

## HORIBA MIRA LTD TERMS OF CONTRACT

### 1. BASIS OF CONTRACT

- 1.1 All research, testing, design, development, services, supply of goods, hire of facilities or project work of any kind (hereinafter referred to as "**the Project**") carried out by HORIBA MIRA Limited Watling Street, Nuneaton, Warwickshire, CV10 0TU ("**HORIBA MIRA**") for a person who purchases works from HORIBA MIRA ("**the Client**") is carried out subject to the following terms and conditions ("**the Conditions**") to the exclusion of any other terms including conditions, warranties or representations written or oral, expressed or implied, even if contained in the Client's purchase order or any other documents which purport to provide that the Client's own or some other terms shall prevail.
- 1.2 Any proposal made by HORIBA MIRA ("**the Proposal**") for carrying out the Project is given subject to these Conditions and, without prejudice to HORIBA MIRA's right not to accept an order, the Proposal will be valid for thirty (30) days unless previously withdrawn or specified in the Proposal to the contrary. A reference to a 'day' in the Conditions or Proposal means a business day other than Saturday, Sunday or public holiday in England when banks in London are open for business.
- 1.3 The Conditions cannot be varied save with the written consent of an executive director or the company secretary of HORIBA MIRA save as set out in Schedule 1, if applicable.
- 1.4 Each order for Project Works submitted by the Client to HORIBA MIRA shall be deemed to be an offer by the Client to purchase the Project Works subject to these Conditions and the terms set out in the Proposal (together, "**the Contract**") only from the date thereof and is subject to confirmation by HORIBA MIRA at the time of acceptance.
- 1.5 No order placed by the Client shall be deemed to be accepted by the Client until a written acknowledgement of order is issued by HORIBA MIRA or (if earlier) HORIBA MIRA commences performance of the Project Works. Any order shall be accepted entirely at the discretion of HORIBA MIRA.
- 1.6 The specification ("**the Specification**"), the programme of works ("**the Programme of Works**") and any assumptions ("**the Assumptions**") on which the Project is to be provided by HORIBA MIRA to the Client shall be as detailed in the Proposal.
- 1.7 The Client acknowledges and agrees that it is its sole responsibility to ensure that the Specification and Assumptions made in the Proposal are complete and accurate and to advise HORIBA MIRA of any incorrect assumptions prior to the commencement of the Project. The Client shall be solely responsible for the accuracy of designs, drawings, specifications and other data supplied to HORIBA MIRA and in conformity with which HORIBA MIRA is to perform the Project Works even if HORIBA MIRA examines, inspects, studies or comments to the Client upon any such designs, drawings, specifications or other data. In the event that any of the Assumptions are incorrect, HORIBA MIRA reserves the right to make such amendments to the Proposal, including without limitation the Specification, the Price, the Programme of Works and any other matters as it deems appropriate. HORIBA MIRA may at any time make changes to the Project which are deemed necessary to comply with statutory requirements.
- 1.8 The Project will be carried out in accordance with the Contract. The content of any material provided for marketing purposes, price lists, advertisements or other published matter are intended to present a general idea of HORIBA MIRA's goods and services and none shall form a part of the Contract or be considered a collateral warranty or a representation inducing the same.
- 1.9 If following acceptance of the Proposal the Client requests that HORIBA MIRA carry out additional work in connection with the Project then HORIBA MIRA may, at its sole discretion, agree to a variation of the Contract terms. HORIBA MIRA shall be under no obligation to accept such additional work. If HORIBA MIRA agrees to accept the additional work, it shall issue a written variation to the Proposal with the terms set out in accordance with the Scope Change Management Process in paragraph 2 of the Proposal. The Clients authorised representative shall sign and return the written variation to HORIBA MIRA within thirty (30) days.
- 1.10 All times for completion of the Project stated in the Contract are approximate only and are given without commitment, unless expressly stated otherwise in the Proposal and Time for delivery of the Project shall not be of the essence.
- 1.11 If it is expressly stated in the Proposal that HORIBA MIRA will adhere to an agreed timetable then, in the event that delays are caused by the Client, including but not limited to, the failure of the client's, its agents, or suppliers, to give instructions, supply data, drawings, information, equipment, materials, components, vehicles and the like ("**Client Supplied Items**") on time and to the quality specified in the Proposal without any defect, HORIBA MIRA shall be entitled upon written notice and at its sole discretion to extend the time for delivery and charge the Client for all costs incurred as a result of such extension together with any costs incurred in correcting, repairing or rectifying defects in Client Supplied Items. This includes where the client delays any of the Project for which the client shall be charged as set out in clause 8.7 of the Conditions.
- 1.12 Neither party to this Contract shall be liable for failure to perform the Contract if performance is prevented, hindered or delayed, whether directly or indirectly, by means of any event beyond its reasonable control, including but not limited to war, civil commotion, pandemic, government restrictions, lock-outs, strike, mutiny, fire, ice, transport difficulties, adverse weather conditions, accidents or stoppage to works, none or restricted availability or late delivery of fuel, power, or raw materials, difficulties with or non-performance by any supplier or sub-contractor or any other cause whatsoever whether such cause existed or was foreseeable at the date of the Contract or not ("**Force Majeure Event**") and shall be entitled, without liability on its part and without prejudice to its other rights, to suspend or determine the Contract or any unfulfilled part thereof, or at its option to effect partial performance if it is affected by a Force Majeure Event.

