

Inglese

Annexure A

Optotec S.p.A.

STANDARD TERMS OF SALE

(These Terms are to be read along with the Terms of Quotation/Offer Letter)

Optotec S.p.A., hereinafter referred to as the “Seller”, hereby mentions its standard terms of sale for Products manufactured and/or provided by it. These terms and conditions form part of and apply to all the transaction of sale and supply of any Products by the Seller to any other party hereinafter referred to as the “Purchaser”. These terms are in addition to the Special Terms and Conditions (forming part of Quotation/proposal given by the Seller or any other agreement governing the transaction) and to the extent these contradict with Special Terms, the Special Terms will supersede.

1. The Quotation/proposal provided herewith these terms and conditions shall be treated as invitation to an offer and no Purchase Order raised or issued by any prospective purchaser shall be binding on the Seller, unless the Seller has expressly accepted the same.
Orders are not binding on the Seller until the Seller has confirmed the order in writing, by fax or e-mail, pursuant to an Order Confirmation. Confirmation should be sent within four (4) weeks from receipt of the Order, during which the Buyer remains bound to the order shipped.
Where the counteroffer or conditional acceptance is given by the Purchasers, the same shall not be binding on the Seller unless expressly accepted /approved by the Seller. The Purchaser must ensure that the terms of its order and any applicable specifications are complete and accurate.
2. The prices charged to the Buyer will be in Euro (EUR); unless otherwise indicated in the Quotation. Unless otherwise agreed by the parties, the logistics, packaging and insurance costs, including any other surtaxes, are payable to seller over and above the price. The prices are intended on an EX WORKS Garbagnate Milanese (Milan, Italy) basis and include only the loading costs, unless otherwise stated in the Quotation.
Unless otherwise agreed in writing, the costs of packaging, excluding VAT, and transport of the goods to destination, including stamp duty on drafts and promissory notes, shall be paid by and invoiced separately to the Purchaser, as well as any present and future charges or costs ancillary to the sales contract or payment (e.g. bank costs, etc.).
Unless otherwise expressly agreed in writing, payment should be made in full by Bank Transfer in advance using the bank details communicated by the Seller when the Order Confirmation is issued.
In the case of late payment, the Seller shall have the right to apply to the Purchaser interests on arrears pursuant to Legislative Decree n. 231/2002.

In case of late payment by the Buyer, subsequent payments will be allocated, in the following order, to cover expenses, interests, the principal according to the chronological order of the due date.

The Buyer may not offset credits of Seller against credits that - in turn - the Buyer has towards the Seller, unless the Seller expressly permits the credits to be offset or these credits have been ascertained pursuant to a judgment which is final.

The Purchaser may not suspend payments for any reason whatsoever and expressly agrees to submit objections or claims only once it has duly fulfilled its obligations.

3. All the Purchase Orders issued to the Seller shall be complete with details like order number, full description of the Products to be purchased and delivery schedule. The reference number of the quotation has to be mentioned in the Purchase Order. The matters, on which PO is silent, shall be dealt in with by the Seller in prudent commercial manner.
4. Any terms and conditions mentioned in the Purchase Order which are conflicting with the terms and conditions mentioned herein then the terms and conditions mentioned in this document shall prevail over the Purchase Order.
5. The quantity and description of the Products will be as set out in the Seller's acknowledgement of order. All samples, drawings, descriptive matter, specifications and advertising issued by the Seller (or the manufacturer of the Products) and any descriptions or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Products or Services represented by or described in them. They will not form part of the Contract and this is not a sale by sample. The Seller may make any changes to the specification, design, materials or finishes of the Products which are required to conform to any applicable safety or other statutory or regulatory requirements and can supply from any of its manufacturing units.
All quotations, drawings and other documents ancillary to the Offer, and related copyrights are the property of the Seller; the originals and copies thereof may not disclosed or made available to third parties - not even for viewing. Projects classified as "confidential" by the Purchaser may be made available by the Seller to third parties only with the Purchaser's consent.
6. Without prejudice to the Seller's right to demand full payment on the due date, the Seller may at its sole discretion, allow a further period of credit charging interest on arrears at the interest rate provided by Legislative Decree no. 231/2002.
Time specified for payment is of the essence.
7. All payments to be made by the Purchaser under these terms will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Purchaser is required by law to make any such deduction or withholding. The Seller may appropriate any payment made by the Purchaser to the Seller to such of the invoices for the Products as the Seller thinks fit, despite any purported appropriation by the Purchaser. Without prejudice to any other rights the Seller may have, the Seller will have the right to suspend performance of its obligations under these terms if the Purchaser does not make any payment on or before due date.
8. The Purchaser agrees that the Seller shall be entitled to use the services of a credit agency from time to time to obtain information concerning the Purchaser (and where the Purchaser is a Seller, its Directors) in order to assess the Purchaser's credit worthiness.

