

TERMS AND CONDITIONS

Sim2000 Imaging Limited trading as Sim Frame

1. Definitions

In these conditions, unless the context requires otherwise:

- 1.1 'Buyer' means the person, company or firm who buys or agrees to buy goods from the Seller;
- 1.2 'Conditions' means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller;
- 1.3 'Delivery Date' means the date specified by the Seller when the goods are to be delivered;
- 1.4 'Goods' means the articles and standard pieces of equipment which the Buyer agrees to buy from the Seller;
- 1.5 'Price' means the price for the Goods excluding carriage, packing, insurance and VAT; and
- 1.6 'Seller' means Sim2000 Imaging Limited whose Registered Office is at Wisteria Cavendish House 369 Burnt Oak Broadway Edgware Middlesex HA8 5AW (Company number 05210780).

2. Applicable Terms

- 2.1 These Conditions shall apply to all contracts for the purchase of Goods by the Buyer from the Seller to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any sales offer, purchase order, confirmation of order or similar document or in correspondence. These Conditions constitute the entire understanding between the Buyer and the Seller with respect to the subject matter covered by the contract of purchase and supersedes all previous agreements and understandings between the parties.
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Buyer and Seller.

3. Price and Payment

- 3.1 The Price of the Goods shall be the Seller's quoted price or if no price has been quoted the price listed in the Seller's price list current at the date of acceptance, which shall be binding upon the Seller provided that the Buyer shall accept the Seller's quotation within 30 days.
- 3.2 Unless otherwise agreed in writing all prices quoted or listed by the Seller are exclusive of Value Added Tax which the Buyer shall be additionally liable to pay to the Seller.
- 3.3 The Seller reserves the right, upon giving notice to the Buyer at any time before delivery, to increase the Price of the Goods to reflect any increase in the cost to the Seller due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, changes in currency regulations, alteration of duties, increases in the cost of labour) or as a consequence of any change of delivery dates, quantities or specifications by the Buyer or any delay caused by late or changed instructions of the Buyer or failure of the Buyer to give the Seller adequate instructions. The Buyer may cancel the contract within 7 days of the Seller giving notice of an increase in the Price of the Goods.
- 3.4 Time is of the essence for payment of the Price of the Goods. The Buyer shall make payment of the Price of the Goods in full before production will commence on the Goods ("the due date") notwithstanding that delivery may not have taken place and that property in the Goods will not have passed to the Buyer until payment of the Price and all sums due from the Buyer to the Seller (as provided for below).
- 3.5 If the Buyer fails to make full payment of the Price on the due date then without prejudice to any of the Seller's other rights the Seller may:
 - (a) suspend or cancel deliveries of any articles due to the Buyer; and/or
 - (b) appropriate any payment made by the Buyer to such of the Goods (or goods supplied under any other contract with the Buyer) as the Seller may in his sole discretion think fit; and/or
 - (c) charge the buyer interest (both before and after any judgment) on any unpaid amount at the rate of 4 per cent over base rate per annum until full payment of the unpaid goods is received in cleared funds by the Seller; and/or
 - (d) obtain from the Buyer on a full indemnity basis all costs, expenses, fees and commissions incurred by the Seller or its agents in connection with the recovery of any money due to the Seller under these Conditions, including legal costs and the costs of its collection agents.
- 3.6 The Buyer may not deduct from the Price or set off against the Price (including any applicable VAT payable) any claims, counterclaims, legal or equitable set offs or amounts due or claimed to be due from the Seller whether under these Conditions or otherwise.
- 3.7 In the event of the Buyer purchasing Sample Goods the word "Sample" will appear on those Goods, as a result of which a reduced Price will apply. Goods purchased as Sample sets must be collected within the time limits stipulated on the Order form. The Price paid for Sample sets can be offset against full Price Goods as long as payment is made before the time limit stipulated on the Order form is complied with. Payment is not refundable for Goods which are not collected within the time limit stipulated. Time is of the essence.

