

# 4SIGHT IMAGING LTD: TERMS AND CONDITIONS OF SALE

## 1 Definitions

In these conditions, unless the context requires otherwise:

- 1.1 'Buyer' means the person who buys or agrees to buy the goods and/or services from the Seller.
- 1.2 'Conditions' means the terms and conditions of sale and the supply of goods and/or services set out in this document and any special terms and conditions agreed in writing by the parties.
- 1.3 'Delivery Date' means the date specified by the Seller when the Goods and/or Services are to be delivered or provided.
- 1.4 'Goods' means the articles which the Buyer agrees to buy from the Seller.
- 1.5 'Services' means the Services the Buyer agrees to buy from the Seller.
- 1.6 'Price' means the price for the Goods and/or Services excluding carriage, packing, insurance and VAT; and
- 1.7 'Seller' means the person whose name and address appears in the box marked 'Seller' overleaf.

## 2 Conditions Applicable

- 2.1 These Conditions shall apply to all contracts for sale of goods and parts sold including software and firmware ('the Goods') and/or the provision of services ('the Services') by 4Sight Imaging Ltd ('the Seller') to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order conformation or order or similar document.
- 2.2 All orders for Goods and/or Services shall be deemed to be an offer by the Buyer to purchase Goods and/or Services on these Conditions.
- 2.3 Acceptance of delivery of Goods and/or Services shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

## 3 Price and Payment

- 3.1 The Price shall be the Seller's quoted price.
- 3.2 The price is exclusive of VAT which shall be due at the rating ruling at the date of the Seller's invoice.
- 3.3 The price of Goods and/or Services shall remain in effect for thirty days after the Seller's quotation
- 3.4 Payment of the Price and VAT shall be due within 30 days of the date of the invoice.
- 3.5 Time for payment shall be of the essence.
- 3.6 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at the rate of 2% above Barclays Bank plc's base rate from time to time in force and shall accrue at such a rate after as well as before any judgment.
- 3.7 The Seller may by giving notice to the Buyer at any time increase the Price of the Goods and/or Services to reflect any increase in the cost to the Seller which is due to factors occurring after the making of the contract of sale or for the provision of Services which are beyond the reasonable control of the Seller (including without limitation, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs). Provided that the Buyer may cancel this contract within 7 days of any such notice from the Seller if such increase represents 10% increase on the Price.
- 3.8 The Seller may require periodic payments from the Buyer where invoices shall be issued by the Seller and paid by the Buyer based on the following milestones:
  - 3.8.1 Milestone 1: 40% of the price upon release by the Seller of an approved bill of material to manufacturing for assembly of the goods or the beginning of the Services
  - 3.8.2 Milestone 2: 60% of the price upon shipment of the Goods or completion of the Services.
- 3.9 Where the Buyer fails to make any payment to the Seller when due without prejudice to the Seller's other remedies under these conditions the Seller may at its sole discretion terminate this agreement or suspend further delivery of Goods and/or Services under these conditions or other agreements between the Seller and Buyer

## 4 The Goods and/or Services

- 4.1 The quantity and description of the Goods and/or Services is set out in the Seller's quotation.
- 4.2 The Seller may from time to time make changes in the specification of the Goods and/or Services which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for purpose of the Goods and/or Services.
- 4.3 Where the Seller's quotation provides a list of entries of the individual Goods and/or Services to be supplied and each entry has a specific price and the Seller renders an invoice to the Buyer for any entry the Buyer must pay the Seller the Price and VAT for each Goods and/or Services relating to any entry that is ready for delivery and invoiced by the Seller to the Buyer within 30 days of the date of the invoice and the Buyer is not entitled to withhold payment for any entries that have been delivered notwithstanding that other entries have not been delivered and/or invoiced.

## 5 Delivery

- 5.1 The Buyer shall be responsible for:
  - 5.1.1 determining the method of shipment of the Goods and/or Services;
  - 5.1.2 arranging for a carrier; and
  - 5.1.3 all freight costs, insurances, fees taxes, duties and other charges including without limitation the cost of customs formalities in respect of shipping the Goods.
- 5.2 Where the Buyer fails to arrange a carrier for Goods and/or Services that are ready to be shipped then the Seller may at its own discretion do so and the costs of carriage, insurance and any other expenses shall be reimbursed by the Buyer without any set-off or other withholding whatsoever and shall be due on the date for payment of the Price.
- 5.3 Risk in the Goods and/or Services shall pass to the Buyer upon tender to a carrier by the Seller.
- 5.4 The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Goods and/or Services (or any of them) promptly.
- 5.5 Notwithstanding that the Seller may have delayed or failed to deliver the Goods and/or Services (or any of them) provided the Buyer shall be bound to accept delivery and to pay for the Goods and/or Services in full promptly that delivery shall be tendered at any time within 3 months of the Delivery Date.

