

Terms and Conditions

Introduction

These Terms and Conditions shall apply to the sale of all goods made by Coltraco Ultrasonics except where the sale of such goods may be subject to the terms of a separate legal agreement between the Buyer and Coltraco. Where the terms of any such legal agreement differ from the terms set out below the provisions of the legal agreement shall apply and take precedence.

1. Interpretation

1.1 In these Conditions these words have the following meanings:

“Buyer”	means the person who accepts a quotation or offer of the Company for the sale of goods or whose order for the goods is accepted by the Company.
“Conditions”	means the standard terms and conditions of business set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Company.
“Contract”	means the contract between the Buyer and the Company for the supply of Goods.
“Company”	means Coltraco Ultrasonics Limited of 46/47 Mount Street, London UK and includes all Agents of the Company.
“Goods”	means the goods, which the Company is to supply with these conditions.
“Premises”	means 46/47 Mount Street, London W1K 2SA
“Specification”	means the specification agreed between the Company and the Buyer setting out the way in which the Goods will be provided.
“Writing”	and any similar expression, includes facsimile transmission and comparable means of communication including electronic email.

2. Orders

- 2.1 The Buyer will be responsible to the Company for ensuring the accuracy of the terms of any order submitted by the Buyer and for confirming telephone orders in writing and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms. By placing an order the Buyer is deemed to be offering to purchase the goods on these terms and conditions
- 2.2 The Company reserves the right to make any changes in the specification of Goods, which are required to conform with any applicable statutory E.U. or International requirements, which do not materially affect their quality or performance.
- 2.3 No order, which has been accepted by the Company, may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs, damages, charges and expenses incurred by the Company as a result of the cancellation.

3. Time

- 3.1 Unless otherwise agreed the Goods shall be ready for despatch or collection by the Buyer on a date to be confirmed by the Company at the commencement of the Contract.
- 3.2 Any period stated for despatch, collection or for compliance with any other contractual obligations of the Company is an estimate only and in any event the Company accepts no responsibility for loss or damage resulting in delay or failure to notify the Buyer of any such delay.

4. Price of the Goods

- 4.1 The price of the Goods will be the Company's quoted price.
- 4.2 Every effort is made to ensure that prices shown in the Company's current price list are accurate at the time that Buyer places an order. If an error is found, the Company will tell the Buyer as soon as possible. The Buyer can then either reconfirm the order at the correct price or cancel the order
- 4.3 The Company reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.
- 4.4 Unless otherwise stated, prices shall be exclusive of UK value added tax, which shall be payable where applicable by the Buyer in the manner and at the rate from time to time prescribed by law.

5. Delivery

- 5.1 Delivery of the Goods shall be made ex-works the Premises. The Company shall notify the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place.
- 5.2 Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods, however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Company in writing. The Goods may be delivered by the Company in advance of the quoted delivery date of giving reasonable notice to the Buyer.
- 5.3 If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Company's fault) then, without limiting any other right or remedy available to the Company, the Company may:

- 5.3.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 5.3.2 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. Inspection

The Buyer shall be responsible for inspecting the Goods on arrival and shall notify the Company within 48 hours if there is any discrepancy, damage or shortage or that the goods fail to correspond with the Specification. There is no right to return the Goods for refund if the Goods are in perfect working order in compliance with the Specification and if no attempt has been made to notify the Company of user issues and request advice.

7. Payment

Subject to any special terms agreed in writing between the Buyer and the Company, the Company may invoice the Buyer for the price of the Goods prior to despatch.

- 7.1 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to the Company, the Company may:
 - 7.3.1 suspend any further deliveries to the Buyer;
 - 7.3.2 charge the Buyer interest (both before and after judgment) on the amount unpaid, at the rate of 4 per cent per annum above National Westminster Bank base 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)
 - 7.3.3 Unless otherwise specified in writing by the Company all payments are to be made in the currency referred to in the Company's invoice or as otherwise agreed between the parties.
 - 7.3.4 Non-UK taxes and duties are the responsibility of the buyer.

8 Warranty and Limitation of Liability

- 8.1 The goods supplied by the Company are warranted free from defects at the date of supply and the Buyer will be entitled to the benefit of a warranty specific to those Goods, details of which shall be provided to the Buyer.
- 8.2 These warranties do not apply to any defect in the Goods arising from fair wear and tear, wilful damage, accident, negligence by the Buyer or any third party, use otherwise than as recommended by the Company, failure to follow the Company's instructions, or any alteration carried out without the Company's approval.
- 8.3 Subject to expressly provided in these Conditions, and except where the Goods 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 Unless the Buyer gives notice to the Company within 14 days from the date of receipt of the Goods, it shall be presumed that the Goods supplied to the Buyer are free from any defect in quality or condition. The Buyer must keep the Goods and allow the Company (or those appointed by it) reasonable access to those Goods for inspection. If delivery is not refused, and the Buyer does not notify the Company accordingly, the Buyer will not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.5 Where a valid claim in respect of any of the Goods is notified to the Company in accordance with these Conditions, the Company may at its discretion replace the Goods (or the part in question) free of charge or refund to the Buyer the price of the Goods (or a proportionate part of the price), in which case the Company shall have no further liability.
- 8.6 **EXCEPT IN RESPECT OF DEATH OR PERSONAL INJURY CAUSED BY THE COMPANY'S NEGLIGENCE, OR LIABILITY FOR DEFECTIVE PRODUCTS UNDER THE CONSUMER PROTECTION ACT 1987, THE COMPANY SHALL NOT BE LIABLE TO THE BUYER BY REASON OF ANY REPRESENTATION (UNLESS FRAUDULENT), OR ANY OTHER IMPLIED WARRANTY, CONDITION OR OTHER TERMS, OR ANY DUTY AT COMMON LAW, OR UNDER THE EXPRESS TERMS OF THE CONTRACT, FOR LOSS OF PROFIT OR FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE, COSTS, EXPENSES OR OTHER CLAIMS FOR COMPENSATION WHATSOEVER (WHETHER CAUSED BY THE NEGLIGENCE OF THE COMPANY, ITS EMPLOYEES OR AGENTS OR OTHERWISE) WHICH ARISE OUT OF OR IN CONNECTION WITH THE SUPPLY OF THE GOODS (INCLUDING ANY DELAY IN SUPPLYING OR ANY FAILURE TO SUPPLY THE GOODS IN ACCORDANCE WITH THE CONTRACT OR AT ALL) OR THEIR USE OR RESALE BY THE BUYER AND THE ENTIRE LIABILITY OF THE COMPANY UNDER OR IN CONNECTION WITH THE CONTRACT SHALL NOT EXCEED THE PRICE OF THE GOODS, EXCEPT AS EXPRESSLY PROVIDED IN THESE CONDITIONS.**

