

Chemigraphic Limited
TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

1.1 "Contract" shall mean a contract between the Supplier and the Customer constituted by the Quotation, an Order referencing the Quotation which has been accepted by the Supplier, together with these Terms and Conditions and any other document expressly incorporated by the written agreement of the parties.

1.2 "Customer" shall mean the Supplier's customer under a Contract.

1.3 "Customer Information" shall mean the specification for the relevant Product and all drawings, documentation, data, software, information and know-how provided by the Customer to the Supplier.

1.4 "Customer Tooling" shall mean the tooling, fixtures, appurtenances, test hardware and software and any other items to be provided by the Customer to the Supplier or procured or produced by the Supplier and paid for by the Customer pursuant to any Contract.

1.5 "Intellectual Property" shall mean all patents, applications for patents, copyrights, mask works, trade secrets and other intellectual property rights recognised by any jurisdiction and relating to the Products.

1.6 "Materials" shall mean any components and other materials comprising or comprised in Products.

1.7 "Order" shall mean any order for Products and/or Services placed by the Customer.

1.8 "Prices" shall mean the prices for Products and/or Services and/or non recurring expenditure (including without limitation, tooling and fixtures and other agreed items) as set out in the Quotation or as may be otherwise agreed in writing between the parties.

1.9 "Products" shall mean the goods and/or services to be provided by the Supplier to the Customer pursuant to a Contract.

1.10 "Quotation" shall mean the relevant Quotation from the Supplier to the Customer (including all assumptions and details therein) comprised in the Contract.

1.11 "RMA" shall mean returns material authorisation to be provided by the Supplier to the Customer.

1.12 "Supplier" shall mean Chemigraphic Limited, a company incorporated in England under registered number 1045772

2. SCOPE OF AGREEMENT

2.1 These Terms and Conditions will apply to all Orders for Products and Services placed by the Customer and accepted by the Supplier under any Contract.

2.2 The Supplier will manufacture and deliver Products and supply Services pursuant to Contracts, subject to the Customer first having provided the Supplier with the specification for the Product, together with any Customer Information, Customer Tooling (or an order therefor) and all other necessary drawings, documentation, data, and software, know how and other information of the Customer.

2.3 The Customer will accept Products and Services delivered, and Prices payable, pursuant to Contracts.

3. MATERIALS

3.1 The Supplier shall be entitled, to order Materials as necessary to support Orders, including without limitation, additional Materials as are, in the opinion of the Supplier, reasonably required to take into account: supplier minimum requirements and economic order quantities.

4. DELIVERY AND RISK

4.1 Except as agreed otherwise, all Products sold to the Customer are delivered Ex works the Supplier's premises.

4.2 The Customer will arrange transportation and specify carrier and transportation instructions. If the Customer has not done so, the Supplier shall arrange for transportation on the Customer's behalf at the Customer's cost.

4.3 The Supplier will use its reasonable efforts to meet agreed delivery dates. The Supplier will bear the cost of any reasonable additional freight charges necessarily incurred as a result of persistently late delivery, where such costs have been agreed by the Supplier in advance. The Supplier will have no other liability whatsoever for any delays of any kind.

4.4 Risk of loss and damage will pass from the Supplier to the Customer upon delivery by the Supplier pursuant to clause 4.1 above.

4.5 All Products will be packed by the Supplier in secure packaging considered appropriate by the Supplier or otherwise as may be agreed.

4.6 The Customer is responsible for obtaining:

(a) any necessary export and import licences relating to Products; and

(b) any government or regulatory approvals relating to the marketing, sale or use of Products and maintaining compliance with all applicable laws and regulations in any jurisdiction to or from which Products are shipped or in or from which the Products are marketed, distributed or sold.

5. ACCEPTANCE OF PRODUCTS

5.1 The Customer may reject Products which are proved, to the Supplier's reasonable satisfaction, to have been materially damaged prior to delivery by the Supplier or otherwise do not meet the relevant specification provided by the Customer ("Rejected Products").

5.2 The Customer will notify the Supplier in writing of Rejected Products within ten (10) calendar days of original delivery and will return Rejected Products at its risk to the Supplier within a further five (5) calendar days. The Customer requires an RMA from the Supplier prior to returning any Product.

5.3 The Supplier will then at its election either repair, replace or credit the Customer in respect of Rejected Products. The cost associated with any such repair or credit will be the responsibility of the Supplier. In the case of replacement or credit, title to the Rejected Product shall pass to the Supplier on delivery to the Supplier.

