

Corning Optical Communications Pty Ltd Terms and Conditions

ALL QUOTATIONS AND OFFERS ARE MADE BY THE COMPANY AND ALL ORDERS ARE PLACED BY THE CUSTOMER WITH THE COMPANY ONLY ON CONDITION THAT THESE TERMS AND CONDITIONS SHALL APPLY TO THE EXCLUSION OF ALL OTHER TERMS AND CONDITIONS, SAVE INSOFAR AS ANY SPECIAL TERMS AND CONDITIONS ARE EXPRESSLY AGREED TO IN WRITING BY THE COMPANY AND THE CUSTOMER.

1. Interpretation:

Wherever stated “**Company**” means Corning Optical Communications Pty. Ltd. (formerly known as Corning Cable Systems Pty Ltd) and “**Customer**” means the person, persons, firm or company to whom the quotation is addressed or to whom the offer is made for this sale and shall include their respective legal representatives, administrators, successors and/or permitted assignees. Delivery of an Item to the Customer shall be deemed to have occurred on the date that the Item is delivered to the Customer and/or the date that the Item is delivered to a carrier for conveyance to the Customer. “Items”, unless the context requires otherwise, means the cable, connectors, hardware, hardware accessories, metals, materials, products, equipment, installations, samples, prototypes and experimental or preliminary work or the provision of services (as the case may be) which are the subject of a binding quotation, offer, or order.

Paragraph headings following paragraph numbers do not form part of the Company’s terms and conditions and are provided only for reference.

2. Validity:

The Company’s quotation or offer will remain open for acceptance for the period stated in the Company’s quotation or offer, or if no such period is stated, the period of thirty days from the date that the quotation or offer is delivered to the Customer. If the validity period has expired, the Company’s offer shall lapse automatically and prices will be subject to review at the time the order is placed. The Company’s quotation or offer may be revised in whole or part or withdrawn prior to expiration of the validity period or acceptance of the quotation or offer by the Customer.

3. Acceptance:

A quotation or offer by the Company shall become binding upon the Company and the Customer only upon receipt from the Customer of an unconditional written acceptance in such form as the Company may require from time to time. Such an unconditional written acceptance will be deemed to include a written order placed by the Customer with the Company, which order is strictly in accordance with the terms of the relevant quotation or offer. If an order is not in writing or is not strictly in accordance with the terms of the relevant quotation or order, the Company may at its absolute discretion elect to accept or reject the order. Without limiting paragraph 6 below, such an order will only become binding on the Company and the Customer if the Company notifies the Customer in writing of acceptance of the order. Order forms and other documents provided to the Company by the Customer as confirmation of orders previously placed must be clearly marked with the word Confirmation. Confirmation documents not so marked will be treated as original orders.

4. Inspection, Testing and Certification of Compliance:

Selected Items, at the Company's option, are subject to inspection before dispatch by the Company or the applicable supplier the Company represents. Orders for Items which must comply with national standards must specify details of the standard. If tests are to be performed at the Customer's request the order must specify details of the routine or special test and whether test certificates are required. All tests and inspections shall be carried out by the Company's personnel at the Company's premises and are final and binding unless prior agreement in writing is given by the Company.

5. Delivery Duration and Quoted Delivery or Completion Times:

Delivery or completion time or times stated by the Company are estimates based on present production commitments, availability of materials, labour, transport, and other contingencies. Delivery or completion estimates should be checked on placement of the order. Such times are to be treated merely as estimates not involving any contractual obligation, unless the Company has expressly confirmed its agreement in writing and any such contract shall be subject to the Company not being delayed by instructions, or lack of instructions, or by industrial dispute, or any cause or event whatsoever beyond its reasonable control.

6. Cancellation or Deferral of Order:

Should an order be placed by the Customer, it cannot be cancelled or delivery deferred unless prior agreement in writing is given by the Company and then only on terms which will indemnify the Company against any loss or damage incurred by the Company from the Customer's cancellation or delay.

7. Prices:

All Items will be priced subject to the following provisions unless otherwise specified in writing by the Company:

(a) The Company's quotation or offer is based on:

- (i) Prices current at the date of the quotation or offer;
- (ii) the quantity and/or pack size specified for the relevant Item is subject to variation if the quantity or pack size is altered in any way; and
- (iii) the Customer agrees to accept reasonable short lengths of ordered cable.

