

**MICROSTRAIN LIMITED T/A CUBICM3 STANDARD TERMS AND CONDITIONS OF SALE 2017**

**THESE TERMS AND CONDITIONS SHOULD BE READ CAREFULLY AS THEY FORM PART OF THE CONTRACT BETWEEN YOU AND MICROSTRAIN LIMITED T/A CUBIC M3**

**DEFINITIONS**

**“Company”** means Microstrain Limited

**“Contract”** means the contract for the purchase and sale of the Goods and includes the Quotation, the Special Conditions contained within the Quotation, the Customer’s Order and these Terms and Conditions

**“Customer”** means the buyer of the Goods

**“Goods”** means the goods (including any instalment of the goods or any part for them) which the Company is to supply in accordance with these Terms and Conditions (specified on the Quotation to which these Terms and Conditions are annexed)

**“Quotation”** means the prices and details of the Goods quoted to the Customer prior to the Customer’s acceptance of the Contract

**“Special Conditions”** means the Special Conditions contained within the Quotation

The headings in these Terms and Conditions (the “Conditions”) are for convenience only and shall not affect their interpretation.

**THE CONTRACT**

1. Unless otherwise agreed in writing, the Conditions and the Special Conditions supersede all prior negotiations and representations, over-ride any terms and conditions attaching to any purchase order whenever received and are the sole terms and conditions governing quotations made and orders accepted, save for any conditions implied by law which may not be excluded or limited.
2. Any orders placed are deemed offers open for acceptance until accepted or declined by the Company.
3. Without prejudice to any other legal rights of the Company, uncompleted orders may be suspended or cancelled at the Company’s option where any payment due by the Customer is in arrears or if events referred to in Item 24.3 of the Conditions should arise.
4. No variation to the Conditions shall be binding unless agreed in writing between the Company and the Customer.
5. The Company’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing. In entering the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

**DESCRIPTION OF GOODS**

6. Only those statements, recommendations, figures, advices, specifications, dates, illustrations, diagrams, dimensions, weights, performance, estimates or drawings given by or on behalf of the Company to the Customer contained in a quotation made or order accepted by the Company shall form part of the Contract; any other of the aforesaid shall not be regarded as inducing the Contract. Samples of goods provided are agreed to have been given to enable the Customer to judge the quality for itself and will not give rise to a sale by sample. Measurements are approximate and minor deviation of colour, weight, strength and hydraulic properties may occur.
7. No order submitted by the Customer shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company’s authorised representative.
8. The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specifications) submitted by the Customer, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
9. The quantity, quality and description of and any specification for the Goods shall be those set out in the Company’s quotation (if accepted by the Customer) or the Customer’s order (if accepted by the Company).

10. If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Customer, the Customer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company 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 Company's use of the Customer's specification.
11. The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.
12. No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), cost, (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

#### **DELIVERY**

13. Goods ordered shall be delivered at the Company's option by road. Delivery of goods by road is effected when goods are loaded on Customer's agents' vehicles at the Company's premises. Where the Company is responsible for transport of the Goods, Goods shall be delivered at the Customer's premises and the Customer shall be responsible for offloading of the Goods.
14. Any delivery date stated on the Company's confirmation of the order is approximate only and the Company shall not be bound by that date although it will use its best endeavours to effect delivery by such date. If no delivery date is stated, the Company shall deliver the goods as soon as it can conveniently do so having due regard, inter alia, to the availability of goods in stock at that time.
15. The Customer shall have no claim of any nature howsoever arising in relation to delays in delivery other than arising from wilful default of the Company. The Customer shall accept delivery as and when made by the Company.
16. Time shall not be of the essence of the contract save as to payment when time shall be of the essence.
17. If the Company is unable to make/complete delivery within 90 days of any delivery date stated in the Company's confirmation of order due to any occurrence beyond the control of the Company, the Company shall have the right at any time thereafter to cancel the order by notice in writing to the Customer.
18. If the Company is prevented from delivering any goods at the time stipulated due to instructions from or by reason of any actions on the part of the Customer or due to any cause beyond the Company's control additional expenses incurred by the Company for storing and handling the same shall be for the Customer's account.
19. Goods delivered to the Customer may not be returned for credit without the prior written consent of the Company. Costs of storing and transporting any goods returned to the Company for credit shall be for the Customer's account. A minimum handling charge of 10 per cent will be levied payable on demand.
20. The Customer shall notify the Company in writing within 7 days from the date of installation or (where the defect or failure was not apparent on reasonable inspection) within 28 days after discovery of the defect or failure, of any matter wherein it is alleged that goods are defective, and any consignment referred to in such notice shall be left intact until the Company notifies the Customer whether or not it desires to inspect such consignment in considering any claim. Goods referred to in any notice considered defective by the Company shall be replaced free of charge if returned to Company warehouse within one month of receipt by the Customer. Where no notice is given or the consignment referred to in any notice is not left intact for 7 days after receipt of notice by the Company, the Customer shall be deemed to have accepted same and shall be bound to pay for same.
21. If the Customer fails to take delivery of the Goods or fails to give the Company 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 Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may; store the Goods until actual delivery and charge the Customer for the reasonable costs, (including insurance) of storage; or sell the Goods at the best price readily obtainable and (after deducting all reasonable storage 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.

