

360 Vision Technology Limited : Terms And Conditions of Sale

1. INTERPRETATION

- 1.1 In these Conditions the following words have the following meanings:
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| Word | Meaning |
| "the Buyer" | the person(s), firm or company who purchases the Goods from the Company; |
| "the Company" | 360 Vision Limited (Company number: 4649992); |
| "the Contract" | any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these Conditions; |
| "Delivery Point" | the place where delivery of the Goods is to take place under Condition 4; |
| "Goods" | any goods or services agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them); |
| "Purchase Order Confirmation" | the Company's standard form of purchase order confirmation from time to time and incorporating these Conditions. |
- 1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

2. APPLICATION OF TERMS

- 2.1 Subject to any variation under condition 2.3 the Contract will be on these Conditions 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 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These Conditions apply to all the Company's sales and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Company.
- 2.4 Each order for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.
- 2.5 No order placed by the Buyer shall be binding on the Company or be deemed to be accepted by the Company until the Buyer has sent an order for the Goods and a written Purchase Order Confirmation is issued by the Company or (if earlier) the Company sends the Goods to the Buyer. The Buyer must ensure that the terms of its order, the Purchase Order Confirmation and any applicable specifications are complete and accurate in all respects.
- 2.6 Any quotation is given without commitment and on the basis that no contract will come into existence until the Company despatches a Purchase Order Confirmation to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.
- 2.7 No order which has been accepted by the Company may be varied or cancelled by the Buyer except with the agreement in writing of a Director of the Company and then only on terms that the Buyer indemnifies the Company in full against all loss (including loss of profit) costs, (including the costs of all labour and materials used) damages, charges and expenses incurred by the Company as a result of variation or cancellation.
- 2.8 Any advice, representation or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the Goods, their fitting or use or as to the incorporation or compatibility of the Goods with other goods, is followed or acted upon entirely at the Buyer's own risk unless otherwise specified on the Purchase Order Confirmation and the Buyer acknowledges that it does not rely on and waives any claim for breach of any such representation which are not so confirmed. Accordingly, the Buyer must rely on its own judgement and if necessary seek expert advice in relation to the suitability and compatibility of the Goods for any particular use.

3. DESCRIPTION

- 3.1 The description and specification of the Goods shall be as set out in the Purchase Order Confirmation.
- 3.2 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of this Contract.
- 3.3 The Buyer must satisfy itself as to the specification quality and fitness for its purpose of the Goods before taking delivery and the Buyer shall not in any way rely upon the Company's skill or judgement.
- 3.4 The Buyer shall be responsible for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 3.5 If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a name logo design requirement specification information or component submitted or proposed by the Buyer, the Buyer indemnifies the Company against all loss, damage, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trademark, or other industrial or intellectual property rights of any other person which result from the Company's use of the Buyer's design or specification.
- 3.6 The Buyer shall acquire no intellectual property rights in the Goods but if the Purchase Order Confirmation so requires the Company shall grant or procure the grant of a licence to use any relevant software with the Goods.

4. DELIVERY

- 4.1 Unless otherwise agreed in writing by the Company delivery of the Goods shall take place at the Company's place of business.
- 4.2 The Buyer will take delivery of the Goods within 14 days of the Company giving it notice that the Goods are ready for delivery.
- 4.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.
- 4.4 Subject to the other provisions of these Conditions the Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 90 days.
- 4.5 If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations (or for any other reason) risk in the Goods will pass to the Buyer (including for loss or damage caused by the Company's negligence), the Goods will be deemed to have been delivered and the Company may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance). The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for loading the Goods.
- 4.6 Unless otherwise agreed in writing the Company is entitled to make deliveries by instalments or partial deliveries. Each instalment shall be construed as constituting a separate agreement to which all the provisions of these Conditions shall (with any necessary alterations) apply. Failure by the Company to deliver any one or more instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 4.7 The Buyer shall inspect and test the Goods and within 7 days of their delivery (and in respect of services, within 7 days of the Company tendering their completion) shall give written notice to the Company of any damage or claim. In the absence of such notice, the Goods shall be deemed to comply with the Contract and the Buyer shall accept them. The Goods are sold as a batch and without prejudice to the Buyer's right to reject all the Goods the Buyer may not reject some only of the Goods.

5. NON-DELIVERY

- 5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 2 days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the *pro rata* Contract rate against any invoice raised for such Goods.

6. RISK/TITLE

- 6.1 The Goods are at the risk of the Buyer from the time of delivery.
- 6.2 Ownership of and full legal and equitable title to the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Goods.
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:
- 6.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
 - 6.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
 - 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.4 maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and
 - 6.3.5 hold the proceeds of the insurance referred to in condition 6.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdraft bank account.
- 6.4 The Buyer may not in any circumstances resell the Goods before ownership has passed to it.
- 6.5 The Buyer's right to possession of the Goods shall terminate immediately if:
- 6.5.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
 - 6.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/performs any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - 6.5.3 the Buyer encumbers or in any way charges any of the Goods.
- 6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.7 The Buyer grants the Company, 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.

