



**ULTRATECH**  
INTERNATIONAL, INC.

# Ultra-Rapid Boom

## Terms & conditions

### 1. Definitions

In this document the following words shall have the following meanings: (i) "Agreement" means these Terms and Conditions together with the Proposal; (ii) "Customer" means the organization or person who purchases Goods and Services from Supplier; (iii) "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable; (iv) "Supplier" means UltraTech International, Inc.

All references to the Goods and Services ("Goods" or "Goods and Services") are to such Goods and Services supplied pursuant to an order issued by Customer ("Order") in reply and compliance with Supplier quotation, proposal or offer or agreement or other binding arrangement delivered by Supplier to the Customer prior to receiving the Order ("Proposal").

### 2. General

2.1 The terms herein shall govern the sale of Supplier's Goods and Services pursuant to any and Proposal and Order. All Orders for the purchase of Goods and Services from Supplier shall be accepted upon and subject to this Agreement, together with any in effect Proposal and documents described therein. No qualification of this Agreement whether contained in the Order or form of purchase, letters or other forms of communication issued by Customer, shall have any effect or shall vary any of the terms of this Agreement except insofar as expressly consented to by Supplier in writing.

2.2 All Orders received by Supplier from the Customer shall be in writing. Verbal or telephone orders will not be accepted.

2.3 In the event of a conflict between any Order and this Agreement or any Proposal, the terms of this Agreement or Proposal shall prevail. This Agreement shall also govern the packaging, transportation and delivery of all goods by Supplier to the Customer.

2.4 Supplier shall use its reasonable efforts to complete the services within estimated time frames but time shall not be of the essence in the performance of any services nor shall it be made of the essence by notice.

### 3. Price and payment

3.1 The Supplier's Proposal covers only the products and services specified therein. Any subsequent alteration by the Customer in the design, application, quantities or the specification and any suspension of work due to modified instructions, lack of instructions or incomplete drawings or specifications, will involve adjustment of the price if any costs are increased as a result.

3.2 If, in the course of executing any work involving the servicing of the goods, Supplier finds any defect that, in their opinion should be rectified without delay, Supplier will notify the Customer accordingly and seek his approval, in writing, to carry out such repairs. Only after receipt of such approval, in writing, will Supplier proceed with the necessary repairs that will be completed at the Customers' expense. All Supplier's documentation, marketing material and technical instructions or manuals will be provided in English.

3.3 Payment for Goods and Services supplied against an Order shall be made in full, without any set-off, in the currency of the Proposal. Payment shall be due and be quoting Supplier's invoice number and the Customer's name, to the Supplier's Account No. within the period and other details set forth in the Proposal. Supplier may charge interest on overdue invoices as set in the Proposal.

3.4 Title to the goods shall not pass to the Customer subject to Supplier receipt of payment in full.

### 4. Termination/cancellation

4.1 Any Order placed by the Customer shall not be binding upon The Supplier until accepted and confirmed by Supplier in writing.

4.2 Either party may terminate this Agreement forthwith by notice in writing to the other if: (i) the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the other party to do so; (ii) the other party commits a material breach of this Agreement which cannot be remedied under any circumstances; (iii) the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect; (iv) the other party ceases to carry on its business or substantially the whole of its business; or (v) the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.



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## 5. Delivery and risk

Supplier shall deliver the goods in accordance with Incoterms 2010 and the specific terms agreed in the Proposal. Supplier shall include delivery dates in good faith and shall make every endeavor to deliver within the stated time. No liability can be accepted for delay in delivery whatever the cause. Whilst every effort will be made by Supplier to effect dispatch and transportation in accordance with any pre-arranged shipment dates, no guarantee as to the date of shipment is to be implied and Supplier will not be liable for any loss or damage occasioned by delay in shipment howsoever caused. No failure on the part of Supplier, to make any shipment in accordance with this Agreement or any other arrangements, or any claim by the Customer in respect of such shipment or other arrangements shall entitle the Customer to reject the Order. Customer shall be responsible for obtaining and paying for all necessary import licences, permits or other approvals.

## 6. Customer's obligation

To enable the Supplier to perform its obligations under this Agreement the Customer shall: (i) Co-operate with the Supplier; (ii) provide the Supplier with any information reasonably required by the Supplier; (iii) Obtain all necessary permissions and consents which may be required before the commencement of manufacturing/ provision of services; (iv) Comply with such other requirements as may be set out in the order or otherwise agreed between the parties; and (v) where appropriate, arrange all necessary import procedures and licences to allow for the importation of the goods into the Customer's country.

