

1. GENERAL

- 1.1 All orders for products and services shown on the Pico Technology Limited ("**PICO**") websites at www.picotech.com and www.picoauto.com (the "**PICO websites**") and accepted by **PICO** are subject to these terms and conditions of sale ("**T&Cs**"). No other terms will apply to the supply of products and services by PICO unless agreed in writing by an authorised signatory of PICO or expressly stated otherwise in these T&Cs. Customer's use of PicoLog Cloud is governed by the PicoLog Cloud Schedule (the "**Schedule**") which is incorporated into and forms a part of these T&Cs.
- 1.2 All descriptions of the products and services contained on the PICO website or otherwise communicated to any purchaser of such products or services (the "**Customer**") are illustrative only and shall not form any part of the contract between PICO and the Customer. PICO shall not be liable to the Customer for any errors or omissions on the PICO website, the PICO catalogue or other product advertisement.
- 1.3 PICO's acceptance of the Customer's order will take place when PICO sends an order acknowledgment to the Customer in writing confirming pricing and delivery dates (the "**Order Confirmation**") or when PICO dispatches the products or commences delivery of the services to the Customer (whichever occurs earlier), at which point a contract will come into existence between PICO and the Customer.
- 1.4 PICO is a business-to-business and business-to-consumer supplier. The PICO website is intended for use by business customers and by private individuals acting as consumers ("**Consumers**"). Notwithstanding the foregoing, nothing in these T&Cs shall affect the statutory rights of a Customer who deals as a Consumer.
- 1.5 The Customer's attention is drawn to:
- (a) condition 11 which sets out certain limitations of PICO's liability;
 - (b) condition 16.5 and the "**Mandatory Policies**"; and
 - (c) the Schedule.

2. PRICES

- 2.1 The prices of the products and services are as set out on the PICO website, from time to time. In the event of any conflict between prices for any products and services listed on the PICO website and prices listed in any catalogue, prices listed on the PICO website shall prevail.
- 2.2 The price of an ordered product or service will be as set out on the PICO website at the time of order acceptance by PICO, except for products or services ordered for delivery at a future specified date ("**forward orders**"). The price for forward orders may be varied by PICO after the date of order acceptance by written notice to the Customer.
- 2.3 Any typographical, clerical or other error or omission on the PICO website, any catalogue, acceptance of offer, invoice or other document or information issued by PICO shall be subject to correction without any liability on the part of PICO.
- 2.4 All prices exclude delivery, packing, shipping, carriage, insurance, VAT or any equivalent tax chargeable in the UK or elsewhere (where applicable) and other charges and duties which PICO will add at the rate applicable at the date of order acceptance. Importation and any related handling fees are the responsibility of the customer.

3. ORDERING

- 3.1 PICO:
- (a) reserves the right to decline to trade with any company or person;
 - (b) may decline to accept any order, whether or not payment has been received, by giving notice of non-acceptance to the Customer by telephone or email; and
 - (c) may cancel any order which has been accepted by giving notice of such cancellation to the Customer by telephone or email.

If PICO rejects or cancels an order for which payment has been taken, it will refund the amount to the Customer as soon as reasonably practicable.

- 3.2 PICO may provide substitute products where requested by the Customer, or where the product has been superseded by a later version. To the extent that orders cannot be fulfilled completely from stock, the unfulfilled balance will (at the Customer's option) either be put on back order to be fulfilled when PICO next has available stock or be cancelled and refunded to the Customer. If the Customer opts to cancel part of an order pursuant to this clause 3.2, it must notify PICO of such option within 14 days of the date PICO informs the Customer that that order cannot be fulfilled completely from stock. Partial shipments may incur additional importation and handling fees that are the responsibility of the customer.
- 3.3 The Customer must submit orders using the PICO stock numbers and the priced units used on the PICO website or in any PICO catalogue, and must specify which delivery option is required. Any confirmation of a previous order by the Customer must be marked 'CONFIRMATION ONLY' or otherwise clearly identified as a confirmation

to avoid duplication. If the Customer orders the wrong product or number of products, or duplicates orders, condition 12 will apply.

4. DELIVERY

- 4.1 Subject to any cancellation, substitution or non-fulfilment of the Customer's orders in accordance with condition 3, PICO will deliver the products specified in the Customer's order. PICO may use third party delivery agents to deliver products to the Customer.
- 4.2 Delivery options, and the prices for them, are as set out on the PICO website at the date of order or will be notified to the Customer at the time of order. If there is any conflict between delivery options and delivery prices for any products listed on the PICO website and in any catalogue, the delivery options and delivery prices listed on the PICO website shall prevail.
- 4.3 Delivery prices apply per order, irrespective of the number of products ordered. Delivery will be made to the delivery address indicated by the Customer at the time the relevant order was placed, unless otherwise agreed in writing.
- 4.4 PICO will aim to deliver products in accordance with the times and dates for delivery quoted on the PICO website or in the Order Confirmation (the "**Quoted Delivery Times**"), but Quoted Delivery Times are approximate only and PICO shall not be liable for the consequences of any delay in delivery. Time for delivery shall not be of the essence.
- 4.5 Delivery of certain products marked in any catalogue or on the PICO website as requiring special handling may (because of the nature of the products) take longer to be delivered.
- 4.6 If any delivery has not been made by the Quoted Delivery Time then, subject to the Customer notifying PICO of such delay, PICO will inform the Customer of the status of the delivery or the new expected delivery time. PICO may also, at its discretion, refund the total delivery charge to the Customer. If a revised delivery time is not acceptable PICO may also, at its discretion, offer an alternative delivery option. The remedies set out in this condition 4.6 are the Customer's exclusive remedies for late delivery.

