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Standard Trading Conditions for the supply of Goods and Services

Unless otherwise stated in writing the following conditions shall apply:

1. INTERPRETATION

1.1. In these Terms:-

"Buyer" means the person who places an Order for the Goods;
"Contract" means the contract between the Buyer and the Seller for the sale and purchase of the Goods and/or Services, which includes the Buyer's Order and these Terms;
"Data Protection Legislation" means: (i) the General Data Protection Regulation (EU) 2016/679 (GDPR) and any national implementing laws, regulations and secondary legislation, as amended or updated form time to time in the UK; and (ii) any successor legislation to the GDPR or the Data Protection Act 1998.
"Delivery" means the completion of delivery of the Goods by the Seller to the Delivery Point;
"Delivery Point" means the place stated in the Order to which the Goods are to be delivered, unless varied by either party and agreed by the other party no less than seven days before Delivery;
"Goods" means the goods (or any part of them) stated in the Order which the Seller is to supply in accordance with these Terms;
"Order" means the Buyer's order for purchase of the Goods and/or Services following acceptance of the Seller's Quotation;
"Price" means the price of the Goods and/or Services as set out in the Order;
"Quotation" means the Seller's quote to the Buyer to supply the Goods and/or Services;
"Seller" means Neptune Sonar Limited, registered at Companies House with company registration number 02525414 with its registered office at Kelk Lake, Kelk, Driffield, East Yorkshire, YO25 8HG;
"Services" means the services (or any part of them) stated in the Order which the Seller is to provide in accordance with these Terms;
"Specification" means the Buyer's specification for the Goods, as detailed in the Buyer's Order;
"Terms" means these standard terms of sale and includes any special terms agreed in writing between the Buyer and Seller;

2. BASIS OF CONTRACT

2.1. The Seller shall sell and the Buyer shall purchase the Goods and/or Services in accordance with these Terms which are applied to all Contracts to the exclusion of all other conditions including any conditions which the Buyer may purport to apply under any offer or purchase order or similar document.

2.2. The Seller shall issue the Quotation for the Goods and/or Services to the Buyer. The Quotation shall be valid for 60 days and represents no obligation on the Buyer or the Seller to proceed with the sale and purchase of the Goods and/or Services.

2.3. Upon receipt of the Quotation, the Buyer may place an Order for the Goods and/or Services. All Orders for Goods and/or Services shall be deemed to be an offer by the Buyer to purchase the Goods and/or Services pursuant to these Terms. All Orders must be placed in writing and must contain the Seller's Quotation number.

2.4. No Order submitted by the Buyer shall be binding on the Seller unless and until the Seller accepts the Buyer's Order either verbally or in writing.

2.5. If the Seller accepts the Buyer's Order, the Order shall be binding on both parties and a Contract shall be formed and these Terms shall apply.

2.6. No variation of these Terms under the Contract shall be binding upon the Seller unless and until accepted in writing by a duly authorised person on behalf of the Seller.

2.7. These Terms contain the whole agreement between the parties under the Contract who confirm that they have not entered into the Contract in reliance on any representations that are not expressly incorporated in these Terms. These Terms apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract.

3. SPECIFICATION

3.1. The Buyer shall be responsible for ensuring the accuracy of any Specification and Order and providing any necessary information within a sufficient time to enable the Seller to perform the Contract in accordance with these Terms.

3.2. The Buyer acknowledges that the Seller is not in a position to confirm whether the Specification is correct for the Buyer's intended purpose.

3.3. The quantity, quality and description of the Goods and/or Services and any Specification for them shall be as set out in the Order.

3.4. Where the Seller is the manufacturer and service provider, the Goods and/or Services will be supplied in all material respects as set out within the Order but the Seller reserves the right to make any changes in the specification of the Goods and/or Services which are required to conform with any applicable statutory or EU requirements or, where the Goods and/or Services are to be supplied to the Seller's specification, which do not materially affect their quality or performance. Where the Seller is not the manufacturer or service provider, the Goods and/or Services will be supplied to the manufacturer's current specification and finish to which the Seller accepts no liability or responsibility.

4. CALIBRATION & TESTING SERVICES

4.1. This clause 4 shall only apply when the Buyer purchases the Seller's calibration or testing facility services as defined and specified within the Order.

4.2. The Buyer shall be granted a non-exclusive licence to use the Seller's premises in order to complete the Order and for the Seller to provide its Services as set out within the Order. Such licence shall be terminated by the Seller with immediate effect upon completion of the Services and the Order, or earlier should the Buyer breach any of these Terms.