(b) Customer orders shall be on the basis that:

- (i) all prices are strictly net; and
- (ii) prices charged shall be those ruling on the day of dispatch or date of invoice if Items are held awaiting shipment.

8. Other Charges:

All Items may be subject to additional charges on the basis of the following provisions:

- (a) Where tools are not available and/or need to be purchased by the Company in order to supply the relevant Item, the Customer will be responsible for tooling charges, which will be agreed by the parties in advance, unless otherwise specified or agreed by the Company.
- (b) Drums, cases, packages, and reels, etc. will be supplied in accordance with the standard price lists from time to time issued by the Company or its suppliers unless otherwise stated by the Company. Where a Customer requests goods to be packed in a manner other than that normally observed by the Company or where special packaging for intrastate, interstate, or overseas delivery is required, the Customer will be responsible for all relevant costs and charges.

- (c) The supply of certificates of testing, inspection or compliance with national and international standards at the request of the Customer will be subject to an additional charge of not less than the Company's currently prevailing minimum charge unless otherwise specified by the Company.
- (d) Carriage will be charged extra at the Company's rate currently in effect on the date the order is dispatched unless otherwise specified by the Company. Where the Customer nominates a method of carriage, the Customer will be responsible for all relevant costs and charges.
- (e) Insurance during transit will be charged at the rate currently in effect on the date the order is dispatched unless otherwise specified in the Company's quotation or offer. Where the Customer nominates the arrangements for insurance, the Customer will be responsible for all relevant costs and charges.
- (f) A service charge at the Company's rate currently in effect on the date the order is dispatched may be applied to each invoice below the total net value determined by the Company from time to time as notified to the Customer.
- (g) If there is a deferred delivery which is specifically requested by the Customer or due to the inability of the Customer to accept the Items for any reason on or after the due date for delivery or due to some other cause beyond the reasonable control of the Company in circumstances where the Company is ready to deliver and/or install the Items, then the Customer shall be liable for any extra charges, losses, costs, or expense incurred by the Company.
- (h) If the Company supplies metal drums as part of a value-added service, then the Customer has three (3) months, from the date of delivery to site of the metal drums, to return the drums to the Company. In the event that this does not occur, the Company reserves the right to charge the Customer the Company's cost of the metal drum. Prices quoted exclude GST unless otherwise specified by the Company. Where applicable, GST will be charged at the rate in effect on the day of dispatch and will be shown as a separate line on the invoice.
- (i) Any other existing or new taxes or government charges (other than income tax payable by the Company) from time to time imposed on or in respect of an Item will also be to the Customer's account.

9. **GST:**

- (a) Any reference in this clause 9 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply made under or in connection with this agreement does not include an amount on account of GST in respect of the supply (**GST Exclusive Consideration**) except as provided under this clause.
- (c) Any amount referred to in this agreement (other than an amount referred to in clause 9(h)) which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- (d) To the extent that GST is payable in respect of any supply made by a party (**Supplier**) under or in connection with this agreement, the consideration to be provided under this agreement for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- (e) The recipient must pay the additional amount payable under clause 9(d) to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- (f) The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under clause 9(d) or at such other time as the parties agree.

- (g) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this agreement, the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under clause 9(e), the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (h) If one of the parties to this agreement is entitled to be reimbursed or indemnified for a loss, cost, expense, or outgoing incurred in connection with this agreement, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense, or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 9(d).

10. Packing, Method of Delivery, and Point of Delivery:

Should an order be placed, the sale of all Items will be subject to the following conditions:

- (a) For ease of handling and protection during transit, selected Items, at the Company's option, shall be packaged.
- (b) The method of delivery will be nominated in the Company's quotation or offer unless otherwise specified by the Company.
- (c) Unless otherwise agreed with the Company, the point of delivery will be as nominated by the Company, provided that access is reasonable in the opinion of the Company.
- (d) The Customer at its own expense shall provide all necessary facilities, labour, and equipment to off-load the Items at the nominated point of delivery unless otherwise specified by the Company. The Customer must accept delivery of the Items at any time during normal business hours of the Company.
- (e) The Company, at its option, may elect to purchase from the Customer cable drums which are in reusable condition, in which case the Customer must at its expense promptly return such cable drums to the Company.