### 2. PRICE AND PAYMENT

- 2.1 The price for the Project Works ("**the Price**") shall be as set out in the Proposal and shall, unless expressly specified, be exclusive of all duties, taxes (including any withholding tax and VAT or equivalent local taxes). All such duties and taxes shall be paid by the Client. On written request by the Client HORIBA MIRA may agree at its sole discretion to cover other costs and expenses in addition to the Price, such as shipping, freight, packaging, transport, spare and replacement parts, equipment, materials, and services which shall be charged to the Client at the cost price to HORIBA MIRA plus a handling charge of fifteen (15) per cent of the cost price.
- 2.2 HORIBA MIRA shall invoice the Client for the Price and any other sums payable in accordance with the Payment Schedule set out in the Proposal. In the absence of a Payment Schedule in the Proposal HORIBA MIRA shall be entitled to invoice the Client for all work undertaken on a monthly basis.
- 2.3 Payment of invoices is due within thirty (30) days of the date HORIBA MIRA's invoice unless otherwise expressly agreed in the Payment Schedule. In the case of a Client resident outside the United Kingdom, payment will, if so required by HORIBA MIRA, be made by confirmed irrevocable letter of credit in a form and issued by a bank acceptable to HORIBA MIRA (all charges for the Client's account). Time for payment shall be of the essence.
- 2.4 In the event that payment is not received within thirty (30) days and in accordance with the Payment Schedule (if applicable) HORIBA MIRA shall be entitled to:
  - (a) Charge interest at the rate of four (4) per cent per annum above the base lending rate of Royal Bank of Scotland Plc, calculated on a day to day basis on each invoice from the due date of payment until the actual date of payment; and/or
  - (b) suspend provision of the Project Works without liability to the Client until the outstanding amount is paid in full, amend the Programme of Works accordingly and invoice any additional costs incurred by HORIBA MIRA as a result of the suspension to the Client; and/or
  - (c) terminate the Contract in accordance with clause 8.
- 2.5 If, by reason of any rise or fall in the cost of materials, fuel, power, overheads, equipment, labour, or transport, or of conforming to any legislation or any order, regulation, or by-law made with statutory authority by government departments or by local, or other authorities after the date of quotation the cost to HORIBA MIRA of performing its obligations under the Contract shall be increased then HORIBA MIRA may, upon notice to the Client, increase the Price to reflect this, provided that no account shall be taken of any amount by which any cost incurred by HORIBA MIRA has been incurred by HORIBA MIRA's default or negligence.
- 2.6 If any tax is levied by a non-UK government in connection with the provision of the Project Works, the Client shall provide HORIBA MIRA with the necessary tax certificates to enable HORIBA MIRA to recover the taxes to the fullest extent possible under any agreement for the avoidance of double taxation between the UK Government and the non-UK government levying the tax charge.
- 2.7 If any deduction or withholding is required by any law, practice or regulation (whether or not such practice or regulation has the force of the law) in respect of any payment due from the Client to HORIBA MIRA under the Contract or is any event made, the relative sum payable by the Client shall be increased so that, after making the minimum deduction or withholding so required, the Client shall pay to HORIBA MIRA and HORIBA MIRA shall receive and be entitled to retain on the due date for payment a net sum at least equal to the sum which it would have received had no such deduction or withholding been required to be, or had in fact been made.

