CONDITIONS OF SALE

In these conditions the “Seller” means Eclipse Magnetics Limited. “Customer” means the purchaser of the Goods from the Seller. “Goods” means any goods agreed in the Contract to be supplied to the Customer by the Seller (including any part or parts for them). “Contract” means any agreement between the Seller and the Customer for the sale and purchase of Goods and/or Services, incorporating these conditions. “Services” means any services (including design services) agreed in the Contract to be supplied to the Customer by the Seller.

1. APPLICATION OF TERMS

1.1 The Contract shall be subject to these conditions, to the exclusion of all other terms and conditions including any the Customer attempts to apply. Any variation of the Contract shall have no effect unless expressly agreed in writing by the Seller

1.2 A Contract will only be binding:

1.2.1 in the case of orders to be delivered within the United Kingdom, upon acceptance by the Seller of the Customer’s order; or

1.2.2 in the case of orders to be delivered outside the United Kingdom, upon whichever shall be the later of acceptance in writing by the Seller of the Customer’s order or notification to the Seller that any Letter of Credit (which the Seller may have requested prior to written acceptance of the order) has been opened and that any necessary export or import licence or exchange permit has been granted; and the following conditions shall be deemed to be incorporated into the Contract.

1.3 Each order or acceptance of a quotation by the Customer from the Seller shall be deemed to be an offer by the Customer to buy Goods and/or Services subject to these conditions.

1.4 Any quotation is given on the basis that no Contract shall come into existence until the Seller despatches an acknowledgement of order to the Customer. Any quotation is valid for a period of 14 days only from its date (unless otherwise specified), provided that the Seller has not previously withdrawn it. Quotations may be withdrawn or updated at any time by the Seller or may be issued subject to special conditions.

1.5 The quantity and description of the Goods and/or Services shall be as set out in the Seller’s quotation or acknowledgement of order.

1.6 Where stated in the quotation or acknowledgement of order, variations in the quantities of Goods supplied by the Seller from the quantities originally ordered by the Customer shall not exceed 10% either upwards or downwards. The Customer shall be obliged to pay for the actual quantities of Goods supplied as opposed to for the quantities originally ordered, and the price shall be adjusted accordingly.

1.7 Subject to paragraph 1.6 above, gauges, weights, chemical composition and analysis, quantities and sizes will so far as possible be adhered to but reasonable excesses and deficiencies thereof shall be accepted by the Customer, who shall not be entitled to reject any goods or to the replacement of any goods on the ground that they are not precisely as specified.

1.8 Unless otherwise specifically agreed all tests, test pieces, and inspections whatsoever required by the Customer will be charged extra. All tests and inspections (whether or not being tests of chemical composition) shall take place under the Seller’s standard testing arrangements and such tests shall be final. All tests are subject to analytical tolerances.

2. PRICES

2.1 Unless otherwise agreed by the Seller in writing, the price for the Goods and/or Services shall be the price set out in the Seller’s price list published on the date of delivery or deemed delivery, or as specifically quoted.

2.2 The price for the Goods shall be exclusive of any value added tax and all other sales tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Customer shall pay in addition when it is due to pay for the Goods and/or Services.

2.3 Quotations in a currency other than sterling are based on the rate of exchange fixed by the Seller at the time of acknowledging in writing the Customer’s order and unless otherwise stated the price may be subject to revision by the Seller up or down if any different rate of exchange is ruling at the date of invoice.

3. TERMS OF PAYMENT

3.1 Payment of the price is due in pounds sterling unless otherwise agreed.

3.2 Time for payment shall be of the essence.

3.3 No payment shall be deemed to have been received until the Seller has received cleared funds.

3.4 All payments payable to the Seller under all Contracts shall become due immediately on termination of any Contract despite any other provision.

3.5 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim or discount unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Customer.

3.6 If a Termination Event occurs or the Customer fails to pay the Seller any sum due under the Contract, the Seller may suspend work and delivery on all Contracts and the Customer shall be liable to pay interest to the Seller on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment. The Seller reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

3.7 Where Goods are to be delivered outside the United Kingdom, payment must be made against delivery of the Goods or shipping documents, FOB UK Port unless credit arrangements within the United Kingdom approved by the Seller have been made.

3.8 Subject to credit being approved, payment for Goods shall be made to the Seller within 30 days following the month of invoice. For projects, or where stage payments are agreed, payment for Goods shall be made to the Seller on the following terms:

3.8.1 60% of the price – on acceptance by the Seller of Customer’s order;

3.8.2 30% of price – on delivery of equipment to Customer’s site, or on notification by the Seller that it is ready to despatch the goods, whichever shall be the earlier.

