

TERMS AND CONDITIONS OF PURCHASE

- 1) **General**
- In these conditions, "Buyer" means Hilger Crystals Ltd, "Supplier" means the supplier indicated on Buyer's order, "Goods" means the item(s), goods or other materials stated on Buyer's order or to be transferred to Buyer in connection with Services and "Services" means the services to be provided by Supplier as stated on Buyer's order. References to the Goods include their packaging and labelling. If Buyer has not issued a formal order, "Buyer's order" means any document authorised and issued by a purchasing officer of the Buyer indicating the terms on which the Goods are to be supplied or the Services are to be provided.
 - These conditions shall apply both to contracts for the purchase of Goods and to contracts for the purchase of Services and shall be interpreted accordingly.
 - These conditions shall supersede and override any conditions of sale, supply or business or other terms which have been or may be issued by Supplier. These conditions do not affect Buyer's statutory and other legal rights.
 - Any term or representation inconsistent with these Conditions will only bind Buyer if it is in writing and signed by a member of the management team. The words "unless otherwise agreed in writing by the Buyer" in these Conditions mean unless otherwise agreed in writing and signed by a member of the management team.
- 2) **Delivery of Goods/provision of Services**
- Supplier shall deliver or despatch the Goods or complete provision of the Services by the delivery or despatch date(s) or date(s) for completion stated on Buyer's order (or within a reasonable time if no delivery or despatch date or date for completion is specified). Time of delivery or completion is of the essence of the contract.
 - In the case of Goods, delivery, and in the case of Services, provision to Buyer shall be made to or at the place(s) and by the method(s) specified on Buyer's order (or, if none is specified, to or at Buyer's premises from which Buyer's order is despatched).
 - Supplier shall deliver the quantity of Goods stated on Buyer's order. However, Buyer may at its discretion accept a quantity variation and pay pro-rata for the actual quantity delivered.
 - All containers and other packaging shall be included in the contract price, shall be non-chargeable and non-returnable unless otherwise stated on Buyer's order. Supplier shall comply with all applicable laws and regulations, and with any collection, quality or other requirements stated on Buyer's order, in relation to any packaging in or on which the Goods are supplied to Buyer. This Clause 2(d) does not affect any statutory right, under any applicable legislation in force at the relevant time, for Buyer to require Supplier to take back or otherwise deal with any such packaging.
 - Supplier shall ensure that the Goods are properly packaged so as to avoid loss, damage, deterioration, contamination or distortion in delivery to Buyer.
 - Buyer shall endeavour to notify Supplier of any Goods incorrectly delivered or damaged or detained in transit or of any Services defectively provided, but shall not be responsible for giving notice of any such occurrence (in the case of Goods) to the carrier or (in the case of Services) to any employee, agent or other person providing the Services for Supplier.
 - Supplier may not deliver Goods or provide Services in instalments or make partial deliveries or partial provision of Services unless otherwise stated on Buyer's order.
 - Supplier shall obtain and comply with any export/import licences, permits or consents (including work permits or consents) for the supply and delivery of the Goods or the provision of the Services to Buyer
- 3) **Price**
- Unless otherwise stated on Buyer's order, the agreed price for the Goods or the Services is exclusive of VAT but inclusive of other duties, fees or taxes and of all costs of delivery or provision to Buyer.
 - The agreed price for the Goods or the Services shall not be subject to adjustment or increase without the written agreement of Buyer, and Buyer shall be under no obligation to pay any additional cost of such adjustment or increase if such is included in Supplier's invoice for the Goods or the Services.
 - Supplier's invoices shall not be passed for payment by Buyer unless Buyer's order number is shown. All invoices and statements must show separately the VAT rate, the amount of VAT charged and Supplier's VAT registration number.
 - Unless otherwise stated on Buyer's order, payment shall be due from Buyer by the end of the second month following the month in which Buyer receives Supplier's invoice for the Goods or the Services. Supplier may not invoice Buyer until delivery of the Goods to Buyer or until completion of the Services to be provided to Buyer.
 - Payment by Buyer shall be without prejudice to any claims or rights which Buyer may have against Supplier and shall not constitute any admission by Buyer as to satisfaction by Supplier of its obligations under the contract. Buyer may make deductions or deferment from or in respect of its payment for the Goods or Services in respect of any dispute or claim with or against Supplier, without prejudice to Supplier's right to the full price if such disputes or claims are resolved in its favour.
 - Where Supplier is indebted to any business or division of Buyer in respect of any products or materials or Services supplied by Buyer (whether or not such is then due and payable), Buyer may, by notice in writing to Supplier, set off any or all of the monies owing by Buyer to Supplier for the Goods or the Services against such indebtedness, whereupon Buyer shall, to the extent of such set-off, be discharged from its obligation to pay for the Goods or the Services and Supplier shall to the same extent be discharged from its indebtedness to Buyer (without prejudice to any other remedies of Buyer in respect of any non-payment or other default by Supplier).
- 4) **Warranties and Liabilities**
- In the case of Goods Supplier undertakes and warrants to Buyer that-
 - the Goods shall comply on delivery to Buyer with either Supplier's standard, or any agreed contract specification or description or any agreed sample or design in respect of the Goods, and shall otherwise be of satisfactory quality, of sound design, materials and workmanship and be to Buyer's reasonable satisfaction;
 - the Goods shall be fit for any purpose for which they are designed or any purpose which is specified by Buyer or may reasonably be inferred from the contract or dealings between the parties relating thereto; and
 - the Goods and their manufacture and delivery shall comply with all national, local and other applicable laws and regulations (including without limitation the Consumer Protection Act 1987 ("the CPA"), the Trade Descriptions Act 1968, the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 and any amendment or re-enactment thereof) and with all health and safety, labelling and other applicable regulations, relevant European and British Standards and best accepted industry practices.