4.3. Where the Buyer provides its own equipment and materials for the purposes of the Order under this clause 4, the Buyer shall at all times be responsible for such equipment and materials and shall keep such equipment and materials fully insured against all and any loss or damage whilst on the Seller's premises. The Buyer will maintain title and risk in its equipment and materials throughout the period of the Services and duration of the Contract.

4.4. The Buyer shall fully indemnify the Seller and keep the Seller fully indemnified from and against all and any loss or damage to person or property caused by any negligent act of its employees, agents or subcontractors whilst on the Seller's premises.

5. PRICE

5.1. The Price is exclusive of VAT. The Buyer shall pay the Seller such additional amounts in respect of VAT and any other government duty or tax as applicable and as are chargeable on the supply of the Goods and/or Services under the Order.

5.2. Unless stated otherwise in the Quotation, the Seller shall invoice the Buyer at the point the Goods are dispatched, or, if the Order placed by the Buyer is for Services only, prior to the performance of the Services.

5.3. Unless otherwise agreed by the Seller, payment for the Goods and/or Services shall be due no later than 30 days from the date of invoice ("**Due Date**").

5.4. If the Buyer is placing its first Order with the Seller, the Seller reserves the right to request payment equal to 30% of the Price upon the Seller's acceptance of the Order under clause 2.5, with the remaining 70% of the Price payable prior to dispatch of the Goods or provision of the Services.

5.5. The payment terms under this clause 5 shall apply whether the Buyer is based in the UK or overseas.

5.6. For large Orders, the Seller reserves the right to invoice the Buyer in instalments prior to dispatch of the Goods. Where such Goods are stored on the Seller's premises prior to dispatch, risk and title to such Goods shall pass to the Buyer once payment of the corresponding invoice has been received in full by the Seller, and the Buyer shall be responsible for insuring such Goods for any loss or damage whilst stored on the Seller's premises howsoever caused.

5.7. Any discount specified by the Seller shall apply only where payment is received in accordance with this clause 5.

5.8. In the event that full payment is not received by the Seller by the Due Date, the Seller may in addition to its rights in clause 13:

5.8.1. charge interest on overdue invoices at the rate of 8% above the Bank of England's base rate from the Due Date on a day-to-day basis until full and final payment is received in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 together with any regulations thereunder;

5.8.2. cancel the Contract or suspend any further deliveries to the Buyer; or

5.8.3. appropriate any payment made by the Buyer to such of the Goods and/or Services as the Seller may deem fit.

5.9. If at any time any sum of money becomes payable by the Seller to the Buyer under or in connection with the Contract or any breach thereof by the Seller, the Seller shall be entitled, in addition to any other rights of set-off conferred by law, to set-off against such sum any amount then due, or which may at any time thereafter become due to the Seller from the Buyer under the Contract or any other contract, order or transaction between the Seller (or any such other company) and the Buyer. For the avoidance of doubt, the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Seller in order to justify withholding payment of any such amount in whole or in part.

5.10 The Seller reserves the right to increase the price of the Goods and/or Services in proportion to any increase of costs to the Seller between the date of the Quotation, the Order and the date of delivery (including without limitation costs relating to exchange rates, labour, materials, transport and taxes) or where the increase is due to any act or omission of the Buyer, including without limitation the cancellation by the Buyer of part of any Order or non-adherence to agreed call-off or scheduled delivery arrangements.

6. DELIVERY

6.1. Delivery of the Goods shall be made by the Seller to the Delivery Point which if the Seller's premises, shall be effected by the Seller notifying the Buyer that the Goods are ready for collection. For the avoidance of doubt, the Seller will charge the Buyer for the costs of carriage to the Delivery Point which shall be added to the Price set out in the Seller's Quotation.

6.2. Any Delivery period stated within the Order is an estimate only and the Seller shall not be liable for any delay in Delivery of the Goods caused by a Force Majeure event or the Buyer's failure to provide the Seller with adequate Delivery instructions or any other instructions that are relevant to the supply of the Goods. Time for Delivery shall not be of the essence unless expressly agreed by the Seller in writing.

6.3. If the Buyer fails to take Delivery of the Goods or fails to give the Seller adequate Delivery instructions at the time stated for Delivery, then Delivery of the Goods shall be deemed to have been completed at 9.00 am on the second day after the day on which the Seller notified the Buyer that the Goods were ready and without limiting any other right or remedy available to the Seller, the Seller may:-

6.3.1. store the Goods until actual Delivery and charge the Buyer for the reasonable costs (including insurance) of storage plus 1% of net invoice value until Delivery; or

6.3.2. sell the Goods at the best price readily obtainable and after deducting all reasonable storage and selling expenses account to the Buyer for the excess over the Price under the Contract or charge the Buyer for any shortfall below the Price under the Contract.

