

## TERMS AND CONDITIONS OF SUPPLY OF GOODS

THE CUSTOMER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CLAUSE 2.3 (EXCLUSION OF ALL OTHER TERMS); CLAUSE 2.4 (WAIVER OF CUSTOMER'S RIGHT TO RELY ON ANY INCONSISTENT TERMS); CLAUSE 7.8 (SUPPLIER'S RIGHT TO RETAIN ADVANCED PAYMENT); AND CLAUSE 8 (LIMITATION OF LIABILITY).

### 1 INTERPRETATION

#### 1.1 Definitions:

**Accepted Purchase Order:** a Purchase Order accepted by the Supplier in accordance with clause 2.1(c);

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Business Hours:** the period from 8.00 am to 5.30 pm on any Business Day.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 11.4.

**Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods from the Supplier.

**Delivery Location** has the meaning given in clause 4.2.

**Force Majeure Event:** an event, circumstance or cause beyond a party's reasonable control.

**Goods:** the goods (or any part of them) set out in the Accepted Purchase Order.

**Purchase Order:** a purchase order for Goods placed by the Customer in accordance with clause 2.1(b).

**Specification:** any design-for-manufacture specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

**Supplier:** Resolve Optics Limited registered in England and Wales with company number 04552334).

**Warranty Period:** save where agreed otherwise in writing between the parties, a period of 12 months from the date of delivery.

#### 1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes email (but not fax).

### 2 FORMATION AND BASIS OF CONTRACT

#### 2.1 Contracts for the supply of Goods shall be formed in the following manner:

(a) **Quotation:** The Supplier shall issue a Quotation to the Customer, setting out:

- (i) details of the Goods to be supplied and any applicable Specification;
- (ii) the cost of the supply of the Goods (excluding all delivery costs and VAT);
- (iii) the Delivery Location and (where known) estimated delivery date(s); and
- (iv) any other relevant information,

in each case, based upon the Customer's requirements confirmed to the Supplier prior to issue of the Quotation. The Quotation shall not constitute an offer but an invitation to treat.

- (b) **Purchase Order:**
- (i) The Customer may place an order (“**Purchase Order**”) with the Supplier for Goods in response to and reflecting the terms of the Quotation.
  - (ii) If the Customer does not place a Purchase Order within the timeframe stated on the Quotation, such Quotation shall be deemed to have lapsed.
  - (iii) A Purchase Order constitutes an offer from the Customer to the Supplier and shall not be binding upon the Supplier until accepted in accordance with Clause 2.1(c).
  - (iv) The Customer is responsible for ensuring that the terms of the Purchase Order and any applicable Specification are complete and accurate.
- (c) **Order Acceptance:** The Supplier shall either accept or reject the Purchase Order at its sole discretion, acting reasonably, and communicate its decision to the Customer. An acceptance by the Supplier of a Purchase Order under this Clause 2.1(c) shall be an “**Order Acceptance**” and each such Purchase Order shall become an “**Accepted Purchase Order**”.

2.2 Upon delivery of the Order Acceptance by the Supplier to the Customer, the Accepted Purchase Order shall form a legally binding and enforceable Contract between the parties for the supply of the Goods stated therein. Each Contract is a separate contract between the Customer and the Supplier.

2.3 **THESE CONDITIONS APPLY TO THE CONTRACT TO THE EXCLUSION OF ANY OTHER TERMS THAT THE CUSTOMER SEEKS TO IMPOSE OR INCORPORATE (INCLUDING BUT NOT LIMITED TO ANY TERMS OR CONDITIONS WHICH THE CUSTOMER PURPORTS TO APPLY UNDER ANY PURCHASE ORDER, SPECIFICATION OR OTHER DOCUMENT), OR WHICH ARE IMPLIED BY LAW, TRADE CUSTOM, PRACTICE OR COURSE OF DEALING.**

2.4 **THE CUSTOMER WAIVES ANY RIGHT IT MIGHT OTHERWISE HAVE TO RELY ON ANY TERM ENDORSED UPON, DELIVERED WITH OR CONTAINED IN ANY DOCUMENTS OF THE CUSTOMER THAT IS INCONSISTENT WITH THESE CONDITIONS.**

2.5 Any samples, drawings or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's website, brochure or marketing materials are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

### 3 **GOODS**

3.1 The Goods are described in the relevant reference data sheet and/or latest drawings supplied to the Customer by the Supplier (each as modified by any applicable Specification).