### 3. DELIVERY, ACCEPTANCE AND WARRANTIES

- 3.1 Unless otherwise agreed in writing by HORIBA MIRA delivery of the Deliverables and any other Project Works shall take place at HORIBA MIRA's place of business in normal business hour and the Client shall take delivery of the Deliverables and any Project Works as soon as possible following notice that such are ready for delivery.
- 3.2 If for any reason the Client does not accept delivery of any of the Deliverables or Project Works when they are ready for delivery, or HORIBA MIRA is unable to deliver on time because the Client has not provided appropriate instructions, documents, licences or authorisations then the Deliverables or Project Works will be deemed to have been delivered, risk passing to the Client (including for loss or damage caused by HORIBA MIRA's negligence) and the Client shall be bound to pay the Price as if the Deliverable had been delivered in accordance with the Contract.
- 3.3 The Client shall be deemed to have accepted the Deliverables and Project Works as being in accordance with the Contract unless:
  - (a) within 14 days of the date of delivery of the Deliverables, the Client notifies HORIBA MIRA in writing of any defect or other failure of the Deliverables to conform with the Contract (which would be apparent upon reasonable inspection and testing of the Deliverables within 14 days); or
  - (b) the Client notifies HORIBA MIRA in writing of any defect or other failure of the Deliverables to conform with the Contract within a reasonable time where the defect or failure would not be so apparent within 14 days of the date of delivery, failing which the Client shall not be entitled to reject the Deliverables and HORIBA MIRA shall have no liability for such defect or failure, and the Client shall be bound to pay the Price as if the Deliverable had been delivered in accordance with the Contract.
- 3.4 Deliverables, once delivered, may not be returned unless their return is agreed in advance in writing by HORIBA MIRA, and subject to the following conditions:
  - (a) Deliverables are returned in a new and unused condition;
  - (b) Any packaging remains unbroken and in reasonable condition;
  - (c) Returns are made within 3 weeks of delivery of those Deliverables, all transport and other re-delivery costs of whatever nature paid by the Client; and
  - (d) Returned goods shall be accompanied by a written record of invoice number, date and a note of reasons for their return.
- 3.5 HORIBA MIRA shall carry out the Project Works in accordance with the Specification and the Contract using reasonable skill and care in accordance with good engineering practice. HORIBA MIRA shall not be responsible for ensuring the accuracy of the results of any Project in respect of which HORIBA MIRA has acted as support rather than as main provider, nor for the accuracy of any tests or other Projects carried out elsewhere than at HORIBA MIRA's premises or those of HORIBA MIRA's subcontractors.
- 3.6 HORIBA MIRA gives no warranty that the Project Works or the Deliverables will be satisfactory or fit for the purposes of the Client and the Client acknowledges and agrees that it is its sole responsibility to ensure that the Specification is accurate and correct. It is expressly agreed that all representations, conditions or warranties and other terms implied by statute or otherwise are, to the fullest extent permitted by law, excluded from the Contract.
- 3.7 Subject to the Client bearing any related costs, HORIBA MIRA shall to the extent possible assign to the Client the benefit of any warranty, guarantee or indemnity given by any third-party supplier of components, parts, software or third-party products.
- 3.8 If, within one (1) year from the date of delivery (or the date when HORIBA MIRA first attempted to deliver to the Client), whichever is the sooner, the whole or any part of the Deliverables are defective due to faulty workmanship, materials or design HORIBA MIRA will, at its sole discretion, either repair or replace the Deliverables free of all charge to the Client or refund to the Client the purchase price of the defective Deliverables. The Client must notify HORIBA MIRA of any such defect and return, at the Client's cost the defective Deliverables to HORIBA MIRA's premises for inspection, and repair or replacement if necessary. In the event that the returned Deliverables are not faulty, and/or the warranty does not apply then the Client shall pay HORIBA MIRA for all inspection and out of warranty repairs. This warranty does not apply where:

- (a) defects are caused by the Deliverable not being used in accordance with HORIBA MIRA's instructions, whether written or verbal;
- (b) any parts of the Deliverable have been specifically excluded from this warranty in the Proposal;
- (c) a Deliverable has been modified in a manner not approved in writing by HORIBA MIRA prior to such modification;
- (d) defects have arisen from fair wear and tear, wilful damage, negligence or abnormal conditions;
- (e) the total price for the Deliverables has not been paid by the due date for payment;
- (f) for any parts, materials or equipment not manufactured by HORIBA MIRA in respect of which the Client shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to HORIBA MIRA to the extent that they are assignable by HORIBA MIRA to the Client; and
- (g) for any deliverable manufactured or appropriated to the Contract in accordance with any design, specification, instruction or recommendation made to HORIBA MIRA by the Client or for and Project Works provided in accordance with Specifications, instructions or recommendations issued by the Client.

#### **4 LIABILITY**

4.1 Nothing in these Conditions shall limit or exclude HORIBA MIRA's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

4.1.1 Subject to clause 4.1:

- (a) HORIBA MIRA shall not 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;
- (b) In the event that a destructive test fails for any reason directly attributable to HORIBA MIRA, liability to the Client shall be limited to carrying out a further test free of charge; and
- (c) HORIBA MIRA'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 not exceed the Price or £1,000,000 whichever is the lower.

4.2 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

#### **5. RISK AND TITLE**

5.1 Risk in the Deliverables and any Project Works shall pass to the Client immediately upon notification from HORIBA MIRA to the Client that the Deliverables are available. Title in the Deliverables shall remain with HORIBA MIRA until such time as the Client has made payment in full of the Price, at which time title in the Deliverables passes to the Client.

5.2 Where the Deliverables are delivered to the Client prior to title in the Deliverables passing to the Client:

- (a) The Client shall hold the Deliverables in a fiduciary capacity and as bailee for HORIBA MIRA and shall keep the Deliverables properly stored, protected and insured and identified as HORIBA MIRA's property at the premises to which HORIBA MIRA delivered the Deliverables;
- (b) HORIBA MIRA shall be entitled to re-take possession of the Deliverables without prejudice to any of its other rights against the Client and HORIBA MIRA is hereby granted a licence to enter into any property or premises owned, occupied or controlled by the Client for the purpose of recovering the Deliverables; and
- (c) The Client shall not pledge the Deliverables or in any way charge the Deliverables by way of security for an indebtedness.

#### **6 CLIENT SUPPLIED ITEMS**

6.1 All Client Supplied Items are to be delivered to HORIBA MIRA by the Client or his agent free of all charge in accordance with the Proposal, or if no time is stipulated in the Proposal, in sufficient time for HORIBA MIRA to carry out the Project in accordance with the Proposal. HORIBA MIRA shall not be liable for any defect, failure or delay in respect of Client Supplied Items, or any defect arising from fair wear and tear, misuse, alteration, amendment or repair.

6.2 In the event that HORIBA MIRA has disposed of Client Supplied Items HORIBA MIRA shall account to the Client for the balance of any sales proceeds thereof which is over and above the sums owed to HORIBA MIRA.

6.3 HORIBA MIRA complies strictly with all export control laws and regulations that are applicable to HORIBA MIRA, whether domestic or international. This Contract is therefore subject to both parties obtaining all necessary Export licences and consents. For HORIBA MIRA to comply with export control regulations the Client must:

- (i). On request, provide information about the End-Use, the End-User and ultimate destination of goods and/or technology to be supplied by completing an End User Declaration;
- (ii) Complete any requests for Goods Classification;
- (iii) Apply for, in a timely manner, any foreign export licence required for HORIBA MIRA to import or have access to receive goods and/or technology required to carry out the work;
- (iv) If the goods or technology are ITAR controlled, provide HORIBA MIRA with a Technical Assistance Agreement (TAA), Manufacturing Licence Agreement (MLA) or other relevant authority from the US State Department e.g. DSP-5, 73, 83 or 85;
- (v) If the goods or technology are US EAR controlled (other than EAR99) provide HORIBA MIRA with the Export Control Classification Number (ECCN) and relevant authorisation from the US Department of Commerce;
- (vi) If the Client is re-exporting goods supplied to the Client from HORIBA MIRA it is entirely the Client's responsibility to ensure that the relevant export authorisations are in place prior to re-export and for strict compliance with all applicable U.S. UK and international export control laws and regulations.