- 5.6 Where the Buyer rejects the Goods and/or Services then the Buyer shall have no further rights whatsoever in respect of the supply to the Buyer of such Goods and/or Services or the failure by the Seller to supply Goods and/or Services which conform to the contract of sale
- 5.7 Where the Buyer accepts or has been deemed to have accepted any Goods and/or Services then the Seller shall have no liability whatever to the Buyer in respect of those Goods and/or Services.
- 5.8 The Buyer shall inspect the Goods and/or Services on delivery and shall within 7 days of delivery notify the Seller of any alleged defect, shortage in quality, damage or failure to comply with the specification. The Buyer shall afford the Seller an opportunity to inspect the Goods and/or Services within a reasonable time following delivery and before any use is made of them. If the Buyer shall fail to comply with these provisions the Goods and/or Services shall be conclusively presumed to be in accordance with these conditions and free from any defect or damage which would be apparent on a reasonable examination of the Goods and/or Services and the Buyer shall be deemed to have accepted the Goods and/or Services.

- 5.9 If the Goods and/or Services are not in accordance with the contract for any reason the Buyer's sole remedy shall be limited to the Seller making good any shortage by repairing, replacing such Goods and/or Services or, if the Seller shall direct, by refunding a proportionate part of the Price. Under no circumstances shall the liability of the Seller exceed the Price of the Goods and/or Services.

## 6 Retention of Title

- 6.1 The Goods and Services shall be at the Buyer's risk pursuant to Clause 5.3.
- 6.2 In spite of delivery having been made property in the Goods and/or Services shall not pass from the Seller until:
  - 6.2.1 The Buyer shall have paid the Price plus VAT in full; and
  - 6.2.2 No other sums whatsoever shall be due from the Buyer to the Seller.
- 6.3 Until property in the Goods and/or Services passes to the Buyer in accordance with Clause 6.2 the Buyer shall hold the Goods and/or Services and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods and/or Services (at no cost to the Seller) separately from all other Goods in its possession and marked in such a way that they are clearly identified as the Seller's property.
- 6.4 Notwithstanding that the Goods and/or Services (or any of them) remaining the property of the Seller the Buyer may sell or use the Goods and/or Services in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods and/or Services passes from the Seller the entire proceeds of sale or otherwise of the Goods and/or Services shall be held in trust for the Seller and shall be at all material times identified as the Seller's money.
- 6.5 The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that the property in any of the Goods and/or Services has not passed from the Seller.
- 6.6 Until such time as property in the Goods and/or Services passes from the Seller the Buyer shall upon request deliver up such of the Goods and/or Services as have not ceased to be existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon the premises owned occupied or controlled by the Buyer where the Goods and/or Services are situated and repossess the Goods and/or Services. On making of such request the rights of the Buyer under clause 6.4 shall cease.
- 6.7 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods and/or Services which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 6.8 The Buyer shall insure and keep insured the Goods and/or Services to the full Price (plus VAT) against 'all risks' to the reasonable satisfaction of the Seller until the date that property in the Goods and/or Services passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

## 7 Limited Warranty

- 7 Subject to clauses 7.5 and 8 below the Seller warrants that the Goods and/or Services supplied will at the time of delivery correspond to the description given by the Seller:
  - 7.1 the software and firmware will execute the programming instructions provided by the Seller
  - 7.2 the Goods manufactured and/or the Services will be free from defects in material or workmanship under normal use and care until the expiration to the applicable following warranty periods:
    - 7.2.1 Goods for integration into OEM products are warranted for 15 months from the date of the Seller's invoice.
    - 7.2.2 All other Goods are warranted for a period of 12 months from the date of the Seller's invoice.
    - 7.2.3 Services are warranted for a period of 90 days from the date the Services were provided
  - 7.3 Where the buyer identifies any defect in the Goods and/or Services and communicates this to the Seller in writing during the applicable warranty period the Seller may at its own option promptly correct any errors in the software and firmware or Services, repair the Goods, replace the Goods (with the Buyer being responsible for freight and risk to and from the Seller), or refund the purchase price of the Goods and/or Services.
  - 7.4 Any Goods and/or Services repaired or replaced during the applicable warranty period shall remain in warranty under the original warranty period or for ninety days whichever is longer.
  - 7.5 Any defect caused by inadequate maintenance, unsuitable power sources, unsuitable environmental conditions, accident, misuse, improper installation, modification, repair storage or handling, or any other cause not the fault of the Seller are excluded by the limited warranty and shall be at the Buyers expense.
- 8 **Liability**
  - 8.1 Except where the Buyer is dealing as a consumer (as defined in the Unfair Contract Terms Act 1977 Section 12 and/or the Unfair Contract Terms in Consumer Contracts Regulations 1999 Regulation 3(1)) all other warranties, conditions or terms relating to fitness for purpose, quality, condition, merchantability, non-infringement, or any other matter relating to the Goods and/or Services, whether express or implied by statute or common law or otherwise are excluded to the fullest extent permitted by law. Provided that nothing in this contract shall restrict or exclude liability for death or personal injury by the negligence of the Seller

- 8.2 The Seller shall be under no liability whatsoever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer and/or its customers arising out of a breach by the Seller of these conditions.