7. PRICE

- 7.1 Unless otherwise agreed by the Company in writing the price for the Goods shall be the price set out in the Purchase Order Confirmation.
- 7.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to loading, unloading, carriage installation and insurance all of which amounts the Buyer will pay in addition when it is due to pay for the Goods.
- 7.3 The company reserve the right by giving notice to the Buyer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as without limitation, any foreign exchange fluctuation, currency fluctuation, alteration of duties, significant increase in the cost of labour materials or other costs of manufacture), any change of delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions. Any additional cost incurred by the Company on account of alterations made at the Buyers request to quantities, dates or rates of delivery or to the specification of Goods or to the date of installation shall be borne by the Buyer.
- 7.4 Should any duty tax levy or any other payment whatsoever be imposed by the European Union or any member national government thereof relating to the Goods before delivery thereof, the Buyer shall bear the burden of such duty tax or other payment and the costs arising therefrom.

8. PAYMENT

- 8.1 Unless otherwise agreed in writing payment of the price for the Goods is due within 30 days of the date of invoice. The Company shall be entitled to invoice the Buyer for the Goods on or at any time after delivery, and time for payment shall be of the essence. No

payment shall be deemed to have been received until the Company has received cleared funds.

- 8.2 All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.
- 8.3 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer. If the Buyer fails to pay the Company any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 5% above the base lending rate from time to time of Natwest Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. #
9. QUALITY
- 9.1 Subject to these Conditions the Company warrants that the Goods will correspond with their description at the time of delivery and will unless otherwise stated be free from defects in material and workmanship which become manifest and are notified to the Company in writing within a period of 12 months from delivery or within any longer warranty period as may be stated on the Purchase Order Confirmation.
- 9.2 The above warranty is given by the Company subject to the following conditions:
- 9.2.1 The Company shall be under no liability in respect of any defect in Goods arising from any drawing, design or specification supplied by the Buyer;
 - 9.2.2 The Company shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, unsuitable storage handling or treatment prior to use, unsuitable application, abnormal use or use under abnormal conditions, failure to follow the Company's instructions (whether oral or in writing), misuse, alteration or repair of the Goods or incorporation, alteration or conversion of the Goods with any other goods products or systems, or as a result of non-compatibility of the Goods with any other goods products systems of the Buyer in any way after delivery without the Company's prior written approval;
 - 9.2.3 The Company 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;
 - 9.2.4 The Company shall not be liable for a breach of the above warranty if the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use, compatibility or maintenance of the Goods or (if there are none) good trade practice.

- 9.3 The Company shall not be liable for a breach of the warranty in condition 9.1 unless the Company is given a reasonable opportunity of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost for the examination to take place there.

- 9.4 Notwithstanding the other provisions of this Condition 9 if the Goods incorporate goods or services provided by a third party, the obligations of the Company in respect of such goods or services shall not exceed the warranty obligations of such third party to the Company nor exceed any time limit upon those obligations.

10. LIMITATION OF LIABILITY

- 10.1 In an effort to keep the Contract price as low as possible and as the Buyer is better able than the Company to quantify loss which it may suffer from a breach of contract and to insure accordingly, the Buyer agrees to the following provisions which set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of any breach of these Conditions and/or any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 Subject as expressly provided in these Conditions, (and except where the Buyer is dealing as a consumer save for the conditions implied by s.12 Sale of Goods Act 1979) all warranties, conditions or other terms whether express or implied by statute or common law or otherwise relating to the provision of any goods or services in connection with the Contract (including without limitation) as to the condition quality performance or fitness for purpose of the Goods or the standard of care used in the provision of any services, are excluded to the fullest extent permitted by law.
- 10.3 The Company 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 indirect or consequential loss or damage (including any claim for damages or an indemnity in respect of any sum paid or payable to any third party and any claim in respect of loss of revenue, profits, production, opportunity, business, goodwill or of any contract) or in respect of costs expenses or other claims for consequential compensation (including but not limited to costs of recalling the Goods) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer and whether caused by the negligence of the Company its employees or agents or otherwise, except as expressly provided in these Conditions.
- 10.4 No provision contained in these Conditions shall however exclude or limit the liability of the Company if and to the extent that such liability arises out of the fraud or fraudulent misrepresentation of the Company; or in respect of death or personal injury caused by negligence of the Company; or cannot be excluded under the Consumer Protection Act 1987 or the General Product Safety Regulations 1994; or is in respect of the Company's implied undertakings as to title; or in the case of a Buyer who is dealing as a consumer, is in respect of the Company's implied undertakings as to conformity of goods with description or of sample or as to quality or fitness for purpose of the Goods or in relation to the standard of care used in the provision of any services.
- 10.5 **IN ALL OTHER CASES NOT FALLING WITHIN CONDITION 10.4 ABOVE THE COMPANY'S TOTAL LIABILITY (WHETHER IN CONTRACT, TORT INCLUDING NEGLIGENCE, MISREPRESENTATION OR OTHERWISE) UNDER OR IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF ANY CONTRACT OR BASED ON ANY CLAIM FOR CONTRIBUTION OR INDEMNITY SHALL NOT EXCEED A SUM EQUAL TO THE INVOICE PRICE OF THE DEFECTIVE GOODS.**

