

## QIOPTIQ LIMITED (UK) – CONDITIONS OF SALE

### 1. DEFINITIONS

For the purposes of these Conditions of Sale:

- a) The "Company" shall mean Qioptiq Ltd.
- b) The "Article(s) " shall mean the products or services to be supplied by the Company in accordance with these Conditions of Sale.
- c) The "Customer" shall mean the person or party whose order for the Article(s) is accepted by the Company.
- d) The "Parties" shall mean the Company and the Customer.
- e) The "Contract" means the Contract for sale and purchase of the Articles to which these Conditions of Sale apply.
- f) The "Total Contract Price" shall be the price agreed between the Company and the Customer in respect of the total value of the Articles. For the purposes of Total Contract Price, "firm" shall mean not subject to variation except in accordance with sub-clause 3.2 below.

### 2. SCOPE

These Conditions of Sale govern the Contract and shall prevail over all other terms and conditions unless such other terms and conditions are specifically agreed in writing and signed by an authorised representative from each of the Parties. Any terms and conditions appearing in the Customer's documents shall have no contractual effect and appear only by reason of being printed on the Customer's stationery.

### 3. PRICES

3.1 Unless otherwise agreed in writing, the Total Contract Price shall be firm, ex works, exclusive of VAT.

3.2 In the event that the Customer requests any change in delivery dates, quantities, or specifications or in the event that any delay arises from instructions of the Customer or from failure by the Customer to provide the Company with adequate information or instructions, the Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Article(s) to reflect any resultant increase in cost to the Company.

### 4. PAYMENT

4.1 Unless otherwise agreed in writing, payment shall be made by the Customer in UK Pounds Sterling and upon net monthly terms.

4.2 Without prejudice to the Company's rights under Clause 21 of these Conditions of Sale, the Company shall be entitled to charge interest on any late payments of any sums due under these Conditions of Sale at a rate of 3% p.a. above the National Westminster Bank plc base rate. The Customer shall not be entitled to withhold payment for the Article(s) or to exercise any rights of set-off, counterclaim, or other deduction for any reason whatsoever.

4.3 Any failure on the part of the Customer to make payment in accordance with the terms of this Contract shall entitle the Company, at its option, to withhold further deliveries both in respect of this Contract or series of Contracts and/or any other Contract for delivery of goods to the Customer until such payment has been made.

## **5. EXPORT SALES**

5.1 Delivery of the Article(s) forming the subject of this Contract may be subject to issue of an appropriate export licence by the Government of the United Kingdom. If requested, the Customer shall provide to the Company an End User Certificate in respect of all Article(s) supplied under these Conditions of Sale. Such End User Certificate shall be in a form acceptable to the Company.

5.2 Both Parties agree to comply with all applicable UK, U.S. and other government export control laws and regulations.

5.3 In the event that performance of the Contract is subject to the provision of technical information from the Customer to the Company, the Customer agrees to notify the Company and advise whether such technical information is restricted by export control laws or regulations, specifically including, but not limited to, the U.S. Arms Export Control Act including the requirements of the International Traffic in Arms Regulations (ITAR) and the U.S Export Administration Act including the requirements of the Export Administration Regulations (EAR).

5.4 The Customer shall indemnify the Company against all actions, claims, demands, charges and expenses, arising from any of its acts or omissions in the performance of any of its obligations under this clause.

5.5 Notwithstanding the Customer may have acted punctually and diligently regarding the provision of an End User Certificate to the Company, should there be any delay in delivery or other performance under the Contract resulting from a failure by the relevant UK, U.S. or other government agency to provide an appropriate export licence or other clearance then such delay in delivery or other performance shall, for the purposes of this Contract be considered a "Force Majeure" in accordance with clause 19 below.

## **6. DELIVERY**

6.1 Delivery shall be ex-works in accordance with Incoterms 2010.

6.2 The Company shall use its most reasonable endeavours to deliver Articles and/or services by the dates quoted or accepted for despatch or delivery. All estimates for despatch or delivery shall start to run from the date the order was accepted along with receipt of by the Company of all necessary information and drawings to enable the work to proceed. For the avoidance of doubt delivery of Articles and/or services are not of the essence.

6.3 The Article(s) may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Customer.

6.4 Where the Article(s) are to be delivered in instalments, any failure or delay by the Company in delivering any one or more of the instalments in accordance with these Conditions of Sale, or any claim by the Customer in respect of one or more of the instalments, shall not entitle the Customer to treat the Contract as repudiated as a whole.

## **7. PACKAGING**

Unless otherwise agreed in writing, packaging will be in accordance with the Company's normal commercial standards and the cost thereof shall be included in the Total Contract Price.

