TERMS AND CONDITIONS OF SALE AND SUPPLY

1. Definitions: For the purposes of these Terms and Conditions of Sale and Supply ("Conditions"):

"Buyer" means the person, firm or company, which places an order for purchase of Products, and/or Services as identified in any such order or Proposal as the case may be.

"Contract" means the agreement between the Supplier and the Buyer arising as a result of the Buyer's submission of an order for the Supplier's Products and Supplier's written acceptance and/or, in the case of Services, an agreement between such parties for the provision of Services by Supplier, as constituted by a Proposal.

"Products" means goods supplied under any Contract including, where applicable, any Software.

"Proposal" means a proposal document signed by the Supplier and the Buyer describing Services to be provided to or for the Buyer, subject to these Conditions.

"Services" means any services, which the Supplier has agreed to provide to or for the Buyer under any Contract, as more fully described in the relevant Proposal.

"Supplier" means Brüel & Kjær Sound & Vibration Measurement A/S or any of its affiliates as named in any quotation or Proposal.

2. Basis of Sale: **THESE CONDITIONS SHALL TAKE PRECEDENCE OVER ANY TERMS AND CONDITIONS, WHICH APPEAR IN BUYER'S ORDER OR IN ANY DOCUMENTS INCORPORATED BY REFERENCE IN BUYER'S ORDER.** No term or condition of the Buyer's order additional to or different from these Conditions shall become part of any Contract unless explicitly agreed to in writing by the Supplier. Receipt by the Buyer of any products delivered by the Supplier, receipt by the Buyer of any services performed by the Supplier or payment by the Buyer of any invoice rendered hereunder, shall be conclusively deemed acceptance of these Conditions. The Supplier's failure to object to any provision contained in any communication from the Buyer shall not be construed as a waiver of these Conditions or as an acceptance of any such provision.

3. Quotations: Prices, specifications and dates for delivery referenced in the Supplier's quotations are for information purposes only and shall not be binding on the Supplier until all technical requirements have been agreed and the Supplier has accepted the Buyer's order. Quotations terminate if not accepted by the Buyer within 90 calendar days from the Buyer's receipt of the quotation in question.

4. Orders: By submitting an order to the Supplier, the Buyer agrees to be subject to these Conditions in their entirety, cf. Section 2. All orders must be bona fide commitments showing definite prices and quantities and mutually agreed shipping dates. No order, whether or not submitted in response to a quotation by the Supplier, shall be binding upon the Supplier until accepted in writing by the Supplier.

5. Prices, Taxes and VAT: The prices for Products shall be the price quoted by the Supplier to the Buyer, and the fee for Services shall be the fee agreed in the Proposal or, in either case, as otherwise agreed between the parties in writing. Prices do not include taxes, transport charges, insurance, exports and/or import charges and VAT, including duties and levies, which taxes may, in the Supplier's discretion, be added by the Supplier to the sales price or billed separately and which taxes shall be paid by the Buyer.

6. Shipment and Delivery:

6.1 The Supplier shall deliver the Products FREE CARRIER (FCA INCOTERMS 2000) Supplier. **ANY DATES QUOTED BY THE SUPPLIER FOR DELIVERY OF PRODUCTS ARE APPROXIMATE ONLY AND THE SUPPLIER SHALL NOT BE LIABLE FOR ANY DELAY IN DELIVERY OF PRODUCTS HOWSOEVER CAUSED.**

6.2 The Supplier reserves the right to make delivery by instalments and to tender a separate invoice in respect of each instalment. When delivery is to be by instalments or the Supplier exercises its right to deliver by instalments a delay in the delivery of in any one or more instalments or the delivery of a non-conforming delivery for whatever reason will not entitle the Buyer to damages or to treat the Contract in whole or in part as repudiated.

7. Risk and the Passing of Property:

7.1 Risk of loss and damage to the Products shall pass to the Buyer when the Products are delivered in accordance with Section 6. Any claims for loss, damage or misdelivery shall be filed with the carrier (if any) and notified to the Supplier. All products shall be deemed finally inspected and accepted within ten days after delivery unless notice of rejection is given in writing to the Supplier within such period.

