

1. DEFINITIONS

In these Terms and Conditions all references to “the Company” are to Gilden Photonics Limited, all references to “the Purchaser” are to the person, company or institute by whom the order is placed and “the Parties” mean both of them together and all references to “the Goods” are to the equipment and products supplied by the Company to the Purchaser under the terms of the order or sale agreement (the “Contract”) between them.

2. INTERPRETATION

A reference to a law or regulation is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

3. GENERAL

3.1 Each right or remedy of the Company under these Terms and Conditions is without prejudice to any other right or remedy of the Company whether under these Terms and Conditions or not.

3.2 These Terms and Conditions are to be incorporated in all Contracts entered into by the Company, unless specifically provided to the contrary in writing signed by either a director or the secretary of the Company.

3.3 The Purchaser acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company that is not set out in these Terms and Conditions. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

3.4 If any condition of these Terms and Conditions is found by any court or tribunal of competent jurisdictions to be wholly or partly invalid, void, voidable, unenforceable or unreasonable, it shall be deemed severable and the remaining conditions and the remainder of such conditions shall continue in full force and effect.

3.5 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Purchaser shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

4. DESCRIPTION

4.1 The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.

4.2 The Purchaser shall ensure that the terms of its order and any applicable specification are complete and accurate.

5. PRICES AND QUOTATIONS

5.1 Quotations indicate the prices at which the Company would be willing to supply the Goods if a written order is placed within the period, as specified in the quotation. Thereafter the Company reserves the right to revise all or any part of the quotation.

5.2 Any order placed on the basis of a quotation is only binding on the Company when it has been confirmed to the Purchaser on an official Company order acknowledgement form or (if earlier) the Goods are delivered to the Purchaser. Any clerical errors on either the quotation or official acknowledgement are subject to correction.

5.3 Prices shall be exclusive of any value added tax.

6. DELIVERY TERMS

6.1 The International Commercial Terms 2010 (“Incoterms 2010”) will apply to these Terms and Conditions as appropriate unless otherwise specified in writing.

6.2 The delivery date, if specified, as an estimate only made at the time of quotation or acknowledgement of order and is not binding on the Company unless otherwise expressly agreed in writing. If no date is specified, delivery shall be within a reasonable time. In any event the Company shall not be under any liability to the Purchaser for non-delivery or delay in delivery caused by strikes, lock outs, outbreaks of hostilities, acts of God, national calamities or any other like causes outwith the control of the Company.

6.3 Prices quoted to the Purchaser (including accredited agents) are ex-works (as defined by Incoterms 2010) unless otherwise specified. All costs or charges in relation to the freight, packaging, insurance and installation are charged at cost, which the Purchaser shall pay in addition to the price of the Goods due from time to time. For the avoidance of any doubt, the Company shall only arrange delivery of the Goods by land based or aircraft delivery and not carriage by sea.

6.4 The quantity of any consignment of Goods as recorded by the Company on dispatch from the Company's place of business shall be conclusive evidence of the quantity received by the Purchaser on delivery under the Contract unless the Purchaser can provide conclusive evidence proving to the contrary that another quantity was received.

6.5 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Purchaser gives written notice to the Company of the non-delivery within 7 days of the specified delivery date or if unspecified, within 7 days of the receipt of the relevant invoice specific to the Contract.

6.6 Notwithstanding any other condition, 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 for the amount of the invoice raised for such Goods.

7. TRANSFER OF TITLE

7.1 The passing of risk under the Contract shall be determined in accordance with the Incoterms 2010 as follows:

7.1.1 where the Purchaser purchases the Goods on an ex-works basis at the Company's premises, the Goods shall be at the risk of the Purchaser from the time of collection.

