



Test, Measurement and Control Solutions for Demanding Applications

Martech
a Coda Octopus company

Coda Octopus Martech Standard Terms and Conditions of Sale

Updated December 2022

1. Definitions

The Buyer: The person who accepts a quotation from the Seller for the Goods whose order for the Goods is accepted by the Seller.

The Seller: CODA OCTOPUS MARTECH LIMITED.

The Order: The Buyer's purchase order accepting the Seller's quotation over which these conditions form part.

The Goods: The Goods or any parts of them which the Seller is to supply in accordance with these Conditions.

The Conditions: The standard terms and conditions of sale set out in this document (unless the context otherwise requires) including any special terms and conditions agreed in writing between the Buyer and the Seller.

The Contract: the contract for the purchase and sale of the Goods.

2. General

- 2.1 These terms and conditions apply in preference to and supersede any terms and conditions referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between the Seller and the Buyer with reference to the Goods to which this Contract relates. The Order by the Buyer is affected by the Seller subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions. Without prejudice to the generality of the foregoing, the Seller will not be bound by any standard or printed terms furnished by the Buyer in any of its documents, unless the Buyer specifically states in writing separately from such terms that it intends such terms to apply and the Seller acknowledges such notification in writing.
- 2.2 Neither the Buyer nor the Seller shall be bound by any variation, waiver of or addition to these Conditions, except as agreed by both parties in writing and signed on their behalf.

3. Description

The description of the Goods has been given by way of identification only and the time of such description shall not constitute a sale by description.

4. Sample

- 4.1 Notwithstanding that a sample of the Goods has been exhibited to and inspected by the Buyer, it is hereby declared that such a sample was so exhibited and inspected solely to enable the Buyer to judge for himself the quality of the bulk, and not so as to constitute a sale by sample, and shall in no way be representative of the actual Goods to be supplied by the Sellers.
- 4.2 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with statutory or international requirements, The Seller reserves the right to add to or delete from its range or to change the Goods without notice to the Buyer.



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5. Liability

- 5.1 The Seller shall not be liable to the Buyer in contract for and/or otherwise to the extent that such liability arises as a result of any of the following:
- (a) inaccuracies or omissions in any data, calculation, specifications, information or material supplied to the Seller for the purposes of enabling it to make and/or supply the Goods;
 - (b) any errors or omissions in instructions given by the Buyer, its agent, consultants or subcontractors in connection with the Goods.
- 5.2 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions, misuse or alteration or repair of the Goods without the Seller's approval.
- 5.3 The Seller shall be under no liability to the Buyer if the total price of the Goods has not been paid by the due date for payment.
- 5.4 The Seller shall not be liable to the Buyer for any indirect or consequential loss including, but not limited to loss of profit or business whether caused by the negligence of the Seller, its employees and agents or otherwise which arise out of or in connection with the supply of the Goods or their resale.
- 5.5 Without prejudice to the other provisions hereof and except insofar as such liability may not be excluded or limited by law the Seller's total liability to the Buyer under the Contract shall in no event exceed the contract price.

6. Warranty

- 6.1 Subject to the provisions hereof (including without limitation Clause 5 above) the Seller warrants to the Buyer that for a period of twelve months following delivery the Goods shall be free from defect in material and workmanship. The Buyer's sole remedy in the event of any defects shall be limited to repair, replacement or refund of the price of the defective Goods or part thereof at the Seller's sole election and expense except that there shall be no obligation to repair, replace or refund payment for parts which by their nature are expendable.
- 6.2 This warranty is conditional upon the Buyer's proper operation, maintenance and housekeeping of the Goods all in accordance with the Seller's relevant instruction manual and/or the relevant instruction manual of the Seller's suppliers. Without prejudice to the generality of the foregoing, this warranty shall not apply to Goods which are subject to mis-use, mishandling, damage during shipment, improper storage or negligent
- 6.3 No claims for any defect in the Goods will be accepted unless made in writing by the Buyer within the warranty period. The Buyer shall notify the Seller promptly in writing of any suspected claim against this warranty. No Goods shall be returned to the Seller without the Seller's prior written authorization. The Seller shall assess a claim following such notification and shall either (i) arrange for its agent to inspect the Goods at the Buyer's premises and to carry out such repair as may be necessary to the Goods or (ii) replace the faulty part and bear the cost of shipment of same to the Buyer provided that the Buyer returns the faulty part to the Sellers within thirty days of the Seller's notification that the Seller intends to replace the faulty part.
- 6.4 In the event that any claim under this warranty is in respect of a component which is not manufactured by the Seller, the Seller's total liability shall be limited to the amount recoverable or other remedy which the Seller may have against the relevant manufacturer.
- 6.5 Except as provided herein the Seller shall have no other liability to the Buyer or to any third party in the event of a breach of the warranty contained herein.

