

CVI Melles Griot Conditions of Sale

Definitions

1. (a) In these Conditions:

"Conditions" means these terms and conditions of sale
"The Contract" shall mean any contract concluded pursuant to Condition 2 (a) hereof
"The Customer" shall mean the other party to the Contract
"The Products" shall mean all goods supplied by the Vendor pursuant to the Contract
"The Vendor" shall mean CVI Laser Ltd and any of its subsidiaries
"Writing" includes facsimile transmission and electronic mail
(b) The headings in these Conditions are inserted for convenience only and shall not affect the meaning or interpretation of these Conditions

The Contract

2. (a) Any quotation (a "Quotation") given by the Vendor is not an offer capable of acceptance and no contractual obligation shall arise until the Customer has sent to the Vendor a written order for the Products (an "Order") and the Vendor has despatched to the Customer a written acceptance of such order (an "Acceptance of Order")

(b) The Vendor may without incurring any liability amend or withdraw a Quotation prior to the despatch of the Acceptance of Order: but an Order may not thereafter be cancelled or varied without the prior consent of the Vendor, which the Vendor shall be under no obligation to give but which, if given, shall be conditional upon the receipt by the Vendor from the Customer of an indemnity in respect of all and any loss or damage of whatsoever nature sustained by the Vendor as a direct or indirect result of such cancellation or variation

(c) Any order for the Products shall upon acceptance of the order be deemed to constitute an acknowledgement by the Customer that the Contract has not been induced by any representation by or on behalf of the Vendor save such (if any) as may be expressly specified in the Quotation

(d) The Vendor shall not be under any liability, nor shall the Customer be entitled to any remedy, by reason of any misrepresentation made to the Customer or any agent of the Customer by or on behalf of the Vendor where the misrepresentation results from information derived from a third party which the Vendor has received and acted upon in good faith and without reason to disbelieve or doubt

(e) The Products are supplied by the Vendor only on these Conditions, and the giving of any order by the Customer and the acceptance of any order by the Vendor shall incorporate these Conditions into the Contract to the exclusion of any as superseding all terms and conditions inconsistent therewith or additional thereto and which: (i) might otherwise be implied by law but are capable of lawful exclusion: or (ii) the Customer may have sought to impose at any time in relation to such Order

(f) The acceptance by the Vendor of any order relating to goods intended to be delivered from stock is subject to such goods being available in stock and unsold

(g) No purported modification or variation of these Conditions shall be of any effect unless agreed in writing by the Vendor and the Customer and signed on behalf of each of them

(h) Nothing in these Conditions shall exclude the Vendor's liability for fraudulent misrepresentation

Prices

3. (a) Unless otherwise shown in the Quotation prices quoted are ex works and the Customer shall bear all freight and other costs associated with transportation of the Products to or to the order of the Customer

(b) The Customer shall bear all additional costs incurred by the Vendor on account (i) any alterations made at the Customer's request to quantities or delivery dates (ii) changes in specifications (iii) substrates supplied for coating by the Customer being supplied in batch quantities differing from the batch quantities specified in the Quotation (iv) materials or designs supplied by the Customer requiring any additional process not taken into account in determining the price.

(c) Prices are based on costs current at the date of the Quotation and are subject to increase to the extent of any subsequent variation in costs resulting from alterations in exchange rates, new or increased taxes, duties or other imposts, or in the costs of or relating to the manufacture or delivery of the Products.

(d) All prices are exclusive of VAT which will be charged at the rate current at the date of the appropriate tax point

Payments

4. (a) Payment shall be net cash by the thirtieth day following the date of invoicing unless otherwise stated in the Quotation and the Customer shall not be entitled to withhold payment or make any deduction from the price in respect of any set-off or counterclaim

(b) The Vendor reserves the right to charge interest at the rate of 4% per annum above the base rate of Barclays Bank Limited for the time being ruling on any sums for the time being due to the Vendor hereunder

(c) In the event the Customer fails to pay any invoice from the Vendor by the due date, all invoices issued to the Customer by the Vendor in respect of any Products sold or supplied pursuant to any other contract shall immediately fall due for payment and any credit offered or extended by the Vendor to the Customer in respect of the same shall be cancelled forthwith

(d) The Vendor's invoices shall be payable in accordance with these Conditions notwithstanding that delivery may not have taken place and the property in the

