

# CONDITIONS OF SALE – Issue 1 (Feb 2016)

1. **INTERPRETATION**

In these Conditions, the following definitions apply:

**"Background IPR"** any and all Intellectual Property Rights owned by and/or licensed to a party prior to the date of this Contract

**"Company"** Nasmyth Technologies Ltd CE Site a company registered in England and Wales with registered number 09046577 and whose registered address is c/o Nasmyth Group Limited, Nasmyth House, Coventry Road, Exhall, Coventry, CV7 9FT

**"Conditions"** the standard Conditions of Sale set out in this document and (unless the context otherwise requires) includes any Special Conditions and any additional terms and conditions agreed in writing between the Company and the Purchaser

**"Contract"** the contract between the Purchaser and the Company for the design and/or supply of the Goods and/or provision of Services comprising the Conditions and the Order Acknowledgement

**"Contract Price"** the aggregate price under the Contract for the design and/or supply of Goods and/or provision of Services by or on behalf of the Company

**"Foreground IPR"** any and all Intellectual Property Rights created by the Company under this Contract

**"Goods"** the parts that the Company is to design and/or supply in accordance with these Conditions and as described in the Company quotation or Order Acknowledgement

**"Intellectual Property Rights"** copyright, registered designs, design rights, patents, inventions, rights in confidential information (including know-how and trade secrets), trade marks, trade names and all other forms of intellectual property protection, whether registered or unregistered and applications (or rights to apply for) and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection and all rights from which any of the foregoing are derived and all rights derived from any of the foregoing rights and all other rights of a similar nature which may now or in the future subsist in any part of the world

**"Order Acknowledgement"** the acknowledgement provided by the Company which sets out the Goods and/or Services and the Contract Price

**"Purchaser"** a person or organisation who enters into a Contract with the Company as set out in the Order Acknowledgement

**"Services"** the services that the Company is to provide in accordance with these Conditions and as described in the Company quotation or Order Acknowledgement

**"Special Conditions"** the special conditions relating to the provision of specific Goods and/or Services as notified to the Purchaser
2. **BASIS OF THE CONTRACT**
  - 2.1 The Company shall supply the Goods and/or Services and the Purchaser shall purchase the Goods and/or Services in accordance with and subject to these Conditions, which shall govern the Contract to the exclusion of any other terms proposed by the Purchaser.
  - 2.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract and this is not a sale by sample.
  - 2.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, Order Acknowledgement, invoice or other document or information issued by the Purchaser shall be subject to correction without any liability on the part of the Supplier.
  - 2.4 The Company's employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by the Company in writing. In entering into the Contract the Purchaser acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.5 The Company may make changes to these Conditions from time to time. Any such change shall apply to all orders placed by the Purchaser after the date of the change. The Purchaser is reminded of the need to periodically check these Conditions for changes.
- 2.6 If there is any conflict between any of the terms of the Contract then the parts of this Contract shall prevail and take priority in the following order solely to the extent of any conflict:
  - 2.6.1 additional terms and conditions;
  - 2.6.2 Order Acknowledgement;
  - 2.6.3 Special Conditions; and
  - 2.6.4 the standard conditions set out in this document.
3. **ORDERS AND SPECIFICATIONS**
  - 3.1 No order submitted by the Purchaser shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company's authorised representative.
  - 3.2 The Purchaser shall be responsible to the Company for ensuring the accuracy of any designs, drawings, specifications, instructions or plan submitted by the Purchaser, and for giving the Company any necessary information relating to the Goods and/or Services within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
  - 3.3 The quality and description of and any specification for the Goods and/or Services shall be as set out in the Company's quotation or Order Acknowledgement.
  - 3.4 If the Goods are manufactured, or any process is applied to the Goods by the Company and/or the Services are provided in accordance with a design, drawing, specification, instruction, plan or Background IPR submitted by the Purchaser, the Purchaser shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any Intellectual Property Rights of any other person which results from the Company's use of the Purchaser's design, drawing, specification, instruction, plan or Background IPR.
  - 3.5 The Company reserves the right to make any changes in the specification of the Goods and/or Services which are required to comply with any applicable safety or other requirements or which do not materially affect its quality or performance.
4. **PRICE AND PAYMENT**
  - 4.1 Any price quoted by the Company will be valid for 30 (thirty) days or such other period as may be specified in writing by the Company or until earlier acceptance by the Purchaser, after which time it may be altered by the Company without giving notice to the Purchaser.
  - 4.2 Subject to agreement with the Purchaser, the Company is entitled to increase the Contract Price by notice in writing to the Purchaser before delivery, but only to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates or specifications for the Goods and/or Services requested by the Purchaser and/or any delay caused by any instructions of the Purchaser or failure of the Purchaser to give the Company adequate information or instructions.
  - 4.3 The Contract Price is exclusive of Value Added Tax or any other duty, applicable taxes and charges that may be payable, which the Purchaser shall be additionally liable to pay to the Company, and (unless otherwise agreed in writing by the Company) is given on an ex works basis. Where the Company agrees to deliver the Goods otherwise than at the Company's premises, the Purchaser shall be liable to pay the Company's charges for transport, packaging and insurance.
  - 4.4 The Contract Price is
  - 4.5 Unless otherwise agreed in writing:

- 4.5.1 the Company shall be entitled to invoice the Purchaser for the price of the Goods and/or Services at any time after the Company has notified the Purchaser that the Goods are ready for collection and/or upon provision of the Services; and
- 4.5.2 the Purchaser shall settle each invoice delivered by the Company without set off or deduction within 30 (thirty) days of the date of invoice in GBP Sterling, notwithstanding that delivery may not have taken place or that the property in the Goods has not passed to the Purchaser.
- 4.6 Time of payment of the Contract Price shall be of the essence of the Contract. If the Purchaser fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- 4.6.1 cancel the contract or cease or suspend any further work or deliveries to the Purchaser;
- 4.6.2 appropriate any payment made by the Purchaser to such of the Goods and/or Services (or the goods and/or services supplied under any other contract between the Purchaser and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Purchaser); and
- 4.6.3 charge the Purchaser interest (both before and after any judgement) on the amount unpaid, at an annual rate 4 (four) percentage points above the Company's bank's base rate from time to time, until payment in full is made. The Company may in its absolute discretion choose not to charge interest if arrangements for payment have been made to the satisfaction of the Company.
- 4.7 If the Purchaser fails to make any payment on its due date then all payments under invoices rendered on or before that date shall become immediately due and payable. All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
5. **DELIVERY**
- 5.1 Unless otherwise agreed in writing, delivery of the Goods shall be ex-works as defined by Incoterms (latest edition). All other Incoterms are expressly excluded from this Contract. Delivery shall be made by the Purchaser collecting the Goods at the Company's premises at any time after the Company has notified the Purchaser that the Goods are ready for collection.
- 5.2 If delivery is the responsibility of the Company delivery will be made to the place stated on the Order Acknowledgement.
- 5.3 Any dates quoted for delivery of the Goods and/or Services are approximate only and the Company shall not be liable for any delay in delivery of the Goods and/or provision of Services, howsoever caused. Time for delivery shall not be of the essence. The Goods and/or Services may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Purchaser.
- 5.4 Where the Goods and/or Services are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Purchaser in respect of any one or more batches shall not entitle the Purchaser to treat the Contract as a whole as repudiated.
- 5.5 The Purchaser shall notify the Company of any discrepancy between the quantity stated on the delivery documentation and the quantity received or any damage to the Goods within 7 (seven) days from date of despatch of the Goods. The Company will accept no liability for any purported variances after this time. The Purchaser's only remedy in respect of damaged or short delivery shall be (at the Company's sole discretion) the provision of replacement Goods or a refund.
- 5.6 Where the supply of Goods and/or Services is reliant upon the use of a sub-contractor/supplier nominated by the Purchaser the Company shall not be held responsible for any delay in delivery due to the non-performance of the nominated sub-contractor/supplier.
- 5.7 If the Purchaser fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Purchaser's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:
- 5.7.1 store the Goods until actual delivery and charge the Purchaser for all costs (including insurance) of failed delivery, storage and re-delivery; or
- 5.7.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Purchaser for the excess over the price under the Contract or charge the Purchaser for any shortfall below the price under the Contract.
- 5.8 The Company reserves the right to refuse to deliver if, in its sole opinion, the conditions at that place are such as to constitute a danger to its property (including any vehicle), in which case the Purchaser shall be deemed to have wrongfully failed to take delivery of the Goods.
- 5.9 Where the Purchaser refuses to take delivery or does not collect the Goods within 3 (three) days of notification of the Goods being ready for collection then delivery will have deemed to have taken place at the stated time of delivery or notification by the Company.
6. **RISK AND TITLE**
- 6.1 Risk of damage to or loss of the Goods shall pass to the Purchaser:
- 6.1.1 in the case of Goods to be delivered at the Company's premises at the time when the Company notifies the Purchaser that the Goods are available for collection; or
- 6.1.2 in the case of Goods to be delivered otherwise than at the Company's premises at the time of delivery or if the Purchaser wrongfully fails to take delivery of the Goods the time when the Company has tendered delivery of the Goods.
- 6.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the title in the Goods shall not pass to the Purchaser until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Purchaser for which payment is then due.
- 6.3 Until such time as the title in the Goods passes to the Purchaser, the Purchaser shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods properly stored, protected, insured and identified as the Company's property. Until that time the Purchaser shall be entitled to use the Goods in the ordinary course of its business, but shall account to the Company for any proceeds derived from the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Purchaser or of third parties.
- 6.4 Until such time as the title in the Goods passes to the Purchaser, the Company shall be entitled at any time to require the Purchaser to deliver up the Goods to the Company and, if the Purchaser fails to do so, to enter upon any premises of the Purchaser or any third party where the Goods are stored and repossess the Goods. The Purchaser shall indemnify and hold the Company harmless against any costs and expenses and/or liability that the Company may incur to any third party in connection with any re-possession or attempted re-possession.
- 6.5 The Purchaser shall not be entitled to pledge the Goods or in any way charge the Goods by way of security for any indebtedness so long as it remains the property of the Company, but if the Purchaser does so all moneys owing by the Purchaser to the Company shall (without prejudice to any other right or remedy of the Company) immediately become due and payable.
7. **WARRANTIES AND LIABILITY**
- 7.1 Subject to the conditions set out below, the Company warrants that the Goods will correspond with its specification at the time of delivery and will be free from defects in design, material and workmanship for a period of 12 (twelve) months from the date of delivery.
- 7.2 The above warranty is given by the Company subject to the following conditions:

7.2.1	the Company shall be under no liability in respect of any defect in the Goods arising from any design, drawing, specification, instruction, plan or Background IPR supplied by the Purchaser;		regardless of the form of action, whether in contract, tort (including, but not limited to, negligence) or strict liability otherwise howsoever arising and regardless of whether the Company knew or had reason to know of the possibility of the loss or damage in question (and whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods and/or provision of the Services or any use of the same by the Purchaser and whether or not such loss has been suffered by the Purchaser or by some third party to whom the Purchaser may be liable, except as expressly provided in these Conditions.
7.2.2	the Company 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 any Company's instructions related to the Goods (whether oral or in writing) or good engineering practice, misuse or alteration or repair of the Goods without the Company's approval;	7.10	Nothing in these Conditions shall exclude or restrict the Company's liability for death or personal injury due to the Company's negligence or any liability which is due to the Company's fraud and/or any other liability which it is not permitted to exclude or limit as a matter of law.
7.2.3	the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid at the date of the warranty claim;	7.11	The Company shall not be liable to the Purchaser or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control: Act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Company or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; or power failure or breakdown in machinery.
7.3	The warranty under condition 7.1 does not extend to parts, materials or goods not manufactured by the Company, in respect of which the Purchaser shall be entitled to the benefit of any such warranty or guarantee which is given by the manufacturer to the Company and which the Company hereby assigns to the Purchaser so far as it is able.		
7.4	The Supplier warrants that the Services will be performed by appropriately qualified and experienced personnel with reasonable care and skill, materially in accordance with any relevant specifications provided by the Customer and the Services will be performed in accordance with all statutory requirement and regulations, provided that:		
7.4.1	the Supplier shall have no liability in respect of any defective workmanship arising from any design, drawing, design, specification, instruction, plan or Background IPR supplied by the Purchaser; and	8.	<b>CANCELLATION</b>
7.4.2	the Supplier shall have no liability if the total price of the Goods and/or Services has not been paid by the due date for payment.	8.1	The Purchaser shall not cancel the Contract in whole or part without the written agreement of the Company and on terms that the Purchaser shall indemnify the Company in full against all loss (including but not limited to loss of profit), costs (including but not limited to the cost of all labour and materials used), damages, charges and expenses incurred nor committed to by the Company as a result of cancellation.
7.5	All warranties, conditions, guarantees and representations that are implied by statute, common law or otherwise are hereby excluded by the Company to the fullest extent permitted by law.	8.2	Within 1 (one) month of the agreement to cancel the contract the Company will submit to the Purchaser a summary of any related cancellation costs.
