

CONDITIONS OF SALE – RENISHAW (CANADA) LIMITED (GENERAL)

In these Conditions, “**Seller**” means Renishaw (Canada) Limited; “**Buyer**” means a customer that places an order on Seller which is accepted by Seller; “**Goods**” means all items referenced on Seller’s order acknowledgement excluding Services; “**Equipment**” means the equipment provided by Seller as referenced on Seller’s order acknowledgement; “**Software**” means the computer programs supplied by Seller to Buyer, whether as part of or in connection with the Equipment or separately, that are the subject of a licence granted by Seller to Buyer (“**License**”) contained in a document accompanying the Software (whether or not signed by the parties) or incorporated in the Software, but excludes computer programs licensed to Buyer by a third party, and unless otherwise agreed in writing, Buyer is licensed to use the Software only for its intended purpose; “**Services**” means any installation, commissioning, calibration, part programming, training, maintenance or other such services provided by Seller, as are referenced on Seller’s order acknowledgement and any written description or specification which has been provided to Buyer (“**Services Specification**”); “**Deliverables**” means the deliverables from any Services, as are referenced on Seller’s order acknowledgement or Services Specification; “**Intellectual Property Rights**” means any patents, trademarks, registered designs and all applications for registration of them, copyrights or design rights or any right which is similar or analogous to any of these anywhere in the world; “**Incoterm**” means one of the sets of terms defined by Incoterms 2010.

1. Making of Contract

A. Seller’s quotations are submitted on these Conditions and are not offers capable of acceptance. Buyer’s orders are not binding on Seller. A contract shall only come into existence on the date Seller issues a written order acknowledgement on these Conditions and the “**Contract**” means the written order acknowledgement, any other terms or documents referenced on the order acknowledgement and other terms incorporated by these Conditions. These Conditions supersede any conditions in Buyer’s order. No other terms, conditions or representations about the Goods or Services shall apply unless specifically agreed by Seller in writing. No variation or waiver of these Conditions shall be effective unless made in writing signed by an authorised representative of each party. The Licence shall prevail over these Conditions if there is any inconsistency.

B. The Goods or any part of them are sold subject either to: (i) the “ex works” Incoterm; or (ii) another Incoterm referenced on Seller’s order acknowledgement; and the relevant Incoterm shall be incorporated into the Contract. If there is any inconsistency, the order of precedence shall be (i) any other terms or documents referenced on the order acknowledgement, (ii) these Conditions, and (iii) the Incoterm.

C. Buyer’s cancellation of an order after Seller’s acceptance is a breach of contract. The parties agree that where Seller is providing the Goods, Services or any part thereof to Buyer’s specification, Seller will be suffering losses as a result of such breach. If Buyer cancels the order after acceptance, Buyer agrees to pay Seller for all Seller’s work done to fulfil the order and other unavoidable costs incurred, as at the date of cancellation, payable in accordance with Seller’s invoice for such costs.

D. Where it is a condition of the Contract that Buyer will open a letter of credit or pay the whole or part of the price for the Goods or Services before the due delivery date, any failure to comply will entitle Seller to treat the Contract as cancelled by Buyer, and Seller may invoice for the amounts in Condition 1C above.

2. Prices and Payment

A. Unless otherwise agreed in writing, or provided for in the relevant Incoterm, all prices quoted are: (i) ex works Seller’s premises, (ii) exclusive of any applicable taxes, which shall be payable in addition; and (iii) subject to variation and may be replaced with those prevailing at the date of delivery.

B. Other than where set out by Seller in writing, the price for the Goods includes all matters for which Seller is liable under the relevant Incoterm.

C. Subject to Seller’s credit approval and unless otherwise agreed in writing, Buyer shall pay all Seller’s invoices in full (in cleared funds) not later than 30 days from the date of the invoice.

D. Seller may charge interest on overdue sums at a rate equal to 4% per annum above the current prime business interest rate as set by the Bank of Canada, accruing on a daily basis until payment is received, after as well as before any judgment for such sums.

3. Delivery and Acceptance

A. All delivery dates are estimates only and the time of delivery is not of the essence of the Contract. Seller is not liable to compensate Buyer in damages or otherwise for non-delivery or late delivery of the Goods, Services, or any part of them, for whatever reason or for any direct or indirect loss arising.