## **8. TESTING AND ACCEPTANCE**

Testing and inspection of the Article(s) will be undertaken in accordance with the Company's quality assurance procedures. The Company shall certify conformity of the Article(s) to the agreed Contract specification(s). Within thirty (30) days of delivery Customer shall be entitled to reject the Article(s) on the grounds that they do not conform to the agreed Contract specification(s). Upon any such rejection, the Customer shall return the Article(s) to the Company, carriage paid, by the method of transport specified by the Company. If the Customer has not exercised its right of rejection within the said thirty day period, the Article(s) shall be deemed to have been accepted.

## **9. DELIVERY OF WRONG QUANTITY**

Where a wrong quantity of Article(s) is delivered, the Customer shall be entitled to reject only such of the Article(s) as are in excess of the total quantity ordered always provided that the Customer shall have notified the Company in writing of its intention to reject the Article(s) within fourteen (14) days of receipt thereof. Unless otherwise agreed between the parties rejected Article(s) shall be returned to the Company at the Company's expense. Any costs associated with damage in transit of such returned Articles shall be met by the Customer.

## **10. STORAGE**

10.1 If for any reason the Customer fails or is unable to give forwarding instructions sufficient to enable the Company to despatch Article(s) within thirty (30) days of notification from the Company to the Customer that the Article(s) are ready for delivery, the Company shall be authorised to place the Article(s) in storage on behalf of the Customer and to arrange any necessary insurance. The Total Contract Price in respect of those Article(s) shall thereupon become due and payable. Risk in the Article(s) shall pass to the Customer immediately upon the Article(s) being placed in storage.

10.2 All storage, transport, handling, maintenance, insurance and associated administrative charges shall be for the account of the Customer. If the Article(s) have not been collected and the above charges not paid for by the Customer within six (6) months, the Company shall be entitled to assume that the Customer has no further interest or right therein, and the Company shall be entitled to dispose of the Article(s) in such way as it deems fit.

## **11. DESCRIPTION**

Whilst every effort is made to ensure the accuracy of all descriptions, diagrams and other information contained in documentation issued by the Company, such descriptions, diagrams and other information are for information only and do not constitute any representation, warranty or undertaking on the part of the Company unless specifically so agreed by the Company in writing.

## **12. RISK AND TITLE**

12.1 Unless otherwise agreed in writing, risk in the Article(s) shall pass to the Customer in accordance with the ex-works provisions of Incoterms 2010 as specified in sub-clause 6.1 above.

12.2 Notwithstanding the passing of risk, title to the Article(s) shall not pass from the Company to the Customer until the Company has received payment in full of the price of the Article(s).

12.3 Until such time as title to the Article(s) passes to the Customer, the Customer shall, where appropriate, hold the Article(s) as the Company's fiduciary agent and bailee, and shall keep the Article(s) separate from goods belonging to the Customer and/or third parties, properly stored, protected and insured and identified as the Company's property. Unless otherwise agreed to in writing by the Company the Customer shall under no circumstances resell the Article(s) to any third party nor incorporate them in or commix them with any other products, goods or equipment until such time as title to the Article(s) has passed to the Customer in accordance with clause 12.2 above.

12.4 Until such time as title to the Article(s) passes to the Customer, the Company may at any reasonable time enter upon any of the Customer's premises and remove the Article(s) therefrom and the Customer shall permit the Company reasonable access to the said premises to do so.

12.5 In the event that the price for the Article(s) is not paid by the due date in accordance with the provisions of Clause 4 of these Conditions of Sale, the Company shall at its absolute discretion be at liberty either to recover the Article(s) or commence an action for the price of the Article(s).

### **13.WARRANTY**

13.1 The Company warrants the Article(s) against defects arising solely from defective materials or workmanship occurring during a period of twelve (12) calendar months from the date of ex-works delivery as defined in Incoterms 2010. The warranty provided herein is exclusive and in lieu of any other warranty, express or implied, including without limitation any implied warranty of merchantability or fitness for a particular purpose. Accordingly, the terms implied by Sections 13, 14 and 15 of the Sale of Goods Act 1979 and the corresponding provisions of the Supply of Goods and Services Act 1982 are hereby excluded. The Customer's exclusive remedy and the Company's sole liability under the warranty shall be limited to the repair or replacement of the defective Article(s) and the Company shall be liable for no other damages or losses including, but not limited to, consequential or indirect damages or losses arising from the defective Article(s).

