

CONDITIONS OF CONTRACT

1 Interpretation and Definitions

The following expressions shall have the following meanings:-

- 1.1 "The Company" means Photometrix Imaging Limited whose registered office is at 8 Forest Grove, Treforest, Pontypridd, Mid Glamorgan CF37 1DL.
- 1.2 "The Client" means the Client specified in the Quotation.
- 1.3 "The Services" means the services details of which are set out in the Quotation.
- 1.4 "The Goods" means the goods details of which are set out in the Quotation.
- 1.5 "The Quotation" means the written Quotation of the Goods and Services annexed hereto and marked "Quotation" as may from time to time be amended by the written agreement of the parties.
- 1.6 "the Working Day" means a day (other than Saturday or Sunday) on which banks open for a full range of banking transactions.
- 1.7 The headings to these Conditions are for guidance only and shall not affect the construction of the Contract. The singular shall include the plural and vice versa.

2 Appointment

Upon written acceptance of these conditions by the parties, the Client engages the Company to provide the Goods and Services in accordance with the Quotation upon the terms and conditions herein contained unless otherwise stated in the Quotation.

3 Price

- 3.1 The Client agrees to pay the fees and expenses at the rates and in the manner set out in the Quotation.
- 3.2 If not explicitly shown in the Quotation prices provided do not include sales, excise or similar taxes. These will be charged at the standard rate and shall be payable by the Client in addition where applicable.
- 3.3 Invoices will be submitted by the Company as provided in the Quotation and shall be paid by the Client on or before the date specified on the invoice.
- 3.4 In the event of late payment for whatever reason the Company shall have the right to:-
 - 3.4.1 suspend any further performance of the Goods and Services for such period as the Company feels fit;
 - 3.4.2 to charge interest on all outstanding monies due from the client to the Company at the rate of 3% above the base rate of National Westminster Bank PLC from the date of the invoice to the date of payment.
- 3.5 If the delivery of the Goods or performance of the Services is suspended or canceled at the request of the Client or delayed through any failure or delay by the Client in providing information under clause 7.1 below then the Company shall be immediately entitled to payment for:-
- 3.6 Goods already delivered and Services already performed or provided by the Company; and
- 3.7 The cost of the Goods and Services based on the following sliding scale of fees set out in the Quotation:-
 - Cancellation within 3 Working Days - 30% of fees.
 - Cancellation within 30 Working Days - 60% of fees.

4 Delivery

- 4.1 The Company shall use its reasonable endeavours to comply with any date(s) for completion of the Services PROVIDED THAT such date(s) shall not be binding. Failure to comply with such date(s) shall not constitute a breach of contract and the Company shall not be liable for any loss or damage, direct or indirect, caused by any such failure and in no case shall delay be a ground for rejecting the Goods or Services or otherwise rescinding the contract.
- 4.2 Subject to clause 4.1, if expedited performance of the Services is required by the Client, the additional costs incurred by the Company may be charged to the Client in addition.

5 Risk and Property

- 5.1 Unless otherwise agreed delivery of Goods to the Client shall be deemed to take place at the Company's premises and thereafter shall be at the Client's risk.
- 5.2 If the Company agrees to deliver goods otherwise than at its premises, the Client shall be liable to pay the Company's charges for transport, packaging and insurance.
- 5.3 Notwithstanding the foregoing, property in and to the Goods supplied by the Company shall not pass to the Client until the Company has received full payment for the Services.
- 5.4 Until such time as the property in Goods passes to the Client pursuant to clause 5.3, the Client shall hold such goods as the Company's fiduciary agent and bailee, and shall keep the goods separate from those of the Client and third parties properly stored, protected and insured and identified as the Company's property.

5.5 Until property passes to the Client pursuant to clause 5.3 the Client shall be entitled to resell or use such Goods in the ordinary course of its business, but shall account to the Company for the proceeds of sale or use of the goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Client and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

5.6 Until property in the Goods passes to the Client pursuant to clause 5.3 (and provided such Goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Client to deliver up such goods to the Company and, if the Client fails to do so forthwith, to enter upon the premises of the Client or any third party where such Goods are stored and repossess them.

6 Warranties and Liability

- 6.1 The Company excludes all warranties, express or implied, with respect to its performance of the Services or Goods including without limitation warranties as to quality merchantability or fitness for purpose of any goods.
- 6.2 The Company shall be under no liability to the Client for any infringement or alleged infringement of any patents, registered designs, copyright and any other intellectual property rights owned or controlled by a third party arising out of or in connection with the Services or the manufacture, sale and use of any prototype or any Goods supplied pursuant to the Quotation.
- 6.3 The Company shall indemnify the Client for the bodily injury or death of any persons if such bodily injury or death is caused by its negligence or of any person for whose acts it is responsible.
- 6.4 The Company shall indemnify the Client for damage to property if such damage is caused directly by its negligence or of any person for whose acts it is responsible save that its liability under this clause shall be limited to the lesser of the direct costs of replacement or repair of the damaged property or the sum of £500,000 per incident or series of incidents arising out of the one event.
- 6.5 It is hereby agreed by the Client that the Company shall in no circumstances be liable whether in tort contract or otherwise for any financial or consequential loss however arising whether direct or indirect including without prejudice to the generality of the foregoing any loss of profits or business or contract.