9. The Seller is deemed to have delivered the Products when the Products transferred to the common carrier on an EX WORKS Garbagnate Milanese (Milan, Italy) basis unless otherwise specified by the Quotation and from there on any risk of loss, damages or destruction to the Products shall be borne by the Purchaser.
10. Unless agreed otherwise, the Seller is not liable for any claims for non-fulfilment or late Delivery of Products or for any loss or damage (including consequential/indirect loss or damage) suffered by the Purchaser arising from delay in Delivery or failure to deliver and the Purchaser shall accept and pay for the Products notwithstanding late Delivery.
The Seller shall exert its best efforts to meet the agreed delivery terms; any delay will not entitle the Purchaser to request termination of the contract or claim direct or indirect damages; without prejudice to the Purchaser's right to declare the contract terminated if delivery has not been made after more than 60 days have elapsed from the agreed delivery term. The agreed delivery time is considered to be essential within the meaning of Article 1457 of the Italian Civil Code only if it is expressly indicated as an essential delivery term on the Purchaser's order, and has been expressly accepted as such in the Seller's Order Confirmation.
11. Unless otherwise agreed by the Purchaser and the Seller, the Seller shall be entitled to deliver the Products in partial shipments.
12. Notwithstanding the Purchaser's inability to accept Delivery of the Products, the Seller shall be deemed to have delivered the Products in accordance with these Terms of Sale. If Purchaser fails to inspect the Product within the agreed time period, the Purchaser will be deemed to have surrendered its right to inspect.
13. The Seller reserves the right to charge the Purchaser for any costs, charges or expenses whatsoever that the Seller may incur as a result of the following events:
 - i. Detention of the Products to the extent the same is not caused or contributed to by the Seller;
 - ii. Demurrage on ships and port as a consequence of any act or omission of the Purchaser;
 - iii. Any special requirements or stipulations of the Purchaser accepted by the Seller but not provided for in the Terms of Sale;
 - iv. Any increase in duties, taxes, freight, insurance or other charges or expenses from the date of acceptance of the Purchaser's order by the Seller to the date of Delivery.
 - v. If the Seller notifies the Purchaser that the Products are ready for Delivery and the Purchaser requests the Seller to hold the Products in storage on its behalf, the Seller at the Purchaser's risk will hold such Products, and the Seller shall be entitled to charge storage fees in respect of the Products so stored.
14. The Purchaser shall inspect the Products immediately upon receipt of delivery of the goods and, if the Products are damaged or not otherwise in conformity with the specifications, the Purchaser shall give written notice to the Seller of the details in respect thereof within 8 (eight) days of the date of Delivery, unless otherwise agreed. All the delays which are caused due to any action or inaction on the part of Purchaser will be attributable to Purchaser.
15. Any Products the subject of a notice as aforesaid shall be left in the state and condition in which they were delivered until such time as the Seller or its duly authorised agent has inspected the Products, such inspection to be carried out within a reasonable time after notification by the Purchaser at the cost of Purchaser. If the Products are not so left in the

state and condition in which they were delivered, the Purchaser shall be deemed to have accepted the Products and shall pay the purchase price for the Products to the Seller.