Products may not have passed to the Customer. The time for payment of the Vendor's invoices shall be of the essence of the Contract

Delivery

5. (a) Where any time for delivery is stipulated in the Acceptance of Order such time shall run, unless otherwise stated in writing by the Vendor, from the date of the Acceptance of Order or the date of receipt by the Vendor of all information, instructions and/or drawings necessary to enable the Vendor to complete the Order, whichever date is later

(b) All dates specified to the Customer for the delivery of Products are in any event business estimates. The Vendor shall reasonably endeavour to deliver the Products on the date indicated by the Vendor in the Acceptance of Order or the date agreed between the parties, but the time for delivery of the Products shall not be of the essence and if despite those endeavours the Vendor is unable for any reason to fulfil any delivery of the Products on the date so indicated, the Vendor shall not be deemed to be in breach of the contract or have any liability to the Customer. Delivery may at any time be withheld pending payment of the any sum due from the Customer to the Vendor under any contract

(c) The Customer shall take delivery of the Products within 7 days of notification from the Vendor that the Products are ready for delivery

(d) The Customer shall notify any loss of or damage to the Products in writing to the Vendor and to the carriers within 7 days of such loss or damage coming to its notice or (if less) within 14 days from receipt of the Products at the premises of the Customer or (if less) within such time as will comply with and enable the Vendor to comply with the carrier's conditions affecting such loss or damage. Where Products are delivered by carrier, unless the Products are checked on receipt, the carrier's documentation shall be endorsed "unexamined"

(e) If the Customer does not accept delivery of a consignment of Products at the agreed date then: (i) the Vendor shall be entitled to full payment in respect of the Products refused; and (ii) the Products refused shall be and remain in all respects at the Customer's risk; and (iii) the Customer shall bear all storage and handling costs arising from the delay (such costs being calculated where goods are stored on the premises of any of the Companies at the rate of two per cent per month of the purchase price of the Products so delayed); and (iv) without prejudice to any right on the Vendor's part to damages or payment in respect thereof, the Vendor shall be entitled to cancel any further consignments under the Contract

(f) Unless otherwise agreed in writing the Vendor shall be entitled to make partial deliveries and to determine the route and manner of delivery of the Products, and shall for the purpose of Section 32(2) of the Sale of Goods Act 1979, be deemed to have the Customer's authority to make such contract with any carrier as to the Vendor shall seem reasonable. The Customer shall pay for any partial delivery such proportion of the price as the part delivered bears to the whole of the Products. Where deliveries are to be made by instalments, failure by the Vendor to deliver any instalment shall not entitle the Customer to treat the Contract as at an end

Passing of Property and Risk

6. (a) The Products shall notwithstanding delivery remain the sole property of the Vendor until all amounts owing to the Companies or any of them by the Customer of any account whatsoever have been paid to the relevant one or more of the Companies in full

(b) So long as the Products remain the Vendor's property: (i) the Customer may resell the Products to third parties in the normal course of business; in which event, and up to the amount of such indebtedness, the proceeds of any such resale shall belong to the Vendor and the customer shall be under a fiduciary duty to account to the Vendor therefore and shall if so required by the Vendor and pending such accounting pay all such proceeds of sale into a separate trust account; and (ii) the Customer shall if the Vendor so requires keep the Products marked and/or separately stored at the Customer's expense so as to be clearly identifiable as the Vendor's property; and (iii) the Vendor may at any time recover and resell the Products (if in the Customer's possession) if payment therefore is overdue and for this purpose the Vendor's employee or agents may enter upon the Customer's or other premises upon which the Products are situated. The Vendor may exercise the like rights of recovery resale and entry so long as any payment owed by the Customer to the Companies or any of them on any account is overdue

(c) The risk of loss of or damage to the Products shall pass to the Customer upon the occurrence of the first in time of any of the following events ("the risk point"): (i) The physical delivery of the Products to the Customer (ii) the physical delivery of the Products to a carrier (other than the Vendor) or other bailee for transmission to the Customer

(d) During the period of time from the risk point until the property in the Products has passed to the Customer the Vendor shall be entitled (but not bound) to effect and maintain insurance of the Products in its own name and in full value against all risks. Including fire, flood, explosion, loss and damage whatsoever, and the Customer shall on demand pay to the Vendor all costs of effecting such insurance

(e) The Vendor shall be under no obligation to give the Customer the notice referred to in section 32(3) of the Sale of Goods Act 1979

