



# Terms of Business

## 1. Definitions

- 1.1. The “seller” means OpalTec International Ltd.
- 1.2. The “buyer” means any person who accepts a quotation for goods by the seller or whose order for goods is accepted by the seller.
- 1.3. “goods” means any goods or services which the seller is to supply to the buyer.
- 1.4. “conditions” means the terms and conditions set out herein and any special or additional conditions agreed in writing by the seller.
- 1.5. “writing” includes by mail, facsimile transmission or email

## 2. Conditions

- 2.1. These conditions apply to all contracts for sale of goods by the seller to the buyer and shall be deemed to supersede and exclude all other terms and conditions including any which the buyer may seek to apply under any purchase order, confirmation of order, or similar document.
- 2.2. No variation or addition to these terms and conditions shall be effective unless agreed in writing by a duly authorised officer of the seller.
- 2.3. No employee or agent of the seller is authorised to make any representations concerning goods on the seller’s behalf unless such representations are confirmed in writing by the seller and any representations made without the written confirmation of the seller may not be relied upon in connection with any contract.
- 2.4. Until despatch of goods by the seller of goods to the buyer or the buyer’s acceptance in writing of any quotation of the seller (whichever shall first occur) no contract for the sale of goods shall arise.
- 2.5. The seller shall be at liberty to correct without any liability on the seller’s part and without prior notification any error or omission in any sales literature, price list, acceptance of offer, quotation, invoice, or other document issued by the seller.
- 2.6. The order shall only be deemed to have been accepted at either the earlier of the buyer accepting delivery of the goods or when the seller issues a written acceptance of the order at which point the contract shall come into existence.

## 3. Prices

- 3.1. The price for the goods shall be that on the seller’s current price list unless otherwise confirmed and agreed in writing by the seller.
- 3.2. All prices are exclusive of VAT and charges for postage, packaging and carriage, all of which shall be paid in addition as agreed in writing.

## 4. Payment

- 4.1. The seller is prepared to consider applications for credit accounts from corporate customers subject to approved references.
- 4.2. Non-credit account buyers must make payment in full of any invoice before despatch of goods.
- 4.3. Payment may be made by Bank Transfer, Cheque, Online Escrow or PayPal.
- 4.4. Buyers with credit accounts must make payment in full on the terms of credit agreed which shall not be more than from the end of the month following the date of invoice unless otherwise agreed in writing by the seller.



## **5. Interest on Overdue Invoices**

- 5.1. If any invoice shall become overdue for payment interest shall be payable at 2% per annum above Barclays Bank plc base rate from time to time from the date the payment became due under the invoice until the date of payment. Such interest shall accrue both before and after any Judgment.

## **6. Delivery**

- 6.1. The seller will take all reasonable steps to adhere to any estimated delivery date. The seller shall not be liable for any losses consequential or otherwise arising directly or indirectly out of any failure to meet an estimated delivery date. The seller reserves the right to make delivery in advance of the quoted delivery date on giving reasonable notice to the buyer.
- 6.2. Unless otherwise agreed in writing deliveries may take place at the buyer's premises or such premises as are designated by the buyer up until 6.00 p.m. on the date of delivery. In the event of the buyer not accepting delivery on the delivery date the first attempt at delivery is to be considered as the delivery date for the purpose of invoicing.
- 6.3. The seller shall make delivery of the goods to the buyer's address and the buyer shall make arrangements to take delivery of the goods at that address upon the same being tendered for delivery.
- 6.4. The method of despatch of all goods shall be at the seller's absolute discretion. OpalTec uses third-party couriers to deliver orders. During the Coronavirus Pandemic, non-contact handover has become necessary in most cases; physical signatures are no longer obtained either at collection from us or delivery to the shipping address. Third Party couriers combine driver-completed PoD with GPS data to confirm Proof of Delivery. This information can be obtained if necessary, but is only available for 90 days after delivery.