B. If Seller cannot deliver the whole or part of any Goods or Services because of any cause which is not reasonably within Seller’s control, the time of delivery shall be extended by a period equal to that during which the cause delaying delivery exists. If this Condition applies, Seller shall deliver and Buyer shall take and pay for such part of the Goods and Services as Seller shall be able to deliver in accordance with the Contract.

C. Seller shall be entitled to deliver the Goods in one or more consignments or instalments unless otherwise expressly agreed. In all cases where delivery is made in one or more consignments or instalments, each consignment or instalment shall be deemed to be made under a separate contract and may be invoiced separately, and cancellation of any consignment or instalment shall not void or affect contracts as to other consignments or instalments.

D. Delivery shall be in accordance with the relevant Incoterm.

E. Where Buyer is to collect the Goods from Seller’s premises, it shall do so within 7 days of receipt of Seller’s notice that the Goods are ready for collection, otherwise, Seller may charge Buyer for its costs associated with Buyer’s failure to collect within this time. Where Seller has arranged for carriage of the Goods, Buyer shall be deemed to have received such Goods unless it notifies Seller in writing of non-delivery by the due date for payment of the relevant invoice.

F. If it has been agreed in writing that the Goods are sold subject to prior inspection by Buyer, such inspection shall take place at Seller’s premises and once Buyer or its representative has inspected and approved the Goods, the Goods shall be conclusively presumed to be in accordance with the Contract and accepted, and Condition 3H below shall not apply in respect of those Goods.

G. For orders comprising Goods and Services which are supplied together, acceptance will be deemed to take place on the date the Seller’s installation report is signed by Buyer, or completion of all the Services, whichever occurs first. For orders of Goods only, Services only, or Services delivered later than the Goods to which they relate, acceptance will be deemed to take place on the date of delivery of the Goods or performance of the Services, or when the Goods or Deliverables are put into use, whichever occurs first.

H. If, before acceptance, Buyer establishes to Seller’s reasonable satisfaction that the Goods are not in accordance with the Contract, Buyer’s sole remedy shall be limited, at Seller’s option, to the replacement of the Goods or refund of the purchase price against return of the Goods.

4. Property and Risk

A. Risk of loss of or damage to the Goods shall pass to Buyer at the time specified by the relevant Incoterm.

B. Property in the Goods or in tangible Deliverables shall not pass to Buyer until Seller receives full payment (in cleared funds) for the Goods and Services. If Buyer does not pay for the Goods and Services on time then Seller shall be entitled to the immediate return of the Goods and Deliverables (or the documents of title to them) and Buyer hereby irrevocably authorises Seller to recover the Goods, Deliverables or documents and to enter any premises of Buyer for that purpose. Demand for or recovery of the Goods, Deliverables or documents by Seller does not affect Seller’s other legal rights.

5. Buyer’s Default

A. Seller may, at its option, cancel or withhold all further deliveries under the Contract if Buyer: (i) does not pay any sum due under this or any other contract between Seller and Buyer on time; (ii) being a natural person, dies or becomes bankrupt; (iii) being a company, enters into liquidation or if an administrator or receiver or administrative receiver is appointed over all or part of its undertaking, property or assets; (iv) enters or offers to enter into any arrangement or composition with his or its creditors; or (v) suffers anything similar or analogous to any of these events under the laws of any jurisdiction in which Buyer is incorporated, resident or carries on business.

B. Buyer shall immediately give notification to Seller should any of the events in (ii)-(v) above apply, and in the case of death, Buyer’s representatives shall give such notification.

6. Defects

A. Subject to Conditions 6B and 6F, Seller will make good, by repair or, at its option, by the supply of a replacement, defects which under proper use appear in the Equipment, within a period of:

(i) 12 months; or

(ii) 15 months, if Buyer is a manufacturer of equipment for resale with the Equipment as an integral part of the manufacturer’s equipment, or purchases the Equipment for resale new and unused; or

(iii) such time as stated in any different warranty period for the Equipment or components of the Equipment that is specified in Seller’s order acknowledgement, tender offer or documentation accompanying the Equipment,

after (a) the Equipment has been shipped, or (b) where the Equipment will be installed by or on behalf of Seller, the date the Seller’s installation report is signed by Buyer, or installation has been completed, whichever occurs first, or (c) such other date as specified in Seller’s order acknowledgement, tender offer, or documentation accompanying the Equipment, (“**warranty start date**”) and which arise solely from faulty materials or workmanship. The repair or replacement shall not benefit from a new period of warranty and the original warranty period of 12 or 15 months or other specified period (whichever is applicable) shall remain unaltered from the warranty start date.