6.4. For deliveries outside the UK, the Buyer is responsible at their own expense for obtaining any import licence required in the country of destination. The Buyer will also be responsible for any import duties, taxes or other costs that may apply in the country of destination, such costs to be invoiced by the Seller to the Buyer. The Seller may not be aware of any export charges at the time of placing the Order and will notify the Buyer within a reasonable period of becoming aware of the costs of delivering the Goods to the Delivery Point outside of the UK. Notwithstanding this clause 6.4, the Seller is responsible for obtaining any necessary licence to export from the UK unless the Buyer's office placing the Order is located in the UK in which case, for the avoidance of doubt, the Buyer shall be responsible for obtaining the necessary licence to export the Goods from the UK to the Delivery Point.

6.5. The Seller shall provide all necessary documentation and Certificates of Conformity, showing that the Goods have been manufactured to the Buyer's specification in accordance with the Order, free of charge to the Buyer.

6.6. The Seller reserves the right to complete Delivery in more than one consignment and to invoice each consignment separately. Any call-off arrangements or scheduled deliveries can only be arranged once agreed by the Seller.

7. TITLE AND RISK

7.1. Subject to clause 5.6, risk of damage to or loss of the Goods shall pass to the Buyer on Delivery. Legal title to the Goods shall remain with the Seller until such time as the Seller has received full payment of the Price of the Goods whereupon title to the Goods shall pass to the Buyer.

7.2. Pending the transfer of the title in the Goods, the Buyer shall until such time hold the Goods as the fiduciary agent and bailee of the Seller and shall accordingly remain liable to account to the Seller for the Goods, and:-

7.2.1. if the Goods shall be sold by the Buyer, the Buyer shall, as trustee for the Seller, pay such proceeds into a bank account separate from all other bank accounts and other monies and assets of the Buyer and of third parties; and

7.2.2. the Buyer shall store the Goods separate from any other goods of the Buyer and of third parties and shall identify the Goods as the property of the Seller. The Buyer shall not remove any identifying marks placed on the Goods by the Seller.

8. WARRANTIES AND LIMITATION OF LIABILITY

8.1. Subject to the following provisions the Seller warrants that the Goods and/or Services will correspond with the Order.

8.2. The Seller shall be under no liability under the above warranty:-

8.2.1. In respect of any defect or lack of fitness in the Goods arising from any specification supplied by the Buyer or arising from the manner in which the Goods are used or applied or incorporated into other goods by the Buyer or a third party;

8.2.2. in respect of any defects arising from fair wear and tear, wilful damage, negligence, abnormal working or storage conditions, failure to follow the Seller's instructions whether oral or in writing, misuse or alteration of the Goods without the Seller's approval;

8.2.3. if all or any part of the Price has not been paid by the Due Date;

8.2.4. in respect of goods not manufactured by the Seller or provided by the Buyer for incorporating into the Goods; or

8.2.5. in respect of Goods not used, handled or applied only in strict accordance with the Seller or any third party manufacturer's instructions and recommendations.

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

8.4. Where a valid claim is made under the above warranty, the Seller shall at its discretion refund the price or repair or replace free of charge, any of the Goods found to its satisfaction to be defective within 12 months of the date of Delivery (**"Warranty Period"**) owing to faulty design, materials or workmanship provided that the Goods have not been modified or repaired other than by the Seller and have been operated, stored and maintained within the Seller's recommendations for use. In the case of Goods repaired or replaced by the Seller the above warranty shall terminate at the end of the Warranty Period.

8.5. Goods returned within the Warranty Period must be delivered to the Seller's premises at the Buyer's cost and expense accompanied by the Seller's original packing note and a statement of the reason for the return.

8.6. Nothing in these Terms limits or excludes the liability of the Seller:

8.6.1. for death or personal injury resulting from negligence; or

8.6.2. for fraud or fraudulent misrepresentation.

8.7. Subject to clause 8.6, the Seller shall not be liable for:

8.7.1. loss of profit;

8.7.2. loss of business;

8.7.3. loss of contract;

8.7.4. loss of goods;

8.7.5. depletion of goodwill;

8.7.6. loss of use;

8.7.7. loss of corruption of data or information; or

8.7.8. any special, indirect, consequential or pure economic loss, costs, damages or expenses.