7. Price

- 7.1 All quotations and estimates issued by the Seller are, unless otherwise stated, based on the current cost of production (materials, hours and wages) and are subject to amendment on or after acceptance to meet any rise or fall in such costs.
- 7.2 Any variation to prices quoted as a result of government taxes and levies will be for the Buyer's account.
- 7.3 All quotations and estimates of the purchase price for the Goods are exclusive of VAT or sales tax, as applicable, either of which are payable by the Buyer.
- 7.4 The Seller reserves the right to amend the purchase price without giving notice to the Buyer.

8. Payment

- 8.1 Payment for the Goods supplied under the Contract is due 30% with order and the remainder 30 days after delivery, unless otherwise stated.
- 8.2 If payment of the price or any part thereof is not made by the due date, the Seller shall be entitled:
- (i) to charge interest on the outstanding amount at the rate of 4% per annum above the JP Morgan Chase Bank prime rate accruing daily, until payment in full is made of the appropriate payment;
 - (ii) to require payment in advance of delivery of undelivered Goods;
 - (iii) to refuse to make delivery of any undelivered Goods whether ordered under the Contract or not and without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery;
 - (iv) to terminate the Contract;
 - (v) to appropriate any payment made by the Buyer to such of the Goods as the Seller may think fit.

9. Delivery

- 9.1 The Seller will deliver the Goods internationally by any method of transport at the Seller's option and all the costs therefore shall be borne by the Buyer in addition to the price of the Goods unless otherwise agreed in writing. Following delivery, the Buyer alone will be responsible for off-loading the Goods and storing them securely, locked up under cover and protected from inclement weather. The Seller undertakes to use its reasonable efforts to ensure that there is no delay in despatch and/or delivery of the Goods on any promised delivery date but does not guarantee to do so and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time of delivery should not be of the essence of the contract unless it is especially so stipulated in writing.
- 9.2 If a firm delivery date is specifically provided for and the Seller fails to deliver the Goods by such time for reasons other than matters beyond its control, the Buyer shall be entitled to claim a reduction of the price by giving the Seller notice in writing within a reasonable time, unless it can be reasonably concluded from the circumstances that the Buyer has suffered no loss. Such reduction shall be equal to ½% of that part of the price which is properly attributable to such part of the Goods which cannot as a consequence of such failure be put to the use intended for each complete week of delay from such firm date but shall not exceed 5% of such part of the price as aforesaid.

10. Risk

The risk in the Goods will pass to the Buyer at the time of dispatch from the Seller's premises so that they will be at the Buyer's risk during transit and thereafter.

