

Mesophotonics Limited Terms and Conditions of Sale of Goods and associated services ("Conditions of Sale")



1. Definitions

"Company" means Mesophotonics Limited (registered number 04162222) whose registered office at Centre for Enterprise and Innovation, University of Southampton, Highfield, Southampton, Hampshire, SO17 1BJ.

"Contract" means any contract between the Company and the Customer for the sale and purchase of goods and/or services.

"Customer" means the person(s) or company whose Order is accepted by the Company.

"Goods" means any goods that the Company is to supply to the Customer under a Contract.

"Order" means any request made by a person or company to the Company for Goods or Services.

"Services" means any services that the Company is to supply to the Customer under a Contract.

2. Conditions

All Orders are accepted by the Company subject to and in accordance with these Conditions of Sale which constitute the whole agreement and understanding between the parties with respect to the Goods and/or Services and override and exclude any other terms stipulated or incorporated or referred to by the Customer during any negotiations or in any course of dealing between the Company and the Customer.

Each Order for Goods and/or Services by the Customer from the Company shall be deemed to be an offer by the Customer to purchase the Goods and/or Services subject to these Conditions of Sale. No Order placed by the Customer shall be deemed to be accepted by the Company until the Company issues a written acceptance or (if earlier) the Company delivers the Goods to the Customer or performs the Services.

Any quotation is given on the basis that no contract will come into existence until the Company issues an acceptance of Order to the Customer. Any quotation is valid only for a period of 15 days from its date, provided that the Company has not previously withdrawn it.

No variation to these Conditions of Sale is permitted unless expressly authorised in writing by a director of the Company.

The Customer acknowledges that it has not purchased the Goods and/or Services in reliance on any statement or representation, whether or not made by the Company, except in so far as the representation has been incorporated into these Conditions of Sale. The Customer irrevocably and unconditionally waives any right it may have to claim damages and/or to rescind these Conditions of Sale by reason of any misrepresentation (other than a fraudulent misrepresentation) not contained in these Conditions of Sale.

3. Prices

The price of the Goods and/or Services shall, unless otherwise agreed in writing, be exclusive of all freight delivery charges, duties and taxes. On acceptance of any Order and where the Company agrees to trade in Euro or US Dollars, it will specify an exchange rate for such Order. Prices charged for the Goods and/or Services will be those prevailing when an Order is accepted. The price for Goods delivered in instalments will be calculated at the time of acceptance of Order at for the total quantity ordered.

4. Discount for data feedback

The Customer will be entitled to such discount on the standard price of the Goods and/or Services as the Company may agree in writing subject to the Customer agreeing to provide to the Company, within 60 days of delivery, written feedback concerning the performance of the Goods (the "Feedback"). The type and quality of information to be included in the Feedback shall be agreed by the parties in writing but shall include without limitation any reviews of

the Goods by the Customer intended for publication. The Company shall be entitled to recharge any discount given under this clause 4 to the Customer if the Customer does not comply with the parties' agreement as regards the Feedback.

5. Payment

Payment of the price for the Goods and/or Services is due not later than 30 days from the date of the invoice in cleared funds or cash. If the Company receives payment within seven days of the date of the invoice the Customer shall be entitled to a 3% discount from the gross invoice amount. Subject to the foregoing, the Customer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer. If the Customer fails to make payment by the due date then, without prejudice to any other right or remedy, the Company shall be entitled to:

- i. cancel the Contract or suspend any further deliveries of Goods and/or further performance of the Services;
- ii. appropriate any payment made by the Customer to such of the Goods (or the Goods supplied under any other contract) as the Company may think fit; and
- iii. charge interest under the Late Payment of Commercial Debts (Interest) Act 1998.

Time for payment of all sums due by the Customer to the Company shall be of the essence.

Notwithstanding the foregoing, in respect of Customers domiciled, resident or based outside the UK, the Company reserves the right to either:

- i. request payment of the price in full for the Goods and/or Services prior to and as a condition of delivery and/or performance; or
- ii. secure the price for the Goods and/or Services by irrevocable letter of credit established by the Customer in favour of the Company in a form and with a bank satisfactory to the Company.

6. New accounts

A Customer wishing to open a credit account must furnish such information as requested by the Company and the Company will make a search with a credit reference agency. The Company reserves the right in its absolute discretion to grant, refuse or discontinue any credit facilities or reduce or suspend any credit limit at any time.

7. Orders

The Company reserves the right to decline to trade with any company or person and refuse to accept any Order.

