

1. INTERPRETATION

In these terms and conditions of sale ("**Conditions**"), the words set out in the Schedule below have the meanings set opposite them and the Schedule is incorporated into these Conditions as if set out here.

2. OVERVIEW

2.1. These Conditions apply to all quotations given or contracts made or agreed to be made by us for the supply of the Goods or the Services or both. Any conditions submitted, proposed or stipulated by you in whatever form and at whatever time, whether written or oral, and any conditions which are implied by trade, custom, practice, or course of dealing are expressly waived and excluded.

2.2. No change to these Conditions will be binding unless agreed in writing by one of our directors.

2.3. These Conditions apply to the supply of both Goods and Services except where application to one or the other is expressly specified.

3. ORDERS

3.1. We will not be bound by any orders you send us until we have expressly confirmed so in writing. At this stage, the Contract will come into existence.

3.2. We are under no obligation to accept any orders you send us or to prefer you over any other person or business who we may choose to contract with.

4. PRICE

4.1. Unless stated otherwise, the price of the Goods or Services will be: the prices set out in the quotation we provide to you ("**Quotation**"); or if no price is stated in the Quotation, the list price of the relevant Goods or Services at the date of delivery.

4.2. A Quotation will remain open for acceptance for the period stated in the Quotation or, if none is stated, for thirty (30) days.

4.3. Unless we agree otherwise in writing, the price of the Goods does not include our costs of packaging and delivery which must be paid at the same time as payment for the Goods.

5. GOODS AND SALES TAX

5.1. Subject to Condition 5.3, any Goods and Sales Tax chargeable on any Goods or Services we provide you will be payable by you on demand.

5.2. All payments due to us under these Conditions are calculated without regard to Goods and Sales Tax. If any such payment constitutes the whole or any part of the consideration for a taxable supply or deemed taxable supply (whether or not such supply is a taxable supply or deemed taxable supply pursuant to the exercise of any option) by us, the amount of that payment will be increased by an amount equal to the Goods and Sales Tax chargeable on the supply in question.

5.3. Condition 5 will not apply to any supply in respect of which a full increased payment has been made under Condition 5.2 at or before the time of supply.

6. PAYMENT

6.1. Invoices must be paid in full and in cleared funds within either fourteen (14) or thirty (30) Business Days of the date of the invoice, as stated on the invoice, in the currency invoiced. Time of payment is of the essence.

6.2. If any sums become overdue, we may suspend any Goods or Services which we have not yet provided to you.

6.3. Without prejudice to any other rights or remedies available to us, we may charge interest at the rate of 8% per annum above the Bank of England's base rate from time to time on any sum not paid on the due date. Such interest will accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. You will be required to pay the interest in addition to the overdue amount.

6.4. In the event that you have a claim, counterclaim or set-off against us, you are not entitled to withhold payment to us, either fully or partially.

7. CHANGES AND RETURNS

7.1. We have the right to change the specification of the Goods, but only if such changes do not materially affect the installation, performance, or the price of such Goods.

7.2. You may only return Goods to us if we have authorised you to do so in writing.

8. DELIVERY OF THE GOODS

8.1. The time for delivery of the Goods is not of the essence, and any time we provide is intended as an estimate only. We will not be liable to you for any loss or damage, whether arising directly or indirectly, from delay in delivery of the Goods.

8.2. Risk in the Goods will pass to you when delivery has been made to the destination country, after which they will be held by you at your sole risk in respect of all loss or damage arising from any cause whatsoever.

8.3. If you decline or delay accepting a delivery from us, or if the delivery is delayed due to your failure to comply with the pre-installation requirements as set down under Condition 10.1, we may (without prejudice to any other right or remedies), charge as part of the price of the Goods any reasonable storage fees and other costs we incur; or sell the Goods and retain the proceeds.