7.1.2 where the Purchaser arranges for the Goods to be collected from the Company's premises by an authorised delivery agent, the Goods shall be at the risk of the authorised delivery agent (or the Purchaser itself depending on the conditions of the carriage agreement) from the time of collection

7.1.3 where the purchaser arranges for the Goods to be delivered by the Company to the designated collection point of an authorised delivery agent, the Goods shall be at the risk of the authorised delivery agent (or the Purchaser itself depending on the conditions of the carriage agreement) from the time of delivery at the designated collection point. For the avoidance of any doubt, delivery shall be deemed to have constituted in this condition 7.1.3 by the authorised delivery agent signing a delivery receipt acknowledgement form or bill of lading confirming that the packaging of the Goods is intact and has not been damaged during delivery and

7.1.4 where the Purchaser arranges for the Goods to be delivered by the Company to the Purchaser's place of business or nominated delivery address, the Goods shall be at the risk of the Purchaser from the time of delivery at the designated delivery address when the Purchaser signs a delivery acknowledgement form confirming that the packaging of the Goods is intact and has not been damaged during delivery.

7.2 The title in the Goods shall remain with the Company until the Company has received payment in full (in cash or cleared funds) for the Goods and all other amounts arising and/or due to the Company by the Purchaser. Until ownership has passed to the Purchaser, the Purchaser shall maintain any Goods that it is holding in satisfactory condition and keep them insured for the full reinstatement value.

7.3 Where the terms of any Contract between the Parties has deemed to have terminated, howsoever caused, the Company's rights contained in this condition 7 shall remain in full force and effect.

8. TERMS OF PAYMENT

8.1 Where the Goods are sold in the United Kingdom, payment shall be made within fourteen (14) days of the date of the relevant invoice, unless agreed otherwise in writing.

8.2 Where the Goods are sold overseas to accredited agents, payment shall be made within thirty days of the date of the relevant invoice. Payment shall be made in Pounds Sterling unless otherwise agreed in writing.

8.3 Where part-deliveries of Goods are made by the Company, as agreed with the Purchaser, payment shall be made as set out in conditions 6.1 and 6.2 at the relevant pro-rata rate of the invoice order.

8.4 The Company reserves the right to charge daily interest on the balance of overdue accounts at an annual rate of five percent above the base lending rate from time to time of the Bank of Scotland.

8.5 The Company may at any time at its sole discretion give written notice to the Purchaser requesting that full payment is made before delivery of any Goods remaining to be delivered under the Contract.

8.6 If the Purchaser shall become in arrears with payments arising under the terms of Contract, the Company shall be entitled to cancel further deliveries under the Contract or any other Contract existing between the Parties until payment has been made in full.

9. CANCELLATION OR RE-SCHEDULING

9.1 In the event that the Purchaser wishes to cancel the Contract, the Company reserves the right to make a cancellation charge of up to fifty percent of the total Contract value. If the cancellation period is less than thirty (30) calendar days from the acknowledged delivery date, then the cancellation charge will be 100% of the Contract value.

9.2 In the event that the Purchaser wishes to re-schedule the delivery of the Contract once this has been arranged, the Company reserves the right to make a re-scheduling charge, which will be calculated at a daily rate of ten percent (10%) above the base lending rate from time-to-time of the Bank of Scotland on the value of the Contract. This will be charged in addition to the original sums owing under the Contract.

9.3 Any charge as set out in condition 9.1 and 9.2 will be notified to the Purchaser immediately as they fall due. Any such charges will be payable by the Purchaser within 7 days of written notification issued by the Company.

9.4 In the event that the product to be shipped requires an export license then the delivery will be determined by the granting of that license. If for some reason that the export license is not granted due to circumstances out with the control of the Company, for example: a government export license refusal, then the Company reserves the right to apply all charges applicable to the Contract and a refund of any pre-payments up to and including the full value contract will not be allowable.

10. TERMINATION

The Company shall have the right to terminate the Contract at any time upon occurrence of any of the following events:

10.1 If the Purchaser makes, or offers to make, any arrangements or composition with creditors, or becomes insolvent or bankrupt or if a judicial factor, trustee, receiver or official assignee is appointed over the estate of the Purchaser.

