

MeasurIT Technologies Ltd. Terms and Conditions of Sale

DEFINITIONS

In these conditions:-

"Company" means MeasurIT Technologies Ltd., Craanford, Co. Wexford, Ireland or any subsidiary or associated company;

"Buyer" means any person, firm, company or unincorporated association, which orders or buys or licences goods from the Company;

"Goods" mean all or any goods distributed, sold or supplied from time to time by the Company, which are the subject an the Order and, where the context so admits any instalment thereof;

"Invoice" means the invoice given or dispatched to the Buyer detailing the Goods and the Price;

"Order" means the contract between the Company and the Buyer (of which these conditions form part) for the supply of Goods by the Company to the Buyer;

"Price" means the total price to be paid by the Buyer to the Company for the supply of the Goods in accordance with these conditions.

These condition are effective and binding as and from 1st August 2007 and are in place of all previous terms and conditions issued by the Company.

1. ACCEPTANCE OF ORDERS

1.1 Any quotation relating to goods supplied by the Company and any catalogue, mail shot, email or other advertisement of such goods shall constitute an invitation to treat only and not an offer to contract. Any order placed by a Buyer with the Company for goods (including orders for goods on approval) shall be accepted entirely at the discretion of the Company and, if so accepted will only be accepted upon these Conditions.

1.2 These Conditions shall override any contrary, difference or additional terms or conditions contained or referred to in a Buyer's order or in any other correspondence or documents from that Buyer and no addition, alteration or substitution of these conditions will bind the Company or form part of any Order unless expressly accepted in writing by a person authorised to sign on the Company's behalf.

1.3 A Buyer's order shall be deemed to have been accepted by the Company upon: -

1.3.1 Acceptance by the Company of payment in cleared funds for the Goods; or

1.3.2 Despatch to the Buyer of a note advising that the Buyer's Order has been recorded and will be fulfilled once the Goods, to which the advice note relates are available; or

1.3.3 Delivery of Goods to the Buyer or to some person firm or company authorised to collect or receive the Goods on the Buyer's behalf

1.4 Each order which is so accepted shall constitute an individual legally binding contract between the Company and the Buyer.

2. SALE BY DESCRIPTION

- 2.1 Unless expressly stated otherwise in the Order, all Goods are sold by description and not by sample, even if samples are provided.
- 2.2 The Buyer's attention is specifically drawn to the manufacturers' brochures and safety literature in respect of the correct use and application of products which the Company may supply.
- 2.3 The Buyer is wholly responsible for checking that such products are entirely appropriate for the use to which they may be put.
- 2.4 The specification and description of the goods have been supplied by the manufacturers and are correct to the best of the Company's knowledge at the time of writing. In view of the rights claimed by manufacturers to change specification without notice and whilst reasonable care is taken to ensure that due notification of such changes is given, customers are advised to check the exact specification of all goods prior to order where variations will be material to performance.

3. DELIVERY OF GOODS

- 3.1 Unless otherwise agreed with the Buyer, the Company shall effect delivery of Goods at the Buyer's expense.
- 3.2 Delivery of the Goods shall be deemed to have taken place when the Goods reach the Buyer's place of business or the place designated by the Buyer for delivery of the Goods. In all circumstances, including Goods carried by the Company's nominated carriers, delivery shall take place when the Goods come within the possession or control (actual or constructive) of the Buyer.
- 3.3 Risk in the Goods shall pass to the Buyer immediately the Goods are delivered to the Buyer or its Representative, notwithstanding any failure by the Buyer or its representative to endorse its acceptance and the Company shall not have any responsibility in respect of the safety of the Goods thereafter, notwithstanding that the ownership of the Goods shall not have passed to the Buyer. Goods damaged by the Buyer its servants or agents whilst loading and unloading are the responsibility of the Buyer. The Buyer shall be responsible to insure the Goods against all risks.
- 3.4 The Company reserves the right to make deliveries by instalment in all cases. Where Goods are delivered by instalment, the Buyer shall not be entitled to treat defective delivery in respect of one or more instalments as a repudiation of the whole of the Order nor to defer payment for any previous instalment.
- 3.5 Every effort shall be made by the Company to dispatch all the Goods in good condition and on time. Any time or date for delivery given by the Company is given in good faith but is an estimate only. Events beyond the Company's control by which availability of the Goods, delivery, or the transportation of Goods should be made impossible or essentially difficult shall entitle the Company to cancel the Contract or to postpone delivery until such hindrance may be overcome. The Company shall also be entitled to cancel the Contract if such hindrance or difficulty causes expense, which cannot reasonably be deemed by the Company to be acceptable to it. The term "hindrance" shall be regarded as including official acts, availability of raw materials, availability of the Goods, difficulty in production and/or transport, strikes, lockouts or destruction of the Goods in transit or for any reason.
- 3.6 The right to cancel the Contract shall at all times be available to the Company, if essential changes in the business situation of the Buyer are considered by the Company to have taken place.