11. Title

- 11.1 Title in the Goods will not pass to the Buyer notwithstanding delivery of the Goods until payment is made in full of all debts (including interest) due from the Buyer to the Seller (and not only under this Contract).
- 11.2 Until such time as property in the Goods has passed to the Buyer the Buyer shall hold the Goods as the Seller's fiduciary agent and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property.
- 11.3 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 11.4 Any power of sale which the Buyer may have over the Goods which are the property of the Seller shall automatically cease:
- (a) if the Buyer (being an individual or firm) shall become apparently insolvent or commit an act of bankruptcy; or
 - (b) if the Buyer (being a company) has a receiver or administrator appointed over the whole or any part of its property or undertaking or a petition is presented or a resolution proposed for its winding up; or
 - (c) if any event occurs in relation to the Buyer which in any jurisdiction to which the Buyer is subject is analogous to any of the events set out in sub-paragraphs (a) and (b) above.
- 11.5 Until such time as the property in the Goods passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so, forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and may possess the Goods. In such circumstances the Buyer hereby waives any right to claim from the Seller damages for loss, injury or damage caused to any premises, business reputation, profits or business whatsoever of the Buyer or his agents as a result of such entry.

12. Assignment

The Buyer shall not assign the Contract and/or any of its rights or duties under the Contract without receiving the prior written consent of the Seller.

13. Continuing Terms

The rights and obligations contained in Clause 5 (Liability), Clause 6 (Warranty), Clause 12 (Assignment), Clause 13 (Continuing Terms), Clause 14 (Intellectual Property), Clause 15 (Indemnity), Clause 16 (Confidentiality) and Clause 19 (Applicable Law) hereof shall survive the termination or expiry of the Contract.

14. Intellectual Property

- 14.1 Any drawings, specifications or other technical information supplied to the Buyer by the Seller in connection with this Contract are provided on the express understanding that the Buyer will not give, loan exhibit, or sell such drawings, specifications or technical information to any third party and that the Buyer will not use them in any way except in connection with the Goods provided hereunder. All intellectual property rights including, the copyright in all documents provided by the Seller shall remain vested in the Seller.
- 14.2 The Buyer shall indemnify the Seller against all actions, costs (including the cost of defending any legal proceedings), claims, proceeding accounts and damages in respect of any infringement or alleged infringement of any patent, registered design, design right, copyright, trade mark or other industrial or intellectual property rights resulting from the Seller's compliance with the Buyer's specific requirements, designs or specification.

15. Indemnity

15.1 The Buyer shall keep the Seller fully indemnified against: (a) All losses, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any intellectual property rights of any other person resulting from the Seller's use of the Buyer's specification or the Seller's compliance with the Buyer's direction in relation to the Goods manufactured in accordance with the Buyer's specific direction; and b) all losses, damages, costs and expenses awarded against or incurred by the Seller in respect of the use by the Buyer of the Goods in the manufacture, supply, or distribution of any other Goods arising out of such manufacture, supply or distribution.

15.2 The Buyer shall at all times maintain reasonable insurance cover with a reputable insurer in respect of all or any such liabilities referred to above and shall when required to do so by the Seller provide evidence that all and any such insurance is in force.

16. Confidentiality

The Buyer shall hold as confidential all information, details and any other matter relating to the Goods supplied in terms of this Contract and shall not disclose the same or any of the same to any other person except such of its servants and agents and authorized subcontractors as may be necessary for the performance of its obligations under this Contract and shall ensure that such persons are aware of the confidential nature of such information and maintain that confidentiality. These obligations shall survive the termination of the Contract.

17. Termination

This clause applies if:

(a) the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or a firm) becomes bankrupt or (being a company) goes into liquidation otherwise than for the purpose of amalgamation or reconstruction; or

(b) an encumbrancer takes possession of or a receiver is appointed over any of the property or assets of the Buyer; or

(c) the Buyer ceases, or threatens to cease, to carry on business; or

(d) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

If this clause applies, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangements to the contrary.

18. Force Majeure

"If delivery is delayed by strikes, lockouts, fire, accidents, pandemic/epidemic, defective materials, delays in receipt of raw materials or bought-in goods or components or any other cause beyond the reasonable control of the Seller, a reasonable extension of time for delivery shall be granted and the Buyer shall pay such reasonable extra charges as shall have been occasioned by the delay."

19. Applicable Law and jurisdiction

The Contract shall be deemed to have been made in England and the parties to the Contract hereby submit to the jurisdiction of the English courts. English law shall be the proper law of the Contract.