8.8. The Seller's total liability to the Buyer in contract, tort (including negligence or breach of statutory duty) misrepresentation or otherwise arising in connection with the supply of the Goods and/or Services shall be limited to the Price of the Goods and/or Services the subject of the Order.

8.9. The Buyer agrees to indemnify the Seller and keep the Seller indemnified against all losses, costs, claims, demands, expenses and actions which the Seller may suffer or incur as the result of the Buyer's breach of any of the terms of this Contract or as the result of any resale of the Goods to any third party. This clause 8.9 shall survive termination of the Contract.

9. FORCE MAJEURE

9.1 The Seller shall have no liability in respect of failure or delay in delivery or in performance of any obligations under the contract due to any cause outside the Seller's control, including but not limited to act of God, fire floods, war, civil disturbances, riot, act of Government, currency restriction, industrial disputes, unavailability of materials or failure of a third party carrier or sub-contractor to deliver on time.

10. INTELLECTUAL PROPERTY RIGHTS

10.1. If the Goods are to be manufactured or the Services are to be carried out or subjected to any process in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with, or paid or agreed to be paid by the Seller in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any attributable to the Seller's use of the Buyer's specification.

10.2. The supply of the Goods and/or Services by the Seller shall not confer any right upon the Buyer to use or acquire any Intellectual Property Rights of the Seller and the Buyer warrants that it shall not use or otherwise exploit any Intellectual Property Rights of the Seller without the Seller's written consent.

11. U.S. EXPORT CONTROL REGULATIONS

11.1. The Seller shall in no circumstances be liable for any damage, loss or claim howsoever arising by an act or omission by the Buyer in contravention of any regulations issued by the United States Government concerning the export of goods, services or technology.

11.2. Any Goods supplied by the Seller under the Contract of which export from the United Kingdom is restricted by any aforementioned regulations under clause 11.1 shall not be delivered to the Buyer without the prior approval of the relevant authorities concerned with the administration of such regulations.

12. BUYER'S ITEMS

12.1. The Buyer warrants that any items supplied under the Contract for the purpose of the Seller manufacturing the Goods or providing the Services shall be of satisfactory quality and fit for the purpose of completing the Order.

12.2. The Buyer shall provide all items under this clause free of charge in the quantities and at the times as required by the Seller.

12.3. The Seller shall not be liable for any claim or action howsoever arising in respect of the Goods as a direct or indirect consequence of the items that the Buyer supplies unless the Buyer supplies such items in accordance with the above warranty.

12.4. The Buyer shall not be entitled to rescind the Contract, reject the Goods, make deductions from the Price or claim damages in respect of defects in the Goods or any other loss, whether direct or indirect, if such defect or loss was a result of the items the Buyer supplied to the Seller otherwise in accordance with this clause 12.

12.5. The Buyer shall indemnify and keep indemnified the Seller from and against all actions, demands, court proceedings, losses or other costs arising from the supply of items to the Seller otherwise in accordance with this clause 12.

13. CANCELLATIONS

13.1. Following the Seller's acceptance of the Order the Buyer may only cancel the Contract with the Seller's express written consent. Orders for non-catallogue items may not be cancelled by the Buyer. If the Buyer seeks to cancel the Contract, the Seller may charge termination fees to the Buyer as it deems fit which shall not exceed the Price of the Goods or Services under the Contract.

14. TERMINATION

14.1 If the Buyer commits any breach of the Contract or suffers distress or execution or becomes insolvent or commits an act of bankruptcy or enters into any arrangement or composition with its creditors or goes or is put into liquidation (other than solely for amalgamation, or reconstruction while solvent) or if a receiver or administrator is appointed over any part of the Buyer's business, the Seller may without prejudice to any rights which may have accrued or which may accrue to it, terminate the Contract by written notice with immediate effect.

15. GOVERNING LAW

15.1 This Contract shall be governed and construed in accordance with the laws of England and Wales and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

16. GENERAL

16.1. **Assignment**. The Buyer may not assign any of its rights or obligations under the Contract without the prior written consent of the Seller.

16.2. **Notices.** Any notice given by either party to the other shall be in writing and addressed to the other party's registered office.

16.3. **Confidentiality.** The Buyer will at all times keep confidential all information acquired in consequence of or pursuant to this Contract save as may be required by law or where such information is in the public domain other than due to the Buyer's breach.

16.4. **Waiver.** No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision by the Seller or any rights of the Seller in respect of the same.

16.5. **Third parties.** For the purpose of the Contracts (Rights of Third Parties) Act 1999, this Contract is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions.

16.6. **Data Protection.** The Buyer and the Seller shall each comply with all applicable requirements of the Data Protection Legislation.