

Sercal Calibrations and Service Terms and Conditions

1 Definitions

1.1 **The Company** : SERCAL Materials Testing Machines Services Limited, Southern Avenue, Leominster, England, HR6 0QH, . Registered Company Number : 02555639

1.2 **The Customer** : The person company or other legal entity who enters into an agreement to purchase goods or Services from the Company.

1.3 **Conditions** : The terms and conditions set out below.

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

1.5 **Goods** : The goods which the Company is to supply in accordance with these conditions.

1.6 Any reference in these Conditions to any statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time.

1.7 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 Basis of Sale

2.1 The Company shall sell and the Customer shall purchase the Goods in accordance with any written quotation of the Company which is accepted by the Customer or any written order of the Customer which is accepted by the Company subject in either case to these Conditions.

2.2 No variation to these Conditions shall be binding unless agreed in writing between the Company and the Customer

3 Orders and Specifications

3.1 No order submitted to the Company shall be deemed to be accepted by the Company unless and until confirmed in writing by or on behalf of the Company

3.2 The Customer shall be responsible for ensuring the accuracy of the terms of any order and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

3.3 The quantity description or any specification for the Goods shall be those set out in the Company's quotation.

3.4 The Company reserves the right to make any changes to the specification of the Goods which are required to conform with applicable statutory or EC requirements.

3.5 No order which has been accepted by the Company may be cancelled by the Customer.

4 Price of Goods

4.1 All prices quoted are valid for 30 days only after which time they may be altered by the Company without giving notice to the Customer.

4.2 The Company reserves the right by giving written notice to the Customer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Company which is beyond the control of the Company (such as without limitation any foreign exchange fluctuation, currency regulations, alterations of duties, material labour or other costs of manufacture)

4.3 Except as otherwise stated under the terms of any quotation all prices given by the Company are on an ex works basis and where the Company agrees to deliver the Goods otherwise than at the Company's premises the Customer shall be liable to pay the Company's charges for transport packaging and insurance

4.4 If the Company delivers the Goods otherwise than at the Company's premises the Customer shall be responsible for immediately off loading the Goods and shall provide all necessary lifting equipment lifting facilities and labour to position the Goods at their point of installation

4.5 The price is exclusive of any applicable value added tax which the Customer shall be additionally required to pay.

5 Payment Terms

5.1 Payment for the Goods shall be made in accordance with the Company's written quotation or if not specifically stated:-

5.1.1 as to 30% of the price upon acceptance by the Company of the order for the Goods, due immediately

5.1.2 as to 70% of the price upon the Company notifying the Customer that the Goods are available for despatch, due within 30 days

5.1.3 If the payment terms refer to "on delivery" then delivery is defined as the delivery of goods excluding services. Separate provision for payment terms "on acceptance" or "on sign-off" must be agreed prior to placing any order.

5.2 If payment is not made within 30 days of the due date the Customer shall in addition to all other payments due under these Conditions pay to the Company a sum equal to:-

5.2.1 4% per annum above the base rate from time to time of National Westminster Bank plc from the due date until the date payment is received by the Company (inclusive)

5.2.2 2% of the total price of the Goods for each calendar month commencing on the date on which the Company notifies the Customer that the Goods are available for despatch and ending on the date of receipt of payment by the Company

5.3 If the Customer fails to make any payment when due then without prejudice to any other right or remedy available to the Company the Company shall be entitled to:- 5.3.1 cancel the Contract or suspend any further deliveries to the Customer and

5.3.2 appropriate any payment made by the Customer to such of the Goods as the Company may think fit.

6 Delivery Estimated lead times included in the quotation are from receipt of the deposit and confirmation of the order by the Company and any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract. The Goods may be delivered by the Company in advance of the quoted delivery date upon reasonable notice to the Customer.

7 Risk and Property

7.1 Risk of damage or loss of the Goods shall pass to the Customer:-

7.1.1 in the case of Goods to be delivered at the Company's premises at the time when the Company notifies the Customer that the Goods are available for collection

7.1.2 in the case of Goods delivered otherwise than at the Company's premises at the time of delivery

7.2 Property in the Goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other payments due pursuant to these Conditions.