9. EXPORT TERMS

9.1. Where the Goods are supplied for export from the United Kingdom, then unless we agree otherwise in writing:

9.1.1. delivery of the Goods is subject to the granting of all necessary export licences (where applicable);

9.1.2. the order will be fulfilled in accordance with the Incoterms 2010 as specified in our written confirmation of that order. If there is any conflict between the provisions of the Incoterms and these Conditions the latter will prevail;

9.1.3. you are responsible for complying with any legislation or regulations governing the importation of the Goods into the country of

- destination and for the payment of any duties and taxes; and
- 9.1.4. if you intend to use the Goods outside the UK, you will be considered to have satisfied yourself that the Goods comply with the safety regulations of the proposed country of use. **You agree to indemnify us in full for any loss or damage whatsoever which we may incur if such Goods do not comply with any such safety regulations.**
- 9.2. We will not be liable for any loss or damage whether arising directly or indirectly from delay in obtaining necessary export licences.
- 10. INSTALLATION AND ACCEPTANCE**
- 10.1. Where the Goods require installation, you will be required (at your own cost), to prepare the installation site in accordance with our pre-installation requirements and any other instructions we may provide.
- 10.2. Following installation, we will undertake any final testing required using our standard instruments and procedures ("**Testing**"). We may issue a Test Certificate to evidence our compliance with Condition 10.1 and our obligations under the Contract. You agree that the Goods are accepted: (a) seven (7) days after the date on which we notify you that Testing was successfully completed or issue you with the Test Certificate; or (b) on the date you first use the Goods, whichever is earlier.
- 10.3. At your request, you may witness the Testing. However, if you fail to attend when advised that Testing is due to take place, you will not be entitled to raise any objections to the Testing, or to the results of the Testing.
- 10.4. If we supply Goods to you in returnable containers, these must, at our request, be returned to us at your expense and in good condition. Title to these containers will remain with us at all times, however **you** are responsible for them until they are returned to us. If you fail to do so, or if they are damaged in any way, we will be entitled to invoice you for the full replacement value of the containers.
- 11. SUPPLY OF THE SERVICES**
- 11.1. Time will not be of the essence for the performance of the Services.
- 11.2. We have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services.
- 11.3. If our performance of any of our obligations in respect of the Services is prevented or delayed by any act or omission by you, or failure by you to perform any relevant obligation ("**Buyer Default**"):
- 11.3.1. we will, without limiting our other rights or remedies, have the right to suspend performance of the Services until you remedy the Buyer Default, and rely on the Buyer Default to relieve us from the performance of any of our obligations to you.
- 11.3.2. we will not be liable for any costs or losses sustained or incurred you arising directly or indirectly from our failure or delay to perform any of our obligations set out in this Condition 11.3; and
- 11.3.3. you will reimburse us on written demand for any costs or losses we incur arising directly or indirectly from the Buyer Default.
- 11.4. You are required to cooperate with us in respect of the Services and you must:
- 11.4.1. ensure that adequate and safe facilities exist at your premises, and notify us of any hazardous conditions, relevant regulations, and safety procedures;
- 11.4.2. provide tools and labour to un-crate the Goods and move them to the designated location on your premises;
- 11.4.3. provide us, and our employees, agents, consultants and subcontractors ("**Personnel**"), with access to your premises, office accommodation and other facilities as reasonably required by the us to provide the Services;
- 11.4.4. provide us with such information and materials as we may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- 11.4.5. prepare your premises for the supply of the Services; and
- 11.4.6. obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.
- 11.5. We are under no obligation to provide Services that do not comply with Condition 11.4.
- 11.6. At our request, you must make available at least one suitably qualified person who can ensure the safety of our Personnel at all times during installation/performance of the Services (if no such person is made available, we have the right to charge you for an additional person to be present.
- 11.7. You agree to indemnify us against all claims, demands, losses, expenses and costs we may incur as a result of any of our Personnel visiting your premises, office accommodation and other facilities for the purposes of supplying the Services.
- 11.8. You are responsible for the proper management, storage, and disposal of all Service and/or installation-related waste, unless otherwise agreed in writing, or if we are legally required to take back the materials.
- 12. RESTRICTED USE**
- 12.1. There may be use restrictions with certain Goods, which are a condition of the purchase which you are required to adhere to. **You are solely liable to ensure compliance with any regulatory requirements related to your use of the Goods. Any warranty we grant you will be deemed void if any Goods covered by such warranty are used for any purpose not permitted.**
- 12.2. **You agree to indemnify us, and hold us harmless from and against any and all claims, damages, losses, costs, expenses and other liability of whatever nature that we suffer or incur as a result of any unpermitted use.**

