



Flexim Instruments
UK Ltd.

Flexim Instruments UK Ltd.
Theatre Court · Northwich · Cheshire · CW9 5HB

GENERAL TERMS AND CONDITIONS OF SALE OF FLEXIM INSTRUMENTS UK LTD

Theatre Court, Northwich, Cheshire CW9 5HB
(HEREINAFTER REFERRED TO AS "FLEXIM")

These Terms and Conditions of Sale (hereinafter referred to as "TCS") are applicable to all offers, quotations, agreements and orders for the sale of Products, which for the purpose hereof includes the licensing of Software, and the providing of Services by FLEXIM to its Customers.

Any provisions in Customer's general conditions of purchase and/or sale, any Purchase Order, enquiry, letter, form of contract, specification or other document put forward by the Customer, or any amendment(s) made by Customer to these TCS, are herewith explicitly rejected and excluded. Any such additions or amendments to and deviations from these TCS can only be agreed in writing and require signature by duly authorized representatives of Parties.

DEFINITIONS

Customer: the legal entity issuing a Purchase Order to FLEXIM.

Delivery Date: the date by which FLEXIM shall deliver the Products and/or execute and perform the Services. **Hardware:** all flowmetering equipment, installations and components.

ICC - Incoterms 2000: International Chamber of Commerce ("ICC") rules for the interpretation of trade and delivery terms.

Party or Parties: FLEXIM and/or Customer individually or collectively as the case may be.

Products: all Hardware, Software and documentation, test and measurement equipment, analyzers, flow meters, transmitters, sensors or any other good specified in the Quotation, not consisting of Services.

Purchase Order: a written order issued by Customer for the purchase of Products/ Services as accepted in writing by FLEXIM.

Quotation: the offer, proposal or quotation (however named) including scope, specifications, functional requirements, quantity, schedule, conditions, drawings and other related documents attached thereto or referred therein, issued by FLEXIM to the Customer for the sale of Products/Services.

Services: all activities performed by FLEXIM (or under FLEXIM's direction) for Customer, as specified in the Quotation, not consisting of the supply of Products.

Site Work: Services to be performed by FLEXIM or under FLEXIM's direction which are not





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performed at FLEXIM premises.

Third Party Products: Non-FLEXIM products which are delivered to FLEXIM's premises for the purpose of a) reselling to the Customer b) integration with the Products or c) the testing of the Products.

Variation Order: a written document issued by Customer and accepted in writing by FLEXIM for the variation of an existing Purchase Order.

QUOTATION AND PURCHASE ORDER

Any Quotation issued by FLEXIM shall be without engagement and the price stated therein shall remain valid for a maximum period of thirty (30) days calculated from the date of the Quotation. Technical specifications, dimensions, designs, drawings, illustrations, catalogues, use statistics, weights etc. used by FLEXIM in a Quotation, are drawn up by FLEXIM to the best of its ability, but do not bind FLEXIM unless expressly agreed to in writing. FLEXIM shall be free (at its sole discretion) to accept or refuse Customer's Purchase Orders.

DELIVERY AND PRICE

A minimum order value of £100.00 net applies per order and if it is not met, an additional handling charge of £15.00 net shall be invoiced. All prices for Products are calculated on the basis of deliveries ex FLEXIM-office / production- / distribution facility which is "Ex Works" in accordance with the ICC – Incoterms 2000. Prices for Services are calculated, applying then prevailing rates in the FLEXIM pricelist. All prices and rates are exclusive of VAT, transport, packaging, travel, lodging and installation, import duties and other taxes, levies or costs. Transport insurance will be charged with 0.5% of the invoiced value of goods. The Delivery Date is not a deadline and in the event of late delivery, FLEXIM shall notify the Customer in writing as soon as possible, identifying the reasons for the delay. The delivery time is calculated from acceptance of Customer's Purchase Order by FLEXIM, or, in case it has been agreed that Customer shall make a deposit, prepayment and/or shall pay a security, from the date FLEXIM has received the relevant Customer payment. The Delivery Date may be extended if Customer requests Variation Orders.

If dispatch or shipment is delayed at the Purchaser's request by more than one month after notice of the readiness for dispatch was given, the Purchaser may be charged, for every month commenced, storage costs of 0.5% of the price of the items of the Supplies, but in no case more than a total of 5%.

