

### **IMPORTANT**

All business is conducted and orders are only accepted subject to the Terms and Conditions. They contain important matters affecting rights and liabilities and you are advised to read them.

### **INTERPRETATION**

1. In these Conditions of Sale “the Company” means Zimmer and Peacock Ltd. or any of its subsidiary companies or brands and “the Customer” means the party to whom goods and services are sold or supplied by the Company. The subsidiary companies include Zimmer and Peacock AS and Zimmer and Peacock Inc.

### **THE CONTRACT**

2. The Terms and Conditions defined herein apply to contracts for the sale of goods or services provided by the Company. Unless otherwise expressly agreed in writing by the Company, these Terms and Conditions override any terms or conditions stipulated, incorporated or referred to by the Customer in its order or negotiations. The Terms and Conditions embody the entire understanding of the Company and the Customer and supersede any prior promises, representations, understandings or implications. No variation of these Terms and Conditions shall be effective against the Company unless expressly agreed in writing and signed by a Director of the Company.

### **QUOTATIONS**

3. A quotation has a validity period of 30 days from the date of issue. Notwithstanding acceptance of a quotation, no contract shall arise until the Company has issued a written sales order acknowledgement.

### **VARIATION OF PRICE**

4. The Company reserves the right to vary the quoted price: a) to add Value Added Tax or any other levy or duty which shall be payable by the Customer; b) to take account of the effects of adverse currency changes prior to order acknowledgement; c) to account for having to install the goods on more than one occasion; d) to account for the installation of the goods being interrupted, where the Company is not responsible for such interruptions; e) to account for delays by the Customer in providing information, instructions, licences, consents and other items necessary for supply or installation of the goods, where the Customer has been informed in advance in writing of the need for these items and their due date(s) and has had reasonable time to provide the items; f) to cover storage and other charges arising from any delay as in (e) above or from the Company’s inability to install the goods owing to the Customer’s failure to prepare the installation site in the manner referred to in Clause 24; g) to cover any special transport, handling or installation costs not included in the Quotation; h) to cover agreed variations to the deliverables or scope of work detailed in the Quotation.

5. Unless otherwise expressly mentioned, quotations are based on work being carried out during normal working hours. If overtime costs are incurred at the Customer’s request the Company reserves the right to make an additional charge in respect of such costs.

## **LITERATURE**

6. All illustrations, drawings and other information issued by the Company or contained in its catalogues, price lists, advertisements or any other publications must be regarded as guides only and any weights, dimensions, power, measurements, capacities, properties, colours and other particulars of goods, processes, equipment or materials are offered by the Company in good faith but no responsibility can be accepted for their accuracy except where otherwise specifically agreed in writing by the Company. Errors or omissions in such publications are subject to correction. The Company will supply the Customer with a set of relevant drawings and documentation ('Information'). Information is supplied only to enable the Customer to operate and maintain the Goods. The Information is provided on the express understanding that the Customer will keep it confidential and not use it to manufacture or have manufactured other than by the Company components, assemblies, additional complete systems or for any other purpose. The Customer will not disclose Information to third parties without the express written permission of the Company. Any information relating to the software or design of the systems supplied by the Company shall be treated as confidential.

## **PAYMENT**

7. A payment schedule is defined in the Quotation. Invoices will be raised according to the payment schedule. Payment of invoices is strictly within 30 days of the date of invoice.

8. Should the payment schedule defined in the Quotation require advanced payment prior to shipping, the Company will not despatch any goods until the payment schedule is satisfied.

9. In the event that payment of the full amount shown on any invoices is not made to the Company within 30 days of the date of the invoice, the Customer will be liable to pay interest on the amount unpaid at a rate of 8.0 per cent per month above UK base interest rate from the said due date until the date of actual payment. In addition, the Company shall have the right, by written notice within 14 days of the date when payment became due, either, to suspend all further work deliveries of goods and all installation work until the default be made good or, to rescind any or all the contracts between the Customer and the Company and to recover damages from the Customer for any resulting loss. The Customer shall have no right to withhold any such payments by reason of any set off or counterclaim in respect of any sums due from the Company to the Customer or any claim by the Customer against the Company for damages for whatever cause or on whatever grounds.

