

General Terms & Conditions of Purchase of  
Optical Coating Technologies Ltd  
November 2018 edition

1. General information, scope of application
  - (1) We are Optical Coating Technologies Ltd, a company registered in England and Wales under company number 03676535. Our registered address is at Unit 8, Lagrange, Tamworth B79 7XD. Our registered VAT number is GB715673818.
  - (2) These general terms and conditions of purchase ("Purchase Terms") apply exclusively to contracts concluded with our purveyors and suppliers (each, a "Supplier") for the provision of service and works ("Services") as well as to contracts for the sale and/or supply of products ("Goods") by a Supplier.
  - (3) Unless otherwise agreed, the version of the Purchase Terms in force, or otherwise the most recent version communicated to the Supplier in writing at the time of our order for the Services and/or Goods ("Order") shall apply to that Order and all future Orders without requiring us to refer to the Purchase Terms again in each individual case.
  - (4) These Purchase Terms apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing; we do not accept Suppliers' terms and conditions contrary or different to these Purchase Terms unless expressly agreed by us in writing and no terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of order, delivery note, invoices, specification or similar document shall form part of the contract between us and the Supplier, and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.
  - (5) These Purchase Terms, together with our Order, constitute the entire agreement between us and the Supplier and supersede and extinguish all previous drafts, agreements, arrangements and understandings between us, whether written or oral, relating to their subject matter.
  - (6) No variation of these Purchase Terms shall be effective unless it is in writing and signed by both parties. Only our directors and those of our employees who we have appointed as our attorney are authorised to conclude varied terms with a Supplier.
  - (7) If we agree to vary terms with a Supplier (for example, by side agreement, or amendment), those varied terms shall take precedence over these Purchase Terms.
  - (8) Any notice or other communication given to a party under or in connection with the Contract (as defined in sub-section 2(1)) shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or email. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to above in this sub-section 1(8); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second business day (that is, a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business) after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one business day after transmission. The provisions of this sub-section 1(8) shall not apply to the service of any proceedings or other documents in any legal action.
  - (9) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

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2. Contract Formation

- (1) An Order placed by us constitutes an offer by us to purchase Goods in accordance with these Purchase Terms. The Order shall be deemed to be accepted on the earlier of: (a) the Supplier issuing a written acceptance of the Order; and, (b) the Supplier doing any act consistent with fulfilling the Order, at which point the contract ("Contract") shall come into existence. Prior to acceptance, the Supplier shall notify us of any obvious errors (for example, typos or calculation errors) or incomplete or missing details in the Order (including any documents associated with the Order) so the necessary corrections can be made or details completed, otherwise the erroneous and/or incomplete Contract shall not be deemed to have been concluded.

The Supplier must accept our Order in writing within a period of 5 (five) working days. Any acceptance after this period shall be deemed to be a new offer from the Supplier requiring our acceptance.

3. Delivery Period and Default in Delivery

- (1) The delivery period specified by us in the Order shall be binding and delivery shall be of the essence of the Contract. Advance deliveries may only be made with our approval. If the delivery period is not specified in the Order, it shall be deemed to be 2 (two) weeks starting from the formation of the Contract. The Supplier shall immediately notify us in writing delay if it cannot meet the agreed delivery period for whatever reason.
- (2) For the purpose of determining compliance with the delivery period, delivery of the ordered Goods shall be deemed to be completed: (a) where the Goods do not require installation/assembly or set-up, on the date of receipt at the address specified in the Order; or (b) where the Goods require set-up, installation/assembly or any further services by the Supplier, at the point at which such set-up, installation/assembly or further services is completed/provided so as to allow acceptance of the Goods.
- (3) If the Supplier does not perform its services at all or within the agreed period, or if the Supplier misses a delivery deadline, we are entitled, without limiting any of our other rights or remedies and whether or not we have accepted the Goods, to terminate the Contract with immediate effect by giving written notice to the Supplier and to claim damages for any other costs, loss or expenses we may incur which are directly or indirectly attributable to the Supplier's failure to carry out its obligations under the Contract, and liquidated damages under sub-section 3(4), below.
- (4) If the Supplier misses a delivery deadline, we have the right, at our option, to issue a letter of demand and claim or deduct, by way of liquidated damages, an amount equal to 1% of the net Order value of the Goods for each week of delay in delivery up to a maximum amount equal to 5% of the net Order value of the Goods subject to the delayed delivery. If we exercise our rights under this sub-section 3(4), any claim for damages under sub-section 3(3) shall be reduced by the amount of liquidated damages paid under this sub-section 3(4).