3.8.3 10% of price – 30 days following commissioning of equipment and passing over of drawings, or 60 days following notification that the Seller is ready to despatch, whichever shall be the earlier. If credit is not approved, payment must be received in full by the Seller on acceptance of the Customer’s order.

3.9 Payment for Services shall be made to the Seller prior to the Services being delivered.

4. RISK AND TITLE TO GOODS

4.1 The Goods are at the risk of the Customer from the time of delivery.

4.2 Ownership of the Goods shall not pass to the Customer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of:

4.2.1 the Goods; and

4.2.2 all other sums which are or which become due to the Seller from the Customer on any account.

4.3 Until ownership of the Goods has passed to the Customer, the Customer shall:

4.3.1 hold the Goods on a fiduciary basis as the Seller’s bailee;

4.3.2 store the Goods (at no cost to the Seller) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Seller’s property;

4.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

4.3.4 maintain the Goods in satisfactory condition and keep them insured on the Seller’s behalf for their full price against all risks to the reasonable satisfaction of the Seller. On

request the Customer shall produce the policy of insurance to the Seller.
4.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:
4.4.1 any sale shall be effected in the ordinary course of the Customer's business at full market value; and
4.4.2 any such sale shall be a sale of the Seller's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.
4.5 The Customer's right to possession of the Goods shall terminate immediately if:
4.5.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
4.5.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Seller and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade or the Seller reasonably believes that any of the above is likely to occur; or
4.5.3 the Customer encumbers or in any way charges any of the Goods, (together "Termination Events").
4.6 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.
4.7 The Customer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
4.8 Where the Seller is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Seller to the Customer in the order in which they were invoiced to the Customer.
4.9 On termination of the Contract, however caused, the Seller's (but not the Customer's) rights contained in this condition 0 shall remain in effect.

5 WARRANTY: LIMIT OF RESPONSIBILITY
5.1 Where the Seller is not the manufacturer of the Goods, the Seller shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Seller.
5.2 The Seller warrants that (subject to the other provisions of these conditions) on delivery and for a period of 12 months from the date of delivery, the Goods shall:
5.2.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
5.2.2 be reasonably fit for any particular purpose for which the Goods are being bought if the Customer had made known that purpose to the Seller in writing and the Seller has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgement of the Seller.
5.3 The Seller warrants that the Services shall be provided with reasonable care and skill and, as far as reasonably possible, in accordance with any specification agreed in writing by the Seller.
5.4 The Customer shall not be liable for a breach of any of the warranties in condition 5.2 unless:
5.4.1 The Customer gives written notice of the defect to the Seller, and, if the defect is as a result of damage in transit to the carrier, within [2] days of the time when the Customer discovers or ought to have discovered the defect; and
5.4.2 The Seller is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Seller) returns such Goods to the Seller's place of business for the examination to take place there.
5.5 The Seller shall not be liable for a breach of any of the warranties in condition 5.2 if:
5.5.1 the Customer makes any further use of such Goods after giving such notice; or
5.5.2 the defect arises because the Customer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
5.5.3 the Customer alters or repairs such Goods without the written consent of the Seller.
5.6 Subject to condition 5.3 and condition 5.5, if any of the Goods do not conform with any of the warranties in condition 5.2 the Seller shall at its option repair or replace such Goods (or the defect part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Seller so requests, the Customer shall, at the [Seller's] expense, return the Goods or the part of such Goods which is defective to the Seller.
5.7 If the Seller complies with condition 5.6 it shall have no further liability for a breach of any of the warranties in condition 5.2 in respect of such Goods.
5.8 Any Goods replaced shall belong to the Seller and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the 12 month period.
5.9 A claim in respect of any defect or failure to comply with the specification or in respect of any delivery or instalment of any order or any part thereof shall not entitle the Customer to cancel or refuse delivery of or payment for any other order, delivery or instalment or any part of the same order, delivery or instalment.

