

**PHOTON LINES LIMITED
TERMS AND CONDITIONS OF SALE**

1 INTERPRETATION

- 1.1 In these Terms and Conditions of Sale (the "Conditions"):
- 1.1.1 The "Seller" means Photon Lines Limited of Bitcham Hill, Bitcham Road, Bitcham, Hants, Oxfordshire, OX15 4FF;
 - 1.1.2 The "Buyer" means any customer who purchases the Goods from the Seller;
 - 1.1.3 "Contract" means any contract between the Seller and the Buyer for the Sale and Purchase of goods, incorporating these Conditions;
 - 1.1.4 "Goods" means any goods agreed in the Contract to be supplied to the Buyer by the Seller (including any part or parts of them).

1.2 In these Conditions headings are for convenience only and shall not affect their construction.

2 APPLICATION OF TERMS

- 2.1 Any Contract made with the Seller will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order or confirmation of order).
- 2.2 No other statement, written or oral, including any brochure or promotional literature of the Seller, shall be incorporated into the Contract or have any legal effect.
- 2.3 No employee or agent of the Seller has any authority to vary these terms orally or to make any representation on behalf of the Seller as to their effect. No addition to or variations of these Conditions shall be binding on the Seller unless expressly agreed in writing and signed by the Technical Sales Manager or E.Dream of the Seller.

3 FORMATION OF THE CONTRACT

- 3.1 The Seller will send a quotation to the Buyer in response to an enquiry to purchase the Goods. A copy of these Conditions will be attached to the quotation.
- 3.2 On receipt of the quotation, any subsequent order to purchase the Goods must be confirmed by the Buyer in writing and shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.
- 3.3 No order placed by the Buyer shall be deemed to be accepted by the Seller until a written sales order acknowledgement form (the "Acknowledgement Form") is completed and despatched to the Buyer confirming the price in the quotation and the estimated delivery time at which point the Contract will come into existence except as described in Clause 3.3. Any quotation is valid for a period of 30 (thirty) days from its date, provided the Seller has not withdrawn it.

4 DESCRIPTION

- 4.1 The description and specification for the Goods shall be as set out in the Seller's quotation.
- 4.2 All drawings, descriptive matters, specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them; they will not form part of the Contract.

5 ORDERS AND SPECIFICATIONS

- 5.1 As stated in Clause 3.2 any order to purchase the Goods must be in writing and the Buyer shall be responsible for ensuring the accuracy of the terms of any order and that any specifications are accurate and complete.
- 5.2 No order which has been accepted by the Seller pursuant to Clause 3.3 may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profits), costs, damages, charges and expenses incurred by the Seller as a result of cancellation.

6 DELIVERY

- 6.1 The Seller shall arrange with a carrier to deliver the Goods to the Buyer at its nominated delivery address and shall act as the Buyer's agent in arranging such delivery and the carrier's charges together with insurance costs may accompany the invoice for the Goods pursuant to clause 7.2 below.
- 6.2 Any estimated delivery time given by the Seller and contained in the Acknowledgement Form is approximate only and refers to its readiness to deliver ex-works and in regard to any such dates time shall not be of the essence. If notwithstanding the Seller's endeavours it fails to despatch or the carrier fails to deliver the Goods by such date, such failure shall not constitute a breach of the Contract and the Buyer shall not be entitled to claim compensation for such failure or for any consequential loss or damage resulting therefrom.
- 6.3 Subject to the provisions of Clause 6.2 above, where despatch or delivery is delayed by more than 30 (thirty) days beyond the estimated date given in the Acknowledgement Form, the Buyer shall grant the Seller a reasonable extension period. If upon the expiry of the extension period the Goods have not been despatched or delivered, the Buyer may forthwith by notice in writing terminate the Contract and in such circumstances the Buyer shall pay in accordance with Clause 8 for all Goods sold by the Seller to the actual date of termination and neither party shall have any further liability to the other in respect of the Goods undelivered.
- 6.4 If at the date on which the Seller is ready to despatch or deliver the Goods the Buyer delays acceptance thereof for any reason whatsoever, the Goods will be stored by the Seller at the Buyer's risk but the Buyer shall pay to the Seller an amount equivalent to what the Buyer would be liable to pay if the Goods had in fact been despatched or delivered together with reasonable storage charges for the period of delay and the cost of any additional handling and transporting incurred. If on the expiry of 30 (thirty) days after the date on which the Seller is ready to despatch or deliver the Goods the Buyer has not accepted the Goods, the Seller reserves the right immediately to cancel the Contract. This cancellation shall entitle the Seller to dispose of the Goods and obtain from the Buyer compensation for loss of profit in addition to any other sums due to the Seller under the Contract.
- 6.5 Claims in respect of incomplete or incorrect supplies or of Goods damaged in transit must be notified to the Seller as soon as possible and in any event not later than 7 (seven) days after receipt of the Goods at the Buyer's nominated delivery address.
- 6.6 Claims in respect of non-delivery of Goods must be made as soon as possible and in any event within 7 (seven) days of the receipt by the Buyer of the Seller's invoice.
- 6.7 At the option of the Seller, Goods sold to the Buyer may be delivered in two or more instalments and, in that event, each instalment shall be deemed to form a separate Contract and failure to deliver or defective delivery of any one instalment shall not constitute a breach of contract in respect of other instalments.

