

# Terms and Conditions of Sale Photodata Test Services Ltd.

## 1 Definitions

- 1.1 "Buyer" – Means the person who buys or agrees to buy the goods from the seller.  
1.2 "Conditions" – means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.  
1.3 "Delivery date" – means the date specified by the Seller when the goods are to be delivered.  
1.4 "Goods" – means the articles which the Buyer agrees to buy from the Seller.  
1.5 "Price" – means the price for the goods excluding carriage, packaging, insurance and VAT.  
1.6 "Seller" – means Photodata Test Services Ltd, Photodata House, Knowl Piece, Hitchin, Hertfordshire, SG4 0TY

## 2 Conditions applicable

- 2.1 These conditions shall apply to all contracts for the sale of goods by the seller to the buyer to the exclusion of all other Terms and Conditions including any Terms and Conditions that the buyer may purport to apply under any purchase order, confirmation of order or similar document.  
2.2 All orders for goods shall be deemed to be an offer by the Buyer to purchase goods pursuant to these conditions and shall be conclusive evidence of the Buyer's acceptance of these Conditions.  
2.3 Any variation to these Conditions (including any special Terms and Conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller and signed by a director of the Seller in a document entitled "Agreed Variation to Terms and Conditions".  
2.4 Nothing in these Conditions shall affect the statutory rights of any consumer.

## 3 The Price and Payment.

- 3.1 The price shall be the Seller's quoted price. No cancellation can be accepted once an order has been placed.  
3.2 Payment shall be due within 30 days of the date of the invoice.  
3.3 Interest on overdue invoices shall accrue from the date of the invoice from day to day until the date of payment at a rate of 5% above NatWest base rate from time to time in force and shall accrue at such a rate after as well as before any judgement.  
3.4 If the Buyer fails to make any payment on the date due then without prejudice to any of the Seller's other rights the Seller may: suspend or cancel deliveries of any articles due to the Buyer and/or appropriate any payment made by the Buyer to such of the goods (or goods supplied under any other contract with the buyer) as the Seller may in its sole discretion think fit.  
3.5 The Buyer may not set off against the price amount due from the Seller whether under the applicable contract or otherwise.  
3.6 In the event of the Seller taking any action concerning this contract the Buyer shall indemnify the seller for all costs and expenses.

## 4 Goods

- 4.1 The Goods shall be supplied in accordance with the description contained in the Seller's specification.  
4.2 The Seller may from time to time make changes in the specifications of the goods including those which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for the purpose of the goods.  
4.3 The bulk of the Goods will correspond with the sample in quality provided that the Seller shall have no liability to the Buyer unless more than 10 % of the Goods do not so correspond.  
4.4 The Buyer shall be deemed to have had a reasonable opportunity of comparing the bulk of any consignment of Goods with a sample after 24 hours after delivery have expired.  
4.5 The Buyer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that: such discrepancy in quantity shall not exceed 10 %; the price shall be adjusted pro rata to the discrepancy.  
4.6 All terms and conditions and warranties (whether implied or made expressly) whether by the Seller or its servants or agents or otherwise (other than those express warranties set out in the current edition of the Seller's specification) relating to the quality and / or fitness for the purpose of the Goods or any of the Goods are excluded.  
4.7 The specification(s) and design(s) of the Goods (including the copyright, design right or other property in them) shall as between the parties be the property of the Seller. Where any designs or specifications have been supplied by the buyer for manufacture by or to the order of the Seller then the Buyer warrants that the use of those designs or specifications for the manufacture, processing assembly or supply of the Goods shall not infringe the rights of any third party.

## 5 Delivery

- 5.1 The Seller shall on request arrange for carriage of the Goods to the Buyer's address or to an address agreed in writing by the Seller. The costs of carriage and any insurance incurred by the Seller shall be reimbursed without any set off or other withholding whatever and shall be due on the date on which the Seller requests payment. The carrier shall be deemed to be the Buyer's agent.  
5.2 Due delivery of the Goods shall be deemed to have taken place at the Buyer's address or to an address agreed in writing by the Seller. In the event of dispute, delivery shall be deemed to have taken place at the Seller's address.  
5.3 The Seller may deliver the Goods by separate instalments in accordance with the agreed delivery schedule. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the contract.  
5.4 The failure of the Buyer to pay for any one of the instalments of the Goods on the due dates shall entitle the Seller (at the sole discretion of the Seller); without notice to suspend further deliveries of the Goods pending payment by the buyer; and/or to treat the contract as repudiated by the Buyer.  
5.5 The Seller shall not be liable for any loss or damage whatever due to a failure by the Seller to deliver / transport the Goods (or any of them) promptly or at all.  
5.6 Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly the Buyer shall be bound to accept delivery and to pay for the goods in full provided that delivery shall be tendered at time within three months of the estimated date of delivery.  
5.7 The delivery date is not of the essence of the contract.