Partial Supplies shall be allowed, unless prior agreement has been made with the Purchaser. The Purchaser shall not refuse to receive Supplies due to minor defects.

PAYMENT



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Payment shall be made by Customer within thirty (30) days from invoice date. Payments must be made without any deduction or set-off into a bank account, designated by FLEXIM. All bank charges shall be for Customer's account. If Customer does not meet its payment obligations promptly or in full, Customer shall, without any further notice being required, be in default. Default interest to the amount of 8% over the actual discount rate of the European Central Bank will be charged in the event of payment delays, as far as not other provisions of the Statute apply. The foregoing shall apply in addition to FLEXIM's right, in case of Customer's late payment, to suspend the further execution of the Purchase Order or, to the extent the Purchase Order has not yet been executed, to terminate the same by means of a written notice, without prejudice to FLEXIM's right in the prevailing case to claim full compensation for any loss suffered.

PACKING

Packing of the Products shall be in accordance with FLEXIM's standard procedures.

ACCEPTANCE TESTING

Factory Acceptance Test (FAT) means the testing of the Products and/or Services according to FLEXIM's standard test procedures, based on the original quotation as approved by Customer. The FAT is carried out on FLEXIM's premises, eye-witnessed by Customer to verify the compliance of the Products and/or Services with the contractual requirements and the specification as quoted. If Customer, despite prior invitation and/or confirmation, has not been present at FAT, FAT is deemed to have taken place in Customer's presence. Completion of FAT shall result in the release of the Products and/or Services for shipment or performance, subject to all outstanding invoices having been paid by Customer. Site Acceptance Test (SAT) is the test carried out at the Customer's site to verify that no deterioration occurred to the Product(s) during shipment and installation of the delivery on Customer's site

SITWORK

Unless otherwise agreed in writing, assembly/erection shall be subject to the following provisions:

1. The Purchaser shall provide at its own expense and in good time:
 - a) all earth and construction work and other ancillary work outside the scope of the Supplier, including the necessary skilled and unskilled labour, construction materials and tools,
 - b) the equipment and materials necessary for assembly and commissioning such as scaffolds, lifting equipment and other devices as well as fuels and lubricants,
 - c) energy and water at the point of use including connections, heating and lighting,
 - d) suitable dry and lockable rooms of sufficient size adjacent to the site for the storage of machine parts, apparatus, materials, tools, etc. and adequate working and recreation rooms for the erection personnel, including sanitary facilities as are appropriate in the specific circumstances. Furthermore, the Purchaser shall take all measures it would take for the protection of its own possessions to protect the possessions of the Supplier and of the erection personnel at the site,
 - e) protective clothing and protective devices needed due to particular conditions prevailing on the specific site.
2. Before the erection work starts, the Purchaser shall make available of its own accord any information required concerning the location of concealed electric power, gas and water lines or of similar installations as well as the necessary structural data.
3. Prior to assembly or erection, the materials and equipment necessary for the work to start must be available on the site of assembly/erection and any preparatory work must have advanced to such a degree that assembly / erection can be started as agreed and carried out without interruption. Access roads and the assembly/erection site itself must be level and clear.
4. If assembly, erection or commissioning is delayed due to circumstances for which the Supplier is not responsible, the Purchaser shall bear the reasonable costs incurred for idle times and any additional travelling of the Supplier or the erection personnel.
5. The Purchaser shall attest to the hours worked by the erection personnel towards the Supplier at weekly intervals and the Purchaser shall immediately confirm in writing if assembly, erection or commissioning has been completed.
6. If, after completion, the Supplier demands acceptance of the Supplies, the Purchaser shall comply therewith within a period of two weeks. In default thereof, acceptance is deemed to have taken place. Acceptance is also deemed to have been effected if the Supplies are put to use, after completion of an agreed test phase, if any.
Additionally in respect of Site Work to be performed by FLEXIM, Customer shall ensure the following:
 - Site Work can be commenced and continued unhindered and undisturbed from the moment of arrival of FLEXIM's personnel.
 - Site Work can be performed during and outside normal working hours.
 - - Mandatory government permits have been obtained.
 - Strict adherence to all reasonable directions given by FLEXIM to ensure the proper performance of the Purchase Order.
 - - Availability at Customer's site of suitable and secure space for storing Products,



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materials and tools of FLEXIM for performing the Site Work, as well as a telephone for communications outside Customer's site. Customer shall be liable for all damage to and loss of Products, materials, tools and instruments from any cause during storage on Customer's site.

