



# PEAK NDT

## STANDARD TERMS AND CONDITIONS OF SALE

### 1. DEFINITIONS

1.1 In these standard terms and conditions of sale unless the context otherwise requires:

the "**Customer**" means the person or the company referred to in the Quotation to whom Peak NDT sells or is to sell the Products or is to supply the Services;

the "**Conditions**" means the terms and conditions set out in this document, as amended from time to time in accordance with clause 16;

the "**Contract**" means the contract between Peak NDT and the Customer for the supply of the Products or Services in accordance with these Conditions;

the "**Delivery Location**" has the meaning set out in clause 7.1(a);

the "**Equipment**" means Peak NDT's property made available in connection with the provision of Services which will remain the property of Peak NDT;

the "**Expenses**" means the actual and notional expenses reasonably incurred by Peak NDT and its agents and employees in consequence of, or in connection with, the due execution of the Services and/or provision of the Products to include, but not limited to, travelling expenses, subsistence and any associated expenses (subject to any price ceiling set out in the Quotation);

"**Peak NDT**" means Peak NDT Limited whose registered office is at Unit 1 Enterprise Way, Jubilee Business Park, Derby, DE21 4BB who is a supplier of ultrasonic instruments and supplies the Products and Services listed in the Quotation;

the "**Price**" means:

- (a) in the case of the Products, the fixed price; or
- (b) for time and materials contracts, the total price calculated in accordance with the Time Rates and the Expenses (subject to any price ceiling set out in the Quotation);

the "**Products**" means the products (excluding the Equipment) sold or to be sold by Peak NDT to the Customer in accordance with the Quotation;

the "**Services**" means any services supplied or to be supplied by Peak NDT to the Customer in accordance with the Quotation;

the "**Specification**" means any specification for the Products and/or Services, including any related plans and drawings, that is agreed in writing by the Customer and Peak NDT as may be amended from time to time in accordance with clause 3.2 or clause 16 (as appropriate);

the "**Time Rates**" means the rates chargeable by Peak NDT for the time engaged by it in the execution of the Services;

the "**Quotation**" means the quotation annexed to these Conditions as may be amended from time to time in accordance with clause 4.2 or clause 16 (as appropriate);

the "**Validity Period**" means the (inclusive) period of 30 days from the date of despatch of the Quotation by Peak NDT to the Customer (or such longer period as may be defined in the Quotation); and

the "**Warranty Period**" means the period of 12 months:

- (a) from and including the date of delivery of the Products; or
- (b) where Services are to be provided (whether following delivery of the Products provided by Peak NDT or not), the date from and including the date of completion of the Services,

whichever is the later, subject always to any Warranty Period specified in the Quotation.

### 1.2 Construction

In these Conditions the following rules apply:

- (a) a person includes a natural person, corporate or incorporate body (whether or not having a separate legal personality); and
- (b) a reference to a party includes its personal representatives, successors or permitted assigns.

### 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.

2.2 Peak NDT will sell the Products and/or supply the Services and the Customer accepts the same in accordance with the Quotation and the terms of the Contract.

2.3 The Customer's written acceptance of the Quotation within the Validity Period constitutes an offer by the Customer to purchase the Products and or/to procure the Services in accordance with these Conditions.

2.4 The offer shall only be deemed to be accepted when Peak NDT issues a written order acknowledgment to the Customer, or, if sooner, such time when Peak NDT commences the supply of the Services to the Customer, at which point the Contract shall come into existence (subject to clause 4.2).

2.5 Neither party will be deemed to have waived any rights under or in connection with the Contract save where either party shall expressly waive such rights by giving written notice to the other party in accordance with clause 12.

2.6 The Customer acknowledges that Peak NDT's employees and agents are not authorised to make any representation concerning the Products or Services unless confirmed in writing by a senior member of Peak NDT and Peak NDT shall not be liable for any such representation unless and until so confirmed.

2.7 The Customer shall be responsible for the safe custody and return of the Equipment and will be responsible for any loss or damage to the Equipment howsoever caused from the date and time of delivery or installation of such Equipment at the Customer's premises (or at any other premises by the Customer's direction) until the safe return of such Equipment to the premises of Peak NDT (or such other premises as specified by Peak NDT).