7.2 **THE SUPPLIER RESERVES THE RIGHT OF OWNERSHIP (IN DANISH "EJENDOMSFORBEHOLD") TO ANY DELIVERY UNTIL THE PURCHASE PRICE HAS BEEN PAID IN FULL.**

8. Services:

8.1 The Supplier shall provide Services in accordance with these Conditions and the terms of the relevant Proposal.

8.2 The Buyer shall, upon the Supplier's request and otherwise as required, provide the Supplier with all necessary information and materials for the Supplier to provide its Services and the Buyer will be responsible for the completeness and accuracy of all such information and materials.

9. Terms of Payment:

9.1 Each shipment shall be a separate transaction and the Buyer will be invoiced on delivery. In respect of Services the Supplier shall be entitled to invoice the Buyer in advance. Unless otherwise stated in the Supplier's invoice, terms of payment shall be net thirty (30) days from date of invoice.

9.2 All amounts due under a Contract shall be paid in full by the Buyer without deduction, withholding, set-off or counterclaim for any reason whatsoever.

9.3 The Supplier may, in its sole discretion, determine at any time that the Buyer's financial condition requires full or partial payment in advance or other assurance of payment satisfactory to the Supplier and, if such requirement is not met, cancel the order or any part thereof and receive reasonable cancellation fees.

9.4 If the Buyer fails to pay any payment due hereunder when due, the Supplier shall (at its option) be entitled: (i) to treat the Contract repudiated by the Buyer or (ii) to affirm the Contract. Furthermore, the Supplier may suspend or cancel further delivery of Products and/or the provision of Services or any part thereof under that Contract or any other Contract and claim damages and/or receive reasonable cancellation fees and recover, in addition to the payment, interest thereon at the rate of one point five percent (1.5%) per month.

10. Force Majeure: The Supplier shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any event beyond the control of the Supplier, including but not limited to, war, sabotage, insurrection, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof, judicial action, labour dispute, accident, fire, explosion, floods, storm, shortage of labour, fuel, raw material or machinery or technical failure where the Supplier has exercised ordinary care in the prevention thereof. If any such contingency occurs, the Supplier may allocate production and deliveries among the Supplier's customers.

11. Products: The Supplier may modify specifications provided the modifications do not adversely affect the performance of the Products to be supplied under the Contract. In addition, the Supplier may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by government authority, or non-availability of materials from suppliers. All descriptions, illustrations and any other information relating to the Products contained in the Supplier's catalogues, brochures, price lists, advertising material and any sales or other particulars or literature are made by way of general description, are approximate only and for the general guidance and information of the Buyer. They shall not constitute warranties or representations by the Supplier nor shall they form part of any Contract.

12. Software: The Supplier shall at all times have and retain title and full ownership of all software, firmware programming routines, and documentation thereof supplied by the Supplier for use with the equipment, and of all copies thereof made by the Buyer (collectively "Software"). The Supplier grants the Buyer a non-exclusive and non-transferable license to use such software solely for use with the equipment.

13. Intellectual Property Rights:

13.1 Notwithstanding delivery of and the passing of title in any Products and subject to Section 12 and 13.3, nothing in these Conditions or any Contract shall have the effect of granting or transferring to, or vesting in, the Buyer any intellectual property rights in or to any Products and/or Services.

13.2 The Buyer acknowledges and agrees that all property, copyright and other intellectual property rights in any work or tangible deliverable item arising from or created, produced or developed by the Supplier under or in the course of provision of any Services (the "Works"), wherever in the world enforceable, including without limitations all right title and interest in and to the Services and all documents, data, drawings, specifications, articles, sketches, drawings, reports, inventions, improvements, modifications, discoveries, tools, scripts and other items relating thereto shall immediately upon creation or performance vest in and shall be and remain the sole and exclusive property of the Supplier and the Buyer shall acquire no right, title or interest in or to the same except as expressly stated in these Conditions.

13.3 The Supplier grants to the Buyer a non-exclusive, non-transferable licence to use such of the Works as are necessary, and to the extent necessary, for the Buyer to obtain and utilise the intended benefit of the Services.

13.4 If any claim is made against the Buyer that the Products or Services infringe any patent, copyright or other rights subsisting in Denmark of any third party, the Supplier shall indemnify the Buyer against all losses, damages, costs and expenses awarded against, or incurred by, the Buyer in connection with the claim or paid, or agreed to be paid, by the Buyer in settlement of the claim provided that: (i) the Supplier is given full control of any proceedings or negotiations in connection with any such claim; (ii) the Buyer shall give the Supplier all reasonable assistance for the purposes of any such proceedings or negotiations; (iii) except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Supplier; (iv) the Buyer shall do nothing which would or might vitiate any insurance policy or cover which the Buyer may have in relation to such infringement and shall use its best endeavours to recover any sums due there under and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy

or cover; (v) the Supplier shall be entitled to the benefit of, and the Buyer shall accordingly account to the Supplier for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and (vi) the Supplier shall be entitled to require the Buyer to take such steps as the Supplier may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Supplier is liable to indemnify the Buyer under this Section, and the Supplier may, at its expense and option, either (a) procure for the Buyer the right to continue using said Product, (b) replace the said Product with a suitable non-infringing product, (c) suitably modify said Product, or (d) refund the purchase price of said Product, less depreciation at twenty percent (20%) per year.

