

# TERMS AND CONDITIONS OF SALE

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## Application and Entire Agreement

1. These Terms and Conditions apply to the purchase of the **Products and/or Services** described in our quotation by the buyer (**you**) from **OceanWise Limited**, a company registered in England and Wales under number 07206926 whose registered office is at 2 Upperton Gardens, Eastbourne BN21 2AH, U.K. (**we** or **us**).
2. These Terms and Conditions, along with the Terms and Conditions that may apply to one or more of our Products and Services specifically, will be deemed to have been accepted by you when you accept our formal quotation/proposal by way of a purchase, work or other order, or other written instruction, or you receive delivery of the Products and/or Services, whichever happens earlier, and will constitute the entire agreement between us and you.
3. These Terms and Conditions apply to the purchase of any Products and/or Services, to the exclusion of any other terms that you may attempt to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, unless otherwise agreed, including in a formal contract which is written and signed by both parties.

## Interpretation

4. **Business Day** means any day, other than a Saturday, Sunday or Bank Holiday in England and Wales, between the hours of 0900 and 1730.
5. **Licensed Partner** means an organisation or individual that has been appointed by us to resell our Products and/or Services. Details of our current Licensed Partners are available on our website.
6. **Warranty** means our obligation to you to repair, replace or reinstate the Products and/or Services in accordance with the Limitation of Liability clauses below.
7. The headings in these Terms and Conditions are for convenience only and will not affect their interpretation.
8. Words imparting the singular number include the plural and vice-versa.

## Products and Services

9. Our Products and/or Services are described in our promotional material and related documentation, unless expressly amended by us in our quotation/proposal to you. In accepting our quotation, you acknowledge that you have not relied upon any statement, promise or other representation about the Products and/or Services. Descriptions of the Products and/or Services are intended as a guide only and do not guarantee that the products and/services are suitable for any given use unless we have confirmed in writing that this is the case.
10. We reserve the right to make any changes to the Products and/or Services at any time and without notice, including any changes that are required to conform to any applicable safety or other statutory or regulatory requirement.

## Price

11. The Price of the Products and/or Services is set out in our quotation/proposal to you current at the date of your order or such other price as we may agree in writing.
12. If the cost of the Products and/or Services to us increases due to any factor beyond our control including, but not limited to, material costs, labour costs, alteration of exchange rates or duties, or changes to delivery rates, we can increase the Price prior to delivery.
13. Any increase in the Price under the clause above will only take place after we have told you about it.

14. You may be entitled to a discount on certain Products and/or Services. For our Licensed Partners, discounts will be included in Schedule 1 of your Agreement. Other discounts which may apply will be at our discretion. Any discounts that apply will be included in our quotation/proposal current at the date of your order.
15. The Price is exclusive of fees for packaging and transportation/delivery, unless this is specifically itemised in our quotation. Where we have provided an estimate, the actual cost will be recharged and included in our invoice.
16. The Price is exclusive of any taxes, including any withholding tax, import duties or other levies which may be imposed or charged by any regulatory or other authority, unless this is specifically itemised in our quotation e.g. VAT on Products and/or Services sold within the U.K., in which case the current rate will apply. Additional taxes, import duties or other levies may apply.

### **Cancellation and Adjustment**

17. Details of the Products and/or Services as described in the clause above (Products and/or Services) and promotional material and other documentation are subject to alteration without notice and are not a contractual offer to sell the Products and/or Services which is capable of acceptance.
18. The quotation/proposal (including any non-standard price negotiated in accordance with the clause on Price above) is valid for a period of 90 days from the date shown unless otherwise specified or expressly withdrawn by us prior to this date.
19. Either of us can cancel the order for any reason prior to your acceptance (or rejection) of our quotation/proposal.

### **Payment**

20. We will invoice you for the Price:
  - a. in full before, on or at any time after delivery of the Products and/or Services; or
  - b. in stages, namely before, on or at any time after delivery of the Products and/or Services, according to the payment schedule included in our quotation/proposal or where this is otherwise agreed in writing by both parties;
  - c. where the collection of the Products and/or Services is arranged by you, or where you have been unable to take delivery of the Products and/or Services at a time which has been agreed by between us.
21. You must pay the Price in full or, if agreed, in stages within 30 days of the date of our invoice or invoices or otherwise according to any credit terms agreed between us.
22. You must make payment even if delivery has not taken place and/or that the title in the Products and/or Services has not passed to you.
23. If you do not pay within the period set out above, we will suspend any further deliveries to you and without limiting any of our other rights or remedies for statutory interest, charge you interest at the rate of 24% per annum above the base rate of the Bank of England on the amount outstanding until you pay in full.
24. Time for payment will be of the essence of the Contract between us and you.
25. Both parties must pay all amounts due under these Terms and Conditions in full without any deduction or withholding except as required by law and neither party is entitled to assert any credit, set-off or counterclaim against the other in order to justify withholding payment of any such amount in whole or in part.

### **Delivery/Installation**

26. We will arrange for the delivery and/or installation of the Products and/or Services as specified in our formal quotation/proposal, or your order or other instruction, or as we may

otherwise agree in writing.