10. Notwithstanding delivery of the goods, title to the goods shall not pass to the Customer until all sums due or owing on any account whatsoever by the Customer to the Company have been paid in full or the goods cease to be identifiable as the Company's property by reason only of their conversion by the Customer into other products. Until such time the Customer holds the goods as Bailee of and in a fiduciary capacity for the Company and will: a) mark the goods conspicuously as being the property of the Company and ensure that such marking is not removed or obliterated; and b) deliver the goods up to the Company upon demand; and c) permit the Company or its agents to enter upon the Customer's premises in order to retake possession of the goods, properly identifying and showing

the goods to the Company or its agents.

11. The Customer undertakes to not use the goods for any commercial purpose until title has been transferred. If any such use is made, then the goods will be deemed to have been accepted in full and all monies due on final acceptance will be due.

12. When all amounts owing to the Company are paid, the Customer may freely use any hardware or software that is furnished as part of the Company's fulfilment of the Deliverables defined in the Quotation, subject to the following: (a) the Company (or its subsidiaries) is a licensee for intellectual property owned by various agencies, and where relevant, Customer use of Deliverables may be restricted in scope and scale by the terms of these licenses. The Company makes no warranty, either express or implied, that the products and/or methods embodied in the work performed and/or Deliverables do not infringe any patents or other property right owned by a third party.

13. Except as defined in Clause 12, no other right or license in or to any intellectual property or other proprietary rights of the Company are granted hereunder to Customer. The Company shall be under no obligation to provide or transfer to Customer or to any third party any of the technology of the Company, including without limitation any processes or procedures used in the manufacturing and fabrication of Deliverables.

#### **TERMINATION**

14. Termination of any order for whatever cause, after acceptance by the Company, can be made only with 4 weeks' notice with the Company's consent and only upon payment of all costs including pro rata profit incurred by the Company.

#### **TITLE**

15. Delivery of the goods shall be deemed to take place when the agreed INCOTERMS are fulfilled. The default Incoterms is Ex Works Horten, Norway. ZP will accept other terms upon negotiation.

16. All delivery dates are estimated. No guarantee of delivery is implied or offered. Any dates quoted for delivery of goods are intended as fair estimates only and are not a term of the contract. Failure to deliver goods by the quoted or specified time shall not be a ground for cancellation of the contract or refusal to take delivery of the goods or entitle the Customer to any claim by reason of such failure.

17. Should the Customer refuse, or be unable, to take delivery when the goods are ready to be delivered, the Company reserves the right to invoice the goods for payment as if it's part of the contract had been fulfilled and to make storage charges for goods remaining in its possession longer than two weeks after being ready for delivery.

18. The Company shall not be liable whether as Bailee or otherwise in respect of any goods which are stored prior to delivery either at the Customer's request or because of the Customer's default in relation to any of its obligations herein and the Customer shall bear the risk of any deterioration or damage caused during storage of the goods in these circumstances.

19. The risk in the goods passes to the Customer on delivery notwithstanding any subsequent return or retaking of possession by the Company of the goods.

20. The Customer acknowledges that it will insure, unload, store and place all the Company's goods

which are delivered to the site with no charge to the Company and will carefully protect the same from damage or loss until such time as installation is completed.

21. The Company reserves the right to make partial deliveries. Goods in each delivery or part delivery shall be considered sold under separate contract, which may be invoiced separately. Neither any non-delivery, nor shortages in delivery nor any claim by the Buyer in respect of any delivery or part delivery shall entitle the Buyer to reject any other goods.

