

TERMS AND CONDITIONS FOR THE SUPPLY OF PRODUCTS

These terms and conditions ("Terms") apply to the provision by PhoenixTM Ltd (company number 07127984) whose registered office is at 25 Earith Business Park, Meadow Drove, Earith, Cambridgeshire, PE28 3QF ("PhoenixTM") of Products to you.

1 INTERPRETATION

1.1 **Definitions:**
 1.1.1 **"Business Day"** means a day which is not a weekend or national holiday in England.
 1.1.2 **"Agreement"** means the contract between PhoenixTM and the Customer for the sale and purchase of the Products in accordance with these Terms.
 1.1.3 **"Customer"** means the person or firm who purchases the Products from PhoenixTM.
 1.1.4 **"Force Majeure Event"** means an event or circumstance beyond a party's reasonable control.
 1.1.5 **"Intellectual Property Rights"** means patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.
 1.1.6 **"Products"** means the Products (or any part of them) set out in the Order.
 1.1.7 **"Order"** means the Customer's order for the Products, as set out in the Customer's purchase order or in the Customer's written acceptance of PhoenixTM's quotation, as the case may be.
 1.1.8 **"Specification"** means any specification for the Products, including any related plans and drawings, that is agreed in writing by the Customer and PhoenixTM.

1.2 Interpretation:

1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
 1.2.2 any phrase introduced by the terms **including**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
 1.2.3 a reference to writing or **written** includes faxes and emails.

2 BASIS OF AGREEMENT

2.1 These Terms apply to the Agreement 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 Products in accordance with these Terms. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
 2.3 The Order shall only be deemed to be accepted when PhoenixTM issues a written acceptance of the Order in the form of an Order Acknowledgement, at which point the Agreement shall come into existence.
 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Terms.
 2.5 Any samples, drawings or advertising produced by PhoenixTM and any descriptions or illustrations contained in PhoenixTM's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Products referred to in them. They shall not form part of the Agreement nor have any contractual force.
 2.6 A quotation for the Products given by PhoenixTM shall not constitute an offer. A quotation shall only be valid for a period of 60 Business Days from its date of issue.

3 PRODUCTS

3.1 The Products are described in PhoenixTM's catalogue as modified by the Specification.
 3.2 PhoenixTM reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.
 3.3 Standard calibration points (as per manufacturer's specification) will be used for all Data Loggers unless otherwise specified. Data Loggers will only be calibrated according to ISO17025 if requested by the Customer.
 3.4 Data stored within a data logger returned for calibration and any calibration results will be treated as confidential.
4 DELIVERY AND ACCEPTANCE
 4.1 PhoenixTM shall ensure that each delivery of the Products is accompanied by a delivery note that shows the type and quantity of the Products (including the code number of the Products, where applicable), and PhoenixTM shall deliver the Products to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**").
 4.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. PhoenixTM shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Customer's failure to provide PhoenixTM with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
 4.4 If PhoenixTM fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Products of similar description and quality in the cheapest market available, less the price of the Products. PhoenixTM shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide PhoenixTM with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
 4.5 The Customer shall inspect the Products on delivery to ensure that the correct quantity has been delivered and that no damage has occurred during transit and must inform PhoenixTM of any problems within 15 Business Days of receipt of Products. Customer shall be deemed to have accepted the Products if it does not notify PhoenixTM of any non-conformity with this period.
 4.6 PhoenixTM may deliver the Products by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5 WARRANTY

5.1 PhoenixTM warrants that on delivery, and for a period of 12 months from the date of delivery ("**Warranty Period**"), the Products shall:
 5.1.1 conform in all material respects with their description and the Specification;
 5.1.2 be free from material defects in design, material and workmanship; and
 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
 5.2 Subject to clause 5.3, if:
 5.2.1 the Customer gives notice in writing to PhoenixTM during the Warranty Period within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in clause 5.1. The notice must include sufficient information to enable PhoenixTM to identify the non-conformity;
 5.2.2 PhoenixTM is given a reasonable opportunity of examining such Products; and
 5.2.3 the Customer (if asked to do so by PhoenixTM) returns such Products to PhoenixTM's place of business at the Customer's cost,
 5.2.4 PhoenixTM shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full. Repaired or replaced Products may be reconditioned or new and shall be of substantially identical form, fit and function.
 5.3 PhoenixTM shall not be liable for the Products' failure to comply with the warranty set out in clause 5.1 in any of the following events:
 5.3.1 the Customer makes any further use of such Products after giving notice in accordance with clause 5.2;
 5.3.2 the defect arises because the Customer failed to follow PhoenixTM's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same;
 5.3.3 the defect arises as a result of PhoenixTM following any instructions, drawing, design or specification supplied by the Customer;
 5.3.4 the Customer alters or repairs such Products without the written consent of PhoenixTM;
 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working Terms; or
 5.3.6 the Products differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
 5.4 Except as provided in this clause 5, PhoenixTM shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 5.1.
 5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Agreement.
 5.6 Repaired or replaced Products shall benefit from any Warranty Period remaining in respect of the original Product.
 5.7 The warranties set out in this clause 5 replaces and excludes to the extent permitted by law, all other conditions, warranties and representations (express or implied), statutory or otherwise in respect of the Products. PhoenixTM specifically disclaims all other implied warranties of merchantability, fitness for a particular purpose and non-infringement with respect to the Products, documentation and any other materials, and with respect to the use of any of the foregoing, not set out in the Specification. In addition, PhoenixTM Ltd does not warrant that any software or firmware (or portion thereof) incorporated within a Product is error free.

6 INTELLECTUAL PROPERTY

6.1 The Customer acknowledges and agrees that PhoenixTM and/or its licensors own all Intellectual Property Rights in the Products and the Specification.