13.5 The Supplier shall have no obligation or liability under Section 13.4 insofar as the infringement arises from: (i) any additions or modifications made to the Products and/or Services in question, otherwise than by the Supplier or with its prior written consent; (ii) any information provided by the Buyer to the Supplier including without limitation any specification; (iii) performance by the Supplier of any work required to any Products, or performance of any Services, in compliance with the Buyer's requirements or specification; (iv) a combination with or an addition to equipment not manufactured or developed by the Supplier; or (v) the use of Products beyond that scope established by the Supplier or approved in writing by the Supplier.

13.6 THIS SECTION 13 STATES THE ENTIRE LIABILITY OF THE SUPPLIER AND THE EXCLUSIVE REMEDY OF THE BUYER WITH RESPECT TO ANY ALLEGED INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS BELONGING TO A THIRD PARTY ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF ANY CONTRACT. This Section 13 shall be subject to the limits of liability in Section 14.

14. Liability

14.1 The Supplier warrants that all Products is free from defects in material and workmanship under normal use for a period of one year from the date of delivery to the Buyer save that operation of the Software may not be completely uninterrupted or error free. The Buyer shall be responsible for determining that the Product is suitable for the Buyer's use and that such use complies with any applicable law.

14.2 The Buyer shall notify the Supplier in writing of any claimed defect in the Product immediately upon discovery and any such Product shall be returned at the Buyer's risk to the Supplier, transportation charges prepaid, no later one year from date of delivery.

14.3 The Supplier shall not be responsible for any breach in respect of Products supplied if: (i) the Buyer makes further use of such Products after giving the notice required in Section 14 (1); (ii) the defect or failure arises from the Buyer's own fault; (iii) the defect arises from any drawing, design or specification supplied by the Buyer or from other materials or other property supplied by the Buyer or from failure to supply such information or property, or from any parts or items that have not been completely manufactured by the Supplier; and (iv) the defect arises out of the use of the Products in conjunction with products or materials not reasonably contemplated by the Supplier.

14.4 If a Product is determined to be defective, the Supplier shall at its option (i) repair or replace such defective Product, and the Supplier shall have reasonable time to make such repairs or to replace such Product or to (ii) grant the Buyer a fair proportionate price reduction for the delivery in question. Any repair or replacement of Product shall not extend the period of one-year notice of defect.

14.5 The Supplier shall perform the Services substantially in accordance with the Proposal and with reasonable skill and care. Services which do not substantially conform with the Proposal and which are notified to the Supplier within 10 days of the Buyer becoming aware of the same, and in any event no later than 3 months after the date on which the Services were performed, shall, if the Supplier agrees they were non-conforming, be re-performed as soon as reasonably practicable after the Supplier's receipt of notice of the non-conforming Services. If the Supplier fails to rectify any deficient performance of the Services, the Buyer's sole remedy shall be reimbursement of that portion of the fees attributable to the Services concerned.

14.6 If the Buyer fails to pay when due any portion of the purchase price or any other payment required from the Buyer to the Supplier under this Contract or otherwise, all warranties and remedies granted under this Section 14 may, at the Supplier's option, be terminated.

14.7 The Supplier shall not be liable for damage to property caused by a defect in a Product, including damage to products produced by the Buyer or to products of which the Product form a part, or for damage to property, which the Buyer's products cause due to a defect in the Product. To the extent the Supplier incurs liability towards a third party, the Buyer shall hold the Supplier harmless to the same extent, as the Supplier's liability is limited according to this Section 14. In case of personal injury caused by the Product and in case of damage to property usually intended for non-commercial use, the provisions of the Danish Product Liability Act (in Danish "Produktansvarsloven") shall apply.