References in sub-clause (i) above to contract specification, description, sample or design shall include, without limitation, any specification, description, sample or design to which Buyer is obliged to supply the Goods, or products incorporating the Goods, to its own customer(s), provided that Supplier has been notified of such intended use of the Goods by Buyer and has accepted, by its conduct or in writing, that Buyer's customer's specification, description, sample or design shall apply to the contract.
 - In the case of Services Supplier undertakes and warrants to Buyer that-
 - the Services shall comply on completion of their provision to Buyer with either Supplier's standard, or any agreed contract specification or description or any agreed sample or demonstration in respect of the Services and shall otherwise be the best of their kind provided in the trade and be to Buyer's reasonable satisfaction;
 - the Services shall be provided with the highest standards of care, skill and workmanship accepted within the trade and that Supplier shall hold as bailee and treat with the highest degree of care and skill accepted within the trade all items, Goods or other materials of Buyer entrusted or otherwise provided to Supplier for or in connection with the provision of the Services;
 - the Services and their provision and persons physically providing them shall comply with all national, local and other applicable laws and regulations (including without limitation the Trade Descriptions Act 1968 and the Supply of Goods and Services Act 1982 and any amendment or re-enactment thereof) and with all health and safety, labelling and other applicable regulations, relevant European and British Standards and best accepted industry practices;
 - in the case of Services provided on or at premises of Buyer, Supplier shall strictly comply with Buyer's rules as published from time to time and with other site rules or regulations or reasonable requests of Buyer and procedures for access and all as notified by Buyer and Seller, and shall ensure so far as possible that all persons employed by it physically to provide the Services are efficient and sufficiently competent, trained and experienced properly to provide the Services and are informed of the content of such rules, regulations and requests to the extent such content concerns the work the persons are to carry out. Supplier shall also ensure that any equipment used by it on site is safe and properly maintained.

