

# OPTEK TERMS & CONDITIONS

**DEFINITIONS:** In these conditions, "the Company" means **OPTEK LIMITED**, a company Incorporated under the Laws of England, "the Buyer" means the person or company to whom this document is addressed, and the term "the Product" shall mean the product or products proposed for sale by **OPTEK LIMITED** as detailed in the quotation.

1. **Acceptance.** Quotations provided by the Company are not an offer to contract. Acceptance by the Company of the Buyer's purchase order will be made by the Company's written order acceptance or invoice form and will be expressly subject to acceptance of the terms and conditions stated herein. There are no other agreements or understandings either written or oral to conflict with, alter or enlarge these Terms and Conditions, any additional terms and conditions contained in the Buyer's purchase order or other response hereto are hereby objected to by the Company and shall be of no effect nor binding upon the Company unless specifically agreed to in writing signed by an officer of the Company. Failure by the Company specifically to object to provisions contained in the Buyer's purchase order shall not in any way be deemed an alteration to or waiver of these terms and conditions.
2. **Prices.** All prices, unless otherwise specifically stated on the face hereof, are FOB the Company's plant or warehouse. Prices do not include any Value Added Tax, or any local, foreign or provincial taxes, now or hereafter enacted applicable to the Products. Prices do not include any goods or services other than those specifically included in this quotation; technical data or documentation; proprietary rights of any kind; qualifications; testing; or process performance that are not specifically stated on the face hereof. Unless specifically stated otherwise on the face hereof, prices are firm for, and expire, 30 days from the date of this quotation.
3. **Changes.** The Buyer may request changes to the Products after acceptance of Buyer's purchase order by the Company, and the Company will quote an increased or decreased price and other terms, including change in the time of delivery which will be occasioned by the proposed change. The proposed change shall not become effective unless and until Buyer has issued a purchase order recording the change and the purchase order has been accepted in writing by the Company.
4. **Delivery Dates.** All delivery and shipment dates indicated on the face hereof are approximate and, subject to the Company's availability schedule. Delivery dates are subject to Buyer's prompt and timely response to the Company's requests for information, material samples, etc. The Company will make reasonable efforts to meet the delivery date(s) quoted, however, the Company does not assume liability, consequential or otherwise, because of any delay or failure to deliver all or any part of any order for any reason. The Company reserves the right to allocate inventories in current production among its customers in such manner as it, in its sole discretion, determines.
5. **Installation.** If Buyer has specially contracted with the Company for installation services or such services are included in the Company's quotation, Buyer will complete all site preparation and operating environment requirements before installation will begin. Buyer will coordinate the Company's installation activities with the activities of Buyer's personnel and any other contractors at Buyer's facility. It is Buyer's responsibility to identify and resolve all physical and procedural conflicts at Buyer's facility without cost to the Company, and Buyer will request whatever information and drawings it requires to avoid such conflicts.
6. **Credit and Payment Terms.** The payment terms stated on this quotation are conditioned upon approval of the Buyer's credit and may be withdrawn or amended at any time by the Company at its discretion. The Company reserves the right to change the credit terms provided herein, refuse shipment, or cancel unfilled orders at any time when, in its opinion, the financial condition or previous payment record of the Buyer so warrants. Title to the Products or any part thereof shall pass from the Company to the Buyer upon payment in full for the Products except as otherwise expressly stipulated herein. Where the Company has extended credit to the Buyer, the terms of payment are stated on the face of the quotation. Unless otherwise indicated by the Company in writing, Buyer agrees to remit payment in full to the address on the face of the Company's invoice for all shipments, including shipments of any portion of the Product, in accordance with the Company's payment terms and conditions. If delivery dates are delayed by Buyer or Buyer has not completed the required site preparation, payments are nevertheless due when the Company is prepared to make delivery according to the delivery schedule. No cash discounts for early payment will be granted. When payment in full is not remitted according to the applicable terms, Buyer shall be in breach. Interest shall accrue on overdue invoices at the rate of 15 percent per month, subject to applicable laws or regulations, on the amount of the unpaid balance from the original due date of the invoice. In the event the Company refers overdue invoices to a solicitor or an agent for collection, Buyer shall pay all costs of collection, including reasonable solicitor's fees. Should Buyer become overdue for more than 15 days in the payment of any sum due hereunder, all contractual obligations of the Company to the Buyer shall terminate.
7. **Security Interest.** Buyer agrees that the Company shall retain a security interest in the Products to secure any portion of the purchase price not paid, and the Buyer will, on request, execute a security agreement in such form as is required by the Company, which, at the Company's option, may be registered where appropriate. The Company shall have all rights and remedies accorded by law or equity to a secured seller, including the right to enter upon the premises where the Products shall be located for purposes of removing same or rendering them inoperative, and all such rights and remedies shall be cumulative. Buyer shall maintain insurance against all risks to cover full replacement value of the Products until the Company shall have been paid in full. Material provided by Buyer to the Company for processing will become the property of the Company unless explicitly agreed otherwise.