4. Delivery of the Goods

- 4.1 Delivery of the Goods shall be effected by the Buyer collecting the goods from the Seller's premises. The Buyer is entitled to take delivery of the Goods at any time after the Seller has notified the Buyer that the Goods are ready for collection. If the Buyer and Seller agree that the location for delivery is a place other than the Seller's premises delivery of the Goods shall be effected by the Seller delivering the Goods to that location.
- 4.2 The Seller reserves the right to make deliveries by installments in all cases. Where Goods are delivered by installment, the Buyer shall not be entitled to treat delivery of one or more installment as defective delivery or to accept repudiation of the Contract nor to defer payment for any previous installment.

4.3 Time shall not be of the essence for any delivery dates quoted by the Seller, its employees or agents and delivery dates are estimates only.

4.4 The Seller shall not be liable for any loss or damage (including without limitation loss of profits and/or consequential losses and/or direct and/or indirect losses) arising from any delay in delivery of the goods howsoever caused.

4.5 If no delivery of the goods is made by the Seller at all as a result of any cause beyond the Seller's reasonable control or as a result of the Buyer's fault, the Seller shall not be liable for any loss or damage (including without limitation loss of profits and/or consequential losses and/or direct and/or indirect losses). If no delivery of the goods is made by the Seller at all as a result of any other reason, the Seller's liability shall be limited to the difference in value between the price of the Goods and the cost to the Buyer of the same (or if unavailable the nearest equivalent) Goods in the cheapest available market to the Buyer and the Buyer shall be required to use all reasonable endeavours to obtain the replacement goods at the cheapest possible price.

4.6 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery information or instructions at the time stated for delivery then provided that this was not caused by circumstances beyond the Buyer's reasonable control and was not caused by the Seller's fault, the Seller may, without prejudice to any other right or remedy available:

- (a) store the goods until delivery and charge the Buyer for the reasonable costs of storage (to include insurance); and/or
- (b) sell the Goods at the best price readily obtainable and after deducting all reasonable storage and selling expenses account to the Buyer for those sums realised in excess of the Price or charge the Buyer for any shortfall obtained below the Price as the case may be.

5. Shortages and Return of Goods

5.1 The Buyer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that such discrepancy in quantity shall not exceed 5%. The Price shall be adjusted pro rata to the discrepancy.

6. Title and Risk

- 6.1 The Goods shall be at the Buyer's risk:
 - (a) where it is agreed that delivery is to take place at the Seller's premises, at the time the Seller notifies the Buyer that the Goods are available for collection;
 - (b) where delivery is agreed to take place at a location other than the Seller's premises and delivery takes place, at the time of delivery;
 - (c) where it is agreed that delivery is to take place at a location other than the Seller's premises and the Buyer wrongfully fails to take delivery, at the time that delivery is tendered by the Seller.
- 6.2 Whether delivery has or has not taken place, property in the Goods shall not pass from the Seller until:
 - (a) the Buyer shall have paid the Price plus VAT in full; and
 - (b) no other sums whatever are due from the Buyer to the Seller.
- 6.3 Until property in the Goods passes to the Buyer in accordance with the above provision the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.
- 6.4 Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal as regards the sub-buyer when making such sales or using such property. Such part of the proceeds of sale as represent or are equivalent to the Price at which the goods resold were invoiced by the Seller to the Buyer shall be beneficially owned by the Seller and shall be held by the Buyer as trustee for the Seller and shall be placed in a separate account so as to be identifiable as being in the beneficial ownership of the Seller and shall be kept separate by the Buyer and shall be kept by the Buyer as a fiduciary of the Seller and shall at all material times be identified as the Seller's money.
- 6.5 The Seller shall be entitled to recover the Price (plus VAT) notwithstanding the property in any of the Goods has not passed from the Seller.
- 6.6 Until such time as property in the Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods to the Seller as have not ceased to be in existence or been resold. If the Buyer fails to do so the Seller may forthwith enter upon any premises owned occupied or controlled by the Buyer where the goods are situated or any premises of third parties where the Goods are situated and repossess the Goods. On the making of such request, the rights of the Buyer under clause 6.4 above to sell or use the Goods shall cease.
- 6.7 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 6.8 The Buyer shall insure and keep insured the Goods to the full Price against 'all risks' to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