5. INSPECTION, DELIVERY DELAYS AND NON-DELIVERY

- 5.1 The Customer must inspect the products as soon as is reasonably possible after delivery or collection. The Customer shall, within 14 days of the date of delivery or collection or, in the case of sub-condition (d) below, the Quoted Delivery Time or any updated estimated date for delivery, give notice to PICO in detail of:
- (a) any defect in the product that is apparent on reasonable examination. In this case PICO shall, at PICO's discretion, replace the products or refund the purchase price. In any event the Customer must refuse parcels delivered to it in a damaged condition;
 - (b) any shortfall in products delivered. In this case PICO shall, at PICO's discretion, deliver the undelivered products or refund the price of the undelivered products;
 - (c) any delivery of products not in accordance with the order. In this case PICO shall, at PICO's discretion, replace the products or refund the purchase price; and
 - (d) any non-delivery of the products (in which case the time limit is within seven days of the estimated dispatch date). In this case PICO shall, at PICO's discretion, deliver the undelivered products or refund the price of the undelivered products.
- 5.2 If the Customer fails to give the notice described in condition 5.1, the products shall be deemed to be, in all respects, in accordance with the order and free from apparent defects, and the Customer shall be deemed to have accepted the products accordingly. PICO's record of the products dispatched (including the quantity) shall be conclusive evidence of the products received by the Customer, unless proved otherwise by the Customer.
- 5.3 The remedies set out in condition 5.1 above are the Customer's exclusive remedies for non-delivery or short delivery of products, or for apparent defects in the products or delivery of products not in accordance with the order. PICO shall not be liable for any losses, consequential or otherwise, or for costs (including legal costs), expenses, liabilities, loss of profits, loss of productivity, business or economic loss, depletion of goodwill, damages, claims, demands, proceedings, judgments or otherwise arising from these circumstances.

6. PAYMENT

- 6.1 If PICO has not granted credit to the Customer, payment terms are cash with order.
- 6.2 PICO accepts Visa, Mastercard, Switch/Maestro, PayPal, and telegraphic transfer, in each case in sterling, euro or US dollars.
- (a) If paying by card, PICO will need the Customer's card number, security code and expiry date (also the start date and issue number for Switch) and the full name and address of the cardholder. Goods will be dispatched on receipt of payment.
 - (b) If paying by PayPal, the Customer should log into its PayPal account to send payment to PICO. Do not send PICO your PayPal login details. Goods will be dispatched on receipt of payment.

- (c) If paying by cheque, the Customer should request a pro-forma invoice so it can write a cheque for the correct amount including carriage. Goods will be dispatched after the cheque has cleared.
 - (d) If paying by telegraphic transfer, the Customer should request a pro-forma invoice with PICO's bank details against which to make payment. Seven to ten days should be allowed for the transfer to complete.
- 6.3 Credit terms (subject to satisfactory references and at PICO's absolute discretion) are available. If credit has been granted, on acceptance of a Customer's order, PICO will issue that Customer with an invoice. Such invoice will be sent by email in PDF format, unless otherwise agreed between PICO and the Customer. Unless otherwise notified to the Customer in writing, the Customer shall pay the amount shown in the invoice within 30 days of the date shown in the invoice. All payments must be made without any set-off, deduction or counterclaim.
- 6.4 If any sum is not paid on the due date for payment then, without prejudice to any other right or remedy, all sums then outstanding from the Customer will immediately become due and payable notwithstanding that such sums would not otherwise be due until a later date, and PICO may:
 - (a) apply a compensation charge as an estimate of administrative and other wasted costs incurred by PICO to the Customer of £40 for outstanding sums up to £999.99; £70 for outstanding sums between £1,000 and £9,999.99; and £100 for outstanding sums of £10,000 or more;
 - (b) charge the Customer interest from the due date until payment is made in full (both before and after any judgement) on the amount unpaid at a rate which is 4 per cent. per annum above the Bank of England base rate as set at 31 December for the period 1 January to 30 June inclusive in the following year and as set at 30 June for the period 1 July to 31 December inclusive, compounded monthly;
 - (c) terminate these T&Cs or suspend any further deliveries of product (whether ordered under these T&Cs or not) to the Customer; and/or
 - (d) stop any product in transit and make a storage charge for any undelivered product at its current rates from time to time.
- 6.5 PICO may, without prejudice to any other rights it may have, set off any liability of the Customer to PICO against any liability of PICO to the Customer.