16. Acceptance of the Products shall be deemed for all purposes to have taken place when dispatch has occurred, and the Purchaser has not given written notice as aforesaid within 8 (eight) days of the date of Delivery. No Products will be accepted for return by the Seller unless agreed in writing by the Seller prior to such return and then only upon conditions acceptable to the Seller and at the Purchaser's entire risk as to loss or damage.
17. Seller confirms that the Products sold under these Terms of Sale shall be of best quality and workmanship and shall be strictly in accordance with specifications and particulars contained in the order and warranties that Products would continue to conform to the description and quality aforesaid for a period of 12 (twelve) months from the date of supply or such other period as may be agreed by the Parties. The Seller's liability shall, at the option of the Seller, be limited to (a) the cost of replacing of the Products in question; or (b) the cost of repairing the Products in question; or (c) the replacement of the Products in question; or (d) the repair of the Products in question.
18. No warranty is made to claims arising out of combinations of the Products with Products provided by others, or to claims resulting from compliance of the Products with Purchaser's design or specifications. Purchaser assumes and shall hold Seller harmless against any patent liability for Products manufactured to patent's design or specifications or specially designed by Seller to meet Purchaser's requirements.
19. This guarantee is subject to fulfilment by the Purchaser of its obligations as provided by the contract.

The Seller warrants that its products have been manufactured in a workmanlike manner, using suitable materials and designs, for a period of twelve (12) months from the date of the transfer of the risk or from the time the goods are made available to Purchaser, or the carrier appointed by Purchaser for shipment, or when the goods leave the Seller's availability.

The Seller therefore undertakes to replace or repair free of charge, in the shortest possible time, at the Seller's discretion, on the premises of the Seller's or Purchaser or at the place where the goods have been received, any products or components thereof that do not comply with the guaranteed specifications. In the case of delivery to a foreign country, any additional costs for improvement/replacement are covered by this guarantee only if they do not imply very high amounts.

The Seller declines all and any liability for normal breakages, wear and tear, damage caused by improper or inaccurate use, failure to comply with the method of use indicated, improper installation by the Buyer or third parties, inappropriate logistics location.

The Purchaser shall allow the Seller to make - within a reasonable period of time - any necessary and/or appropriate improvements and replacements to the products under this warranty. Should the Purchaser refuse to do so, the Purchaser will lose the guarantee. Improvement/replacements are also excluded if the Buyer or third parties attempt to install or modify the product, - without the Seller's consent.

The Seller's warranty covers improved or replacement products or parts thereof only until the warranty expires for the original product; the expiry of the warranty period is however suspended for the duration of the improvement and replacement works.

The replaced and/or discarded parts are the property of the Seller; they shall therefore be returned, at the Purchaser's expense, to the Seller's registered office or any other location

indicated by the Seller. The Seller may however authorise the Buyer in writing to dispose of such parts.

The warranty obligation provided by this clause is the only warranty provided by the Seller. All other rights of the Purchaser are excluded, within the mandatory limits provided by law. If defects are found on the products, the Purchaser should send an email to: _____@_____.____, describing the specific nature of the defect, and attaching photographs. This obligation should be fulfilled, under penalty of forfeiture, within eight (8) days from the date of receipt of the products in the case of obvious defects (which by way of example and not in a limiting sense may be: the condition of the packaging, quantity, number or external characteristics of the products, etc.) or within 8 days from the discovery of the defect in the case of hidden defects that may not be identified with a careful check upon receipt of the goods. The non-conformity report should accurately describe the defective product, indicating the product code, the delivery date and the nature of the defect, and should be accompanied by a copy of the transport document. After the above terms, the claim will not be accepted.

Without prejudice to the wilful misconduct or gross negligence of the Seller, any other responsibility, whether contractual or non-contractual, which may in any way arise from, or refer to, the supply of non-conforming or defective Products, including, but not limited to, liability for any direct, indirect or consequential damage, including loss of production and machine downtime, is excluded.

Under no circumstances can the Seller be held liable for damage caused by improper use of the product, incorrect or poor maintenance, incorrect positioning, tampering or other acts of negligence attributable to the Purchaser.

The Seller shall in any case not pay damages in excess of the amount received for the single supply.

