

# **CONTRA VISION SUPPLIES LTD**

## **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

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

“Intellectual Property” means any patents, copyright, registered design, unregistered design, trade mark (registered or unregistered) or other industrial or intellectual property owned or to be owned by the Seller

“Seller” means Contra Vision Supplies Limited registered in England under number 1946657.

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.

2.2 There shall be no variation to these Conditions unless agreed in writing between the Buyer and 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 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the specification artworks and/or other briefing information or in connection with any claim that the Goods are of a defamatory or illegal nature as a result of the Seller's use of the specification.
- 3.4 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.

#### 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 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 value added and sales taxes, 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 delivery of the Goods or after notification to the Buyer that the Goods have been manufactured.
- 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 payment of the price shall be of the essence of the Contract. All payments from the Buyer to the Seller shall be made via wire 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 overdue payments shall be charged on the amount paid, at the rate of 4 per cent per annum above the Bank of England Bank Rate from time to time, 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.
- 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.

## 6. **Risk and property**

- 6.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- 6.1.1 in the case of Goods to be delivered at the Seller's premises or other premises nominated by the Seller, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- 6.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises or other premises nominated by the Seller, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 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, 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 to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 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.

## 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 The Goods will typically fall within one or more claims of the international family of patents relating to EP 0800462 and/or EP 0880439 and/or any patent that issues from International Patent Application PCT/IB2008/052189.
- 7.3 Whenever any of the Seller's trade marks are used by the Buyer, they shall be accompanied by the wording to show that they are registered trade marks used by the Buyer with the permission of the Seller, the terms of the wording and its placing shall be as reasonably requested by the Seller.
- 7.4 The Buyer shall use the trade marks 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.

## 8. **Warranties and Liability**

- 8.1 The Goods are sold by the Seller upon the undertaking that the Buyer has independently determined the suitability of the Goods for its purposes. Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery.
- 8.2 The above warranty is given by the Seller subject to the following conditions:-
- 8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any specification supplied by the Buyer;
- 8.2.2 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;

- 8.2.3 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;
- 8.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 8.3 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.
- 8.4 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 (whether the defect or failure was not apparent on reasonable inspection) within a reasonable time 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.
- 8.5 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), but the Seller shall have no further liability to the Buyer.
- 8.6 Except in respect of death or personal injury caused by the Seller's negligence, 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 consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever (including without limitation, loss of profit or revenue and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.
- 8.7 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 caused 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:-

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

## 9. **Third Party Rights**

Nothing in this contract confers or purports to confer on any Third Party any benefit or any right to enforce any of these terms and conditions.