- 8.3 The Seller may cancel this contract at any time before the Goods and/or Services are delivered by giving written notice. On giving such written notice the Seller shall promptly repay to the Buyer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

- 8.4 Where the Buyer provides the Seller in writing with any specifications, data, representations, operating condition information, or other information ('Buyer Supplied Data') which the Seller relies on in selecting and/or designing the Goods and/or Services any warranties or other provisions contained which are affected by such Buyer Supplied Data shall be null and void to the extent that the Buyer Supplied Data is not accurate.

## 9 Buyer's Additional Obligations

- 9.1 The Buyer is responsible for:
  - 9.1.1 providing the Seller promptly with all information including but not limited to data and documentation specifically identified in the Seller's quotation and the Seller will not be liable for any delays in delivering the Goods and/or Services to the Buyer caused by the failure of the Buyer to provide this information to the Seller promptly and
  - 9.1.2 ensuring that the Goods and/or Services comply with local law or regulations including but not limited to obtaining all permits, licences, authorizations, and permissions required for the installation and/or use of the Goods and/or Services and
  - 9.1.3 receiving, storing, installing, starting up and maintaining all Goods and/or Services provided in accordance with the seller's installation procedures.

## 10 Intellectual Property Rights

- 10.1 All goods sold in retail packaging may be used by the Buyer only in the packaging supplied by the Seller and in no case may any trade mark other than those supplied by the Seller be marked on or applied in relation to the Goods and/or Services.
  - 10.2 No right or licence is granted under these conditions to the Buyer under any patent, trade mark, copyright, registered design or other intellectual property right except the right to use the Goods and/or Services.
  - 10.3 The Seller makes no warranty that the Goods and/or Services will not in any way infringe any claims of any United Kingdom, United States, European or foreign patents
  - 10.4 The Seller will not indemnify the Buyer or its customers for any claims brought against the Buyer or its customers for infringement of any such patents
  - 10.5 The Buyer will fully indemnify the Seller if any infringement is based on the use manufacture or sale of Goods and/or Services in connection with goods or services not manufactured or provided by the Seller or in a manner for which the Goods and/or Services were not designed by the Seller, or if the Goods and/or Services were designed by the Buyer or were modified by the Buyer or for the Buyer in a manner to cause them to become infringing.
  - 10.6 Notwithstanding any other provision in these conditions to the contrary the Seller or applicable third party owner shall retain exclusive title to its respective firmware, software, all designs and techniques embodied within the Goods and/or Services, whether or not represented in drawings, shall remain permanently with the Seller.
  - 10.7 Any invention, discovery or improvement, whether patentable or not, made by the Seller, its servants or agents, in connection with this contract, shall belong wholly and exclusively to the Seller.
  - 10.8 Except as otherwise provided the Buyer is granted a nonexclusive, royalty free license to use the software and firmware incorporated into the Goods and/or Services.
  - 10.9 The Buyer's use of certain software and firmware (as specified by the Seller) and all other software shall be governed exclusively by the Seller's and/or third party owner's applicable licence terms.
  - 10.10 The specification[s] and design[s] of the Goods and/or Services (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Seller.
  - 10.11 The Seller shall retain the exclusive property and reserve the copyright in all documents supplied or produced to the Buyer in connection with the Goods and/or Services and the Buyer must not communicate the contents of any such documents and any part thereof either directly or indirectly to any other person, firm or company without the Seller's prior written consent.
  - 10.12 Where any designs or specifications have been supplied by the Buyer for manufacture by or to the order of the Seller then the Buyer warrants that the use of those designs and specifications for the manufacture, processing, assembly or supply of Goods and/or Services shall not infringe the rights of any third party.
  - 10.13 The Buyer will indemnify the Seller against any claim that the sale or use of the Goods and/Services by the Buyer contravenes any third party's intellectual property rights.
- ## 11 GENERAL PROVISIONS
- 11.1 Neither party shall be liable for any default due to any act of God, war, strike, lockout, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
  - 11.2 The Seller may license or sub-contract all or any part of its rights and obligations under this contract without the Buyer's consent.
  - 11.3 The Buyer must not assign its rights or obligations under these conditions without the Seller's prior written consent.
  - 11.4 If any provision of these conditions is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from these conditions and rendered ineffective as far as possible without modifying the remaining provisions of these conditions, and shall not in any way affect any other circumstances of or the validity or enforcement of these conditions.
  - 11.5 The provisions of the Contracts (Rights of Third Parties Act) 1999 shall not apply to this contract and a person who is not a party to this contract shall have no right under that Act to enforce any term of these conditions.
  - 11.6 All disputes arising out of this contract shall be subject to the non-exclusive jurisdiction of the courts of England and Wales.
  - 11.7 The following clauses will survive the termination of this agreement 9.1.2, 9.1.3, 10, 11.3, 11.4, 11.6 and 11.7.