



## **CONDITIONS OF SALE**

### **1. DEFINITIONS**

**Price:** Quotations are exclusive of VAT and carriage. In addition, insurance costs shall be borne by the Purchaser where necessary.

**Goods:** All articles sold to the Purchaser, including hardware, software and documentation.

**Materials:** Parts purchased from suppliers for incorporation into Goods.

**The Company:** Photon Power Technology Limited.

**Customer:** The person, firm or company to whom a quotation is addressed or whose order is accepted by the Company.

**Design:** Foundation Technology flowing from accumulated Company know-how.

**Development:** The application of Design to create production information including Tooling, Patterns, Test Software, Schematic Circuits, Parts Lists and all parts and information required to produce the Goods.

**Engineering Specification:** A document which sets out the Electrical, Mechanical, Environmental, Health and Safety criteria or performance for the Goods.

**Quotations:** Quotations are valid for 30 days but the Company retains the right to vary, amend or modify quotations.

### **2. GENERAL CONDITIONS**

(1) All orders are accepted subject to these Conditions of Sale.

(2) No variations to the Conditions of Sale are permitted, unless expressly authorised in writing by a Director of the Company. No other person is authorised to accept, confirm or vary any order nor make any representation, promise or warranty on behalf of the Company. The contract price shall be adjusted to take account of any increase in costs incurred by the Company as a result of any permitted variation or from any loss incurred on a suspension of work as a result of any fault of the Customer.

### **3. WAIVER**

The waiver by the Company of any breach of any of these Conditions of Sale shall not in any way prejudice or affect the subsequent enforcement of the term and shall not be deemed a waiver of any subsequent breach thereof.

### **4. CONFIDENTIALITY**

Except with the Company's previous written consent, the Customer shall not use (other than for the purposes of fulfilling the contract), or disclose to any other person, any information relating to the Goods or to the Contract. The Customer shall ensure that its employees enter into similar undertakings with the Customer and shall indemnify the Company against all losses, damage or expenses arising out of a breach of this clause.

### **5. ASSIGNMENT**

The quotation or contract to which these are the Conditions of Sale is personal to the Customer who shall not, without prior written consent of the Company, assign any rights or obligations hereunder to any other person, firm or company.

## 6. GENERAL DESCRIPTIVE MATTER

All specifications, drawings and particulars or weights and dimensions submitted by the Company are approximate only and intended to give a general idea of the Goods described therein and shall not form part of the Contract. Unless supplied or approved, the Company undertakes no responsibility for sites or foundations or for any framework or support or machinery or for compliance with any local bye-laws or statutory regulations or for the fulfilment of any special requirements the Customer is bound to observe.

## 7. PERFORMANCE

Unless any performance figures, tolerance or characteristics have been specifically warranted by the Company in writing in the form of the Company's Engineering Specifications, the Company shall be under no liability for failure to attain such figures. If performance figures, tolerances or characteristics obtained on any test provided for in the contract are outside the acceptance limits the Customer will be entitled to reject the Goods, but before rejecting the Goods or taking legal steps to claim breach of contract the Customer will give the Company reasonable time and opportunity to rectify its performance. Save insofar as the Customer's stipulations are based on advice given by the Company in writing, the responsibility for ensuring that Goods are sufficient and suitable for the Customer's purposes rests upon the Customer.