B. Seller is not liable for the quality, performance or fitness for purpose of any hardware manufactured or software licensed by a third party that are stand-alone items or otherwise external or supplied as an option to the Goods. However, Seller will endeavour to pass on to Buyer the benefit of any warranty received by Seller from its supplier.

C. If Buyer notifies Seller that the Software does not materially perform to specification under proper use in the 90 days (or such other period stated in Seller’s order acknowledgement, tender offer or the Software licence) after the warranty start date, Seller shall replace or repair the Software within a reasonable time of notification. No warranty is given that the Software is bug or error-free.

D. If Buyer notifies Seller that any of the Services or Deliverables have not been provided using reasonable care and skill or do not materially meet any Services Specification in the 90 days (or such other period stated in Seller’s order acknowledgement or tender offer) after delivery, Seller shall re-perform the relevant Services within a reasonable time of notification.

E. The warranty in this Condition excludes any consumable items.

F. Seller is not liable to Buyer for any such defect unless Buyer immediately gives Seller written notice of the alleged defect with full particulars of the operating conditions under which it became apparent and returns the Equipment or relevant part or Deliverable carriage paid to Seller’s works.

G. Any items returned to Seller are at Buyer’s risk. Repaired or replacement items will be despatched carriage paid by Seller to the address requested by Buyer.

H. If the Seller does not identify a defect in the Goods or Deliverables, or does identify a defect or malfunction which is due to any reason set out in Conditions 6I(i) to 6I(i)(viii), Seller may charge Buyer for all work undertaken in such identification at its then current chargeable rates, and for any costs and expenses reasonably incurred.

I. Seller is not liable, whether in contract, tort or otherwise, for any defect, damage to or reduced performance of any part of the Goods or Deliverables, or any equipment being maintained as part of the Services (“**Maintained Items**”), or for any direct or indirect losses, and Conditions 6A and 6C cease to apply if, after delivery, the Goods, Deliverables or Maintained Items have been:

(i) used for any purpose which is not contemplated by Seller’s instructions for use;

(ii) installed, used or stored in a way that is not in strict accordance with Seller’s instructions for use, or otherwise brought to the attention of the Buyer, including where installation has been undertaken by persons not authorised by Seller;

(iii) used with materials, equipment or software which is not contemplated by Seller’s instructions for use;

(iv) damaged, misused, neglected, not properly cleaned and stored after use or had any of their identification marks or numbers altered or removed;

(v) modified and altered in any way without Seller’s prior written authorisation;

(vi) damaged as a result of use or operation after any defect in them has become apparent;

(vii) damaged as a result of failure or fluctuation of electrical power or environmental systems; or

(viii) damaged as a result of fire, flood, theft, act of god, war, terrorism or similar event,

and Seller may invoice Buyer for any repairs required to the Goods, Deliverables or Maintained Items in such circumstances.

J. The decision of Seller on all matters governed by this Condition 6 and in particular (but without limiting the foregoing) as to the nature and cause of any defect or malfunction, shall be conclusive, and binding on Buyer.

7. Customised or Bespoke Goods

A. Where the Goods have been produced or adapted according to designs or configurations specified or supplied by Buyer, Buyer represents and warrants to Seller that:

(i) the Goods as so designed or configured do not breach any third party’s Intellectual Property Rights;

(ii) the Goods will be fit for the purpose for which they are designed or configured (and as such Buyer agrees that Seller will have no responsibility for any defective design or configuration); and

(iii) Buyer has or will have satisfied itself that all necessary tests and examinations have been made or will be made before the Goods are brought into use to ensure that the Goods are designed, constructed and operational so as to be safe and without risk to the health or safety of any persons using or near to the Goods.

B. Buyer shall indemnify Seller against all actions, suits, claims, demands, charges, interest, costs and expenses which Seller may suffer or incur in connection with any claim by any third party alleging facts which, if established, would indicate a breach of Buyer’s representations and warranties in this Condition.

