

## Exloc Instruments UK Limited

### Terms and Conditions for Supply of Goods

The Customer's attention is drawn in particular to the provisions of clause 9.

#### 1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6.

**Contract:** the contract between Exloc and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the person or company who purchases the Goods from Exloc.

**Goods:** the goods (or any part of them) set out in the Order.

**Order:** the Customer's order for the Goods, the Customer's written acceptance of Exloc's quotation as the case may be.

**Exloc:** Exloc Instruments UK Limited, a company registered in England and Wales under company number 07737802 and with registered office address 72 High Street, Uppermill, Saddleworth, OL3 6AW.

#### 2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract 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. Exloc's failure to object to provisions contained in any Customer document or communication shall not be deemed a waiver of the application of these Conditions.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when Exloc issues an order acknowledgement of the Order, at which point the Contract shall come into existence.
- 2.4 Telephone orders shall be accepted only at the Customer's risk and Exloc's interpretation of any verbal instructions will be deemed to be correct and valid.
- 2.5 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Exloc which is not set out in the Contract.
- 2.6 Any samples, drawings, descriptive matter, or advertising produced by Exloc and any descriptions or illustrations contained in Exloc's catalogues or brochures (or those of the relevant manufacturer's of the Goods) are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.7 A quotation for the Goods given by Exloc shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue unless otherwise stated or unless withdrawn during that period.
- 2.8 Once the Customer's order has been accepted, it may not be cancelled or rescheduled without Exloc's written consent.

#### 3. GOODS

- 3.1 The Goods are described in Exloc's catalogue. Exloc reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements without notice but in any event the Goods will conform in all material respects with the specification of the Goods at the time the Contract is formed.
- 3.2 Exloc makes no representation or warranty that the Goods are suitable for the Customer's purpose and it shall be the Customer's sole responsibility to ascertain that any Goods ordered are sufficient and suitable for its intended purpose.

#### 4. DELIVERY

- 4.1 Exloc shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Exloc reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 Exloc shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Exloc notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.4 Any dates quoted for delivery are approximate only given by Exloc in good faith, and the time of delivery is not of the essence. Exloc shall not be liable for any delay in delivery of the Goods and delay shall not constitute a ground for rejecting the Goods or rescinding the Contract.
- 4.5 If the Customer fails to accept delivery of the Goods within three Business Days of Exloc notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Exloc's failure to comply with its obligations under the Contract:
  - (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Exloc notified the Customer that the Goods were ready; and
  - (b) Exloc shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.6 If 10 Business Days after the day on which Exloc notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, Exloc may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.7 Exloc may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.8 Goods may only be returned with Exloc's prior written consent. Where consent is given: (a) it shall be conditional upon Goods being returned in unused condition with all quality seals intact and with all original packaging in undamaged form; (b) Exloc may in its sole discretion apply a % restocking charge of 30% of the invoiced price of the Goods; and (c) all returns shall be at the Customer's sole risk and cost.

#### 5. QUALITY

- 5.1 Exloc warrants that on delivery, and for a period of 12 months from the date of delivery or for the duration of the manufacturer's warranty or guarantee if less (**warranty period**), the Goods shall:
  - (a) conform in all material respects with their description; and (b) be free from material defects in design, material and workmanship.
- 5.2 Subject to clause 5.3, if:
  - (a) the Customer gives notice in writing to Exloc within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1 (**warranty notice**);
  - (b) Exloc is given a reasonable opportunity of examining such Goods;
  - (c) the Customer (if asked to do so by Exloc) returns such Goods to Exloc's place of business at Customer's cost within 20 Business Days after the date of the warranty notice and within the warranty period; and
  - (d) the Customer has paid in full for the Goods by the due date for payment,

Exloc shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 Exloc shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow Exloc's or the manufacturer's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the Customer alters or repairs such Goods without the written consent of Exloc;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
- (e) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or
- (f) the Customer has not paid for the Goods in full by the due date for payment in accordance with the terms herein.

5.4 Except as provided in this clause 5, Exloc shall have no liability to the Customer in respect of the Goods' 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 Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by Exloc.

## **6. TITLE AND RISK**

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until Exloc has received payment in full (in cash or cleared funds) for: (a) the Goods; and (b) any other goods or services that Exloc has supplied to the Customer in respect of which payment has become due.

6.3 Until title to the Goods has passed to the Customer, the Customer shall: (a) hold the Goods on a fiduciary basis as Exloc's bailee; (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Exloc's property; (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; (e) notify Exloc immediately if it becomes subject to any of the events listed in clause 8.2; and (f) give Exloc such information relating to the Goods as Exloc may require from time to time. The Customer may resell or use the Goods in the ordinary course of its business.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or Exloc reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Exloc may have, Exloc may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **7. PRICE AND PAYMENT**

7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in Exloc's published price list in force as at the date of delivery.

7.2 Exloc may, by giving notice to the Customer at any time prior to the date of delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond Exloc's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give Exloc adequate or accurate information or instructions.

