

ORBITAL FABRICATIONS LTD

Terms & Conditions of Sale

- 1.0 The company placing the order is hereinafter called the “Customer” and the person, firm or company to whom the order is addressed (Orbital Fabrications Ltd.) is hereinafter called the “Seller”.
- 2.0 The Seller shall supply and the Customer shall purchase the Equipment and/or Services subject to the Conditions which shall govern the Contract to the exclusion of any other terms and conditions. No variations to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Customer and the Seller. In entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of any representations made by the Seller’s employees or agents which are not confirmed in writing. The Seller shall not be liable for any advice or recommendation given by the Seller or its employees or sub-contractors or agents to the Customer or its employees or agents as to the storage, application or use of the equipment which is not confirmed in writing by the Seller. Any typographical, clerical or other error or omission in any quotation or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 3.0 The Customer shall be responsible to the Seller for ensuring the accuracy of the quotation and for giving the Seller all necessary information relating to the equipment/service, its operating conditions and performance requirements. The quantity, quality, description of and any specification for the equipment or services shall be those as set out in or attached to the quotation. The Seller reserves the right to make any changes to the equipment/service which are required to conform to any applicable safety or other statutory requirements or which do not materially affect its quality or performance or, where the equipment is being made by any third party, any changes made to the equipment by that third party. Special tests and/or witness tests required by the Customer are charged as extra unless previously shown separately in the quotation. No order which has been accepted by the Seller may be cancelled by the Customer except with the agreement in writing of the Seller and on the terms that the Customer shall indemnify the Seller in full against any loss (including the cost of all labour and materials used), damages, charges, administration costs and expenses incurred by the Seller whether directly or indirectly as a result of cancellation. The

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Seller shall be entitled to set off some or all of any sums paid by the Customer against such loss, costs, damages, charges and expenses incurred or suffered by the Seller.

- 4.0 The price of the equipment and/or services shall be the price stated on the quotation, the price shall be based on the current prices. All prices are valid for 30 days only, or until earlier acceptance by the Customer, after which time they may be altered by the Seller without giving notice to the Customer. The Seller reserves the right, by giving notice to the Customer, at any time before delivery, to increase the price of the equipment and/or services, to reflect any increase in the cost to the Seller which is due to any factor beyond control of the Seller, any changes in delivery dates, quantities, description, operating conditions or performance requirements for the equipment and/or services which is requested by the Customer. In addition any revision requested by the Customer which leads to any change to the specification for the equipment and/or services, or any delay caused by any instructions of the Customer or failure of the Customer to give the Seller adequate information or instructions may be requested. All prices for equipment and services are given on an ex works basis and where the Seller agrees to deliver or procure delivery of the equipment otherwise than at the Seller's premises, the Customer shall be liable to pay the Seller's charges for transport, packaging and insurance. The price is exclusive of any applicable Value Added Tax, other taxes and export duties and the Customer is additionally liable to pay these to the Seller.
- 5.0 The Seller shall be entitled to invoice the Customer for the price of the equipment and/or services:
- a) A new customer will be invoiced on a Pro-Forma basis with payment being received and funds cleared unless prior agreement with sellers directors.
 - b) Existing customers will be invoiced upon completion of works.
- The time of payment of the price including all appropriate taxes shall be the essence of the Contract. Notwithstanding that delivery may not have taken place and the property in the equipment and/or services has not passed to the Customer, the Customer shall pay the price of the equipment and/or services within 30 days from month end of invoice date. If the Customer fails to make payment on the due date (without prejudice to any other right or remedy to the Seller), the Seller shall be entitled to cancel the contract, appropriate any payment made by the Customer to the equipment or service and charge the Customer daily interest (both before and after any judgement) on the amount unpaid, at a rate of 3 per cent per annum above Barclays Bank Plc base rate until payment is made or demand immediate payment on the whole price of the equipment and/or service notwithstanding that the equipment may not have been delivered and/or the service provided.
- 6.0 Delivery shall be made by the Seller delivering or arranging delivery of the equipment or service to the delivery address or by the Customer collecting the equipment (at a time acceptable to the Seller) from the Seller's premises (or any other premises that the Seller shall notify to the Customer) at any time after the Seller has notified the Customer that the equipment is ready for collection. Delivery shall have been deemed to have taken place on the third day after the date the Seller

notifies the Customer that the equipment and/or services is ready. Where the Seller delivers or arranges delivery of the equipment to the delivery address, delivery shall not include off loading or positioning of the equipment unless clearly specified in the quotation. Any dates quoted for delivery of the equipment and/or performance of services are approximate only and the Seller shall not be liable for any delay in delivery of the equipment and/or performance of the services however caused. The equipment may be delivered and/or services performed by the Seller before the quoted delivery date upon giving reasonable notice to the Customer. Where equipment is to be delivered in instalments, each delivery shall constitute a separate contract and shall not entitle the Customer to treat the Contract as a whole as repudiated. If the Customer fails to take delivery of the equipment and/or services or fails to give the Seller adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy available to the Seller, the Seller may either store the equipment and charge the Customer reasonable costs (including insurance) of storage or sell the equipment at the best price readily obtainable.