7. RISK AND OWNERSHIP

- 7.1 Risk of loss of or damage to the products shall pass to the Customer on delivery at the address specified in condition 4.3, unless the Customer fails to take delivery of the products, in which case such risk shall pass to the Customer at the time when PICO or its agent has attempted to deliver the products.
- 7.2 Ownership of any product supplied shall not pass to the Customer until full payment of the purchase price of the product and of all other amounts owing to PICO has been received by PICO. If the Customer is late in paying any sum to PICO, then PICO shall be entitled to the immediate return of all products where ownership has not passed to the Customer. The Customer authorises PICO and its agents to inspect or recover any such products in such circumstance, and to enter any premises of the Customer for that purpose.
- 7.3 Until ownership of a product has passed to the Customer in accordance with condition 7.2, the Customer shall:
 - (a) hold that product on a fiduciary basis as PICO's bailee;
 - (b) store that product (at no cost to PICO) in satisfactory conditions and separately from all the Customer's other equipment or that of a third party, so that it remains readily identifiable as PICO's property;
 - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to that product; and
 - (d) keep that product insured on PICO's behalf for its full price against all risks with a reputable insurer to the reasonable satisfaction of PICO, ensure that that PICO's interest in that product is noted on the policy, and hold the proceeds of such insurance on trust and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 7.4 Demand for or recovery of the products by PICO shall not of itself discharge either the Customer's liability to pay the whole of the price and take delivery of the products or PICO's right to sue for the whole of the price.

8. PRODUCT AND AVAILABILITY INFORMATION

- 8.1 PICO reserves the right, without prior notice, to discontinue any product or to make design changes as part of its continuous programme of product improvement. The most up to date information on the availability and design of the products PICO supplies is available on the PICO website.
- 8.2 Unless otherwise confirmed in writing, nothing on the PICO website or in any PICO catalogue is to be taken as a representation of the source of origin, manufacture, or production of the products or any part of them.

9. WARRANTIES AND REMEDIES

- 9.1 For the purposes of this condition 9, "**Warranty Period**" means:

- (a) for automotive oscilloscopes and WPS pressure transducers, two years;
- (b) for all other USB oscilloscopes and USB data loggers, five years; and
- (c) for all other products, a minimum of one year (further details are available from PICO on request),

from delivery or collection. Extensions to the Warranty Period for an extra charge may be agreed by PICO and the Customer.

- 9.2 Pico warrants that during the Warranty Period no product purchased from PICO will be materially defective. In the event of any such product being materially defective, and subject to the provisions of condition 5 relating to defects apparent on delivery, PICO will, at its option, either replace or repair the product or refund the purchase price. The refund, if offered, shall be the lower of the original purchase price or the current purchase price of the relevant product.
- 9.3 PICO warrants that any service purchased from PICO referred to in condition 13 will be provided using reasonable care and skill. If any such service falls short of this standard, PICO will, at its option, either re-provide the service or supply to the Customer free of charge a substitute product in place of the defectively serviced product.
- 9.4 The warranties in conditions 9.2 and 9.3 shall not apply to any defect which arises from improper use, failure to follow the product instructions, or any repair or modification made without the consent of PICO.
- 9.5 The remedies set out in this condition 9 shall be the Customer's sole remedies for any breach of warranty and in respect of the supply or non-supply of products and/or services.
- 9.6 The availability of the remedies set out in this condition 9 is conditional on:
- (a) the Customer giving written notice to PICO of a material defect (in the case of a claim under the warranty at condition 9.2) or service standard shortfall (in the case of a claim under the warranty at condition 9.3) within 28 days of the time when the Customer discovers or ought to have discovered the material defect or service standard shortfall; and
 - (b) the Customer returning or disposing of the relevant products, or making them available for collection by PICO, in accordance with PICO's instructions and suitably packaged. For any returns, the Customer must obtain a returns number from PICO and quote this on all paperwork, and state the original invoice number in respect of the products and the nature of any claimed defect. If, in accordance with condition 9.2 a product: (i) is materially defective on delivery, and PICO instructs the Customer to return that product, the return of that product will be at PICO's cost; and (ii) becomes materially defective after delivery, and PICO instructs the Customer to return that product, the return of that product will be at the Customer's cost. In either case, the cost of returning a repaired product to the Customer will be at PICO's cost.
- 9.7 Where the Customer returns defective products otherwise than in accordance with these T&Cs, PICO may refuse such products and return them to the Customer at the cost of the Customer.
- 9.8 Any products which are replaced by PICO shall become the property of PICO. Title to replacement products shall pass to the Customer in accordance with the provisions of condition 7, and the period of the replacement product's warranty shall be the unexpired period of the Warranty Period for the first defective product.
- 9.9 The Customer shall have no remedy in respect of any untrue statement made to it upon which it relied in ordering products and/or services (unless such untrue statement was made fraudulently) other than any remedy it may have set out expressly in these T&Cs.
- 9.10 The Customer acknowledges that it is responsible for ensuring that the products and services it orders are fit for the purposes for which it intends to use them.

