

# General Terms of Delivery of SICK Optic-Electronic Co., Ltd.

as at 01 / 2019

1. **Legally Binding Effects**

All deliveries and services provided by SICK Optic-Electronic Co., Ltd. (hereinafter referred to as "Supplier") are subject to these General Terms of Delivery and to separate contractual agreements, if any. Deviating or additional General Terms and Conditions of the Purchaser shall solely apply to the extent expressly confirmed in writing by the Supplier.
2. **Offer – Conclusion of Contract – Contents of Contract**
  - 2.1 Unless expressly marked as binding, offers are non-binding. Binding offers must be accepted by the Purchaser within a reasonable time. Verbal or written orders are considered accepted when a written order confirmation is issued or the ordered goods are delivered within an adequate period of time.
  - 2.2 Documents pertaining and attached to the offer, such as illustrations, drawings, technical specifications, and other documents, are subject to the property right and copyright of the Supplier; the Purchaser is not entitled to grant access to the aforesaid documents to third parties.
3. **Scope of Delivery and Services**

The scope of delivery and services is subject to the offer of the Supplier or, respectively, to the Supplier's written order confirmation. Partial deliveries are permitted, if reasonable to the Purchaser.
4. **Prices and Payment**
  - 4.1 Price lists and other general price information are non-binding and are updated by the Supplier regularly.
  - 4.2 Prices are in HKD and, unless stipulated otherwise, are based on delivery according to DAP (Incoterms 2010) place of delivery within Hong Kong, plus packaging and transportation as well as applicable VAT.
  - 4.3 Should delivery and/or service be carried out more than nine (9) months after the date specified in the order confirmation, the Supplier shall be entitled to adjust prices, provided the list prices and/or material, labor or other costs have changed in the meantime. The offered prices are valid only for the respective individual order. Fixed price agreements must be expressly agreed upon in writing.
  - 4.4 Costs for packaging, transportation and insurances, the latter to the extent expressly requested by the Purchaser, shall be calculated based on the prices effective at the time of the actual accrual and shall be charged separately.
  - 4.5 In case the Supplier is contractually obliged to carry out installation, assembly and/or commissioning, the Purchaser shall bear, in addition to the agreed remuneration for the delivery, the costs for installation, assembly and / or commissioning according to the price list of the Supplier effective at the time of performance as long as nothing to the contrary has been agreed upon.
- 4.6 Invoices for deliveries shall be paid net without delay by direct transfer to the Supplier's bank account.
- 4.7 Invoices for services shall be paid net without delay by direct transfer to the Supplier's bank account.
- 4.8 The Purchaser is only entitled to retain payments or to offset counterclaims insofar as such counterclaims are undisputed, ruled with res judicata effect by a court of law or are ready for a decision after pending suit.
5. **Dates for Deliveries and Services, Delay**
  - 5.1 The adherence to time periods and dates for deliveries and services shall be subject to the timely provision of all performances to be provided by the Purchaser, in particular, of any documents to be provided, of required permissions and releases – especially of plans – as well as to adherence to the agreed payment terms and to any other obligations of the Purchaser. If these prerequisites are not fulfilled on time, the time periods and dates shall be adequately extended.
  - 5.2 In case delivery periods or dates cannot be met due to force majeure, e.g. due to war, riots or similar occurrences such as strike or lock-out, delivery periods or dates shall be adequately extended. If the deliveries and/or services cannot be provided entirely or in part in due time due to no fault of the Supplier, the Supplier shall be entitled to fully or partially rescind the contract.
  - 5.3 Upon request of the Supplier, the Purchaser shall declare within reasonable time, after setting a reasonable period of grace, whether he insists on delivery or wishes to rescind the contract due to the Supplier's delay.
6. **Installation or Assembly**
  - 6.1 To the extent that installation, assembly or commissioning has been agreed upon, the Purchaser shall, at its own expense, provide in due time:
    - a) any supplementary works foreign to the branch of trade such as earthworks, construction works, etc. including the required skilled workers and auxiliary staff, building material and tools;
    - b) the articles and materials required for assembly, installation and commissioning, such as scaffolding, wedges, lubricants, fuels, etc.;
    - c) operating power and water at the place of operation, including the necessary connections, heating and light;
    - d) suitably-sized, dry and lockable rooms for stocking machine parts, equipment, materials, tools, etc. as well as appropriate work and recreation rooms with appropriate sanitary equipment for the Supplier's employees at the installation site; further, the Purchaser shall take the same steps he would take in order to protect his employees and belongings in order to protect the Supplier's employees and belongings at the construction site;