8. **Cancellation Charges.** Buyer agrees to pay to the Company a cancellation charge in the event it:
  - a. Cancels any order or portion thereof, or
  - b. Fails to meet any obligation causing cancellation. Such charges will be computed based on net invoice price as follows: Twenty (20) percent will be charged for all standard component orders cancellations occurring prior to 30 days before scheduled shipment; thirty-five (35) percent will be charged for cancellations occurring less than 30 days prior to shipment. Such charges are calculated upon being the genuine pre-estimate of the costs to be sustained by the Company in the event of cancellation and shall not be deemed to be a penalty. Cancellation charges for orders involving custom or "special" Product will be 100% prorated by work completed on the order, unless otherwise stated on the face hereof. Buyer agrees that this charge is a reasonable approximation of the damages that would result from its cancellation, and that the charge is not a penalty, but is used as a means to avoid the difficulty of proving the actual damages incurred by the Company. No order may be cancelled after delivery has occurred.
9. **Taxes and Other Charges.** Buyer is responsible for the ultimate payment of all federal, state, local, foreign, or provincial taxes (now or hereafter enacted), fees, or charges which may be assessed or levied now or hereafter on or on account of materials sold hereunder to the Buyer, whether termed Value Added Tax, use tax, property tax, sales tax, manufacturers tax, excise tax, custom duties or taxes, inspection or testing fee, or any other tax, fee, or charge of any nature whatsoever imposed by any governmental authority on or measured by this transaction between the Company and the Buyer. Unless specifically stated on the face of this quotation, prices do not include such taxes, and will be added by the Company to the sales price where the Company has a legal obligation to collect them. When Buyer claims that this transaction is not subject to any such tax, or that Buyer is exempt, or that the Company is not required to collect such tax, Buyer agrees to provide the Company with any documentation necessary to support such a claim and to allow the Company to document its decision not to collect tax(es). Prices are subject to change to reflect changes in any Governmental laws or regulations taxing raw or processed materials or governing working hours or compensation of labor.
10. **Acceptance Criteria and Documentation.**
  - a. **Standard Price List Products.** Buyer agrees to accept Products which are items from the Company's standard price list and for which Buyer has not required a performance test (see (b) below) upon demonstration to Buyer's reasonable satisfaction that, upon delivery to Buyer, the Products are in material conformity to the Company's published specifications in effect at the date of acceptance of Buyer's purchase order.

- b. **Standard Price List Products and Custom Products Ordered for a Particular Purpose:** If Buyer wants criteria other than the Company's published specifications to become conditions of Buyer's final acceptance and payment for the Products, Buyer must communicate those criteria to the Company and include those criteria in its purchase order. Such criteria include, but are not limited to, requirements for special drawings, dies, patterns, tooling and test equipment. If Buyer orders Products for a particular purpose, and Buyer wants to retain the power to reject the Products if they will not perform Buyer's particular purpose, Buyer must specify that particular purpose in its purchase order. In that event, the Company will devise and describe a performance test which will reasonably demonstrate the Products' performance of Buyer's particular purpose; and prior to shipment of the Products, the Company will conduct the performance test at an authorized facility. Buyer may attend the performance test through a person authorized by Buyer to execute binding contract documents accepting the Products if they successfully complete the performance test. Buyer shall furnish or specify in writing the materials upon which the performance test will be performed, and, if Buyer considers it to be material, it shall specify in writing the environmental conditions at Buyer's facility under which the Products are expected to operate, but such conditions must be within those specified as minimum conditions by the Company. Upon demonstrating the Products' material conformity to the Company's published specifications at the date of acceptance of Buyer's purchase order and successful performance of the particular purpose specified in Buyer's purchase order, Buyer's authorized representative shall execute the Company's form of Performance Acceptance. Thereafter Buyer shall give its final acceptance of the Products upon their delivery to Buyer and demonstration by the Company that the Products then materially comply with the agreed upon specifications. If the Buyer's authorized representative shall fail to execute the Company's form of Performance Acceptance or the Buyer fails to give its final acceptance of the Products, acceptance shall be deemed to have occurred on the earlier of the date on which the Products are put into operation by the Buyer or seven days following the Products having been shown to materially conform to the agreed upon specifications.
11. **Shipments.** Unless otherwise stated on the face hereof, all sales are FOB at the Company's plant or warehouse. Buyer is responsible for cost of transport and insurance after delivery to the carrier. Details regarding Shipments, Partial Deliveries and Inspection and Return of Goods are contained in a separate written enclosure.
12. **Installation Services and Site Preparation.** In order to avoid invalidation of the Company's warranty, installation and putting into operation of the Product must be performed by Company employees or others trained and authorized by the Company. Installation services are not included in the purchase price of the Product sold hereunder, unless expressly so stated on the face of the Company's quotation. Details regarding installation services, conditions and rates are contained in a separate written enclosure.