7.6	Any claim by the Purchaser under conditions 7.1 and 7.4 above being made by the Purchaser shall (whether or not delivery is refused by the Purchaser) be notified to the Company within 7 (seven) days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Purchaser does not notify the Company accordingly, the Purchaser shall not be entitled to reject the Goods and/or Services and the Company shall have no liability for such defect or failure, and the Purchaser shall be bound to pay the Contract Price as if the Goods and/or Services had been delivered in accordance with the Contract. The Company may in its absolute discretion consider any claims made outside of this period on a case-by-case basis.	8.3	Where the Purchaser's order either states a quantity or not and requires deliveries to be made against a schedule whether advised at the outset of the Contract or not the Purchaser agrees to continue to take delivery of, and pay for, all Goods in manufacture for a period of 3 (three) months or to a quantity not less than the equivalent of the forecast deliveries for the same period or to an agreed level whichever is the greater.
7.7	In the event of any valid claim under conditions 7.1 and 7.4 above being made by the Purchaser, the Company shall be entitled to replace or repair the Goods (or the part in question) or re-perform the Services free of charge or, at the Company's sole discretion, refund to the Purchaser the Contract Price (or a proportionate part of the price as appropriate) but the Company shall have no further liability to the Purchaser.	9.	<b>CONFIDENTIALITY AND INTELLECTUAL PROPERTY</b>
7.8	Subject to condition 7.10 and unless otherwise set out in any Special Conditions, in no event shall the Company's liability whether for breach of contract, strict liability or tort (including without limitation, negligence) or otherwise exceed the price paid for those Goods and/or Services.	9.1	The Purchaser and the Company shall each keep confidential and not disclose to any third party any information, specifications, drawings, technical descriptions, whether of a commercial or a technical nature concerning the Goods and/or Services or the business or affairs of the other, where such information was acquired in confidence from the other pursuant to or as a result of this Contract.
7.9	Subject to condition 7.10, the Company shall not be liable to the Purchaser for any:	9.2	Condition 9.1 shall not apply where a party is required to disclose the information by law or where the information is already in the public domain other than as a result of the default of the receiving party.
7.9.1	loss of profits, loss of use, loss of goodwill, loss of business opportunity or loss of anticipated savings;	9.3	The Company acknowledges that all Intellectual Property Rights existing in the Purchaser's Background IPR shall vest in the Purchaser (or its licensors).
7.9.2	injury to reputation;	9.4	The Purchaser grants a royalty-free, non-exclusive licence with the right to grant sub-licences to the Company to use the Purchaser's relevant Background IPR solely for the purpose of exercising its rights and/or performing its obligations under this Agreement.
7.9.3	third party losses;	9.5	The Purchaser acknowledges that all Intellectual Property Rights existing or in any way relating to the Company's Background IPR, the Goods and/or Services and any Foreground IPR shall vest in the Company, or its licensors (unless otherwise agreed in writing between the parties).
7.9.4	indirect, consequential or special loss or damage,	9.6	Unless otherwise agreed in writing, any jigs and/or tools made and/or procured by the Company and all drawings and information relating to, and Intellectual Property Rights in such tools or jigs are and shall