7. Inspection of Goods and Defective Goods

7.1 The Buyer shall inspect the Goods immediately upon delivery and within seven (7) days of delivery (time being of the essence) shall give notice in writing to the Seller of any alleged shortages in the Goods or of any damage to or defect in the Goods or of any other matter or thing by reason whereof the Buyer alleges that the Goods are not in accordance with these Conditions. If the Buyer shall fail to give such notice then the Goods shall be conclusively presumed to be in accordance with these Conditions in all respects and the Buyer shall not (subject to clause 7.2) thereafter be entitled to reject the Goods or to claim from the Seller in respect of any shortage, damage or other defect in the Goods.

7.2 In the case of damage or other defect in the Goods which was not apparent on reasonable inspection, notice shall be given to the Seller within thirty (30) days after discovery of the damage or other defect, otherwise clause 7.1 shall apply. If requested by the Seller, following notification of damage or other defect, defective Goods shall be returned promptly by the Buyer to the Seller.

7.3 In the event that Goods are defective and the damage or other defect complained of shall have arisen as a result of the negligence of the Seller, and the Buyer has notified the fact of damage or defect to the Seller in accordance with clause 7.1 or 7.2, then the Seller shall refund to the Buyer the Price in respect of the defective Goods or cancel the liability of the Buyer to pay the said Price, provided that where this is possible the Seller may instead opt to repair or replace the defective Goods free of charge.

7.4 If there is a fault with the Goods photographic images, details of the fault must be emailed to the Seller at returns@sim2000imaging.com with seven (7) days. The Seller will arrange collection of the Goods, or alternatively the Buyer may return the Goods whereby the Seller will reimburse the Buyer the costs of returning the Goods up to a maximum of £20 subject to sight of a receipt concerning the costs of the return. It is the Buyer's responsibility to ensure the Goods are properly packaged for the return to the Seller. The Seller is unable to accept responsibility for damage to Goods which are damaged in transit if they have not been properly packaged. The Seller will only arrange collection on one occasion per item. Additional collection appointments will be charged at the rate of £12.50 to cover the Seller's cost of collection

8. Seller's Warranties

8.1 The Seller warrants that all Goods sold shall be free of defects on materials and workmanship and shall be of satisfactory quality and fit for the purpose for which they have been purchased. The Seller makes every effort to ensure that the colour of the Goods is as close as possible to the colour required, however cannot warrant an exact colour match. The Seller warrants that any variation will be within tolerances accepted by industry standards.

8.2 The warranty shall be revoked without notice if the user/Buyer himself or any third party, to the exclusion of the Seller, undertakes any repair or alteration or modification to the Goods.

8.3 The Seller shall assume no obligation to honour warranties of any kind in case of neglect or improper adjustment.

9. Limitation of Liability

9.1 In no circumstances shall the Seller be liable in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof for:-

9.1.1 any increased costs or expenses, or

9.1.2 any loss of profit, business, contracts, revenues or anticipated savings or any liability of the Buyer to any third party, or

9.1.3 any special and/or direct and/or indirect and/or consequential damage or losses of any nature whatsoever arising directly or indirectly out of the provision by the Seller of the Goods or of any failure or defect therein, or of the performance, non-performance or delayed performance by the Seller of these Conditions.

9.2 subject to clause 9.4, the Seller's liability to the Buyer in respect of the contract entered into between the Buyer and the Seller in contract, tort (including negligence or breach of statutory duty) or howsoever otherwise arising, shall be limited to the price.

9.3 where the Buyer rejects any Goods then the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such Goods or the failure by the Seller to supply Goods which conform to the contract of sale.

9.4 nothing in these conditions shall operate or be construed so as to operate to exclude or restrict:-

(a) the liability of the Seller for death or personal injury resulting from the negligence of the Seller or its servants, employees or agents;

(b) the statutory rights of the buyer where these conditions are entered into as a consumer transaction as defined in the Consumer Transaction (Restriction on Statements) Order 1975 (as amended).