6. DELIVERY
6.1 Unless otherwise agreed in writing by the Seller, delivery of the Goods shall take place at the Seller's place of business.
6.2 Any delivery dates specified in the Contract are approximate only and, unless otherwise expressly stated, time is not of the essence for delivery. The Seller will not be liable in any circumstances for the consequences of any delay in delivery or failure to deliver.
6.3 Subject to the other provisions of these conditions the Seller shall not be liable for any direct, indirect or consequential loss caused directly or indirectly by any delay in delivery (even if caused by the Customer's negligence) nor shall any delay entitle the Customer to terminate or rescind the Contract (or any further instalment) unless such delay exceeds [180] days.
6.4 The Seller may make delivery by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

7. NON-DELIVERY
7.1 The quantity of any consignment of Goods as recorded by the Seller on despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Customer can provide conclusive evidence proving the contrary.
7.2 The Seller shall not be liable for any non-delivery of Goods (even if caused by the Seller's negligence) unless the Customer gives written notice to the Seller of the non-delivery within five days of the date when the Goods would in the ordinary course of events have been received.
7.3 Any liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

8. DELAYED ACCEPTANCE

8.1 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or the Seller is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
8.1.1 risk in the Goods shall pass to the Customer (including for loss or damage caused by the Seller's negligence);
8.1.2 the Goods shall be deemed to have been delivered; and
8.1.3 the Seller may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

9. TERMINATION
If a Termination Event occurs the Seller may forthwith terminate all or any Contracts by notice in writing to the Customer.

10. LIMITATION OF LIABILITY
10.1 Subject to condition 5, condition 6 and condition 7, the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
10.1.1 any breach of these conditions;
10.1.2 any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
10.1.3 any representation, statement or tortuous act or omission including negligence arising under or in connection with the Contract.
10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
10.3 Nothing in these conditions excludes or limits the liability of the Seller:
10.3.1 for death or personal injury caused by the Seller's negligence; or
10.3.2 under section 2(3), Consumer Protection Act 1987; or
10.3.3 for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or 10.3.4 for fraud or fraudulent misrepresentation.
10.4 Subject to condition 10.2 and condition 10.3:
10.4.1 The Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
10.4.2 The Seller shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11 INTELLECTUAL PROPERTY RIGHTS
The Customer shall indemnify the Seller against all actions, costs (including the cost of defending any legal proceedings) claims proceedings, accounts and damages in respect of any infringement or alleged infringement of any patent, registered design, unregistered design, design right, copyright, trademark or other industrial or intellectual property rights ("IPR") resulting from compliance by the Seller with the Customer's instructions, whether express or implied.

12 FORCE MAJEURE
The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, the Customer shall be entitled to give notice in writing to the Seller to terminate the Contract.

13 PATTERNS, DIES, TOOLS, DRAWINGS AND EQUIPMENT
13.1 Where the Customer supplies patterns, dies, tools, drawings or equipment ("Customer Materials") the Seller shall be entitled to assume that the Customer has the right to grant the Seller permission to use the same and to assume that the same are in good condition, true to drawing and entirely suitable to the Seller's methods of production, and for the production of the goods ordered in the quantities required.
13.2 Whilst the Seller uses all reasonable endeavours to verify Customer Materials, no responsibility is accepted by the Seller for their accuracy.
13.3 All replacements, alterations and repairs to the Customer Materials shall be paid for by the Customer.
13.4 Where the patterns, dies, tools, drawings and equipment are not supplied by the Customer only those which are specially made by the Seller and separately charged to the Customer in full, shall, when paid for by the Customer become the property of the Customer. The Seller reserves all IPR in all materials (including drawings and specifications) it creates and supplies to the Customer.
13.5 Carriage on Customer Materials will be paid by the Seller in one direction only.
13.6 The Seller will take all reasonable care of the Customer Materials while in the Seller's possession but does not accept liability for loss or damage thereto, howsoever arising, except where neglect on the part of the Seller or its agents was the direct cause of loss or damage and in those circumstances the Seller's liability shall be limited to the actual cost of replacement or repair to the exclusion of all other expenses, consequential losses, loss of profits and other expenses, liabilities and losses howsoever arising.
13.7 The Seller reserves the right to destroy or otherwise dispose of patterns, dies, tools, drawings and equipment in its possession or custody (whether or not the property of the Customer) from which the Customer has not required goods to be made for a period of 12 months or more in the case of patterns and three years or more in all other cases.

14 GENERAL
14.1 The Seller shall be entitled to sub-contract any work relating to the contract without obtaining the consent of, or giving notice to, the Customer.
14.2 The Seller may assign the Contract or any part of it to any person, firm or company.
14.3 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.
14.4 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.
14.5 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
14.6 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
14.7 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
14.8 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
14.9 The Contract shall in all respect be governed by and construed in accordance with English Law ad the Customer hereby submits to the exclusive jurisdiction of the English courts.