

**GILL INSTRUMENTS LIMITED  
TERMS AND CONDITIONS OF SALE**

These conditions shall be incorporated in and form part of every contract for the sale by GILL INSTRUMENTS LIMITED (the “**Seller**”) of any services, materials, machines, or other goods and systems (the “**Goods**”) which shall be the subject of the contract between the Seller and the persons, company or other organisation (the “**Buyer**”) purchasing the Goods.

**Quotations.** Quotations by the Seller are not sales offers but invitations to treat only. All information in and relating to the quotations shall be confidential and shall not be passed without the permission of the Seller to any third party. All quotations are valid for 30 days unless otherwise agreed.

**Acceptance of Order.** Save as otherwise agreed in writing all orders are accepted by the Seller subject to these Conditions of Sale which override any other terms or conditions stipulated or incorporated or referred to by the Buyer, whether in the order or in any negotiations, so that these Conditions of Sale are the only terms or conditions upon which the Seller sells or supplies the Goods. The contract for the sale of the Goods between the Seller and the Buyer shall be deemed to have been made when the Seller sends or otherwise communicates to the Buyer its acceptance of the Buyer’s order and the Goods relative to such Contract shall be those stated in such acceptance. Contracts for delivery by instalments shall be deemed to be indivisible. The Seller shall be free to accept or refuse an order for any reason whatsoever.

**Prices.** The Seller may at any time before delivery increase the price of the Goods by notice to the Buyer. In such an event the Buyer may on receipt of such notice cancel the order for the Goods, but if the delivery of the Goods is to be made by instalments the Buyer shall be entitled to cancel only the undelivered portion of the order. No other remedy shall be available to the Buyer in respect of such variation in price as regards those Goods not already delivered when the increase is made. On all orders, irrespective of value, prices do not include the costs of delivery and insurance and the Buyer shall be responsible for arranging and paying for such delivery and insurance, unless otherwise agreed in writing prior to delivery. All Prices and quotations are exclusive of VAT which will be added at the applicable rate.

**Payments.** Unless otherwise agreed in writing prior to delivery, payment for the Goods shall be made not later than 30 days from the invoice date (time being of the essence). Notwithstanding the previous sentence the Seller may at any time require the Buyer to make payment in advance of delivery or to advance adequate security for the payment of all amounts due or to become due under the contract. Where payment is to be made by instalments the failure of the Buyer to pay any instalment in due time shall entitle the Seller to treat such failure as a repudiation of the whole contract by the Buyer and to recover damages for such breach of contract.

**Delivery/Despatch.** Unless otherwise agreed in writing between the Seller and the Buyer the following provisions shall apply:

**Ownership and Risk.** The risk in the Goods shall pass to the Buyer upon delivery but the ownership of the Goods shall not pass to the Buyer until such time as payment for the Goods shall have been made.

**Delivery.** Subject to ownership of the Goods passing on payment, unless otherwise agreed the Goods are supplied on an Ex-Works (INCOTERMS 2000) basis and the Seller will make the Goods available for collection by the Buyer at the Seller’s place of business or other location specified by the Seller. Delivery shall occur when the Buyer collects the Goods or 14 days after the Seller has given the Buyer written notice that the Goods have been made available for collection, whichever is the sooner.

Where the Seller agrees to arrange for delivery of the Goods such delivery shall be made in accordance with the relevant incoterm agreed between the parties.

**Quoted Delivery Times.** All quoted delivery dates and times are estimates only. The Seller shall not be liable for failure to deliver by such dates and/or within such times or for any damage or loss arising directly or indirectly out of delay in delivery, nor shall the Buyer be entitled to refuse to accept the Goods because of late delivery.

**Tender and Deliveries.** If the Buyer fails to collect the Goods within 14 days after they have been made available for collection or, where the Seller has agreed to transport the Goods, fails or refuses to accept delivery, then the Seller shall be deemed to have tendered and the Buyer to have refused to accept the Goods and to have repudiated the contract.