27. Where applicable, if you do not specify a delivery/installation address or other means of delivery, and if we both agree, you must arrange to collect the Products from our premises.
28. Subject to the specific terms of any special delivery service, or any other terms that may be agreed between us, delivery/installation must be accepted by you on any Business Day.
29. Installation, and any site survey or service visit which may be required, will be undertaken as specified in our 'System Design' and/or 'Risk Assessment and Method Statement' documentation, which we will provide to you, and to which you must agree prior to our mobilising to site.
30. If you do not take delivery of the Products, we may at our discretion and without prejudice to any other rights:
  - a. store or arrange for the storage of the Products and will charge you for all associated costs and expenses including, but not limited to, transportation, storage and insurance; and/or
  - b. arrange for the redelivery of the Products and will charge you for the costs of such redelivery; and/or
  - c. after 10 business days, resell or otherwise dispose of part or all of the Products and charge you for any shortfall below the quoted/proposed price, including the price for any associated Services and expenses which we may incur.
31. We can deliver the Products and/or Services by instalments, which will be invoiced and paid for separately or has otherwise been agreed between us. Each instalment is considered to be a separate contract. Any delay in delivery or defect in an instalment will not entitle you to cancel any other instalment.
32. The delivery of Services will have deemed to have taken place from the date that these are available to you or may be used by you, irrespective of whether or not you are in a position to do so.

### **Inspection/Acceptance**

33. You must inspect the Products and/or Services at the time of any Factory Acceptance Test, delivery, collection, installation or otherwise when they are first made available to you.
34. A representative authorised by you must sign any appropriate documentation e.g. Delivery Note that is presented to you. If you identify any damages or shortages in the Products, or shortcomings in the Services, provided to you, you must inform us immediately, so that we can take any action that may be appropriate.
35. Other than by agreement, we will only accept returned Products if we are satisfied that those Products are defective, and you have carried out and acknowledged an inspection.
36. Subject to your compliance with this clause and/or our agreement, you may return the Products and we will, as appropriate, repair or replace the Products or part of them in accordance with the Limitation of Liability clause below.
37. We will be under no liability or further obligation in relation to the Products and/or Services if:
  - a. you fail to provide notice as set out above; and/or
  - b. the defect arises because you did not follow our oral or written instructions about the storage, commissioning, installation, use and maintenance of the Products and/or Services; and/or
  - c. the defect arises from normal wear and tear of the Products and/or Services; and/or
  - d. the defect arises from misuse or alteration of the Products and/or Services, negligence, wilful damage or any other act by you, your employees, agents or third parties; and/or
  - e. the defect arises as a result of external factors over which we have no control including but not limited to criminal and accidental damage and the impact of the weather.

**Risk and Title**

38. The risk in the Products and/or Services will pass to you on completion of delivery.
39. Title to the Products and/or Services will not pass to you until we have received payment in full (in cash or cleared funds) for: (a) the Products and/or Services and/or (b) any other products or services that we have supplied to you in respect of which payment has become due.
40. Until title to the Products and/or Services has passed to you, you must (a) hold the Products and/or Services on a fiduciary basis as our bailee; and/or (b) store the goods separately and not remove, deface or obscure any identifying mark or packaging on or relating to the Products and/or Services; and/or (c) keep the Products and/or Services in satisfactory condition and keep them insured against all risks for their full price from the date of delivery.
41. As long as the Products and/or Services have not been resold, or irreversibly incorporated into another product, and without limiting any other right or remedy we may have, we can at any time ask you to deliver up the Products and/or Services and, if you fail to do so promptly, enter any of your premises or of any third party where the Products and/or Services are stored in order to recover them.

**Termination**

42. We can terminate the sale of Products and/or Services under the Contract where:
  - a. you commit a material breach of your obligations under these Terms and Conditions;
  - b. you are or become or, in our reasonable opinion, are about to become the subject of a bankruptcy order or take advantage of any other statutory provision for the relief of insolvent debtors;
  - c. you enter into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with your creditors; or
  - d. you convene any meeting of your creditors, enter into voluntary or compulsory liquidation, have a receiver, manager, administrator or administrative receiver appointed in respect of your assets or undertakings or any part thereof, any documents are filed with the court for the appointment of an administrator, notice of intention to appoint an administrator is given by you or any of your directors or by a qualifying floating charge holder (as defined in para. 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed, or petition presented to any court for the winding up of your affairs or for the granting of an administration order, or any proceedings are commenced relating to your insolvency or possible insolvency.