## 6 Acceptance

- 6.1 The Buyer shall be deemed to have accepted Goods on delivery or deemed delivery to the Buyer.  
6.2 After the acceptance the buyer shall not be entitled to reject Goods that are not in accordance with the contract.  
6.3 If the Buyer properly rejects any of the goods which are not in accordance with the contract the Buyer shall nonetheless pay the full price for such Goods unless the Seller has received from the Buyer within 24 hours of delivery written notice of rejection and at the Buyer's cost returns such Goods to the Seller within 72 hours of delivery or deemed delivery.  
6.4 No Goods delivered to the Buyer that are in accordance with the contract will be accepted for return without the prior written approval of the Seller signed by a director of the Seller on terms to be determined at the absolute discretion of the Seller.  
6.5 Goods returned without the prior written approval of the Seller signed by a director of the Seller may at the Seller's absolute discretion be returned to the Buyer or stored at the Buyer's cost without prejudice to any rights or remedies the Seller may have.  
6.6 The Buyer shall not be entitled to reject goods that are not in accordance with the contract.

## **7 Title and Risk**

- 7.1 The goods shall be at the Buyer's risk as from delivery.
- 7.2 Property in the Goods shall not pass from the Seller until the Buyer shall have paid the full price and no other sums whatever shall be due from the Buyer to the Seller.
- 7.3 The Seller shall be entitled to a general lien on all goods of the buyer in the Seller's possession (including goods of the buyer which have been paid for) for the unpaid price of all goods sold to the Buyer by the Seller under this or any contract.
- 7.4 In spite of delivery having been made property in the Goods shall not pass from the Seller until the Buyer shall have paid the full consideration and no other sums whatever shall be due from the Buyer to the Seller.
- 7.5 Until the property in the Goods passes to the Buyer, the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other Goods in its possession and marked in such a way that they are clearly identified as the Seller's property.
- 7.6 Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Seller to the Buyer the entire proceeds of sale or otherwise of the goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.
- 7.7 The Seller shall be entitled to recover the full consideration plus VAT notwithstanding that property in any of the goods has not passed from the Seller.
- 7.8 Until such time as property in the Goods passes from the Seller the Buyer shall upon request deliver up such of the goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned occupied or controlled by the Buyer where the goods are situated and repossess the Goods.
- 7.9 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 7.10 The Buyer shall insure and keep insured to the full consideration against all risks to the reasonable satisfaction of the Seller until the date that property in the goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller if the Buyer fails to do so whatever owing by the Buyer to the Seller shall forthwith become due and payable.

## **8 Remedies of the Buyer**

- 8.1 Where the buyer rejects any goods then the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such goods or the failure by the Seller to supply goods which conform to the contract of sale.
- 8.2 Where the buyer accepts or has been deemed to have accepted any goods then the Seller shall have no liability to the Buyer in respect of those Goods.
- 8.3 The Seller shall not be liable to the Buyer for late delivery or short delivery of the goods.
- 8.4 The Seller shall be under no liability whatever to the Buyer for any indirect loss and / or expense (including loss of profit) suffered by the Buyer arising out of a breach of contract by the Seller.
- 8.5 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the price paid for the Goods.

## **9 Miscellaneous**

- 9.1 All headings are for ease of reference only and shall not affect the construction of these terms.
- 9.2 Any provision of this contract which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of this contract.
- 9.3 The Seller may license or sub-contract all or part of its rights and obligations under this contract without the Buyer's consent.
- 9.4 The Seller may cancel this contract at any time before the goods are delivered by giving written notice. On giving such notice the Seller shall promptly repay to the Buyer any sums in respect of the price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 9.5 This contract is subject to the law of England and Wales.