8. Performance of Services; and Use and Disposal of Goods

A. Buyer shall: (i) co-operate with the Seller in all matters relating to the Services; (ii) provide Seller and its representatives with access to Buyer’s premises as reasonably required to provide the Services; (iii) provide such materially accurate information and materials as Seller may reasonably require to supply the Services; (iv) inform Seller of all health and safety rules and regulations and any other reasonable security requirements that apply at Buyer’s premises; (v) undertake such work necessary to prepare Buyer’s premises for the supply of the Services, in accordance with Seller’s reasonable instructions; and (vi) be solely responsible for assessing and meeting all legislative and recommended health and safety conditions at Buyer’s premises to enable provision of the Services.

B. Buyer shall bring to the attention of all persons using the Goods, or where the Buyer is reselling the Goods, to the attention of its purchaser, all of Seller’s instructions and/or recommendations for use including those referred to in Seller’s catalogues or brochures or which Seller has otherwise notified to Buyer. Buyer shall take such steps as are necessary to secure that there will be available in connection with the use of the Goods adequate information about the use for which they were designed and about any conditions necessary to ensure that when put to that use they will be safe and without risk to health.

C. Buyer shall not, and where Buyer resells the Goods, shall require its purchaser shall not remove any marking on the Goods referring any user to Seller’s instructions and/or recommendations for use.

D. If either Buyer or its purchaser requires any information as to the use for which such Goods were designed and have been tested and about any conditions necessary to ensure that when put to that use they will be safe and without risk to health for the purposes of satisfying its obligations under any legal requirement relating to health and safety at work, Seller shall provide such information, subject to reimbursement of its out-of-pocket expenses incurred in providing such information.

E. Buyer shall indemnify Seller against all liabilities losses, interest, costs and expenses which Seller may suffer or incur in connection with any claim by any third party alleging facts which, if established, would indicate a breach of Buyer’s undertakings, representations and warranties contained in this Condition 8 or a breach by any purchaser from Buyer of any undertaking which Buyer is obliged in this Condition 8 to require from such purchaser.

F. Buyer shall be responsible for the disposal of Goods, or the Seller’s costs of such disposal, if the applicable legislation on waste electrical and electronic equipment in the country to which Seller ships the Goods permits Seller to delegate such responsibility for disposal or to recover the costs of such disposal.

9. Intellectual Property Rights

A. Nothing in this agreement changes the ownership of any pre-existing Intellectual Property Rights. Intellectual Property Rights created specifically for the Buyer as part of the Deliverables shall belong to the Buyer and all other Intellectual Property Rights shall belong to the party that created them.

B. Condition 9C applies where a claim is made against Buyer that any part of the Goods or any use of the Goods for their intended purpose, infringes the Intellectual Property Rights of any person except where (i) Buyer has allowed the Goods to be altered or (ii) the Goods have been used as set out in Condition 6I(iii), and in either such case the claim would not have arisen if such alteration or use had not occurred.

C. Provided that Buyer gives Seller prompt notice in writing of any claim of the type referred to in Condition 9B and allows Seller (if it so wishes) the entire control of the defence and settlement of the claim, Seller will pay any costs and damages awarded against Buyer in proceedings brought upon the basis of any such claim.

D. If any claim of the type referred to in Condition 9B is made or is in the opinion of Seller likely to be made, then either (i) Seller shall be entitled to procure for the benefit of Buyer a licence to use the Goods and/or Software for their intended purpose, or to modify or replace the Goods so as to avoid infringement without materially diminishing their utility for their intended purpose, or (ii) if the remedies in (i) are in the opinion of Seller not practicable at reasonable cost, Seller shall be entitled to require Buyer to sell the Goods to Seller at the original price after deducting an allowance for depreciation on a straight line basis over the useful life of the Goods, as reasonably determined by Seller.

E. Seller shall have no other or further liability in respect of the alleged infringement of any Intellectual Property Rights other than as specified in this Condition 9.

F. All drawings, materials, specifications and other data supplied by Seller (“**Materials**”) and all Intellectual Property Rights in them shall remain the property of Seller and, except where they have already been placed in the public domain by Seller, Buyer shall keep the Materials confidential and shall not use them for any purpose other than that for which they were supplied. Buyer shall destroy or return the Materials to Seller immediately upon Seller’s request and in any event, promptly upon Buyer’s requirements for the Materials having been satisfied.