## **RISK**

22. Risk in and to the goods shall pass to the Customer on delivery in terms of (13) above and any carrier road, as the case may be, shall be the Customer's agent. Risk in and to goods ordered shall pass to the Customer on delivery to the nominated carrier if the Customer requires delivery other than as set out in (13) above.
23. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Customer for which payment is then due.

## **TITLE OF GOODS**

24. So long as the Customer has not resold or used in the ordinary course of business any goods sold by the Company to it:
  - 24.1 the Customer acknowledges that it is in possession of those goods solely as bailee for the Company and that title to such goods shall not pass to the Customer provided that the Customer shall be entitled to sell or use such goods in the ordinary course of its business at which point of sale or use title shall pass to the Customer;
  - 24.2 the Customer acknowledges that the goods of the Company are identifiable, and identification marks shall not be removed;
  - 24.3 the Company may (without prejudice to any of its rights) without previous notice retake and resume possession of goods equal to the value of any amount outstanding to the Company and by its servants and agents may enter upon the Customer's premises or any other place where the goods may be upon the occurrence of one of the following events:
    - 24.3.1 if the Customer is a corporation and winding up proceedings are initiated or it is placed under official management, placed into examinership or a receiver is appointed or an encumbrancer takes possession of its undertaking or property or any part thereof; or
    - 24.3.2 if the Customer is a natural person and the Customer becomes insolvent or bankrupt or commits an act of bankruptcy or makes an assignment for the benefit of a creditor; or a judgment is registered against the Customer, or
    - 24.3.3 if any monies are overdue from the Customer to the Company, which are in breach of the terms of payment referred to above;
  - 24.4 the Customer shall make good any damage to any premises occasioned by the removal of any goods and shall indemnify the Company in respect of any proceedings brought against it arising from the removal of the goods from any such premises.

## **PAYMENT AND INTEREST**

25. Unless otherwise stated, all prices agreed to are net of VAT and shall be paid free of exchange and deductions within 30 days of the date of Company's statement to the address of the Company as stated on its documentation.
26. The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.
27. Where the Company agrees to deliver the Goods, the Customer shall be liable to pay the Company's charges for transport, packaging and insurance.
28. The cost of pallets and returnable containers will be charged to the Customer in addition to the price of Goods, but full credit will be given to the Customer provided they are returned undamaged to the Company before the due payment date.
29. If the Customer fails to pay the full amount when due:
  - 29.1 interest on the amount due shall accrue at the rate of 18 per cent per annum from the date payment falls due to the date of payment; and

- 29.2 the Customer shall refund to the Company all legal costs on a solicitor and client basis incurred by the Company in recovering any amount due and interest thereon; and
- 29.3 the Company will be entitled to cancel the Contract or suspend any further deliveries to the Customer.

#### EXCLUSIONS

**THESE CLAUSES SHOULD BE READ CAREFULLY. THEY LIMIT THE EXTENT OF THE COMPANY'S LIABILITY IN CONTRACT, TORT AND OTHERWISE TO THE CUSTOMER**

- 30. These exclusions are to be read and interpreted in conjunction with the Product Policy Warranty given by the Company to the Purchaser at the time of sale.
- 31. All goods are supplied to and accepted by the Customer without any warranty that the goods are suitable for the purpose for which they are bought. The Company shall in no circumstances be liable to the Customer or any other person for any loss or damage of whatsoever nature and howsoever arising from the use of the Company's goods or from any alleged defect in them.
- 32. All conditions and warranties and liability which may be implied by law or otherwise to apply to these conditions are hereby expressly excluded to the extent that such exclusion is not void by law.
- 33. The liability of the Company for breach of any condition or warranty implied by statutory legislation shall be limited, where such limitation is permitted by law, at the option of the Company to:
  - 33.1 in the case of services to:
    - a. the re-supply of the services in respect of which the breach of condition or warranty arose; or
    - b. the payment of the cost of having such services in respect of which the breach of condition or warranty arose re-supplied;
  - 33.2 in the case of goods to:
    - a. the replacement of the goods or the supply of equivalent goods;
    - b. the repair of such goods;
    - c. the payment of having the goods repaired; or
    - d. the payment of the cost of replacing such goods or acquiring equivalent goods.

#### EXPORT TERMS

- 34. In these Conditions "Incoterms" means 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. Unless the Contract otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 35. Where the goods are supplied for export from Ireland the provisions of this clause (subject to any special terms agreed in writing between the Company and the Customer) apply notwithstanding any other provision of these Conditions.
- 36. The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 37. Unless otherwise agreed in writing between the Company and the Customer, the Goods shall be delivered to the air or sea port shipment and the Company shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1893.
- 38. The Customer shall be responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

#### **INSOLVENCY OF THE CUSTOMER**

39. This clause applies if;
- 39.1 The Customer makes any voluntary arrangements with its creditors or seeks the protection of the Court or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 39.2 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
- 39.3 The Customer ceases, or threatens to cease, to carry on business; or
- 39.4 The Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
40. If this clause applies, then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

#### **GENERAL**

41. If any provision of the Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Conditions and the remainder of the provision in question shall not be affected thereby.

#### **LAW**

42. These conditions shall be governed by the laws of the Republic of Ireland and the Customer and the Company hereby subject themselves to the jurisdiction of the Republic of Ireland.