13. WARRANTY

13.1. Condition 13.2 - 13.5 will apply in the event no other specific warranty has been agreed in the Contract. As regards any Goods covered by a warranty issued by a third party manufacturer, those warranty terms will apply to the exclusion of Section 13.2 -13.5.

13.2. **Goods:** we warrant, for a period of twelve (12) months from either:

- 13.2.1. the date we deliver Goods to you; or
- 13.2.2. the date we complete any agreed installation works (if applicable),

that the Goods are free of defects in workmanship or materials under normal usage, and any claim must be submitted in writing within this period. Our sole liability and your exclusive remedy for a breach of this warranty is limited to repair, replacement or refund at our option. Any repairs or replacement will not extend the warranty period.

13.3. **Software:** we warrant, for a period which is the longer of:

- 13.3.1. three (3) months from the date of delivery; or
- 13.3.2. in the event the Software is intended to be installed and run on our Goods, twelve (12) months from the date of delivery,

that the Software substantially conforms to its published specifications and that the media on which the Software resides will be free from defects in materials and workmanship under normal use and any claim will be submitted in writing within such period.

13.4. We do not warrant that the Software is error free or that you will be able to operate the Software without problems or interruptions. Our sole liability and your exclusive remedy in the event of breach of this warranty is limited to repair, replacement, or refund at our option.

13.5. **Services:** we warrant that all Services will be carried out with reasonable care and skill. Our sole liability for breach of this warranty will be, at our option, to give credit for or re-perform the Services in question. This warranty will apply for a period of ninety (90) days after the completion of the Services and any claim will be submitted in writing within such period.

13.6. To the maximum extent permitted by applicable law, we expressly disclaim, and you expressly waive, any warranties regarding results obtained through the use of the Goods, including without limitation any claim of inaccurate, invalid, or incomplete results. All other warranties, representations, terms and conditions (statutory, express, implied or otherwise) as to quality, condition, description, merchantability, fitness for purpose or non-infringement (except for the implied warranty of title) are expressly excluded.

13.7. Unless expressly agreed, we are not obliged to carry out dismantling or re-installation of any Goods in connection with any warranty claims.

14. CLAIMS

14.1. We will not be liable for loss of or damage to the Goods in transit unless we have arranged transportation of the Goods, and:

14.1.1. in the case of loss of the Goods, within 10 Business Days of the date we notify you that the Goods have been dispatched from our premises, you give written notice to us and the carrier that you have not received the Goods;

14.1.2. in the case of partial loss of or damage to the Goods which is apparent at delivery, you notify both us and the carrier within 5 Business Days of the date of delivery;

14.1.3. in the case of partial loss of or damage to the Goods which is latent at delivery, you notify us within 5 Business Days of becoming aware of such damage;

14.1.4. you retain the packaging of the Goods for inspection by the carrier or its insurers; and

14.1.5. you comply with any requests we may have in respect of the damaged Goods including, without limitation, taking photographs of the damaged Goods and providing us with copies of them.