#### **CARRIAGE**

22. Where the Zimmer and Peacock Ltd carrier is used, delivery is FCA (Incoterms 2010) to the delivery address as stated in the purchase order. A fixed charge will be applied to cover packing, handling, carriage and insurance from Horten, Norway; local charges/duties may be charged directly to the Customer by the carrier in addition to the Zimmer and Peacock Ltd. fixed charge. Where the Customer carrier is used, delivery is Ex Works (Incoterms 2010) from Horten, Norway to the delivery address as stated on the purchase order; a fixed charge may be applied to cover packing and handling; all other costs will be borne directly by the Customer.

#### **INSTALLATION AND SITE PREPARATION**

23. Unless otherwise agreed, the Company will install the goods at the site provided all necessary information relative to the installation of the goods, in particular the location of installation and all drawings and any other relevant details including all software interfaces, has been agreed between the Company and the Customer in good time to enable the installation to commence.

24. In cases where it has been agreed that the Company shall install the goods, the Customer shall, at its own expense: (a) prepare the site and provide all the facilities specified in information provided to the Customer by the Company prior to installation including, without prejudice to the generality of the foregoing, supplying electricity, water, gas, compressed air and adequate lifting gear, lighting and all reasonable working conditions; (b) provide the Company with proper access to the site, ensure the site is safe and certify the site to be free of chemical and biological hazards; (c) where requested by the Company the Customer will complete and provide permits to work to provide the Company with secure areas for storing materials and installation equipment.

25. The Company reserves the right to refuse to install the goods where in its opinion the site and/or access has not been prepared and/or provided according to Clause 24 and shall not in the event be liable for any loss, damage or additional expense arising from such non-compliance.

#### **INSPECTION**

26. If the Customer requires special tests to be made, then these must be agreed before acceptance of the Customer's order. If the Customer fails to attend these special tests within fourteen days of receipt of notice of readiness, the goods shall be deemed to have passed such special tests.

27. Where special tests involve handling or any form of processing of the Customer's materials or components, then the Customer shall supply representative samples of the materials or components

in suitable quantities free of Zimmer and Peacock Terms and Conditions Page 3 of 4 charge. If the representative samples deviate in any way from the specification agreed prior to acceptance of the Customer's order, then an additional charge shall be made by the Company to cover any expenses incurred by it in respect of any modifications it is required to make to the goods as a result of such deviation.

#### **EQUIPMENT SAFETY**

28. Owing to the variability of Customer requirements in respect of safety and other protective equipment, the Company limits itself to the provision of the safety systems defined in the System Specification. However, should local conditions, the relevant Inspector, or other requirements necessitate additional protection, the provision of such protection shall form an extra to the price payable by the Customer. The System Specification will be outlined in the Quotation or relevant technical note.

#### **CUSTOMER MATERIALS**

29. Materials or components supplied by the Customer for use on or in connection with any goods to be manufactured or supplied by the Company will be stored at the Customer's own risk, and the Company accepts no liability whatsoever for damage to any such item, or for any consequential damage or loss arising from their use.

30. The Customer will be required to supply the Company with a certificate of safety relating to any chemical or biological material supplied to the Company. The Customer will be responsible for the cost and disposal of all such materials supplied to the Company.

#### **WARRANTY AND LIMITATION OF LIABILITY**

31. Goods are supplied with a fixed period warranty of twelve months from despatch. This warranty does not apply to wetted parts or consumables, which are supplied with a one month warranty.

32. Warranty covers all deliverable hardware including spares from standard products, all deliverable software and firmware and all deliverable documentation.

33. The Company warrants the system supplied will meet the specifications for performance and functionality defined in the System Specification.

34. Any parts delivered that are deemed as 'custom parts', will not be supplied with a fixed warranty of twelve months. These parts may have a reduced warranty depending on the nature of the custom work. The Company will confirm the warranty of these parts prior to purchase order.