	remain the Company's property. The Purchaser undertakes that it shall not copy or make use of the same without the Company's prior written consent.		(otherwise than for the purposes of amalgamation or reconstruction); or
9.7	If any claim is made against the Purchaser that the Goods and/or Services infringes or that its use infringes the Intellectual Property Rights of any other person, the Company shall indemnify the Purchaser against all loss, damages, costs and expenses awarded against or incurred by the Purchaser in connection with the claim, or paid or agreed to be paid by the Purchaser in settlement of the claim, provided that:	10.1.3	an encumbrancer takes possession, or a receiver or administrative receiver is appointed, of any of the property or assets of the Purchaser; or
9.7.1	the claim does not result from any design, drawing, specification, instruction, plan or Background IPR provided by the Purchaser;	10.1.4	the Purchaser ceases, or threatens to cease, to carry on business; or
9.7.2	the Company is advised within 7 days of any claim made upon the Purchaser;	10.1.5	the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Purchaser and notifies the Purchaser accordingly.
9.7.3	the Company is given full control of any proceedings or negotiations in connection with any such claim;		
9.7.4	the Purchaser shall give the Company all reasonable assistance for the purposes of any such claim, or compromise any such proceedings without the consent of the Company (which shall not be unreasonably withheld);	11.	<b>GENERAL</b>
9.7.5	the Purchaser shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Company (which shall not be unreasonably withheld);	11.1	Purchaser shall not transfer, assign or otherwise part with all or any of its rights, interests or obligations under this Contract or transfer any of its obligations without the Company's prior written consent.
9.7.6	the Purchaser shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Purchaser may have in relation to such infringement, and this indemnity shall not apply to the extent that the Purchaser recovers any sums under any such policy or cover (which the Purchaser shall use its best endeavours to do);	11.2	The Company may sub-contract, assign and/or delegate all or any part of its rights, interests or obligations under this Contract.
9.7.7	the Company shall be entitled to the benefit of, and the Purchaser shall accordingly account to the Company for, all damages and costs (if any) awarded in favour of the Purchaser which are payable by or agreed with the consent of the Purchaser (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and	11.3	Nothing in this Contract shall prevent the Company from undertaking or offering to provide to third parties goods and/or services of a similar nature or designed to achieve the same results as the Goods and/or Services under this Contract.
9.7.8	without prejudice to any duty of the Purchaser at common law, the Company shall be entitled to require the Purchaser to take such steps as the Company may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Company is liable to indemnify the Purchaser under this clause.	11.4	Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing and sent by registered post 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.
10.	<b>TERMINATION</b>	11.5	The Company shall maintain in force comprehensive insurance policies including professional indemnity insurance cover and product liability insurance cover.
10.1	Without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel any Contract or suspend any further work or deliveries under any Contract without any liability to the Purchaser if:	11.6	No variation to these Conditions shall be binding unless made in writing specifying both which clause is to be varied and full details of such variation and signed on behalf of each of the Purchaser and the Supplier.
10.1.1	the Purchaser commits an irremediable breach of the Contract, persistently repeats a remediable breach or commits any remediable breach and fails to remedy it within 30 (thirty) days of receipt of notice of the breach requiring remedy of the same; or	11.7	The headings in these Conditions are for convenience only and shall not affect their interpretation.
10.1.2	the Purchaser 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	11.8	Each clause and sub-clause in these terms and conditions is separate and severable and enforceable accordingly.
		11.9	The remedies available to the parties shall not limit or exclude any other rights that either party may have against the other and a party's failure to enforce or rely on or delay in enforcing or relying on any right will not prevent that party from later enforcing or relying upon that or any other right.
		11.10	If a court or other regulatory body finds that any part of this Agreement is invalid or unenforceable, the remainder of the Agreement shall not be affected and shall be construed as if such invalid or unenforceable part did not exist.
		11.11	Nothing in any Agreement shall confer any rights upon any person who is not a party to it, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
		11.12	No waiver by the Company of any breach of the Contract by the Purchaser shall be considered as a waiver of any subsequent breach of the same or any other provision.
		11.13	The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales, provided that nothing in this condition shall prevent the Purchaser from taking any action in any foreign court where the Supplier is resident outside England and Wales.