10. EXPORT CONTROL AND LIMITATIONS OF USE

- 10.1 Where a product is supplied for export from the United Kingdom, the provisions of this condition 10 shall override any other provision of these T&Cs.
- 10.2 Certain products sold by PICO are subject to export control regulations of the United Kingdom, the United States of America, the European Union and other countries ("**Export Laws**"). The Customer shall comply with such Export Laws and obtain any licence or permit required to transfer, export, re-export or import the products and shall be responsible for the payment of any duties arising therefrom.
- 10.3 The Customer shall not, directly or indirectly, sell, permit to be sold, dispose of, export, re-export or otherwise provide products to any country or entity in contravention of any sanction or embargo administered by the United Kingdom, the United States of America, the European Union or other country.
- 10.4 The Customer is responsible for ensuring compliance with all applicable export legislation, including determining the correct classification of an item at the time of any onward export.

11. LIABILITY

- 11.1 This condition 11 sets out the entire financial liability of PICO (including without limitation any liability for the acts or omissions of its employees, agents or sub-contractors) to the Customer in respect of:
- (a) any breach of these T&Cs (including, for the avoidance of doubt, the Schedule) howsoever arising; and

- (b) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising out of or in connection with these T&Cs (including, for the avoidance of doubt, the Schedule).
- 11.2 All warranties, conditions and other terms implied by statute or common law are excluded from these T&Cs (including, for the avoidance of doubt, the Schedule) to the fullest extent permitted by law.
- 11.3 Nothing in these T&Cs (including without limitation this condition 11) shall exclude or limit the liability of PICO for death or personal injury caused by the negligence of PICO or its employees, agents or sub-contractors, or for fraud or for fraudulent misrepresentation or anything else which cannot by law be limited or excluded.
- 11.4 Subject to conditions 11.2 and 11.3:
 - (a) PICO shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for: loss of profits; loss of business; depletion of goodwill or similar losses; loss of anticipated savings; loss of goods; loss of contract; loss of use; loss or corruption of software, data or information; or any special, indirect, consequential or pure economic loss, costs damages, charges or expenses; and
 - (b) PICO's total liability in contract, tort (including without limitation negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of
 - (i) these T&Cs or an order (excluding the Schedule) shall be limited to the price payable for the products and services under these T&Cs or the relevant order; and
 - (ii) the Schedule shall be limited to the Subscription Fee (as defined in the Schedule) paid during the 12 months immediately preceding the date on which the claim arose.

12. NO QUIBBLE RETURNS POLICY

- 12.1 The Customer may cancel an order or return a product where there is no fault with the product, subject to (i) PICO, if it so elects, recovering from the Customer the costs incurred by PICO in respect of such cancellation or return, and (ii) the Customer complying with the provisions of this condition 12.
- 12.2 In the event of cancellation of part of any order in accordance with condition 12.1, PICO may invoice the Customer any difference in selling price per unit applicable to the quantity actually dispatched up to the time of cancellation compared to the quantity ordered.
- 12.3 For Customers that are not Consumers, a processing charge may apply in respect of all products returned in accordance with condition 12.1.
- 12.4 If the Customer returns any product to PICO in accordance with condition 12.1, the Customer must:
 - (a) contact PICO to obtain a returns number (to be quoted on all relevant paperwork);
 - (b) return the relevant product within 14 days of the date of delivery (as stated on the delivery documentation) or collection of the relevant product;
 - (c) return the relevant product to PICO in its original condition and packaging and in a condition which will enable it to be immediately fit for re-sale;
 - (d) follow any specific instructions given by PICO on the PICO website or otherwise regarding the return of the relevant product;
 - (e) return the relevant product to PICO adequately packed and clearly labelled to the address advised by PICO; and
 - (f) quote the Returns Number (RMA) on the parcel being returned.
- 12.5 Where the Customer returns a product to PICO otherwise than in accordance with condition 12.4 above (for example, after the period for returns has expired or in an unfit state) PICO may return the product to the Customer at the Customer's expense or may apply a handling charge which reflects the actual cost of reprocessing which the Customer shall pay.
- 12.6 This returns policy excludes software, calibrated products, production packaging products, non-catalogue products, extended range products, specially manufactured products and any products marked as non-cancellable (NC) or non-returnable (NR). In addition, PICO will not accept returned electrostatic discharge (ESD) sensitive devices where the integrity of the original PICO ESD shielding packaging has been compromised e.g. the bag has been opened and resealed or multiple bags have been stapled together.
- 12.7 PICO accepts no responsibility for any loss of or damage to products in transit from Customer to PICO where PICO has not provided the collection services.

13. SERVICES

- 13.1 PICO offers services in respect of products. These services include: REPAIR, CALIBRATION, SOFTWARE UPDATE and any other services that the parties agree. PICO may quote a turnaround time target for these services, but PICO shall be under no liability if it fails to comply with such target. Except in respect of the REPAIR service, the product must be free from physical and electrical damage and from modifications (other than modifications detailed in the literature supplied with the product).