8. Delivery

Unless otherwise agreed in writing, delivery of the Goods will be made ex-works (as that term is defined in Incoterms 2000 Edition) at the Company's premises at Chilworth Business Incubator, 2 Venture Road, Chilworth Science Park, Southampton, SO16 7NP, UK. The Company will use its reasonable endeavours to meet delivery estimates but in no circumstances shall it be liable for any direct, indirect, or consequential loss (all three of which terms include, without limitation, loss of profits and loss of business), costs, damages, charges or expenses caused directly or indirectly by any late delivery of the Goods, nor will any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 90 days. The Company reserves the right to deliver by instalments. Failure to meet a delivery date where deliveries are by instalment shall not preclude the Company's right to make further deliveries by instalment under the relevant Contract. The Customer may request delivery by instalments for a maximum period of 12 months from the date of the Order being accepted by the Company.

9. Inspection, defects and non-delivery

The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery, unless the Customer can provide conclusive evidence to the contrary. The Company will not be liable for any non-delivery of Goods unless written notice is given to the Company within 10 days of the date when Goods should have been delivered in the

ordinary course of events. Any liability of the Company for non-delivery or defective Goods shall be limited to replacing the Goods within a reasonable time or to refunding any monies already paid in respect of the Goods.

10. Returns

No Order can be cancelled or accepted for credit without previous written agreement from a director of the Company. The Customer must notify the sales office by telephone prior to returning any Goods. All returns of the Goods by the Customer must be to "Mesophotonics Limited, Chilworth Business Incubator, 2 Venture Road, Chilworth Science Park, Southampton, Hants, SO16 7NP," quoting both the Customer's account number and order number. Goods returned after 30 days as 'unwanted' or 'incorrectly ordered' shall only be accepted at the discretion of the Company however in such cases the Company reserves the right to charge an administration fee of 10% of the Order value. The Customer is responsible for returning Goods to the Company and for providing proof of delivery of such return. Goods will be returned at the Customer's expense. However, where Goods are proven to be defective the Company shall refund the cost of return of the Goods to the Customer.

11. Description

All technical specifications, (including but not limited to drawings, particulars of weights, dimensions and capacity) or other details relating to the Goods ("Technical Specifications") provided by the Company to the Customer are intended to give only a general idea of the Goods and the parties agree that such items will not form part of the Contract. The Company shall take all reasonable steps to ensure the accuracy of the Technical Specifications but accepts no liability in contract or tort or under statute or otherwise for any error or omission in such Technical Specifications whether caused by the Company's negligence or otherwise. The Company may make changes to the Goods at any time as part of a continuous programme of improvement or to comply with legislation.

12. Risk of ownership

The risk of damage to or loss of Goods will pass to the Customer when the Goods are delivered. Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due in respect of the Goods. Until ownership of the Goods passes to the Customer under this clause, the Customer must hold the Goods on a fiduciary basis as the Company's bailee. The Customer may resell the Goods before ownership has passed to it solely on the following conditions:

- i. any sale shall be effected in the ordinary course of the Customer's business at full market value; and
- ii. any such sale shall be a sale of the Company's property in the Customer's name but for the account of the Company and the Customer shall hold all funds it receives for such a sale on trust for the Company.

If payment is not received in full by the due date, or the Customer passes a resolution for winding up or a court shall make an order to that effect, or a receiver or administrator is appointed over any assets or the undertaking of the Customer or an execution or distress is levied against the Customer, the Company shall be entitled, without notice, to retake possession of the Goods and for that purpose to enter upon any premises occupied or owned by the Customer.

13. Performance and fitness for purpose

- (a) The Company offers no guarantees and makes no representations or warranties as to the performance of the Goods and/or Services.
- (b) Unless any performance figures, tolerances or characteristics ("Performance Specifications") have been specifically and expressly warranted by a director of the Company in writing to the Customer, the Company accepts no liability for any failure of the Goods to meet such figures, whether this failure is attributable to the Company's negligence or otherwise.
- (c) The responsibility for ensuring that Goods are sufficient and suitable for a particular purpose is the Customer's unless specifically stated in writing by a director of the Company.
- (d) Any advice or recommendation on Performance Specifications given by an employee of the Company which is not confirmed in writing by a director of the Company is acted on entirely at the Customer's risk and the Company shall not be liable for any such advice or recommendation.

- (e) Where paragraph (b) of this clause 13 applies, if any of the Goods and/or Services do not perform substantially in accordance with the Performance Specifications, the Company shall at its option repair or replace the Goods or re-perform the Services or refund any monies already paid in respect of the Goods and/or Services and any such remedy shall be the sole remedy available to the Customer.