5.4 In the absence of earlier notification of rejection the Customer will be deemed to have accepted Products ten (10) calendar days after delivery.

6. RESCHEDULING OF DELIVERIES

6.1 The Customer may reschedule deliveries in advance of agreed delivery dates as follows:

(a) the Customer may not reschedule a delivery within thirty days of its scheduled delivery date; and

(b) in respect of deliveries rescheduled more than thirty (30) days before its scheduled delivery date, the Customer will be responsible for carrying charges for costs incurred by the Supplier to accommodate any such rescheduling by the Customer at the rate of two (2) per cent. per month of the value of the rescheduled delivery.

6.2 A delivery may only be rescheduled (whether in whole or in part) once from its original agreed date and then only within a period of sixty (60) days from such original scheduled delivery date. The Supplier may treat any attempt to reschedule an order more than once or outside such period as a cancellation.

6.3 The Supplier will upon request from the Customer use its reasonable efforts to accelerate delivery dates subject to the Customer agreeing to meet any increased costs as a result of such activity.

CANCELLATION

7.1 If the Customer cancels:

(a) any Order, or any part thereof, within thirty (30) days of the scheduled delivery date; or

(b) any Order, or any part thereof, for any prototype, pre-production or pilot Orders or one time Orders for Product

the Customer will forthwith pay to the Supplier the full value of the Order(s) so cancelled.

If the Customer cancels any other Order, or part thereof, the Customer will pay to the Supplier:

(a) for finished Product and work in progress (which the Supplier shall be entitled to complete and deliver to the Customer) the full Product Price;

(b) all costs of obsolete and/or surplus Materials and related handling charges determined in accordance with clause 14 of these Terms and Conditions; and

(c) any investment incurred by the Supplier specifically in relation to the relevant Contract with the prior agreement of the Customer and which has not been recovered by the Supplier from the Customer through amortisation or other means; and

(d) the pro-rated portion of the Price of the cancelled Orders that relates to the Supplier's value add.

The Supplier, using its reasonable efforts, will attempt to mitigate the costs described above on behalf of the Customer.

If the Customer refuses or fails to accept any delivery made by the Supplier pursuant to any Contract, such Contract (or the relevant part thereof) may, at the Supplier's option, be deemed to have been cancelled by the Customer.

8. PRICES

8.1 Prices will be as stated in the relevant Quotation unless otherwise agreed in writing by the parties.

8.2 Changes to Prices, and the manner and timing of their implementation, will be agreed by the parties on a fair and reasonable basis except that in any event:

(a) the Customer will be responsible for any increased costs of procuring Material arising from variances from the exchange rate used in the Quotation; and

(b) where Prices are related to volume and the Customer does not purchase the anticipated volume of Product, the Supplier reserves the right to adjust Prices to reflect the actual quantities of Product shipped to the Customer and invoice the Customer for the difference between the Price paid and the adjusted Price.

9. PAYMENT

9.1 Payment of the Prices is due to the Supplier without any set off or deduction in Pounds Sterling cleared funds by thirty (30) days following the date of invoice.

9.2 The Supplier will invoice on, or as soon as reasonably practicable after, the delivery of Products pursuant to clause 4.1 and the rendering of Services.

9.3 The Customer will be solely responsible for and will pay all taxes including value added taxes, duties or other governmental or regulatory charges in any country resulting from the performance of any Contract, except for any income related taxes for which the Supplier is directly liable.

If the Customer fails to make any payment by the due date the Supplier may, in addition to its other rights and remedies, charge interest on any overdue amounts on a day to day basis at the rate of four (4) percent above the then current one month London Interbank Overnight Rate ("LIBOR") as published in the Financial Times newspaper, or the maximum interest rate permitted by law (whichever is the lower) together with any additional costs and charges incurred by the Supplier in collecting the overdue payment. Furthermore, the Supplier may elect not to perform any further obligations under any Contract until payment is received.

TITLE

10.1 Title and interest to Products will pass to the Customer only on receipt by the Supplier of payment in full of the relevant Price.

10.2 Payment of Prices for Services does not confer any rights in or title to the subject matter of the Service which shall remain the absolute property of the Supplier.

11. INTELLECTUAL PROPERTY

11.1 All existing Intellectual Property owned by or licensed to the Customer will continue to be owned by the Customer and, accordingly, the Supplier is licensed to use such of it as may be necessary for the Supplier to perform its obligations under a Contract. With respect to any Intellectual Property licensed to the Customer, the Customer warrants that such license is in good standing and includes all necessary rights of sub-licensing.