35. For the duration of the warranty period, the Company will either repair or modify, or at its option replace, free of charge, any goods or any part(s) which are found to be defective due to faulty workmanship, material or design, provided that: a) the Company is satisfied that the goods complained of are defective and b) the goods have been handled, stored, maintained, installed, operated or otherwise used in accordance with sound engineering practice and any instructions issued by the Company and c) the goods have not been subjected to any use other than that for which they were designed, have not been involved in any accident or subjected to any alteration, modification or re-siting not authorised, in writing, by the Company and d) that any modification,

alteration or re-siting so authorised by the Company has been carried out in accordance with sound engineering practice.

36. Any defective electrical or mechanical components replaced by the Company will be similarly warranted for a period of six months or until the expiry of the system warranty period, whichever is the longer.

37. The Company offers a range of enhanced Service and Support Plans, which offer cover in addition to the level specified above. Please contact the Company for further information on these plans.

38. The Company warrants that within the system warranty period, software or firmware will perform in accordance with the System Specification when used with the hardware. In any event, the Company makes no representation or warranty, express or implied, that the operation of the software or firmware will be uninterrupted or error free or that the functions contained in the software or firmware will meet or satisfy use outside of the System Specification. Software or firmware corrections, made during the warranty period, are warranted for a period of three months from the date shipped by the Company, or until expiry of the system warranty period, whichever is the longer.

39. The Company will rectify all faults in the system software and firmware that prevent the goods from functioning according to the System Specification, and will notify the Customer of changes to system and user documentation as appropriate.

40. In the event that any modifications of the software, firmware or hardware are performed by anyone other than the Company, the system warranty will be null and void. In addition, the Company will charge for any time up to the point of discovery of any such modification, and for all subsequent rectification work necessary to return the system to its warranted condition at charge-out rates pertaining at the time.

41. In no circumstances whatsoever shall the Company be liable to the Customer for loss of profit, revenue, contracts, anticipated savings or any other indirect or consequential loss.

42. In no circumstances whatsoever shall the Company be liable for any indirect or consequential loss suffered by the Customer whether caused by the Company's negligence, misrepresentation, breach of contract, warranty, the aforesaid warranty or otherwise.

43. Without prejudice to the aforesaid, in no circumstances whatsoever shall the Company's liability or the amount of any indemnity, damages or compensation payable by the Company on any claim or claims whatsoever concerning or relating, directly or indirectly to the goods supplied or their installation by the Company and including but not limited to claims based on negligence, misrepresentation, breach of contract, warranty or the aforesaid warranty, exceed in total the Company's invoice price of the goods or installation work complained of, excluding taxes.

44. Nothing in these Terms and Conditions is to be taken as excluding or restricting or as attempting to exclude or restrict the Company's liability for death or personal injury resulting from negligence as defined in the Unfair Contract Terms Act 1977.

45. The Customer acknowledges that: a) only by reference to and by reason of the aforesaid

limitations is the Company able or willing to offer goods and installation services at the prices quoted; b) it is the responsibility of the Customer to insure against any liability or risk not accepted by the Company under these Conditions of Sale.

#### **INDEMNITY**

46. The Customer shall indemnify the Company against all liability for damages, penalties, costs and expenses to which the Company may become liable in respect of: a) any words, description, trademarks, devices, and other matter printed at the Customer's request or specification on the goods; b) any adverse effects upon any other goods howsoever arising; c) any action by a third party against the Customer relating to any product or service arising from use of the Goods.

#### **DEFAULT OR INSOLVENCY OF THE CUSTOMER**

47. If the Customer fails to take delivery of any goods when required or makes default in or commits a breach of any of its obligations under this contract or any other order or contract with the Company or if any distress or execution or other legal process is levied upon any of the Customer's property, goods or assets or if the Customer commits any act of bankruptcy or, if, being a limited Company, the Customer goes into liquidation (other than for purposes of restructuring) or suffers the appointment of a Receiver of its undertaking property or assets or any part thereof, the Company may at any time thereafter be entitled to terminate this Contract and without prejudice to Zimmer and Peacock Terms and Conditions Page 4 of 4 its other rights the Company will be entitled to recover from the Customer any loss on resale of the goods comprised in this Contract.