## 7. Damage, shortage or loss

Unless otherwise stated in the Proposal, claims for damage or loss will only be accepted if it can be proved that such damage or loss occurred prior to the date in which pursuant to the applicable incoterms, the goods shall pass from the responsibility of the Supplier.

## 8. Warranty

- 8.1 This warranty extends only to the Goods and Services supplied or to be supplied by Supplier pursuant to a Proposal and a valid Agreement.
- 8.2 The Goods and Services will carry 12 (twelve) months Warranty, commencing on the date you receive the Goods and Services (the "Warranty Period"). During the Warranty Period, when maintained under and/or use in accordance with UltraTech's then current recommendations set forth in UltraTech's formal documentation and/or other written instructions ("Documentation"), the Goods and Services will materially correspond with UltraTech's Documentation, and will be free from material defects in design, material and workmanship (the "Warranty").
- 8.3 The Warranty is subject to: A complete review of written and video instructions about the use and handling of the Goods and Services, and provision of written confirmation issued by UltraTech's designated distributor (above and hereinafter: "Distributor"). It is Customer's sole responsibility to coordinate training session with a Distributor. Customer shall notify in writing UltraTech or the Distributor from which it has purchased the Goods and Services, of any Defect in the Goods and Services within the Warranty Period. For the purpose of these Terms of Warranty, "Defect" shall mean material non-compliance of the Goods and Services to the Documentation excluding the exceptions set below.
- 8.4 The Supplier's Warranty for the Goods and Services hereunder is limited to making good repair or replace, without charge to the Customer, of any Defected Goods and Services if such was reported within the Warranty Period, provided always that such defects are notified in writing to Supplier within fourteen days of their discovery and that the defective parts are promptly sent, carriage paid, to Supplier's premises.
- 8.5 The Customer will provide Supplier with copies of reports on the use and performance of the Goods and Services, in particular where such use and performance were subject to occurrence of fault in the goods and services.
- 8.6 Any defective Goods and Services shall be returned to UltraTech or its Distributor as the case may be. UltraTech shall examine the returned Goods and Services in a timely manner and issue preliminary findings to the Customer no later than 30 (thirty) days after receipt of the Defected Good and Services at its premises. UltraTech's sole and exclusive liability and Customer's sole remedy for breach of the Warranty is as set in section 8.4 above either the repair or replacement of the Goods and Services, free of charge to Customer, and to the extent such options are not applicable (at UltraTech's discretion) – provide credit for the respective Goods and Services.



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- 8.7 UltraTech's limited Warranty does not cover, and UltraTech shall not be liable for (i) Defects reported to UltraTech after termination of the Warranty Period, (ii) Goods and Services (or any part thereof) which has been stored, shipped, handled, used, installed, operated and/or maintained not in accordance with the Documentation and/or otherwise damaged due to abuse, misuse, accident, negligence or omission of or on behalf of the Customer (including improper storage and/or use of unsuitable components) or attempted repair; (iii) Goods and Services which has been altered or modified; (iv) Goods and Services which was damaged by causes beyond UltraTech's control (v) such Defects and faults caused by ordinary wear and tear.
- 8.8 In addition, due to the nature of the purpose of the Goods and Services, the Goods and Services is to be used under unusual (and in some cases extreme) environmental conditions, and customer's ability to use the Goods and Services, including, without limitation, the Goods and Services's efficiency when being used, may be influenced by and/or subject to various parameters, which cannot be foreseen and/or otherwise anticipated in advance. To the maximum extent permitted by law, UltraTech makes no representation, warranty, or guaranty as to the reliability, quality, suitability, or completeness of the Goods and Services. UltraTech does not represent or warrant that (a) the Goods and Services or its use will be uninterrupted or fault-free or free from Defects, or that (b) the Goods and Services will meet the customer requirements or expectations or needs, or that (c) the Goods and Services will completely block and/or contain an area which has been contaminated.
- 8.9 Customer assumes all risks resulting from the use of the Goods and Services, whether used singularly or combinations with other substances.
- 8.10 THE REPRESENTATIONS AND WARRANTIES EXPRESSLY GRANTED IN THIS WARRANTY ARE THE ONLY REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, MADE BY ULTRATECH, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ULTRATECH DISCLAIMS ALL OTHER WARRANTIES, LIABILITIES OR GUARANTEES, EXPRESS OR IMPLIED (INCLUDING BUT NOT LIMITED TO ANY NON INFRINGEMENT WARRANTIES OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), OF ANY NATURE WHATSOEVER, WHETHER ARISING IN CONTRACT, TORT, WRONGFUL ACT, NEGLIGENCE OF ANY DEGREE, STRICT LIABILITY OR OTHERWISE, WITH RESPECT TO THE GOODS AND SERVICES, SERVICES OR ANY PARTS THEREOF AND/OR WITH RESPECT TO ANY NON-CONFORMANCE OR DEFECT IN THE GOODS AND SERVICES, SERVICES AND/OR PARTS THEREOF.
- 8.11 The Supplier's warranties contained in this section 8 shall constitute Supplier's sole warranties including for latent and other defects and is in full exclusion of any warranty or liability whatsoever implied by common law, statute or otherwise as to quality of the goods, their fitness for any particular purpose, their merchantability or otherwise.