3.7 The Company must be informed in writing if the final destination and use of the Goods is outside the EU or EEA area.

3.8 The Company is prohibited from delivering certain Goods for use in the Tobacco industries. If the Company believes at any stage that this may be the case, the Order may be canceled without notice and all costs to date recovered. UN peace keeping and humanitarian projects are excepted.

4. INSPECTION AND ACCEPTANCE OF GOODS

4.1 The Buyer shall inspect the Goods immediately upon delivery and within five days of delivery (time being of the essence) give notice in writing to the Company of any alleged shortages in the Goods or of any defect or damage to the Goods or of any other matter or thing by reason whereon the Buyer alleges that the Goods are not in accordance with the Order. If the Buyer shall fail to give notice within five days, then the Goods shall be conclusively presumed to be in accordance with the Order in all respects and the Buyer shall not thereafter be entitled to reject the Goods or to claim from the Company in respect of any shortage, damage or other defect in the Goods.

4.2 In the case of damage or other defect in the Goods, which was not apparent on reasonable inspection, notice shall be given to the Company within four days after discovery of the damage or other defect, provided this is discovered within 28 days of delivery of the Goods and subject to this relaxation, Clause 4.1 shall apply.

5. PROPERTY IN GOODS AND RISK

5.1 Notwithstanding delivery and passing of risk in the Goods, or any other provision of these conditions, property in the Goods shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full of the Price and of all other sums plus VAT which may be due by the Buyer to the Company at the time and the Price and all taxes and duties are paid in full.

5.2 Until the property and the Goods passes, the Buyer shall keep the Goods free from any lien, charge or encumbrance and the Company may at any time require the Goods to be returned to it by the Buyer and if such requirement is not met within three days of demand for return to it, the Company may take possession of the Goods and may visit (and is hereby authorised to enter) any premises of the Buyer or third party where the Goods are kept for the purpose of taking possession of the Goods.

5.3 Until such time as property in the Goods passes to the Buyer, the Buyer shall hold same as the Company's fiduciary agent and custodian and keep them separate from its property and from that of third parties and properly stored, protected and insured and identified as the property of the Company. If the Buyer shall sell or otherwise dispose or process the Goods (or any part thereof) it shall receive and hold as trustee for the Company the proceeds of such sale, disposal or process or other monies derived from or representing the Goods (or any part thereof) (including insurance proceeds) and shall keep such proceeds or other monies separate from any monies or property of the Buyer and/or third parties, and shall as soon as possible after receiving the same pay such monies to the Company or into a separate account in trust for the Company.

5.4 The Company shall be entitled to sue for the Price charges expenses and VAT once payment is due in terms of Clause 6.4, notwithstanding that the property in the Goods has not passed to the Buyer.

6. PRICE AND PAYMENT

6.1 The Price shall be calculated by reference to the Price quoted by the Company plus Value Added Tax at the rate applicable, where applicable and/or other taxes, duties and appropriate other charges and as shall be specified in the invoice. Unless otherwise agreed with the Buyer, quotations are valid for 30 calendar days from the date of quotation.

6.2 The Price shall be payable in the currency stated in the contract and invoice free of all charges to the Company. Every effort shall be made by the Company to deliver the Goods at the price quoted, however, the Company reserve the right to alter the price in the event of any increase in import duty, tax variation, freight or carriage charges or insurance charges or any other charges to which the Goods are subject, which increase shall be for the Buyer's account and the Buyer shall also bear any increase in Price brought about by the revaluation or devaluation of the currency of any country from where the Goods are being imported or originate.

6.3 All invoices shall be paid by the Buyer within 60 calendar days of the date of delivery of the Goods or the date of the invoice whichever shall be the earlier (the Due Date). The Company reserves the right to dispatch further invoices to the Buyer in respect of increases or other charges payable pursuant to these conditions and not ascertainable at the time of dispatch of the original invoice.

6.4 The Price and any increases and any other charges and value added tax at the rate applicable shall be paid in full by the Buyer to the Company and shall be so paid on or before the date shown on the Invoice, as the Due Date for the payment unless otherwise agreed in writing between the Company and the Buyer.

6.5 If the Price is not paid in full by the Due Date:-

6.5.1 The provisions of the European Communities (late payment in Commercial Transactions) regulations 2002, Statutory Instrument No. 388 of 2002 and any amendments thereto from time to time shall apply and interest will be payable pursuant to the terms of the Statutory Instrument and

6.5.2 The Buyer shall reimburse to the Company (on a full indemnity basis) all costs and expenses incurred by the Company in connection with the recovery of any monies due to the Company.