14.8 Any claim arising out of or in connection with a Contract must be commenced against the Supplier within one (1) year of (i) delivery of the Products, or (ii) provision of the Services (as applicable), giving rise to the claim, and the Supplier shall have no liability to the Buyer under or in connection with any claim commenced after such time.

14.9 **THE SUPPLIER'S MAXIMUM AGGREGATE LIABILITY INCLUDING THE REMEDIES GRANTED IN SECTION 14.4 UNDER OR IN CONNECTION UNDER ANY CONTRACT SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PRODUCT IN QUESTION, OR IN RESPECT OF SERVICES THE AMOUNT PAYABLE BY THE BUYER UNDER THAT CONTRACT AND, IN RESPECT OF SERVICES CONTINUING BEYOND ONE YEAR, SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT PAYABLE BY THE BUYER IN RESPECT OF SERVICES THAT YEAR. IN NO EVENT SHALL THE SUPPLIER BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS, INCLUDING CLAIMS ARISING OUT OF THIRD PARTY ACTIONS, REGARDLESS OF WHETHER SUCH THIRD PARTY ACTIONS, OR ANY OTHER CLAIMS, LOSSES, OR DAMAGES, WERE REASONABLY FORESEEABLE TO BUYER OR SUPPLIER.**

15. Confidential Information: Each party undertakes to keep confidential, not use for its own purposes and not without the prior written consent of the other party disclose to any third party, any information of a confidential nature belonging or relating to the other party which may become known to it unless such information is or becomes public knowledge (other than by breach of this Section) or is required to be disclosed by order of a competent authority.

16. Rescheduling and Cancellation:

16.1 Orders accepted by the Supplier may be cancelled or rescheduled by the Buyer only with the written consent of the Supplier and upon payment of the Supplier's cancellation or rescheduling charges. The Supplier shall have the right without penalty or payment to cancel any order accepted (i) if the Buyer fails to make any payment when due to the Supplier under the Contract or any other contract with the Supplier, (ii) if any act or omission of the Buyer delays the Supplier's performance, (iii) if the Buyer violates any of these Conditions, or (iv) if the Buyer's credit becomes impaired; and in the event of such cancellation the Supplier shall be entitled to receive reimbursement for its reasonable and proper cancellation charges.

16.2 Without prejudice to Section 16.3, either party may terminate a Contract for Services by giving ninety days (90) written notice to the other party before the end of the term of the Contract.

16.3 Either party may terminate a Contract for Services immediately at any time by written notice to the other party if the other party commits a material breach of the Contract for Services which is incapable of remedy or which it fails to remedy within thirty days (30) of receiving written notice requiring it to be remedied.

16.4 Upon termination or expiry of any Contract for Services, each party shall, except to the extent permitted or required to exercise of perform its continuing rights, or obligations hereunder, return to the other party all property of the other party then in its possession, custody or control and shall not retain any copies of the same.

17. Insolvency of the Buyer: If: (i) the Buyer suspends its payments (in Danish "betalingsstandsning"), makes any composition or arrangement with its creditors (in Danish "tvangs- eller frivillig akkord"), enters into bankruptcy proceedings (in Danish "konkurs") or undergoes any analogous act or proceedings under an applicable foreign law; then, without prejudice to any other right or remedy available to the Supplier, the Supplier may treat any Contract as repudiated and/or withhold any further supply of Products and/or Services without any liability to the Buyer and, if any Products and/or Services have been supplied but not paid for, the price or fees shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

18. Non-Waiver: No waiver of any breach of these Conditions shall constitute a waiver of any prior or subsequent breach of any similar or dissimilar provision or a modification of the contract.

19. Applicable Law and Actions to Recover Damages: The contract shall be governed by and construed in accordance with Danish law (the United Nation's Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded) and all disputes arising in connection with the contract shall be submitted to the jurisdiction of the Danish Courts, but the Supplier shall be entitled to bring a claim against the Buyer in any court of competent jurisdiction. If any provision of these Conditions is held to be unenforceable, such holding shall not affect the enforceability of any other provision. Prior to commencement of any legal proceedings, the Buyer and the Supplier shall meet at a senior level to attempt to resolve differences. Notwithstanding any attempts to resolve differences or negotiations regarding such differences, any action brought by the Buyer against the Supplier arising out of this contract or the Buyer's purchase and use of the Product must be commenced within one year after such action accrues and in no event later than two years after date of shipment of such Product. Nothing in this Section 19 shall prevent any party from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief without provision of security.

20. Notices: All notices given under the contract shall be in writing. BKSV 2004