- 13.2 The following special conditions apply to repairs, calibration and software update services:
- (a) **REPAIRS:** The REPAIR service is subject to the availability of parts and may only be available if the product has not suffered excessive physical or electrical damage and is free from modifications (other than modifications detailed in the literature supplied with the product). Any instructions set out in the repair information/questionnaire supplied with the product in question must be complied with. PICO may at its absolute discretion either repair the product or replace it with a substitute product. Any Customer-generated software returned with a product will be erased or otherwise destroyed on receipt and PICO shall not be under any liability whatsoever in respect of any data contained in such software.
 - (b) **CALIBRATION:** PICO will check the product for compliance with the published specification at appropriate points, using working standards which are periodically verified and which are traceable to National Standards. When the laboratory reports a statement of conformity to a specification, it shall use guidance within document: ILAC G8:03. The acceptance limits applied will be derived from the manufacturer's specification or application standard (e.g. DIN, EEC, BS). If you require different acceptance limits please notify our sales team at point of order by emailing sales@picotech.com. The full details of the CALIBRATION service are as set out on the PICO website.
 - (c) **SOFTWARE UPDATE:** PICO will install the latest version of software. PICO will functionally check the unit to ensure software acceptance.
- 13.3 For the avoidance of doubt, PicoLog Cloud does not constitute a service for the purposes of this condition 13. Customer's use of PicoLog Cloud is governed by the Schedule.

14. **FORCE MAJEURE**

- 14.1 For the purposes of this condition 14, a "**force majeure event**" is any event beyond the reasonable control of PICO (including but not limited to strikes, lock-outs or other industrial disputes, traffic congestion, failure of a utility service or transport, the downtime of any external line, act of God, war, riot, civil commotion, disease, epidemic or pandemic, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, fire, flood, storm or PICO's inability to procure services, materials or articles required for the performance of the contract except at enhanced prices).
- 14.2 If PICO is prevented or restricted from carrying out all or any of its obligations under these T&Cs by reason of any force majeure event, then PICO shall be relieved of its obligations during the period that such event continues, and shall not be liable for any delay and/or failure in the performance of its obligations during such period. If the force majeure event continues for a period longer than 14 days, PICO may cancel the affected order or cancel the whole or any part of these T&Cs, without any liability to the Customer.

15. **INTELLECTUAL PROPERTY RIGHTS**

- 15.1 The Customer acknowledges that PICO or, as the case may be, any third-party rights owners, own the intellectual property rights in the products, any PICO Software (as defined below), the PICO website, the PICO catalogues, the catalogue content and the stock numbers, and that their whole or partial reproduction without PICO's prior written consent is prohibited.
- 15.2 PICO shall retain the property and copyright in all documents supplied to the Customer in connection with these T&Cs and it shall be a condition of such supply that the contents of such documents shall not be communicated either directly or indirectly to any other person, firm or company without PICO's prior written consent.
- 15.3 PICO does not warrant or give any assurance to the Customer that any products, software or services supplied or made available do not infringe the intellectual property rights of any third party.
- 15.4 PICO develops software (available on the PICO Website) for use in connection with its products ("**PICO Software**"). The Customer acknowledges that the PICO Software contains open source software developed and owned by third parties ("**Third-Party OS Software**"). Unless the Customer has accepted the terms of a separate "shrink-wrap" or "click-wrap" licence from PICO in relation to the PICO Software, the Customer hereby accepts a non-exclusive, non-transferable licence to use the PICO Software on the following conditions:
- (a) the Customer shall only use the PICO Software with PICO products or with data collected using PICO products;
 - (b) the Customer shall not copy, distribute, provide access over a network, translate, adapt, vary or modify the PICO Software without PICO's prior written consent;
 - (c) this licence is terminable by PICO on 28 days written notice;
 - (d) on or before the expiry of this licence, the Customer shall return to PICO or at its election delete all copies of the PICO Software in its possession;
 - (e) use of the Third-Party OS Software shall be subject to separate licensing terms between the Customer and the relevant third party ("**Third-Party Terms**"); and

- (f) PICO may treat the Customer's breach of any Third-Party Terms as a breach of the licence contained in this condition 15.4 which gives PICO the right to terminate such licence with immediate effect.

15.5 The parties agree that the provisions of the Schedule to these T&Cs shall govern the Customer's use of PicoLog Cloud.

16. COMPLIANCE WITH LAWS AND MANDATORY POLICIES

16.1 The Customer shall (and shall procure that persons associated with it or other persons who are providing goods or services in connection with these T&Cs shall) at its own expense comply with all laws and regulations relating to its activities under these T&Cs (including, but not limited to the Bribery Act 2010), as they may change from time to time, and with any conditions binding on it in any applicable licences, registrations, permits and approvals (the "Relevant Requirements").

16.2 The Customer shall:

- (a) not (directly or indirectly) induce any employee, agent or subcontractor of PICO to make any concession to or confer any benefit on PICO, refrain or withhold from doing any act, in return for any gift, money, or other inducement;
- (b) not do or omit to do any act that will cause or lead PICO to be in breach of any of the Relevant Requirements; and
- (c) promptly report to PICO any request or demand for any undue financial or other advantage of any kind received by the Customer in connection with these T&Cs.

16.3 The Customer is informed that:

- (a) PICO employees are not permitted to accept gifts of more than token value, loans, excessive entertainment or other substantial favours from any company or individual that does business with PICO or seeks to do so;
- (b) PICO employees are not permitted to solicit gifts or other favours from any company or individual that does business with PICO, or seeks to do so; and
- (c) entertainment of PICO employees is acceptable only if it has a justifiable business purpose. It should be of a reasonable nature and such that PICO's employees, agents or contractors, can reciprocate.

