

UNIVERSAL FIBRE OPTICS LIMITED
TERMS AND CONDITIONS OF BUSINESS

1 GENERAL

- 1.1 These terms and conditions apply to all supplies of goods and/or services by Universal Fibre Optics Limited, a Company incorporated under the Companies Acts (company number SC197759) and having its registered office at Home Place, Coldstream, Berwickshire, TD12 4DT ("the Company"). You ("the Customer") agree that these terms and conditions shall be the only terms and conditions governing the supply of the goods and/or services by the Company. No waivers, alterations or modifications of these terms and conditions (including, for the avoidance of doubt, any subsequent purported alteration or replacement of these terms and conditions by the Customers standard terms and conditions) shall be valid unless made in writing and signed by the duly authorised representatives of the Company and Customer.
- 1.2 All quotations or offers given or made by the Company are, unless the Company decides at any time to extend such period, open for acceptance by the Customer for a period of 30 days only from their date. All quotations and offers are also given or made subject to the availability of goods, materials, and any other items required to give effect to the Company's obligations under the Contract.

2 PAYMENT TERMS

- 2.1 All prices are, unless otherwise stated, exclusive of any applicable value added tax.
- 2.2 Unless otherwise agreed in writing, payment of the price, and (where applicable) carriage costs and VAT, is due 1/3 of the total on order, 1/3 of the total on delivery/ installation and the remainder within 30 days following the date of delivery or installation.
- 2.3 Where the supply of goods and/or services takes place over a period in excess of one month, the Company shall have the right to invoice on a monthly basis and any such invoices shall be due for payment within 30 days of their date.
- 2.4 Time of payment is of the essence of the agreement between the Company and the Customer, and as detailed in Clause 7.2.2, where the Customer delays in, or fails to make, payment of the price to the Company, the warranty given by the Company in terms of Clause 7.1 shall not apply.
- 2.5 The Customer shall not be entitled to withhold or set off payments for any reason whatsoever including retentions of any nature.
- 2.6 The Company shall be entitled to charge interest at a rate equal to 4% above the base lending rate of the Royal Bank of Scotland plc from time to time on all overdue payments.
- The price is based on the current costs of materials, labour, transport and other relevant costs of whatever nature of the Company and, in the event that any such costs increase between the time when the price was offered by the Company and the time when the goods and/or services are delivered, the Company shall have the right to increase the price to reflect such increase in costs.
- Where a Customer seeks to make payment by credit card, the Company shall apply a surcharge of 3% plus VAT on the total transaction price.

3 DELIVERY

- 3.1 Unless otherwise agreed in writing, delivery shall be made by the Company delivering to the Customer at the Customer's place of business in the United Kingdom or, in the case of an export order, FOB the United Kingdom port agreed with the Company.
- 3.2 The price is exclusive of carriage and insurance of the goods during such carriage to the Customer's premises on the mainland of Great Britain. The Customer shall be liable to the Company for any increase in the cost of carriage and insurance where the Customer requests delivery in manner other than that selected by the Company and shall indemnify the Company in respect of any such increase.
- 3.4 Any times and dates quoted for delivery are approximate only and are not guaranteed, and the Company shall not be liable for any delay in delivery of goods howsoever caused. Any time or date for delivery shall not be of the essence unless otherwise agreed by the Company in writing.
- 3.5 The Customer shall inspect all goods supplied by the Company immediately upon delivery. No liability for under-delivery, loss of or damage to the goods will attach to the Company unless a claim to that effect has been notified in writing by the Customer to the Company within 7 days of delivery. In the event of a valid claim for under-delivery, loss of or damage to goods, the Company undertakes at its option either to reprocess or replace the goods at its expense to the extent required to make good the under-delivery, loss of or damage to the goods, or alternatively to take possession of the goods and refund any of the contract price paid, but shall not be under any further or other liability to any person in connection with such under-delivery, loss of or damage to the goods.
- 3.6 If for any reason the Customer is unable to accept delivery of the goods at any time when the goods are due and ready for delivery, the Company may at its sole discretion and without prejudice to its other rights store the goods at the risk of the Customer and take all reasonable steps to safeguard and insure them at the cost of the Customer provided that the Customer shall be informed thereof immediately.
- 3.7 The Company shall have the right to make delivery by instalments of such quantities and at such intervals as it may decide, and any express provisions as to instalments shall be in addition to and not in derogation of this right.
- 3.8 Where delivery is to be made by instalments, the Company shall be entitled to invoice each instalment as and when delivery thereof has been made and payment shall be due in respect of each instalment whereof delivery has been made notwithstanding non-delivery of other instalments or other default on the part of the Company.

