

OPTIMAS OE SOLUTIONS GK

General Conditions of Sale - Japan

The Purchaser's attention is in particular drawn to the provisions of Condition 11

1. DEFINITIONS

"The Company" means Optimas OE Solutions (Japan) GK.

"The Purchaser" means the person, firm or company to be supplied with the goods and services by the Company.

"Goods" means the goods, materials and/or other items and any Services to be supplied pursuant to the Contract.

"Services" means the services to be supplied pursuant to the Contract.

"The Contract" means the contract for sale and purchase of the Goods and supply of the Services made between the Company and the Purchaser to which these Conditions apply.

2. SCOPE

These Conditions apply to all sales of Goods and supplies of Services by the Company and shall prevail over any terms or conditions referred to in the Purchaser's order or in correspondence or elsewhere unless specifically agreed to in writing by the Company and expressed to form part of the Contract and any conditions or stipulations to the contrary are hereby excluded or extinguished.

3. QUOTATION

A quotation by the Company does not constitute an offer and the Company reserves the right to withdraw or amend the same at any time prior to the Company's acceptance of the Purchaser's order.

4. PRICES

4.1. Unless the prices quoted are stated to be fixed the prices payable for the Goods or Services shall be those charged by the Company at the time of despatch or supply of the Services so that the Company shall have the right at any time to revise quoted prices to take account of increases in cost including (without limitation) costs of raw materials or labour and any variation in exchange rates.

4.2. Quoted prices for the Goods are "ex-works" and exclusive of Value Added Tax and other duty levy or tax assessed against the Goods or Services by any Government or other authority.

4.3. Prices may be changed by the Company to the extent Purchaser seeks earlier deliveries or excess quantity. Pricing reflects an agreement with Seller as to MOQ's. Pricing is also subject to change to the extent Purchaser requests delivery over more than a six-month period.

5. TERMS OF PAYMENT

5.1. Subject to Condition 5.5 below payment of invoices shall, unless otherwise agreed in writing, be made in full without any deduction or set off within 30 days of the date of invoice.

5.2. Any extension of credit allowed to the Purchaser may be changed or withdrawn at any time.

5.3. The Company may claim interest upon late payments in accordance with the law and further recover from the Purchaser all reasonable costs incurred in recovering late payments.

5.4. If in the opinion of the Company the creditworthiness of the Purchaser shall have deteriorated prior to the delivery the Company may require full or partial payment of the price prior to delivery or the provision of security for payment by the Purchaser in a form acceptable to the Company.

5.5. In any case where the Purchaser is resident outside Japan and unless otherwise agreed the price of the Goods shall be secured by an irrevocable letter of credit satisfactory to the Company established by the Purchaser in favour of the Company immediately upon receipt of the Company's acceptance and confirmed by a Japanese bank acceptable to the Company. The letter of credit shall be for the Contract price inclusive of any tax or duty payable by the Purchaser and shall be valid for the period specified by the Company. The Company shall be entitled to payment on presentation to such Japanese bank of the documents specified by the Company.

6. DELIVERY

6.1. Delivery or performance dates mentioned in any quotation or acceptance form or elsewhere are approximate only and not of any contractual effect, and time for delivery shall not be made of the essence by notice. The Company shall not be under any liability to the Purchaser in respect of any delay in delivery howsoever arising.

6.2. In the event of the Purchaser returning or failing to accept any delivery of the Goods in accordance with the Contract the Company shall be entitled at its option to invoice the Purchaser for such Goods and either to deliver and invoice the Purchaser for the balance of Goods then remaining undelivered or to suspend or cancel further deliveries under the Contract. The Company shall be entitled to store at the risk of the Purchaser any Goods which the Purchaser refuses or fails to accept and the Purchaser shall in addition to the invoice price pay all costs of such storage and any additional costs or carriage incurred as a result of such refusal or failure. The Company shall be entitled after the expiration of 3 months from the date upon which the price became payable to dispose of the Goods in such manner as the Company may determine.

6.3. Unless otherwise specified delivery shall be "ex-works" so that the Goods shall be deemed to have been delivered and the risk therein to have passed to the Purchaser upon the Company notifying the Purchaser that the Goods are available for collection.