16.4 Financial restrictions on gifts and entertainment are contained in PICO's Anti-Bribery and Anti-Corruption Policy and further details are available on request.

16.5 The Customer shall comply with the Mandatory Policies as PICO may update them from time to time.

16.6 Any breach of this condition 16 shall be a material breach of these T&Cs which is incapable of remedy.

17. DATA PROTECTION AND CUSTOMER INFORMATION

Please refer to our privacy policy for more information about how we process your personal data (available at <https://www.picotech.com/privacy>).

18. CONFIDENTIALITY

18.1 Each party undertakes that it shall not at any time during the term of these T&Cs, and for a period of five years thereafter, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by condition 18.2.

18.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with these T&Cs. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this condition 18; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

18.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with these T&Cs.

19. TERMINATION

19.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate these T&Cs or, in the case of PICO suspend any further deliveries under these T&Cs without liability to the other party if:

- (a) where the terminating or suspending party is PICO, the ability of the Customer to accept delivery of the product is delayed, hindered or prevented by circumstances beyond the Customer's reasonable control;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party;
- (e) an application is made to court, or an order is made for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
- (f) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of that other party;
- (h) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent to or similar to any of the events mentioned in conditions 19.1(a) to 19.1(h) (inclusive);
- (j) the other party suspends ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (k) there is a change of control in the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010); or
- (l) the other party commits a material breach of these T&Cs (other than failure to pay any amounts due under these T&Cs) which breach is irremediable or (if that breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so.

19.2 For the purposes of condition 19.1(l), a “**material breach**” means a breach which has not been remedied within 14 days of the innocent party notifying the other party in writing of the breach and requiring its remedy.

19.3 Any provision of these T&Cs that expressly or by implication is intended to come into or continue in force on or after termination of these T&Cs shall remain in full force and effect.

19.4 Termination or expiry of any contract constituted by these T&Cs shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of these T&Cs which existed at or before the date of termination or expiry.

20. VAT AND TAXES

20.1 All sums payable under these T&Cs, or otherwise payable by any party to any other party under these T&Cs are exclusive of any VAT or any equivalent tax chargeable in the UK or elsewhere.

20.2 All taxes, charges, levies, assessments and other fees of any kind imposed on the purchase or import of the Products shall be the responsibility of, and for the account of, the Customer.

21. NOTICES

21.1 Any notice given to a party under these T&Cs shall be by email.

21.2 Any notice shall be deemed to have been received if delivered by email.

22. MISCELLANEOUS PROVISIONS

22.1 **Interpretation and severance.** If any part of these T&Cs is found to be unenforceable by any court or competent authority or would be found to be unenforceable if it were interpreted or construed in a particular way, then it is the parties' express intention that the relevant wording should be interpreted or construed so as to avoid such a finding and that, in the event of such a finding, the remainder of the provision in question shall be interpreted or construed to give it full effect. A reference to a day is a reference to a calendar day.

22.2 **No third-party rights.** No one other than a party to these T&Cs shall have any right to enforce any of its terms.

22.3 **Rights and Remedies.** Except as expressly provided in these T&Cs, the rights and remedies provided under these T&Cs are in addition to, and not exclusive of, any rights or remedies provided by law.

22.4 **Set off.** All amounts due under these T&Cs shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

22.5 **Assignment.**

- (a) The Customer shall not, without the prior written consent of PICO, assign, transfer, charge, sub-contract or deal in any other matter with all or any of its rights or obligations under these T&Cs.

- (b) PICO may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these T&Cs.
- 22.6 **No Variation.** No variation of these T&Cs shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 22.7 **Waiver.**
 - (a) A waiver of any right or remedy under these T&Cs or by law is only effective if given in writing and shall not be deemed to a waiver of any subsequent right or remedy.
 - (b) A failure or delay by a party to exercise any right or remedy provided under these T&Cs or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under these T&Cs or by law shall prevent or restrict future exercise of that or any other right or remedy.
- 22.8 **No Partnership or Agency.**
 - (a) Nothing in these T&Cs is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other party.
 - (b) Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 22.9 **Entire Agreement.**
 - (a) These T&Cs constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
 - (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these T&Cs. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these T&Cs.

23. GOVERNING LAW AND JURISDICTION

- 23.1 These T&Cs and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and interpreted in accordance with, the laws of England and Wales.
- 23.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these T&Cs or its subject matter of formation.

