

TERMS & CONDITIONS OF SALE

1. DEFINITIONS

1.1 In these Conditions the following expressions shall have the meanings set out below unless the context requires otherwise:

“Acceptance”	has the meaning given in Condition 6.9;
“Buyer”	the purchaser of the Goods and/or Services from the Supplier being the person, firm or company whose details are set out on the order form;
“Conditions”	the standard terms and conditions of business set out in this document and (unless the context otherwise requires) including any Special Conditions;
“Contract”	the agreement between the Seller and the Buyer for the supply of the sale of the Goods and/or supply of the Services;
“Goods”	the goods (including any instalment, spares or any parts for them) to be supplied by the Seller in accordance with these Conditions;
“Intellectual Property Rights”	all intellectual property rights of whatever nature throughout the world including copyright, registered and unregistered design rights, trade marks, registered and unregistered patent rights, trade secrets and know-how;
“Order Acknowledgment”	the letter of order acknowledgment setting out the terms and conditions upon which the Seller will provide the Services and/or supply the Goods to the Buyer;
“Seller”	Yamato Scale Dataweigh (UK) Limited (Company No: 02919226) whose registered office is at 3 Maple Park, Lowfields Avenue, Leeds, West Yorkshire LS12 6HH;
“Services”	the services (if any) set out in the Order Acknowledgment which are to be supplied by the Seller and purchased by the Buyer;
“Special Conditions”	any additional conditions which appear on the face of an order or quotation or in the Order Acknowledgment and which form part of the Contract.

2. BASIS OF THE SALE

- 2.1 All orders are accepted and Goods and/or Services supplied subject to these Conditions, provided that any Special Conditions of the Seller in any quotation, contract or agreement shall prevail to the extent that they are inconsistent with the Conditions set out in this document.
- 2.2 These Conditions may not be modified or revised unless an authorised representative of the Seller (a Director or Company Secretary) agrees in writing and the Seller shall not be deemed to accept such other conditions nor waive any of these Conditions by failing to object to provisions contained in any purchase order or other communication from the Buyer.
- 2.3 No Contract shall be created until an authorised representative of the Seller has indicated its acceptance of an order in writing or by making a delivery or part delivery of the goods.
- 2.4 Any Contract shall be subject to the Seller being satisfied as to the Buyer's credit worthiness and without generality to the foregoing the Seller may, in its absolute discretion, having informed the Buyer that the Goods are ready for delivery, refrain from delivering the Goods and/or providing the Services until such time as the Buyer tenders the purchase money to the Seller in a form satisfactory to the Seller.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. ORDERS, SPECIFICATIONS AND SERVICE EXCHANGE

- 3.1 The Buyer shall be solely responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification, instructions or other required information) submitted by the Buyer and for providing to the Seller any necessary information relating to the Goods and/or Services within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.2 The quantity, quality and description of and any specification for the Goods and/or Services shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller) but in either case shall be subject always to these Conditions.
- 3.3 If any Goods are to be manufactured or any process is to be applied to them by the Seller in accordance with a specification, instructions or other required information 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 Intellectual Property Rights of any other person which results from the Seller's use of the Buyer's specification, instructions or other required information.
- 3.4 The Seller reserves the right to make any changes in the specification of the Goods and/or the 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 Buyer's specification, which do not materially affect their quality or performance.

- 3.5 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs including the cost of all labour and materials used, damages, charges and expenses incurred by the Seller as a result of such cancellation.
- 3.6 Orders sent in confirmation of telephone instructions should be clearly marked as such, otherwise the Seller will accept no liability for duplication of despatch and any additional expense incurred by the Seller as a result of duplication of orders will be charged to the Buyer.
- 3.7 Goods incorrectly ordered by the Buyer may be returned to the Seller within 30 days of delivery provided that such Goods were not specifically manufactured by the Seller to any particular specification or instruction of the Buyer and/or did not have processes applied to them as explicitly specified by the Buyer. In the event of such returns the Seller is entitled to charge a handling fee of 10% of the purchase price.
- 3.8 The Seller offers service exchange on selected items on the basis of the following exchange process: Faulty items must be returned to the Seller within 30 days of discovery of the fault. An alternative used but fault-free item is supplied to the Buyer, invoiced at full sales price and the returned faulty item is checked and repaired. If the item is repairable, the Seller will issue a credit note to the Buyer for the difference between full price and service exchange price. If the item is not repairable, no credit note will be issued.

