

# APPLIED PHOTONICS LIMITED

## GENERAL TERMS AND CONDITIONS OF SUPPLY

### 1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms the following expressions shall have the meanings set against them:-:

“APL”	Applied Photonics Limited (Company Number 3617150) whose registered office is at Unit 8 Carleton Business Park, Skipton, North Yorkshire BD23 2DE
“APL Software”	computer programs developed by or for APL;
"Appointment Letter"	the letter issued by APL confirming the terms of APL’s appointment;
"Client"	the person named in the Appointment Letter for whom APL has agreed to provide the Specified Service in accordance with these Terms;
"Contract"	the contract for the provision of the Specified Service;
"Document"	includes, in addition to a document in writing, a map, plan, design, drawing, picture or other image, or any other record of any information in eye or machine readable form on whatever medium it is kept, stored or displayed;
"Input Material"	any Documents or other materials, and any data or other information provided by the Client relating to the Specified Service;
"Intellectual Property"	all know-how, rights or methods of application, trade marks, trade names, copyright, design right, patents or other industrial or intellectual property rights whatsoever and whosoever whether registered or not
“Order”	any order or request placed by the Client for the provision of the Specified Service or supply of the Product
"Output Material"	any documents or other materials, and any data or other information provided by APL relating to the Product or to the Specified Service;

“Product”	all goods (and other equipment (including software if applicable) forming part of or ancillary to those goods), reports or services to be provided to the Client by APL in accordance with the Appointment Letter
"Price"	the price (subject to variation in accordance with clause 5.2) for providing the Specified Service set out in the Quotation or such other price agreed between the parties
“Quotation”	any quotation, proposal or tender given by APL for provision of the Specified Service or Product
“Site”	the place at which the Specified Service is to be carried out or Product installed, used or provided
"Specified Service"	the service agreed to be provided by APL for the Client and referred to in the Appointment Letter or the Order;
“Specification”	any technical specification and description of the Specified Service or supply of the Product agreed by APL and the Client from time to time

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

1.3 References to clauses are references to the clauses in these Terms

1.4 The singular shall include the plural and vice versa and reference to one gender shall be deemed to include reference to the other two genders

## 2. SUPPLY OF THE SPECIFIED SERVICE AND PRODUCT

2.1 APL shall provide the Specified Service and Product to the Client subject to these Terms which shall apply notwithstanding the Client’s terms of purchase (if any). Any changes or additions to the Specified Service or Product or these Terms must be agreed in writing by APL and the Client

2.2 All specifications, descriptions, drawings, photographs, illustrations, dimensions, other technical information and particulars of the Specified Service and Product and any advertising matter and samples are intended only as a guide and are not to be relied upon or treated as binding or as forming part of the Contract

2.3 The Client shall at its own expense supply APL with all necessary Documents or other materials, and all necessary data, access to personnel or other information required for the provision of the Specified Service or Product within sufficient time to enable APL to provide the Specified Service and Product in accordance with the Contract

2.4 The Specified Service and Product shall be provided in accordance with the Appointment Letter and/or the Order. In the event of any conflict the terms of the Appointment Letter shall prevail

2.5 Further details about the Specified Service and Product and advice or recommendations about its provision or utilisation, which are not given in APL brochure or other promotional literature, may be made available on written request

2.6 APL may at any time without notifying the Client make any changes to the Specified Service or Product which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Specified Service or Product

2.7 APL's Quotation is subject to withdrawal at any time before receipt of an unqualified Order from the Client. A Contract shall be created only when an Order is accepted by APL sending to the Client an Appointment Letter

2.8 All times, dates or periods given for delivery or performance of the Specified Service are estimates only and shall not be of the essence of the Contract. APL will use all reasonable endeavours to meet any such time, date or period but it shall not be binding and APL shall not incur any liability whatsoever for any loss or damage resulting from delay howsoever caused

### **3. CLIENTS RESPONSIBILITIES**

3.1 The Client warrants that the Site is controlled or owned by it and that it has obtained all necessary permissions for the provision of the Specified Service and/or the installation and existence of the Product on the Site

3.2 The Client shall at its own cost obtain all necessary licences or consents and provide Applied Photonics with such information and assistance as APL may require to enable APL to provide the Specified Service or Product in accordance with the Appointment Letter

3.3 It is the responsibility of the Client to notify APL in a timely fashion of any special circumstances which may affect or prejudice access to the Site or place where the Specified Service is to be provided and/or the Product is to be installed or which may affect or prejudice the Product in normal use

3.4 It shall be the sole responsibility of the Client at its expense:-

(1) to obtain any planning or building regulation consent or any other consent or approval required by any landlord, local government safety or other authority required for the installation or existence of the Product or Specified Service on the Site

(2) to ensure that the Site is safe for any employee, agent or sub-contractor of APL to enter and is ready to house the Product and that all the environmental requirements and installation facilities required by APL have been provided and all Health and Safety Regulations are met

(3) to ensure that any Product (until paid for) or equipment of APL brought onto the Site or other place where the same may be used, kept or stored for the purposes of providing the Specified Service or at the request or direction of the Client is kept safe, undamaged, uncontaminated and available for use by APL at all times (whether before, during or after the

provision of the Specified Service) to the intent that the Client shall keep APL fully indemnified for all the consequences of any failure on its part to do any of such things