11.2 All existing Intellectual Property of the Supplier will continue to be owned by the Supplier and all Intellectual Property arising in the course of the Supplier's performance of the Contract will be owned by the Supplier.

11.3 Nothing in these Terms and Conditions or any Contract grants or can be capable of granting to the Customer (whether directly or by implication) any rights to any Intellectual Property owned by or licensed to the Supplier or any affiliate of the Supplier.

12. QUALITY ASSURANCE

12.1 The Supplier will maintain quality assurance systems for the control of material quality, processing, assembly, testing, packaging and shipping in accordance with its usual policies and practices.

12.2 The Supplier will perform its normal test procedures relating to Products and Services. If the Supplier performs tests using test equipment, procedures and software provided by the Customer, the Supplier will have no liability for defects in Products where failure to isolate the defect is attributable to such equipment, procedures or software.

13. CHANGE CONTROL

Changes to the Product or the specification, (including without limitation the agreed shipping or packaging requirements) will only be implemented following the written agreement of both the Customer and the Supplier to an engineering change notice ("ECN"). Any increased costs to the Supplier resulting from such changes (including increased costs of manufacture) will be compensated in full by the Customer, except ECN's initiated by the Supplier solely to improve its manufacturing processes.

14.	OBSELETE AND/OR SURPLUS MATERIAL	16.2	The above indemnity will extend to all claims of any kind made by third parties (including without limitation claims for infringement of Intellectual Property rights and for personal injury or death caused by the Products or Services or otherwise arising from the performance of Contracts) other than claims which result, and to the extent that they result, from defects in workmanship of the Supplier.	21.	TERM AND TERMINATION
14.1	When any Material is for any reason at any time rendered obsolete and/or surplus to Customer requirements and that Material was ordered by the Supplier against an accepted Order under the provisions of clause 3.1 above, the Supplier will:			21.1	Either party may terminate any Contract:
	(a) provide to the Customer as soon as reasonably practicable following the date of the event causing the obsolescence/surplus (the "Obsolescence Date") a notice of the potential cost of such obsolescence or surplus including relevant handling charges; and	16.3	The Customer shall settle or defend, at Customer's expense, and shall pay any damages, costs or fines resulting from all proceedings or claims against the Supplier and its affiliates for infringement or alleged infringement of Intellectual Property rights in relation to Products or Services or otherwise arising from the performance of Contracts. The Supplier will as soon as reasonably practicable notify the Customer in writing of any such proceedings or claims. The Customer agrees that the Supplier has the right to retain counsel and participate at the Supplier's expense in the defence of any such proceeding or claim and to assist in any settlement negotiations.		(a) if the other party commits a material breach of any Contract and fails to remedy the breach within sixty (60) days of written notice requiring it to do so; or
	(b) for a period of four (4) weeks from the Obsolescence Date, use its reasonable efforts to:				(b) immediately if the other party becomes insolvent or calls a meeting of creditors or being a company has a receiver, administrative receiver or administrator appointed or passes a resolution or has a petition presented for its winding-up (otherwise than for the purpose of amalgamation or reconstruction), or any equivalent event occurs under any relevant jurisdiction.
	(i) cancel outstanding orders for such Materials; or				(c) and in any such case on termination the terminating party shall have no further obligations to the other party except to make payment of Prices for Product delivered prior to the date of termination, less any amount owing to the terminating party.
	(ii) sell such Materials back to the original supplier or to a third party; or				
	(iii) use excess/uncancellable Materials for the manufacture of other products.				
14.2	After such four (4) week period:	17.	CUSTOMER PROPERTY	21.2	The terms of clause 7 will apply to any Orders cancelled as a result of termination pursuant to this clause 21 and the terms of clause 14 will apply to any Material rendered obsolete or surplus by such cancellation.
	(a) the Supplier will, at the Customer's risk and expense, be entitled to deliver to the Customer (or, if the Customer so requests, otherwise dispose of) all obsolete and/or surplus Materials then held by the Supplier; and	17.1	All Customer Information and Customer Tooling may be used by the Supplier as required by the Supplier for the purposes of any Contract.	22.	GENERAL
	(b) the Supplier shall be entitled to invoice the Customer for the full cost thereof together with the costs of all other Materials for which the Supplier remains liable and the Supplier's reasonable handling charges in respect of all obsolete and/or surplus Materials originally made obsolete and/or surplus. Such invoice shall be paid by the Customer in Pounds Sterling cleared funds without set off or deduction within fourteen (14) days of the date of invoice.	17.2	All Customer Information and all Customer Tooling (for which, if applicable the Supplier has been paid in full) will remain the Customer's property and will be treated by the Supplier with substantially the same care as it treats its own property of a similar nature.	22.1	Resale and exports - The Customer will obtain all necessary licences and consents for the resale or export of Products under the laws and regulations of any relevant country.