6.4 The Client shall indemnify and hold harmless HORIBA MIRA from and against any claim, proceeding, action, fine, losses, costs and damages arising out of or relating to the Client's non-compliance with Export Control regulations.

6.5 Any charges incurred by HORIBA MIRA for provision of material or for transportation, customs clearance, storage or handling will be charged to the Client and shall be charged at the cost price to HORIBA MIRA plus a fifteen (15) per cent charge levied by HORIBA MIRA. The Client shall ensure that Client Supplied Items shall be in a safe condition and fit for the purpose intended. Such Client Supplied Items will, unless a specific undertaking is given by HORIBA MIRA in the Proposal, remain at the risk of the Client at all times. The Client shall collect or arrange for the storage of any equipment supplied by the Client or on his instruction within thirty (30) days of being notified that it is ready for collection. In case of default by the Client, HORIBA MIRA reserves the right to arrange for storage and to charge the Client with all storage and handling costs incurred. In the event that Client Supplied Items remain uncollected three (3) months after notification of availability for collection, HORIBA MIRA reserves the right to dispose of the Client Supplied Items as it thinks fit, at the expense of the Client and without recompense to the Client.

6.6 If HORIBA MIRA specifically agrees in the Proposal that the risk in Client Supplied Items shall pass to HORIBA MIRA then the Client will advise HORIBA MIRA of the value of the Client Supplied Items prior to delivery so that HORIBA MIRA may subject to verification, take steps to insure the same for such value whilst at HORIBA MIRA's premises and under HORIBA MIRA's control. For the avoidance of doubt HORIBA MIRA shall not be liable for or be obliged to insure Client Supplied Items whilst they are being used by employees or representatives of the Client at HORIBA MIRA's premises or elsewhere.

6.7 The Client shall provide or procure the provision of technical support, instructions, and training relating to the use of the Client Supplied Items from time to time as required in order to support the Project.

6.8 The Client shall be responsible for the health and safety of HORIBA MIRA's employees, contractors and personnel whilst on the Client's premises and whilst using any of the Client's systems or equipment, including without limitation Client Supplied Items whether on or off the Client's premises; and notify HORIBA MIRA promptly of any risk, safety issues or incidents arising in respect of the Input Material or in any processes or systems used at the Client's premises.

6.9 The Client warrants that the Client Supplied Items do not infringe the Intellectual Property Rights of any third party and shall indemnify and hold harmless HORIBA MIRA and its employees from and against any loss, claim, damage or liability that may result from any third party claim that the Client Supplied Items or the Client Background Intellectual Property infringes the rights of a third party.

6.10 The Client warrants that it shall comply with all applicable United Kingdom, European Union (EU), U.S. and other sanctions and export control laws, rules and regulations, specifically including, but not limited to, the International Traffic in Arms Regulation ("ITAR"), 22 C.F.R. 120 et seq., the Export Control Act, the Export Administration Regulations ("EAR"), 15 C.F.R. 730-774, the Foreign Assets Control Regulations, 31 C.F.R. 500-598, E.U. controls on exports of dual-use items and technology implemented pursuant to Council Regulation (EC) No. 428/2009 and U.K. controls on exports of strategic items and technology implemented pursuant to the Export Control Act 2002 and the Export Control Order 2008 (SI 2008/3231) (collectively, "Export Laws") and any re-enactment or modification thereof, items, technical data and services controlled by Export Laws are referred to in this clause respectively as "export controlled" items, technical data and services. Without limiting the foregoing, the Client agrees that it will not transfer any export controlled item or technical data, or provide any export controlled service, including transfers or provision of services to any non-UK national employed by or associated with, or under contract to the Client or to any third party including the Client's lower tier subcontractors, unless authorised in advance by an export authorization, licence, licence exception or licence exemption (collectively, "Export Authorisation"), as required.