13.2 This warranty shall in any event be subject to the following conditions:-

- a) Article(s) which are repaired or replaced during the warranty period shall remain under warranty for a period of time equivalent to the unexpired warranty existing at the time of notification by the Customer to the Company of warrantable arising.
- b) The Customer shall have notified the Company of any alleged defect within fourteen (14) days of its appearance and shall have given the Company the opportunity to examine the Article(s) and any relevant records of usage, maintenance and storage maintained by the Customer.
- c) The Customer shall have ensured that the Article(s) have been stored, fitted and used in accordance with any specifications, user instructions, maintenance manuals etc. provided by the Company.
- d) The Customer shall not have changed, removed or obscured any serial or identification numbers, labels, lettering or other markings which are on the Article(s) at the time of delivery thereof.
- e) The warranty does not extend to normal wear and tear, misuse, accidental damage, wilful damage, negligence and/or defects which in the case of the latter are attributable to modification by persons other than authorised employees of the Company.
- f) The warranty does not extend to any damage caused by the Customer failing to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Article(s) or (if there are none) good trade practice.
- g)The Company shall be under no liability in respect of any defect in the Article(s) arising from any drawing, design or specification supplied by the Customer.

h) The warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any such warranty as is given by the manufacturer to the Company.

i) The warranty may be asserted by the Customer only and not by any third party or other user of the Article(s).

j) The warranty shall be ineffective in respect of such Article(s) for which payment has not been paid by the due date in accordance with Clause 4 above.

13.3 If so advised by the Company, the Customer agrees to return all defective Article(s) or parts thereof along with a statement of the alleged defect to the Company, carriage paid, by the method of transport stipulated by the Company. Where the examination of the said Article(s) or parts thereof finds that the defect is due to the fault of the Company, the Company will pay all return charges which will otherwise be the responsibility of the Customer.

13.4 All reasonable costs incurred by the Company in relation to a "No Fault Found" analysis/examination of Article(s), including those incurred in relation to the shipment of such Article(s), shall be fully reimbursed by the Customer to the Company.

#### **14. INDEMNITY**

14.1 Subject to sub-clause 14.2 below, the Company hereby indemnifies the Customer against all actions, claims, demands, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any patent, registered design, copyright, trade mark or trade name by or on behalf of the Customer arising as a result of the Customer's use of a design or instruction furnished by the Company in relation to the Article(s) (or any feature thereof) always provided that the Company shall not be liable to indemnify the Customer:-

a) If the Company has at its own expense procured for the Customer the right to continue to use the Article(s) or has replaced or modified the Article(s), or

b) If the Customer has failed to give the Company the earliest possible notice in writing of any action being threatened or claim being made, or has failed to permit the Company to conduct all necessary litigation and/or negotiations in accordance therewith, or

c) If the Customer has made any admission of liability on behalf of itself or the Company, or

d) If the Customer has used or caused the Article(s) to be used in a manner or for a purpose other than that for which they were originally intended by the Company, or

e) If the Customer has used, or caused the Article(s) to be used, sold or exported into any country not authorised by the Company.

14.2 The Customer hereby indemnifies the Company against all actions, claims, demands, charges and expenses in respect of any infringement or alleged infringement of any patent, registered design, copyright, trade mark or trade name resulting directly or indirectly from its unauthorised sale or modification of the Article(s) or failure to follow the Company's instructions, instructions from the Customer to the Company specifying the use by or on behalf of the Company of any material, design, process or other feature required by the Customer in the production of the Article(s).

#### **15. INTELLECTUAL PROPERTY**

15.1 All rights in the design of the Article(s) and all intellectual property existing or coming into existence in relation to the Article(s) are wholly owned by the Company.

15.2 In accepting an order for Article(s), the Company shall not, by implication or otherwise, be deemed to have granted any free rights of user or licence whatsoever in or to any intellectual property relating to the Article(s) to be supplied under the said order.

## **16. CONFIDENTIALITY**

The Contract, quotation and all material, documents and information issued by the Company in any form in connection therewith shall be confidential and their use and disclosure shall be strictly limited by the Customer to those of its employees having a need to know and the Customer shall under no circumstances disclose any such information to any third party without the prior written consent of the Company.

## **17. TOOLS**

All tools, jigs, moulds, dies, gauges and other equipment and associated software made by or for the Company, shall, unless otherwise agreed, become and/or remain the property of the Company who may use the same for any purpose whatsoever. Where, for the purpose of the Contract, such equipment is supplied by the Customer to the Company, the Company shall not be liable for any loss or damage thereto unless such loss or damage is directly attributable to the Company's negligence.