14.2. We will not be liable for defective Goods unless:

14.2.1. you give written notice to us as soon as possible and in any case within 5 Business Days of becoming aware of such defect;

14.2.2. such notice is given no later than 12 months from the date of delivery of the Goods you, specifying with reasonable detail any matter where consider the Goods to be defective; and

14.2.3. you return the defective Goods to us, at your cost and at your risk (section 36 of the Sale of Goods Act 1979 will not apply).

14.3. Our liability under Conditions 14.1 and 14.2 whether based on negligence or any other cause of action will be limited to repairing or replacing the lost, damaged or defective Goods or, at our option, repaying a corresponding proportion of the price of the Goods.

14.4. Subject to Condition 14.2.1, if the Goods are damaged or defected and you are unable to return them, we will despatch an engineer to your premises. We will carry out on-site servicing and repairs in respect of such Goods at our cost, but we may, at our discretion, charge any travelling and subsistence expenses incurred by our engineer.

14.5. No claim will be met by us under Conditions 14.1 and 14.2 if, in our opinion:

14.5.1. the defect is not due solely to defective materials or manufacturing undertaken by us;

14.5.2. the Goods have been misused or subjected to neglect, carelessness or abnormal conditions or involved in any accident or attempt at repair, replacement or modification or dealt with contrary to any directions issued by us; or

14.5.3. the terms of payment set out in Condition 6 have not been complied with.

15. SOFTWARE LICENCE

15.1. We grant you a non-exclusive license to use the Software solely in object code format and solely for your own internal business purposes subject to these terms.

15.2. You must not: (a) use the Software for purposes other than those for which it was designed; (b) use the Software in connection with other manufacturers' products unless such connectivity is authorized in the Product documentation; (c) grant, assign, transfer, or otherwise make available to third parties any right whatsoever in the Software; (d) disclose to third parties any information contained in the Software; (e) copy or reproduce the Software (except for one copy for back-up purposes or as may otherwise be permitted by applicable law); (f) alter or modify the Software; or (g) reverse engineer, decompile, disassemble or create any derivative works based upon the Software except as expressly permitted by mandatory law.

16. DATA PROTECTION

16.1. We will only use your Personal Data in accordance with our Privacy Notice.
[<https://www.photophysics.com/dataprotection>].

16.2. Prior to returning any equipment to us, you must ensure that all Personal Data, including but not limited to patients' Personal Data stored in such equipment is deleted. You acknowledge that we may delete all data and settings stored in the returned equipment.

17. RETENTION OF TITLE

17.1. Title to the Goods will pass to you once we have received payment in full for the Goods, but risk in the Goods passes to you once delivery has been made.

17.2. Until title to the Goods has passed to you, you will:

- 17.2.1. hold the Goods as bailee for us;
- 17.2.2. store the Goods in such a way that they are readily identifiable as property belonging to us;
- 17.2.3. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 17.2.4. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery and provide us with a copy of such policy of insurance on request.

17.3. We may at any time without notice inspect or recover possession of the Goods owned by us. You grant us an irrevocable licence to enter for that purpose any premises you are occupying at that time.

17.4. We will be entitled to maintain an action for the price of the Goods, notwithstanding that title to them has not passed to you.

18. LIABILITY

18.1. Nothing in these Conditions will limit or exclude our liability for: death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors (as applicable); fraud or fraudulent misrepresentation; breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982; breach of the terms implied

by section 12 of the Sale of Goods Act 1979; or any matter in respect of which it would be unlawful for us to exclude or restrict liability.

18.2. We will have no liability under the warranties contained in Section 12 in respect of any defect in the Goods arising from: (a) specifications or materials supplied by the Buyer; (b) fair wear and tear; (c) wilful damage or negligence caused by you or by your employees or agents; (d) abnormal working conditions at your premises; (e) failure to maintain the site in accordance with our pre-installation requirements; (f) failure to comply with our user manual, our use restrictions or other instructions (whether oral or in writing); (g) misuse or alteration or repair of the Goods without our approval; or (h) if you are in breach of your payment obligations under this Contract. If any of the exclusions set out in this Section 18.2 apply, we reserve the right to charge you for repairing such defects at our then current pricelist.