## **7. Ownership and Risk**

- 7.1. Upon delivery of the goods to the buyer or upon the goods being retained at the seller's premises at the buyer's request the risk in the goods shall pass to the buyer.
- 7.2. Title to the goods shall remain vested in the seller until the invoice for the goods has been paid in full.
- 7.3. The buyer shall hold the goods as the seller's fiduciary agent and bailee until such time as title to the goods passes to the buyer and shall keep the goods properly stored and protected and insured and identified as the seller's property.
- 7.4. The buyer shall not remove, deface or obscure any identifying mark or packaging on or relating to the goods and shall maintain the goods in satisfactory conditions.
- 7.5. If before title to the goods passes to the buyer, the buyer becomes subject to any of the events listed in clause 7.7, or the seller reasonably believes that any such event is about to happen and notifies the buyer accordingly, then, provided that the goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the seller may have, the seller may at any time require the buyer to deliver up the goods and, if the buyer fails to do so promptly, enter any premises of the buyer or of any third party where the goods are stored in order to recover them.
- 7.6. If the buyer becomes subject to any of the events listed in clause 7.7, or the seller reasonably believes that the buyer is about to become subject to any of them and notifies the buyer accordingly, then, without limiting any other right or remedy available to the seller, the seller may cancel or suspend all further deliveries under the contract or under any other contract between the buyer and the seller without incurring any liability to the buyer, and all outstanding sums in respect of goods delivered to the buyer shall become immediately due.

- 7.7. For the purposes of clause 7.6, the relevant events are:
- (a) the buyer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
  - (b) the buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the buyer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the buyer with one or more other companies or the solvent reconstruction of the buyer;
  - (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the buyer with one or more other companies or the solvent reconstruction of the buyer;
  - (d) (being an individual) the buyer is the subject of a bankruptcy petition or order;
  - (e) a creditor or encumbrances of the buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the buyer
  - (g) (being a company) a floating charge holder over the buyer's assets has become entitled to appoint or has appointed an administrative receiver;
  - (h) a person becomes entitled to appoint a receiver over the buyer's assets or a receiver is appointed over the buyer's assets;
  - (i) any event occurs, or proceeding is taken, with respect to the buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 7.7(a) to clause 7.7(h) (inclusive);
  - (j) the buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
  - (k) the buyer's financial position deteriorates to such an extent that in the seller's opinion the buyer's capability to adequately fulfil its obligations under the contract has been placed in jeopardy; and
  - (l) (being an individual) the buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 7.8. Termination of the contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the contract shall continue in full force and effect.
- 7.9. Whilst the purchase price for any goods delivered to the buyer shall remain overdue for payment either wholly or in part without prejudice to any of its other rights the seller may recover and/or resell the goods or any of them and may enter on the buyer's premises by its servants or agents to recover the goods and shall be entitled to recover from the buyer any costs incurred in connection with such recovery.
- 7.10. Until payment for any goods has been made in full the buyer shall not pledge, charge by way of security or in any other way encumber the goods which remain the property of the seller.



## **8. Warranties**

- 8.1. The seller warrants to the buyer that the goods delivered will correspond with the description given by the seller to the buyer on delivery and such warranty is given subject to the following conditions:-
- (a) The seller accepts no liability for any defect arising on errors or omissions in any drawing specification or design supplied by the buyer to the seller.
  - (b) The seller will accept no responsibility for any defect in the goods arising from wilful damage, neglect, failure to follow manufacturer's instructions, failure to follow the seller's oral or written instructions as to the storage, maintenance or installation of goods or the good practice regarding the usage of goods, abnormal working conditions or abuse or alteration or repair during the manufacturer's warranty period without the seller's written approval
  - (c) The seller's warranty shall not come into force unless the invoice for the goods was paid by the due date.
  - (d) The benefit of any warranty or guarantee given by the manufacturer of the goods will be passed to the buyer on delivery of the goods to the buyer.
  - (e) Save as provided in these conditions and save and except where the buyer is dealing as a consumer all warranties, conditions or other terms implied by statute, common law or otherwise are excluded to the extent permitted by law.
  - (f) Save in respect of death or personal injury caused by the seller's negligence the seller shall not be responsible for any incompatibility of use issues or held liable to the buyer by reason of any representation or any implied warranty, condition or other term or any duty of common law for any direct or indirect special or consequential loss or damage expenses or other claims for compensation whatsoever whether caused by negligence of the seller, its employees or agents or otherwise which arise out of or in connection with the supply of goods or their use or resale by the buyer of whatsoever nature.
  - (g) The buyer may purchase an extended warranty from the seller on terms to be agreed in writing by the seller
  - (h) Any liability of the seller in connection with claims made under the contract shall not exceed the price of the goods actually paid by the buyer unless otherwise specifically agreed in writing by the seller.
  - (i) The seller shall not be liable for any delay in delivery of the goods that is caused by a Force Majeure Event as defined in clause 10 or the buyer's failure to provide the seller with adequate delivery instructions or any other instructions relevant to the supply of goods.