## **18. LIABILITY**

18.1 The Customer shall ensure that the end user of the Article(s) or of products incorporating the Article(s) shall be advised as to the nature of the Article(s) and shall be supplied with all relevant information (including any instruction and maintenance manuals and/or safety information) supplied by the Company to the Customer in respect of such Article(s).

18.2 Subject to any express provisions to the contrary contained in these Conditions of Sale, all representations, warranties, guarantees and conditions in relation to the Article(s), whether express or implied, statutory or otherwise, are hereby excluded and the Company shall not be liable in contract, tort, breach of statutory duty or otherwise for any loss, injury, destruction or damage whatsoever arising in connection with the supply of the Article(s). The Company does not exclude or limit liability arising in respect of death or personal injury caused by the Company's negligence.

18.3 Notwithstanding the provisions of Clause 14 of these Conditions of Sale and except in respect of liability for death or personal injury caused by the Company's negligence, the Company's liability in respect of any claim for loss or damage arising in any way in connection with the Article(s) shall cumulatively be limited to the Total Contract Price of the Article(s) inclusive of any subsequent amendments or changes thereto.

18.4 The Company accepts no liability whatsoever for any form of consequential or indirect loss or damage including but not limited to any loss of use, profit or contract.

18.5 The Customer acknowledges and agrees that the exclusions and limitations of liability provided for in this clause are reasonable and that, if they had not been included, the Total Contract Price would have been materially increased.

## **19. FORCE MAJEURE**

19.1 The Company will not incur any liability arising out of any delay in delivery or other performance hereunder due to a "Force Majeure". A "Force Majeure" is defined as any circumstance beyond the reasonable control of the Company including, but not limited to, industrial disputes, fire, flood, earthquake, currency restriction, shortage of transport, general shortage of material or power or fuel, epidemic, quarantine, Acts of God or nature, riots, mutinies, civil commotion, war or warlike operations, sabotage, failure to obtain the necessary export licence(s) where such failure is due solely to any action or inaction on the part of the government department or agency responsible for the issue of such export licence(s) or any acts of the United Kingdom Government and Departments or Courts thereof. An

extension of time for delivery or other performance by the Company shall be granted for a period equal to the duration of the delay caused by the Force Majeure circumstance.

19.2 Notwithstanding the provisions of paragraph 19.1 above, if the Force Majeure circumstances affecting the Company's performance hereunder continue for a period exceeding ninety (90) calendar days, the Parties shall use their best efforts to agree upon a mutually satisfactory course of action always provided that the Customer shall at all time after such ninety day period be entitled to terminate the Contract immediately by notice in writing to the Company.

## **20. WAIVER**

Unless formally agreed in writing, no delay by or failure of the Company in exercising any right under the Contract shall be construed as a waiver of such right, and waiver by the Company of any breach of any term hereunder by the Customer shall not prevent subsequent enforcement of that term or any other term.

## **21. RIGHTS OF THIRD PARTIES**

Notwithstanding anything to the contrary elsewhere in the Contract, a person who is not a Party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

## **22. TERMINATION**

22.1 The Company may terminate or (at its option) suspend the Contract, either partially or wholly, by written notice to the Customer, if the Customer fails to observe or perform any of its contractual obligations including its obligation to make payment on any due date.

22.2 The Company may terminate the Contract should the Customer be unable to pay its debts as and when they fall due, and the Contract shall automatically terminate if the Customer goes into liquidation, whether voluntary or compulsory (except for the purposes of any amalgamation or reconstruction), or has a receiver appointed or makes a compromise or arrangement with its creditors. Any termination shall be without prejudice to any accrued rights and liabilities of the parties under the Contract.

## **23. NOTICES**

All notices to be given under these Conditions of Sale shall be in writing and forwarded by first class prepaid post or sent by facsimile transmission to the receiving Party at its business address as last notified in writing to the other Party and shall be deemed to have been given on the date of the notice in writing or facsimile transmission or on the day following that on which the notice was posted.

## **24. AMENDMENT**

Any amendment or addition to these Conditions of Sale must be in writing and signed by the authorised signatory of the Company.

## **25. PARAGRAPH HEADINGS**

Paragraph Headings are for convenience only and shall not affect in any way the interpretation of any of these Conditions of Sale.

## **26. INVALIDITY OR ILLEGALITY**

The invalidity, illegality or unenforceability of any provision or clause herein, in whole or in part, shall not affect the validity or enforceability of the remainder unless such invalidity or unenforceability affects a part of this Agreement of fundamental economic or commercial importance to one of the Parties hereto.

## **27. LAW**

The construction, validity and performance of these standard conditions and any Contract incorporating the same shall be governed in all respects by the laws of England and subject to the exclusive jurisdiction of the courts of England and Wales.