References in sub-clause (i) above to contract specification, design, description, sample or demonstration shall include, without limitation, any specification, design, description, sample or demonstration to which Buyer is obliged to supply the Services, or products manufactured directly or indirectly with the aid of the Services, to its own customer(s), provided that Supplier has been notified of such intended use or effect of the Services by Buyer and has accepted, by its conduct or in writing, that Buyer's customer's specification, design, description, sample or demonstration shall apply to the contract.
 - In respect of any Goods or Services the Supplier undertakes and warrants to Buyer that any computer systems, software or equipment used by the Supplier in the provision of the Services or in the manufacture and supply of the Goods or incorporated in the Goods will recognise and process all date fields, and perform all date-dependent calculations and operations (including sorting, comparing and reporting) correctly, and will not experience software ending and/or invalid and/or incorrect results as a result of the change of century or the occurrence of any particular date (all without human intervention, other than original date entry of valid dates).
 - Supplier's undertakings and warranties in Clauses 4(a), (b) and (c) are hereinafter referred to as "Supplier's Warranties". If Buyer finds that the Goods or Services fail to comply with any of Supplier's Warranties, Buyer may, at its option and by giving notice to Supplier, (without prejudice to Buyer's other rights and remedies) (i) cancel all the parties' outstanding obligations under the contract, (ii) require Supplier to refund the purchase price (if such has been paid), (iii) require Supplier to make good or replace the Goods or re-perform to Buyer's satisfaction the Services within 30 days, free of charge, and/or (iv) itself or through others, make good, modify, repair or otherwise correct the Goods, at the cost of Supplier, and Supplier will forthwith on demand reimburse Buyer its costs and expenses thereof. Depending on the circumstances and the requirements of Buyer's own customer(s), Buyer shall endeavour but not be obliged to give Supplier a period of up to 30 days within which to correct the failure concerned before Buyer exercises any of the above rights. Replacements or Goods made good or re-performed Services shall be covered by these conditions, including Supplier's Warranties. If for any reason (without prejudice to (iv) above) Supplier is unable to replace or make good defective Goods or re-perform or correct to Buyer's satisfaction the Services under this Clause within 30 days or such other reasonable period as may be allowed by Buyer, Buyer may arrange for such replacement or making good or re-performance or correction to be effected and Supplier shall forthwith on demand reimburse Buyer with its costs and expenses thereof.
 - Goods which are alleged not to comply with Supplier's Warranties under Clause 4(a) shall as far as practicable be preserved by Buyer for inspection by Supplier (provided that Supplier inspects the Goods within 14 days of being notified of the alleged defect by Buyer), and shall, if a replacement or a refund is made, if Supplier reasonably so requests and if practicable, be returned to Supplier at Supplier's cost.
 - Supplier shall indemnify and keep Buyer fully indemnified against any losses, damages, proceedings, claims and expenses (including without limitation economic losses, loss of profits and claims from Buyer's customers) which may be suffered or incurred by Buyer arising from (i) any Goods or Services failing to comply with any of Supplier's Warranties or (ii) any Goods or Services being defective or causing loss or damage under the CPA or other applicable law or (iii) any late or incomplete delivery or performance or any other breach of the contract by Supplier or any negligent act of Supplier, its employees, agents or contractors.
 - Supplier shall be responsible for all acts and omissions of its employees (whether or not in the course of their employment), agents, or sub-contractors in providing the Services as if they were acts or omissions of Supplier.
 - Buyer reserves the right for itself and its representatives to inspect any Goods, or raw materials for use therein, intended to be used by Supplier for the purposes of the contract and to inspect the provision or other performance of the Services and Supplier irrevocably grants Buyer the right to enter its premises for those purposes. Any such inspection shall not relieve Supplier of its obligations under the contract nor imply acceptance by Buyer.
 - Supplier shall on Buyer's request use reasonable endeavours to assign to Buyer the benefit of any warranty which Supplier may have from sub-contract manufacturers of the Goods, suppliers of raw materials for the Goods or from sub-contract providers of the Services.
 - NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY HEREIN, THE LIABILITY OF BUYER UNDER THIS CONTRACT (WHETHER BY REASON OF BREACH OF CONTRACT, TORT OR OTHERWISE, INCLUDING UNDER INDEMNIFICATION PROVISIONS (IF ANY)), SHALL BE LIMITED TO THE LESSER OF £650,000 AND THE INVOICE PRICE FOR THE GOODS OR SERVICES CONCERNED SAVE THAT WHERE SUCH LIMITATION WOULD NOT

