

THAMES CRYOGENICS LTD.  
GENERAL CONDITIONS OF SALE.

These General Conditions of Sale ('Conditions') apply to and are deemed to be incorporated in all contracts for the sale and supply of services, equipment, products and materials ('Goods') of THAMES CRYOGENICS LIMITED ('the Company') to the customer ('Customer') stated on the relevant order placed by the Customer ('Order'), and entirely supersede any conditions contained in a Customer's order unless otherwise agreed to in writing by the Company.

**1. Orders and Quotations**

Unless otherwise stated, a quotation is valid for acceptance within 30 days from the date thereof. All quotations of the Company are subject to a valid Order.

**2. Orders**

Orders must be accompanied by sufficient information to enable the Company to proceed with the order forthwith. The Customer shall ensure that the terms of the Order and any relevant specification are complete and accurate. Orders must be confirmed in writing by the Customer. Each Order constitutes an offer to buy the Goods stated on the Order subject to these Conditions.

No Order shall be accepted or deemed to be accepted by the Company until the Company issues an order confirmation ('Order Confirmation') at which point a legally binding contract ('Contract') including these Conditions shall come into existence. The quantity and description of the Goods shall be as set out on the Order Confirmation. Notwithstanding the foregoing, the provision of Goods is subject always to availability and the Order Confirmation does not give rise to a binding obligation on the Company to provide the Goods until such time as the Company confirms the availability of the relevant Goods. The Customer may not cancel an Order, in whole or part, without the Company's prior written consent. Order cancellations will not be accepted on or after fourteen (14) calendar days after the date of the Order Confirmation and the Customer shall be fully liable for the full value of the Order. A cancellation charge equivalent to fifty per cent (50%) of the value of the Order (based on the value of the original Order) will be levied if the Order is cancelled after the date of the Order Confirmation but the Goods remain unshipped. A cancellation charge equivalent to one hundred per cent (100%) of the value of the Order including any associated shipping, packaging, insurances or duties, related costs incurred by the Company will be levied if Goods have been shipped to the Customer.

**3. Modification to Contract**

Any modifications to the Contract resulting from the Customer's demands or requirements or necessitated by circumstances outside the control of the Company, which arise subsequent to the establishment of the Contract, will be the subject of an adjustment in price. Such modification must be agreed in writing to both parties.

**4. Drawings and Technical Specifications**

While the Company takes every precaution in the preparation of catalogues, technical circulars, price lists, illustrations, data sheets and other advertising matter, these are an indication of the type of goods offered and no particulars contained therein shall be binding on the Company. General descriptive and technical specifications submitted with a quotation are typical only and shall not form part of any Contract.

Specific written technical specifications included in quotations shall only form part of a Contract when they are confirmed as an integral part of the Company's written Order Confirmation. All drawings and engineering data submitted to the Customer by the Company are confidential and shall not be disclosed by any other party without the written consent of the Company.

**5. Delivery**

Delivery dates indicated by the Company shall mean the date when the relevant Goods are completed and available for despatch at the Company's factory. 'Delivery' means when the Goods are made available by the Company for collection by the Customer at the Customer's named place of delivery and on such date as specified on the Order Confirmation unless otherwise agreed in writing by the Company and the Customer and 'Deliver', 'Delivered' and 'Delivering' shall be construed accordingly. The Company will use its reasonable endeavour to despatch the Goods immediately after completion, but shall not incur any liability in respect of failure so to do, for whatever reason, unless otherwise agreed in writing. If the Company has not received forwarding instructions sufficient to enable it to despatch the goods within 14 days of the date of notification that they are ready for despatch, the Customer shall take delivery or arrange for storage. If the Customer does not take delivery or arrange storage, the Company reserves the right to arrange storage at its own works or elsewhere on the Customer's behalf and all charges for demurrage/insurance shall be payable by the Customer.

**6. Passing of Property and Risk**

- a. The Goods shall remain the sole and absolute property of the Company as legal and equitable owner until such time as the Customer shall have paid to the Company the agreed price in full together with the full price of any other goods the subject of any other contract with the Company.
- b. Until such time as the Customer becomes the owner of the Goods it will store them on its premises separately from his own goods or those of any other person and in a manner which makes them readily identifiable as the Goods of the Company.
- c. The Customer acknowledges that until such time as the property in the Goods passes to the Customer it is in possession of the Goods as a bailee for the Company.
- d. The Company may for the purpose of recovery of its Goods enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the same.
- e. From Delivery until such time as ownership passes to the Customer the goods shall be at the risk of the Customer who will take proper care of the goods. Goods must be stored under conditions generally accepted for the commodity, and/or as stated on labels or any packaging. The Company will not accept liability for damage or claims for defects if such conditions are not adhered to. The Customer must, at its own cost, obtain any necessary licenses, permits, certificates, concerns, authorisations and import documentation as required to allow the importation and transportation into the destination country of the Goods where appropriate.
- f. The Customer shall be deemed to have accepted the Goods on Delivery. Following acceptance the Customer shall only be entitled to return Goods in accordance with section 9 below and shall not otherwise be permitted to reject any Goods following acceptance.