(f) Where any machinery, tooling, equipment and/or materials are lent by the Vendor to the Customer in addition to the supply of the Products the same shall remain the property of the Vendor and may at any time be recovered upon demand and for this purpose the Vendor's employees or agents may enter upon the Customer's or other premises upon which the same are situate and the Customer shall be liable for all and any loss or damage thereto

(g) The Vendor shall retain title to all and any machinery, tooling and equipment manufactured by or on behalf of the Vendor for the performance of the Contract whether or not the price for the Products includes a tooling or other similar charge

(h) The Customer shall not be deemed to be the Vendor's agent for any other purpose than as may be necessary to give effect to paragraph (b) (i) of this clause

Defects

7. (a) The Customer shall be under a duty to inspect the Products as soon as reasonably practicable but in any event no later than 14 days from the date of

delivery. Where a defect is discovered, the Customer shall be under a duty to inform the Vendor of such defect immediately and in any event no later than 7 days from the date of discovery of the defect.

(b) Subject to clauses 7(c) and (d) the Vendor will at its option reimburse the Customer the price of (on a pro rata basis) or repair or replace free of charge any of the Products which is found to the satisfaction of the Vendor to be defective as a result of faulty materials or faulty design, manufacture or workmanship on the part of the Vendor provided that: (i) the Customer has complied with the provisions of clause 7(a); (ii) the Products are returned properly packed carriage paid to the Vendor at the Customer's risk within a period of 3 months from the date of delivery; and (iii) the Products have not been modified in any way by or damaged whilst in the Possession of the Customer

(c) The Vendor shall use its best endeavours to coat to the specifications referred to in the Quotation any substrates supplied by the Customer and shall in the case of a defective coating (subject to the other provisions of this clause) provide a new coating on a properly prepared substrate if such substrate is supplied to the Vendor by and at the expense of the Customer but shall not be under any liability to the Customer; (i) for failure to coat any substrates which do not meet the Vendors quality standards (ii) for defects in coating due wholly or in part to defects in the substrates (iii) if the Products have been manufactured to the Customer's design and the defects are attributable in whole or in part to any error in such design (iv) if materials or goods for or associated with the manufacture of the Products have been supplied by the Customer and the defects are attributable in whole or in part to any defect in such materials or goods

(c) Where substrates which meet the Vendor's quality standards are supplied by the Customer for coating and not more than 5% of such coatings (or one coating, whichever is the greater) are defective then: (i) the Customer shall accept the remaining coatings in full discharge of the Vendor's obligations under the Contract and the Vendor shall not be under any liability in respect of the defective coatings (ii) the price will be adjusted pro rata so that the Customer shall be charged for the satisfactory coatings only

Liability

8. (a) Except where expressly provided for in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. In particular, the Vendor makes no warranty as to the fitness of the Products for any particular purpose, even if that purpose is stated in the Customer's order. This exclusion includes recommendations or advice from the Vendor to the Customer relating to a specific enquiry. The Customer must satisfy itself as to the fitness of the purpose for which the Products are intended. The Vendor will not be liable if the Products are not fit for the purpose required unless the Customer states the purpose in writing and the Vendor specifically confirms in writing that the Products are fit for such a purpose.

(b) Except as expressly provided in clause 7 and 8 (a) the Vendor's liability in connection with the sale of the Products shall be as follows: (i) in respect of physical damage to or loss of the Customer's tangible property to the extent that it results from the wilful default or negligence of the Vendor, its employees, agents or contractors, the Vendor's liability shall be limited to an amount of £[] in respect of each incident or series of connected incidents; (ii) in respect of all other direct loss (whether in contract, tort or otherwise) the Vendor's liability shall be limited to an amount of £[]; and (iii) in respect of any loss of goodwill or any type of special or indirect loss or damage, the Vendor's liability shall be nil.

(c) Nothing in these Conditions excludes or limits the liability of the Vendor for death or personal injury caused by the negligence of the Vendor.

(d) The Vendor shall have no liability under the provisions of these Conditions or otherwise if the Products have not been paid for by the due date for payment.

(e) Any claim by the Customer in respect of any Product shall not entitle the Customer to withhold or delay payment in respect any of the Products in respect of which no such claim has been made whether or not those Products form part of the same consignment."

