

# OPTICAL SYSTEMS DESIGN (OSD) TERMS AND CONDITIONS OF SALE

UNLESS EXPRESSLY ALTERED OR MODIFIED IN WRITING BY OPTICAL SYSTEMS DESIGN PTY LTD, THE FOLLOWING TERMS AND CONDITIONS APPLY AND SHALL BE DEEMED INCORPORATED IN AND FORM PART OF ANY CONTRACT BETWEEN OSD AND THE CUSTOMER CONSTITUTED BY OSD'S WRITTEN ACCEPTANCE OF CUSTOMER'S ORDER.

## **1. PRICES**

Unless otherwise stated, the purchase price is exclusive of Goods and Services Tax.

## **2. ORDERS**

- (a) The quotation is not an offer to sell at the price or prices quoted and is an invitation to the Customer to offer to purchase by placement of an order only.
- (b) A contract shall only arise between the Company and the Customer upon the Company's written acceptance of the Customer's order. The Customer's order must quote the number of the quotation or otherwise specifically refer to it and must expressly state that the Standard Terms and Conditions in the quotation form part of the offer constituted by the Customer's order. The Customer acknowledges and agrees that by placing an order which quotes the quotation or refers to it, these Standard Terms and Conditions are thereby incorporated in any contract which may arise by reason of the Company's written acceptance of the order.
- (c) The Company reserves the right, without prejudice to any other remedy available to it, to suspend delivery or to cancel the uncompleted part of any contract in the event that the Customer has failed to meet any of its commitments to the Company, whether arising out of that contract or out of any prior or subsequent contract.
- (d) The Customer may not withdraw all or part of any order or cancel part of any contract without the express written agreement of the Company and shall, if so required by the Company, pay as liquidated damages any loss sustained or profits foregone by the Company as a consequence of such withdrawal or cancellation notwithstanding the Company's express written agreement thereto.

## **3. DELIVERY**

- (a) Unless otherwise stated in writing, delivery will be effected ex works, unpacked.
- (b) All deliveries will be made in normal working hours. Any penalty rates paid by the Company for delivery outside normal working hours will be charged as extra and be payable by the Customer. Any costs for waiting time will likewise be charged as extra and be payable by the customer.
- (c) While the Company will use its best endeavours to adhere as far as possible to delivery dates furnished by it, nevertheless no liability is incurred by the Company and no claim will lie against it for any damage or loss suffered by the Customer from delay in delivery, whether such delay be caused by any acts or omissions, negligence or otherwise of the Company, its servants or agents or from any other cause.
- (d) The customer shall not be entitled to withdraw any order or to cancel any contract by reason of delay in delivery by the Company, whatever the cause or reason for such delay.
- (e) The company reserves the right to deliver by instalments, in which case each instalment delivered shall be considered completion or performance of a separate part of the contract and shall be paid for accordingly.

## **4. PAYMENT**

Unless otherwise stated in writing, terms are strictly nett and payment in full shall be due thirty (30) days from the date of invoice accompanying or following delivery and where delivery is not possible due to the Customer's inability to accept goods, within thirty (30) days of the Company giving the Customer notice that the Company is in a position ready, willing and able to perform or complete the contract by delivery of the goods.

## **5. TITLE AND RISKS**

- (a) Property in the goods shall pass to the Customer at the time the goods are paid for by the Customer in full unless otherwise agreed in writing by the company.
- (b) All risks in respect of the goods delivered will be borne by the Customer from the time the goods cease to be in the actual possession of the Company.

## **6. DESCRIPTIONS, SPECIFICATIONS AND PERFORMANCE**

Unless otherwise stated in writing by the Company, the descriptions, illustrations, drawings and specifications contained in any catalogues, pricelists, brochures, leaflets or any other like material are intended to be approximations only and accordingly:-

- (i) should not be worked to;
- (ii) do not form part of the contract;
- (iii) do not amount to representations or warranties;
- (iv) do not give rise to any liability on the part of the Company and no claim lies against the Company in the event of inaccuracy.

## **7. WARRANTY**

- (a) Subject as provided below, the Company warrants all goods manufactured by it to be free from defects in material and workmanship but its sole liability under such warranty shall be limited, at its absolute option, to replacing, repairing or issuing credit (to the amount of the purchase price) for goods which within sixty days of delivery are returned, freight prepaid, to the Company and which the Company accepts having been defective in materials or workmanship.
- (b) The Company shall incur no liability under this warranty:-
  - (i) unless the Company is notified in writing promptly upon discovery of the defects by the Customer or is notified in writing of any defects within sixty days of delivery, whichever is the earlier;
  - (ii) for any goods in which the alleged defect is found on examination to have been caused in whole or in part by misuse, neglect, overload, unsuitable lubricant, improper installation, improper or inadequate servicing or repair, accident or following alteration or modification to the goods otherwise than by the Company or its authorised contractors;
  - (iii) for any transport, removal or reinstallation costs;
  - (iv) for any goods supplied but not manufactured by the Company, but the Company will use its best endeavours to pass on to the Customer the benefit of any warranties given by the manufacturer for such goods; and
  - (v) for any consequential or resulting loss, damage or injury incurred or suffered by the Customer or its employees to the intent and effect that the Company's liability under the warranty is limited to the cost of replacing or repairing the defective goods or issuing credit for the purchase price of the defective goods only;
- (c) In respect of any electronic components manufactured by the Company, the warranty is conditional upon such items being connected in accordance with the governing wiring code and in accordance with the recommendations (if any) communicated by the Company to the Customer and upon such items being protected by "under voltage" and "over current" devices.

## **8. CONSEQUENTIAL LOSS AND DAMAGE**

Same as expressly provided for in the limited warranty in paragraph 7, the Company shall not be liable for any loss or damage or injury, direct or consequential, whether in contract, tort, by statute, or otherwise, and whether at law or in equity, and whether caused or arising out of or through the negligence, breach, acts or omissions of the Company, its servants or agents or otherwise and of whatsoever nature and to whomsoever or whatsoever caused arising out of the manufacture and supply or supply only of any goods to the Customer or out of or through the use of any such goods by the Customer.

## **9. EXCLUSION**

Any conditions introduced by the Customer (insofar as they differ from these conditions) shall be ignored and of no effect or force unless and until expressly agreed to or accepted in writing by the Company and in the absence of such express written agreement or acceptance, these Standard Terms and Conditions shall prevail.

## **10. CLAIMS AND RETURNS**

Claims by the Customer must be made promptly upon delivery of shipment and Seller given an opportunity to investigate. All claims are deemed waived and the Customer accepts such goods if objection is not made in writing within eight days after delivery. All returns must comply with OSD Return Policy.

## **11. GOVERNING LAW**

This agreement shall be governed by and interpreted in accordance with the laws of the State of New South Wales and of the Commonwealth of Australia.