3.5 Without prejudice to the generality of the foregoing the Client shall maintain with a reputable insurance company insurance cover for the replacement cost of the Product and of any equipment used by APL in the provision of the Specified Service and shall if requested in an Appointment Letter have APL interest noted on the policy

3.6 The Client acknowledges that all person employed by APL to work at a Site and all Product enter a Site at the risk of the Client

#### **4. INSTALLATION OF PRODUCT**

4.1 A place of delivery and installation shall be a place specified in the Order and shall be at the Clients risk (whether assembled or not and whether installed or not) from the time the Product leaves the public highway to gain access to the Site

4.2 The Client shall provide access to the Site to APL and its employees at all times of the day or night together with such supplies of electricity and other facilities as APL require for the installation including (without limitation) to secure facilities for the storage and assembly of materials on or near the Site. It shall be the responsibility of the Client to provide dry secure storage for any materials and to prevent all people not employed or engaged by APL from entering the Site for any other storage or assembly area used by APL in the installation area

4.3 The Client shall ensure that all its members of staff are trained to use the Product correctly and that sufficient safety equipment and safety protocols are in place

#### **5. CHARGES**

5.1 Subject to any special terms agreed, the Client shall pay APL the Price and any additional sums which are agreed between APL and the Client for the provision of the Specified Service or which, in APL sole discretion, are required as a result of the Client's instructions or lack of instructions or any other cause attributable to the Client

5.2 APL may vary the Price to take account of increases in costs, including (but not limited to) the costs of labour, overheads and/or transport, between the date of the Quotation (or if no Quotation is issued, the date at which APL otherwise mutually determine the date the Specified Service is completed)

5.3 All charges quoted to the Client for the provision of the Specified Service are exclusive of any Value Added Tax for which the Client shall be additionally liable at the applicable rate from time to time

5.4 APL may invoice the Client at any time in the month in which the Specified Service is provided or at other times agreed with the Client

5.5 All sums shall be payable by the Client (together with any applicable Value Added Tax) without any set-off or other deduction on the date of APL's invoice

5.6 If payment is not made within [30] days of the due date APL shall be entitled without limiting any other rights it may have to charge interest on the outstanding amount (both before

and after any judgment) at the rate of 5% above the base rate from time to time of Barclays Bank plc from the due date for payment until the amount due is paid in full

5.7 Time of payment of APL's invoices shall be of the essence of the Contract

5.8 Any query or dispute regarding any invoice must be notified to APL in writing within 10 days of the invoice date failing which the invoice is immediately payable

5.9 All sums due shall be paid by the Client without set off or other deduction whatsoever. For the avoidance of doubt no claim or dispute which the Client may have or purport to have against APL shall entitle the Client to set off or make any deduction from the charges payable to APL under the Contract.

5.10 If the Price is payable by instalments (which will be specified in a Quotation) the foregoing provisions of this clause 5 shall apply to each invoice raised in respect of each such instalment. If any such instalment is not paid when due then without prejudice to any other right or remedy of APL:

(1) APL may then terminate the Contract or may at its discretion suspend any further work for the Client until the relevant invoice is paid, in which event APL will only resume work on such terms as it may then agree; and

(2) if applicable remove from the Site any of its personnel and equipment and require the Client to pay in advance for such personnel and equipment to be returned to the Site and in addition to the Price to pay any costs and expenses incurred by APL in removing and returning such personnel and equipment to the Site; and

(3) may require the Client in addition to the Price to pay in every month a sum equal to 10% of the Price for every month or part of a month that the provision of the Specified Service or the Product is delayed; and

(4) may remove from the Site any Product associated with or forming part of the Contract

## 6. RIGHTS IN INPUT MATERIAL AND OUTPUT MATERIAL

6.1 The property and Intellectual Property rights in:

(1) any Input Material shall belong to the Client;

(2) any Output Material or APL Software shall (unless otherwise agreed in writing between the Client and APL) belong to APL, but the Client shall be entitled to use the Output Material for the purposes of utilising the Specified Service (but for no other purpose) or (if applicable) the APL Software by way of a non-exclusive licence, subject to payment in full of all sums payable under the Contract

6.2.1 Any Input Material or other information provided by the Client which is designated confidential by the Client shall be kept confidential by APL

6.2.2 All Output Material or other information provided by APL shall be kept confidential by the Client and shall not be used directly or indirectly by the Client (other than as contemplated

by clause 6.1(2)) neither shall the Client permit or suffer such information to be used by a third party

6.2.3 Clauses 6.2.1 and 6.2.2 shall not apply to any Documents or other materials, data or other information which APL or the Client is required by law to reveal or which are in the public domain (other than by breach of this obligation) and shall cease to apply if in the future they come into the public domain through no fault of the other party

6.3.1 The Client warrants that any Input Material and its use by APL for the purpose of providing the Specified Service will not infringe the Intellectual Property or other rights of any third party and the Client shall indemnify APL against any loss, damages, costs, expenses or other claims arising from any such infringement