4. PRICES

- 4.1 The price for the provision of the Goods and/or supply of the Services shall be the Seller's quoted price. All prices quoted are valid for 60 days or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.2 The Seller reserves the right, by giving notice to the Buyer, at any time before delivery, to increase the price of the Goods and/or the Services to reflect any increase in the cost to the Seller which is due to any factor beyond the Seller's reasonable control, including but not limited to, any foreign exchange fluctuation, alteration of duties, increase in the cost of labour, materials or other manufacturing costs incurred by the Seller after the date of the order, any change in delivery dates, quantities or specifications for the Goods and/or the Services which is requested by the Buyer, or any delay caused by any specification or other instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 Any additional work either in production or on site necessary due to the operation of health & safety or other laws and regulations or to any change in circumstances of the Buyer's requirements and not previously specified to the Seller for the purpose of quotations and contracts, shall be subject to price revision or shall, where substantial, be subject to a new contract.
- 4.4 Where chargeable, value added tax will be charged at the rate applicable at the date of despatch.
- 4.5 The Seller reserves the right to make a charge for carriage and packing.
- 4.6 The Seller reserves the right to charge for carrying out site work outside the hours of 9am to 5pm, Monday to Friday inclusive.

5. TERMS OF PAYMENT

- 5.1 Prospective Buyers wishing to open a credit account are requested to furnish two trade references and one banker's reference. Until the opening of a credit account has been confirmed delivery will not be made unless payment has been received with order or made against the Seller's pro-forma invoice.
- 5.2 Where credit terms are allowed, terms of payment are strictly net and payable within 30 days from the date of the invoice. Otherwise all accounts are payable on demand. No receipts will be issued against payments by cheque unless specifically requested. The time of payment of the price shall be of the essence of the Contract.
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
 - 5.3.1 cancel the Contract or suspend any further deliveries of the Goods/supplies of the Services to the Buyer;
 - 5.3.2 decline to make further deliveries of any Goods and/or supplies of any Services to the Buyer except upon receipt of cash or satisfactory security;
 - 5.3.3 appropriate any payment made by the Buyer to such of the Goods and/or the Services as the Seller may think fit; and
 - 5.3.4 charge the Buyer interest on any unpaid amount. The rate of interest shall be 2% per annum over Barclays Bank base lending rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 5.4 The Buyer shall not be entitled to withhold or set off payment for Goods and/or Services supplied against any alleged debt or claim against the Seller.
- 5.5 Where the Contract is to be or may be fulfilled in separate instalments, payment for each such instalment delivery or part, shall constitute a separate contract and the contract price will be payable by the Buyer in strict accordance with the order terms, notwithstanding any delay in despatch or performance occasioned by circumstances beyond the Seller's control or any adjustments or corrections of defects which may be required to the machinery or work.

6. DELIVERY AND ACCEPTANCE

- 6.1 Delivery of the Goods shall be made by the Seller delivering or procuring the delivery of the Goods to the Buyer's premises or any other place agreed by the Seller.
- 6.2 Delivery dates are estimated delivery times and the Seller shall not be liable for any delay in delivery of the Goods and/or performance of the Services howsoever caused. Time for delivery shall not in any circumstances be of the essence of the Contract.
- 6.3 If shipment is delayed due to the failure on the part of the Buyer to provide the necessary shipping instructions the Seller shall be entitled to arrange storage of the Goods either at its own works or elsewhere on the Buyer's behalf and all charges for storage, transport, insurance and demurrage shall be payable by the Buyer.
- 6.4 Notwithstanding Condition 6.2, the Seller shall not be liable for any non-delivery of the Goods (even if caused by the Seller's negligence) unless the Buyer notifies the Seller in writing of the failure to deliver within seven days after the estimated delivery date.
- 6.5 Any liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Goods.
- 6.6 The Buyer shall be responsible, at the Buyer's own expense, for:
 - 6.6.1 taking delivery;
 - 6.6.2 assisting in unloading from the conveyances;
 - 6.6.3 storing in a protective place until the commencement of erection;
 - 6.6.4 carrying to and/or hoisting materials to position near the actual site for final installation;
 - 6.6.5 preparing the delivery location for the delivery of the Goods; and
 - 6.6.6 the provision of all necessary access and facilities reasonably required to deliver and install the Goods.
- 6.7 If the Seller is prevented from carrying out the delivery or installation on the specified date because of the Buyer's failure to act in accordance with Condition 6.6, the Seller may levy additional charges to recover its loss arising from this event.
- 6.8 After delivery and if the Seller is responsible for installation of the Goods, the Seller shall install the Goods and subject the Goods to its standard installation and acceptance tests to ensure the Goods materially conform to Contract. If the Goods pass those tests, the Seller shall issue an acceptance certificate to that effect to the Buyer.
- 6.9 The Buyer will be deemed to have accepted the Goods at the earliest to occur of either:
 - 6.9.1 the Buyer signing the acceptance certificate issued by the Seller pursuant to Condition 6.8;
 - 6.9.2 the Buyer commencing commercial production using the Goods; or
 - 6.9.3 if the Buyer and the Seller have agreed that the Buyer (itself or through a third party) will be responsible for installing the Goods, at the time the Goods are delivered.

