or all of the Goods.

6. Packing of Goods

- 6.1 Packing will be in accordance with the Company's standard packing unless otherwise specified in writing. Details of the Company's standard packing are set out in the product brochure and are available on request.



7. Design and Drawing

- 7.1 It is the Customer's responsibility to ensure that the drawings, specifications and tooling are correct and in accordance with the order.
- 7.2 The Company accepts no responsibility for any drawing, design or specification not prepared by the Company and offers no warranty, guarantee, representation or opinion as to the practicability of construction or the efficacy, safety or otherwise of materials to be supplied or work to be executed by the Company in accordance therewith and the cost of any drawings, designs or specifications shall be chargeable to the Customer.

8. Quality of Goods

- 8.1 The Company warrants that, as at the date of invoice and for a period of 12 months from the date of the invoice (**Warranty Period**), the Goods shall:
 - 8.1.1 conform in all material respects with their description;
 - 8.1.2 be free from material defects in design, materials and workmanship; and
 - 8.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 8.2 Subject to clause 8.3, if:
 - 8.2.1 the Customer gives notice in writing to the Company during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 8.1;
 - 8.2.2 the Company is given a reasonable opportunity of examining such Goods; and
 - 8.2.3 the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Customer's costs, the Company shall, at its option, repair or replace the defective Goods or refund the price of the defective goods in full.
- 8.3 The Company shall not be liable for the Goods' failure to comply with the warranty set out in any of the following events:
 - 8.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 8.2;
 - 8.3.2 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 8.3.3 the defect arises as a result of the Company following any drawing, design or specification supplied by the Customer;
 - 8.3.4 the Customer alters or repairs such Goods without the written consent of the Company;
 - 8.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - 8.3.6 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 8.4 Except as provided in this clause 8 the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 8.1.
- 8.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.6 These conditions shall apply to any repaired or replacement Goods supplied by the Company.

9. Risk and Title

- 9.1 The risk in the Goods shall pass to the Customer upon collection or delivery to the place agreed.
- 9.2 The property and title in the Goods shall not pass to the Customer until all amounts due from the Customer to the Company in respect of Goods collected or delivered have been paid for in full. During that time the Customer shall hold the Goods as the Company's agent and shall keep Goods separate from those of the Customer and third parties and be protected and insured and identified as the Company's property. Until that time the Customer shall be entitled to sell the Goods in the ordinary course of its business but shall hold the proceeds of the sale on trust for the Company.
- 9.3 If the Customer becomes subject to an administration order or becomes insolvent or bankrupt or goes into liquidation or makes any arrangements with its creditors or has a receiver appointed over any of its property or undertaking, the power of sale under clause 9.2 shall automatically cease and if the Customer has failed to make any payment to the Company when due then the total price of the Goods shall become immediately payable.
- 9.4 The Company shall have a general lien on all goods or other paraphernalia of the Customer and the right to retain possession until all payment, costs, expenses or loss suffered as a result of any breach of contract of the Customer has been paid for or otherwise satisfied.

10. Supply of Services

- 10.1 The Company shall supply the Services to the Customer in accordance with any agreed specification, in all material respects.
- 10.2 The Company shall use reasonable endeavours to meet any performance dates for the Services that have been agreed, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 10.3 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.
- 10.4 The Customer shall:
 - 10.4.1 co-operate with the Company in all matters relating to the Services;
 - 10.4.2 provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Company to provide the Services; and
 - 10.4.3 provide the Company with such information and materials as the Company may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects.
- 10.5 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
 - 10.5.1 without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
 - 10.5.2 the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 10.5; and
 - 10.5.3 the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

11. Indemnities

- 11.1 The Customer warrants and undertakes that the manufacture of any Goods to the Customer's order or design will not involve the Company in the infringement of patent, registered design, trade mark or the other right in the manufacture of such Goods. The Customer will indemnify



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the Company against all claims, demands, costs, charges, expenses, damages and losses (including any direct, or consequential losses, loss of profit, loss of reputation and all interest, penalties, and legal and other professional costs and expenses):

11.1.1 arising from or incurred by reason of any such infringement; or

11.1.2 by reason of any loss, injury or damage, howsoever caused, sustained by any third party after the collection or delivery of the Goods.

12. Terms of Payment

12.1 The price of the Goods and Services excludes amounts in respect of value added tax (VAT) which the Customer shall additionally be liable to pay to the Company, at the applicable rate, subject to the receipt of a valid VAT invoice. For deliveries outside of the United Kingdom, any local taxes and export charges shall be payable by the Customer, in accordance with clause 16.

12.2 The Customer shall pay strictly net 30 days after the date of invoice unless otherwise agreed in writing notwithstanding that, in relation to Goods, delivery may not have taken place and the property in the Goods has not passed to the Customer. Time for payment shall be of the essence. If the Customer shall fail to pay within the time hereby stipulated then the Customer shall lose benefit of any previously agreed discount. The Customer shall pay all accounts in full and not exercise any rights of set off or counterclaim against invoices submitted.

12.3 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to charge the Customer interest (both before and after judgment) on the amount unpaid, at the rate of 4% per annum above the Bank of England base rate from time to time, until payment is made (a part of a month being treated as a full month for the purposes of calculating interest).

