

## PHOTONIC SOLUTIONS STANDARD TERMS AND CONDITIONS OF SALE

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1. **DEFINITION** In these terms and conditions the following words shall (unless the context requires otherwise) have the following meanings:-

“the **Buyer**” means any company, firm or individual from whom the Company receives an Order which the Company has accepted in Writing;

“the **Company**” means Photonic Solutions, a company incorporated in Scotland under the Companies Acts (No. 194276) and having its trading address at Unit 2.2 Quantum Court, Heriot-Watt University Research Park, Edinburgh, EH14 4AP;

“the **Contract**” means the contract (subject to and incorporating the Terms and Conditions) between the Company and the Buyer in respect of the sale of the Goods, established by acceptance in Writing, by the Company of the Order;

“the **Goods**” means the product, or materials, equipment and/or services to be supplied by the Company under the terms of the Contract;

“the **Order**” means the order placed by the Buyer for the Goods;

“the **Price**” means the price payable by the Buyer in respect of the Goods;

“the **Specification**” means the technical description (if any) of the Goods contained or referred to in the Order:

“the **Terms and Conditions**” means these Terms and Conditions; and

“**Writing**” means the manner or method of sending any formal communications between the Company and the Buyer in accordance with Clause 16.

2. **GENERAL** The Company shall accept orders for the supply of Goods subject to these Terms and Conditions. No variation of these Terms and Conditions shall be valid or binding unless specifically agreed to the contrary in Writing by the Company.

3. **PRICING (£ STERLING, EURO OR USD) AND QUOTATIONS.** The Price is based on the cost of the Goods prevailing at the date the Order is accepted by the Company and the Contract is established. The Company reserves the right to adjust the Price by such an amount as may be necessary to cover any increase affecting the Company, after the date of the Contract, attributable to market conditions prevailing at the date of delivery to the Buyer or arising between the date of the Contract and the actual or anticipated date of delivery of the Goods. The Company shall give the Buyer 7 days prior written notice of any such increase, with explanation, after which the increased price shall apply in addition to or in lieu of (as the case may be) the Price and shall be deemed to have been accepted unless the Buyer notifies the Company to the contrary within 7 days. Without prejudice to the foregoing generality, market conditions shall include but

shall not be limited to any direct or indirect increase in any foreign exchange rates relating to the Goods or in the cost of labour, materials, handling, manufacture, supply or transport or such other costs as may be incurred by the Company in complying with obligations imposed by law. Unless otherwise stated all prices quoted exclude delivery charges, VAT and any other tax or duties which will be added to the Price payable by the Buyer. (Pricing may be in either £ Sterling, Euro or USD). Any clerical or arithmetic errors on either the quotation or the order acknowledgement are subject to correction by the Company. Should the Buyer be eligible for either or both VAT exemption or Import duty relief it is the Buyer's sole responsibility to supply with the Order the necessary certification to allow the Company to process the Order accordingly. Should such certifications not be available at the time of Order the Company has the right to invoice the Buyer for the full amount due, excluding such exemptions or relief, and it shall then be the sole responsibility of the Buyer to reclaim such payments from the relevant Government bodies.

**4. TERMS OF PAYMENT** Invoices shall be payable within 30 days of the invoice date, failing which, interest shall accrue (on a daily basis) on the full amount due at the annual rate of 4% above the National Westminster Bank base rate until payment (including of accrued interest) is made in full. Any legal expenses incurred in the collection of any outstanding amount will also be charged to and payable by the Buyer. Should the Buyer be resident outside the UK or Eire then prepayment shall be required for the Goods unless an alternative payment plan is agreed by the Company in Writing. Should the Company become concerned that the Buyer's financial circumstances are such that it is unlikely that the Buyer shall be able to satisfy the agreed terms of payment the Company is entitled to advise the Buyer in Writing that the Company will require prepayment to continue to deliver any Goods remaining to be supplied under the Contract.

**5. DELIVERY TERMS** Subject to clause 12, dates quoted for delivery are estimates only and are not conditions of sale unless otherwise expressly agreed in terms of the specific Contract. All freight, packaging and insurance charges shall be in addition to the Price and will be stated on the invoice. Installation, where required, will be charged for unless agreed in advance between the Company and the Buyer. Should the Buyer not receive the Goods within 7 working days of receipt of the Company's invoice it is the responsibility of the Buyer to notify the Company. Delivery shall be deemed to be effective at the time when the Goods are unloaded at the delivery address nominated by the Buyer, save where the Buyer or his agent collects the Goods from the Company's office, delivery being at the time of collection. The Company reserves the right to deliver the Goods by instalments and where payment of the Price or any part thereof is not made on the due date then the Company, at its sole discretion and without prejudice to any other rights or remedies available to it, shall be entitled to withhold deliveries of

further instalments until the Goods delivered in earlier instalments have been paid for in full.