BE VALID ON GROUNDS OF UNREASONABLENESS BY OPERATION OF LAW OR OTHERWISE THEN THE ENTIRE LIABILITY OF THE COMPANY UNDER OR IN CONNECTION WITH THE CONTRACT SHALL NOT EXCEED THE SUM OF £650,000. IN NO EVENT SHALL BUYER BE LIABLE FOR ANY INDIRECT DAMAGES INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF BUSINESS OR REVENUE, LOSS OF ANTICIPATED SAVINGS, LOSS OF PROFITS OR LOSS OF GOODWILL OR OTHER DAMAGES CONSEQUENTIAL UPON THE SAME REGARDLESS OF WHETHER BUYER (I) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (II) IS NEGLIGENT. THIS CLAUSE SHALL NOT LIMIT IN ANY WAY THE LIABILITY OF BUYER FOR DEATH OR PERSONAL INJURY CAUSED BY ITS OR ITS EMPLOYEES' OR AGENTS' NEGLIGENCE.

5) Force Majeure

Where either:-

- a) Supplier's ability to manufacture, supply or deliver the Goods or provide the Services is materially impaired for a period of over 30 days due to circumstances beyond its reasonable control; or
- b) the requirement of Buyer or its customer(s) for the Goods or Services is materially impaired or reduced for a period of over 30 days due to circumstances beyond the reasonable control of Buyer or the customer(s) concerned,

Buyer may without liability suspend or terminate (in whole or in part) the parties' outstanding obligations under the contract.

6) Termination and Suspension

- a) Buyer may, without prejudice to its other rights and remedies, terminate or suspend the whole or any outstanding part of the contract in the circumstances described in Clause 6(b). Buyer may also suspend deliveries of Goods or provision of Services while investigating any claim relating to any prior shipment (under any contract) of Goods or provision of Services.
- b) The relevant circumstances are if:-
 - i) Supplier fails to deliver or despatch the Goods or commence or complete the Services on the date required or within the period (as the case may be) required under Clause 2(a) or breaches any other term of the contract, or if Supplier is late in delivery or performance under or otherwise breaches any other contract for the sale or purchase of Goods or Services between Supplier and Buyer or any other company which is controlled by or is in common control with Hilger Crystals; or
 - ii) Supplier becomes bankrupt or insolvent or if a receiver or encumbrancer takes possession of any material part of Supplier's assets, or Supplier suffers any foreign equivalent of the foregoing; or
 - iii) Buyer has reasonable grounds for suspecting that an event in Clause 6(b)(i) has occurred or shall occur, or that Supplier shall not deliver the Goods or provide the Services in accordance with the contract, and so notifies Supplier.
- c) Without prejudice to Clause 7(b), Buyer also reserves the right in the circumstances stated in Clause 6(b) to remove from the premises where they are being made and purchase from Supplier any Goods, or raw materials therefor, in course of preparation for the purposes of the contract and to have the same completed elsewhere or to remove from the premises where they are being processed or otherwise dealt with in connection with the Services any items, Goods or other materials entrusted or otherwise provided to Supplier for or in connection with the provision of the Services. Buyer shall pay to Supplier a fair proportion of the contract price for any Goods or materials so removed or work in progress taken over by Buyer or (as applicable) a fair proportion of the contract price in respect of the Services provided to or in connection with such items, Goods or other materials so removed by Buyer, less (and without prejudice to any entitlement of Buyer to) any sums due to Buyer in respect of Supplier's liabilities under the contract, including without limitation Clause 4(f).