- 10.6 The Buyer indemnifies the Company in respect of all damage or injury to any person or loss of or damage to any property and against all actions, suits, claims, demands, costs, charges or expenses arising at common law or under the Consumer Protection Act 1987 or otherwise under statute as a result of the Buyer failing to identify or notify the Company of any defect in the Goods within a reasonable time or as required by these Conditions and/or by any statutory obligation.

- 10.7 Where Goods supplied by the Company are re-sold to and/or used by a third party in a manner not previously agreed in writing by the Company to be suitable or in a manner not in accordance with these Conditions, the Company shall not be liable for any costs, loss, damage, liability or expenses suffered or incurred by the Buyer or any third party arising directly or indirectly from or in respect of such Goods or such use (including for loss of revenue, profits, production, opportunity, business, goodwill and/or of any contract) and the Buyer shall indemnify and keep indemnified the Company from and against all such costs, loss, damage, liability or expenses suffered or incurred by the Company as a result of any claim or demand in respect thereof by any third party.

11. CONFIDENTIALITY

- 11.1 Each party undertakes with the other that it shall keep secret and confidential all information relating to the business of the other party, all know-how and other technical information which in both cases has been communicated to it by the other under or in respect of the Contract or acquired from the other as a result of this Contract and shall not disclose the same or any part of the same to any person whatsoever other than its directors or employees directly concerned in the manufacture, use or sale of the Goods or communications with and from regulatory authorities relating to the Goods.
- 11.2 The provisions of Condition 11.1 shall not apply to information which the Buyer or the Company (as the case may be) can prove to have been in its possession (other than under an obligation of confidence to the other or to a third party) at the date of receipt or which becomes public knowledge otherwise than through a breach of any obligation of confidentiality owed to the party communicating such information to the other; or is necessarily disclosed in the course of marketing of or sales of the Goods; or is necessarily disclosed under a legal obligation.

12. FORCE MAJEURE

- The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company, including, without limitation, acts of God, acts of terrorism, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability to obtain raw materials, labour, fuel, parts or machinery, power failure or breakdown in machinery provided that, if the event in question continues for a continuous period in excess of 30 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

13. OVERSEAS SALES

- 13.1 In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provision of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between any provision of Incoterms and these Conditions, the latter shall prevail.
- 13.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 14 shall (subject to any special terms agreed in writing between the Buyer and the Company) apply notwithstanding any other provision of these Conditions.
- 13.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 13.4 Unless otherwise agreed in writing between the Buyer and the Company, the Goods shall be delivered Ex Works.
- 13.5 Payment for all amounts due to the Company shall be made either by telegraphic transfer prior to shipment or by irrevocable letter of credit opened by the Buyer in favour of the Company and confirmed by a bank in London acceptable to the Company or, if the Company has agreed in writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and delivery to the Company of a bill of exchange drawn on the Buyer payable 60 days after sight to the order of the Company at such branch of Natwest Bank plc in London as may be specified in the bill of exchange.
- 13.6 The Buyer undertakes not to offer the Goods for resale outside the EEC at or before the time the Buyer's order is placed, or to sell the Goods to any person if the Buyer knows or has reason to believe that person intends to resell the Goods in any country outside the EEC.

14. GENERAL

- 14.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 14.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 14.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 14.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 14.5 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 14.6 If the Buyer makes a voluntary arrangement with creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction), or a receiver is appointed on any of the property or assets of the Buyer, or the Company apprehends that any of the events mentioned above is about to or appears likely to occur in relation to the Buyer and notifies the Buyer accordingly then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries without liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 14.7 The operation of the Contracts (Rights of Third Parties) Act 1999 (the 1999 Act) is excluded and shall not apply to the Contract.
- 14.8 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company. The Company may assign or subcontract the Contract or any part of it to any person, firm or company.

15. COMMUNICATIONS

- All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission. Communications shall be deemed to have been received if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); if delivered by hand, on the day of delivery; and if sent by facsimile transmission on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.