18.3. Subject to Condition 18.1:

18.3.1. we will under no circumstances be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with any contract made between us and you; and

18.3.2. our total liability to you in respect of all other losses arising under or in connection with any such contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will not, in any circumstances, exceed the price of the Goods or the Services (as applicable) under such contract.

18.4. The exclusion of liability in Conditions will only apply to the extent allowed according to applicable law.

19. TERMINATION

19.1. We have the right to cancel all or any contracts with you, withhold delivery of any Goods, or suspend the supply of the Services, if you:

- 19.1.1. fail to pay any monies owed to us by the due date;
- 19.1.2. commit a material breach which is incapable of remedy of any of the provisions of these Conditions;
- 19.1.3. commit a material breach which is capable of remedy of any of the provisions of these Conditions and you have failed to remedy such breach within 7 Business Days of the date we notify you on a breach and requiring it to be remedied;
- 19.1.4. become subject to any voluntary arrangement, are unable to pay your debts within the meaning of Section 123 of the Insolvency Act 1986, have a receiver, manager, administrator or administrative receiver appointed over your assets, undertakings or income, have passed a resolution for your winding-up, or if a petition is presented to any Court for your winding-up or for an administration order, or if you suffer any similar or analogous proceedings in any jurisdiction;

- 19.1.5. have any distraint, execution or other process levied or enforced on any of your properties;
- 19.1.6. are dissolved, cease to trade, or threaten to cease to trade; or
- 19.1.7. bring our reputation into serious disrepute or otherwise cause us to suffer material adverse publicity which you do not remedy within a reasonable time.
- 19.2. On termination of the Contract, you will immediately pay us all outstanding unpaid invoices and interest and, in respect of Goods or Services supplied but for which no invoice has yet been submitted, we will submit an invoice, which will be payable by you immediately on receipt.
- 19.3. Termination of the Contract howsoever arising will not affect any of the rights, remedies obligations and liabilities of either party that have accrued as at termination and Conditions 16, 18, 20, and 23 will continue to be enforceable notwithstanding termination.

20. INTELLECTUAL PROPERTY

- 20.1. Except for the rights expressly granted in these Conditions or the Contract, the Customer, you will not acquire in any way any title, rights of ownership, or Intellectual Property Rights of whatever nature in the Goods, Services, or Software and no Intellectual Property Rights are transferred or licensed to you as a result of the Contract.
- 20.2. This Condition 20 will survive the termination or expiry of the Contract.

21. NOTICES

- 21.1. Any notice required or authorised to be given under these Conditions will be in writing and in English.
- 21.2. Notices may be given, and are deemed received:
 - 21.2.1. in the case of a notice sent by recorded delivery post, that the envelope containing the notice was properly addressed to the address last known to the party giving the notice; and
 - 21.2.2. in the case of a notice sent by email, that the notice was successfully transmitted to the email address as the recipient may designate from time to time by notice given in accordance with the provisions of this Condition 21.
- 21.3. Notices will be deemed served:
 - 21.3.1. in the case of a notice sent by recorded delivery post, on the fourth Business Day following the day of posting;
 - 21.3.2. in the case of a notice sent by email, one hour after transmission, or if not sent on a Business Day, on the next Business Day.

