



Terms & Conditions for Sale of Equipment

1. DEFINITIONS

1.1 In these Conditions, the following definitions apply:

"Business Day" means a day (other than a Saturday, Sunday or a public holiday) when banks in Scotland are open for business;

"Conditions" means the terms and conditions set out in this document;

"Contract" means the contract between Oceanscan and the Customer for the sale and purchase of the Equipment in accordance with these Conditions;

"Customer" means the person, firm or company who purchases the Equipment from Oceanscan;

"Equipment" means any apparatus, material or equipment (including all accessories supplied either as part of a kit or as standard with the main unit) as set out in the Order;

"Force Majeure Event" has the meaning set out in clause 10;

"Oceanscan" means Oceanscan Limited (registered in Scotland with company number SC116255);

"Order" means the Customer's order for the Equipment, as set out in the Customer's purchase order form or the Customer's written acceptance of Oceanscan's quotation, as the case may be;

"Specification" means any specification for the Equipment to be manufactured by Oceanscan, including any related plans and drawings, that is agreed in writing by the Customer and Oceanscan.

2. ACCEPTANCE

2.1 The Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Equipment in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when Oceanscan issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Oceanscan which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by Oceanscan and any descriptions or illustrations contained in Oceanscan's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Equipment described in them. None of them shall form part of the Contract or have any contractual force.

2.6 Fitness for use is for the Customer to determine, no performance objective is expressed or implied by Oceanscan. The Equipment may appear to offer comparable or similar specifications to other manufacturers' products but will not necessarily perform identically to such other manufacturers' products.

2.7 A quotation for the Equipment given by Oceanscan shall not constitute an offer. A quotation shall only be valid for a period of thirty (30) days from its date of issue and shall also be subject to availability of the Equipment.

3. EQUIPMENT

3.1 To the extent that the Equipment is to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify Oceanscan against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Oceanscan in connection with any claim made against Oceanscan for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Oceanscan's use of the Specification. This clause 3 shall survive termination of the Contract.

3.2 Oceanscan reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4. DELIVERY

4.1 Oceanscan shall deliver the Equipment to the location set out in the Order or such other location as the parties may agree at any time after Oceanscan notifies the Customer that the Equipment is ready for delivery.



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- 4.2 Delivery dates quoted by Oceanscan are approximate only, and the time of delivery is not of the essence. It is expressly agreed that Oceanscan shall not be liable to the Customer for any delay in delivery or of the condition of the Equipment or otherwise.
- 4.3 If the Customer fails to take delivery of the Equipment within three (3) Business Days of Oceanscan notifying the Customer that the Equipment is ready, then, except where such failure or delay is caused by a Force Majeure Event or Oceanscan's failure to comply with its obligations under the Contract:
- (a) delivery of the Equipment shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Oceanscan notified the Customer that the Equipment was ready; and
 - (b) Oceanscan shall store the Equipment until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.4 If ten (10) Business Days after the day on which Oceanscan notified the Customer that the Equipment was ready the Customer has not taken delivery of it, Oceanscan may resell or otherwise dispose of part or all of the Equipment and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Equipment or charge the Customer for any shortfall below the price of the Equipment.
- 4.5 Oceanscan may deliver the Equipment by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5. QUALITY**
- 5.1 Oceanscan warrants that on the date of delivery to the Customer, the Equipment shall:
- (a) conform in all material respects with its description in the Order and any applicable Specification; and
 - (b) be free from material defects and workmanship for a period of 12 months.
- 5.2 Subject to clause 5.3, if:
- (a) the Customer gives notice in writing to Oceanscan within twenty-four hours of discovery that some or all of the Equipment does not comply with the warranty in clause 5.1;
 - (b) Oceanscan is given a reasonable opportunity of examining such Equipment; and
 - (c) the Customer (if asked to do so by Oceanscan) returns such Equipment to Oceanscan's place of business at the Customer's cost;
- Oceanscan shall, at its option, repair or replace the defective Equipment, or refund the purchase price of the defective Equipment in full.
- 5.3 Oceanscan shall not be liable for the Equipment's failure to comply with the warranty in clause 5.1 in any of the following events:
- (a) the Customer makes any further use of such Equipment after giving notice in accordance with clause 5.2;
 - (b) the defect arises because the Customer failed to follow Oceanscan's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Equipment or (if there are none) good trade practice regarding the same;
 - (c) the defect arises as a result of Oceanscan following any drawing, design or Specification supplied by the Customer;
 - (d) the Customer alters or repairs such Equipment without the written consent of Oceanscan;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - (f) the Equipment differs from its description in the Order or the Specification as a result of changes made by Oceanscan to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Except as agreed in writing by Oceanscan, the warranty in clause 5.1 shall not extend to Equipment (or any part of the Equipment) not manufactured by Oceanscan, in respect of which the Customer shall only be entitled to the benefit of the unexpired duration of any such warranty or guarantee as is given by the manufacturer to Oceanscan.
- 5.5 Except as provided in this clause 5, Oceanscan shall have no liability to the Customer in respect of the Equipment's failure to comply with the warranty in clause 5.1.