- Suitable and safe facilities for FLEXIM's personnel in the immediate vicinity of the Site Work.
- Physical safety of FLEXIM's personnel; Customer's Health and Safety program (including evacuation and emergency plans) shall be applicable to FLEXIM personnel. Customer shall be wholly liable for damages and losses arising from the death of or physical injury to FLEXIM personnel, resulting from Customer's failure to meet this obligation.
- Applying for and obtaining of all necessary Site Work permits and licenses as required for FLEXIM's personnel, as well as prior notification to FLEXIM of all relevant rules and procedures in connection therewith.
- Messing facilities are available.
- The Customer's facilities and services described in this article are available to FLEXIM free of charge.

VARIATION ORDERS

In case of variations which affect or may affect a Purchase Order, Customer shall notify FLEXIM in writing. Upon FLEXIM's receipt of such notification, FLEXIM will inform Customer in writing: (i) whether or not such variations are acceptable, (ii) price- and/or schedule impact (if any) and (iii) any other commercial or technical impacts or conditions (if any). Only upon receipt of Customer's written confirmation of acceptance of FLEXIM's informed/proposed impacts and conditions and upon Customer's compliance with any consequent obligations (if applicable) such as advanced payments, amendments of payment vehicles or the submission of additional information, FLEXIM shall incorporate and proceed with the above variations after signature by both Parties of the relevant Variation Order. In case such variations result in loss of time and/or additional costs, FLEXIM shall be entitled to extend the delivery time and/or to a reimbursement of additional costs, even if the variations are cancelled by Customer afterwards.

TITLE AND RISK

Title to the Products/Services is reserved and shall transfer to Customer upon full payment by Customer. Risk to the Products/Services shall transfer to Customer upon delivery.



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INTELLECTUAL PROPERTY RIGHTS

FLEXIM remains the owner of all intellectual property rights in the Products and the results of Services, including inventions, models, designs, schedules, drawings, illustrations, catalogues, manuals and all other documentation etc. comprised therein as supplied to Customer. Customer shall not copy, reproduce or circulate the above in whole or in part, without the prior written permission of FLEXIM. Nothing in these TCS or any Purchase Order or Quotation is intended to or shall have the effect of vesting in or transferring to Customer rights in FLEXIM's or its affiliates' or its or their suppliers' Software, methods, know-how or other intellectual property, regardless of whether such intellectual property was created, used or first reduced to practice in tangible or intangible form in the course of performance of the Services, whether solely by FLEXIM or jointly with Customer. FLEXIM reserves any industrial property rights and/or copyrights pertaining to its cost estimates, drawings and other documents (hereinafter referred to as „Documents“). The Documents shall not be made accessible to third parties without the Supplier's prior consent and shall, upon request, be returned without undue delay to the Supplier if the contract is not awarded to the Supplier.

SOFTWARE LICENSE CONDITIONS

FLEXIM declares to the best of its knowledge that it is entitled to license and adapt the Software as necessary for the proper execution of the relevant Purchase Order. The ownership of, and all intellectual property rights in Software shall at all times remain with FLEXIM or its licensors. Software is made available to Customer on the following licensing conditions:

The Purchaser shall have the non-exclusive right to use standard software, provided that it remains unchanged, is used within the agreed performance parameters, and on the agreed equipment. The Purchaser may make one back-up copy without express agreement.

WARRANTY

The Products are warranted to be free from defects in material and workmanship for a period of twenty-four (24) months from the Delivery Date. FLEXIM assumes no warranty responsibility in the event of (i) improper handling, storage or use; (ii) attempted renovation, repair, calibration or replacement of parts by any third party other than authorized by means of prior written approval by FLEXIM; (iii) normal wear and tear; or (iv) other cause of defect not exclusively attributable to FLEXIM.

If Third Party Products are supplied, the terms of warranty of the supplier of such products shall apply if transferable.

Subject to the remaining provisions herein, Products found to be defective shall be repaired or replaced at FLEXIM's sole discretion at its premises with transportation charges prepaid by Customer. Dismantling of the defective part or Product, re-installation of the repaired/replaced part or Product and re-commissioning shall be the responsibility of Customer. Any warranty claim shall be made in writing within the aforementioned warranty period and will be handled during FLEXIM's normal working hours. Customer shall be responsible for delivering to FLEXIM the defective part or Product clean and free from any substance that may affect health. Upon Customer's request and FLEXIM's acceptance, FLEXIM may dispatch at Customer's cost, its service engineer(s) during FLEXIM's normal working hours, to repair the defect and/or investigate its cause. With respect to the providing of Services, FLEXIM warrants that the engaged personnel will execute the Services in accordance with the level of diligence, knowledge and craftsmanship which is standard in the industry.