10. Limitation of Liability

A. THIS CONDITION SETS OUT SELLER’S TOTAL LIABILITY IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, MISREPRESENTATION OR OTHERWISE ARISING UNDER OR IN CONNECTION WITH THE CONTRACT.

B. Subject to any express warranties in this agreement but otherwise to the fullest extent permitted by law, Seller expressly excludes all warranties, conditions and representations in whatever form, whether express or implied, relating to the Goods, Equipment, Software or Services, including any warranties or representations relating to performance, quality, merchantability, fitness for use and/or security and operation of the Goods, Software, Equipment, Services or Deliverables. Seller makes no representation that the Services will be uninterrupted or free from defects and errors.

C. Nothing in these Conditions excludes or limits Seller’s liability for death or personal injury caused by Seller’s negligence, or for fraud or fraudulent misrepresentation, or for any other matter in respect of which it would be unlawful for the Seller to exclude or restrict its liability.

D. Subject to Condition 10B and 10C above Seller’s total liability in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise arising under or in connection with the Contract is limited to \$50,000 or the total price paid by Buyer under the Contract, whichever is greater. Further, and subject to such total liability:

(i) Seller’s liability for defects is limited to the obligations in Conditions 3H and 6;

(ii) Seller’s liability for breach of obligations under Condition 6 is limited to the price of the relevant part of the Goods or Services in question;

(iii) Seller’s liability for Intellectual Property Rights claims is limited to the obligations in Condition 9;

(iv) Seller’s liability for damage to tangible property is limited to making good or replacing damaged property;

(v) Seller is not liable for any direct or indirect loss of profit, revenue, data, contracts, business, or goodwill, or for any indirect or consequential loss, or any claims of third parties; and

(vi) Seller is not liable for any claim unless (a) full details of the claim have been given to Seller within 1 month of the matters giving rise to the claim becoming known to Buyer, and (b) legal proceedings in respect of the claim are begun within 12 months of that date.

E. Notwithstanding any other clause in this agreement, any liability Seller has to Buyer will be reduced to the extent that:

(i) the relevant loss (“**Loss**”) is caused or contributed to by Buyer;

(ii) the Loss is recovered by the Buyer under another claim or is made good or otherwise compensated for without cost to the Buyer;

(iii) the circumstances giving rise to a claim are remedied to the reasonable satisfaction of the Buyer within 5 business days after the Seller receives notice of the claim;

(iv) Buyer does not use its reasonable efforts to mitigate any Loss; and

(v) the claim arises from a change in any legislation or regulation, or any judicial or administrative interpretation of the law.

F. Where Buyer resells the Goods or Deliverables by incorporation into Buyer’s products, Buyer shall indemnify Seller against any third party claims arising out of defects in Buyer’s products. This does not apply where the defect is caused by Seller’s Goods or Deliverables.

11. Export Control

A. Seller’s acceptance of Buyer’s order is conditional on the receipt of any export licence, permit, answer to a rating enquiry from the applicable government(s), or other documentation required by the relevant authorities to comply with applicable export controls. Buyer acknowledges that Seller’s compliance with such export controls may delay a shipment and, without prejudice to Condition 3A, agrees that Seller is not liable for such delay.

B. If Buyer intends to export or re-export any item after receipt from Seller (including deemed exports), Buyer shall request and obtain all necessary licences for the use and/or export of the item.

12. Governing Law

The Contract and any dispute or claim arising from or in connection with it (whether contractual or non-contractual) shall be governed by and interpreted in accordance with the laws of the Province of Ontario and Dominion of Canada. Buyer irrevocably submits to the exclusive jurisdiction of the Ontario Superior Court of Justice, but Seller may enforce the Contract in any court of competent jurisdiction. The application of the 1980 United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

13. Language

Il est convenu par le présent acte que les parties demandent que ces Conditions et tout avis, consentement, autorisation, communication et approbation soient rédigés en langue anglaise. It is hereby agreed that the parties specifically require that these Conditions and any notices, consents, authorizations, communications and approvals be drawn up in the English language.