#### **DEFAULT OR INSOLVENCY OF THE COMPANY**

48. If any distress or execution or other legal process is levied upon any of the Company's property, goods or assets or if the Company commits any act of bankruptcy or, if, being a limited company, the Company goes into liquidation (other than for purposes of restructuring) or suffers the appointment of a Receiver of its undertaking property or assets or any part thereof, then title to the goods will be transferred to the Customer pro rata to the amount already paid and the Customer may at any time thereafter be entitled to terminate this Contract.

#### **FRUSTRATION**

49. If either party is prevented or hindered from carrying out its obligations under the Contract by circumstances beyond its reasonable control, including strikes and lockouts, then, subject to notice in writing, the performance of such obligations shall be suspended for such time as the circumstances aforesaid last and the party affected shall not be liable for any delay occasioned thereby. Provided that if such delay shall extend for an unreasonable time, either party may by giving a further three months' notice in writing to the other party, terminate the contract and no liability shall by reason of such termination attach to either party save for any outstanding costs incurred by the supplying party incurred up to the point of termination – such costs being minimised wherever possible.

#### **PROPRIETARY RIGHTS**

50. The Company retains for itself all copyright, inventions, patent and other rights in all materials, designs, engineering details and other data pertaining to any of the goods supplied under this

contract.

51. Software defined in the Quotation and supplied by The Company under these Conditions of Sale will be licensed to the Customer exclusively for its own use and shall confer no other rights of ownership, replication or title.

#### **NOTICES**

52. All notices to be served in relation to these Terms and Conditions shall be in writing and delivered by hand, by email, sent by pre-paid first class post or by facsimile to the party's normal place of business or to such address as either party may from time to time specify. Notices sent by post shall be deemed received and take effect two days after the date of posting, and notices sent by facsimile one day after the date of transmission.

#### **GOVERNING LAW**

53. These Terms and Conditions and any questions, disputes or other matters relating to them or to any contract made subject to them shall be governed by and determined in accordance with the Laws of England.

54. These terms together with the Quotation, System Specification (where appropriate) and Acceptance Test Plan (where appropriate) constitute the entire agreement between the Customer and the Company and supersede any prior communications, whether verbal or in writing between the parties. The Company accepts liability only for items covered explicitly by the performance specification for the equipment to be supplied by the Company and excludes any information supplied prior to the date of this agreement.

#### **CONFIDENTIALITY**

55. The Parties agree that any information (financial legal business or technical) disclosed to it (the Receiving Party) by the other (the Disclosing Party) in connection with this Contract, which is marked confidential, shall be considered confidential and proprietary and the Receiving Party shall not disclose the same to any third party, other than contractors who have signed similar confidentiality undertakings with the parties, and shall hold it in confidence for a period of 5 years from the date of this

Agreement and will not use it other than as permitted under this Contract provided, however, that any information or data which is orally disclosed to the Receiving Party shall not be considered confidential and proprietary unless such oral disclosure is reduced to writing and given to the Receiving Party in written form within 10 days of oral disclosure thereof.

56. The obligation of confidentiality shall not be applicable to the extent: a) such information is general public knowledge, or becomes general public knowledge through no fault of the Receiving Party; b) such information can be shown by the Receiving Party to have been in its possession prior to receiving it from the Disclosing Party; c) such information can be shown to have been independently developed by the Receiving Party; d) such information is received by the Receiving Party from a third party not knowingly the subject of any obligation of confidence to the Disclosing Party; e) the disclosure of such information is required to comply with the law, Government Statute, or the securing

of regulatory approvals or is subject to privilege disclosure between either Party and their professional advisers; f) the existence of the contract is not confidential; g) the Company is free to photograph any work on the Company's premises and, with the Customer's approval, at the Customer's site.