**Quantities.** The Seller shall be entitled to deliver Goods in a single delivery or by instalments as it sees fit. The Buyer shall not be entitled to reject any consignment of Goods supplied by the Seller on the grounds that the quantity supplied is below the quantity ordered. The Buyer shall notify the Seller of the shortage within 3 days of delivery. The Seller shall be responsible for supplying the balance of the Goods required to bring the aggregate to the quantity ordered, or for giving the Buyer credit for the Goods invoiced but not delivered. For the purposes of this condition each consignment constitutes a separate contract. The Buyer shall pay the Seller in full the amount payable under the invoice for each consignment notwithstanding any rights which the Buyer may claim to have against the Seller in respect of any other consignment of under any other contract between the Seller and the Buyer.

**Shortages/Damages**

The Buyer shall inspect the Goods immediately upon delivery and shall give notice in writing to be received by the Seller within 14 days of such delivery (time being of the essence) of any matter or thing which it alleges renders the Goods not in accordance with the contract. Any delivery book or note marked “not examined” will not be accepted by the Seller for the purposes of this sub-paragraph.

If the Buyer should fail to give such proper notice as is required hereunder then the Goods shall be deemed in all respects to be in accordance with the contract and the Buyer shall be deemed to have accepted the Goods

The Goods in respect of which the Buyer makes any claim hereunder shall be preserved intact as delivered, for a period of 21 days from the negotiation of the claim within which time the Seller or its agents shall have the right to attend the Buyer’s premises to investigate the complaint. Any breach of this condition shall disentitle the Buyer to any allowance in respect of this claim.

Goods represented by the Buyer to be defective or not conforming to the contract shall, if authorised by the Seller, be returned and in the Seller’s absolute discretion shall either be replaced or be credited. The Buyer shall not be entitled, where the Goods are to be delivered by instalments, to cancel any undelivered balance of the order without the prior written consent of the Seller.

**Warranty and Limitation of Liability.**

The Seller warrants that the Goods are of satisfactory quality and unless otherwise agreed are produced at the tolerance specified in the Seller’s official literature in respect thereof. All materials and workmanship are warranted for a period of 12 months from delivery unless otherwise agreed in writing subject to normal conditions of use. The Seller expressly excludes any liability beyond repair or replacement of agreed faulty Goods. Any changes made by the Buyer to the Goods without the written agreement of the Seller will invalidate the warranty.

Whilst the utmost care is taken to ensure the accuracy of any information data and advice furnished to the Buyer, such information and data shall not (subject as provided above) be deemed to form part of the contract for the sale of the Goods and the Buyer shall at the time the contract is made be deemed to have carried out its own investigations and tests of the Goods.

The Seller’s liability for any and all direct loss resulting to the Buyer from defective Goods or from any other cause whatsoever shall be limited to the purchase price of the Goods in respect of or in relation to which such loss or damage is claimed unless the Seller shall have replaced such defective Goods with Goods conforming in all respects with the contract in which event the Seller shall be under no further liability to the Buyer. Subject as aforesaid the Seller shall be under no liability in contract or in tort for any injuries, losses, expenses or damage direct or indirect and in particular but without prejudice to the generality of the foregoing, any consequential loss, in each case arising out of or consequent upon or attributable to the contract for the sale of the Goods or the supply or use of the Goods and/or any containers and/or packages or the Buyer or any third party having made use of or adopted in whole or in any part any information or data or advice given by or on behalf of the Seller in relation to the Goods or their use.

The foregoing paragraphs shall apply save that if any Act of Parliament or other statutory provisions for the time being in force shall render such paragraphs void or unenforceable, such paragraphs shall be deemed to apply with the exclusion of those provisions of the paragraphs which are void or unenforceable. For the avoidance of doubt nothing in this clause purports to limit or exclude the Seller’s liability for death or personal injury caused by the Seller’s negligence or for fraudulent misrepresentation.