6.11 The Client shall notify HORIBA MIRA if any deliverable under the Contract including any service to be provided is restricted by applicable Export Laws. Before providing HORIBA MIRA with any export controlled item, technical data or service the Client shall provide in writing to HORIBA MIRA the export classification of any such item, technical data or service under the applicable Export Laws and will notify HORIBA MIRA in writing of any changes to the export classification information regarding the item, technical data or service. The Client represents that an official authorised to bind the Client has determined that the Client or the designer, manufacturer, supplier or other source of the items or services has properly determined its export classification.

6.12 The Client represents that neither the Client nor any parent, subsidiary or affiliate of the Client is included on any of the restricted party lists maintained by the U.S. Government, including the Specially Designated Nationals List administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), Denied Parties List, Unverified List or Entity List maintained by the U.S. Commerce Department's Bureau of Industry and Security ("BIS") or the List of Statutorily Debarred Parties maintained by the U.S. State Department's Directorate of Defense Trade Controls, or the consolidated list of asset freeze targets designated by the United Nations, European Union, and United Kingdom (collectively, "Restricted Party Lists"). The Client shall immediately notify HORIBA MIRA if the Client or any parent, subsidiary or affiliate of the Client is, or becomes, listed on any Restricted Party List or if the Client's export privileges are otherwise denied, suspended or revoked in whole or in part by any United Kingdom, or other relevant governmental entity or agency.

6.13 The Client shall immediately notify HORIBA MIRA upon learning that any subcontractor or lower-tier supplier with which it engages or the country in which it or such subcontractor or supplier is based has become listed on the Restricted Party Lists.

6.14 The Client shall be responsible for all losses, costs, claims, damages, liabilities and expense, including legal fees, all expense of litigation and/or settlement, and court costs incurred by HORIBA MIRA arising from any act or omission of the Client, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

#### **7 INTELLECTUAL PROPERTY**

7.1 "Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

- 7.2 **"Background Intellectual Property"** means the Intellectual Property Rights owned or controlled by either party before the date of the Contract which are utilised in relation to the Project.
- 7.3 **"Foreground Intellectual Property"** means the Intellectual Property Rights in the Specification, the Project or the Deliverables which is generated by the Client, or HORIBA MIRA, or any third party working for either of them in the performance of the Project.
- 7.4 All Background Intellectual Property is and shall remain the exclusive property of the party owning it (or, where applicable, the third party from whom its right to use Background Intellectual Property has derived).
- 7.5 Foreground Intellectual Property shall vest in and be owned by the Client.
- 7.6 The Client grants HORIBA MIRA a royalty free licence to use its Background Intellectual Property for the purposes of the Project.
- 7.7 Each party shall immediately give written notice to the other party of any actual, threatened or suspected infringement of any party's Background Intellectual Property or Foreground Intellectual Property.
- 7.8 Unless otherwise stated in the Proposal, the Price does not include the cost of searches in third party indexes to identify any existing third-party rights in relation to the Specification, the Deliverables or the Project and HORIBA MIRA shall not be obliged to carry out any such searches unless specifically requested to do so by the Client at the Client's sole cost.
- 7.9 HORIBA MIRA shall grant the Client a non-exclusive, non-transferable, perpetual, royalty free licence, but without the right of sub-licence (save in accordance with this clause 7.9), to use the Intellectual Property Rights in the Deliverables solely for the purpose of and in connection with Deliverables and not for any other purpose without HORIBA MIRA's express prior written consent. The rights granted by this clause 7.9 may only be sub-licensed to such of the Client's production suppliers who have a need to know and solely on the basis that (i) such sub-licence is only for use in connection with the Deliverables and (ii) notice and details of such sub-licence, including without limitation the name of the sub-licensor, are promptly given to HORIBA MIRA.
- 7.10 The Client shall not in any publication or publicity material at any time make use of any report or statement issued by HORIBA MIRA, nor any extract therefrom, nor refer to the fact that any product or process has been the subject of a contract with HORIBA MIRA in any publication or publicity material without the express written permission of an executive director or the company secretary of HORIBA MIRA, such permission shall not be unreasonably withheld.