7.3 Until such time as property in the Goods passes to the Customer the Customer shall hold the Goods as the Company's fiduciary agent and bailee.

7.4 Until such time as the property in the Goods passes to the Customer the Customer shall keep the Goods properly stored protected and insured.

7.5 Until such time as the property in the Goods passes to the Customer the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and if the Customer fails to do so the Company shall be entitled to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods

8 Warranty and Liability

8.1 Subject to the conditions set out below the Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of delivery

8.2 The above warranty is subject to the following conditions:-

8.2.1 the Company shall be under no liability in respect of any defect in the Goods arising from any drawing design or specification supplied by the Customer

8.2.2 the Company shall be under no liability under the above warranty in respect of any defect arising from fair wear and tear, wilful damage or abnormal working conditions failure to follow the Company's instructions misuse or alteration or repair of the Goods without the Company's approval

8.3 Except in the case of death or personal injury caused by the Company's negligence the Company shall not be liable to the Customer by reason of any representation (unless fraudulent) or any implied warranty condition or other term or duty at common law or under the express terms of the contract for any indirect special or consequential loss or damage which arise out of or in connection with the supply of the Goods and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Goods

8.4 The Company shall not be liable or be deemed to be in breach of contract by reason of any delay or failure to perform any of the Company's obligations if the delay or failure was due to a cause beyond the Company's reasonable control including: _

8.4.1 explosion, flood, tempest fire or accident

8.4.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition

8.4.3 acts restrictions regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental parliamentary or local authority

8.4.4 import or export regulations or embargoes

8.4.5 strikes lockouts or other industrial action.

9 Installation and Commissioning

9.1 The Customer must ensure that before the delivery of the Goods there shall be available all necessary utilities and that they are correctly installed and available for connection to the Goods in a safe manner

9.2 The point of installation of the Goods must be in a finished room with sufficient floor space and headroom for the Goods and their orderly installation have good heating lighting and ventilation (where necessary). Should special foundations be required for the Goods these must be ready and the area cleaned prior to unpacking the machine

9.3 Access to the point of installation must be available to large lorries [7.5 tonnes gross] or the Customer shall provide necessary transport equipment and personnel to enable the Goods to be moved to the point of installation

9.4 The Customer shall ensure that all legal requirements have been fulfilled to enable the installation of the Goods to be effected

9.5 The Company shall not be required to calibrate the Goods unless this is specifically stated in the quotation.

10 Insolvency of Customer

10.1 This clause applies if:-

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

10.1.2 an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Customer or

10.1.3 the Customer ceases or threatens to cease to carry on business or

10.1.4 the Company reasonably apprehends that any of the events mentioned above are about to occur in relation to the Customer and notifies the Customer accordingly

10.2 If this clause applies then without prejudice to any other right or remedy available to the Company the Company shall be entitled to cancel the Contract without any liability to the Customer and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary

11 Export terms

11.1 In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions but if there is any conflict between the provisions of Incoterms and these Conditions the latter shall prevail

11.2 Where the Goods are supplied for export from the United Kingdom the provisions of this Clause 11 shall (subject to any special terms agreed in writing between the Customer and the Company) apply notwithstanding any other provision of these Conditions

11.3 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them

11.4 The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment

11.5 Payment of all amounts due to the Company shall be made before the Goods are released for export

11.6 The Customer undertakes not to offer the Goods for resale in any country in respect of which export restrictions have been imposed by the United Kingdom government or any other country notified by the Company to the Customer at or before the time the Customer's order is placed or to sell the Goods to any person if the Customer knows or has reason to believe that that person intends to resell the Goods in any such country.

12 General

12.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that 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 provision to the party giving the notice

12.2 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision

12.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected

12.4 Where the Goods are sold under a consumer transaction as defined by the Consumer Transaction (Restrictions on Statements) Order 1976 the statutory rights of the Customer are not affected by these Conditions

13 Governing Law and Jurisdiction

13.1 These Terms and Conditions shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.