7 PRICE

- 7.1 The price of the Goods (the "Price") confirmed in the Acknowledgement Form is exclusive of any applicable VAT which the Buyer shall be additionally liable to pay to the Seller.
- 7.2 The Price is stated on an ex-works basis and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay in addition the carrier's charges for transport, packaging and insurance. Such additional costs may be listed on the delivery note attached to the invoice on despatch of the Goods.

8 PAYMENT

- 8.1 All payments will be due 30 (thirty) days from the date of the invoice.
- 8.2 Payment shall be by direct transfer to the Seller's bank account (through the BACS system).
- 8.3 The Seller reserves the right to request payment by means of an irrevocable letter of credit in favour of the Seller which the Buyer will arrange to be confirmed by a first class bank acceptable to the Seller. All charges in respect of each letter of credit shall be settled by the Buyer.
- 8.4 Time for payment shall be of the essence.
- 8.5 If at the date on which the Seller is ready to despatch or deliver the Goods the Buyer delays delivery for any reason, the Seller may present invoices for full settlement on that date and in default of payment and without prejudice to any other rights or remedies the Seller reserves the right to demand payment of all outstanding balances whether or not due and/or cancel all outstanding contracts.
- 8.6 If the Buyer fails to pay the Seller any sum due pursuant to the Contract interest shall be charged on outstanding balances at the rate of 3.0% (three per cent) above the lending rate from time to time accruing on a daily basis until payment is made. The Seller reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.7 The Buyer shall not be entitled to withhold or set-off payment for Goods for any reason whatsoever.
- 8.8 If at any time the Seller is advised of circumstances casting doubt on the Buyer's creditworthiness or satisfactory security for payment is not given on request or the Buyer is in default of payment under a previous Contract, the Seller may require payment of the whole or part of the Price in advance and pending such payment the Contract in question shall be suspended. In the event of such payments not being made within a reasonable period stipulated by the Seller, the Seller may cancel the Buyer's Contract without liability and the Buyer shall be responsible for any resulting loss to the Seller.

9 RISK AND PROPERTY

- 9.1 Risk in the Goods shall pass to the Buyer from the time they are delivered into the custody of the carrier in question at the Seller's works, whether arranged by the Buyer or by the Seller on the Buyer's behalf.
- 9.2 Until the Price of the Goods comprised in this or any other Contract between the Buyer and the Seller together with VAT and delivery charges pursuant to Clause 7 shall have been paid or satisfied in full (if by cheque then only upon clearance):
- 9.2.1 the property in the Goods remains vested in the Seller (notwithstanding the delivery of the same and the passing of the risk therein);
 - 9.2.2 the Buyer shall store the Goods in such a way that they can be readily identified as being the Seller's property;
 - 9.2.3 the Buyer shall on request inform the Seller of the precise location of each item of the Goods identified where applicable by its serial number, by supplying the Seller at its expense within 7 (seven) days of its request with a written schedule of the said locations.
- 9.3 The Seller shall be entitled by itself, its servants or agents to enter upon any of the Buyer's premises for the purpose of removing and repossessing such Goods and the Seller shall be entitled to claim from the Buyer the costs and expenses incurred by the Seller in and ancillary to such removal and repossession.
- 9.4 In the case of Goods in Scotland, Clause 9.2 hereof shall not apply, and in place thereof there shall be substituted the following Clause (and for the avoidance of doubt Sub-Clauses 9.2.1 to 9.2.3 and Clause 9.3 shall continue to apply): "9.2 Until the Price of the Goods comprised in this Contract between the Buyer and the Seller shall have been paid in full:"

10 WARRANTY AND LIABILITY

- 10.1 The Seller warrants that (subject to the other provisions of the Contract) upon delivery the Goods will be of satisfactory quality and correspond with their specifications and that they will be within the normal limits of industrial quality for such products.
- 10.2 The Seller will at its earliest convenience following payment in full for the Goods, arrange to transfer to the Buyer the benefit of any warranty or guarantee given by the manufacturer.
- 10.3 If any of the Goods do not conform with the warranty contained in Clause 10.1, the Seller shall at its option replace or repair such Goods or refund the price of such Goods, whereupon it shall be entitled to the benefit of the manufacturer's warranty or guarantee to that extent.
- 10.4 The Seller shall not be liable for any breach of the warranty in Clause 10.1 if:
- 10.4.1 the Buyer fails to notify the Seller in writing within 60 (sixty) days of delivery of any defect; or
 - 10.4.2 the Seller is not given a reasonable opportunity after receiving the notice of examining such Goods; or
 - 10.4.3 the Buyer makes any further use of such Goods after giving such notice; or
 - 10.4.4 the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or
 - 10.4.5 the Buyer alters or repairs such Goods without the written consent of the Seller.
- 10.5 For the avoidance of doubt the Seller does not warrant that the Goods are fit for any particular purpose of the Buyer.
- 10.6 Save as provided for in this Clause 10 (and the conditions implied by Section 12 of the Sale of Goods Act 1979) the Seller shall have no liability for any defect in the quality of the Goods or for their failure to correspond to any description or sample or be fit for any purpose and all other conditions, warranties, stipulations and undertakings, whether express or implied by statute or common law are excluded. In particular the Seller shall have no liability for loss of profit or consequential loss.
- 10.7 The Seller makes no exclusion of its liability for death or personal injury arising from its negligence or fraudulent misrepresentation.
- 10.8 The Buyer accepts as reasonable that the Seller's total liability for the Goods which are defective shall be as set out in this Clause 10: in fixing that limit the parties have had regard to the fact that the Buyer has selected the Goods from its own knowledge of their characteristics and relying upon their manufacturer's reputation and warranties, the Price for the Goods, the nature of the Goods, the use they will receive and the resources available to each party including any applicable manufacturer's guarantee, servicing facilities and insurance cover.