PICOLOG CLOUD SCHEDULE

1. DEFINITIONS

1.1 In this Schedule:

- (a) **"Authorised Users"** means those employees, contractors or agents of the Customer, or students or hobbyists that are permitted by the Customer to use PicoLog Cloud.
- (b) **"Customer Data"** means the data uploaded by the Customer or Authorised Users to PicoLog Cloud.
- (c) **"Data Protection Legislation"** means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).
- (d) **"PicoLog Cloud"** means the cloud-based data storage software application owned by PICO and its licensors which enables Authorised Users to upload, store and access data recorded from certain PICO products online via the internet.
- (e) **"PicoLog Cloud Premium Service"** means a premium version of PicoLog Cloud, the features, functionality and terms of which are described on the PICO Website and in the Pricing Terms. If the Customer has subscribed to the PicoLog Cloud Premium Service, references to PicoLog Cloud in this Schedule will be treated as references to the PicoLog Cloud Premium Service.
- (f) **"Pricing Terms"** means the document describing the pricing of the PicoLog Cloud Premium Service and made available to the Customer.
- (g) **"Subscription Fee"** means the subscription fees payable by the Customer to PICO in respect of the PicoLog Cloud Premium Service as set out in the Pricing Terms.
- (h) **"UK Data Protection Legislation"** means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

2. ACCESS TO PICOLOG CLOUD

- 2.1 Subject to the provisions of this Schedule, PICO hereby grants to Customer a non-exclusive, non-transferrable right, without the right to grant sublicences, to permit the Authorised Users to use PicoLog Cloud solely for the Customer's internal business operations or, in the case of students and hobbyists, internal, non-commercial research purposes.
- 2.2 The Customer shall not access, store, distribute or transmit any virus or any material during the course of its use of PicoLog Cloud that is illegal, obscene or causes damage or injury to any person or property.
- 2.3 The Customer shall not:
 - (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Schedule: (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of PicoLog Cloud in any form or media or by any means; or (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of PicoLog Cloud; or
 - (b) access all or any part of PicoLog Cloud in order to build a product or service which competes with PicoLog Cloud; or
 - (c) use PicoLog Cloud to provide services to third parties; or
 - (d) use PicoLog Cloud to run a single live data capture for more than 30 days.
 - (e) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make PicoLog Cloud available to any third party except the Authorised Users, or
 - (f) attempt to obtain, or assist third parties in obtaining, access to PicoLog Cloud other than as provided under this paragraph 2; or
 - (g) introduce or permit the introduction of, any virus into PICO's network and information systems.
- 2.4 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, PicoLog Cloud and, in the event of any such unauthorised use, promptly notify PICO.
- 2.5 The rights provided under this paragraph 2 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.
- 2.6 PICO may, on thirty days written notice, modify the terms of this Schedule. If the Customer objects to any such modifications, it may terminate this Schedule in accordance with paragraph 9.1(a).

3. CHARGES AND PAYMENT – PICOLOG CLOUD PREMIUM SERVICE

- 3.1 This clause 3 only applies if the Customer has subscribed for the PicoLog Cloud Premium Service.
- 3.2 The Customer shall pay the Subscription Fee to PICO in accordance with this clause 3 and the Pricing Terms.
- 3.3 Before accessing the PicoLog Cloud Premium Service, the Customer shall provide to PICO valid, up-to-date and complete credit card details or approved purchase order information acceptable to PICO and any other valid-up-to date and complete contact and billing details and, if the Customer provides:
- (a) its credit card details to PICO, the Customer hereby authorises PICO to bill such credit card; and
 - (b) if the Customer provides its approved purchase order information to PICO, PICO shall invoice the Customer,
at the frequencies and in the amounts specified in the Pricing Terms.
- 3.4 The Customer shall pay each invoice within 30 days after the date of such invoice.
- 3.5 If PICO has not received payment within 14 days after the due date, and without prejudice to any other rights and remedies of PICO, PICO may:
- (a) without liability to the Customer, disable the Customer's password, account and access to all or part of PicoLog Cloud Premium Service and PICO shall be under no obligation to provide any or all of PicoLog Cloud Premium Service while the payments concerned remain unpaid; and
 - (b) charge the Customer interest from the due date until payment is made in full (both before and after any judgement) on the amount unpaid at a rate which is 4 per cent. per annum above the Bank of England base rate as set at 31 December for the period 1 January to 30 June inclusive in the following year and as set at 30 June for the period 1 July to 31 December inclusive, compounded monthly.
- 3.6 All amounts and fees stated or referred to in this Schedule:
- (a) shall be payable in pounds sterling;
 - (b) are non-cancellable and non-refundable; and
 - (c) are exclusive of value added tax, which shall be added at the appropriate rate.
- 3.7 PICO shall be entitled to increase the Subscription Fees upon 90 days' prior notice to the Customer and the Pricing Terms shall be deemed to have been amended accordingly.

4. CUSTOMER DATA

- 4.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
- 4.2 Subject to paragraph 4.3, the Customer acknowledges and agrees that PICO shall have no liability or responsibility in relation to the loss, damage or destruction of Customer Data.
- 4.3 PICO shall follow its standard back-up procedures for Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against PICO shall be for PICO to use reasonable endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by PICO. PICO shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.
- 4.4 Without prejudice to clause 4.2, if PICO considers a PicoLog Cloud account to be dormant, PICO may, at its discretion, endeavour to notify the accountholder and take steps to freeze and delete any Customer Data.
- 4.5 PICO is permitted to run analytics processes using, among other things, Customer Data, metadata, access data and other information relating to and/or derived from the Customer's and Authorised Users' use of PicoLog Cloud ("**Analytics**"). Analytics will be aggregated and anonymised. Examples of how such Analytics may be used include: research and development, continuous improvement, performance optimisation and development of new products and services. For the avoidance of doubt, PICO owns all intellectual property rights in and in relation to data generated from Analytics.