6.4. In any case where Goods are sold on the basis of any other international trade term the meaning of such terms contained in the latest Incoterms shall apply as if expressly incorporated herein except insofar as any part of the same may be inconsistent with any of the provisions contained in these Conditions.

6.5. Not used.

6.6. Unless otherwise expressly agreed the Company may effect

delivery in one or more instalments. Where delivery is effected by instalments each instalment shall be treated as a separate contract.

6.7. If the Contract involves more than one delivery and any default is made in payment the Company shall have the right to suspend all or any further deliveries pending payment or to terminate the Contract in its entirety by notice in writing to the Purchaser.

6.8. In the event Buyer orders any inventory from Seller which Seller produces or procures for Buyer and such inventory is not readily saleable to other customers of Seller, Buyer agrees to be responsible and pay for all such custom or specially procured inventory, notwithstanding any defences Buyer may have as to its failure to pay for other inventory and notwithstanding Buyer's failure to use or sell such inventory.

7. EXPORT

The Purchaser represents and warrants that it will not violate U.S., E.U., or other applicable local country export-related laws with respect to the Goods.

8. TITLE

Title to the Goods shall pass to the Purchaser upon delivery.

9. VARIATIONS

The Company shall be deemed to have fulfilled its contractual obligations in respect of any delivery though the quantity may be up to ten per cent more or less than the quantity specified in the Contract and in such event the Purchaser shall pay for the actual quantity delivered.

10. SPECIFICATIONS BY THE PURCHASER

The Purchaser shall indemnify and keep indemnified the Company against all claims, costs, damages and expenses incurred by the Company or for which the Company may become liable as a direct or indirect result of the carrying out of any work required to be done on or to the Goods in accordance with the requirements of specifications of the Purchaser involving any infringement or claim or infringement of any intellectual property right vested in another person, firm or company.

11. LIABILITY

11.1. The Company shall not be liable for any visible defects or non-conformities and/or for any shortage in the quantity delivered unless a claim in writing shall have been received by the Company from the Purchaser within 7 days of delivery of the Goods. Where liability for any shortage is accepted by the Company, the Company's only obligation shall be to make good such shortage.

11.2. The Company warrants that (subject to the other provisions of these Conditions), for a period of 12 months (or, in the case of software, 30 days) from delivery, the Goods will be free from material defects in material and workmanship and materially in accordance with the specifications provided by the manufacturer of the Goods.

11.3. The Company will perform the Services with reasonable skill and care.

11.4. The Company makes no warranty that software will operate uninterrupted or error-free.

11.5. The warranties in Condition 11.2 do not cover wear and tear and shall not apply to Goods which have been subjected to misuse

or abuse, neglect, accident, damage, improper storage, improper installation or maintenance.

11.6 Subject to Conditions 11.4 and 11.5, if the Goods do not comply with the warranties in Condition 11.2 the Company shall at its option replace or repair such Goods free of charge or refund the price of such Goods

provided that, if the Company so requests, the Purchaser shall, at the Purchaser's expense, return the Goods or the part of such Goods which is defective to the Company. Any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the 12 month period.

11.7 Without prejudice to Condition 11.6, the Company's maximum aggregate liability (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Purchaser whether for tort (including negligence or breach of statutory duty), breach of contract (including deliberate, repudiatory breach by the Company), indemnification, misrepresentation, restitution or otherwise shall in no circumstances exceed the greater of:

(a) 10,000,000 JPY in any 12 month period or

(b) 100% of the cost of the relevant Goods which give rise to such liability as determined by the net price invoiced to the Purchaser.

11.8. The Company shall not be liable to the Purchaser for loss of profit, loss of business or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract, whether such loss or claim was foreseeable or in the contemplation of the parties and whether arising in or caused by breach of contract, tort (including negligence and breach of statutory duty), indemnity or otherwise.

11.9. Subject to the foregoing all conditions, warranties, representations and other terms expressed or implied by statute, common law or otherwise are, to the fullest extent permitted by law, hereby excluded.

11.10. Nothing in this Condition 11 or otherwise in the Contract, excludes or limits the liability of the Company (a) for death or personal injury caused by the Company's negligence; or (b) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or (c) for fraud or fraudulent misrepresentation.

12. LICENCES AND CONSENTS

12.1. The Contract is conditional upon the obtaining of all licences or consents necessary for its performance (other than for the importation of the Goods by the Purchaser) in which connection the Purchaser shall sign all such forms and documents and render such other assistance to the Company as may be necessary.