3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.

3.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

### 4 **DELIVERY**

4.1 The Supplier shall include within each delivery of the Goods a delivery note that shows the date of the Accepted Purchase Order, the contract number, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 Save where specifically agreed otherwise in writing by the Supplier, the Supplier shall, through its third-party couriers, deliver the Goods to the location set out in the Accepted Purchase Order (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready for dispatch.

4.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier or its courier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier or its courier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. Subject to the foregoing, if the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses reasonably incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.

- 4.6 If the Customer fails to accept delivery of the Goods within two Business Days of the Supplier or its courier (acting as the Supplier's agent) notifying the Customer that the Goods are ready for delivery, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the second Business Day after the day on which the Supplier or its courier notified the Customer that the Goods were ready for delivery; and
  - (b) the Supplier shall store the Goods until actual delivery takes place and shall charge the Customer for all related costs and expenses (including insurance).
- 4.7 If ten Business Days after the day on which the Supplier or its courier notified the Customer that the Goods were ready for delivery the Customer has not accepted actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and charge the Customer for any shortfall below the price of the Goods.
- 4.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 5 QUALITY

- 5.1 The Supplier warrants that on delivery, and for the Warranty Period the Goods shall:
- (a) conform in all material respects with their description (or, where applicable, with the Specification); and
  - (b) be free from material defects in design, material and workmanship.
- 5.2 Subject to clause 5.3, if:
- (a) the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
  - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
  - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,
- the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
  - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - (c) the defect arises as a result of the Supplier following any drawing, design or specification (including any Specification) supplied by the Customer;
  - (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - (f) the Goods differ from their description (or where, applicable the Specification) as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

**5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.**

**5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.**

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## 6 TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cleared funds to the account designated by the Supplier in the relevant invoice) for the Goods in respect of which payment has become due.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.1(c) to clause 9.1(e); and
- (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
  - (i) the Goods; and
  - (ii) the ongoing financial position of the Customer.

6.4 At any time before title to the Goods passes to the Customer, the Supplier may require the Customer to deliver up all Goods in its possession that have not been irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 7 PRICE AND PAYMENT

7.1 The price of the Goods shall be the price set out in the Accepted Purchase Order.

7.2 The Supplier may, by giving notice to the Customer at any time prior to delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities, types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

7.3 The price of the Goods **excludes**:

- (a) all amounts in respect of value added tax (**VAT**) or other local sales tax, which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice;
- (b) all customs duties and import charges;
- (c) all costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced separately to the Customer.

7.4 Save where agreed otherwise and specified in the Order Acceptance, the Supplier shall invoice the Customer in the following manner:

- (a) for Goods being delivered in a single delivery:
  - (i) when issuing the Order Acceptance, for such proportion of the overall Accepted Purchase Order cost as the Supplier considers (in its reasonable opinion) to cover the Supplier's initial outlay costs for commencing supply of the Products (**the Advanced Payment**); and
  - (ii) at any time following payment of the Advanced Payment and prior to delivery, for the balance (**the Balance Payment**);

or
- (b) for Goods being delivered by instalments:
  - (i) when issuing the Order Acceptance, for the Advanced Payment;
  - (ii) at any time following payment of the Advanced Payment and prior to each instalment delivery, in respect of the relevant Goods to be delivered in the given instalment (**each an Instalment Payment**); and
  - (iii) at any time prior to the final instalment delivery, for the Balance Payment.

