

INOPLAS TECHNOLOGY LIMITED'S TERMS AND CONDITIONS OF SUPPLY

1 Interpretation

1.1 **Definitions.** In these Conditions, the following definitions apply:

Business Day: means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Buyer: means the person or firm who purchases the Goods from the Seller.

Conditions: means the terms and conditions set out in this document, as amended from time to time in accordance with clause 14.6, together with any terms set out in the Specification Document.

Contract: means the contract between the Seller and the Buyer for the sale and purchase of the Goods in accordance with these Conditions.

Force Majeure Event: has the meaning given in clause 13.

Goods: means the goods (or any part of them) as set out in the Specification Document.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Buyer's order for the Goods.

Seller: Inoplas Technology Limited (registered in England and Wales with company number 01129378), whose office is at Units 1-4, Uddens Estate, Wimborne, Dorset, BH21 7LD.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Buyer and the Seller.

Specification Document: means a statement of work, quotation, confirmation or other similar document describing the Goods to be provided by the Seller.

1.2 **Construction.** In these Conditions, the following rules apply:

1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.

1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.4 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.5 A reference to **writing** or **written** includes faxes and e-mails.

2 Basis of Contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 An Order by the Buyer constitutes an offer to purchase the Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order and any applicable specifications are complete and accurate and provide the Seller with sufficient information to manufacture the Goods.

2.3 The Order shall only be deemed to be accepted when the Seller issues an acceptance of the Order, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Seller which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.6 A quotation for the Goods given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.

3 Goods

3.1 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Buyer, the Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Seller's use of the Specification. This clause 3.1 shall survive termination of the Contract.

3.2 The Seller reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

4 Delivery

4.1 The Seller shall ensure that:

4.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Buyer and Seller reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

4.1.2 if the Seller requires the Buyer to return any packaging materials to the Seller, that fact is clearly stated on the delivery note. The Buyer shall make any such packaging materials available for collection at such times as the Seller shall reasonably request.

- 4.2 The Seller shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Seller notifies the Buyer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Seller fails to deliver the Goods, its liability shall be limited to the price of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Buyer fails to accept delivery of the Goods within three Business Days of the Seller notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Seller's failure to comply with its obligations under the Contract:
- 4.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Seller notified the Buyer that the Goods were ready; and
- 4.6.2 the Seller shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).
- 4.7 If 10 Business Days after the day on which the Seller notified the Buyer that the Goods were ready for delivery the Buyer has not accepted delivery of them, the Seller may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.
- 4.8 The Buyer shall not be entitled to reject the Goods if the Seller delivers up to and including 10% more or less than the quantity of Goods ordered and the Seller may invoice the Buyer for the actual quantity of Goods delivered to the Buyer.
- 4.9 The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. The Seller may suspend delivery of an instalment whilst payment for any previous instalment remains unpaid after the payment due date. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

5 Quality

- 5.1 The Seller warrants that on delivery the Goods shall:
- 5.1.1 conform in all material respects with their description, any Specification Document or any applicable Specification;
- 5.1.2 be free from material defects in design, material and workmanship; and
- 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

- 5.2 Subject to clause 5.3, if:

- 5.2.1 the Buyer gives notice in writing to the Seller within 10 Business Days of delivery of the Goods that the Goods do not comply with the warranty set out in clause 5.1, otherwise the Goods are deemed to have been accepted by the Buyer;
- 5.2.2 the Buyer gives the Seller reasonable opportunity to examine such Goods; and
- 5.2.3 the Seller agrees that the Goods do not comply with clause 5.1, the Seller may, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3 The Seller shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
- 5.3.1 the Buyer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- 5.3.2 the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 5.3.3 the defect arises as a result of the Seller following any drawing, design or Specification supplied by the Buyer;
- 5.3.4 the Buyer alters or repairs such Goods without the written consent of the Seller;
- 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 5.3.6 the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Except as provided in this clause 5, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.

6 Title and Risk

- 6.1 The risk in the Goods shall pass to the Buyer:
- 6.1.1 if the Goods are delivered overland, on completion of delivery of the Goods to the Buyer's premises or to the Buyer's nominated carrier; or
- 6.1.2 if the Goods are delivered by sea or air, on completion of delivery of the Goods to the Buyer's nominated carrier.
- 6.2 Title to the Goods shall not pass to the Buyer until the earlier of:
- 6.2.1 the Seller receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Seller has supplied to the Buyer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- 6.2.2 the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in clause 6.4.
- 6.3 Until title to the Goods has passed to the Buyer, the Buyer shall:

- 6.3.1 store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
- 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 6.3.4 notify the Seller immediately if it becomes subject to any of the events listed in clause 9.1; and
- 6.3.5 give the Seller such information relating to the Goods as the Seller may require from time to time.
- 6.4 Subject to clause 6.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Goods. However, if the Buyer resells the Goods before that time:
 - 6.4.1 it does so as principal and not as the Seller's agent; and
 - 6.4.2 title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.
- 6.5 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 9.1, then, without limiting any other right or remedy the Seller may have:
 - 6.5.1 the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - 6.5.2 the Seller may at any time:
 - (a) require the Buyer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (b) if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

7 Price and Payment

- 7.1 The price of the Goods shall be the price set out in the Specification Document, or, if no price is quoted, the price set out in the Seller's published price list in force as at the date of delivery.
- 7.2 The Seller may, by giving notice to the Buyer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
 - 7.2.1 any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, increase in delivery charges, and increases in labour, materials and other manufacturing costs);
 - 7.2.2 any request by the Seller to change the delivery date(s), quantities or types of Goods ordered, or the specifications of the Goods; or
 - 7.2.3 any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.
- 7.3 Unless otherwise stated in the Specification Document, the price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Buyer.
- 7.4 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect

of VAT as are chargeable on the supply of the Goods.