## 8. WARRANTY

- (1) Any defects which under proper use appear in the Goods within a period of 12 months after delivery and are due to faulty materials, workmanship or design (other than a design provided or specified by the Customer) shall be made good by the Company, either by repair or at the Company's option by replacement, provided the Company is notified in writing within seven days of the date of such defects appearing and the Goods or the defective parts thereof are returned to the Company or where in the Company's sole discretion this is not practical are made available for inspection by the Company. The cost of carriage of the returned goods or parts shall be paid by the Customer and the repaired or replaced Goods or parts will be delivered by the Company to the Customer free of charge. The Company's liability under this condition shall be in lieu of any obligation implied by law as to the quality or fitness for any purpose of the Goods and save as provided in this condition the Company shall be under no liability, whether in contract, tort or otherwise, in respect of any defects in the Goods or for any injury, loss or damage resulting from such defects or from any work done in connection therewith. Without prejudice to the generality of the foregoing exclusion the Company shall not in any circumstances be liable for any consequential loss or damage suffered by the customer, including any loss of use, loss of contracts or loss of profits.
- (2) Any repairs or adjustments not performed or authorised in advance by the Company shall cancel the guarantees and release the Company from further responsibility.
- (3) The Company shall be under no liability for the negligence of the Company, its employees, servants, agents, subcontractors or others, except liability for death or personal injury resulting from negligence.
- (4) Notwithstanding the foregoing, the Company shall be under no liability:
  - (a) in respect of any defects which appear under proper use within a period of 12 months after delivery if the Customer fails to adhere strictly to the terms of payment provided for or referred to herein or
  - (b) the Goods have not been used or maintained reasonably or properly by skilled operators and with materials approved by the Company or
  - (c) the defective Goods or parts thereof have not been despatched within 14 days of notification of the defect to the Company at the expense of the Customer or
  - (d) the Goods were sold as second hand or reconditioned or
  - (e) when the Customer has not given to the Company written notice of loss or damage in transit within 7 days after the Company's advice note, invoice or other notification of the despatch of the Goods in case of non-delivery or within 7 days after delivery of the Goods in any other case and where the Goods are transported by an outside freight carrier the Customer has not complied in all respects with the freight carrier's conditions of carriage by notifying claims for loss or damage in transit.
- (5) In the case of Goods not of the Company's manufacture the Customer is entitled only to the benefit of any guarantee or warranty given to the Company in respect thereof insofar as the Company is entitled to assign the same. In any event the Company's liability shall not exceed the amount recovered by the Company from the manufacturer concerned.

(6) The Company's total liability for any one claim shall not exceed the contract price.

## **9. TITLE TO THE GOODS**

- (1) The Goods shall remain the sole and absolute property of the Company until such time as the Customer shall have paid to the Company the agreed price together with any other monies due to the Company.
- (2) The Customer acknowledges that the Customer is in possession of the Goods solely as bailee for the Company and until such time as the Customer becomes owner of the Goods the Customer undertakes to store them separately on his premises in a manner which makes them readily identifiable as the goods of the Company.
- (3) The Customer's right to possession of the goods shall cease if it not being a company, commits an available act of bankruptcy or is in breach of any of these terms and conditions or if it being a company is in breach of any of these terms and conditions or is unable to pay its debts for the purposes of section 123 of the Insolvency Act 1986 or has a petition presented for its winding up, or passes a resolution for voluntary winding up, or has a Receiver, Administrative Receiver or Administrator appointed over any of its assets or enters into a voluntary arrangement with its creditors, the Company may for the purpose of recovery of its Goods enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the same.

## **10. INSOLVENCY OF THE BUYER**

If the Customer (being a company) has a petition presented for its winding-up or passes a resolution for voluntary winding-up otherwise than for the purpose of a bona fide amalgamation or reconstruction or compounds with its creditors or has a Receiver or Administrative Receiver or Administrator appointed over all or any part of its assets or (being an individual) becomes bankrupt or insolvent or enters into any arrangements with creditors or takes or suffers any similar action in consequence of debts or carries out or undergoes any analogous act or proceedings under foreign law then:

(1) The Company has:

- (a) a lien on the Goods together with a general lien on any other goods belonging to the Customer so long as the Company is in possession of them;
  - (b) a right of stoppage in transit;
  - (c) a right of release, and
  - (d) a right to suspend further deliveries of Goods.
- (2) The Company shall be entitled to treat the Contract as repudiated by the Customer and to invoice for any work in progress at the date of repudiation.

## **11. PAYMENT**

Unless otherwise agreed payment is due Net 30 days of the Company notifying the Customer that the Goods are ready for despatch. Interest will be charged on all overdue accounts at the rate of 3% over Barclays Bank plc Minimum Lending Rate for the time being in force.