10.2 If the Purchaser is a Company and any resolution is passed or an order made by a court that the Purchaser is wound up (save for the purpose of amalgamation or reconstruction) or a liquidator, administrator, administrative receiver, manager,

trustee or similar officer is appointed over the Purchaser's undertaking, property or assets or any part thereof.

11. WARRANTY

11.1 Unless otherwise specified, in writing, see section 11.3, the Company guarantees the Goods forming the Contract against defective materials or workmanship for a period of one year ("the warranty period") from the date of delivery to the Purchaser. Should any Goods be replaced or repaired during the warranty period, such Goods shall be guaranteed on the terms of this condition 11 for the remaining period of the warranty period.

11.2 In the case of sub-assemblies of Goods not manufactured by the Company, but incorporated into the Goods ordered, the Purchaser will be entitled to the benefit of any guarantee given to the Company by the makers of such assemblies.

11.3 The Purchaser will only be entitled to the benefit and/or limitations placed on Components used by the Company that have a specific number of hours of operation. This non-exhaustive list of Components applies for example to Xenon bulbs, thyratrons, lasers, laser diodes, light emitting diodes, and other such devices considered to have an operational limited lifetime, where the Component supplier may limit the warranty to the number of hours of operation or shots. Specific items to which this limitation applies will be detailed in specific quotations.

11.4 At the end of the warranty period, any liability of the Company in respect of warranty shall be at an end.

11.5 The Company also warrants that the Goods conform to specifications confirmed in writing at the time of acknowledgement of order.

11.6 No warranty is made or implied as to the suitability of the Goods for the Purchaser's intended use beyond such performance specifications that form part of the Contract.

11.7 The Company does not recommend the use of its Goods in life support applications where a failure or malfunction may directly threaten life or injury. The use of the Company's Goods in life support applications is strictly prohibited. The Purchaser agrees to indemnify the Company for any claims, losses or changes as a result of any unauthorised usage as set out in this condition 11.6.

11.8 The Purchaser warrants:

11.8.1 That they will carefully examine all Goods supplied by the Company and notify the Company in writing of any shortage, defect or failure to comply with the Contract, which is or ought to be apparent upon such examination and test within 7 days of the Goods being delivered to or collected by the Purchaser, unless such Goods require to be installed by the Company and in such circumstances the Goods will be examined by the Company's authorised representative upon installation. Once installed, the Purchaser will be required to sign an acceptance form confirming that the Goods have been installed and tested as operational. In these circumstances, the warranty period will run from the date of signature (of both the Purchaser and the Company's authorised representative) on the acceptance form.

11.8.2 That the Goods will be operated in accordance with the instructions and advice detailed in the appropriate operating instruction manual, or any other instructions which may be provided by the Company. The Company shall not be held responsible for any defect arising from the Purchaser's failure to comply with these recommendations and instructions or from damage arising from negligence or exposure to adverse environmental conditions.

11.9 The warranty is effective only if:

11.9.1 The Goods have been paid for in accordance with the normal payment terms, as set out in conditions 8.1 and 8.2. Any variation in this condition must be agreed between the Parties in writing.

11.9.2 Any defects in the Goods supplied are notified immediately by the Purchaser in writing to the Company within the warranty period.

11.9.3 The Goods are returned to the Company at its Clydebank premises.

11.10 The warranty covers:

11.10.1 The Purchaser makes further use of the Goods after having notified the Company of any defects.

11.10.2 The Purchaser alters or repairs the Goods without obtaining the written consent of the Company.

11.11 The warranty covers:

11.11.1 Engineer's time costs during inspection, replacement or repair.

11.11.2 Any materials or components which require to be replaced or repaired.

11.11.3 Return carriage costs to the Purchaser.

11.12 However, if the Purchaser requests a service engineer to carry out the necessary inspection and repair of the Goods at the Purchaser's premises or on site, the Purchaser agrees that it will pay the engineer's reasonable travel and accommodation expenses that may be applicable to carry out the inspection, replacement or repair. Such amounts will be notified to the Purchaser for approval prior to the engineer attending the Purchaser's premises or site.