- 7.5 The Seller may invoice the Buyer for the Goods on or at any time after the completion of delivery, unless agreed otherwise.
- 7.6 The Buyer shall pay the invoice in full and in cleared funds by the end of the month following the month the invoice was dated. Payment shall be made to the bank account nominated in writing by the Seller. Time of payment is of the essence.
- 7.7 If the Buyer gives notice of its intention to cease placing Orders for Goods with the Seller or if the Buyer does not place any orders for Goods for a period exceeding three months, the Seller may withdraw all credit granted to the Buyer and demand immediate payment of any outstanding sums, which shall become due and payable immediately, and any other liabilities incurred by the Seller in anticipation of the continuing business relationship between the parties, including, but not limited to work in progress and the purchase of materials.
- 7.8 If the Buyer fails to make any payment due to the Seller under the Contract by the due date for payment, then the Buyer shall pay interest on the overdue amount at the rate of 4% per annum above National Westminster Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.
- 7.9 The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

8 Tools

- 8.1 Tools made to the order of the Buyer by the Seller for the manufacture of Goods under the Contract become the property of the Buyer but will remain at the Seller's site.
 - 8.2 The Buyer may request for such tools to be delivered to the Buyer if:
 - 8.2.1 the Seller is unable or unwilling to execute any order for Goods from such tools within a reasonable period; or
 - 8.2.2 the Seller shall cease carrying on business in the normal course, or shall call a meeting of its creditors or make a proposal for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or for any other composition or scheme of arrangement with (or assignment for the benefit of) its creditors, or shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or if a trustee, receiver, administrative receiver or other similar officer is appointed or a meeting is convened for the purpose of considering a resolution for its winding up (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or it is the subject of an administration order,
- provided the Buyer has discharged all its liabilities to the Seller whether under the Contract, in respect of the tools or otherwise.

- 8.3 The Seller may destroy any tools which have not been used for a period of three years on giving the Buyer three months' notice in writing.
- 8.4 The Seller shall keep the tools in good repair at the expense of the Buyer and the Seller shall not use the Buyer's tools for any other customers without the Buyer's written consent.
- 8.5 The Buyer shall pay the total price quoted for the tool by the Seller when placing the order for the tool or, if agreed by the Seller and the Buyer, the Buyer shall pay the total price quoted for the tool as set out below:
- 8.5.1 40% when the Buyer places the order for the tool with the Seller.
- 8.5.2 40% when the Buyer receives a sample moulding made from the tool.
- 8.5.3 20% when the Buyer submits written sample approval or 30 days from receipt of the first sample whichever is the earlier.
- 8.6 Production of Goods from new tooling shall not commence until written sample approval is received from the Buyer for that new tooling and the total payment for the new tooling has been received by the Seller.

9 Termination and Suspension

- 9.1 Without prejudice to any rights that have accrued under the Contract or any of its rights or remedies, the Seller may at any time terminate the Contract with immediate effect by giving written notice to the Buyer if:
- 9.1.1 the Buyer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- 9.1.2 the Buyer commits a material breach of any term of the Contract (other than failure to pay any amounts due under the Contract) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 9.1.3 the Buyer shall cease carrying on business in the normal course, or shall call a meeting of its creditors or make a proposal for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or for any other composition or scheme of arrangement with (or assignment for the benefit of) its creditors, or shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or if a trustee, receiver, administrative receiver or other similar officer is appointed or a meeting is convened for the purpose of considering a resolution for its winding up (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or it is the subject of an administration order; or
- 9.1.4 any event occurs or proceeding is taken with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1.3.
- 9.2 Without limiting the Seller's other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in clauses 9.1.3 and 9.1.4, or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.

- 9.3 On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and any other liabilities incurred by the Seller in producing the Goods for the Buyer. Once the Buyer has settled any outstanding unpaid invoices and interest, the Seller shall as soon as reasonably practicable return the Buyer's tools, as referred to in clause 8, to the Buyer.

- 9.4 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

- 9.5 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

10 Intellectual Property Rights

Nothing in these Conditions will change the ownership of any Intellectual Property Rights of either party. Save as expressly agreed otherwise, neither party may use, duplicate, distribute, create derivative works from, or otherwise exploit or derive benefit from any of the Intellectual Property Rights of the other party.

11 Limitation of liability

- 11.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:
- 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 11.1.2 fraud or fraudulent misrepresentation;
- 11.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 11.1.4 any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 11.2 Subject to clause 11.1:
- 11.2.1 the Seller shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of business, loss of opportunity, or any indirect or consequential loss arising under or in connection with the Contract; and
- 11.2.2 the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

12 Indemnity

- 12.1 The Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Seller arising out of or in connection with:
- 12.1.1 any claim made against the Seller for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with any designs or specifications provided by the Buyer to the Seller; and
- 12.1.2 any claim made against the Seller by a third party arising out of or in connection with the supply of the Goods to the Buyer.

13 Force majeure

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

14 General

14.1 Assignment and Other Dealings.

14.1.1 The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

14.1.2 The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller

14.2 Notices.

14.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.

14.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.2.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

14.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

14.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by

a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

14.6 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Seller.

14.7 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

14.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

These Conditions have last been updated on 17th January 2020.