		17.3	The costs of maintenance, calibration and repair of Customer Tooling shall at all times be the responsibility of the Customer.	22.2	Effective terms and precedence
15.	SUPPLIER WARRANTY	18.	CONFIDENTIALITY		(a) A Contract constitutes the entire contract between the parties in respect of the subject matter of such Contract and supersedes and excludes all other representations, promises and proposals, whether oral or written.
15.1	The Supplier warrants that it will without charge repair or replace, as the Supplier may elect, any Products which are proved to be defective as a result of a failure in the Supplier's workmanship provided that:	18.1	The Customer Information will be kept confidential by the Supplier. All confidential information of the Supplier (including all technical and business information relating to its development, manufacturing, marketing and other business activities and including without limitation all manufacturing methods and test solutions developed by the Supplier) will be and/or remain the Supplier's property and will be kept confidential and used by the Customer only for the purposes of the relevant Contract. The obligations of the parties under this clause 18.1 will survive for a period of five (5) years from the date of each receipt of information.		(b) Any standard terms and conditions set out in any Customer Order form will be without effect.
	(a) the Customer notifies the Supplier in writing within thirty (30) days after discovery of the defect; and				(c) Any rights or obligations under these Terms and Conditions which by their nature continue after termination will remain in effect until they are completed.
	(b) such defective Product has been returned prepaid to the Supplier's designated repair location within one (1) year after original delivery by the Supplier (which period shall not be extended by the repair or replacement of Product).			22.3	(d) If there is any conflict or inconsistency between the terms of any Order or other documents comprised in a Contract and these Terms and Conditions then these Terms and Conditions will prevail over the Order or any other such document.
	The Customer requires a RMA from the Supplier prior to returning any Products. All returned Product shall include documentation describing the nature of the defect, how it was discovered and under what conditions it occurred.				Severability - If any provision contained in any Contract or these Terms and Conditions is, for any reason, held to be invalid or unenforceable in any respect under the laws of any jurisdiction where enforcement is sought, such invalidity or unenforceability will not affect any other provision of such Contract or these Terms and Conditions and such Contract and these Terms and Conditions will be construed as if such invalid or unenforceable provision had not been contained therein.
15.2	The Customer will pay for the return of Products to the Supplier's designated premises. The Supplier will pay for the redelivery to the Customer's location in the UK of all Products which are found by the Supplier to be defective under clause 15.1 above. In respect of any Products which are found by the Supplier not to be so defective the Customer will pay to the Supplier all redelivery costs and a no defect found charge of an amount to be determined by the Supplier per Product. In the case of Product replacement: title to replaced Product will pass to the Supplier on delivery to the Supplier; and title to replacement Product will pass to the Customer on delivery to the Customer.	18.2	Clause 18.1 above will not apply, and the receiving party will have no obligations thereunder, with respect to any information which: is or becomes public knowledge through no wrongful act of the receiving party; is known to the receiving party before its receipt from the disclosing party; is lawfully obtained by the receiving party from a third party without breach by such third party of any obligation owed to the disclosing party; is independently developed by the receiving party; is disclosed pursuant to a lawful requirement or request of a governmental agency or a court order; or is approved for release by written authorisation of the disclosing party.	22.4	Variations - No purported variation or amendment of these Terms and Conditions or any Contract will be valid unless made or confirmed in writing by a duly authorised representative of each party.
				22.5	Notices - All notices must be in writing and sent by prepaid registered mail, by facsimile or by electronic mail or delivered personally to the parties at their respective addresses set out on the Order or such other address as may be notified from time to time by the addressee to the other party. A notice shall be deemed to have been given on the date of receipt if sent by prepaid registered mail, on the date of transmission in the case of facsimile or electronic communication or on the date of delivery if it is delivered by hand.
15.3	The above warranties will not apply to:	19.	FREEDOM OF ACTION		Waiver - No provision of these Terms and Conditions or any Contract will be deemed waived and no breach or default excused unless the waiver or excuse is in writing and signed by the party issuing it.