11.13 The Company will give the Purchaser reasonable advance notice of the proposed date and time of the inspection and repair of the Goods and will try wherever possible to accommodate any reasonable requests of the Purchaser.

12. LIMITATION OF LIABILITY

12.1 All warranties, conditions and other terms implied by statute or common law are to the fullest extent permitted by law excluded from the Contract. In particular, the Company makes no warranty as to the fitness of the Goods for any particular purpose beyond such performance specifications that form part of the Contract.

This exclusion applies to the recommendations or advice from the Company relating to a specific enquiry.

12.2 Nothing in these conditions excludes or limits the liability of the Company.

- a) for death or personal injury caused by the Company's negligence, or
- b) under section 7, Consumer Protection Act 1987 or
- c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability, or
- d) for fraud or fraudulent misrepresentation.

12.3 Subject to conditions 12.1 and 12.2

- a) the Company's aggregate liability under the contract shall in no event exceed the order price payable by the Purchaser for the Goods (including any additional charges such as freight, packaging, insurance and installation which may have been payable under the Contract).
- b) the Company shall not be liable to the Purchaser for: loss of profits (whether direct or indirect), business, revenue, goodwill; nor indirect consequential loss or damage arising from failure of the Goods under the warranty.

13. INTELLECTUAL PROPERTY RIGHTS

The intellectual property embodied in the Goods is the exclusive property of the Company and the Purchaser shall not attempt to duplicate it in any way without the written permission of the Company. All information and materials supplied by the Company to Purchaser relating to the Goods are confidential and proprietary, and Purchaser shall limit distribution thereof to its trusted employees and strictly prevent disclosure to any third party.

14. UK STATUTORY AND OTHER REGULATIONS

14.1 The Purchaser shall:-

14.1.1 be responsible for financing the collection, treatment, recovery and environmentally sound disposal of all waste of electrical and electronic equipment ("WEEE") in accordance with The Waste Electrical and Electronic Regulations 2006 ("WEEE Regulations") as amended from time to time arising or deriving from the Goods and

14.1.2 provide the Purchaser's WEEE compliance scheme operator with such data, documents, information and other assistance as the scheme operator may reasonably require from time to time to enable the operator to satisfy the obligations assumed by it as a result of the Company's membership of the operator's compliance scheme.

14.2 Further information in respect of WEEE can be found at www.sepa.org.uk.

Although the Purchaser is responsible for the disposal of any electrical and electronic equipment ("EEE") once it has reached the end of its life, it may request the assistance of the Company in doing so, who may be willing to offer a recycling service in respect of the EEE. Alternatively, the Purchaser may contact the WEEE compliance scheme operator ("Electrolink") by visiting its website www.electronik.eu.com and clicking on the "TAKE BACK AND FINAL USER OBLIGATIONS" button and then follow the instructions provided.

14.3 The Company adheres to the rules of Export Control and for some products, customers, or territories, will request UK government authorization for shipment and will require a confirmation of being allowed to ship by the granting of an Export License.

15. ASSIGNMENT

15.1 The Company may assign the contract or any part of it to any person, firm or company.

15.2 The Purchaser shall not be entitled to assign the contract or any part of it without the prior written consent of the Company.

16. ARBITRATION

If at any time any question, dispute or difference whatsoever shall arise between the Purchaser and the Company upon, in relation to, or in connection with these Terms and Conditions, either of the Parties may give to the other notice in writing of the existence of such question, dispute or difference, and the same shall be referred to the arbitration of a person to be mutually agreed upon. The Parties shall jointly meet the costs associated with any arbitration.

17. GOVERNING LAW

These Terms and Conditions shall be governed and construed in all aspects exclusively in accordance with the laws of Scotland and the Parties agree to submit to the exclusive jurisdiction of the courts of Scotland.