7 Clients Obligation

- 7.1 The Client agrees to give the Company such information advice and assistance relating to the subject matter of the Quotation as the Company may reasonably require within sufficient time to enable the Company to deliver the Goods, perform the Services and the Quotation in accordance with its terms.
- 7.2 The Client shall be responsible to the Company for ensuring the accuracy of any information submitted by the Client.
- 7.3 The Client shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Client's information or Quotation.
- 7.4 The Client shall indemnify the Company against all claims, actions, losses, damages, costs and expenses incurred by the Company arising from or due to the negligence of the Client's servants or agents.
- 7.5 Any property supplied to the Company by or on behalf of the Client shall be held and worked upon by the Company at the Client's risk. The Company shall not be liable for any loss or damage to any such property.
- 7.6 The Client shall comply with all applicable Health and Safety legislation and regulations in respect of any employee of the Company or self-employed person engaged by the Company to provide the Goods and Services whilst such person is working on the Client's premises and the Client shall provide the Company with such information as is necessary to enable the Company to comply with all applicable Health and Safety legislation and regulations in respect of that person.

8 Computer Software

If as part of the Quotation the Company is required to supply or develop for the Client a computer software program and any manuals and other computer documentation the Company shall enter into a licence agreement with the Client for the use of such computer program and computer documentation and in the event that the terms and conditions of such licence shall conflict with these conditions, the terms of such licence, to the extent of the conflict, shall prevail.

9 Intellectual Property Rights

- 9.1 Copyright in all original drawings, designs, Quotations

reports and other recorded matter whether made in connection with the Quotation and/or the Services or otherwise shall remain vested in the Company at all times.

- 9.2 Unless otherwise agreed in writing ownership of all inventions discoveries and improvements thereto which arise in connection with the Quotation and/or the Goods and Services shall vest in the Company provided that the Company shall grant to the Client a non-exclusive royalty free licence to use such inventions discoveries and improvements.

10 Confidentiality

- 10.1 All drawings and technical information supplied by the Client to the Company and all information supplied by the Company to the Client shall be deemed to have been furnished in confidence for the purpose authorised by the Quotation and no other. The recipient party shall take all reasonable precautions to prevent communication of any such information to any of its employees or to any third party except as may be necessary in order to carry out the purpose of the quotation. If disclosure to an employee or a third party is necessary for such purposes then such employee or third party shall be required to observe the same confidentiality obligations as the recipient party.
- 10.2 Neither the Company nor the Client shall use the name of the other in any publicity material nor publish anything relating to work being undertaken pursuant to the Quotation without the prior written permission of the other (such permission not to be unreasonably withheld).
- 10.3 The obligations of confidentiality and non-publication contained in Clauses 10.1 and 10.2 shall not apply to any information which :-
 - is in or enters the public domain other than by virtue of the recipient's act or omission;
 - is known to the recipient at the time of disclosure to the recipient provided that the recipient produces to the other satisfactory evidence of the same within 14 days of such disclosure;
 - is required to be disclosed by the recipient by a court of competent jurisdiction.

11 Force Majeure

The Company shall not be liable to the Client for any loss or damage suffered by the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Services to be performed or the goods to be supplied, if failure was due to any cause beyond the Company's reasonable control including without prejudice to the foregoing Act of God, explosion, flood, tempest, fire or accident; wars or threat of war, sabotage, insurrection, civil disturbance or requisitions, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any government, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery, and power failure or breakdown in machinery.

12 Law

These conditions together with the Quotation shall be governed and construed in accordance with the Laws of England and Wales.

13 Arbitration

Any dispute arising under or in connection with these conditions, the Quotation or the Services shall be referred to arbitration by a single arbitrator appointed by agreement of the parties hereto.

14 Communications

- 14.1 All communications to the Company shall be addressed to Photometrix Imaging Limited at the address of the Company set out in the Quotation.
- 14.2 All communications to the Client shall be sent to the address appearing in the Quotation unless some other address has been notified in writing to the Company.

15 Variation of Conditions of Contract and Quotation

Any variation to the Quotation or the Conditions of Contract and any representations about the Services shall have no effect unless expressly agreed in writing (on the Company's headed paper) and signed by a director of the Company.

16 Entire Agreement

These conditions together with the Quotation shall form the entire agreement between the Company and the Client. These conditions shall supersede and prevail over terms and conditions sought to be imposed by the Client provided that this shall not exclude any liability which the Company would otherwise have to the Client in respect of any statements made fraudulently by the Company prior to the date of the Quotation.