5. PERSONAL DATA

- 5.1 The Customer will comply with all applicable requirements of the Data Protection Legislation. This clause 5.1 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 5.2 The parties acknowledge that:
- (a) if PICO processes any personal data on the Customer's behalf when performing its obligations under this Schedule, the Customer is the controller and PICO is the processor for the purposes of the Data Protection Legislation; and
 - (b) The Annex sets out the scope, nature and purpose of processing by PICO, the duration of the processing and the types of personal data and categories of data subject.
- 5.3 Without prejudice to the generality of paragraph 5.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to PICO for the duration

and purposes of this Schedule so that PICO may lawfully use, process and transfer the personal data in accordance with this Schedule on the Customer's behalf.

5.4 PICO shall, in relation to any personal data processed in connection with the performance by PICO of its obligations under this Schedule:

- (a) process that personal data only on the documented written instructions of the Customer unless PICO is required by the laws of the European Union and/or Domestic UK Law (where Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data ("**Applicable Laws**"). Where PICO is relying on Applicable Laws as the basis for processing personal data, PICO shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit PICO from so notifying the Customer;
- (b) not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled: (i) the Customer or PICO has provided appropriate safeguards in relation to the transfer; (ii) the data subject has enforceable rights and effective legal remedies; (iii) PICO complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and (iv) PICO complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- (c) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (d) notify the Customer without undue delay on becoming aware of a personal data breach;
- (e) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data (and for these purposes the term "delete" shall mean to put such data beyond use);
- (f) maintain complete and accurate records and information to demonstrate its compliance with this paragraph 5 and immediately inform the Customer if, in the opinion of PICO, an instruction infringes the Data Protection Legislation; and
- (g) ensure that persons who have access to and/or who are authorised to process personal data in connection with this Schedule are subject to a contractual confidentiality obligation (or are under an appropriate statutory obligation of confidentiality) in respect of such personal data.

5.5 Each party shall ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

5.6 The Customer consents to PICO appointing Microsoft and Auth0 as third-party processors of personal data under this Schedule (more information on these processors is available at the Customer's written request). PICO confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business and in either case which PICO confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and PICO, PICO shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this paragraph 5.6.

5.7 PICO may, at any time on not less than 30 days' notice, revise this Schedule by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Schedule).

6. DISCLAIMER

6.1 The Customer acknowledges and agrees that:

- (a) the Customer assumes sole responsibility for results obtained from the use of PicoLog Cloud, and for conclusions drawn from such use. PICO shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided PICO by the Customer in connection with PicoLog Cloud, or actions taken by PICO at the Customer's discretion;
- (b) all warranties, conditions and other terms implied by statute or common law are excluded from this Schedule to the fullest extent permitted by law; and
- (c) PicoLog Cloud is provided to the Customer on an "as is" basis.

7. CUSTOMER OBLIGATIONS

7.1 The Customer shall:

- (a) without affecting its other obligations under this Schedule, comply with all applicable laws and regulations in connection with PicoLog Cloud;
- (b) ensure that the Authorised Users use PicoLog Cloud in accordance with the terms and conditions of this Schedule and shall be responsible for any Authorised User's breach of this Schedule;
- (c) obtain and shall maintain all necessary licences, consents, and permissions necessary for PICO to perform its obligations under this Schedule (including licences, consents and permissions in relation to the Customer Data); and
- (d) be, to the extent permitted by law and except as otherwise expressly provided in this Schedule, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to PICO's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

8. PROPRIETARY RIGHTS

The Customer acknowledges and agrees that PICO and/or its licensors own all intellectual property rights in PicoLog Cloud. Except as expressly stated herein, this Schedule does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of PicoLog Cloud.

9. TERMINATION

9.1 Without prejudice to condition 19 of the T&Cs:

- (a) either party may terminate this Schedule without cause by giving 30 days written notice to the other party at any time;
- (b) PICO may terminate this Schedule immediately on written notice if the Customer breaches any provision of this Schedule; and
- (c) PICO may at its discretion suspend PicoLog Cloud without liability to the Customer at any time.

9.2 On termination of this Schedule for any reason:

- (a) all rights granted to the Customer under this Schedule shall immediately terminate and the Customer shall immediately cease use of PicoLog Cloud;
- (b) PICO may (at PICO's discretion) destroy or otherwise dispose of any of the Customer Data in its possession in a unless PICO receives, no later than ten days after the effective date of the termination of this Schedule, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data (if available). PICO shall use reasonable endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by PICO in returning or disposing of Customer Data.

ANNEX

Personal Data Processing Details

Processing	Detail
Scope and nature	Personal data will be processed in relation to PicoLog Cloud.
Purpose	To enable Authorised Users to set up PicoLog account; to facilitate secure login to PicoLog account
Duration	The term of this Schedule.
Types of personal data	PicoLog Cloud account setup details: name, address, telephone number(s); PicoLog Cloud account login details: username, password
Categories of data subjects	Authorised Users (employees, contractors and agents of Customers) with PicoLog Cloud accounts