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4. Performance, Delivery, Packaging, Passing of Risk, and Inspection

- (1) The Supplier shall not subcontract any part of the Services to a third party without our prior written consent. If we consent to the subcontracting of the Services, the Supplier shall:
  - a. remain responsible to us for the performance of its obligations under the Contract notwithstanding the appointment of any subcontractor and be responsible for the acts omissions and neglects of its sub-contractors; and
  - b. impose obligations on its subcontractor in the same terms as those imposed on it pursuant to the Contract and shall procure that the subcontractor complies with such terms.
- (2) The Supplier shall deliver the Goods to the address as specified in the Order or, if none is specified, to our principal trading address.
- (3) Unless otherwise agreed in writing, deliveries shall be Delivered Duty Paid (Incoterms 2010).
- (4) Each delivery shall be accompanied with a delivery note specifying the date (of issue and of shipment), the contents of the delivery (article numbers and quantities), and our Order number, together with any related shipping documents. If the delivery note is missing or incomplete then we shall not be responsible for the resulting delays in processing and payment.
- (5) The delivery of the Goods shall be carried out in packaging that is appropriate for the Goods while taking into account the relevant environmental regulations. Disposable packaging shall be taken back by the Supplier at the Supplier's expense. If recyclable packaging is used, the Supplier shall provide the packaging "on loan" and shall bear the costs and risk of the return shipment of such packaging. We may, in exceptional circumstances, agree to bear packaging costs and, if so, these costs are to be invoiced by the Supplier at their verifiable cost price paid by the Supplier.
- (6) Title and risk in the Goods shall pass to us on completion of delivery, unless we are expressly required to inspect the Goods, in which case, title and risk shall pass upon our acceptance following inspection.
- (7) We will inspect the Goods for any defects within a reasonable period after receipt of the Goods at the agreed delivery location. Where we re-route or forward goods in the ordinary course of business, the inspection and notice period for defects shall be extended accordingly, provided that we notify the Supplier of such extension in due course.
- (8) If, following an inspection we consider that there is some defect in the Goods and they do not comply with the Supplier's warranties under sub-section 7(1), we shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance, and the provisions of section 7 shall apply. We shall be entitled to: (a) reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense; (b) require the Supplier to repair or replace the rejected Goods; (c) demand a price reduction for defective Goods; and/or (d) require the Supplier to provide us with a full refund of the price of the rejected Goods (if paid).
- (9) The rights and remedies available to us under these Purchase Terms are in addition to our rights and remedies implied by statute and common law.

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5. Price and Payment Terms

- (1) The price specified in the Order shall be binding and shall include VAT unless this is listed separately.
- (2) Unless otherwise agreed in writing, the price shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services and ancillary services (such as assembly or installation) and delivery of the Goods (including packaging, transportation and insurance). Packaging will be returned only if agreed in writing by us.
- (3) The agreed price shall be due for payment within 30 (thirty) calendar days starting from completion of delivery and performance in full by the Supplier (including any agreed acceptance following inspection) as well as receipt of a proper invoice. If we remit payment within 14 (fourteen) calendar days then the Supplier shall grant us a 3% discount off the net invoice amount. In the case of a bank transfer the payment shall be deemed to have been made on time if our transfer order is received by our bank before the expiration of the payment period; we are not responsible for delays caused by the banks involved in the payment transaction.
- (4) We can only process invoices if they specify the Order number shown on our Order document and the Supplier shall be responsible for any consequences of failure to meet this obligation unless the Supplier can prove that it is not responsible.
- (5) If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.
- (6) We may, without limiting any other rights or remedies we may have, set off any amount owed to us by the Supplier against any amounts payable by us to the Supplier under the Contract.
- (7) The Supplier has a right to set off only due to counterclaims that are recognised as legally valid by an order of the court.

6. Confidentiality and Our Property

- (1) The Supplier shall keep in strict confidence all non-public business or technical or commercial information and data that becomes known to the Supplier, its employees, agents or subcontractors, by virtue of its business relationship with us, and any other confidential information concerning our business, products or services which the Supplier may obtain. The Supplier may use our company name or logo in a list of references or in publications only with our prior written consent.

We retain proprietary rights and intellectual property rights to any diagrams, plans, drawings, calculations, execution instructions, product descriptions and other documents. These types of documents are to be used exclusively for the performance of the Contract and are to be returned to us upon our request. The Supplier shall only disclose our confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Supplier's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this sub-section 6(2) as though they were a party to the Contract. The Supplier may also disclose such of our confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This sub-section 6(2) shall survive termination of the Contract.

