

**LEICA MICROSYSTEMS (UK) LTD
TERMS AND CONDITIONS OF SALE**

1. Interpretation

1.1 In these Conditions:

- 'Buyer' means the person who accepts a quotation of the Company for the sale and/or installation of the Goods or whose order for the Goods is accepted by the Company
- 'Goods' means the goods (including any installment of the goods or any parts for them) which the Company is to supply and/or install in accordance with these Conditions
- 'Company' means LEICA MICROSYSTEMS (UK) LIMITED
- 'Conditions' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Company
- 'Contract' means the contract for the purchase and sale of the Goods
- 'Writing' includes telex, cable, facsimile transmission electronic data interface and comparable means of communication

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation

2. Basis of the sale

2.1 The Company shall sell and/or install and the Buyer shall purchase the Goods in accordance with any written quotation given by the Company which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Company, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Company

2.3 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed

2.4 Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Company is followed or acted upon entirely at the Buyer's own risk, and the Company shall not be liable for any such advice or recommendation which is not so confirmed

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company

2.6 All descriptions, illustrations and particulars issued by the Company in catalogues, price lists, advertising matter and specifications are by way of general description and approximate only and shall not form part of any contract or give rise to any liability on the part of the Company

2.7 It is the Buyer's responsibility to establish that the Goods ordered are adequate and suitable for the purpose for which they are required and no liability whatsoever is accepted should the Goods not prove adequate or suitable for that purpose

3. Orders and specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Company unless and until confirmed in Writing by the Company's authorised representative

3.2 The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Company's quotation (if accepted by the Buyer) or the Buyer's order if accepted by the Company

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with the Buyer's specification, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's specification

3.5 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance

3.6 No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in Writing of the Company and on terms that the Buyer shall fully indemnify the Company against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation

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TERMS AND CONDITIONS OF SALE (CONT.)

- 4. Price of the goods**
- 4.1 The price of the Goods shall be the price specified by the Company in its quotation or in the Company's written acceptance of the Buyer's order and shall not be determined by the prices contained in catalogues, advertising material or price lists which are intended only as a guide
- 4.2 The Company reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond its control (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions
- 4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Company, and unless otherwise agreed in Writing between the Buyer and the Company, all prices are given by the Company on an ex works basis, and where the Company agrees to deliver the Goods otherwise than at the Company's premises, the Buyer shall be liable to pay the Company's charges for transport, packaging and insurance
- 4.4 The price quoted by the Company is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Company
- 5. Terms of payment**
- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Company, the Company shall be entitled to payment on delivery or collection of the Goods as the case may be. If the Buyer wrongfully fails to take delivery of the Goods or to collect them, as the case may be, the Company shall be entitled to payment for the Goods at any time after the Company has tendered delivery or notified the Buyer that the Goods are ready for collection as the case may be and rendered an invoice for same
- 5.2 If the Buyer fails to make any payment when due, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- 5.2.1 cancel the Contract or suspend any further deliveries to the Buyer whether under the same contract or any other contract between the Buyer and the Company;
- 5.2.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer); and
- 5.2.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of two per cent per month compounded on all sums due to it until payment in full is made
- 6. Delivery**
- 6.1 Unless otherwise agreed in writing delivery of the Goods shall be made by the Company delivering the Goods to the Buyer's premises or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Buyer
- 6.3 Where the Goods are to be delivered in installments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the installments in accordance with these Conditions or any claim by the Buyer in respect of any one or more installments shall not entitle the Buyer to treat the Contract as a whole as repudiated
- 6.4 The Company's liability for any failure to deliver the Goods shall be limited to the excess (if any) the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods
- 6.5 If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy available to it, the Company may:
- 6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract
- 7. Risk and property**
- 7.1 Risk of damage to or loss of the Goods shall pass to Buyer:
- 7.1.1 in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Buyer that the Goods are available for collection; or
- 7.1.2 in the case of Goods to be delivered elsewhere at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, property in the Goods shall not pass to the Buyer until the Company has received payment in full including all interest and other costs due to it

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TERMS AND CONDITIONS OF SALE (CONT.)

- 7.3 Until property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Company's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Company for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured
- 7.4 Until property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods. The Company shall be entitled where the Goods have been fixed or attached to any other product to detach the Goods in order to recover possession of them. Such redelivery or retaking of possession shall be without prejudice to any other rights of the Company
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Buyer does so all moneys owing by the Buyer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable

8. Warranties and liability

- 8.1 Subject to the conditions set out below the Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of three months from the date of their initial use or, in the case of new goods, for the period of the manufacturer's warranty whichever is the greater
- 8.2 The above warranty is given by the Company subject to the following conditions:
- 8.2.1 the Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification Supplied by the Buyer;
- 8.2.2 the Company shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval;
- 8.2.3 the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
- 8.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company
- 8.3 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law
- 8.4 Where the Goods are sold under a consumer transaction (as defined by the Sale of Goods Act 1979) the statutory rights of the Buyer are not affected by these Conditions
- 8.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Company within 3 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Company accordingly, the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract
- 8.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Company shall have no further liability to the Buyer
- 8.7 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions

9. Force majeure

The Company shall be entitled without liability on its part and without prejudice to its other rights, to terminate the Contract or any unfulfilled part thereof, or at its option to suspend or make partial deliveries or extend the time or times for delivery, if the manufacture of the Goods by the Company or the Company's suppliers, or the delivery of the Goods or the performance by the Company of any of its obligations under the

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TERMS AND CONDITIONS OF SALE (CONT.)**

Contract is hindered or delayed whether directly or indirectly by reason of the Purchaser failing to furnish necessary instructions or information, or by war or other hostilities, civil commotion, act of God, government action or legislation, interruption of transport, strike, lock out or other form of industrial action, accidents or stoppages to works, shortage of labour materials equipment fuel or power, breakdown of machinery or any their cause whatsoever beyond the reasonable control of the Company or its sub-contractors, whether or not such cause exists at the date of the order

10. Insolvency of buyer

10.1

If:

10.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

10.1.4 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly then without prejudice to any other right or remedy available to the Company, it shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary

11. General

11.1

Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice

11.2

No waiver by the Company of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision

11.3

If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby

11.4

The Contract shall be governed by and construed in accordance with English law and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales in relation to any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).