12.2. The Purchaser shall obtain at its own expense any licence or consent required for the importation of the Goods by the Purchaser and if necessary or so required, shall produce evidence of the same to the Company on demand.

13. PURCHASER-OWNED MATERIALS

Title and risk of loss to Purchaser-owned materials that are in the Company's possession shall remain with the Purchaser. The Company shall not be liable for any loss or damage to Purchaser-owned materials stored by the Company unless caused solely by the Company's negligence. Payment by the Company for such loss or damage shall be limited to the direct manufacturing cost of the Purchaser-owned materials (if it is manufactured by the Purchaser or its affiliates), or the replacement cost (if it was purchased from a third party), in either instance less the salvage value. The

Purchaser shall be responsible for insuring its materials against all loss or damage not caused solely by the Company's negligence. The Company assumes no liability for loss or damage to Purchaser-owned materials caused by any force majeure circumstance (as defined in Condition 14.2 below).

14. FORCE MAJEURE

14.1. The Company shall not be liable to the Purchaser for any loss or damage which may be suffered by the Purchaser as a direct or indirect result of the supply of the Goods or Services by the Company being prevented, hindered or delayed by reason of any force majeure circumstances.

14.2. In this Condition "force majeure circumstances" shall mean any act of God, riot, strike, lock-out, trade dispute or labour disturbances, accident, breakdown of plant or machinery, fire, flood, difficulty in obtaining workmen, material or transport or other circumstances whatsoever outside the control of the Company affecting the provision of the Goods or of raw materials therefore by the Company's usual source of supply or the manufacture of the Goods by the Company's normal means or the delivery of the Goods by the Company's normal route or means of delivery.

15. TERMINATION

This Agreement may not be modified or rescinded except by a writing signed by the Parties. If all or part of the contract is terminated by such modification or rescission, Purchaser, in the absence of a contrary written agreement between Company and Purchaser, shall pay termination charges equal to the Company's costs associated with the contract, as determined by generally accepted accounting principles, plus a reasonable profit on the entire contract. Cost shall include any amount Seller must pay to its suppliers due to any termination by the Company of a purchase order or contract for Products intended for Purchaser.

If the Purchaser enters into a deed of arrangement or commits an act of bankruptcy or compounds with his creditors or if a receiving order is made against him or (being a company) it passes a resolution or the Court makes an order that the Purchaser be wound up (otherwise than for the purpose of amalgamation or reconstruction) or if a receiver, administrator or administrative receiver is appointed of any of the assets or undertaking of the Purchaser or if circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court to make a winding-up order or if the Purchaser takes or suffers any similar action in consequence of debt or commits any breach of any part of this or any other contract between the Company and the Purchaser the Company may stop any Goods in transit and suspend further deliveries and by notice in writing to the Purchaser may immediately terminate the Contract without prejudice to the provisions of Condition 5.3 and to existing claim.

Notwithstanding anything specified to the contrary, in all events upon termination for whatever reason, the Purchaser will purchase from the Company any product specially stocked or procured by the Company for the Purchaser ("Special Stock Product") and in the possession of the Company or in transit to the Company, plus any finished goods in the possession of the Company or its suppliers, and reimburse the Company for any manufacturer cancellation charges for unshipped items.

16. WAIVER

The failure on the part of either party to the Contract to exercise or enforce any rights conferred by the Contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

17. NOTICES

Any notice required to be given hereunder in writing shall be deemed to have been duly given if sent by pre-paid first-class post or recorded delivery addressed to the party concerned at its principal place of business or last known address.

18. HEADINGS

Headings to any of these Conditions are included to facilitate reference only and shall not affect the construction hereof.

19. SEVERANCE

If any Condition of the Contract (or part of any Condition) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that Condition or part-Condition shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other Conditions shall not be affected.

20. GOVERNING LAW

The Contract shall be governed by and construed and interpreted in accordance with the laws of Japan without regard to principles of conflicts of law thereof and shall not be governed by the U.N. Convention on the International Sale of Goods and for the purposes of settlement of any disputes arising out of or in connection with the Contract the parties hereby submit themselves to the exclusive jurisdiction of the courts of Tokyo.