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- e) protective clothing and protective devices necessary due to special circumstances at the installation site.
- 6.2 Before the start of the work, the Purchaser must provide without request the necessary specifications concerning the location of hidden power, gas, or water pipes, or similar constructions, as well as the required static specifications.
- 6.3 Before beginning with the installation or assembly, free issue equipment as well as all other items necessary for the performance of the works must be at the site, and any preparatory works must be in such a state that the installation or assembly staff will be able to start their work as agreed after arrival and finish it without interruption. Access to as well as the site itself must be paved, cleared and freely accessible.
- 6.4 Should the installation, assembly, or commissioning be delayed due to circumstances not attributable to the Supplier, the Purchaser shall be obliged to bear to a reasonable extent the costs arising from waiting periods or for the necessary travels of installation or assembly staff .
- 6.5 Upon the Supplier's request the Purchaser shall confirm in writing the working hours of the assembly staff as well as the completion of the installation, assembly or commissioning.
- 6.6 If the Supplier requests acceptance of the works after completion, the Purchaser shall be obliged to declare the acceptance within a period of two weeks. If the Purchaser fails to do so, the acceptance is deemed granted. Acceptance is also deemed granted if the work has been put into use, if applicable, after an agreed testing period.
- 7. Passing of Risk**
- 7.1 The risk shall pass to the Purchaser with the selection/provision of the delivery item. To the extent the Supplier has also assumed installation, assembly or commissioning, the risk shall pass to the Purchaser with the delivery of the delivery item at the installation or assembly site.
- 7.2 Should the dispatch of the delivery item or installation, assembly or commissioning be delayed or omitted due to reasons attributable to the Purchaser, the risk shall pass to the Purchaser at the time when it would have passed to the Purchaser had no delay occurred.
- 7.3 The Supplier shall, on request and at the expense of the Purchaser, insure the delivery item against theft, breakage, and damage caused by transportation, fire or water or against any other insurable risks.
- 8. Warranty**
- For defects regarding quality and title the Supplier – to the exclusion of further claims and subject to sec. 10 – provides warranty as follows:
- 8.1 Quality Defects:
- 8.1.1 In case of any quality defects the Purchaser shall notify to the Supplier without undue delay.
- 8.1.2 Any parts or services which are defective shall, at the Supplier's sole discretion, be remedied by repair or replacement or be re-performed free of charge. The Purchaser shall not be entitled to reject delivery items due to insubstantial defects.
- 8.1.3 The Purchaser shall grant to the Supplier the required time and occasion to perform the necessary remedy and replacement. Only in urgent cases, where operational safety is at risk or to prevent disproportionately large damage, shall the Purchaser be entitled to remedy defects itself or have them remedied by third parties and to demand reimbursement of the accrued reasonable costs from the Supplier. The Supplier shall be notified in writing in such cases without delay.
- 8.1.4 If the remedy is not accomplished in an adequate time period, or fails, the Purchaser shall be entitled to rescind the contract. The Purchaser shall only be entitled to a reduction in price (if the defect is insubstantial) or a refund of the price (if the defect is substantial).
- 8.1.5 Of the costs caused by the remedy or replacement, the Supplier shall– provided the complaint is legitimate – bear the costs of the replacement part including shipment. Furthermore, the Supplier shall bear the costs of providing the necessary assemblers and helpers, if any, including travel costs, unless this would impose a disproportionate burden on the Supplier.
- 8.1.6 Quality defects are excluded in the following cases:  
Inappropriate or improper use, incorrect assembly and/or commissioning by the Purchaser or third parties, wear and tear, incorrect or negligent treatment, improper maintenance, use of unsuitable equipment, electrochemical or electrical influences – unless caused by the Supplier.
- 8.1.7 If the Purchaser or any third party remedies or attempts to remedy a defect improperly, the Supplier shall not be liable for the resulting consequences. The same applies to any changes made to the delivery item without prior approval by the Supplier.
- 8.1.8 In addition to this sec. 8.1, sec. 10 shall apply to claims for damages. Any further claims against the Supplier due to quality defects shall be excluded.
- 8.2 Defects of title:
- 8.2.1 If the use of the delivery item causes an infringement of intellectual property rights (including trademarks, patents and copyrights) under applicable Hong Kong law, the Supplier shall, at its own cost, in principle provide the Purchaser with the right to use the delivery item, or modify the delivery item in a way not unreasonable for the Purchaser as to avoid any further infringement of intellectual property rights.