## **12. DELIVERY AND RISK**

- (a) Unless otherwise specified in the Company's quotation or tender the price excludes delivery. Delivery where specified will be to the premises specified by the Customer in its order by any method of transport available to the Company.
- (b) Any time or date for the despatch or delivery of Goods or for the completion of work, whether specified in the Company's quotation or otherwise given by the Company shall be taken as an estimate made by the Company in good faith but shall not be binding upon the Company either as a term of the Contract or otherwise. In no circumstances shall the Company be liable for any loss or damage sustained by the Customer in consequence of failure to deliver within such time or by such date.
- (c) Unless otherwise agreed in writing, delivery shall be made at the premises specified by the Customer in the order. Subject to Condition 15, the risk in the Goods shall pass to the Customer

upon delivery which shall be deemed to have taken place when the Goods have been loaded onto the tailboard of the delivery vehicle.

(d) The Company may deliver the Goods in instalments and invoice the Customer as if each instalment comprised a separate contract upon the terms of these conditions.

(e) If delivery of the Goods is delayed through any act or omission of the Customer the Company may put the Goods into storage at the Customer's risk and make a charge to the Customer equal to 2% per month or part thereof of the invoice price of the Goods. In this event delivery of the Goods shall be deemed to have taken place when the Goods have been put into storage.

### **13. VARIATIONS**

Agreed delivery schedules shall not be varied by either party without the prior written consent of the other and if varied the contract price shall be adjusted in accordance with the following rules unless otherwise agreed.

(a) On receipt of an amendment to contracted order which re-schedules all or part of the contracted order, the Company will within 2 weeks advise the Customer of the price for re-schedule. If the advised price is not agreed or an amended form not agreed by the end of the third week from amendment receipt, then the original contract order remains unchanged. Maximum period of original contracted order schedule delay is 6 months. The order will lapse thereafter and the provisions contained in (b) below will apply. The Company will calculate the re-schedule charge in accordance with the following scale of charges as a percentage of goods contracted order price as follows:

(i) Finished Goods and

(ii) Work in progress within 3 months of amendment at the rate of 2% per month.

(iii) Work in progress beyond 3 months of amendment and materials on order 1% per month.

(b) On receipt of an amendment to contract order, which cancels all or part of the order, the Company will within 2 weeks halt production of all goods which are the subject of the cancellation. The Company will then count and price all material, work in progress and finished goods, the Company will, where possible, cancel the supply of materials. The value of such materials cancelled less any cancellation charges will be reduced by 15% and taken into account in the scale of charges below. The Company will calculate the price of the cancellation in accordance with the following scale:

(i) Finished goods - at contracted price

(ii) Work in progress - at 90% of contracted price

(iii) Materials in Kits - at Kit cost + 30%

(iv) Suppliers/sub contractors charges - at invoice price + 15%.

A single charge is then invoiced covering the cancellation or required months of delay. Additionally, there will be an administrative charge of £100 pounds or 2% of Order Value (re-scheduled or cancelled) whichever shall be the greater.

### **14. PACKING**

All packing, skips, drums and other packing materials marked "PROPERTY OF THE COMPANY" or defined in the Contract as to be so returned to the Company in good condition, carriage paid, within one month. If not so returned they will be charged for.

### **15. LOSS OR DAMAGE IN TRANSIT**

(1) Where the price includes delivery, the Company will repair or at its option replace free of charge within a reasonable time all Goods damaged or lost in transit, provided separate notices, in writing are given to both the carriers and the Company within three days of receipt of the Company Advice Note. Where the Goods are accepted from the Carrier without being checked the Carriers Delivery Book must be signed "NOT EXAMINED".

(2) All Goods the subject of any claim for damage in transit or shortage in delivery shall be preserved intact as delivered for a reasonable period and at least 7 working days after making the claim within which time the Company shall be at liberty to attend the Customer's works and investigate the complaint. The Customer shall not dispose of any damaged Goods without the Company's agreement.

- (3) Compliance by the Customer with each and every requirement of this condition shall be a condition precedent to any right the Customer has to make a claim and any breach shall release the Company from any liability or obligation in respect of the claim or to investigate it. The acceptance by the Company of any belated notice or claim, or any action taken by the Company thereon, shall not constitute any waiver by the Company and shall be without prejudice to the Company's right to reject the claim on the grounds of non-compliance with this Condition.