**Cancellation of Orders.** Subject as herein provided, orders for Goods may not be cancelled or suspended without the Seller’s written consent. Any cancellation or suspension of an order is acceptable only on the express condition that the Seller shall be indemnified against any loss incurred wholly or in part by the cancellation or suspension.

**Sub-Contracting.** The Seller shall be entitled to sub-contract all or any of their obligations out of any quotation or order made in consequence thereof.

**Force Majeure.** The Seller shall be entitled by written notice to the Buyer to cancel any contract should the Seller be hindered or prevented from performing the contract by any cause reasonably beyond its control. In particular the Seller shall be entitled to effect such cancellation if it is by reasonable endeavours unable to obtain the necessary licences, consents or authorities for the exportation or importation of goods, parts or materials originating outside the United Kingdom or for the payment for such parts or materials.

**Indemnity.** The Buyer shall indemnify the Seller in respect of all damage or injury occurring to any person, firm, company or property and against all actions, suits, claims, demands, charges or expenses for which the Seller may become liable in respect of the Goods sold under the contract in the event that the damage or injury shall have been caused otherwise than by the neglect of the Seller.

**Default.** If the Buyer shall commit any breach of these Conditions or if any distress or execution shall be levied upon any of the property or assets of the Buyer or if the Buyer shall, in the sole opinion of the Seller, be unable to pay the Seller for the Goods or suspend payment of its debts or make any arrangements with its creditors, or being a company have an administrator appointed of its assets, or pass any resolution to be wound-up, or being a person shall commit any act of bankruptcy, or have any bankruptcy petition presented against it, then and in any such event the Seller shall, without prejudice to any other rights and remedies it might have and without any liability whatsoever, be at liberty forthwith by notice in writing to the Buyer:

To cancel all orders and contracts or any part thereof remaining unfulfilled between the Seller and the Buyer for the delivery of the Goods.

Either for its agents or itself to have access to the Buyer’s premises for the protection, removal, realisation and disposal of any Goods at any time and from time to time in which the property shall not have passed from the Seller to the Buyer in accordance with these Conditions of Sale.

**Lien**

Notwithstanding that credit may have been given to the Buyer under the contract the Seller shall retain possession of the Goods or any of them until payment has been received from the Buyer in full.

Without prejudice to any other right which the Seller may have, the Seller shall be entitled to exercise a general lien or right of retention on all Goods in the Seller’s possession which are, or are intended to become, the Buyer’s property in regard to all debts, damages or other sums due to the Seller from the Buyer, and pursuant to such lien or right, the Seller shall be entitled without notice to the Buyer to sell all or any portion of such goods privately, by auction or otherwise, and to keep the proceeds in diminution of such debts, damage or sums and of all costs and expenses incurred in and about effecting such a sale.

**Confidentiality and Publicity.** The Seller will respect normal standards of commercial confidentiality. Any information required to be retained in particular confidence must be identified to the Seller as such. Any requirements of confidentiality whether or not the subject of separate agreement shall not inhibit the Seller’s reasonable use of general information concerning the Buyer’s project for publicity purposes, such information including the Buyer’s name, general commercial parameters, areas of application and photographs of equipment and installations. Publication will not be made before the completion of the contract or other date agreed in advance.

**Liability.** The Seller cannot be responsible for the accuracy or fitness for purpose of the Buyer’s specifications. The Seller accepts no liability for any goods or information supplied by the Buyer being suitable for any purpose whatsoever, or for loss, injury or damage resulting from the use of such goods or information. The Buyer undertakes to indemnify the Seller against any claims arising from the use or exploitation of the Seller’s work for the Buyer, however caused.