## 8 **TERM AND TERMINATION AND CANCELLATION**

- 8.1 The Contract shall continue in full force and effect until completion by both parties of their respective obligations hereunder unless terminated earlier in accordance with clause 8.2 save that HORIBA MIRA may terminate the Contract with immediate effect in the event of an irremediable breach by the Client.
- 8.2 This agreement may be terminated by:
- either party if the other continues in default of any obligation imposed upon it hereunder for more than thirty (30) days after written notice has been dispatched by that party by recorded delivery or courier requesting the other to remedy such default;
  - HORIBA MIRA on written notice to the Client in the event that the Client fails to pay the Price when it falls due and fails to make payment after a further request for payment;
  - either party on written notice to the other in the event that the other makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of a solvent amalgamation or reconstruction) or an encumbrancer takes possession, or a receiver is appointed, of any property or assets of the other or the other ceases, or threatens to cease, to carry on business; or
  - either party on thirty (30) days written notice to the other if a Force Majeure Event affects the other party's ability to properly perform its obligations under the Contract for a continuous period of at least 4 weeks; or
  - HORIBA MIRA with immediate effect if the Client is in breach of any export laws, rules and regulations including those set out in clause 6; or
  - HORIBA MIRA with immediate effect if government sanctions, embargoes or legislation, whether domestic or international would prevent or materially impact HORIBA MIRA fulfilling its obligations under the Contract.
- 8.3 In the event of termination of the Contract for any reason, the Client shall pay HORIBA MIRA for all work performed by HORIBA MIRA up to and including the actual date of such termination.
- 8.4 In the event of termination of the Contract for any reason (other than by the Client pursuant to clause 8.1), the Client shall additionally pay HORIBA MIRA for all costs incurred after the date of termination in winding down the Project including, inter alia and without limitation the dismantling of any test facilities, the storage and/or return of Client Supplied Items, preparatory work on Deliverables prior to delivery, delivery of the Deliverables, any third party supplier costs in respect of goods and/or services which cannot be terminated and the labour costs for HORIBA MIRA's personnel and/or sub-contractors, involved in the performance of the Project, for up to a maximum of four (4) weeks from termination or such shorter period until HORIBA MIRA can place such personnel with alternative work. The Client shall also pay immediately on termination of a booking of a HORIBA MIRA Facility all termination payments ("**Termination Payments**"):
- 8.5 On termination, the Client Supplied Items will, at HORIBA MIRA's sole option as notified to the Client, be returned to the Client by HORIBA MIRA and/or made available for collection from HORIBA MIRA's premises and if the Client is responsible for collecting any of the Client Supplied Items from HORIBA MIRA's premises, such collection may be made at any time during normal business hours on a day when the banks in the City of London are open with reasonable notice to HORIBA MIRA. If the Client fails to collect any Client Supplied Items or fails to provide delivery instructions within the time stated in the notification then, without prejudice to any other right or remedy which HORIBA MIRA may have, HORIBA MIRA may at its sole discretion: store the Client Supplied Item at its own premises or elsewhere and charge the Client for its reasonable costs including without limitation insurance for storage; and/or on notice to the Client, destroy the Client Supplied Items and charge the Client for its reasonable costs.
- 8.6 Any termination of the Contract shall not affect the accrued rights and obligations of the parties nor shall it affect any provision which is expressly or by implication intended to come into force or continue in force on or after such termination.
- 8.7 The Client shall pay the charges below where the Client delays or cancels a booking at a HORIBA MIRA Facility or for a HORIBA MIRA Project. The cancellation/delay charges may, as determined by HORIBA MIRA, be applicable to the entire test programme/Project and not just the elements within the programme/Project that are delayed.