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- 8.2.2 If this cannot be achieved using economically feasible efforts or within reasonable time, then the Purchaser shall be entitled to rescind the contract. Subject to the aforementioned prerequisites, the Supplier shall also be entitled to rescind the contract.
- 8.2.3 Furthermore, the Supplier shall indemnify the Purchaser from undisputed or legally binding claims arising from the infringement of intellectual property rights.
- 8.2.4 The aforementioned obligations of the Supplier shall only apply if:
- the Purchaser notifies the Supplier in writing about the claims asserted by third parties without delay;
  - the Purchaser does not admit an infringement and the defense remains entirely reserved to the Supplier;
  - the infringement of intellectual property rights is not attributable to the Purchaser; and
  - the infringement was not caused due to particular specifications provided by the Purchaser, or by an application unforeseeable for the Supplier, or the infringement results from a modification of the delivery item by the Purchaser or from the use of the delivery item in combination with a product not delivered or not specifically released for such combination by the Supplier.
- 8.2.5 In case of other defects of title the provisions stipulated under sec. 8.1 shall apply accordingly.
- 8.2.6 In addition to this sec. 8.2, sec. 10 shall apply to claims for damages. Any further claims against the Supplier due to defects of title shall be excluded.
- 8.3 The warranty period shall be 12 months from delivery.
- 9. Exclusion of Guarantees**
- 9.1 Specifications in catalogues, product descriptions, data sheets, quotations, drawings or any other documents regarding the measure, quantity, color, application, technical data and other features, in particular regarding availability, reading rates, measuring accuracy, etc. refer to the warranted properties of a delivery item, yet do not – unless expressly otherwise provided for – constitute special guarantees of quality or durability.
- 9.2 In case of non-compliance with warranted properties, the Purchaser shall be entitled to assert the rights stipulated under sections 8 and 10 against the Supplier.
- 10. Damages**
- To the extent not expressly agreed otherwise, the Supplier shall in no event be liable for loss of profit or damages due to business interruption. Unless expressly agreed otherwise, the Supplier's liability for damages, irrespective of the legal cause, shall be limited to the value of the respective order, and further to a maximum of HKD 8,000,000.- (in words eight million Hong Kong Dollars) per calendar year for all orders.

This limitation of liability shall not apply in case of claims resulting from mandatory Product Liability law or from willful misconduct or gross negligence or from personal injury or death.

## 11. Third Party Liability

The liability provisions stipulated under sections 8 and 10 shall also apply in favor of subsidiaries, subcontractors, licensors or other vicarious agents of the Supplier.

## 12. Retention of Title

12.1 Title to the delivered goods shall remain with the Supplier until all claims against the Purchaser are satisfied, irrespective of receipt of payment for specific goods.

12.2 The assertion of title (actio in rem) shall not constitute a termination of the contract. The Purchaser shall inform the Supplier of any enforcement measures by third parties against the reserved goods without delay and provide the Supplier with the documentation required for an intervention – the same shall apply to any other sort of interference. Irrespective hereof, the Purchaser shall be obliged to inform third parties of the existing rights to the goods in advance. The Purchaser shall bear the costs of an intervention if the third party is not able to reimburse them.

12.3 In case of a resale of the reserved goods, the Purchaser herewith assigns to the Supplier all claims against the Purchaser's customer resulting from such resale as security until all of the Supplier's claims have been satisfied.

12.4 If reserved goods are processed, reshaped or blended with other goods, the Supplier shall directly acquire a right of ownership in the new product in proportion to the delivery item's value. The new product shall be deemed a reserved good.

## 13. Export

13.1 In case of export, the Purchaser shall be obliged to adhere to the export control requirements respectively applicable to each delivery item. In case of a violation of export provisions, the Supplier shall be entitled to terminate the contract.

13.2 If a delivery comprises an export which is subject to official approval, the contract shall not be deemed concluded before such approval is granted. The Purchaser shall be obliged to provide and submit all documents required for an approval.

13.3 The Purchaser agrees to provide proof of usage and/or end usage upon request – even if not officially required.

13.4 In case of export/delivery, the supplied goods are not exempt from VAT before the receipt of a valid export certificate.

## 14. Adjustment, Withdrawal

14.1 If and when unforeseeable events pursuant to sec. 5.2 modify the economic objective or the content of the delivery substantially or have a substantial impact on the operations of the Supplier, the contract shall be adjusted accordingly in good faith, subject to the

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provision stipulated under sec. 5.2. In the event that such adjustment is not economically reasonable, the Supplier shall be entitled to withdraw from the contract.

- 14.2 The Supplier shall be entitled to withhold deliveries or services or to withdraw from the contract if the Supplier obtains knowledge of any circumstances whereby the Purchaser might become insolvent or, be unable or unwilling to duly fulfill its payment obligations when they become payable due to other reasons.

**15. Statute of Limitation**

All claims of the Purchaser – regardless of the legal cause – shall become time-barred upon the expiration of 24 months. This shall not apply in cases of violation of life, body or health or in cases of intent, gross negligence or fraudulent behavior, nor to claims that are subject to the Product Liability Act.

**16. Place of Jurisdiction, Applicable Law**

- 16.1 The Supplier and the Purchaser agree to submit to the exclusive jurisdiction of Hong Kong courts, provided that the Supplier shall also be entitled to bring actions before a court seated at the Purchaser's place of business.

- 16.2 All legal relations in connection with this contract shall be governed by the laws of Hong Kong.

**17. Severability**

Should any of the provisions of this contract be or become invalid, void or unenforceable, the validity of the remaining provisions shall remain unaffected thereby. In such case the invalid, void or unenforceable provision shall be interpreted or substituted in such a way as to achieve the intended economic objective of the invalid or void provision. This shall not apply if adherence to the contract constitutes an unreasonable hardship for either contract party.

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