**Intellectual Property.** All Intellectual property, patents, and other rights in work undertaken for the Buyer remains with the Seller during the work and, where agreed to be transferred by the Seller, will be transferred to the Buyer only when the complete program of work is accepted and full payment received and only for those applications relating to the Buyer’s normal commercial activities or those identified to the Seller at the time of contract. The Seller retains rights to the work for any other applications, and also equal rights to any work that is not completed for any reason. The Seller cannot transfer rights to designs or information that are in the public domain or exist in an unprotected form elsewhere. Patent applications and other patent work will be undertaken at the Buyer’s request on a cost-plus basis independently of any fixed price contract and will be charged separately. The Seller accepts no liability for infringements of any patents, copyrights, registered trade marks or designs incurred by use of any information supplied by the Seller.

**Patents and Trade Marks.** No representation, warranty or indemnity is given by the Seller that the Goods do not infringe any letters, patent, trade marks, registered designs, copyright or other industrial rights and in this respect the Buyer shall accept such title to the Goods as the Seller has.

**Non-assignment.** The contract of which these Conditions form part is personal to the Buyer who shall not assign the benefit thereof without the Seller’s written consent.

**Third Parties.** A person who is not party to this contract has no right to enforce any term of this contract under the Contracts (Rights of Third Parties) Act 1999 and the parties to this contract do not intend that any third party rights are created by this contract.

**Data Protection.** The Seller operates under the Data Protection Act. Data provided by the Buyer will be held in multiple file formats by the Seller and will be processed within the Seller’s company for normal business purposes. Data may be passed to third parties for normal business purposes. Data will not be sold by the Seller to any third party.

**Goods Made To Special Order.** The following terms in addition to those above will apply to special orders of Goods made to the Buyer’s request.

**Packaging of Free Issued Materials.** When providing packaging services for products produced by third party manufacturers the Seller will only be liable for defects directly attributable to the packaging operations. The technical composition and quality of the contents is beyond the control of the Seller and any defects in such areas must be pursued with the original third party manufacturer of the product. No liability will be accepted by the Seller for any such defects of whatever nature.

**Standards of Work.** The Seller undertakes to provide a good standard of work appropriate to its engineering disciplines, and to allocate staff of proper qualification and skill to the tasks required for efficient discharge of its responsibilities to the Buyer.

**Fixed Price 1.** Fixed price contracts may be undertaken where an exact specification can be agreed. Any changes to the specification after a contract has been accepted are subject to separate agreement as regards any additional cost and time involved, and may be refused if unreasonable. Unplanned activities at the Buyer’s request will be treated similarly. Time-scales are quoted in good faith, but do not form part of any contract. Payment schedule is by agreement, and invoices are presented upon acceptance of the work at the agreed stages. Work is deemed to have been accepted within 15 days of delivery if no written advice is received to the contrary within this time. Criteria applied during acceptance tests must be contained within the original specification.

**Fixed Price 2.** Where the Buyer is unable to provide an appropriate written specification, but the functional requirement is made clear, then the Seller may be prepared to propose its own interpretation of the Buyer’s requirement, and offer a fixed price Quotation against the Seller’s proposal. If a contract is agreed on this basis, then the Seller’s proposal will be taken in lieu of the Buyer’s specification, and the Seller’s interpretation of the proposal is binding.

**Cost-Plus.** Where an exact specification is not agreed, work is undertaken without commitment, and invoices will be presented monthly in arrears for time spent, at appropriate rates, and for expenses such as travel, materials, etc. Quotations for cost-plus work are for budgetary purposes and form no part of any contract. Invoicing of cost-plus work is not conditional on acceptance of the work.

**Special Order Prices and Timescales.** Special Order Prices and timescales are based on a standard working week, with allowance for holidays. The Seller reserves the right to charge extra if overtime work is needed to meet the Buyer’s request. The Seller reserves the right to review and change Special Order Prices on 1 month’s notice to the Buyer.

**Suspension of Work.** The Seller reserves the right to suspend any work being undertaken for the Buyer while any payments are overdue.

**Arbitration and Proper Law.** The construction, validity and performance of this contract shall be governed by the laws of England. Any disputes arising out of the contract shall be referred to arbitration in England in accordance with the provision of the Arbitration Act 1996 or any statutory modifications thereof for the time being in force.