VOLUME OF WORK	Notice of Termination/Deferment Prior to event	% Charge of Total price
≥3 weeks of single test facility booking or a value of work ≥ £120,000 whichever is greater	≤ 14 calendar days	100
	15-59 calendar days	75
	≥ 60 calendar days	25
>1 week and <3 weeks of a single test facility or booking or a value of work > £40,000 and less than £120,000, whichever is greater	≤ 14 calendar days	100
	15-44 calendar days	50
	≥ 45 calendar days	0
≤1 week of a single test facility booking or a value of work ≤£40,000, whichever is greater	≤14 calendar days	100
	15-29 calendar days	50
	≥30 calendar days	0

The above charges shall be payable by the Client to HORIBA MIRA within 30 days. HORIBA MIRA may withhold from any payments owed to the Client under any contract the amount of such cancellation charges.

## 9 **CONFIDENTIALITY & DATA PROTECTION**

- 9.1 The parties acknowledge and agree that the Confidentiality Agreement (if any) shall continue to apply in respect of the Contract. If there is not a Confidentiality Agreement in place between the parties, the following terms of this Condition 9 shall apply.
- 9.2 The parties (as "Receiving Party") hereby acknowledge that the other (the "Disclosing Party") has provided to the Receiving Party technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature ("Confidential Information") and in respect of all such Confidential Information the Receiving Party will:
- Treat it as confidential;
  - Not use such Confidential Information for any purpose other than to perform its obligations under the Contract.
  - Restrict its disclosure to such of its employees, agents and professional advisors as have a need to know and subject always to such employees and agents being under a similar duty of confidentiality; and
  - Not disclose it to any third party without the prior written consent of the Disclosing Party.
- 9.3 The requirements of clause 9.1 shall not apply to any Confidential Information which:
- is or becomes common knowledge without breach of this clause 9 by the Receiving Party; or
  - was in the Receiving Party's possession prior to receipt from the Disclosing Party or developed for or by the Receiving Party at any time independently of any disclosure by the Disclosing Party; or
  - the Receiving Party is required to disclose by law or other competent authority provided that the Receiving Party notifies the Disclosing Party, if permitted by law, as soon as it receives such a request for disclosure and affords to the Disclosing Party all such reasonable assistance as the Disclosing Party may request to prevent or limit such disclosure.
- 9.4 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this Clause, Data Protection Legislation means (for so long as and to the extent that they apply to the Client) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK as amended from time to time.
- 9.5 This Clause 9 shall survive termination of the Contract.

## 10. **GENERAL**

- 10.1 The Client shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and shall not be entitled to assert any credit, set-off or counterclaim against HORIBA MIRA in order to justify withholding payment of any such amount in whole or in part. HORIBA MIRA may, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by HORIBA MIRA to the Client.
- 10.2 The Contract and any associated confidentiality or non-disclosure agreement constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of HORIBA MIRA which is not set out in the Contract. Any prior statements, undertakings, documents or promises whether written or oral, express or implied made by either party shall have neither force nor effect.
- 10.3 If any of the provisions of the Contract is found by any Court or other competent authority to be void or otherwise unenforceable either in whole or in part such provision or part thereof shall be deleted, and the remaining conditions shall apply.

- 10.4 Nothing in the Contract shall create a partnership or joint venture between the parties and save as expressly provided in the Contract, neither party shall enter into or have authority to enter into any engagement or make representations or give any warranty either express or implied on behalf of or pledge the credit of or otherwise bind or oblige the other party.
- 10.5 No failure or delay by HORIBA MIRA in exercising any of its rights under the Contract shall be deemed to be a waiver of that right and no waiver by HORIBA MIRA of any breach of the Contract by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 10.6 The Client may not assign the Contract nor any of the benefits or liabilities hereof in whole or in part without the express prior written consent of HORIBA MIRA, such consent not to be unreasonably withheld.
- 10.7 HORIBA MIRA is entitled to sub-contract and/or assign any of its rights or obligations under the Contract, whether in connection with the performance of the Project or otherwise.
- 10.8 Any notice required or permitted to be given under the Contract shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this clause 10.8 to the party giving notice.
- 10.9 A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 10.10 The Contract and all claims and disputes arising out of, or in connection with such, whether contractual or non-contractual shall be governed in all respects in accordance with the laws of England. All disputes or claims whether contractual or non-contractual in nature arising out of or relating to the Contract shall be subject to the nonexclusive jurisdiction of the English Courts to which the parties irrevocably submit.

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