20. The Purchase and Seller will not be deemed not to be in breach of these Terms of Sale or otherwise liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under these Terms of Sale due to Force Majeure, provided that it has and continues to comply with its obligations set out in PO. If the performance of its obligations under these Terms of Sale is affected by Force Majeure the party affected will give written notice to the other party, specifying the nature and extent of the Force Majeure, as soon as reasonably practicable after becoming aware of the Force Majeure and will at all times use all reasonable endeavours to bring the Force Majeure event to an end and, whilst the Force Majeure is continuing, mitigate its severity; the date for performance of such obligation will be deemed suspended only for a period equal to the delay caused by such event.

If the Force Majeure in question continues for more than 8 (eight) weeks, either party may give written notice to the other to terminate the Contract. The notice to terminate must specify the termination date, which must not be less than 15 (fifteen) days after the date on which the notice is given, and once such notice has been validly given, these Terms of Sale will terminate on the given date of termination.

21. The termination of this Contact for any reason whatsoever will not affect the rights, duties and liabilities of either the Purchaser or the Seller accrued prior to termination the conditions, which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

22. No right or license is granted to the Purchaser in respect of the Intellectual Property Rights of the Seller, except the right to use, or re-sell the Products in the Purchaser's ordinary course of business. The Purchaser will not without the Seller's prior consent allow any trademarks of the Seller or other words or marks applied to the Products to be obliterated, obscured or omitted nor add any additional marks or words.
23. The Purchaser will keep confidential any and all Confidential Information that it may acquire. The Purchaser will not use the Confidential Information for any purpose other than to perform its obligations under the Contract. The Purchaser will ensure that its officers and employees comply with the provisions of this Condition.
24. The Seller may at its discretion furnish technical advice to the Purchaser relating to Products manufactured or supplied by the Seller or use of them, but on the basis that the same is given at the Purchaser's risk and the Seller be under no liability to the Purchaser whatsoever within the meaning of Article 1229 of the Italian Civil Code (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any damage or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, loss of goodwill etc.) howsoever caused arising there from nor shall the Purchaser be entitled to rescind the Contract.
25. Seller reserves the right to change design, dimensions, weight or specifications of the Products and/or packing. However, Seller shall not make any change to Products ordered by Purchaser without the Purchaser's consent if the change impairs the performance or function of the Products.
26. These Terms of Sale and the Quotation shall not be amended or otherwise altered except pursuant to an instrument in writing signed or proposed by Seller. These Terms of Sale shall be binding upon and inure to the benefit of the respective successors, legal representatives and permitted assigns of the parties, provided that no Party shall assign any of its rights, and/or obligations hereunder without the prior written consent of the other, and any attempted assignment without consent shall be null and void.
27. All notices and other communications should be sent in writing to the recipient's certified e-mail address as entered in the register of companies or the national Index of certified e-mail addresses of businesses and professionals (INI-PEC), or, if this is not possible, by Registered Mail with advice of delivery.
28. If at any time any Party shall waive its rights accruing to it due to breach of any of the provisions of these Terms of Sale such waiver shall not be construed as continuing waiver of other breaches of the same kind or other provisions of the Terms of Sale. No delay on the part of the Parties in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of the Parties of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder.
29. Any provision of the Terms of Sale, which is held to be invalid or unenforceable for any reason, shall be ineffective to the extent of such invalidity or unenforceability only, without affecting in any way the remaining provisions hereof.
30. The court having jurisdiction in the case of any litigation that may arise between the parties in relation to these Standard Terms of Sale or any sale to which they are applicable shall be exclusively that of Milan (Italy), without prejudice to the Seller's right to apply - at its discretion - to the court having jurisdiction at the place of the Buyer's domicile.

These Standard Terms of Sale and the sales to which they are applicable, are governed by Italian law.

date _____

Seller

Buyer

Pursuant to and for the purposes of Articles 1341 and 1342 of the Italian Civil Code, the Purchaser declares to have read and specifically approves, the following Articles: 7 (Payments), 10 (Delivery), 13 (Costs, Charges and Expenses), 17 (Warranty), 18 (Warranty), 19 (Warranty), 24 (Technical advice) and 30 (Jurisdiction and applicable law).

Buyer

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Allegato B
SPECIFICHE DEL PRODOTTO