**6. TRANSFER OF TITLE** Notwithstanding delivery and passing of risk, the absolute and legal beneficial ownership in all Goods shall remain vested in the Company and shall not pass to the Buyer until the Price of the Order of which they form part is paid in full. In the event that the Buyer breaches any of its obligations under these Terms and Conditions, or under any other agreement between the parties, the Company reserves the right to immediately repossess all or any of the Goods to which title remains with the Company and has not passed to the Buyer. Without prejudice to the other legal remedies available to the Company, the Company shall be entitled to seek interdict or equivalent judicial order to prevent the Buyer from selling, transferring or otherwise disposing of the Goods.

**7. PASSING OF RISK** The risk in the Goods shall pass to the Buyer upon delivery of the Goods by the Company or its carriers to the Buyer or its agent and the Company shall not be liable for any loss or damage to the Goods from the time that the Goods are so delivered. The Buyer shall insure the Goods from the date of delivery and if the same are lost or destroyed then such insurance monies as are payable shall be immediately paid by the Buyer to the Company to the extent of the indebtedness of the Buyer to the Company, and that without prejudice to the Company's right to recover from the Buyer any balance of the purchase/hire price remaining due under the Contract. Upon delivery of the Goods the Buyer shall assume responsibility for ensuring that the Goods are installed and used as described in the Health and Safety regulations and, if applicable, under the current safety classifications relevant to the use of the Goods.

**8. CANCELLATIONS OR RE-SCHEDULING OF CREDIT CARD ORDERS** The Buyer shall be entitled to cancel a Contract by giving Written Notice to that effect to the Company, within not less than 7 working days of receipt of the Goods, whereupon the Company shall reimburse the Buyer within 30 days of such written notice for all sums paid in respect of the cancelled Goods. Upon cancellation, the Buyer must return the Goods to the Company at its own expense and prior to such time take proper care of the Goods until they are returned to the Company. The Company shall be entitled to claim all reasonably foreseeable costs, expenses, damages and other liabilities suffered or incurred as a result of any cancelled Order. Should rescheduling be requested the Company will advise the Buyer of any additional cost and the Buyer will issue a separate Order to the Company and shall be issued with a new invoice to pay such additional cost.

**9. CLAIMS** Claims relating to damage to the Goods while in transit shall be made to the Company in writing within seven working days of delivery of the Goods. Should the external packaging be damaged the Buyer should only accept the Goods by signing the delivery documentation "received with damaged packaging", in which case, the

damaged packaging must be retained for possible inspection during the claims procedure.

## **10. TERMINATION**

10.1 The Company may by Written Notice terminate the Contract without any liability if:

10.1.1 the Buyer fails to pay any sum due under the Contract within thirty (30) days of any due date;

10.1.2 the Buyer breaches any terms of these Terms and Conditions (other than failure to pay, such breach falling within clause 10.1.1) and fails to cure such breach within fourteen (14) days of written notice from the Company requiring that such breach be remedied;

10.1.3 the Buyer suspends or threatens to suspend payment of its debts or becomes unable to pay its debts as they fall due (as defined in section 123 of the Insolvency Act 1986) or similar legislation applicable in the jurisdiction of the Buyer;

10.1.4 the Buyer ceases or threatens to cease to carry on its business or a significant part of it;

10.1.5 the Buyer makes a proposal for a compromise in satisfaction of its debts or for a scheme of arrangement of its affairs or other arrangements or any proceedings for the benefit of creditors are commenced under any laws, regulations or procedures relating to the reconstruction or readjustment of debt; or

10.1.6 a petition is made for an administration order under the Insolvency Act 1986 or the Buyer or any other person takes any steps to wind up or dissolve the Buyer or to appoint a liquidator, trustee, receiver, administrative receiver or similar officer to the Buyer or any part of its undertaking or assets.

10.2 Termination, howsoever or whenever occasioned shall not:-

10.2.1 prejudice any rights and remedies the Company may have under these Terms and Conditions under the applicable law in respect of any breach of these Terms and Conditions to the extent such rights or remedies have accrued or become available prior to such termination; or

10.2.2 relieve the Buyer of any payment obligation that arose prior to termination.

**11. LIMITATION OF LIABILITY** The Company will not be responsible for the consequences of and shall not be liable for any loss caused to the Buyer or any third party arising from any misleading, incomplete or erroneous instructions or information given by the Buyer or where information or instructions are not given timeously. In respect of a claim by a third party in such circumstances, the Buyer undertakes to indemnify the Company on demand in respect of all losses, costs, expenses, damages and claims the Company may suffer or incur in relation to that claim.

