

CONTRA VISION NORTH AMERICA, INC.
CONDITIONS OF SALE

1. Definitions

1.1 In these Conditions:-

“Buyer” means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller

“Conditions” means the standard terms and conditions of sale set out in this document and any special terms and conditions agreed in writing between the Buyer and the Seller

“Contract” means the contract by which the Goods will be supplied by the Seller to the Buyer, incorporating these Conditions

“Goods” means the goods which the Seller is to supply in accordance with the Contract

“Intellectual Property” means any patents, copyrights, designs, trade marks, trade, business and domain names, rights in confidential information (including know-how and trade secrets) and any other industrial or intellectual property owned or to be owned by the Seller in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world

“Seller” means Contra Vision North America, Inc., a company incorporated in the State of Georgia.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Basis of the sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 There shall be no variation to these Conditions unless expressly agreed in writing by the Seller.

2.3 The Seller’s employees or agents are not authorised to make any representations concerning the Goods unless the representations are confirmed by the Seller in writing. In entering into the Contract, the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

3. Orders and specifications

3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification and all other briefing information)

submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods to enable the Seller to perform the Contract in accordance with its terms.

- 3.2 The quality, quantity and description and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 3.3 No order which has been accepted by the Seller 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 losses incurred by the Seller as a result of the cancellation.
- 3.4 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 3.5 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

4. **Payment**

- 4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted, the price listed in the Seller's Published Price List current at the date of acceptance of the order. All prices quoted are valid for 30 days only provided that the Seller has not previously withdrawn it or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.2 Unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex-works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises or other premises nominated by the Seller, the Buyer shall be liable to pay the Seller's charges for transport, packaging, insurance and any relevant taxes and duties.
- 4.3 The price is exclusive of any applicable state tax, which the Buyer shall be additionally liable to pay to the Seller.
- 4.4 Unless otherwise agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after the earlier of the date of delivery.
- 4.5 Unless otherwise agreed in writing between the Buyer and the Seller, the Buyer shall pay the price of the Goods within 30 days of the date of the Seller's invoice. The time of full payment of the price of the Goods shall be of the essence of the Contract. All payments from the Buyer to the Seller shall be made via bank transfer to an account designated by the Seller. All payments received into the Seller's bank account from the Buyer shall be the full invoiced amount for the Goods with all bank charges and any other costs payable by the Buyer.

- 4.6 If the Buyer fails to make any payment on the due date, then the Seller shall be entitled to cancel the Contract and suspend any further deliveries to the Buyer.
- 4.7 Interest on any overdue payments shall be charged on the amount paid, at the rate of 8 per cent or 4 per cent per annum above the prime rate stated in the Wall Street Journal Rate from time to time whichever shall be the higher, until payment in full is made.
- 4.8 Where Goods are manufactured or delivered in stages at the Buyer's request, the Buyer shall be obliged to pay for each delivery stage upon the terms set out in clause 4.5 above.

5. **Delivery**

- 5.1 The Seller reserves the right to over or under deliver to the extent of +/- 5% of the quantity of Goods given on the Seller's quotation and/or Buyer's order. The Seller will then invoice pro rata for the appropriate quantity.
- 5.2 Unless otherwise agreed in writing between the Buyer and the Seller, delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises or other premises nominated by the Seller within 7 days after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place of delivery is agreed, by the Seller delivering the Goods to that place. Goods for collection which have not been collected within 7 days of notification of the Seller by the Buyer that the Goods are ready for collection may be subject to a reasonable supplementary warehousing charge.
- 5.3 Any dates quoted for delivery of the Goods are approximate only. Time for delivery shall not be of the essence of the Contract. Subject to the other provisions of these Conditions the Seller shall not be liable for any direct, indirect or consequential loss (all of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Seller's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

6. **Risk and property**

- 6.1 The Goods are at the risk of the Buyer from the time of delivery.
- 6.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 6.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be

entitled to resell or use the Goods in the ordinary course of its business at full market value, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

- 6.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith the Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 6.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 6.6 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.

7. Intellectual Property

- 7.1 The rights in the Intellectual Property in the Goods will remain vested in the Seller unless otherwise agreed in writing between the parties.
- 7.2 When any trade marks used by the Seller are used by the Buyer, they shall be accompanied by wording to show that they are trade marks of Contra Vision Limited, the terms of the wording and its placing shall be as reasonably requested or approved by the Seller. Such use of the trade marks by the Buyer shall be in the form stipulated by the Seller and shall observe all reasonable direction given by the Seller as to colours and the size of the representations of the trade marks and the Buyer shall not destroy, deface or obscure any trade marks on the Goods or any packaging.

8. Warranties and Liability

- 8.1 Where the Seller is not the manufacturer of the Goods, the Seller shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.
- 8.2 The Goods are sold by the Seller upon the undertaking that the Buyer has independently determined the suitability of the Goods for the Buyer's purposes. Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery.
- 8.3 The above warranty is given by the Seller subject to the following conditions:-
- 8.3.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any specification supplied by the Buyer;

- 8.3.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;
- 8.3.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.
- 8.4 Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (if the defect or failure was not apparent on reasonable inspection) within 14 days after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price).
- 8.7 Subject to Conditions 8.8 – 8.10 **Error! Reference source not found.** the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price.
- 8.8 The Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 8.9 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any causes beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:-

- 8.9.1 Act of God, explosion, flood, tempest, fire or accident;
- 8.9.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 8.9.3 acts, restrictions, regulations, bye-laws, prohibitions, measures of any kind on the part of any government, parliamentary or local authority;
- 8.9.4 import or export regulations or embargoes;
- 8.9.5 strikes, lock outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 8.8.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 8.8.7 power failure or breakdown in machinery.

8.10 Nothing in these Conditions excludes or limits the liability of the Seller:

- 8.9.1 for death or personal injury caused by the Seller's negligence; or
- 8.9.2 for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or
- 8.9.3 for fraud or fraudulent misrepresentation.

9. **Third Party Rights**

Nothing in this Contract confers or purports to confer on any person who is not a party to it any benefit or any right to enforce any of these terms and conditions.

10. **Dispute Resolution**

10.1 All disputes arising between the Seller and the Buyer relating to the making or performance of this Contract shall be resolved in the following order:

10.1.1 by good faith negotiations between representatives of the Seller and the Buyer who have authority to fully and finally resolve the dispute. The existence and substance of any negotiations pursuant to this Condition shall be confidential;

10.1.2 if necessary, by non-binding mediation at a location acceptable to both the Buyer and the Seller using a neutral mediator having experience with the industry (with the costs shared equally). All proceedings pursuant to this Condition shall be confidential;

10.1.3 as a last resort only, by litigation.

11. **Assignment**

11.1 The Seller may assign the Contract or any part of it to any person, firm or company.

11.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.

12. **Governing Law**

This Contract is governed and construed under the jurisdiction of the United States District Court for the Northern District of Georgia, Atlanta Division.