22. FORCE MAJEURE

- 22.1. We will not be liable to you as a result of any delay or failure to perform our obligations under these Conditions as a result of a Force Majeure Event.
- 22.2. Subject to Condition 22.3, we reserve the right to: (a) defer the date of delivery; (b) cancel the Contract; or (c) reduce the volume of the Goods ordered by you or the Services to be performed for you (without liability to you), if we are prevented from or delayed in the carrying on of its business due to a Force Majeure Event (as defined in Condition 22.5).
- 22.3. If the Force Majeure Event continues for a continuous period of 10 Business Days, you will be entitled to terminate the Contract by giving us not less than 5 Business Days' notice in writing. In such circumstances, you will be required to pay for all Goods supplied and Services performed to the date of such termination, such payment to be made on or before the last day of the month following the month during which termination was effected.
- 22.4. If we are prevented from delivering part of the Goods due to a Force Majeure Event, we will deliver and you will pay for such part of the Goods as we are able to deliver in accordance with the contract. We have the right to deliver the Goods in one or more consignments.
- 22.5. A "Force Majeure Event" means the occurrence of any event beyond our reasonable control including, without limitation, strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

23. GENERAL

- 23.1. None of the provisions of these Conditions will be deemed to have been waived by any act or acquiescence, but only by an instrument in writing. No waiver of any provision of these Conditions will constitute a waiver of any other provision or of the same provision on another occasion.
- 23.2. You must not assign or transfer or purport to assign or transfer any contract to which these Conditions apply or the benefit thereof to any other person.
- 23.3. If any Condition or part of any Condition becomes or is declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability will in no way impair or affect any other Condition or part of any Condition all of which will remain in full force and effect.
- 23.4. These Conditions and the Contract will be governed by and construed in accordance with English law.
- 23.5. The English courts will have exclusive jurisdiction in respect of any claim or matter arising out of or in connection with these Conditions and the Contract and any proceedings in respect of any such claim or matter will be brought in such courts.

SCHEDULE 1

“Business Day”	means any day other than a Saturday, Sunday or a day which is a public or bank holiday in England and Wales;		licence to use our software for the operation of the Goods;
“Contract”	means the contract for the sale and purchase of Goods and/or Services between us and you as may be further evidenced by our final written offer, quotation, or order acknowledgement;	“Personal Data”	Has the meaning given to it in the General Data Protection Regulation (EU) 2016/679;
“Goods”	means the goods sold or to be sold by us to you;	“Privacy Notice”	Means the fair processing information available on www.photophysics.com , as may be updated from time to time;
“Goods and Sales Tax”	means any and all forms of taxation, levy, contributions, duty, impost, charge, tariff, withholding, deduction, rate and governmental charge (whether national or local) in the nature of tax whenever created, enacted or imposed and whether of the United Kingdom (in the case of VAT), or elsewhere;	“Services”	means the services supplied or to be supplied by us to you;
“Incoterms 2010”	means the terms as defined in the International Chamber of Commerce’s Incoterms® 2010 (save as expressly or impliedly varied by these Conditions);	“Software”	means any firmware, software or data compilations (a) identified in the Contract; or (b) provided to you by us in connection with installation or operation of the Goods. For the avoidance of doubt, Software will not include any "open source" firmware, software or data compilations, as any such "open source" firmware, software or data compilations will be subject to the terms and conditions set out in the relevant "open source" license;
“Intellectual Property Rights”	means copyright, patents, know-how, trade secrets, trade marks, business names, trade names, design rights, rights in get-up, database rights, chip topography rights, mask works, rights in computer software, utility models, domain names and all similar rights and, in each case: (i) whether registered or not; (ii) including any applications to protect or register such rights; (iii) including all renewals and extensions of such rights or applications; (iv) whether vested, contingent or future; (v) to which you are or may be entitled; and (vi) wherever existing;	“United Kingdom”	means the United Kingdom of Great Britain and Northern Ireland; and
“Licence Agreement”	means the current form of the our licence agreement under which we grant you a non-exclusive right and	“VAT”	means any tax introduced pursuant to any directive of The Council of the European Community relating to turnover taxes including value added tax as provided for in the Value Added Tax Act 1994 and legislation (whether delegated or otherwise) supplemental thereto and any similar tax replacing or introduced in addition to the same.
		“we, “us” or “our”	means Applied Photophysics Limited;
		“you” or “your”	means the person with whom we are contracting;