## **9. Limitation on liability**

- 9.1. The seller shall under no circumstances whatever be liable to the buyer, 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 the contract; and the seller's total liability to the buyer in respect of all other losses arising under or in connection with the contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount actually paid for the goods by the buyer.
- 9.2. Nothing in these conditions shall limit or exclude the seller's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
  - (d) defective products under the Consumer Protection Act 1987; or
  - (e) any matter in respect of which it would be unlawful for the seller to exclude or restrict



## **10. Force Majeure**

- 10.1. The seller shall not be liable to the buyer or held to be in breach of the contract by reason of any delay in performing or failure to perform any of the seller's obligations in respect of the goods if such delay or failure was caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, 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, national or international calamity, 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.

## **11. Cancellation of Contract/Return of Goods/Replacement of Defective Goods**

- 11.1. No contract may be cancelled once it is accepted by the seller and no goods may be returned save at the absolute discretion of the seller.
- 11.2. In the event that the seller agrees to accept the return of non-defective goods such return will be on the following conditions:-
- (a) The buyer must obtain a goods return number from the seller, this number must clearly be displayed on each parcel to be returned. The goods must be returned in the manufacturer's original packaging, in unopened condition, complete with any accessories, manual and other documentation. Software packages must have the software seal intact. If these conditions are not complied with returned goods will be rejected.
  - (b) If in the opinion of the seller damage has been caused to the goods during transport from the buyer to the seller the buyer will remain liable for the full cost of the goods or at the discretion of the seller the cost of remedying any damage.
  - (c) If the seller accepts the return of goods (other than on the grounds of defect) the seller reserves the right to make a handling and restocking charge of 20%.
- 11.3. Any alleged defect in the goods must be notified to the seller within seven days of the date of delivery. In the event that delivery is not refused and the buyer fails to notify the seller within the time stated, no rejection of the goods will be accepted and the full purchase price shall be payable by the buyer.
- 11.4. In the event that any valid claim is notified to the seller, based on the goods delivered under the contract being defective, the seller shall at their discretion be entitled to replace the goods free of charge or refund the buyer the price of the goods actually paid by the buyer, and the seller shall have no further liability to the buyer.
- 11.5. The buyer shall retain the goods in respect of which allegation of defect is made together with the original manufacturer's packaging for a reasonable time to enable the seller or its agent to inspect the goods, or to arrange for the goods to be collected from the buyer if the seller would so require.
- 11.6. Unless otherwise agreed in writing by the seller no credit for return goods will be given in the case of goods returned other than by reason of defect.

## **12. Notices**

- 12.1. Any notice required to be given by the buyer to the seller shall be in writing addressed to the seller at his registered office or principle place of business and shall be delivered personally, or sent by first class pre-paid recorded delivery mail.





### **13. Entire agreement**

- 13.1. The contract constitutes the entire agreement between the parties. The buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the seller which is not set out in these terms and conditions.

### **14. Severance**

- 14.1. If any court or competent authority finds that any provision of these terms and conditions (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the terms and conditions shall not be affected.
- 14.2. If any invalid, unenforceable or illegal provision of the terms and conditions would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable

### **15. Waiver**

- 15.1. A waiver of any right or remedy under the terms and conditions is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 15.2. No failure or delay by a party to exercise any right or remedy provided under the terms and conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

### **16. Third party rights**

- 16.1. A person who is not a party to these terms and conditions shall not have any rights under or in connection with them.

### **17. Variation**

- 17.1. Except as set out in these conditions, any variation to the contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by an authorised signatory of the seller.

### **18. Governing law and jurisdiction**

- 18.1. The contract, these conditions and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.