**Limitation of Liability**

43. Our liability under the Contract, and in breach of statutory duty, and in tort, misrepresentation or otherwise will be limited to this clause. Our total liability will not, in any circumstances, exceed the total amount of the Price payable by you.
44. Subject to the clauses above on Inspection and Acceptance and Risk and Title, all warranties, conditions or other terms implied by statute or common law (save for those implied by Section 12 of the Sale of Products and/or Services Act 1979) are excluded to the fullest extent permitted by law.
45. If we do not deliver/install the Products and/or Services as specified in our quotation/proposal, or the Products become defective or the Services inoperable while there is still some form of agreement between us, our liability is limited to one or more of the following:
  - a. monitor the Services being provided and respond to alerts and support requests in accordance with the Terms and Conditions of the Services being provided;
  - b. make reasonable efforts, without incurring abnormal expense, to diagnose the source of any defect and to notify you of the nature of said defect and our recommended resolution;

- c. reinstate the Products and/or Services as originally provided or as close to that originally provided or, where a Product is found to be defective, to replace or repair the defective Product as soon as practicable by:
  - i. requesting that you return the defective Product to our normal business address or another address as notified by us; or by
  - ii. scheduling a site service visit to either inspect the Product and provide any further diagnose that may be necessary and/or to replace or repair the defective Product and to reinstate the Products and/or Services.
46. In undertaking the actions specified in Clause 48, we agree to:
  - a. undertake any action necessary without further cost to you where the defect is diagnosed within three (3) months from delivery/installation, known as the Commissioning Period, or where there is an agreement e.g. Service Level Agreement between us;
  - b. undertake to replace or repair and return the defective Product to you where the defect is diagnosed within the manufacturer's initial Warranty Period or where the initial warranty has been extended by agreement between you, us and/or the manufacturer. We will be responsible for returning, but not reinstating, the repaired or replacement Product(s);
  - c. undertake to provide a quotation for the repair or replacement of the defective Product(s), including any delivery or reinstatement costs.
47. Under Clauses 46 a) and b), you will be responsible for returning the defective Product(s), and reinstating the repaired or replacement Product(s), unless such reinstatement has been agreed by you under a separate Service Level or ad hoc Agreement. The warranty for any replacement or repaired Products will be as originally delivered to you, unless it is agreed by the manufacturer at their and our discretion that it will be extended.
48. We will not be liable (whether caused by our employees, agents or otherwise) in connection with the Products and/or Services, for:
  - a. any indirect, special or consequential loss, damage, costs, or expenses; and/or
  - b. any loss of profits; loss of anticipated profits; loss of business; loss of data; loss of reputation or goodwill; business interruption; or, other third party claims; and/or
  - c. any failure to perform any of our obligations if such delay or failure is due to any cause beyond our reasonable control; and/or
  - d. any losses caused directly or indirectly by any failure or breach by you in relation to your obligations; and/or
  - e. any loss relating to the choice of the Products and/or Services and how they will meet your purpose or the use by you of the Products and/or Services supplied.
49. The exclusions of liability contained within this clause will not exclude or limit our liability for death or personal injury caused by our negligence; or for any matter for which it would be illegal for us to exclude or limit our liability; and for fraud or fraudulent misrepresentation.

## **Communications**

50. All notices under these Terms and Conditions must be in writing and signed by, or on behalf of, the party giving notice (or a duly authorised officer of that party).
51. Notices will be deemed to have been duly given:
  - a. when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient;
  - b. when sent, if transmitted by fax or email and a successful transmission report or return receipt is generated;
  - c. on the fifth business day following mailing, if mailed by national ordinary mail; or
  - d. on the tenth business day following mailing, if mailed by airmail.
52. All notices under these Terms and Conditions must be addressed to the most recent address,

email address or fax number notified to the other party.

**Data Protection**

53. When providing the Products and/or Services we may gain access to and/or acquire the ability to transfer, store or process Personal Data.
54. The parties agree that where such processing of personal data takes place, you shall be the 'Data Controller' and we shall be the 'Data Processor' as defined in the General Data Protection Regulation (GDPR) as may be amended, extended and/or re-enacted from time to time.
55. For the avoidance of doubt, 'Personal Data', 'Processing', 'Data Controller', 'Data Processor' and 'Data Subject' shall have the same meaning as in the GDPR.
56. We shall only Process Personal Data to the extent reasonably required to enable us to provide the Products and/or Services as mentioned in these terms and conditions or as requested by and agreed with you. We shall not retain any Personal Data longer than necessary and refrain from processing any Personal Data for our own or for any third party's purposes.
57. We shall not disclose Personal Data to any third parties other than employees, directors, agents, subcontractors or advisors on a strict "need-to-know" basis and only under the same (or more extensive) conditions as set out in these terms and conditions or to the extent required by applicable legislation and/or regulations.
58. We shall implement and maintain technical and organisational security measures as are required to protect Personal Data Processed by the us on behalf of you. Further information about our approach to data protection is specified in our Data Protection Policy, which can be found on our website. For any enquiries or complaints regarding data privacy, you can contact our Data Protection Officer at the following e-mail address: [info@oceanwise.eu](mailto:info@oceanwise.eu).

**Circumstances Beyond the Control of Either Party**

59. Neither party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause beyond the reasonable control of that party. Such causes include, but are not limited to: power failure, Internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question.

**No Waiver**

60. No waiver by us of any breach of these Terms and Conditions by you shall be considered as a waiver of any subsequent breach of the same or any other provision.

**Severance**

61. If one or more of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (which will remain valid and enforceable).

**Law and Jurisdiction**

62. This Agreement shall be governed by and interpreted according to the law of England and Wales and all disputes arising under the Agreement (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the English and Welsh courts.