4 INSTALLATION OF GOODS

- 4.1 Unless otherwise agreed, the Company shall install the goods during normal working hours. If it is agreed that installation is to take place outwith normal working hours or normal installation runs into unsociable hours, the Company shall be entitled to charge any additional labour and/or travelling costs incurred by such installation.
- 4.2 The Customer shall ensure that the premises at which the goods are to be installed are in a suitable condition to allow such installation to take place and that the Company has access to all areas required for such installation. Any additional costs arising to the Company should the premises not be suitable shall be passed on to the Customer.

5 RISK AND PROPERTY IN GOODS

- 5.1 The risk in goods delivered or supplied hereunder shall pass to the Customer when the Company delivers the goods to the Customer.
- 5.2 Notwithstanding the provisions of clause 5.1 above, property and title in and to the goods supplied shall remain with the Company until all sums due by the Customer to the Company (including any interest and charges) in respect of those goods have been paid in full. The Customer shall store and insure the goods, identifying them clearly as belonging to the Company, until all such monies are paid. If the goods are sold by the Customer to a third party before payment in full of all sums due from the Customer to the Company has been made then all rights of the Customer against the third party in respect thereof shall be and be deemed to be assigned to the Company.
- 5.3 If the Customer fails to pay any sums due to the Company by the due date for payment, in addition to any other remedies available to the Company under these terms and conditions or otherwise, the Company shall be entitled to re-possess the goods. The Customer will assist and allow the Company so to re-possess the goods and for this purpose, admit or procure the admission of the Company or its employees or agents to the premises in which the goods are situated.
- 5.4 Where the contract is terminated in accordance with clause 9 ("Breach") below, the Customer's right to re-sell or otherwise deal in the goods shall automatically terminate and the Company shall be entitled to re-possess any such goods forthwith.

6 PACKING

All packing, skips, drums and other packing materials marked "PROPERTY OF UNIVERSAL FIBRE OPTICS LIMITED" or identified in the agreement between the Company and the Customer as to be so returned must be returned to the Company in good condition, carriage paid, within 1 month. If not so returned the Company shall be entitled to charge for such packing.

7 WARRANTIES AND LIABILITY

- 7.1 Subject to the conditions set out below, the Company warrants that at the date of delivery and for the 12 calendar months following the date of delivery the goods supplied will be free from any significant defects in material and workmanship and all reasonable care and skill will be taken or used in the provision of services.
- 7.2 The above warranty is given by the Company subject to the following conditions:

- 7.2.1 the Company shall be under no liability in respect of any defect in the goods or services arising from any specification supplied by the Customer;
- 7.2.2 in the event that there is a delay in payment of the price by the Customer, or the Customer fails to make such payment, the above warranty shall not apply;
- 7.2.3 the above warranty does not extend to consumables or to goods or materials not manufactured by the Company or services not provided by the Company, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer/supplier to the Company (or to the Customer, in the event that any goods or services were supplied by the Customer to the Company); and
- 7.2.4 the above warranty will be void in respect of goods if the Customer suffers or allows any person other than the Company or its authorised agents to repair, adjust or otherwise tamper with the goods, or any alteration whatsoever has been made to the goods otherwise than by the Company or its authorised agent, or if any device or controls are fitted to the goods otherwise than those approved by the Company, or the Customer has not complied with his duties hereunder.
- 7.3 Subject as expressly provided in these terms and except where the goods or services are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. Where goods or services are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these terms and conditions.
- 7.4 Any claim by the Customer which is based on any breach of warranty or representation (whether express or implied) shall (whether or not delivery is refused by the Customer) be notified to the Company within 7 days from the date of delivery of the goods or (where the defect or failure was not apparent on reasonable inspection) within 7 days after discovery of the defect or failure. The Company shall, unless otherwise provided by statute, not be liable to the Customer in any way if the Customer fails to notify a claim within that period.
- 7.5 Where any valid claim is made in respect of any goods supplied, the Company shall be entitled to replace the goods (or the part in question) or, at the Company's sole discretion, refund to the Customer the price of the goods (or the appropriate proportion thereof), but, unless otherwise provided by statute, the Company shall have no further liability to the Customer.
- 7.6 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, 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 Customer.
- 7.7 Except in respect of death or personal injury caused by the Company's negligence and except as otherwise specifically provided by law, the entire liability of the Company under or in connection with the contract shall not exceed the price of the goods.

8 INTELLECTUAL PROPERTY

- 8.1 Any artwork, designs, drawings or intellectual property rights which are created by the Company and used in connection with any goods supplied shall remain the property of the Company.
If the Customer requests any modifications to the goods by the Company, including the addition of any artwork thereto, the Customer shall indemnify the Company against any claims made against the Company that such modifications infringe the copyright, design, trade mark or other industrial or intellectual property rights of any other person.

9 BREACH

If the Customer:-

- (i) makes default in or commits any breach of its obligations to the Company hereunder; or
- (ii) commits an act of bankruptcy, becomes apparently insolvent, makes an arrangement or composition with creditors or (being a company) has had convened a creditors meeting, had a receiver, administrator or liquidator appointed or a resolution has been passed or a petition presented to any court for winding up of the Customer or any proceedings have commenced relating to the insolvency or possible insolvency of the Customer; or
- (iii) ceases or threatens to cease to trade or if serious doubt arises as to the Customer's solvency;

then in such case the Company shall immediately become entitled (without prejudice to its other claims and rights under this contract and without the requirement to give prior notice to the Customer) to terminate the contract.

10 CANCELLATION

On receipt of an amendment to contract order, which cancels all or part of the order, the Company shall immediately halt production of all goods which are the subject of cancellation, and shall be entitled to payment from the Customer of 60% of the price payable to the Company.

11 SAMPLES

The Customer is liable to pay the full price of any samples supplied to the Customer by the Company unless the samples are returned to the Company in the same packaging in which it was supplied, in full working order and in reasonable condition within 1 calendar month of delivery to the Customer, provided always that:

- (i) the Customer has carried out such acts of maintenance as are specified by the Company;
- (ii) the Customer ensures that the samples are used only by skilled operatives fully trained in the use of the same; and
- (iii) the Customer does not allow anyone to tamper or interfere with any of the samples.

12 MISCELLANEOUS

- 12.1 Each of the clauses of these terms and conditions and every part hereof shall be separate and severable to the extent that if one clause or part thereof shall be unenforceable the other clauses and other parts of the clause respectively shall be effective.
- 12.2 If the Company is affected by any circumstances beyond its reasonable control (including, without limitation, any strike, lock-out or other industrial action) ("Force Majeure") then it shall promptly notify the Customer of the nature and extent of the circumstances in question. Notwithstanding any other provisions of these terms and conditions, the Company shall not be deemed to be in breach of these terms and conditions or any contract between it and the Customer, or otherwise liable to the other, for any delay in performance or non-performance of any of its obligations to the Customer, to the extent that such delay or non-performance is due to any Force Majeure, and the time for performance of that obligation shall be extended accordingly.
- 12.3 Where the contract is for the supply of goods or for the supply of goods and services, the Company may assign the contract with the Customer or sub-contract the whole, or any part thereof, to any person, firm or company.
- 12.4 This contract shall be governed by the law of Scotland and the parties hereto submit themselves to the non-exclusive jurisdiction of the Scottish courts.