7 TITLE AND RISK

7.1 The risk in the Products shall pass to the Customer on completion of delivery.
 7.2 Title to the Products shall not pass to the Customer until the earlier of:
 7.2.1 PhoenixTM receives payment in full (in cash or cleared funds) for the Products; and
 7.2.2 the Customer resells the Products, in which case title to the Products shall pass to the Customer at the time specified in clause 7.4.

7.3 Until title to the Products has passed to the Customer, the Customer shall:
 7.3.1 store the Products separately from all other Products held by the Customer so that they remain readily identifiable as PhoenixTM's property;
 7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
 7.3.3 maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 7.3.4 notify PhoenixTM immediately if it becomes subject to any of the events listed in clause 9.1; and
 7.3.5 give PhoenixTM such information relating to the Products as PhoenixTM may require from time to time.
 7.4 Subject to clause 7.5, the Customer may resell or use the Products in the ordinary course of its business (but not otherwise) before PhoenixTM receives payment for the Products. However, if the Customer resells the Products before that time:
 7.4.1 it does so as principal and not as PhoenixTM's agent; and
 7.4.2 title to the Products shall pass from PhoenixTM to the Customer immediately before the time at which resale by the Customer occurs.
 7.5 If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in clause 9.1, then, without limiting any other right or remedy PhoenixTM may have:
 7.5.1 the Customer's right to resell the Products or use them in the ordinary course of its business ceases immediately; and
 7.5.2 PhoenixTM may at any time:
 7.5.2.1 require the Customer to deliver up all Products in its possession that have not been resold, or irrevocably incorporated into another product; and
 7.5.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

8 PRICE AND PAYMENT

8.1 The price of the Products shall be the price set out in the Order.
 8.2 PhoenixTM may, by giving notice to the Customer at any time 10 Business Days before delivery, increase the price of the Products to reflect any increase in the cost of the Products that is due to:
 8.2.1 any factor beyond PhoenixTM's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 8.2.2 any request by the Customer to change the delivery date(s), quantities or types of Products ordered, or the Specification; or
 8.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give PhoenixTM adequate or accurate information or instructions.
 8.3 The price of the Products:
 8.3.1 excludes amounts in respect of value added tax or similar sales tax ("**Tax**"), which the Customer shall additionally be liable to pay to PhoenixTM at the prevailing rate, subject to the receipt of a valid Tax invoice; and
 8.3.2 excludes the costs and charges of packaging, insurance and transport of the Products, which shall be invoiced to the Customer (unless the Products are supplied ex-works).
 8.4 PhoenixTM may invoice the Customer for the Products on or at any time after the completion of delivery.
 8.5 Unless stated otherwise in the Order, the Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by PhoenixTM.
 8.6 If the Customer fails to make any payment due to PhoenixTM under the Agreement by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
 8.7 The Customer shall pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). PhoenixTM 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 PhoenixTM to the Customer.

9 TERMINATION

9.1 Without limiting its other rights or remedies, PhoenixTM may terminate this Agreement with immediate effect by giving written notice to the Customer if:
 9.1.1 the Customer commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 5 Business Days of that party being notified in writing to do so; or
 9.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
 9.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business.
 9.2 Without limiting its other rights or remedies, PhoenixTM may suspend provision of the Products under the Agreement or any other contract between the Customer and PhoenixTM if the Customer becomes subject to any of the events listed in clause 9.1.1 to clause 9.1.3, or PhoenixTM reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Agreement on the due date for payment.
 9.3 Without limiting its other rights or remedies, PhoenixTM may terminate the Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Agreement on the due date for payment.
 9.4 On termination of the Agreement for any reason the Customer shall immediately pay to PhoenixTM all of PhoenixTM's outstanding unpaid invoices and interest.
 9.5 Termination of the Agreement shall not affect any of the parties' rights and remedies that have accrued at termination, including the right to claim damages in respect of any breach of this Agreement that existed at or before the date of termination.
 9.6 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

10 LIMITATION OF LIABILITY

10.1 Nothing in these Terms shall limit or exclude PhoenixTM's liability for:
 10.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 10.1.2 fraud or fraudulent misrepresentation;
 10.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 10.1.4 defective products under the Consumer Protection Act 1987; or
 10.1.5 any matter in respect of which it would be unlawful for PhoenixTM to exclude or restrict liability.
 10.2 Subject to clause 10.1:
 10.2.1 PhoenixTM shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any of the following types of losses (whether those losses arise directly in the normal course of business or otherwise): pure economic loss; loss of profits; loss of data (excluding Personal Data); loss of business; loss of revenue; loss of contract; or any special, indirect or consequential losses; and
 10.2.2 PhoenixTM's total liability to the Customer in respect of all other losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total value of the Order in respect of which the liability arises.

11 GENERAL

11.1 **Assignment and other dealings** Customer may not assign, subcontract, sublicense or otherwise transfer any of its rights or obligations under these Terms. PhoenixTM may assign, subcontract, sublicense or otherwise transfer all or part of the benefits or all or part of its obligations under these Terms to any party.
 11.2 **Force Majeure.** Despite anything else contained in these Terms, neither party will be liable for any delay in performing its obligations under the Agreement if that delay is caused by a Force Majeure Event and the party affected will be entitled to a reasonable extension of time for the performance of its obligations.
 11.3 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Agreement 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.
 11.4 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
 11.5 **Variation.** No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
 11.6 **Notices.** All notices to be given under these Terms must be in writing (which shall include email) and sent to the address of the recipient set out in this agreement, or any other address which the recipient may tell the other in writing.
 11.7 **Governing Law.** The construction, validity and performance of the Agreement shall be governed in all respects by English law, and the parties agree to submit to the non-exclusive jurisdiction of the English courts.