- 7.0 Damage to or loss of the equipment shall pass to the Customer upon delivery being made. In the case of equipment to be collected by the Customer damage to or loss of equipment shall pass to the customer when goods collected. Notwithstanding delivery and the passing of risk in the equipment, the property in the equipment/service shall not pass to the Customer until the Seller has received payment in full for the price of the equipment/service and for all other sums due from the Customer under this Contract and for all other equipment/service provided by the Seller to the Customer for which payment is due. The Customer shall not be entitled to sell, pledge as security or otherwise dispose of any of the equipment in relation to which property has not passed to the Customer without written consent to the sale from the Seller. The Customer shall keep the equipment clearly identified as the property of the Seller until title of the equipment passes to the Customer. The Seller may recover at any time from the Customer any of the equipment in the Customer's possession in respect of which property has not passed and for that purpose the Seller, its servants and sub-contractors and agents may enter any land or buildings upon which such equipment is situated.
- 8.0 The Customer shall notify the Seller of any damage, delay or partial loss of the equipment within 3 days of delivery or, in the case of non delivery, within 7 days of the notified delivery date. The Customer shall make any claim in writing to the Seller and to the carrier within 7 days of delivery or, in the case of non delivery, within 14 days of the notified delivery date. The Seller shall not be liable in respect of any claim for damage, delay, partial loss or non delivery unless the above condition is complied with. The Seller shall be under no liability in respect of any defect in or failure of the equipment connected to or arising from incorrect, faulty or defective installation and/or commissioning by the Customer or a third party (other than a third party specifically appointed by the Seller), fair wear and tear, wilful damage, negligence, working conditions other than the operating conditions, failure to follow the Sellers instructions (whether oral or in writing), misuse,

alteration or repair of the equipment without the Sellers prior written approval or in respect of loss or damage of whatever nature arising from circumstances wholly outside the Seller's control.

Subject to the conditions set out above, the Seller assures the Buyer that if any part of the equipment becomes defective due to faulty workmanship or materials within 12 months from the date of invoice, the part will be repaired or replaced, as follows:

- For any fabricated products any repair work required will take place at the Seller's premises.
- The collection charges are the responsibility of the Seller within the United Kingdom, however the Buyer's outside the UK.
- Any "free issue" parts i.e., parts that have been supplied by the Buyer to be integrated into the equipment, are excluded. The Seller will rectify the issue provided that the Buyer will supply the required new free issue parts.

The liability of the Seller in respect of parts, materials or equipment shall in all cases be limited to that equivalent to the Seller's own rights of action against the manufacturer or supplier of those parts, materials or equipment and to the extent that the Seller can enforce such rights of action. The Customer shall indemnify the Seller against all loss, damage, costs and expenses incurred or suffered by the Seller as a result of any claim against the Seller by a third party to the extent that the Seller would not be liable, whether by reason of statute or this Contract or otherwise, if such a claim were successfully made by the Customer. In any event the Seller shall not be liable in any circumstances in contract, tort or otherwise and whatever the cause for any increased costs or expenses, loss of profit, business, contracts, revenues or anticipated savings or any special, indirect or consequential damage of any nature whatever, suffered by the Customer which arises out of or in connection with the supply of the equipment, its use or resale or the provision of the services or the Contract. The total liability of the Seller in respect of any one or more claims by the Customer shall not exceed the total price payable by the Customer under the Contract. The Seller shall not be liable to the Customer or be deemed to be in breach of the Contract by means of any delay in performing, or of any failure to perform, any of the Seller's obligations in relation to the equipment and/or services, if the delay or failure was due to any cause beyond the Seller's reasonable control.

- 9.0 All intellectual property in, or relating in any way to the equipment and/or services shall as between the parties be the property of the Seller and the Customer shall, on the Seller's request, deliver all drawings, designs and other documents relating to the equipment and/or services to the Seller and shall not permit any copies of them to be made or permit the use of them to be made or permit the use of them other than for the installation, commissioning or use of the equipment. The Customer shall indemnify the Seller against all loss, damages, costs and expenses incurred or suffered by the Seller in the event that the use of any specifications or designs, supplied by the Customer in connection with the manufacture, processing, assembly or supply of the equipment and/or services infringes the rights of any third party.

- 10.0 If the Customer (being a company) passes a resolution for winding up or has a winding up order made in respect of it, or has a receiver, administrative receiver, manager or administrator appointed of all or any part of its undertaking or assets or the Customer (being a partnership) is dissolved or (being an individual) has a bankruptcy petition presented or dies, the Seller, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries without any liability to the Customer and, if the equipment has been delivered to the Customer but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 11.0 The Customer will ensure that the Seller is in receipt of all required information to enable an efficient and accurate installation prior to the agreed project start date. If information is not forthcoming, or there are delays outside of the Sellers control, this may be detrimental to the originally proposed project programme. The Seller reserves the right to withdraw its labour force from the installation address with little or no notice in the event of delays with free-issued equipment that directly affects the Sellers scope of works, essential equipment required to complete the overall project scope or other sub-contractor services or works that are required to complete the overall project scope. Any equipment or materials that are delivered to the installation address or are stored on site are owned by the Seller. Ownership of material used within the installation will transfer from the Seller upon receipt of payment from the Customer, unless otherwise agreed in writing.
- 12.0 Any notice required or permitted to be given by either party to the other under the Conditions shall be in writing addressed to that other party at the address specified in the quotation or such other address as may have been notified. If any provision of the Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of other provisions of the Conditions and the remainder of the provisions in question shall not be affected thereby. The Seller shall be entitled to assign or sub-contract part or all of its rights and/or obligations under the contract to any other person, company or firm. The Customer shall not be entitled to assign or sub-contract part or all of its rights and/or obligations under the Contract.
- 13.0 The Sellers terms and conditions set out above will supersede any terms and conditions or contract particulars submitted by the Customer, unless otherwise agreed in writing.
- 14.0 This contract shall be governed by English law.