**12. FORCE MAJEURE** The Company shall be under no liability to the Buyer in respect of anything which, apart from this provision, may constitute breach of these Terms and Conditions arising by reason of force majeure, namely circumstances beyond the reasonable control of the Company, which shall include (but shall not be limited to) acts of God, perils of the sea or air, fire, flood, drought, explosion, storm, sabotage, accident, terrorism, embargo, riot, civil commotion, including acts of local government and parliamentary authority, shortage of supplies, equipment, materials, breakdown or shortage of equipment, statute, outbreak of hostilities and labour disputes of whatever nature and for whatever cause arising, including but without prejudice to the generality of the foregoing, work to rule, overtime bans, strikes and lockouts.

**13. WARRANTY** The Company guarantees the Goods forming the subject of the Order for a period of one year from the date of delivery of the Goods to the Buyer (“the Warranty Period”), save, where the original manufacturer specifies an alternative warranty, in which case, the Buyer will only be entitled to the benefit and/or limitation of any guarantee given by that manufacturer. The Company warrants that the Goods conform to the Specification contained in the current brochures and/or to any extra Specification contained in the Contract. Warranty for all optical components shall be three months unless otherwise specified. No warranty is made or implied as to the suitability of any Goods for the Buyer’s intended use beyond such performance Specification as form part of the Contract. The Buyer shall undertake to carefully examine and list all parts of the Goods supplied by the Company and notify the Company in Writing of any shortage, defect or failure to comply with the Contract which is or ought to be apparent upon such examination and to test the Goods within 7 working days of the Goods being delivered. The Buyer shall undertake to only operate the Goods in strict accordance with the instructions and advice detailed in the appropriate operating instructions manual, and to install and operate the Goods within the relevant safety requirements that are applicable to the Goods. The Company shall not be liable at any time for any defect arising from improper use, abuse, mismanagement or the Buyer’s failure to comply with such instructions /requirements or from damage arising from negligence or exposure to adverse environmental conditions. This Warranty shall only apply to Goods which have been fully paid for, provided defects have been reported in writing to the Company during the Warranty Period, resulting in a RA (Return Authorisation) number being issued to the Buyer by the

Company, and that the Goods have been returned to the Company at the Buyer's expense (freight, effective packaging and transit insurance). The warranty shall cover the cost of labour and materials to repair the Goods and the return costs incurred by the Buyer. If the Goods were originally installed by a Company service engineer then the Company may at its discretion have a service engineer either rectify any defect in the Goods on site or re-install the repaired goods on site. Except as otherwise provided in this clause 13, the Company makes no other representations or warranties and expressly to the fullest extent permitted by law hereby excludes the same whether implied, statutory or otherwise especially as to the quality or fitness of the Goods for any particular purpose. The Company's liability for any and all breaches of the warranty in this clause 13 shall be limited to the aggregate of (a) the amount of the Price paid by the Buyer to the Company and (b) all reasonably foreseeable costs, expenses, damages and other liabilities suffered or incurred by the Buyer and arising as a result of such breach.

**14. ASSIGNATION** The Buyer shall not assign or otherwise transfer all or any part of its rights or obligations under the Contract without the prior written consent of the Company.

**15. WAIVER** Failure or neglect by either party to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of that party's rights hereunder nor in any way affect the validity of the whole or any part of the Contract nor prejudice that party's right to take subsequent action.

**16. NOTICES** Any formal communications between the Company and the Buyer shall be sent in writing, and signed by a director or other officer or authorised signatory on behalf of the Company or personally or by a director or other officer or authorised signatory on behalf of the Buyer, or by electronic communication (as defined in The Companies Act 1985 (Electronic Communications Order 2000 (S.I.2000/3373)) and shall either be delivered personally or sent by first class post or facsimile transmission or electronic communication to their respective addresses. Communications delivered by hand, will be taken as being received immediately upon delivery, communications by post will be deemed to have been received on the second business day after posting (or in the case of international post on the fifth business day after posting) and communications by telefax or electronic communication three business hours after transmission (if sent before 2.00pm on a business day) or 10am on the following business day in any other case.

**17. SEVERABILITY** In the event that any part of these Terms and Conditions shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such part shall to that extent be severed from the remaining terms and conditions which shall continue to have full force and effect.

18. **PROPER LAW** These terms and conditions shall be governed by and construed in accordance with the law of Scotland and the parties hereby submit to the non-exclusive jurisdiction of the Scottish Courts.

19. **ARBITRATION** If, at any time, any question, dispute or difference whatsoever shall arise between the Buyer and the Company in relation to, or in connection with the Contract either party may give notice in writing of the existence of such and the same shall, provided both parties agree, be referred to an arbiter to be mutually chosen by the parties or, failing agreement, to be appointed on the application of either party by the President of the Law Society of Scotland. Such arbiter shall have power to assess and award damages and the decree or decrees arbitral of such arbiter, interim or final, shall be conclusive and binding on all concerned. Both parties agree to be bound by the decision of the arbiter.