



# CONDITIONS OF SALE

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## **1. DEFINITIONS**

In these Conditions of Sale the following expressions shall have the following meanings:

- a) "The Company" shall mean TestCal.
- b) "The Purchaser" shall mean the party placing the order with the Company which order is accepted on the form overleaf.
- c) "The Contract" unless otherwise agreed by the Company in writing means the Contract constituted by the written acceptance by the Company of the Purchaser's order.
- d) "The Products" mean the goods the subject of the Contract.
- e) "Payment" is defined as "Delivery of funds". This is either receipt of cash or cleared funds in the company's bank account.
- f) "Special Type" means Products not included in the Company's current catalogue.

## **2. GENERAL**

All contracts for purchases of Products shall be subject to these Conditions of Sale which shall supersede any terms, conditions or representations relating to the Purchase appearing or made in catalogues or otherwise and shall also override any terms or conditions stipulated, incorporated or referred to by the Purchaser whether in the Purchaser's offer to buy or elsewhere. All guarantees, warranties or conditions whether written or oral or express or implied and not appearing in these Conditions of Sale are excluded and hereby negated, but no such exclusion shall apply to any warranty or condition necessarily imposed by English Law.

## **3. VALIDITY OF QUOTATIONS AND ACCEPTANCE**

- 3.1. Unless stated otherwise, a quotation is open for offer by the Purchaser within the period stated therein, or where no such period is stated, within 30 days from the date of such quotation, provided always that it shall not have been withdrawn previously by the Company.
- 3.2. A Quotation is not an offer capable of acceptance by the Purchaser and all orders placed by the Purchase are subject to acceptance by the Company. A binding contract will only be created with the Company when the Company has dispatched to the Purchaser a written form of Acknowledgement of Order or Official Invoice

## **4. PRICES**

All prices quoted by the Company are for quantities of the Products specified in the quotation and are not necessarily applicable to different quantities. Unless otherwise indicated by the Company no price quoted by the Company will include the supply of any descriptive literature or instructions (other than one copy in the English language of instructions for the operation of the Equipment) or the services of an engineer on site for the purpose of checking, servicing or commissioning the equipment, or the cost of packing insurance or carriage. Unless otherwise agreed in writing owing to fluctuations in the prices of materials and labour over which we have no control all Orders are accepted for delivery at prices ruling at the date of despatch. Value Added Tax if applicable will be charged in addition to the prices quoted at the rate prevailing at the date of Products are despatched.

## **5. PAYMENT**

Unless otherwise agreed in writing the Products (or in the case of the Products being delivered by instalments, each instalment of the Products) shall be paid for in cash upon presentation of shipping documents and invoices in the United Kingdom, or on demand if the Products are put into storage under the provisions of Clause 15 hereof. The Company's prices are nett and are not subject to settlement terms.

For Account customers based in the UK a strict payment term of 30 days from date of Invoice will apply unless previously agreed payment terms have been made in the Products Quotation or Sale Agreement (Refer *Section 6 - Payment Terms*)



## 6. Payment Terms

For clarity and understanding the following details the company's payment options and the definition of each: -

- a) **Payment with Order/Deposit Payment/Payment in Advance** - On presentation of the Invoice the Company will require payment prior to starting or delivering any Products or Services.
- b) **Payment on Delivery/Collect on Delivery** - The goods upon delivery will be exchanged for payment.
- c) **Payment in XX Days** - Full payment will be made in XX days from the date of the invoice. Where XX represents the agreed days of the deferred payment.
- d) **Payment end of Month** - Full payment will be made by the 28<sup>th</sup> of the same month as the date of the invoice.
- e) **Payment end of Following Month** - Full payment will be made by the 28<sup>th</sup> of the month following the date of the invoice.

## 7. Penalty on Late Payment

The company will exercise its statutory right to claim interest and compensation for debt recovery costs under the late payment legislation if we are not paid according to agreed terms.

The penalty for late payment will be set at a daily interest of 8% over the Bank of England's base rate.

## 8. Payment Discounts

Where payment discounts are available they will be detailed on the invoice or prior sales contract. In the absence of such detail no discounts will exist or be inferred.