Specifications and Instructions

9. (a) Only the specifications referred to in the Quotation shall form part of the Contract

(b) The Vendor reserves the right subject to giving prior written notice to the Customer to modify the said specifications (whether before or after the despatch of the Acceptance of Order) where the Products cannot in the opinion of the Vendor be manufactured according to the said specifications and the Customer agrees to accept the Products as manufactured according to the specifications so modified in satisfaction of the Vendor's obligations as to manufacture of the Products under the Contract

(c) Where goods are to be made by the Vendor in accordance with the Customer's instructions, specification or design, express or implied; (i) the Customer warrants that he has full right and title to procure the Vendor so to do; and (ii) the Customer shall indemnify and keep indemnified the Vendor against all proceedings, damages, penalties, costs, expenses, claims, royalties, payments, demands and liabilities of whatever nature resulting directly or indirectly from the carrying out or attempted carrying out of the Order, including (without prejudice to the generality of the foregoing) any of such matters which may relate to the infringement or alleged infringement of or of any right attributable to any letters patent, registered design, trade mark, trade name, copyright or proprietary right

Customer's Property

10. In relation to materials supplied by the Customer to the Vendor:-

(a) the Customer warrants to the Vendor that it has full right and title to supply such materials and to procure the Vendor to perform work thereon and that such materials are fit and suitable for the purpose for which they are supplied and hereby agrees to indemnify and keep indemnified the Vendor against any loss or damage of whatsoever nature suffered by the Vendor as a direct or indirect result of the unfitness, unsuitability or non-performance of such materials;

(b) the Vendor accepts no liability whatsoever in respect of the fitness, suitability or performance of such materials;

(c) all work performed by the Vendor upon such materials is to be performed at the Customer's entire risk;

(d) the Vendor accepts no liability whatsoever for destruction of or damage or loss, however caused, to such materials whilst within the possession of the Vendor, except where due to the negligent act or omission of the Vendor

Copyright etc.

11. (a) All specifications, drawings, designs and technical description, and all information and "know-how" whatsoever supplied by the Vendor to the Customer is as between the Vendor and the Customer the Vendor's copyright and property and shall at all times be treated by the customer as confidential and shall not without the prior written consent of the Vendor be used by the customer except for the purposes of the Contract

(b) The Customer will indemnify the Vendor against all actions claims demands costs charges and expenses arising from or incurred by reason of any infringement of letters patent design or copyright arising from the use of specifications supplied by the Customer to the Vendor

Force Majeure

12. The Vendor will make every effort to carry out the terms of the Contract, but if such performance is not possible by reason of any cause whatsoever beyond the reasonable control of the Vendor and in particular and without prejudice to the generality of the foregoing by Act of God, war (whether declared or not), sabotage, riot, explosion, Government control, restrictions or prohibitions or any other Government act or omission whether local or national, fire, accident, earthquake, storm, flood, epidemic, or other natural catastrophes, inability to obtain equipment suitable raw materials, components, fuel, power or transportation, trade disputes, strikes or lockouts, shortage of labour or inability to obtain from suppliers items required for the performance of the Contract, the Vendor reserves the right to modify the terms of or cancel the contract or to extend the time for its performance by a period equivalent to that during which its performance has been so rendered impossible without liability for loss or damage so caused

Bankruptcy or Liquidation

13. If any distress or execution shall be levied upon the Customer's property or assets, or if the customer shall become insolvent or make or offer to make any arrangements or composition with creditors, or commit any act of bankruptcy, or if any petition or receiving order in bankruptcy shall be presented or made against him, if the Customer is a limited company and any resolution or petition to wind up such company (other than for the purpose of amalgamation or reconstruction) shall be passed or presented, or if a receiver of such company's undertaking, property or assets or any part thereof shall be appointed, then, without prejudice to any claim or right the Vendor may otherwise make or exercise and to any obligation or liability to which the customer may otherwise be subject, the Vendor shall have the right forthwith to determine the Contract and upon written notice of such determination being posted to the customer's last know address the contract shall be deemed to have been determined.

Governing Law

14. These Conditions and the Contract shall be governed and construed and shall take effect in accordance with the laws of England, and shall be subject to the exclusive jurisdiction of the Courts of England, to which the parties hereby irrevocably submit

Third Party Rights

15. A person who is not a party to this Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Conditions but this does not affect any right or remedy of a third party which exists or is available apart from that Act

4th October 2007