

Standard Terms & Conditions for Sale of Goods

I. Definitions

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

1. "Buyer" means the organisation or person who buys Goods
2. "Goods" means the articles to be supplied to the Buyer by the Seller;
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;
4. "Seller" means Key Photonics Ltd.

II. General

1. These Terms and Conditions shall apply to sales of Goods by the Seller 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 Seller in writing.
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 Seller.

III. Price and Payment

1. The price shall be the Recommended Retail Price less agreed discount, unless otherwise agreed in writing between the parties. The price is exclusive of VAT or any other applicable costs.
2. Credit terms may be offered subject to satisfactory credit vetting of the Buyer by the Seller. The offer of credit will be at the sole discretion of the Seller.
3. Where credit is offered payment of the price and VAT and any other applicable costs shall be due within 30 days of the date of the invoice supplied by the Seller, unless otherwise agreed in writing. In cases where credit is not offered payment will be required before release of goods by the Seller.
4. The Seller shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 2 per cent per annum above the base rate of the National Westminster Bank
5. If payment of the price or any part thereof is not made by the due date, the Seller shall be entitled to:

1. require payment in advance of delivery in relation to any Goods not previously delivered;
2. refuse to make delivery of any undelivered Goods without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery;

IV. Description

Any description given or applied to the Goods is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer hereby affirms that it does not in any way rely on any description when entering into the contract.

V. Sample

Where a sample of the Goods is shown to and inspected by the Buyer, the parties hereto accept that such a sample is representative in nature and the bulk of the order may differ slightly as a result of the manufacturing process.

VI. Delivery

1. Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Buyer on, or as close as possible to the date required by the Buyer. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
2. If the Seller is unable to deliver the Goods because of actions or circumstances under the control of the Buyer, then the Seller shall be entitled to place the Goods in storage until such times as delivery may be effected and the Buyer shall be liable for any expense associated with such storage.
3. Any damages, shortages, over deliveries and duplicated orders should be reported to the Seller within 7 days of signed receipt to enable replacement or refund.

VII. RISK

Risk in the Goods shall pass to the Buyer upon receipt of the goods. Where the Buyer chooses to collect the Goods itself, risk will pass when the Goods are entrusted to it or set aside for its collection, whichever happens first.

VIII. TITLE

Title in the Goods shall not pass to the Buyer until the Seller has been paid in full for the Goods.

IX. RETURN OF UNUSED GOODS

1. All goods are sold on a firm sale basis, i.e. the Seller will not take back any goods not required or sold by the Buyer, unless otherwise agreed, in which case the following terms apply.
2. Any returns must be authorised by a representative of the Seller before any credit will be given.

3. Where the Seller agrees to accept the return of goods that are not damaged the Buyer will be responsible for the cost of carriage and will ensure that they are carefully packaged to avoid any damage in transit. The Seller will not be obliged to accept any goods that are damaged in any way. The Seller will only accept returns that appear in the Sellers current Publication List.
4. Credit of amounts due or paid in will only be given for goods that are in saleable condition.
5. All goods should be inspected on receipt and any non-conformity or damage reported to the seller within 24 hours, handled or installed goods cannot be returned, without prior authorisation from the seller.

X. LIMITATION OF LIABILITY

1. The Seller shall not be liable for any all loss or damage suffered by the Buyer in excess of the contract price.
2. Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of the Seller for death or personal injury as a result of the Seller's negligence or that of its employees or agents.

XI. INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Seller, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in the Seller by the execution of appropriate instruments or the making of agreements with third parties.

XII. FORCE MAJEURE

The Seller shall not 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, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Seller shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as the Seller considers unreasonable, it may, without liability on its part, terminate the contract.

XIII. 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.

XIV. ASSIGNMENT AND SUB-CONTRACTING

The contract between the Buyer and Seller for the sale of Goods shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Buyer, without the prior written consent of the Seller.

XV. WAIVER

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

XVI. SEVERABILITY

If any term or provision of these Terms and Conditions 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 hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

XVII. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the English courts.

Key Photonics Ltd.