7. RISK & PROPERTY IN THE GOODS

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
 - 7.1.1 in the case of the Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the Goods are available for collection; or
 - 7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full for the Goods.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, and shall keep all such proceeds separate from any monies or property of the Buyer.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided that the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, the Seller or its agent may enter upon any premises of the Buyer or any third party where the Goods are stored and repossess and remove the Goods.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8. WARRANTIES AND LIABILITY

- 8.1 Subject to the conditions set out below the Seller warrants that:
 - 8.1.1 the Goods will materially correspond with any specification at the time of Acceptance; and
 - 8.1.2 the Services will be provided using reasonable skill and care.

- 8.2 The above warranty is given by the Seller subject to the Seller not being under any liability in respect of any loss, damage, costs, expenses or other claims:
- 8.2.1 arising from any information or instructions from the Buyer which are in any way incomplete, inaccurate or arising from their late or non-arrival or any other fault of the Buyer;
 - 8.2.2 arising under the above warranty if the total price for the Goods has not been paid by the due date for payment;
 - 8.2.3 in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, unsuitable storage conditions, failure to follow the Seller's instructions (whether oral or in writing) in relation to the storage, installation, use or maintenance of the Goods, misuse or alteration or repair of the Goods without the Seller's written approval in writing.
- 8.3 Subject as expressly provided in these Conditions, and except where the Goods and/or Services are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.4 Any claim by the Buyer under the warranty as set out in Condition 8.1 shall only be valid if:
- 8.4.1 the Buyer notifies the Seller in writing within seven days from the date of Acceptance or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure;
 - 8.4.2 the Buyer immediately ceases to use the Goods in respect of which it has given written notice under Condition 8.4.1; and
 - 8.4.3 after receiving the notice, the Seller is given a reasonable opportunity to inspect and examine the Goods and the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Seller's cost for the examination to take place there.
- 8.5 Where any valid warranty claim in respect of any of the Goods and/or Services is notified to the Seller in accordance with these Conditions, the Seller may replace the Goods (or the part in question) free of charge or re-perform the Services or (at the Seller's sole discretion) refund to the Buyer the price of the Goods and/or Services (or a proportionate part of the price), in which case the Seller shall have no further liability to the Buyer.
- 8.6 Except in respect of death or personal injury caused by the Seller's negligence, or liability for defective products under the Consumer Protection Act 1987, the Seller shall not be liable to the Buyer by reason of any representation, unless fraudulent, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage, whether for loss of profit or otherwise, costs, expenses or other claims for compensation whatsoever which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer and/or the provision of the Services, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods and/or Services, except as expressly provided in these Conditions.
- 8.7 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods and/or the provision of the Services, if the delay or failure was due to any cause beyond the Seller's reasonable control.

9. TERMINATION

- 9.1 The Seller shall be entitled to cancel the Contract or, at its discretion, suspend any further deliveries or supplies under the Contract without liability to the Buyer in the event that:
- 9.1.1 the Buyer breaches any provision of this Contract; or
 - 9.1.2 any distress or execution is levied upon the goods of the Buyer or the Buyer offers to make any voluntary arrangement with or for the benefit of its creditors or commits any act or bankruptcy or, being a limited company, has a receiver appointed of its undertaking or assets or any part thereof or, for the purposes of a reconstruction or amalgamation without insolvency, goes into liquidation, or the Buyer ceases, or threatens to cease, to carry on business; or
 - 9.1.3 the Seller reasonably apprehends that any of the events set out in Condition 9.1.2 is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 9.2 In the event of a termination of the Contract, the price for any Goods which have been delivered and/or Services which have been provided but not paid for shall become immediately due and payable by the Buyer notwithstanding any previous agreement or arrangement to the contrary.

10. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

All drawings, designs, specifications and other technical and commercial data, and descriptions submitted by the Seller are strictly confidential and for the Buyer's use only and they must not be disclosed to other parties without the Seller's prior written consent, and shall remain the property of the Seller together with all Intellectual Property Rights (if any) therein.

11. GENERAL

- 11.1 Any notice required to be given by these Conditions shall be in writing and may be served either by delivering it by hand, by faxing it or by sending it by pre-paid first class post addressed to the last known place of business for the party to whom it is addressed. Service shall be deemed to have taken place if by personal delivery when delivered, if by first class post 48 hours after posting and if by fax when dispatched.

- 11.2 If at any time one or more of the above Conditions becomes in whole or in part invalid, illegal or unenforceable in any respect under English law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
- 11.3 No failure by the Seller to exercise or enforce any rights under these Conditions shall be deemed to be a waiver of any such rights and will not operate so as to bar the exercise or enforcement thereof at any time.
- 11.4 These Conditions supersede all previous conditions of sale of the Seller.
- 11.5 The Seller shall be entitled to assign, transfer or sub-contract any part of this Contract at any time;
- 11.6 This Contract is personal to the Buyer and the Buyer shall not assign, transfer or sub-contract any part of it without the prior written consent of the Seller.
- 11.7 The Buyer shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010. The Buyer shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK. The Buyer shall have and shall maintain in place its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, and will enforce them where appropriate.
- 11.8 This Contract shall be governed by English law and the parties agree to submit to the non-exclusive jurisdiction of the English Courts.