7.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

7.4 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from Exloc, pay to Exloc such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.5 Exloc may invoice the Customer for the Goods on or at any time after the completion of delivery.

7.6 The Customer shall pay the invoice in full and in cleared funds by the end of the month following the month the invoice was dated. Payment shall be made to the bank account nominated in writing by Exloc. Time of payment is of the essence.

7.7 If the Customer fails to make any payment due to Exloc under the Contract by the due date for payment (**due date**): a) then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Nat West Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and b) Exloc may charge a reasonable administration fee to reflect the costs incurred in recovering a debt

7.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Exloc in order to justify withholding payment of any such amount in whole or in part. Exloc 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 Exloc to the Customer.

7.9 No discount, credit facility or special pricing arrangement shall be binding upon Exloc unless confirmed in writing by Exloc and may be withdrawn by Exloc at any time on written notice.

## **8. CUSTOMER'S INSOLVENCY**

8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or Exloc reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to Exloc, Exloc may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Exloc without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

8.2 For the purposes of clause 8.1, the relevant events are: (a) the Customer has a receiver or an administrative receiver appointed over it or over any part of its undertakings or assets; or (b) passes a resolution for winding up or a court of competent jurisdiction makes an order to that effect; or (c) if Customer other enters into any voluntary arrangement with its creditors or ceases or threatens to cease to carry on business; or (d) undergoes or is subject to any analogous acts or proceedings pertaining to (a) – (c) above; or (e) if Customer suffers a deterioration in its financial position that in Exloc's opinion Customer's capability to adequately fulfil its obligations under the contract has been placed in jeopardy; or (f) if Customer fails to make any payment when due to Exloc.

8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

8.4 If Exloc terminates the Contract pursuant to this clause 8, Exloc may, without prejudice to its other rights demand immediate payment by the Customer of all unpaid accounts and suspend

further deliveries and cancel this and any other contract between Exloc and the Customer without any liability attaching to Exloc in respect of such suspension or cancellation.

## 9. LIMITATION OF LIABILITY

9.1 Nothing in these Conditions shall limit or exclude Exloc's liability for: (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); (b) fraud or fraudulent misrepresentation; (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or (d) any other liability which cannot be excluded by law.

### 9.2 Subject to clause 9.1:

(a) **Exloc shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and**

(b) **Exloc's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the net price actually paid by the Customer for the Goods, excluding VAT, delivery charges and other expenses.**

9.3 Notwithstanding anything else herein, Exloc shall not be liable for, and the Customer agrees to indemnify and hold harmless Exloc from, all liability for any and all damages arising from or in connection with the Customer (its employees, customers and others) subsequent use or misuse of the Goods including (without limitation): (a) fair wear and tear; (b) wilful damage; (c) Customer's negligence, or that of its agents or employees, or any failure to follow Exloc or any manufacturers instructions as to the use of the Goods; d) abnormal working conditions beyond those referred to in any specification from time to time; (e) any alteration or repair of the Goods by any manufacturing process or otherwise.

9.4 The Customer shall be responsible for complying with any legislation or regulations (of the UK or any other country) governing the export and import of goods into the country of destination (or any other country through which the Goods pass in transit) and for the payment of any duties thereon. The Buyer shall fully indemnify Exloc against any fines, penalties, costs, claims, damages, losses and expenses suffered by Exloc as a result of the Customer failing to comply with this sub-clause 9.4.

9.5 The Customer warrants that the Goods will not be used unless and until the Customer shall first have applied or taken all appropriate precautionary measures or applied all such warnings, notices, statements or makings or taken all such other precautions of whatsoever nature as may be required by law or as may be necessary or appropriate to preclude the making of any claim by any person who may use the Goods. The Customer shall indemnify Exloc against all claims, proceedings, costs or expenses, which Exloc may sustain by reason of any breach of this warranty.

## 10. FORCE MAJEURE

Exloc shall not be liable for any delay in performance or failure to perform in whole or in part the terms of this Contract due to causes beyond Exloc's reasonable control ("**Force Majeure Event**") including, without limitation, strike, labour disputes (whether or not in relation to one of the parties workforce), shortages of material, war, acts of terrorism, riot or civil commotion, sabotage, fire, flood or other acts of God.

## 11. GENERAL

### 11.1 Assignment and subcontracting.

(a) Exloc may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

(b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Exloc.

### 11.2 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.3 **Severance.** If any court or competent authority finds that any provision or part provision of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected

11.4 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy.

11.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

11.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Exloc.

11.7 **Entire agreement.** This Contract (and any written supplement signed by the parties) sets out the entire and exclusive agreement between the parties and supersedes all prior proposals, representations, agreements or understandings concerning the subject matter addressed herein. The Customer acknowledges that in entering into the Contract it has not relied on any statement, representation, agreement, undertaking or promise given by Exloc or implied from anything said or written in negotiations between the parties except as expressly stated in these terms and conditions.

11.8 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.