14. Liability

- (a) To the maximum extent permissible by law, the Company shall not be liable for any damage, loss or expense resulting from the failure to give advice or information in relation to the Goods or the giving of incorrect advice or information whether or not due to the negligence of the Company, its employees agents or subcontractors.
- (b) These Conditions of Sale set out the entire liability of the Company to the Customer in respect of the Goods and/or Services and shall be in lieu and to the exclusion of all other warranties, representations, conditions, and other terms implied by statute or common law save for any implied terms which by law cannot be excluded.
- (c) Nothing in these Conditions of Sale excludes or limits the liability of the Company for: (a) death or personal injury caused by the Company's negligence; or (b) fraudulent misrepresentation.
- (d) The Company shall not be liable to the Customer for any indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever or for any loss of profit, loss of business, depletion of goodwill or otherwise (whether caused by the negligence of the Company, its employees, agents or subcontractors) which arise out of or in connection with any Contract.
- (e) The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise arising in connection with the performance or contemplated performance of this Contract shall be limited to the Contract price for the Goods and/or Services giving rise to the liability.

15. Intellectual property rights

- (a) The Company shall indemnify and hold harmless the Customer from all reasonable legal costs and liabilities to pay damages resulting from any claim that the use of the Goods infringes any third party's intellectual property ("Third Party Claim") subject to the Customer using reasonable endeavours to mitigate its loss and provided that:
 - i. the Customer has followed any guidance on the Goods issued by the Company from time to time and used the Goods only in accordance with their instructions for normal use;
 - ii. the Customer complies with clause 15(b); and
 - iii. the Company's liability under this clause shall not exceed the limit specified in clause 14(e).
- (b) The Company will, at its absolute discretion, have the right to defend any Third Party Claim, or require the Customer to conduct the defence of the Third Party Claim. If the Company requires the Customer to conduct the defence of a Third Party Claim, the Customer will:
 - i. keep the Company fully informed of the details of the defence;
 - ii. comply with all of the Company's reasonable demands in relation to the conduct of the defence; and
 - iii. not settle the Third Party Claim without the agreement of the Company, which may be granted or withheld in the Company's absolute discretion.
- (c) The Company does not agree to indemnify the Customer in any way for any claim relating to third party products or software.

16. Use of Personal Data

In the course of conducting its business, the Company collects and processes certain personal information about its Customers, business partners, prospects, suppliers and other business contacts. This might include an individual's name, business or home address, telephone number, e-mail address, credit card details and other information about the individual. The Customer hereby agrees that the Company may use and share such personal information within the Company, other companies within its group and in appropriate circumstances with other third parties in connection with this Contract Unless a Customer requests otherwise, the Company may send the Customer information about its products and services. The Customer may opt-out of receiving this information by contacting the Company on 023 8076 3752.

17. Export

The Customer is responsible at its own expense for obtaining any permission or licence in relation to such export transactions and for complying with any applicable export laws and regulations in force within the United Kingdom and in the country for which the Goods are destined. Certain Goods imported from the United States of America by the Company are subject to specific restrictions. The Company reserves the right not to supply certain customers or countries and to seek from the Customer full details of the end use and final destination of the Goods.

18. Euro

In the event that the UK changes to a single unified European currency (known as the Euro or otherwise), or agrees to the fixing of conversion rates between European Union member states, it will not have the effect of altering any term, or discharging or excusing performance under a Contract.

19. Force majeure

The Company shall not be liable to the Customer in any manner or be deemed to be in breach of any Contract because of any delay in performing or any failure to perform any of the Company's obligations under the Contract if the delay or failure was due to any cause beyond the Company's reasonable control (which shall include, but not be limited to any act of god, government actions, war, fire, explosion, flood, import or export regulations or embargoes, labour disputes or inability to obtain, or a delay in obtaining supplies, of goods or labour) ("Event of Force Majeure"). If the Company suffers an Event of Force Majeure, the Company will notify the Customer once its performance of its obligations under the Contract are no longer prevented due to the Event of Force Majeure. If the Event of Force Majeure continues for a period of 60 days or more, either party may terminate the Contract immediately on written notice to the other, provided such Event of Force Majeure is continuing at the date of termination.

20. Legal construction

All Contracts shall be governed by and interpreted in accordance with English law and the parties submit to the exclusive jurisdiction of the English Courts, save that the Company may enforce such Contract against the Customer in any court of competent jurisdiction.

21. General

Any provision of these Conditions of Sale which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of these Conditions of Sale and the remainder of such provision shall not be affected. Failure by the Company to enforce or partially enforce any provision of these Conditions of Sale will not be constrained as a waiver of any rights under these Conditions of Sale.