7) Risk and Title

- a) Risk in and title to the Goods stated in Buyer's order shall pass to Buyer on delivery and receipt by Buyer or its carriers at the agreed point of delivery of the Goods to Buyer provided however that where Goods are transferred to Buyer in connection with Services, risk and title to such Goods shall pass to Buyer on substantial incorporation into or onto the premises or other real or personal property of Buyer or on completion of the Services whichever is the earlier.
- b) Where Buyer provides to Supplier materials on a free issue basis for use in the manufacture of Goods for supply to Buyer under the contract, such materials shall at all times remain in the ownership of Buyer but shall be at Supplier's risk from the point the same are received by Supplier. Supplier shall only use such materials for the purpose of manufacturing Goods under the contract, shall not subject such materials to any charge, lien or encumbrance and shall where reasonably possible keep such materials separate and clearly identified as Buyer's property. In the circumstances described in Clause 6(b), Supplier's right to use such materials shall terminate and shall return such materials immediately to Buyer and Buyer shall have the irrevocable right to recover such materials and to enter Supplier's premises for that purpose, without prejudice to Buyer's other remedies.
- c) Title to all items, Goods and other materials entrusted to or otherwise provided to Supplier for or in connection with the provision of the Services shall remain at all times with Buyer and Supplier shall not exercise or assert nor purport to exercise or assert any lien of whatever nature and however arising in connection therewith and risk therein shall remain with Supplier until completion of the Services and redelivery to Buyer whereupon it shall revert to Buyer.
- d) Where Goods the subject of the contract, or any items, Goods or other materials of Buyer provided to Supplier for or in connection with the Services, may come into the possession of a sub-contractor or agent of Supplier, Supplier shall beforehand obtain a written acknowledgement from any such sub-contractor or agent that the Goods, items, Goods or materials concerned are the property of Supplier (where title has not yet passed to Buyer under Clause 7(a)) or of Buyer (in any other case).

8) Intellectual Property; Third Party Claims; Secrecy

- a) Supplier shall defend and indemnify Buyer against any losses, damages, proceedings, claims and expenses which may be suffered or incurred by Buyer arising out of use or sale of the Goods by Buyer resulting in:-
 - i) any actual or alleged infringement of the rights of a third party under any patent, registered design, copyright, design rights, trade mark or service mark or other intellectual property rights; and
 - ii) any action, claim, cost or penalty due to breach of any enactment, regulation or order of any government or other authority arising from the state or condition of the Goods as delivered to Buyer.
- b) All designs, drawings, prints, samples and specifications prepared by Buyer for the purposes of the contract, and any such materials prepared by Supplier for the purposes of the contract and representing or containing proprietary designs or other intellectual property of Buyer, shall remain or become Buyer's property and shall be returned to Buyer upon completion, cancellation or termination of the contract. Supplier shall not disclose any such designs, drawings, prints, samples or specifications or any part of them to a third party, or make any use of them, without Buyer's consent.
- c) Supplier shall not use, in any manner not approved by Buyer, any trade marks or trade names required by Buyer to be applied or used by Supplier in relation to the Goods or the Services.
- d) Clause 8(a) shall not apply to the extent that the Goods are manufactured strictly in accordance with the Buyer's designs or other specifications or, on Buyer's instructions, incorporate property of Buyer or any trade mark, trade name or design of Buyer.
- e) Buyer shall indemnify Supplier against any liability incurred by Supplier as a result of incorporating property of Buyer in the Goods or applying any trade mark, trade name or design to the Goods or use or application of service marks in respect of the Services on Buyer's instructions.
- f) The indemnified party shall promptly notify the other of any relevant claim, shall comply with the other's reasonable requirements to minimise liability and/or avoid any further liability, and shall allow the other conduct of any action and/or settlement negotiations, on reasonable terms.
- g) Supplier shall not and shall procure that its officers, agents or employees shall not during or after the contract disclose or allow to be disclosed to any person any confidential information relating to the business, affairs or property of Buyer or any of the Goods or Services.

