



**TERMS AND CONDITIONS FOR SALE OF GOODS  
OF  
Optoscribe Ltd.**

**1 DEFINITIONS**

In this document the following words shall have the following meanings:

- 1.1 "Buyer" means the purchaser of Goods whose name and address appears on the Order;
- 1.2 "Goods" means the articles to be sold by the Supplier to the Buyer as described on the Order;
- 1.3 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable;
- 1.4 "Order" means the Buyer's purchase order for the Goods;
- 1.5 "Price" means the charge to be paid by the Buyer to the Supplier for the Goods;
- 1.6 "Supplier" means Optoscribe Ltd, Unit 1, Rosebank Technology Park, Rosebank Road. Livingston, EH54 7EJ, United Kingdom.

**2 GENERAL**

- 2.1 These Terms and Conditions shall apply to all contracts for the sale of Goods by the Supplier to the Buyer to the exclusion of all other terms and conditions referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between the parties, including any standard or printed terms tendered by the Buyer, unless the Buyer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been acknowledged by the Supplier in writing.
- 2.2 Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Supplier.
- 2.3 All Orders are subject to availability of the Goods and to written acceptance by the Supplier. Any quotation submitted by the Supplier is an invitation to treat and is not an offer. The placing of an Order by the Buyer in writing shall constitute an offer and a contract shall be effected if and when such offer is accepted by the Supplier.

**3 PRICE AND PAYMENT**

- 3.1 The Supplier sells the Goods to the Buyer on the Terms and Conditions of this agreement in consideration of the payment by the Buyer of the Price.
- 3.2 Payment shall be made in UK pounds sterling unless otherwise stated on the Order and shall be made by wire transfer unless otherwise agreed. Time for payment of the Price shall be of the essence of the contract.



- 3.3 The Buyer shall be responsible for any handling and shipping charges or other incidental costs and expenses incurred by the Supplier in relation to the Goods.
- 3.4 The Price is exclusive of VAT or other sales taxes which are payable in addition by the Buyer and are to be paid in full without deduction of taxes, charges or duties imposed. The parties shall collaborate to take advantage of any double taxation treaties in force.
- 3.5 The Price includes packaging charges. Delivery charges shall, where supply is specified on the Order as on the basis that the Supplier shall deliver to the Buyer, be stated on the Order and are payable by the Buyer. Where terms on the Order such as DDP, CIF, ex works etc. are used, these shall be construed in accordance with the international rules for the interpretation of trade terms of the International Chamber of Commerce ("Incoterms") as in force at the date when the contract is made.
- 3.6 No variation in the Price may be made without agreement in writing by both parties. All invoices shall be paid by the Buyer within 30 days of the date of invoice. No right of set off shall arise.
- 3.7 The Supplier shall be entitled to charge interest on late payments of invoices at the rate of 2% per annum above the base rate of the Bank of England from time to time in force.
- 3.8 The Buyer may not cancel or alter an order once an order is placed without the prior written consent of the Supplier.

#### **4 DELIVERY**

- 4.1 Delivery of the Goods shall take place at the address specified by the Buyer on the Order. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 4.2 The date of delivery specified by the Supplier is an estimate only. Time for delivery shall not be of the essence of the contract.
- 4.3 Where Goods are delivered which the Buyer believes are not the quantity or kind ordered or which are damaged, the Buyer must notify the Supplier by telephone immediately on receipt and confirm this in writing within 7 days of delivery otherwise the Supplier accepts no liability.
- 4.4 Where on investigation the Supplier agrees the incorrect quantity was delivered or the Goods were damaged, the Supplier shall ensure the correct quantity is supplied and the Buyer will return any over supply, and/or the Supplier shall replace the damaged Goods with undamaged Goods and this shall be the Buyer's only remedy in such a case. The Buyer shall return any damaged Goods to the Supplier at the Buyer's expense. Where the Supplier agrees after inspection that the Goods were damaged it shall refund the carriage costs of such return to the Buyer, but not otherwise.

#### **5 TITLE AND RISK**

- 5.1 Title in the Goods shall pass to the Buyer when payment is made to the Supplier for those Goods unless otherwise required by the Incoterm under which the parties have agreed the Goods will be supplied.
- 5.2 The Buyer shall not resell the Goods or combine them with other Goods until payment is made and shall ensure they are kept separately from other Goods and are clearly marked as the Supplier's



property. The Supplier may, until such time as payment is made, enter the Buyer's premises to retrieve the Goods.