13. References

13.1 Orders are accepted subject to trade and financial references being satisfactory to the Company.

14. Cancellation and Termination

14.1 The Company shall be entitled to suspend or cancel further deliveries and to suspend or cancel work under this and any other contract between the Company and the Customer if:

14.1.1 any payment is overdue;

14.1.2 after notice to the Customer, to the extent that the value of the Goods and/or Services delivered but not paid for exceeds or if delivered would exceed any credit limit agreed between the Company and the Customer, whether or not payment is overdue.

14.2 Without limiting its other rights or remedies, the Company may terminate this Contract with immediate effect by giving written notice to the Customer if:

14.2.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;

14.2.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

14.2.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

14.2.4 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

14.3 Without limiting its other rights or remedies, the Company may suspend provision of the Goods and/or Services under the Contract or any other contract between the Customer and the Company if the Customer becomes subject to any of the events listed in clause 14.2.2 to clause 14.2.4, or the Company reasonably believes that the Customer is about to become subject to any of them.

14.4 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

14.5 On termination of the Contract for any reason the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt.

14.6 Termination of the Contract, 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 the Contract which existed at or before the date of termination.

14.7 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

15. Guarantee and Limitation of Liability

15.1 The Company will not be liable for any consequential loss or damage, including but not limited to loss of profits, caused directly or indirectly by any defect, breach or otherwise howsoever caused.

15.2 Subject to compliance with the obligations under conditions 5 and 12 hereof which shall be a condition precedent to the Company's liability the Company will repair or replace (at its option) any components of the Company's manufacture, which are found to be defective due to faulty materials or workmanship. In the case of the components or products not of the Company's manufacture but supplied by the Company as part of a contract or order, the Company will assign to the Customer its rights against its supplier and these rights shall be taken in extinction of and substitution for any rights which a Customer would otherwise have against the Company.

15.3 In clause 15.2 'defective' means not in accordance with contractual specification. The Company will accept that Goods and/or Services are defective only after it has been given the opportunity to verify that the allegedly defective Goods and/or Services do not meet the contractual specification.

15.4 The liability of the Company under this guarantee shall be limited to the invoice value of the Goods and/or Services replaced or repaired.

15.5 The guarantee set out in this clause 15 shall be the sole remedy in relation to defective Goods.

15.6 Nothing in this Contract limits any liability which cannot legally be limited, including liability for:

15.6.1 death or personal injury caused by negligence;

15.6.2 fraud or fraudulent misrepresentation;

15.6.3 breach of the terms implied by section 12 of the sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or

15.6.4 defective products under the Consumer Protection Act 1987.

15.7 Subject to clause 15.6, the Company's total liability to the Customer shall not exceed the invoice value of the Goods provided under the Contract.



15.8 Subject as expressly provided in these conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the extent permitted by law.

16. Export Terms

- 16.1 Where the Goods are supplied for export from the United Kingdom the provision of this clause 16 shall, subject to any special terms agreed in writing between the Company and the Customer, apply notwithstanding any other provision of these conditions.
- 16.2 The Customer shall be responsible for complying with registration regulations governing importation of the Goods into the Country of destination and for payment of any duties thereon.
- 16.3 The Company shall, at the Customer's expense, make arrangements for the Goods to be exported from the United Kingdom by using its reasonable endeavours to arrange space on an aircraft or ship and making delivery of the Goods to the ship or aircraft exporting the Goods and insuring the Goods up to the point of loading the Goods on such aircraft or ship and the Company shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.
- 16.4 All payment to be made by the Customer shall be made by payment either in pounds (English Sterling) euros or dollars, as specified by the Company to such Bank as may be specified by the Company.
- 16.5 All payments by the Customer under this Agreement shall be made in full without any deduction or withholding (whether in respect of set-off, counterclaim duties, taxes, charges, levies, bank charges or otherwise howsoever).

17. Onward Sale

- 17.1 Where the Customer purchases the Goods for onward sale, the Customer shall be responsible for all aspects of such onward sale, including but not limited to ensuring compliance with any applicable trade and economic sanctions laws or regulations.
- 17.2 The Customer must not sell, transfer, loan or otherwise provide the Goods to any third party registered, located or trading in any country on the United Kingdom sanctions list, as published by the UK government from time to time.
- 17.3 The Customer shall indemnify the Company against all claims, demands, costs, charges, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit loss of reputation and all interest, penalties and legal and other professional costs and expenses) incurred as a result of any breach by the Customer of any applicable trade and economic sanctions laws or regulations (including but not limited to any breach of clause 17.2 above) or otherwise arising in connection with the onward sale of the Goods by the Customer.

18. General

18.1 Assignment and other dealings

- 18.1.1 The Company may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 18.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.

18.2 Confidentiality

- 18.2.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 18.2.2.
- 18.2.2 Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 18.2; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 18.2.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

18.3 Entire Agreement

- 18.3.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 18.3.2 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 the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

- 18.4 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 18.5 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18.6 Severance. If any provision or part-provision of the Contract 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 the Contract. If any provision of the Contract is deemed deleted under this clause 18.6 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.

18.7 Notices.

- 18.7.1 Any notice or other communication given to a party under or in connection with the Contract 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 provided for such purpose.
- 18.7.2 Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt or 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, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - (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 18.7.2, 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.

- 18.7.3 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.



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18.8 Third Party Rights.

18.8.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

18.8.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

19. English Law

19.1 English law shall be the proper law of the contract and the courts of England and Wales shall have exclusive jurisdiction