10. Force Majeure

10.1 The Seller shall not be liable to the Buyer or be deemed to be in breach of contract by reason of any delay in performing or any failure to perform any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

(a) Act of God, explosion, terrorism, flood, tempest, fire or accident;

(b) War or threat of war, sabotage, insurrection, civil disturbance or requisition;

(c) Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

(d) Import or export regulations or embargoes;

(e) Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

(f) Difficulties in obtaining raw materials, labour, fuel, parts of machinery;

(g) Power failure or breakdown in machinery.

11. Indemnity

11.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:

(a) the Seller is given full control of any proceedings or negotiations in connection with any such claim;

(b) the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;

(c) except pursuant to a final award, the Buyer shall not pay or accept any such claim or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);

(d) the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such

policy or cover (which the Buyer shall use its best endeavours to do);

(e) the Seller shall be entitled to the benefit of, and the buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and

(f) without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

12. Insolvency of Buyer

12.1 This clause applies if:

(a) the Buyer fails to make payment for the Goods in accordance with these Conditions or commits any other breach of these Conditions;

(b) any distress or execution shall be levied upon any of the Buyer's goods;

(c) the Buyer offers to make any arrangement with its creditors or if any bankruptcy petition is presented against the Buyer;

(d) the Buyer is unable to pay its debts as they fall due;

(e) the Buyer being a limited company, any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented;

(f) a receiver, administrator, administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law;

(g) an encumbrancer takes possession of the Buyer's goods;

(h) the Buyer ceases or threatens to cease to carry on business;

(i) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

12.2 If this clause applies then all sums outstanding in respect of the Goods shall become payable immediately. The Seller may in its absolute discretion and without prejudice to any other rights which it may have:

(a) suspend all future deliveries of Goods to the Buyer and/or terminate the contract without liability upon its part; and/or

(b) exercise any of its rights pursuant to clause 6 above.

13. Export Terms

13.1 In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when these Conditions are entered into. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions but if there is any conflict between the provisions of Incoterms and these Conditions the latter shall prevail.

13.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.

13.3 The Buyer shall be 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 thereon.

13.4 Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be delivered FOB the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

13.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

13.6 The Buyer undertakes not to offer the Goods for resale in any other country outside the country of supply, or to sell the Goods to any person if the Buyer knows of or has reason to believe that the person intends to resell the Goods in any such country.

13.7 Payment of all amounts due to the Seller shall be made by the Buyer in cleared funds and in such manner as may be prescribed by the Seller.

14. Assignment

The Buyer shall not assign any of its obligations under these Conditions without the prior written consent of the Seller.

15. Third Party Rights

The provisions of the Contracts (Rights of Third Parties Act) 1999 shall not apply to this contract and a person who is not a party to this contract shall have no right under that Act to enforce any term of the contract.

16. General

16.1 These Conditions shall supersede any previous terms and conditions of trading entered into between the Buyer and Seller.

16.2 Any notice given by either party to the other pursuant to these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may be notified from time to time.

16.3 No failure of or delay by the Seller to exercise any right, power, remedy or privilege shall operate as a waiver of the same. No waiver by the Seller of any breach of any term of these Conditions by the Buyer shall be construed as a waiver of any prior or subsequent breach of the same or any other term of these Conditions.

16.4 If any provision of these Conditions is held by any court or competent authority to be invalid or unenforceable in whole or in part then the validity of the rest of these Conditions and the remainder of the provision in question shall not be affected thereby.

17. Consumer Protection (Distance Selling) Regulations 2000

17.1 If you are a consumer based in the UK or the European Union you have the legal right to cancel your Order within seven (7) working days following your receipt of the Goods under the Consumer Protection (Distance Selling) Regulations 2000. Refunds will be processed under the Regulations in accordance with your legal rights. These Regulations do not apply to made to measure Goods and personalised Goods.

18. Choice of law and jurisdiction

Any dispute or claim arising between the parties hereto shall be governed and construed according to English law and shall be subject to the exclusive jurisdiction of the English courts.

NOTHING CONTAINED IN THESE TERMS & CONDITIONS IS INTENDED TO AFFECT, NOR WILL IT AFFECT, A CONSUMER'S STATUTORY RIGHTS