11 INTELLECTUAL PROPERTY

- 11.1 The Seller reserves the right to effect design changes without notice as required by technical developments or where such changes are effected by the Seller's suppliers.
- 11.2 The Buyer agrees to indemnify the Seller against all liability arising from the Seller's performance of the Buyer's order in accordance with the Buyer's specification where such specifications infringe any patent trade mark registered design or other intellectual property rights not owned by the Buyer or the Seller.
- 11.3 All documents drawings and specifications supplied by the Seller are the Seller's copyright and may not be disclosed to third parties (other than the ultimate user of the Goods) or be reproduced without the Seller's consent in writing.

12 INSOLVENCY

- 12.1 If the Buyer fails to make payment due to the Seller on the due date or commits any other breach of the Contract and fails to remedy such breach within a period of 30 (thirty) days from receipt of notice in writing from the Seller requesting remedy or if the Buyer enters into an arrangement with its creditors or goes into liquidation or passes any resolution for winding up or becomes subject to the appointment of any receiver, administrative receiver or administrator or becomes bankrupt then:
- 12.1.1 the Seller may by notice in writing to the Buyer forthwith cancel the Contract and any other Contracts outstanding between the parties;
 - 12.1.2 in the event of such cancellation the Seller shall be entitled to reclaim any Goods unpaid for in accordance with the provisions of Clause 9 above;
 - 12.1.3 the Buyer shall remain liable to pay the Seller the full Price for the Goods less:
 - a) the disposal price received by the Seller for Goods in its possession or reclaimed from the Buyer; and
 - b) any part of the Price for the Goods paid by the Buyer to the Seller.

13 ASSIGNMENT

- 13.1 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.
- 13.2 The Seller may assign the Contract or any part of it to any person, firm or company. In this respect the Buyer's attention is drawn to the payment provisions contained in Clause 8.4 of these Conditions.

14 FORCE MAJEURE

- 14.1 The Seller shall have no liability in respect of any delay in delivering or performing any obligations to the Buyer due to any cause of whatever nature outside the reasonable control of the Seller or the Seller's suppliers.
- 14.2 In such event the Seller may without liability cancel or vary the terms of the Contract including extending the time for performing it and the Buyer shall take and pay for such part of the Goods as the Seller shall be able to deliver.

15 SEVERANCE

- 15.1 If at any time one or more of these Clauses becomes invalid or unenforceable in respect of any law such terms shall be deemed to be severed from the Contract and the validity and enforceability of the remaining provisions shall not be affected or impaired.

16 WAIVER

- 16.1 The waiver by the Seller of any breach of any terms contained in the Contract shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any subsequent breach.

17 ENTIRE AGREEMENT

- 17.1 The parties agree that:
- 17.1.1 these Conditions together with any other documents referred to in the Conditions (together the "Contractual Documents") constitutes the entire contract between the parties;
 - 17.1.2 neither of them have been induced to enter into any contractual document in reliance upon, nor have they been given, any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as are expressly set out in the contractual documents and, to the extent that any of them have been the relevant party unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation thereto.

18 RIGHTS OF THIRD PARTIES

- 18.1 No term of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.

19 NOTICES

- 19.1 Any notice to be served under the Contract may be given orally in person or by telephone but must be confirmed in writing as soon as possible either:
- a) within the United Kingdom by prepaid first class post (when it will be deemed served at noon on the first working day after it was posted); or
 - b) by facsimile transmission or electronic mail between the hours of 9.00 a.m. and 3.00 p.m. on a working day, (when it will be deemed served twelve hours after it was transmitted); or
 - c) by personal delivery (when it will be deemed served when it is delivered).
- 19.1.2 The address for service of notices shall be the party's address as shown in the Contract or as subsequently notified in writing.

20 APPLICABLE LAW AND ARBITRATION

- 20.1 Any dispute arising under or in connection with the Contract shall be finally settled by reference to arbitration in London, in default of agreement the arbitrator to be appointed by the President of the Law Society.
- 20.2 This Contract shall be governed and interpreted in accordance with English Law.

IMPORTANT

If you have difficulty in reading these Conditions, a full sized set is available from the Seller on request