When offered by means of writing an early discount will detail and state the value of: -

- a) The percentage discount off the full invoice payment.
- b) The specified date or number of days after the invoice date. (herein referred to as "cutoff" date)

When the full discounted payment is completed prior to the cutoff date, then the invoice will have been deemed as paid in full.

If a discounted payment is completed after the cutoff date the payment discount is not valid and thus the balance of payment will become payable in accordance with the terms and conditions.

## 9. TITLE

Full legal and beneficial title in the Products shall remain with the Company and shall only pass to the Purchaser when payment for the Products has been made in full. Until such payment in full has been made: -

- a) The Purchaser shall hold the Products for the Company in a fiduciary capacity as Bailee of the Products and shall return them to the Company forthwith on the Company's request.
- b) The Purchaser shall store the Products separately from other goods in its possession in such a way as indicate clearly that Products are exclusively owned by the Company
- c) Any proceeds of sale of the Products shall be paid into a bank account (the "Bank Account") separate from other bank accounts held by the Purchaser and the Bank Account shall be designated by a title which indicates clearly that the funds therein are held by the Purchaser as trustee for the Company. Notwithstanding the foregoing, the products shall in any event be at the Purchaser's risk from delivery to it or to any carrier or agent acting on its behalf.



## **10. DELIVERY**

Unless otherwise agreed in writing:

- a) Subject to receipt of clear instructions from the Purchaser, the Company will arrange for transport of the Products to the Purchaser's place of business (or such other premises as the Purchaser may request and the Company may agree in writing) and will insure the Products while in transit.
- b) All charges for transport, for special packaging and for insurance in transit are payable by the Purchaser in addition to the quoted price.
- c) For the purpose of this Clause the Carrier shall be deemed to be the agent of the Purchaser.
- d) The Company reserves the right to make delivery of the Products by instalments and to tender for separate invoice in respect of each instalment. Payment for such instalment shall be made in accordance with Condition 5 hereof or as otherwise agreed in writing.

## **11. LIABILITY FOR DELAY**

Any times quoted for despatch, repair or replacement of the Products are to be treated as estimates only and the Company shall not be liable for failure to despatch, repair or replace the Products within such times unless the Purchaser has suffered loss thereby, and the amount payable in respect thereof shall have been agreed in writing as liquidated damages, in which case the Company's liability shall be limited to the amount so agreed to be paid. In all cases where a time for despatch, repair or replacement is quoted or not, the time for despatch, repair or replacement shall be extended until delivery can reasonably be made if delay in despatch, repair or replacement is caused by instructions or lack of instructions from the Purchaser or by industrial dispute or by any other cause whatsoever beyond the Company's reasonable control.

## **12. DEFAULT**

The Company shall have the right to discontinue delivery and also at its discretion, to terminate the contract in respect of any undelivered Products if the Purchaser is in breach of Condition 5 *PAYMENT* hereof, without itself incurring any liability for breach of contract.

## **13. DEFECTS AFTER DELIVERY**

- a) The Company will, by repair or replacement at its option, make good all defects which under proper use appear in the Products within a period of 12 months from the date of delivery to the Purchaser and arise solely from faulty design, materials and/or workmanship, provided the Purchaser first returns the alleged defective product(s) to the Company carriage paid.
- b) In respect of parts or components not of the Company's manufacture, the Company will give the Purchaser a guarantee equivalent to the guarantee (if any) which the Company may have received from the supplier of such parts or components in respect thereof, but not so as to impose on the company in respect of such parts or components a liability greater than that imposed on it by Sub-Clause (a) hereof.
- c) Save as aforesaid and as provided in Condition 11 *LIABILITY FOR DELAY* hereof the Company shall not be under any liability in respect of defects in Products delivered or damage or loss resulting from such defects or from any work done in connection therewith, save for death or personal injury caused by the Company's proven negligence, or where liability is otherwise prohibited from exclusion by statute.

## **14. REPAIRS**

- a) In the event that Products are returned by the Purchaser to the Company for the purpose of carrying out repairs or servicing, then subject to sub-clause (b) hereof and to Clause 6 *TITLE* the risk and the property in the Product shall remain in the Purchaser.
- b) In the event that Products are returned for the purposes described in sub clause (a) hereof, and the Company, having first carried out the repair or servicing has given the Purchaser notice in writing that the Products are ready for collection, then upon the expiry of six months from the date of such notice the property in the Products shall be deemed to pass to the Company, which shall be entitled to deal with the Products as it sees fit.