THIS WARRANT IS IN LIEU OF ALL OTHER LIABILITY OR WARRANTIES ON THE PART OF FLEXIM, EXPRESS OR IMPLIED. ALL IMPLIED WARRANTIES INCLUDING IMPLIED WARRANTIES OF MERCHANT ABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPLICITLY EXCLUDED AND DISCLAIMED. The foregoing shall constitute the exclusive remedies for any breach by FLEXIM of its warranties.

Warranty Limitations: Some products and components like the thermo elements, resistance thermometers, coupling paste, gaskets etc. are consumables and have a limited life time.

FLEXIM only warrants that the properties and functions of these items fulfil the corresponding specification. The Warranty on the rechargeable batteries is of 6 months. The higher limit of the temperature range of the high temperature transducers is not meant as a temperature for permanent operation. A prolonged use of the transducers at the maximal temperature can shorten their life time. The suitability (chemical resistance) of the materials indicated in the quotation or in the specification sheets has to be controlled by the customer. The materials indicated in the quotation or at the latest in the confirmation of the order are binding.

Many delivered products are calibrated under reference conditions at the factory. The accuracies specified in the calibration certificate are reference accuracies. If a customer has concerns about the accuracy of a calibrated instrument during the validity period of the Warranty, and a recalibration at the factory shows that the accuracy of the instrument lies within the specifications, the customer shall bear the costs of the recalibration.

LIMITATION OF LIABILITY

Nothing in these TCS shall have the effect of excluding or restricting the liability of FLEXIM: (i) for death or personal injury resulting from its negligence; (ii) for any fraudulent misrepresentation; or (iii) for liability which may not otherwise be limited or excluded under applicable law. FLEXIM's total liability towards Customer shall be limited to the compensation Customer paid or has to pay for the execution of that part of the individual Purchase Order, in relation to which damage has occurred, but shall never be in excess of the maximum compensation paid by FLEXIM's insurance in respect of such damage. Furthermore, FLEXIM shall only be liable if such damage is a direct and exclusive consequence of negligence on the part of FLEXIM. Claims must be submitted to FLEXIM in writing within two (2) business days after occurrence of such particular damage. Customer shall be solely responsible for the protection of its electronic data and information through installation of the most recent computer virus detection programmes and the timely creation of back-up copies. FLEXIM shall never be liable for any damage, relating to the loss or mutilation of electronic data and information, nor for the restoring of same. Neither Party shall in any event be liable for any special, indirect or consequential damages of the other Party, including but not limited to, loss of profits, loss of business, interruption of business, lost goodwill, lost revenue and/or loss of business information, and regardless whether such damages are based on wrongful act, breach of contract, breach of warranty or other legal fault.

TERMINATION

In the event FLEXIM has valid reasons to assume that Customer shall fail to perform any obligation under the Purchase Order or any agreement connected therewith without providing adequate security; or in case Customer (i) fails to perform any obligation under the Purchase Order which, upon written notice by FLEXIM remains unfulfilled for thirty (30) calendar days thereafter; (ii) becomes subject to change of control or ownership; (iii) terminates or suspends its business activities, becomes insolvent, admits in writing its inability to pay its debts as they mature, takes the benefit of any statutory provision for the relief of insolvent debtors, enters into liquidation, makes an assignment for the benefit of creditors, makes an arrangement or composition with its creditors, becomes subject to direct control of a trustee, administrator or receiver of similar authority or becomes subject to any bankruptcy or insolvency proceedings; FLEXIM shall be entitled, immediately and without warning or notice of default and without any liability or prejudice to any other remedy and/or right which FLEXIM may have, either to claim immediate fulfilment of Customer's obligations or cancel the Purchase Order, obtain possession of the Products and/or recover from Customer any amounts due.