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- (3) We retain the title to tools, substances, and other resources we may provide for the purpose of completing our Orders and these must be handed over to us immediately after fulfilment of the Contract or, at any time, upon our request. Unless these items are being processed, as part of the Services, the Supplier is, at its own cost, to store them, sufficiently insure them against destruction and loss, and clearly label them as our property and the Supplier shall also advise third parties asserting claims to our property of our ownership. Any costs incurred by us in connection with this sub-section 6(3) shall be borne by the Supplier.
- (4) Under an Order, the Supplier may carry out processing, intermixture, or combination (further processing) of products and items we provide to it. Additionally, we may undertake further processing of the delivered Goods, in such a manner that we shall be deemed the manufacturer and shall acquire the title to the end processed product at the time of the further processing at the latest.
- (5) Title to the Goods shall pass to us in accordance with sub-section 4(6) regardless of whether payment has been made. However, should a Contract expressly provide that title to the Goods shall pass to us on payment of the purchase price, the Supplier's title to the delivered Goods shall transfer to us at the time of the payment of the purchase price at the latest. We remain entitled to resell the Goods in the ordinary course of business even before the payment of the purchase price. In any event, all other rights of the Supplier to retention of title in the Goods delivered and to be further processed by us, are excluded.

7. Warranty and Defects

- (1) The Supplier shall ensure that the Goods shall:
  - a. correspond with their description and any applicable specification;
  - b. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by us, expressly or by implication, and in this respect we rely on the Supplier's skill and judgment;
  - c. where applicable, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
  - d. comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- (2) The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.
- (3) If we discover a defect in the Goods at any time after delivery, we shall give prompt notice of such defect to the Supplier, who shall remedy the defect promptly by, at our election, either repairing the defective Goods or replacing them. Our notice of the defect shall be deemed to have been promptly received by the Supplier if it is received by the Supplier within 10 working days of us first becoming aware of the defect.
- (4) The costs incurred by the Supplier in carrying out any inspection, removal, collection, redelivery and installation connected with the defective Goods shall be borne by the Supplier, and this shall be the case even if no defect is identified during inspection and/or while performing repairs. We shall only be liable to the Supplier for losses and damages it incurs as a result of Goods we, acting in a grossly negligent manner, assert to be defective but which in fact are not.

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- (5) If the Supplier is unsuccessful in its repair or providing replacement Goods, refuses to do either without justification, or fails to do either within a reasonable period, we may remedy the defect ourselves and recover from the Supplier all costs incurred by us in connection with or arising out of the taking of such remedial action.
  - (6) We shall also be entitled to demand a proportionate refund of the purchase price that reflects the defect identified under this section 7, or to terminate the Contract, in addition to the rights and remedies available to us implied by statute and common law.
  - (7) In providing the Services, the Supplier shall:
    - a. co-operate with us in all matters relating to the Services, and comply with all our instructions;
    - b. perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
    - c. use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
    - d. ensure that the Services will conform with all descriptions and specifications set out in the Order;
    - e. provide all equipment, tools and vehicles and such other items as are required to provide the Services;
    - f. obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations; and
    - g. not do or omit to do anything which may cause us to lose any licence, authority, consent or permission upon which we rely for the purposes of conducting our business.
8. Replacement Parts and Availability
- (1) Where applicable, the Supplier agrees to supply replacement parts over the ordinary useful life of the product comprising the Goods, subject to a minimum of 10 (ten) years from the last delivery, and the indemnities provided by the Supplier at sections 9 and 10 shall apply to such replacement parts.
  - (2) Should the Supplier decide to discontinue supplying replacement parts after expiry of the period specified under sub-section 8(1) above, or decide to discontinue supplying the ordered product during this period, the Supplier shall notify us in advance and shall give us the opportunity to place a final order.

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9. Supplier's and Our Liability

(1) The Supplier shall indemnify and keep us indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by us as a result of or in connection with:

- a. any claim made against us by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, including, but not limited to any costs incurred by us in recalling the Goods from our customers, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- b. any claim made against us by a third party arising out of or in connection with the supply of the Goods or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

If we are required to recall the Goods, we will notify the Supplier, to the extent possible and reasonable, of the content and scope of such recall action, and provide the Supplier with an opportunity to respond where we are able to.

(3) The Supplier agrees, during the term of the Contract and for three years after that, to maintain product liability insurance at a minimum of £2,500,000 (2.5 million GBP) for any and all liability (however arising) for a claim that the Goods are faulty or defective. The Supplier shall provide a copy of the insurance to us on request.