6.3.2 Subject to clause 6.3.1 APL warrants that any Output Material and its use by the Client for the purposes of utilising the Specified Service will not infringe the Intellectual Property or other rights of any third party and APL shall indemnify the Client against any loss, damages, costs, expense or other claims arising from any such infringement

6.4.1 To the extent that Intellectual Property of APL (whether included in or forming part of the Output Material or not) is made available to the Client the Client acknowledges the rights of APL in that Intellectual Property and agrees to keep the same confidential and not use directly or indirectly or permit or suffer that Intellectual Property to be used by any third party

6.4.2 Without prejudice to the generality of the foregoing the copyright and all other Intellectual Property in any report, drawing, diagram or image produced by APL shall belong to APL

## **7. PROPERTY IN THE PRODUCT**

7.1 Notwithstanding risk in the Product passes to the Client in accordance with clause 4.1 the Product shall remain the sole and absolute property of APL and legal title to and legal and equitable ownership of the Product (other than title to any APL Software [or other software] which shall not pass to the Client in any event) shall not pass to the Client until payment is received from APL for all monies due from the Client to APL in respect of all products and services supplied by APL to the Client

7.2 The Client acknowledges that although the Product is installed in or about the Site the Product is not a fixture nor is it incorporated in the land and buildings which form the Site and remain moveable property and that until such payment is made in full it is in possession of the Product solely as a fiduciary for APL

7.3 The Client may not sell or charge the Product without the written consent of APL until the Product is paid for in full

7.4 The Client will not at any time cause or permit or suffer any labels, serial numbers or other means of identification on the Product to be removed, defaced or obscured

7.5 The Client shall allow or shall procure that APL at all times has access to the premises on which any goods or product of APL is kept, stored or installed for the purpose of entitling APL to recover its goods

## 8. WARRANTIES AND LIABILITY

8.1 APL warrants to the Client that the Specified Service or Product will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the Specification and at the intervals and within the times referred to in the Appointment Letter. Where APL supplies in connection with the provision of the Specified Service or Product any goods (including Output Material) supplied by a third party, APL does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Client the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to APL

8.2 APL shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client

8.3 Except in respect of death or personal injury caused by APL's negligence or as expressly provided in these Terms APL shall not be liable to the Client or to any third party 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 loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of APL, its servants or agents or otherwise) which arise out of or in connection with the provision of the Specified Service or Product (including any delay in providing or failure to provide the Specified Service or Product) or their use by the Client, and (except in the case of death or personal injury caused by APL's negligence) of the entire liability of APL under or in connection with the Contract shall not exceed the amount of APL's charges for the provision of the Specified Service

8.4 APL shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform any of APL's obligations in relation to the Specified Service or Product if the delay or failure was due to any cause beyond APL's reasonable control

8.5 The Client understands and acknowledges that:-

(1) the Product must only be used in accordance with the instructions given in respect of the Product (whether given before or after the date of installation) and failing to do so could result in the failure of the Product. Accordingly APL will not accept liability for any defect in the Product arising from a failure to comply with any instructions or misuse of the Product;

(2) the Product must only be used for the purpose described in the Appointment Letter. The Client acknowledges that the Product cannot be tested in every possible circumstance and therefore APL does not warrant that the operation of the Product will be uninterrupted or error free and it is not within APL control how and for what purpose the Product is used by the customer save as described in the Appointment Letter

## 9. TERMINATION

9.1.1 If the Client shall not comply with its obligations in accordance with these Terms or the Appointment Letter APL may by notice given by APL to the Client:-

(1) if the breach shall continue for more than 30 days terminate the Contract whereupon there shall become due to APL immediately all sums due for the Product or Specified Service then provided or in the course of being provided by APL

(2) require the Client to pay such additional sums arising from such failure or need to change the extent or nature of the Product or Specified Service as APL shall require

9.1.2 For the purposes of clause 9.1.1 additional time spent by APL shall be charged at its rate for time and materials from time to time in force

9.2 Either party may (without limiting any other remedy) at any time terminate the Contract by giving written notice to the other if the other commits any breach of these Terms and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so, or if the other goes into liquidation, becomes bankrupt, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed

9.3 Notwithstanding the provisions of clause 9.1 if the Client does not make any payment on the due date APL shall be under no obligation to provide any Specified Service

9.4 The termination of the Contract pursuant to clause 9.1 shall not prejudice or affect any right or action or remedy which may have already accrued to either party and these Terms shall remain in full force and effect for so long as any of these Terms remain to be observed and performed

## 10. GENERAL

10.1 These Terms (together with the terms, if any, of the Appointment Letter) constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing between the parties. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law

10.2 A notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to the other party at its registered office and may be delivered by hand or sent by post. A notice given by hand, shall be deemed to have been received on the working day following the date of delivery. A notice given by post shall be deemed to have been received 2 working days after the date of posting

10.3 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision

10.4 If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected

10.5 Any dispute arising under or in connection with these Terms or the provision of the Specified Service shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of The Law Society



10.6 The Contract shall be governed by English law and the parties agree to submit to the non-exclusive jurisdiction of the Courts in England

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