## **16. SEVERABILITY**

Any provision of these Conditions held by a court to be unenforceable shall be deemed severable from the rest which shall remain valid and binding.

## **17. TERMINATION**

- (a) Without prejudice to other remedies and accrued rights the Company shall have the right forthwith to terminate the Contract and to claim for any resulting losses or expenses if the Customer commits a breach of this or any other contract with the Company and fails to remedy the breach within a reasonable time of a written notice to do so.
- (b) If for any reason the Company shall receive directions by a Government Department as to the disposal of the Company's Goods of the type, kind or category within the Contract and in the Company's opinion such directives shall prevent or hinder the fulfilment by the Company of the Contract then the Company may at any time, by notice in writing to the Customer, cancel the Contract in whole or in part.

## **18. SAFETY**

Some of the Goods supplied by the Company require additional safety covers and precautions and such Goods are labelled. However because human error can occur, the Customer should acquaint its staff with any dangers and provide the necessary covers and precautions. Advice may be freely sought from the Company, if as a result of the coming into force after the date of the Company's tender (or where the Company has made no tender, the acceptance of the Customer's order) of any Act, Order, Regulation or Bye-law or the discovery of any new health or safety requirement or precaution or for any other reason, additional protective or safety equipment or work should be required, the cost thereof will form an extra to the tender or contract price.

## **19. DESIGN OWNERSHIP**

- (a) Unless otherwise expressly agreed in writing the Company own all rights to the Design, Tooling and Goods Manufactured and future Developments. The Company's right will not be reduced in any way by the Customer's payment of Design, Development, Engineering, Software Tooling or any other charges in whole or in part.
- (b) All estimates, designs, drawing plans or models prepared by the Company remain the Company's property and are copyright. They must not in the whole or in part be copied or otherwise made use of without the Company's prior written consent.

## **20. PATENTS**

The Customer shall indemnify the Company against all damages, penalties, costs and expenses to which the Company may become liable in the supply of any Goods or in the execution of any works in accordance with Customer's specification involving any infringement of a Registered Design, Patent or Copyright.

## **21. LICENCE**

Any licence required to enable Customer to acquire or the Company to sell or supply to the Customer shall be obtained by the Customer.

## **22. COPYRIGHTS**

All estimates, designs, drawings, plans or models prepared by the Company for Customer information remain the Company's property and are copyright. They must not in whole or in part be submitted to or copied or otherwise made use of by any other party without the Company's prior written consent.

**23. SAMPLES**

The Customer is liable to pay the full price of any samples supplied by the Company to the Customer. The charge will be waived if the samples are returned in full working order and in reasonable condition within one month of delivery to the Customer PROVIDED ALWAYS THAT:

- (a) The Customer has carried out such acts of maintenance as the Company specifies.
- (b) The Customer ensures that the samples are used only by skilled operators fully trained in the use of the same.
- (c) The Customer does not allow anyone to tamper or interfere with the samples.

**24. FORCE MAJEURE**

If the performance of the Contract or any obligation under it is prevented, restricted or interfered with by reason or circumstances beyond the reasonable control of the party obliged to perform it, the party so affected upon giving prompt notice to the other party shall be excused from performance to the extent of the prevention, restriction or interference but the party so affected shall use its best efforts to avoid or remove such cause of non-performance and shall continue performance under the Contract with the utmost despatch whenever such causes are removed or diminished.

**25. SUB-CONTRACTING**

The Company reserves the right to assign or sub-contract the contract or any part thereof.

**26. LEGAL CONSTRUCTION**

This contract shall be governed by the laws of England.

**27. NOTICE OF BREACH**

Any notice to be given hereunder shall be in writing and shall be deemed to have been duly given if sent or delivered to the party concerned at its address specified in the quotation, tender or acknowledgement of order or such other address as that party may from time to time notify in writing and shall be deemed to have been served if sent by post 48 hours after posting.

Company Address:

Photon Power Technology Ltd  
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