- 5.3 Risk in the Goods shall pass on delivery unless otherwise required by the Incoterm under which the parties have agreed the Goods will be supplied.

## **6 INTELLECTUAL PROPERTY RIGHTS**

The Buyer will own the specific configuration and layout (and numeric variations as agreed by the Buyer and Optoscribe) of the device(s), including dimensions.

Optoscribe will own all IP related to the manufacturing process, and individual building blocks integrated into the design of this device, including improvements made to any Optoscribe Background IP.

## **7 BESPOKE GOODS**

Where the Buyer requests specific modifications or additions to the Goods the Buyer shall ensure the Supplier is given all information it requires to make such modifications and the Buyer shall fully indemnify the Supplier against any loss or liability arising from the Supplier following the Buyer's instructions or making Goods specifically made or customised for the Buyer.

## **8 CONFIDENTIALITY**

The Buyer will not disclose or make use of information provided to the Buyer by the Supplier (whether patentable or not) for purposes other than the execution of the Order without the Supplier's consent, except where such information is or becomes publicly available through no fault of the Buyer.

## **9 LIABILITY**

- 9.1 The Supplier shall use all reasonable endeavours to ensure that the Goods comply with their description given on the Order, are of satisfactory quality and fit for their intended purpose.
- 9.2 Where the Supplier fails to use such reasonable endeavours, the Buyer shall notify the Supplier within 7 days of delivery in writing and the Supplier's sole obligation shall be to repair, replace or supply the Goods. Save as provided in this clause 9, the Supplier's liability to the Buyer is otherwise excluded, including without limitation, implied conditions to the fullest extent permitted by law. The Supplier limits its liability to the Price of the Goods in relation to any claim relating to the Goods supplied and excludes all liability for consequential, indirect loss, loss of profit revenue and goodwill.
- 9.3 Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of the Supplier for death or personal injury as a result of the Supplier's negligence or that of its employees or agents.

## **10 TERMINATION**

- 10.1 This agreement may be terminated by either party for any material breach of the obligations set out in this agreement, by giving 28 days' notice to the other of its intention to terminate. The notice will include a detailed statement describing the nature of the breach. If the breach is capable of being remedied and is remedied within the 28 day notice period, then the termination will not take effect. If the breach is of a nature such that it can be fully remedied but not within the 28 day notice period,



then termination will also not be effective if the party involved begins to remedy the breach within that period, and then continues diligently to remedy the breach until it is remedied fully. If the breach is incapable of remedy, then the termination will take effect at the end of the 28 day notice period in any event.

- 10.2 The agreement may be terminated by either party immediately on giving notice to the other if the other party becomes bankrupt or insolvent, or has a receiver or administrative receiver appointed over it or over any part of its undertaking or assets, or passes a resolution for winding-up (otherwise than for the purposes of amalgamation or reconstruction), or if a court of competent jurisdiction makes an order to that effect, or if the other party becomes subject to an administration order or enters into any voluntary arrangement with its creditors or ceases or threatens to cease to carry on business.

## **11 INDEMNITY**

Where the Buyer's modification to the Goods or combination of the Goods with other goods or other Buyer action, including without limitation, installation, results in a loss to, or liability of, the Supplier, the Buyer shall fully indemnify and hold harmless the Supplier against all such loss and liability.

## **12 STANDARDS**

It is the responsibility of the Buyer to ensure that the Goods comply with any safety or other standard and for the product or market in which the Goods will be used or resold and that the Goods will not infringe the Intellectual Property Rights of any person in the market in which the Buyer intends to sell the Goods.

## **13 FORCE MAJEURE**

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

## **14 RELATIONSHIP OF PARTIES**

Nothing contained in these Terms and Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions shall be deemed to construe either of the parties as the agent of the other.

## **15 ASSIGNMENT**

The Buyer shall not be entitled to assign its rights or obligations or delegate its duties under this agreement without the prior written consent of the Supplier. The Supplier may assign or sub-contract its obligations hereunder.

## **16 SEVERABILITY**



If any provision of this agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

**17 WAIVER**

No failure by the Supplier to enforce any of these Terms and Conditions shall constitute a waiver of its rights hereunder.

**18 NOTICES**

Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given on the Order or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

**19 ENTIRE AGREEMENT**

This agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this agreement, this agreement may be varied only by a document signed by both parties.

**20 GOVERNING LAW AND JURISDICTION**

This agreement 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.