13. **Warranty.** A warranty is provided on the Product by the Company, the terms and conditions of which are contained in a separate written Warranty. The Company's liability under the Warranty shall be in lieu of any warranties or conditions whether express or implied by statute common law or otherwise howsoever which warranties and conditions are hereby excluded.
14. **EXCLUSIVE REMEDIES.** The remedies provided herein are Buyer's sole and exclusive remedies. The Company shall not be liable for any direct, indirect, special, incidental, or consequential damages, whether based on contract, tort, or other legal theory arising out of the sale, installation, service or use of the products, even if the Company has been advised of the likelihood of such losses, and in no event shall the liability of the Company exceed the unit price of the defective product or of the product subject to late delivery. The Company neither assumes nor authorizes any agent, employee, representative, or any other person to assume for it any other liability in connection with the sale, installation, service, or use of its product; and unless an affirmation, representation, or warranty made by an agent, representative, or employee is specifically included within this Quotation, or is subsequently specifically consented to in writing by an authorized officer of the Company, it shall not be enforceable by Buyer. Nothing contained herein shall operate as to exclude or limit the liability of the Company in respect of death or personal injury arising from the negligence of the Company, its employees, servants or agents. The Buyer in such actions or proceedings, insofar as the same are based on any claim that the Product or any part thereof constitutes an infringement of any claim of a patent, other than a claim covering a process or a Product thereof, provided the Buyer gives the Company immediate notice in writing of the institution of the actions or proceedings and permits the Company through its counsel to defend the same and gives the Company all needed information, assistance and authority to enable the Company so to do. court of competent jurisdiction, the Company, within a reasonable time, will either secure for the Buyer the right to continue using said Product by suspension of the injunction, by procuring for the Buyer a license or otherwise, or will at its own expense, replace such Product with non-infringing product or modify it so it becomes non-infringing or remove the said prohibited Product and refund the sums paid therefor.
15. **Modification/Controlling Terms of Contract.** Any modification of these terms and conditions must be expressly agreed to in writing and signed by an authorized representative of the Company. This quotation includes no items or services not specifically identified in the quotation. This quotation supersedes all previous written or oral commitments, and specifically defines the Products to be delivered under this quotation and constitutes the complete agreement between the Company and the Buyer. The Buyer is urged to confirm their exact needs in writing, prior to issuance of an order. The commercial terms and conditions printed on this form may not be altered except by the Company's explicit written and signed consent.
16. **Authority to Export.** All orders accepted for export are subject to issuance of an export license by the relevant Governmental authority or department for export of the Products, and subject to the Buyer providing the Company with the relevant import certificate, or any other document necessary to secure such export license and/or to permit the import of such goods into the country of destination.
17. **Miscellaneous**
- a. **Applicable Laws.** This contract shall be construed in accordance with the laws of England.
  - b. **Computer Software License.** Computer software provided with this order, including any subsequent improvements or updates, is furnished to Buyer under a license for use with a single system and may only be copied in whole or in part with the proper inclusion of the Company copyright notice on the software, for use on such systems. Buyer shall not provide or otherwise make available the software, or any part hereof, or any copies thereof, in any form to any third party. Buyer shall be required to sign a Computer Software License Agreement at the time of order placement.
  - c. **Confidential Data and Information.** If, in connection with the sale, purchase, use, or maintenance of the Products, the Company is requested, required, or deems it advisable to furnish data or information which it, in its sole discretion, deems proprietary, confidential, or both, the Company shall not, in any event, submit or be required to furnish such data or information unless and until Buyer enters into an agreement concerning the handling, use, copying, retention and return of such information, the form of which agreement is available to Buyer upon request. Notwithstanding the foregoing and in particular the execution of an agreement as aforesaid, all proprietary or confidential data shall be kept by the Buyer and strictly confidential and not copied or supplied to any third party.
  - d. **Proprietary Rights.** The Company retains for itself all proprietary rights in and to all designs, engineering details, and other data and materials pertaining to all goods supplied by the Company and to all discoveries, inventions, patents and other proprietary rights arising out of the work done in connection with the goods or with any and all products developed as a result thereof, including the sole right to manufacture any and all such products. Buyer warrants that it will not divulge, disclose, or in any way distribute or make use of such information, and that it will not manufacture or engage to have manufactured such products.
  - e. **Force Majeure.** The Company shall not be responsible for any failure to perform the contract formed hereunder due to causes beyond its control, including, but not limited to, acts of God, labor disputes or shortages, acts of government or judicial action, or inability or delay in securing parts or components, all whether foreseen or unforeseen.
  - f. **Assignment.** None of the rights, duties, or obligations defined herein may be assigned, transferred, or delegated.
  - g. **Non-Waiver.** The Company's failure to exercise any of its rights for any period shall not constitute or be deemed a waiver or forfeiture of such rights.