## **9. Confidentiality and data protection**

- 9.1 Any information which the Supplier discloses relating to the goods, which is not in the public domain at the time of disclosure, shall be confidential and shall not be disclosed to any third party. The Customer will keep strictly confidential; all information, models and drawings made available to the Customer by The Supplier and shall not use the same for any purpose detrimental to the interests of The Supplier. The Customer will not, without the written consent of The Supplier, make or have made or assist any third party to make anything similar to the goods. In any event nothing in any order will confer on the Customer any propriety right or interest in any name, trademark or design used by The Supplier in connection with the goods.
- 9.2 The Customer acknowledges and agrees that the details of the customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the supplier in connection with the provision of Products and Services under the Agreement.

## **10. Limitation of liability**

Except in respect of death or personal injury due to negligence or any willful misconduct for which no limit applies, the entire liability of the Supplier to the Customer in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, including any liability for any breach by Supplier or its agents of this agreement, or any other cause whatsoever, whether based on contract, tort or any other theory of liability, shall be limited to the price paid by the Customer to which the claim relates. In no event shall the Supplier be liable to the Customer or any other third party for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This limitation of liability shall apply even where such a loss was reasonably foreseeable or the Supplier had been made aware of the possibility of the Customer incurring such a loss. Nothing in this Agreement shall exclude or limit the Supplier's liability for death or personal injury resulting from the Supplier's negligence or that of its employees, agents or subcontractors.



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## 11. Intellectual property rights

- 11.1 All Intellectual Property Rights vested or related to the Goods and Services or any amendments, changes, alterations, enhancements, upgrades and updates thereto shall remain exclusively owned by and vested with Supplier.
- 11.2 All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Supplier, and the Customer shall do all that is reasonably necessary to ensure that such rights vest in the Supplier by the execution of appropriate instruments or the making of agreements with third parties.

## 12. Independent contractors

Supplier and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. The Supplier may, in addition to its own employees, engage sub-contractors to provide all or part of the services being provided to the Customer and such engagement shall not relieve the Supplier of its obligations under this Agreement.

## 13. Miscellaneous

- 13.1 ASSIGNMENT. The Customer shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Supplier.
- 13.2 SEVERABILITY: If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.
- 13.3 WAIVER: The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.
- 13.4 NOTICES: Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given in the quotation or order or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.
- 13.5 ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.
- 13.6 THIRD PARTIES. Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.
- 13.7 FORCE MAJEURE. Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.
- 13.8 BREACH. If the Customer fails to make any payment hereunder when it becomes due, or goes into liquidation, or becomes party to a merger or consolidation as a result of which its rights under this order pass to any other person, firm, corporation or authority, or is deprived of or disposes of its business or any part thereof, or commits any breach of the conditions of this order, The Supplier may without prejudice to its other rights and remedies cancel the order forthwith.



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13.9 LAW AND JURISDICTION. The construction, validity and performance of this Agreement and any Order shall be governed by Israeli law. This Agreement shall become valid when executed and accepted by Customer. This Agreement shall be construed in accordance with the laws of the State of Israel, without an application of the principles of conflicts of laws. Anything in this Agreement to the contrary notwithstanding, the Contractor shall conduct its business in a lawful manner and faithfully comply with applicable laws or regulations of the state, city or other political subdivision in which the Contractor is located. Any suit, action or proceeding with respect to this Agreement shall be brought exclusively in the competent courts of the State of Israel. The parties hereto hereby accept the exclusive jurisdiction and venue of the State of Israel courts for the purpose of any such suit, action or proceeding. The parties hereto hereby irrevocably waive, to the fullest extent permitted by law, any objection that any of them may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or Order or any judgment entered by any court in respect thereof brought in the State of Israel and hereby further irrevocably waive any claim that any suit, action or proceeding brought in in the State of Israel has been brought in an inconvenient form.