(4) If there is a product liability claim, we shall:

- a. take such action, institute such proceedings and give such information and assistance as the Supplier may reasonably request to: (i) dispute, resist, appeal, compromise, defend, remedy or mitigate the matter; or (ii) enforce against any person (other than the Supplier) our rights in relation to the matter; and
- b. in connection with any proceedings related to the matter (other than against the Supplier), use professional advisers nominated by the Supplier and, if the Supplier so requests, allow the Supplier the exclusive conduct of the proceedings,

in each case on the basis that the Supplier shall indemnify us for all reasonable costs incurred as a result of any request or nomination by the Supplier.

(5) Nothing in this agreement shall limit or exclude the liability of either the Supplier or us for:

- a. death or personal injury resulting from negligence; or
- b. fraud or fraudulent misrepresentation; or
- c. breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- d. breach of section 2 of the Consumer Protection Act 1987; or
- e. the indemnity contained in sub-section 9(1).

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- (6) WITHOUT PREJUDICE TO SUB-SECTION 9(5), OUR TOTAL LIABILITY ARISING UNDER OR IN CONNECTION WITH THE CONTRACT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR RESTITUTION, OR FOR BREACH OF STATUTORY DUTY OR MISREPRESENTATION, OR OTHERWISE, SHALL IN ALL CIRCUMSTANCES BE LIMITED AS FOLLOWS:
- a. FOR NON-PAYMENT OF INVOICES FOR PRODUCTS PURCHASED, TO THE AMOUNT UNPAID, AND ANY INTEREST DUE ON SUCH AMOUNT PURSUANT TO SUB-SECTION 5(5); OR
  - b. FOR ANY OTHER TYPE OF LIABILITY, TO THE PRICE PAYABLE BY US UNDER THE CONTRACT.
- (7) This section 9 shall survive termination of the Contract.
10. Third Party Intellectual Property Rights
- (1) The Supplier represents, warrants, and undertakes that the intellectual property rights subsisting in the Goods and/or the products of the Services do not infringe the intellectual property rights of a third party.
  - (2) The Supplier shall indemnify and keep us indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by us as a result of or in connection with any claim made against us for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply or use of the Goods or the products of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.
  - (3) If we are subject to a third party claim as outlined in sub-section 10(2), we shall not compromise or settle the claim without the Supplier's consent, such consent not to be unreasonably withheld or delayed.
  - (4) This section 10 shall survive termination of the Contract.
11. Force Majeure
- (1) War, civil war, export restrictions or trade restrictions due to a change in political circumstances as well as strikes, lockouts, operational disruptions, operational restrictions, and other events beyond a party's reasonable control shall each be considered to be a "Force Majeure Event".
  - (2) Neither party shall be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations if either party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event PROVIDED THAT the party affected by the Force Majeure Event immediately notifies the other party of its occurrence. In such circumstances, the parties agree to renegotiate their respective obligations in good faith in view of the Force Majeure Event.
12. Data Protection
- (1) For the purpose of the Data Protection Act 1998, we are the data controller. We may collect and process personal data about the Supplier, its employees and sub-contractors in connection with the Contract and we will use this personal data to make Orders and payment for Services and/or Goods and for marketing, administrative and management purposes. The Supplier consents to us making such personal data available to any member of our group of companies, those who provide products or services to us, and potential purchasers of us, or a member of our group of companies, or any part of our business



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- (2) The Supplier, its employees and sub-contractors have the right to ask us not to process their personal data for marketing purposes and can exercise this right at any time by contacting us at [info@optical-coatings.com](mailto:info@optical-coatings.com) The Supplier, its employees and sub-contractors have the right to access information held about it in accordance with the Data Protection Act 1998.

13. Termination

- (1) Without limiting its other rights or remedies, we may terminate the Contract:
- a. in respect of the supply of Services, by giving the Supplier one month's written notice; and
  - b. in respect of the supply of Goods, in whole or in part at any time before delivery with immediate effect by giving written notice to the Supplier, whereupon the Supplier shall discontinue all work on the Contract. We shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- (2) Without limiting its other rights or remedies, the Supplier may terminate the Contract by giving us three months' written notice.
- (3) In any of the circumstances in these Purchase Terms in which a party may terminate the Contract, where both Goods and Services are supplied, that party may terminate the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.
- (4) Without limiting its other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- a. the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing to do so;
  - b. the Supplier repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
  - c. the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - d. the Supplier suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
  - e. the Supplier's financial position deteriorates to such an extent that in our opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- (5) Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.
- (6) Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

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14. Miscellaneous Provisions

- (1) The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes and claims) shall be governed by and construed in accordance with English law. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to the Contract.
- (2) Each party irrevocably agrees that the English courts shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).
- (3) A person who is not a party to the Contract shall not have any rights under or connection with it.

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