7.5 The Customer shall pay each invoice submitted by the Supplier in pounds sterling, in full and in cleared funds to a bank account nominated in writing by the Supplier.

7.6 Save where the parties have agreed alternative credit terms in writing, the Customer shall pay:

- (a) each invoice for the Advanced Payment within the timescale specified in the Order Acceptance (or, if none is specified, within 30 days of the date of the Order Acceptance); and
- (b) each invoice for an Instalment Payment or the Balance Payment submitted by the Supplier within the timescale specified in such invoice (or, if none is specified, within 30 days of the date of the invoice); and

- (c) each invoice submitted by the Supplier, prior to delivery of the Goods (or delivery of the relevant instalment of Goods to which the invoice relates).

Time for payment shall be of the essence of the Contract.

7.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting any of the Supplier's other remedies under this Agreement:

- (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%;
- (b) the Supplier may suspend provision of the Goods (including delivery of any subsequent instalments) under the Contract or any other contract between the Customer and the Supplier; and

7.8 If the Customer has paid to the Supplier the Advanced Payment under the Contract and the Customer fails to make payment of:

- (a) the Balance Payment due to the Supplier by the due date;
- (b) one or more Instalment Payments due to the Supplier by the due date;

then, without limiting any of the Supplier's other remedies under this Agreement or at law, the Supplier shall be entitled to retain the Advanced Payment and not make any repayment to the Customer for the same.

7.9 All amounts due under the Contract 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).

## **8 LIMITATION OF LIABILITY**

8.1 The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess liability.

8.2 References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

8.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979.

8.4 Nothing in this Clause 8 shall limit the Customer's payment obligations under the Contract.

8.5 Subject to clause 8.3, the Supplier's total liability to the Customer shall not exceed:

- (a) in the case of Goods delivered by instalment, the total amount paid by the Customer for the specific instalment of Goods to which the liability relates; or
- (b) in all other cases, the total amount paid by the Customer to the Supplier under the Contract.

8.6 Subject to clause 8.3, the following types of loss are wholly excluded:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts (including any loss, liability or penalty incurred by the non-defaulting party arising from any agreement or contract to which it is a party, other than the Contract);
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

8.7 This clause 8 shall survive termination of the Contract.

## **9 TERMINATION**

9.1 Without limiting any of its other rights or remedies, under this Agreement or otherwise, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount or sum due under the Contract on the due date for payment (including, for the avoidance of doubt, any failure by the Customer to pay any Instalment Amount or Balance Amount notwithstanding that the Customer has paid the Advanced Payment);
- (b) the Customer commits a material breach of any other term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
- (c) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (d) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (e) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

9.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
- (b) the Customer becomes subject to any of the events listed in clause 9.1(c) to clause 9.1(e), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

9.3 On termination of the Contract for any reason, the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.

9.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

9.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

## **10 FORCE MAJEURE**

10.1 Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly.

10.2 If the period of delay or non-performance continues for 12 weeks, the party not affected may terminate the Contract by giving 2 Business Days' written notice to the affected party.

## **11 GENERAL**

### **11.1 Assignment and other dealings.**

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

### **11.2 Confidentiality.**

- (a) Each party undertakes that it shall not at any time during the Contract and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2(b).
- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.2; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- (c) Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

11.3 **Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

11.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.5 **Waiver.**

- (a) Except as set out in clause 2.4, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

11.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 11.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.7 **Notices.**

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
  - (i) delivered by hand, by pre-paid first-class post or other next working day delivery service or (where applicable) by international commercial courier, to its registered office (if a UK company) or its principal place of business (in any other case).
  - (ii) sent by email to the email addresses stated on the Accepted Purchase Order.
- (b) Any notice shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
  - (iii) if sent by international commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
  - (iv) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

11.8 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

11.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter, interpretation or formation, shall be governed by and construed in accordance with the law of England and Wales.

11.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter, interpretation or formation.