## **15. SPECIAL ORDERS**

Terms relating to orders for Special Types shall be the subject of negotiation. Orders relating to Items manufactured to a specific specification or design cannot be cancelled and must be paid for in full to the terms set out in Clause 5 *PAYMENT*.

## **16. RETURN OF THE PRODUCTS**

In no circumstances may Products be returned without the written consent of the Company. Where the Company has agreed to the return of such Products a handling charge will be deducted by the Company from any credit allowed to the Purchaser where the reason for such return is not an error on the part of the Company or is governed by Clause 13 *DEFECTS AFTER DELIVERY* hereof.

## **17. DESCRIPTIVE MATTER AND ILLUSTRATIONS**

- a) The Company's drawings descriptive matter, weights, dimensions and shipping specifications are approximate only, unless specifically guaranteed and in any event the Company shall be entitled to make minor modifications in detail to the Contract descriptions of the goods. The Company shall not be liable for failure to attain performance figures stated in the Contract unless these have been guaranteed within a specific margin or tolerance. If any figure so guaranteed is not attained on test in the manner (if any) required by the Contract. The Company shall be afforded a proper opportunity to rectify the failure and if the Company fails to do so the Purchaser may either reject or accept the relevant part of the Products but shall not be entitled to any damages unless an agreed reduction in the price is specified in the Contract, in which case there shall be no right of rejection.
- b) Except where the Company expressly and in writing enters into an undertaking as to fitness, the Purchaser assumes responsibility for the sufficiency and suitability for his purpose of the Products he orders.
- c) Nothing contained in any catalogue, price list or other advertising matter shall be interpreted as an offer to sell.

## **18. TESTS AND INSPECTIONS**

If special tests in the presence of the Purchaser or his representative are required, these shall be charged for and in the event of any delay on the Purchaser's part in attending such tests shall proceed in his absence and shall be deemed to be made as if in his presence.

## **19. STORAGE (APPLICABLE TO EXPORT ORDERS)**

If the Company does not receive Forwarding instructions sufficient to enable the Company to despatch the Products within 30 days after the date of notification that they are ready, the Company shall be entitled to arrange storage on the Purchaser's behalf and all charges for storage, insurance and demurrage shall be charged to the Purchaser. Payments for the Products so stored shall be made as if delivery has been affected.

## **20. FORCE MAJEURE**

- a) Should delivery of all or any of the Products sold or agreed to be sold be prevented or delayed by happenings or occurrences due to "force majeure" (including but without limitation, strikes, lockouts or other labour troubles, war, insurrection, riot, civil commotion, fire, accident to or breakdown of machinery, delay in delivery of goods or materials by suppliers or other persons, government action and Act of God) or any cause whatsoever beyond the Company's reasonable control, the Company reserves the right to cancel or suspend deliveries without prejudice to its rights to payment for any Products already delivered.
- b) In any event in Company shall not be liable in any way for loss or damage including consequential loss or damage arising directly or indirectly as a consequence of such events or happenings as are particularised in paragraph (s) of this Clause.



## **21. LEGAL CONSTRUCTION**

The Contract and these Conditions shall be subject to, and construed in accordance with English Law.

United Kingdom buyers please note: -

Invoices will be zero-rated for VAT purposes on the understanding that you will supply satisfactory written evidence of shipment within 30 days of exportation. We reserve the right to debit you with any costs and charges including any liability for VAT in respect of the transaction which may be incurred by us as a result of your failure to provide such evidence.

We acknowledge with thanks your order as detailed.

Please inform us if your requirements have not been interpreted correctly.

To avoid delays please use our Sales Order / Invoice Numbers in all communications.

**IMPORTANT NOTICE.** Unless examined, goods should be signed for as "Unexamined". The Company can only accept responsibility for loss or damage provided that: (1) The Carriers and Ourselves are notified within 3 days and packing retained for the Carrier's examination. (2) You confirm to us in writing, within 7 days, quoting reference number of this form (3) In the event of non-receipt of a whole consignment, the Carriers and Ourselves are notified within 21 days.

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CalCard is a product name of TestCal whose office is: -  
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