6.6 Without prejudice to 6.5.2 it is hereby expressly stated that timely payment of the Price is of the essence of the Order and if the Buyer fails to make timely payment the Company may at its option either suspend all further deliveries of Goods under the Order or otherwise until payment the Price, charges interest and Value Added Tax is made in full or the Company may cancel the Order and subsequent Orders so far as Goods remain to be delivered.

6.7 Payments made by the Buyer to the Company shall be applied by the Company to Invoices, and to Goods listed in Invoices, in such order or manner as the Company shall at its entire discretion think fit.

6.8 Except with the express agreement in writing of the Company no deduction shall be made by the Buyer for any payment for Goods for or on account of any matter or thing whatsoever including, but not limited to any set off, compensation, counterclaim or present or future taxes.

7. WARRANTY

7.1 The Company warrants that: -

7.1.1 It has the right to sell the Goods

7.1.2 The Goods shall correspond with their description as set out in the documents issued by it, unless the Buyer is specifically advised by the Company to the contrary, prior to delivery of the Goods.

8. LIMITATION OF LIABILITY

8.1 The Company's liability under Clause 7 shall be to the exclusion of all other liability to the Buyer, whether

contractual or otherwise for defects in the Goods or for any loss or damage caused by the Goods, and all other conditions, warranties, stipulations and other statements, whatsoever concerning the Goods, whether express or implied, by statute, at common law or otherwise howsoever, are hereby excluded; in particular (but without limitation of the foregoing) except as set out in Clause 7.1, the Company grants no warranties regarding the fitness for the purpose, performance, use, nature or merchantable quality of the Goods, whether expressed or implied by Statute, at common law or otherwise howsoever.

8.2 In no circumstances shall the Company be liable to the Buyer or any third party, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and, whatever the cause thereof: -

8.2.1 For any increased cost or expense to the Buyer

8.2.2 For any loss of profit, business contracts, revenue or anticipated savings, or

8.2.3 For any special indirect or consequential damage of any nature whatsoever arising directly or indirectly out of the provision by the Company of the Goods or any failure or defect therein or of the performance, non-performance or delayed performance by the Company of the Order.

8.3 The Company's liability to the Buyer in respect of the Order, in contract, tort (Including negligence or breach of statutory duty) or howsoever otherwise arising shall be limited to the Price.

8.4 Measurit will remedy defects in material and/or workmanship in any new Check-Flex® valve for a period of two (2) years from the documented date of purchase so long as the valve has been used in accordance with Measurit's instructions and recommendations and under normal operating conditions. The warranty does not cover damage to the valve caused by external mechanical forces, such as interference from humans, animals or machines, nor is the warranty valid if the valve has been modified or altered in any way post-production.

9. FORCE MAJEURE

9.1 The Company shall not be responsible for any delay or failure to fulfill any of its obligations under the Order nor be liable for any loss or damage suffered or incurred by the Buyer or any third party by reason of any delay in delivery of the Goods or any part thereof caused directly or indirectly by any act of God, war, government or parliamentary restriction, import or export regulation, strike, lockout, trade union dispute, fire, theft, flooding, breakdown of plant or premises, failure of computer system or supplies or by virtue of transportation problems or any other cause whatsoever beyond the control of the Company.

10. INDEMNITY

10.1 The Buyer shall indemnify the Company in respect of all loss, damage or injury occurring to any person, firm, company or property, and against all actions, suits, claims and demands, charges or expenses in connection therewith for which the Company may become liable in respect of the Goods in the event that such loss, damage, or injury shall have been occasioned by the negligence or breach of duty of the Buyer.

11. TERMINATION

11.1 In the event of the Buyer committing any breach of any term or provision of the Order (including, for the avoidance of doubt, these conditions), going into liquidation, having a receiver, examiner or other similar officer appointed over the whole or any part of its assets, becoming bankrupt or apparently insolvent or granting any trust deed or entering into any composition or similar arrangement with its creditors, or if any circumstances arise which, in the sole opinion of the Company render any of the foregoing likely to occur, then the Company shall be entitled, without notice and without any liability

whatsoever, to terminate the Order forthwith and to enter the Buyer's premises for the protection, removal, realisation and disposal of any of the Goods in which the property shall not have passed to the Buyer in accordance with these conditions. The Company shall also be entitled to cancel all Orders or any part thereof remaining unfilled between the Company and the Buyer and to sell to any other party or otherwise dispose of and deal with the Goods.

11.2 Termination of the Order shall not discharge any pre-existing liability of the Buyer to the Company and on such termination the Company shall be entitled to recover from the Buyer such loss or damage as the Company has suffered by reason of such termination.

12. GENERAL

12.1 No failure or delay by the Company to exercise any right, power, remedy or privilege shall operate as a waiver of the same.