### 3. CUSTOMER'S SPECIFICATION

3.1 The Customer shall be responsible to Peak NDT for ensuring that:

- (a) any Specification submitted by the Customer is complete and accurate; and
- (b) full, proper and accurate instructions and all relevant information in the Customer's possession is presented to Peak NDT (by written confirmation) and will continue to be responsible to Peak NDT to advise of any information of which the Customer may from time to time during the currency of the Contract become aware which may be relevant to the performance by Peak NDT of its obligations under the Contract (by written confirmation).

3.2 Peak NDT reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and reasonable endeavours shall be undertaken to notify the Customer in this event.

### 4. PRICE AND PAYMENT

4.1 Peak NDT reserves the right (exercisable by written notice to the Customer at any time before completion of the performance of the Contract) to revise the Price (to reflect any increase in cost) and/or the timescale of delivery of the Products and/or Services that is due to:

- (a) factors beyond Peak NDT's reasonable control; or
- (b) any request by the Customer to change the delivery date(s), quantities or types of Products, the Service or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give Peak NDT adequate or accurate information or instructions.

4.2 For time and materials contracts, Peak NDT shall maintain (and shall supply to the Customer upon reasonable notice) copies of:

- (a) records of the time engaged by its employees, agents and contractors in respect of the performance of the Services, insofar as the same are necessary to verify Peak NDT's calculation of the Price; and
- (b) proper records of the incidence of expense and usage of materials insofar as the same are necessary to verify Peak NDT's calculation of the Expenses.

4.3 The Customer shall pay the Price to Peak NDT on the date specified in the Quotation or (in the absence of any date being specified in the Quotation) within 30 days of delivery of Peak NDT's invoice (the "**Due Date**"). Time of payment is of the essence.

4.4 Any payment to be made to Peak NDT under the Contract must be made to Peak NDT in sterling and in full, without set-off or deduction unless specified in the Quotation or agreed in writing.

4.5 If the Customer fails to make any payment due to Peak NDT under the Contract by the Due Date for payment, then, the Customer shall pay interest per annum on the overdue amount at the rate under the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the Due Date until actual payment thereof, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

### 5. IMPORTS AND TAXES

5.1 The Price payable by the Customer under the Contract is exclusive of VAT. The Customer shall on receipt of a valid VAT invoice from Peak NDT, pay to Peak NDT such additional amounts in respect of VAT as are chargeable on the supply of the Products and/or Services.

5.2 The Customer shall pay all applicable import duties and taxes and other like charges incurred in performance of the Contract.

### 6. TITLE AND RISK

6.1 Unless otherwise stated in the Quotation, the risk in the Products shall pass to the Customer on completion of delivery in accordance with clause 7.1.

6.2 Title to the Products shall not pass to the Customer until Peak NDT has received payment in full (in cash or cleared funds) for:

- (a) the Products; and
- (b) any other Products or Services that Peak NDT has supplied to the Customer in respect of which payment has become due.

6.3 If before title to the Products passes to the Customer, the Customer becomes subject to any of the events listed in clause 11.2(b), then provided the Products have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Peak NDT may have, Peak NDT may at any time require the Customer to deliver up the Products and, 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.

### 7. PERFORMANCE BY PEAK NDT

7.1 Delivery shall be completed:

- (a) in the case of the Products, when the Products are available for collection by the Customer from Peak NDT's premises or, where Peak NDT has agreed in writing to deliver the Products on the Products' arrival at such other location as the parties may agree (the "**Delivery Location**"); or
- (b) when the Services are completed.

7.2 Any dates quoted by Peak NDT for delivery (the "**Delivery Date**") are Peak NDT's best estimates only and Peak NDT shall use its reasonable endeavours to meet delivery by the Delivery Date.