9) Advice/Services of Supplier

Without prejudice to Supplier's Warranties, Supplier shall take reasonable care in the provision of any advice or Services by Supplier (whether or not on Buyer's premises) in relation to the Goods, whether or not such advice or Services are stated or referred to in Buyer's order.

10) Insurance

This Clause shall apply only in the case of Services and for the purposes of this Clause "Works" shall mean the operations or works being carried out by Supplier as part of the Services, including without limitation all equipment, materials or other items of Supplier, Buyer or others for use by Supplier or its sub-contractors in connection with the Services.

- a) Supplier shall take full responsibility for the care of the Works from the date of commencement of provision of the Services until the date of acceptance of the completed Services by Buyer, and shall insure the Works on an all-risk basis for the full reinstatement value thereof.
- b) Subject to any additional or specific insurance requirements separately notified to Supplier by Buyer in writing, and without prejudice to Supplier's liability to indemnify Buyer under Clause 4(e), Supplier shall take out and maintain insurance with a reputable insurance company (indemnifying Buyer as principal) against any loss or damage whatsoever to Supplier's employees, to Buyer or its employees or property or to any third party, caused by Supplier's or its sub-contractors' defaults in providing the Services or otherwise through Supplier's or its sub-contractors' negligence, in a minimum sum (but without limit in the case of death or personal injury caused by Supplier's negligence) of £2 million for any one occurrence. Supplier shall also ensure that its sub-contractors shall take out and maintain equivalent insurance in respect of their defaults or negligence. Evidence of such insurance of Supplier and (if any) of its subcontractors shall be produced to Buyer upon demand. If Supplier fails to provide evidence of such insurance, Buyer may (but shall not be obliged to) itself insure against any risk which ought to have been covered by such insurance and may deduct the cost thereof from the price for the Services.
- c) The insurance in respect of claims for personal injury to or the death of any person under a contract of service or apprenticeship with Supplier or a sub-contractor as the case may be and arising out of and in the course of such person's employment shall be Supplier's responsibility and shall comply with the Employers' Liability (Compulsory Insurance) Act 1969 and any statutory orders made thereunder or any amendments or re-enactments thereof.

11) Miscellaneous

- a) The contract may not be assigned by Supplier and Supplier may not sub-contract manufacture or supply of the Goods or provision of the Services, without Buyer's prior written consent.
- b) Notices must be in writing, in English, to Buyer's or Supplier's address and are deemed delivered on the first working day after sending by hand or subject to confirmation of transmission, by facsimile, or within the UK, on the third working day after being placed prepaid in the first class post to Supplier's or Buyer's U.K. address.
- c) No failure by Buyer to enforce any provision of the contract shall be construed as a release of its rights relating thereto or to sanction any further breach.
- d) No remedy for Buyer conferred by any of the provisions of the contract is intended to be exclusive of any other remedy, and each and every remedy will be cumulative and will be in addition to every other remedy under the contract or now or hereafter existing in law, in equity, by statute or otherwise.
- e) If any provision of the contract is found to be invalid or unenforceable, it shall have effect to the maximum extent permitted by law or, if not so permitted, shall be deemed deleted.
- f) The provisions of Clauses 4(b) and (c), 4(f), 4(j), 6(c), 7(b), 8(a) to (c), 8(e), 8(f) and 10 shall survive any termination of the contract.

12) Law

- a) The contract shall be governed by and construed in accordance with the law of England. Supplier hereby agrees, for Buyer's exclusive benefit, that the English courts shall have jurisdiction to hear all claims or proceedings connected with the products, Services or the contract. Buyer may nevertheless bring claims in any other courts of competent jurisdiction.
- b) In the event of any legal proceedings between Buyer and Seller relating to the contract, neither party may claim the right to a trial by jury, and both parties waive any right they may have under applicable law or otherwise to a right to a trial by jury.