**7. Loss or Damage in Transit**

- a. Insurance:  
The Company will automatically insure every shipment leaving its factory against transit loss or damage up to a limit of 110% of the Order invoice value unless otherwise instructed in writing.
- b. Claims:  
The Company must be informed in writing immediately if the Goods have not been received within 14 days from date of dispatch from the Company's factory.  
The Goods must be inspected immediately on arrival at the Delivery address and any damage found must be reported immediately to the carriers, and in writing to the Company within 7 days, otherwise the Company will accept no responsibility for transit loss or damage.

**8. Terms of Payment**

The price is exclusive of VAT which shall be due at the rate ruling on the date of the Company's invoice.

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The price and payment terms for the Goods shall be as stated on the relevant quotation as confirmed by an Order Confirmation.

If any payment is overdue, interest on the sum concerned will be payable at 4% over the Bank of England base rate for the time being in force, plus £40 per invoice admin and late payment compensation fee. The Company at its discretion may choose to claim statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998 at the current prevailing rate and the Company shall also at all times be entitled to claim, once interest begins to run, any fixed sums due (or which would be due if statutory interest were claimed) under the Late Payment of Commercial Debts Regulations 2002 or any regulation amending or replacing the same.

The Company may set off against any money owed by the Company to the Customer pursuant to these Conditions or otherwise, any sums received from the Customer regardless of what the Customer purports to designate the sums to be on account of. This right of set off will continue unless and until the Customer has paid, satisfied or discharged all monies, debts or liabilities due or owing to the Company by the Customer. The Customer hereby irrevocably authorises The Company to deduct from any monies due or owing to the Company by the Customer from time to time.

**9. Warranty Replacement and Services**

- a. The Company's liability in respect of Goods supplied shall be limited to making good by replacement or repair, at the option of the Company, defects, which under proper use appear therein within 12 calendar months or such other period as may be specified in writing by the Company after the original date of Delivery of them and which arise solely from faulty design, materials or workmanship.  
If the Goods found to be defective during the aforesaid period of 12 months have been repaired or worked upon by any person other than an authorised representative of the Company, then the Company's obligations herein shall immediately cease.  
The Customer assumes the obligation of all expenses of returning defective products or parts to the Company, and of their return to the Customer. If any goods returned to The Company under warranty are found to be not defective, all costs incurred by the Company will be charged to the Customer.  
The Customer will refund to the Company the costs to the Company of any replacement, repair, re-delivery and recommissioning on presentation of an invoice when the defect is not within the scope of this warranty.
- b. For Goods supplied by the Company but not of the Company's own manufacture, the Customer shall be entitled only to such benefits as the Company may have received under any warranty from the relevant supplier, and the Company shall be under no further liability whatsoever to the Customer.
- c. Any performance criteria specified by the Customer are subject to the Goods being used in the proper manner in accordance with any operating instructions issued by the Company.
- d. The Company accepts responsibility for all written technical advice given by its officers or servants and for which a charge is made.  
Technical advice made available to the Customer without charge is given with all reasonable care, but without responsibility on the part of the Company. In the absence of any special arrangements to the contrary, it is the Customer's responsibility to ensure that the nature, capacity and performance of the Goods ordered are sufficient and suitable for the Customer's requirements.
- e. The Customer shall accept the provisions contained in sections 9a, 9b, 9c and 9d hereof in lieu of any other warranty, condition or liability imposed by common law or statute, except that the Company shall be responsible for fraudulent misrepresentation and negligence causing personal injury or death.
- f. The Customer shall in no circumstances, subject to paragraph 9e above, be entitled to recover from the Company damages for breach of contract for negligence or otherwise arising exceeding the price paid by the Customer with respect to the particular delivery or deliveries in question.
- g. Except as provided above, the Company shall not be liable to the Customer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any damage or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused arising out of or in connection with:
- (i) any of the Goods, or the manufacture or sale or supply, or failure or delay in supply, of the Goods by the Company on the part of the Company's employees, agents or sub-contractors;
  - (ii) any breach by the Company of any of the express or implied terms of these Conditions;
  - (iii) any use made or sale by the Customer of any of the Goods, or of any product incorporating any of the Goods; or
  - (iv) any statement made or not made, or advice given or not given, by or on behalf of the Company.