5.6 The terms implied by sections 13 to 15 of the Sale of Equipment Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.7 These Conditions shall apply to any repaired or replaced Equipment supplied by Oceanscan.

6. TITLE

6.1 The risk in the Equipment shall pass to the Customer on completion of delivery.

6.2 Title to the Equipment shall not pass to the Customer until Oceanscan has received payment in full (in cash or cleared funds) for the Equipment in accordance with clause 7.

6.3 Until title to the Equipment has passed to the Customer, the Customer shall:

- (a) store the Equipment separately from all other Equipment or equipment held by the Customer so that they remain readily identifiable as Oceanscan's property;
- (b) not resell the Equipment nor remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
- (c) maintain the Equipment in satisfactory condition and keep it insured against all risks for its full price from the date of delivery;
- (d) notify Oceanscan immediately if it becomes subject to any of the events listed in clause 8.2; and
- (e) give Oceanscan such information relating to the Equipment as Oceanscan may reasonably require from time to time, but the Customer may use the Equipment in the ordinary course of its business.

6.4 If before title to the Equipment passes to the Customer, the Customer becomes subject to any of the events listed in clause 8.2, or Oceanscan reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Equipment has not been irrevocably incorporated into another product, and without limiting any other right or remedy Oceanscan may have, Oceanscan may at any time require the Customer to deliver up the Equipment and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment is stored in order to recover them.

7. PRICE AND PAYMENT

7.1 The price of the Equipment shall be the price set out in the Order, or, if no price is quoted, the price set out in Oceanscan's published price list in force as at the date of delivery.

7.2 Oceanscan may, by giving notice to the Customer at any time before delivery, increase the price of the Equipment to reflect any increase in the cost of the Equipment that is due to:

- (a) any factor beyond Oceanscan's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantity or type of Equipment ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give Oceanscan adequate or accurate information or instructions.

7.3 The price of the Equipment is exclusive of the costs and charges of packaging, insurance and transport of the Equipment, which shall be invoiced to the Customer.

7.4 The price of the Equipment is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from Oceanscan, pay to Oceanscan such additional amounts in respect of VAT as are chargeable on the supply of the Equipment.

7.5 Oceanscan may require the Customer to pay for the Equipment either in whole or in part prior to delivery, but otherwise may invoice the Customer for the Equipment on or at any time after the completion of delivery.

7.6 The Customer shall pay the invoice in full and in cleared funds within thirty (30) days of the date of the invoice. Payment shall be made to the bank account nominated in writing by Oceanscan. Time of payment is of the essence.

7.7 If the Customer fails to make any payment due to Oceanscan under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 2.5% per month. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after decree. The Customer shall pay the interest together with the overdue amount.

7.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Oceanscan may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Oceanscan to the Customer.

8. TERMINATION

8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or Oceanscan reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to Oceanscan, Oceanscan may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Oceanscan without incurring any liability to the Customer and all outstanding sums in respect of Equipment delivered to the Customer shall become immediately due.

8.2 For the purposes of clause 8.1, the relevant events are:

- (a) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company);
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Customer (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver; or
- (f) the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (g) any event analogous to (a) to (f) inclusive, occurs in relation to any other legal jurisdiction; or
- (h) the Customer's financial position deteriorates to such an extent that in Oceanscan's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8.3 Termination or expiry of the Contract shall not affect any rights, remedies or obligations of Oceanscan that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

9. LIMITATION OF LIABILITY

9.1 Nothing in these Conditions shall exclude or in any way limit Oceanscan's liability for:

- (a) death or personal injury caused by its own negligence or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Equipment Act 1979; or
- (d) defective products under the Consumer Protection Act 1987.

9.2 Oceanscan shall under no circumstances whatsoever be liable to the Customer, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of revenue, loss of business or any indirect or consequential loss arising under or in connection with the Contract, in each case however caused, even if foreseeable; and

9.3 Oceanscan's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the purchase price of the Equipment.

10. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

11. GENERAL

11.1 Assignment and other dealings

- (a) Oceanscan may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Oceanscan.

11.2 Notices

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2 (a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.3 Severance

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.4 Waiver

A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.5 Variation

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by Oceanscan.

11.6 Governing Law

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, Scots Law. Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

12. Returns Policy

Within 30 days of delivery, the Customer may return any Equipment purchased provided they are still in a saleable condition (including the original packing) and are accompanied by a copy of the Order plus Oceanscan's invoice or delivery note. The Customer shall indemnify Oceanscan in full against all costs and expenses incurred, including an Administration Fee of 10%, as a result of cancellation. Oceanscan reserve the right to refuse to accept the return of certain non-standard items.