7.3 Peak NDT shall not be liable for any delay in Delivery of the Products or the supply of the Services where delay is due to:

- (a) circumstances outside the control of Peak NDT; or
- (b) the Customer's failure to provide Peak NDT with adequate delivery instructions or any other instructions that are relevant to the Contract; or
- (c) attributable to third party subcontractors engaged by Peak NDT; or
- (d) any force majeure event.

7.4 If the Customer fails to accept delivery of the Products, Peak NDT reserves the right to:

- (a) store the Products; or
- (b) subject to clause 7.7, sell the Products, and charge the Customer for all related costs and expenses (including insurance) as may be the case until the Products are collected by the Customer or sold to another buyer, as the case may be.

7.5 Where payment has been made in advance for the Products and such Products have been sold to another buyer pursuant to clause 7.4(b), Peak NDT shall refund the balance of the Customer's payment for the Products (following all related costs and

- expenses (including insurance) having been deducted) to the Customer within 14 days of Peak NDT receiving payment from the other buyer for the Products.
- 7.6 If the Customer wishes to place a further order for the Products following them having been sold to another buyer pursuant to clause 7.4(b), the Customer must enter into a new Contract with Peak NDT for the purchase of the Products.
- 7.7 If the Customer fails to accept delivery of Product(s) in relation to which Peak NDT is undertaking Services, or is repairing or calibrating, Peak NDT shall have a right to sell the Products pursuant to clause 7.4(b).
- 8. WARRANTY**
- 8.1 **Compliance with Quotation**  
Peak NDT warrants that the Products will throughout the Warranty Period correspond with the Specification as detailed in the Quotation, and that the Services will be undertaken in accordance with the Quotation.
- 8.2 If after delivery there shall appear any defect which under proper use arises from faulty design, material or workmanship, Peak NDT shall:
- (a) at its own expense, make good the defect(s) either by repair, or at the option of Peak NDT, by the supply of a replacement; or
- (b) request that the Customer returns the Product directly to the manufacturer (in cases where the Products sold by Peak NDT are sold with a separate manufacturer's guarantee), provided the Customer has given notice of the defect(s) to Peak NDT within the Warranty Period. This represents Peak NDT's sole liability and Peak NDT shall not be liable for any direct or indirect damages or economic loss (including but not limited to profit) howsoever arising out of the performance of the Contract.
- 8.3 **Warranty Conditions**  
This warranty is subject to the following:
- (a) Peak NDT shall not be liable in respect of any defects as a result of Peak NDT following any drawing, design or Specification supplied by the Customer;
- (b) Peak NDT shall not be liable for any defect arising from fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions, or failure to follow Peak NDT's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trading practice regarding the same, or the Customer alters or repairs such Products without the written consent of Peak NDT, or the Products differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 8.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded.
- 8.5 Subject to clauses 8.6 and 8.7, these Conditions shall apply to any repaired or replacement Products supplied by Peak NDT.
- 8.6 Any replacement parts and/or subcomponents (the "**Replacement Parts**") that may be installed to repair a defect in the Products (or to replace a part of the Products that are defective) are covered under the warranty in clause 8 up until the end of the Warranty Period of the Products.
- 8.7 As an example, any Replacement Parts that are installed within the Products would be covered under the warranty until the expiry of the Warranty Period of those Products detailed in the Quotation. The Warranty Period in respect of the Products or the Replacement Parts will not extend for a further period of 12 months from when the Replacement Parts were installed.
- 9. PATENT INDEMNITY**
- 9.1 If any claim is made against the Customer that the Products or their use or re-sale or the supply of the Services infringes any patent, copyright, trademark, or other industrial or intellectual property rights of another person, then subject to clause 9.2, Peak NDT shall, subject to clause 10, indemnify the Customer against all reasonable loss, damages, costs and expenses awarded against it in connection with such a claim, or payment to be paid in settlement of the claim provided that:
- (a) the Customer shall give notice in writing to Peak NDT of any such claim arising immediately and subrogate to Peak NDT full authority to deal (and if appropriate settle) any proceedings or negotiations in connection with such a claim;
- (b) the Customer shall co-operate fully with Peak NDT in dealing with such a claim; and
- (c) Peak NDT may (at its own discretion and without liability to the Customer) substitute where possible substantially equivalent non-infringing Products or supply non-infringing Services.
- 9.2 This indemnity shall not apply to any claim arising in the situation where:
- (a) the Products were manufactured according to the Specification of the Customer; or
- (b) the claim is in respect of the installation of such Products (notwithstanding that such Products have been installed strictly in accordance with the Customer's Specification); or
- (c) the claim is in respect of the combination of the Products with goods other than the Products and such combination was expressly required by the Customer.
- 10. LIMITATION OF LIABILITY**
- 10.1 Nothing in these Conditions shall limit or exclude Peak NDT'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;
- (d) defective products under the Consumer Protection Act 1987; and
- (e) any matter in respect of which it would be unlawful for Peak NDT to exclude or restrict liability.
- 10.2 Subject to clause 10.1, Peak NDT shall under no circumstances 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.
- 10.3 Peak NDT's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, shall in no circumstances exceed the Price.
- 10.4 Peak NDT provides Products and/or Equipment only on the basis that the Customer verifies any results generated by such Products and/or Equipment to ensure that, insofar as is reasonably practical, the proper use of such results will be safe and without risk to health. Peak NDT accepts no liability in respect of such results.
- 11. TERMINATION**
- 11.1 Without limiting its other rights or remedies, either party may terminate the Contract upon giving 28 days' written notice to the other party.
- 11.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of the Contract, PROVIDED ALWAYS that any dispute as to such matters shall be dealt with in accordance with clause 13; or
- (b) the Customer shall make a voluntary arrangement with its creditors or shall become bankrupt (being an individual or company) or shall become subject to an administration order or shall go into liquidation or shall have a receiver appointed over some or all of its assets; or
- (c) the Customer shall cease for any reason to carry on business.
- 11.3 Without limiting its other rights or remedies, Peak NDT shall have the right to cancel or suspend provision of the Services under the Contract or any other contract between the Customer and Peak NDT if the Customer becomes subject to any of the events listed in 11.2(b) to 11.2(c) (inclusive), or Peak NDT 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 the Contract on the Due Date.
- 11.4 In the event of termination for any reason, Peak NDT shall be entitled to recover from the Customer the full value of the Services and any other work undertaken and the Products and any other goods supplied, including the value of the work in progress and where the Customer is the party in default, Peak NDT may also recover any costs reasonably incurred by it in consequence of such termination or of such matters.
- 12. NOTICE**
- 12.1 Any notice 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 in writing in accordance with this clause, and shall be delivered personally, sent by signed for recorded delivery, or commercial courier.
- 12.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.1; if sent by signed for recorded delivery or commercial courier on that date and time the royal mail's or courier's delivery receipt is signed.
- 12.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 13. ARBITRATION**
- The parties agree that in the event of any dispute as to the interpretation, effect or implementation of any part of the Contract or the Quotation or any matters arising therefrom, such dispute shall be determined by an arbitrator acting as such to be appointed by agreement between both parties (or failing and agreement, to be appointed by the President for the time being of the British Institute of Non Destructive Testing) and both parties further agree that the costs of acting of such arbitrator shall be in his award and that both parties hereto shall accept and be bound by the determination of such arbitrator.
- 14. ASSIGNMENT AND SUBCONTRACTING**
- 14.1 Peak NDT 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.
- 14.2 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 Peak NDT's prior written consent.
- 15. THIRD PARTY RIGHTS**
- A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 16. 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 Peak NDT.
- 17. GOVERNING LAW AND JURISDICTION**
- 17.1 These Conditions and any dispute or claim arising out of or in connection with them or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 17.2 The parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Conditions or their subject matter or formation (including non-contractual disputes or claims).
- 18. SEVERABILITY**
- 18.1 If any provision of these Conditions (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of these Conditions and the validity and enforceability of the other provisions of these Conditions shall not be affected.
- 18.2 If a provision of these Conditions (or part of any provision) is found illegal, invalid or unenforceable, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.
- 19. ENTIRE AGREEMENT**
- The Contract (together with the Quotation) constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given on behalf of Peak NDT which is not set out in the Contract.