FORCE MAJEURE

Parties shall not be responsible for any delay or failure in performing their obligations under a Purchase Order, if due to Force Majeure. For the purpose hereof, Force Majeure shall mean a delay in or failure of the performance of obligations which is directly and solely attributable to events which are compelling, unforeseeable, unavoidable, outside of the invoking Party's control and not due to any fault and negligence on its part. Force Majeure may include, but is not limited to, the following events or circumstances:

- war, hostilities, invasion, acts of foreign enemies;
- rebellion, terrorism, revolution, insurrection, military or usurped power, civil war;
- riot, commotion, disorder, strike or lockout by persons other than the invoking Party's personnel;
- munitions, explosive materials, ionizing radiation or contamination by radio activity, except as may be attributable to FLEXIM's or Customer's use of such munitions, explosives, radiation or radio active material;
- natural catastrophes such as flood, earthquake, hurricane, typhoon or volcanic activity.

In case of any of the above events, Parties will promptly notify the other Party of such delay or failure in writing and if a Force Majeure situation exceeds sixty (60) days, Parties shall have the right to terminate the Purchase Order without liability. In case of termination of the Purchase Order, goods belonging to Customer which are in the possession of FLEXIM shall be returned or held at Customer's expense and risk as from the termination date of the Purchase Order.

If FLEXIM has already partly met its obligations when a Force Majeure situation occurs or if FLEXIM can only partly meet its obligations, FLEXIM shall be entitled to invoice the part already performed and/or to be performed and the related payment shall be due by Customer.

CONFIDENTIALITY

Either Party shall keep strictly confidential all of the other Party's confidential and sensitive information of which it becomes aware of in the course of the execution of a Purchase Order and Parties shall take adequate measures to ensure that their personnel and other engaged personnel shall equally comply with this confidentiality commitment. This confidentiality commitment shall not apply to information which (i) is already known to the recipient or is publicly available at the time of disclosure, (ii) is legally disclosed to the recipient by a third party without an obligation of confidentiality, (iii) becomes publicly available after disclosure without any fault of the recipient, (iv) recipient can prove is independently developed by the recipient without reliance or reference to the information of the discloser, or (v) is required to be disclosed by law or public order.

EXPORT RESTRICTIONS

In the course of performing their respective duties hereunder, either Party agrees to comply with all applicable laws and regulations. In particular Parties shall comply with the export administration and control laws and regulations of the European Union.

Customer shall not knowingly use or export any of the Products if:

- a) Products shall be used for the erection, operation or mounting in a nuclear technology plant, or;
- b) Products shall be used for the erection, operation of a plant for research, production, use, storage or maintenance of armaments or ammunition as per EU Decree 1334/2000, including but not limited to chemical weapons, biological weapons or missiles thereof, or;
- c) the country of final destination is any country to which export regulations of the UN or EU or FLEXIM's export compliance policies apply;

Customer shall exert all reasonable efforts in collecting all information necessary to comply with the above. In all relevant cases Customer shall apply for an appropriate approval of FLEXIM and export license of the proper authorities and FLEXIM. Should no such approval and export license be granted, Customer shall refrain from the intended use or export.

ASSIGNMENT AND SUBCONTRACTING

Parties shall not, in any manner or degree assign or transfer, directly or indirectly, these TCS or a Purchase Order or any part thereof or any share or interest therein, without the prior written consent of the other Party. Such consent shall not be unreasonably withheld.

FLEXIM may subcontract part or all of its obligations under these TCS or a Purchase Order, provided FLEXIM shall remain fully liable and responsible for the acts of the subcontractor and compliance with the terms and conditions of these TCS and the relevant Purchase Order.

WEEE

Any duty and/or costs for de-commissioning, transport, treatment, recovery, recycling and disposal of Products subject to Directive 2002/96/EC on Waste of Electrical and Electronic Equipment (WEEE) shall be for Customer's account. In countries where FLEXIM participates in waste collection schemes, Customer shall deliver WEEE declared products to a waste treatment facility (WTF) designated by FLEXIM for treatment and disposal in accordance with the WTF protocol. A WEEE declared Product shall not be re-used or re-marketed without prior written approval by FLEXIM.

Customer shall indemnify and hold FLEXIM harmless against any fines, penalties, damages and/or claims resulting from or relating to failure by Customer to fulfill its obligations under this article.

GOVERNING LAW AND DISPUTE RESOLUTION

The construction, validity and performance of these TCS shall be governed by and interpreted in accordance with English law and by entering into this Agreement the parties submit to the exclusive jurisdiction of the English courts.