**10. Intellectual Property**

- a. The Company endeavours not to offer for sale goods which infringe known and valid third party intellectual property rights but shall not be liable, and no claims shall be made against it by the Customer, for any damage or loss of profit arising from infringement of any third party intellectual property rights or from any proceedings or threatened proceedings in respect of infringement of any third party intellectual property rights by any use or sale of Goods the subject of the Contract.  
Any condition or warranty implied under the Sale of Goods Act 1979 or otherwise is limited accordingly.
- b. The Customer acknowledges that all intellectual property rights in the Goods and their design belong solely to the Company or its licensors and may not be copied or utilised by the Customer for any purpose except for the sale of the Goods in the form delivered and for the purpose intended.
- c. The Company gives no warranty, either express or implied, with respect to the validity of the Company's intellectual property rights or that the Company's intellectual property rights will not infringe the rights of any third party
- d. Where the Company provides advice to the Customer in matters of technique or supplies Goods for carrying a technique into effect the tendering of such advice or the supply of such Goods carries no guarantee that such technique is free from patent restrictions nor can the Company accept any liability arising from infringement or alleged infringement of patent as a result of the Customer following the advice tendered by the Company or using such Goods.
- c. If Goods supplied by the Company to the Customer's design or specifications, infringe or are alleged to infringe any third party intellectual property rights, the Customer hereby indemnifies and will keep indemnified the Company against all damages, costs, losses and expenses incurred by the Company as a result of the infringement or allegation. The Customer will give the Company all possible help in meeting any infringement claim brought against the Company.

**11. Statutory Obligation**

The Company will offer every co-operation in observing safe working conditions but the responsibility for the observance of the requirements of the Factories Act 1961 (and any amendments or re-enactment thereof) and all other obligations the performance of which is necessary to comply with the law of the country where the goods are serviced, installed or used rest with the Customer who shall indemnify the Company against all damages, costs, losses and expenses arising from claims under the said Act or by reason of non-compliance with any of the said obligations..

**12. Termination of Contract**

- a. By the Company:  
If the Customer shall commit a breach of any term or condition of a Contract issued by the Company for the sale of Goods or related services, the Company shall have the right to terminate that Contract immediately by notice in writing and to charge the Customer for all costs incurred up to the termination date, plus a cancellation charge of 10% of full Contract price. The Company shall also have the right to include in such charges all legal and administrative costs.  
If the Customer shall become bankrupt or insolvent or compound with creditors or in the event of a resolution being passed or proceedings being commenced for the winding-up of the Customer or if a receiver or manager is appointed of the whole or any part of its assets or undertaking the

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Company shall be entitled to cancel the Contract in whole or in part by notice in writing without prejudice to any right or remedy accrued or accruing to the Company

Any termination or cancellation of Contract shall be without prejudice to the rights of either party arising prior to the date thereof.

b. By the Customer:

Should the Customer terminate the Contract for any reason whatsoever, the price for the Goods and all other fees, charges and expenses payable by the Customer under the Order Confirmation, plus a cancellation charge of 10% of full Contract price, shall immediately become due and payable (whether or not due at the time of termination). These costs shall include all legal and administrative costs relating to the termination.

13. **Installation**

Where installation and demonstration services are included in a quotation and confirmed in the Company's Order Confirmation, the Customer shall allow the Company suitable access to and possession of the site and shall at the Customer's expense provide all the necessary facilities as specified in advance by the Company, such provisions will be made by the Customer in sufficient time to allow the Company's officers to perform without hindrance the services specified in the Contract.

Commissioning and training are included in our quotations so long as they occur immediately following the completion of installation and before the Company leaves the site. Visits specifically for commissioning or training will be chargeable at the Company's standard rates. Training sessions are chargeable at the Company's standard rates.

14. **Labour Used in Connection with the Contract**

Any person engaged at the point of delivery on work in connection with a Contract of the Company, other than employees as authorised representatives of the Company, shall be deemed to be the servants or agents of the Customer. The quality of the work of such servants or agents will be the responsibility of the Customer.

15. **Progress Inspection**

Inspection required by the Customer or his representative during the manufacture of Goods made to the order of the Company shall be made at the Company's factory or where otherwise nominated by the Company. The cost of such inspection and of any delays thereby caused will be borne by the Customer and the Customer shall procure that all such personnel visiting the Company's premises will at all times comply with all health and safety and other reasonable requirements of the Company while on the Company's premises.

16. **Employee's Liability**

In making these Conditions the Company does so both for itself and for and on behalf of every employee, servant or agent of the Company and the existence of a Contract for the sale or supply of Goods and related services shall be conclusive evidence of the agreement of the Customer that in the event of any loss or damage of any nature suffered by the Customer by reason of the negligence or default of any employee, servant or agent of the Company, any exemption of liability of the Company given by these Conditions shall extend to such employee, servant or agent.

17. **Third Party Rights**

The parties agree that save for the Company's officers, employees, agents and subcontractors being able to benefit from the Company's exclusions and limitations on its liability it is not intended to give any third parties rights in relation to these Conditions.

18. **Legal Construction**

The Conditions and any Contract following thereon shall be governed by and construed in accordance with English Law. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Conditions or its subject matter or formation (including non-contractual disputes or claims).