	(a) Products which have been misused, modified, damaged, placed in an unsuitable physical or operating environment or maintained improperly or caused to fail by any product or service not supplied by the Supplier or to any Products which have been subjected to any repair not authorised in writing in advance by the Supplier;		Except as expressly provided pursuant to clause 18 above, any Contract shall not prevent the Supplier or its affiliates from marketing, acquiring, or developing materials, products or services which are similar or competitive to those of the Customer. The Supplier may pursue activities independently with any third party, even if similar to the activities under any Contract.	22.6	Force majeure - Neither party will be liable for any delay in performing or for failing to perform obligations (other than payment obligations) resulting from acts of God; inclement weather; fire; explosions; floods; strikes; work stoppages; slow-downs or other industrial disputes; accidents; riots or civil disturbances; acts of government; inability to obtain any necessary licence or consent; delays by suppliers or Material shortages or from any cause whatsoever beyond its reasonable control.
	(b) any defect caused by the Customer or a third party or by an error or omission or design or other fault in any Customer Information or in any other drawings, documentation, data, software, information, know-how or Materials provided or specified by the Customer; or	20.	EXCLUSIONS AND LIMITATION OF LIABILITY	22.7	Assignment - Neither party may assign any Contract or any part thereof without the written consent of the other except that the Supplier may assign any Contracts or any part(s) thereof to any company which is (whether directly or indirectly) controlling, controlled by or under common control with the Supplier or to any person who acquires the whole or any part of the Supplier's business.
	(c) prototypes and pre-production or pilot versions of Products which will be supplied 'as is' without warranty of any kind.	20.1	The Supplier does not exclude or limit its liability for death or personal injury resulting from its negligence nor liability for breach of any term implied by statute to the extent that such liability cannot by law be limited or excluded.		Relationship of the parties - The relationship of the Supplier and Customer as established under any Contract(s) will be and at all times remain one of independent contractors, and neither party will at any time nor in any way represent itself as being a dealer, agent or other representative of the other party or as having authority to assume or create obligations or otherwise act in any manner on behalf of the other party.
15.4	THIS CLAUSE 15 SETS OUT THE SUPPLIER'S SOLE OBLIGATION AND LIABILITY, AND THE CUSTOMER'S EXCLUSIVE REMEDIES, FOR CLAIMS BASED ON DEFECTS IN OR FAILURE OF ANY PRODUCT OR SERVICE OR THE SUBJECT MATTER OF ANY SERVICE AND REPLACES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE PROVIDED ALWAYS THAT THE SUPPLIER DOES NOT EXCLUDE OR LIMIT ITS LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM ITS NEGLIGENCE NOR LIABILITY FOR BREACH OF ANY TERM IMPLIED BY STATUTE TO THE EXTENT THAT SUCH LIABILITY CANNOT BY LAW BE LIMITED OR EXCLUDED.	20.2	Subject only to clause 20.1 above, under no circumstances will the Supplier have any liability in respect of any Contract, whether in contract or for negligence or otherwise and whether related to any single event or series of connected events, for any of the following:	22.8	Headings and references - The headings in these Terms and Conditions are inserted for convenience only and do not constitute a part of any Contract nor are they to be referred to in its interpretation.
			(a) any liability in excess of:	22.9	Governing law - These Terms and Conditions and all transactions under it will be governed by the laws of England exclusive of any provisions of the United Nations Convention on the International Sale of Goods and without regard to principles of conflict of laws. The parties submit to the non-exclusive jurisdiction of the courts of England.
			(i) in the case of damage to or loss of tangible property, the value of such property; and		
			(ii) in any event, and in respect of any other liability, the total of the Prices (if any) paid by the Customer under that Contract or £250,000 (whichever is the greater);		
			(b) any liability for any incidental, indirect or consequential damages or loss of business, loss of records or data, loss of use, loss of profits, revenue or anticipated savings or other economic loss whether or not the Supplier was informed or was aware of the possibility of such loss; or	22.10	
			(c) any third party claims against the Customer for any loss, damage, costs or expenses.		
16.	INDEMNIFICATION	20.3	Neither party may bring an action under any Contract more than two (2) years after the cause of action arose.	22.11	
16.1	The Customer will keep the Supplier fully indemnified against all losses, damages, costs and expenses (including reasonable attorney's fees) which it may incur as a result of the Supplier having followed the specification or any other material or information supplied, or any instructions given, by or on behalf of the Customer.	20.4	The Supplier shall have no liability to the Customer for any failure to perform any obligation under any Contract due to the act or omission of the Customer, any supplier designated or approved by the Customer or any person who is not under the direct control of the Supplier.		