9 Indemnity

The Buyer will indemnify the Company in full on demand from and against all losses, costs, claims, damages, expenses and liabilities awarded against or incurred by the Company in connection with or agreed to be paid by the Company in settlement of any claim:

- (a) arising from any failure by the Buyer to comply with any instructions, procedures, precautions, guidelines or other measure specified verbally or in writing by the Company relating to the use of the Goods by it or from the Buyer's failure to use best endeavours to procure that any person who subsequently uses the Goods is made aware of the same and of the importance of complying with them;
- (b) arising because of any breach by the Buyer of any of its obligations under the Contract

10 Specification

- 10.1 The Company reserves the right on the sale of the Goods to make before despatch any alteration to or departure from the specification or design of the Goods provided that it shall not, to a material extent, adversely affect the performance of the Goods or the quality of the workmanship or the material used.
- 10.2 All specifications, drawings and technical documents issued by the Company either before or after conclusion of the Contract are issued solely for the Buyer's use in connection with the Goods and shall not be copied, reproduced or communicated to any third party without the Company's express consent in writing.

11 Insolvency of the Buyer

- 11.1 This clause 11 applies if;
- (a) The Buyer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - (b) An encumbrancer takes possession, or a receiver is appointed, of any of the Buyer's property or assets; or
 - (c) The Buyer ceases, or threatens to cease, to carry on business; or
 - (d) The Company reasonably believes that any of the events mentioned above is about to occur.
- 11.2 If this clause applies then, without limiting any other right or remedy available to the Company, the Company may cancel the Contract and any other contracts or orders placed by the Buyer; suspend any further deliveries due to the Buyer without any liability to the Buyer. If the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12 Force Majeure

The Company 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 Company's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:

- (a) Act of God, explosion, flood, tempest, fire or accident;
- (b) War or threat of war, sabotage, insurrection, civil disturbance or requisition;
- (c) Acts, restrictions, regulations, bye-laws, prohibitions or measure of any kind on the part of any governmental, parliamentary or local authority;
- (d) Import or export regulations or embargoes;
- (e) Strike, lock outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);
- (f) Difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- (g) Power failure or breakdown in machinery.

13 Export Terms

- 13.1 In these Conditions "Incoterms" means the International Rules for Interpretation of Trade Terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of "Incoterms" shall have the same meaning in these Conditions, but if there is any conflict, these Conditions shall prevail.
- 13.2 Where the Goods are supplied for export from the UK, the provisions of this Clause 13 shall (subject to any special terms agreed in writing between the Buyer and the Company) apply.
- 13.3 The Buyer shall be responsible for complying with any legislation or regulations governing the Importation of the Goods into the country of destination, for the payment of any duties thereon and for obtaining all necessary licences, permits or consents for the sale or shipment of the Goods to the Buyer. The Buyer shall indemnify the Company in respect of any breach of the Buyer's obligations under this clause.
- 13.4 Unless otherwise agreed in writing between the Buyer and the Company, the Goods shall be delivered ex-works and the Company shall be under no obligation to give notice under Section 32 (3) of the Sale of Goods Act 1979.
- 13.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at such premises as may be specified by the Company before shipment. The Company shall have no liability for any claim in respect of any defect in Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

14.0 Confidentiality

14.1 The Buyer will regard the contract as confidential and all information obtained by the Buyer relating to the business and/or the products of the Company shall not disclose such information to a third party except by the Company's written consent. This undertaking shall not apply to any such information legitimately in the public domain. The Buyer may disclose such information to its employees to enable the carrying out its obligations under the Contract.

14.2 The Buyer shall not without the written consent of the Company use or permit to be used any trade mark emblem or symbol which the Company is licensed to use

14.3 Copyright and intellectual property rights in the Company's products shall remain at all times the property of the Company and the Buyer shall acquire no such rights except as provided for by these Terms and Conditions.

14.4 The provisions of clause 14.0 shall survive the termination of the Contract.

15.0 Waiver

15.1 Failure or delay by the Company to enforce any provision of the Contract shall not be construed as a waiver of the Company's rights under the contract. No waiver by the Company of the buyers obligations under the contract shall constitute a waiver of any prior or subsequent breach.

16.0 Severability

16.1 If any part of the Contract is unenforceable, such unenforceability shall not affect the enforceability of the remainder of the Contract .

17.0 Third Party Rights

17.1 A person who is not a party to the Contract shall have no rights under the contract pursuant to the Contracts (Rights of Third Parties) Act 1999

18.0

18.1 The Contract shall be governed by the laws of England and the Company and the Buyer agree to submit to the non exclusive jurisdiction of the English Courts.

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