The Company must then pay the Customer for those returnable cable drums at a price reasonably determined by the Company.

11. Errors in Company Documents:

Clerical errors and misprints in computation, typing, or otherwise in the Company's documents including catalogues, price lists, delivery dockets, invoices, statements, or credit notes shall be subject to correction by the Company by means of reissue of the document or by adjusting dockets with reference to the original transaction. Any such errors or misprints will not entitle the Customer to a reduction or variation in the purchase price of the Items or in the Customer's obligations under these Terms and Conditions.

12. **Payment and Default:**

The Customer's credit facility with the Company (if applicable) shall remain in the name stated by the Customer on the Company's application for credit facilities until the Company is notified in writing and consent is given in writing by the Company. The Customer shall notify the Company as soon as practicable should there be any change in the legal entity, structure, beneficial ownership or management or equity control of the Customer or its business. Payment is to be made at the address specified on the Company's invoice/statement by the end of the month following the month in which the Items are invoiced unless otherwise agreed by the parties in writing, provided that if the Customer does not have a credit facility with the Company or if such a credit facility is removed the Customer must pay the purchase price for all Items in full on or before delivery. The Customer shall not be entitled on any ground whatsoever either wholly or in part to withhold payment when it becomes due. Without prejudice to the Company's other rights and remedies, default in payment shall entitle the Company to suspend deliveries or cancel undelivered portions of the order and to take proceedings for the collection of outstanding amounts and to charge interest on moneys outstanding at a rate of 2% per month compounded monthly from the due date for payment until payment is received in full.

13. **Retention:**

The Company will not, unless expressly confirmed in writing by the Company, agree to any retention clauses of the Customer's order forming part of these Terms and Conditions.

14. **Property and Risk:**

- (a) Property in the Items shall pass to the Customer at the time the Items are paid for by the Customer unless otherwise agreed in writing by the Company.
- (b) Until the Company has received payment in full for the Items the Customer shall hold the Items as bailee for the Company. During this time, the Customer may deal with the Items in the ordinary course of its business, provided that the Customer:
 - (i) holds all Proceeds (as defined in section 31 of the *Personal Property Securities Act 2009* ("PPS Act")) of sale for or (where the Items have been incorporated in other goods) attributable to the Items in a specific bank account to ensure that such Proceeds of sale are kept separate from all other moneys of the Customer; and
 - (ii) accounts fully to the Company for the purchase price of the Items in accordance with these Terms and Conditions.
- (c) All risks in respect of the Items delivered will be borne by the Customer from the time the Items cease to be within the actual possession of the Company or its agents, unless otherwise specified by the Company.
- (d) Items purchased from the Company shall be identified or held in a manner which enables them to be readily distinguished from Items purchased from other suppliers or any Items or other goods supplied by the Company to the Customer in respect of which the Customer has paid the Company in full.
- (e) Until the Company has received payment in full for the Items, the Customer irrevocably authorises the Company to enter the premises of the Customer or the premises of a third party at which the Items are being stored on behalf of the Customer, to retrieve those Items which have not been paid for in full if the Company reasonably suspects that the Customer is in breach of these Terms and Conditions. If the Company so retrieves the Items, the Company will not be liable for trespass or any resulting damage and, without limiting any of the Company's other rights and remedies, may keep or resell any of the repossessed Items.

15. **Return of Items Supplied:**

Subject to clause 17, Items returned for credit will only be accepted subject to the following conditions:

- (a) Items returned must have been approved by the Company as goods authorised for return.
- (b) Items returned must not be obsolete, incomplete, damaged, or otherwise imperfect.
- (c) The amount of credit allowed in respect of Items returned, if any, will be subject to a service charge at the Company's rate currently in effect, unless specifically stated otherwise by the Company.
- (d) Items specially produced or procured to the Customer's order cannot be returned as being unsuitable or because they are no longer required by the Customer.
- (e) Items must be returned to the Company's receiving point by the Customer (or by freight prepaid by the Customer) and no responsibility is accepted by the Company for Items lost or damaged in transit during return to the Company.
- (f) Any claims for credit must be made within thirty days after delivery of the relevant Items, unless otherwise specified by the Company from time to time.

16. **Customer Claims and Complaints:**

No claim for any alleged damage or shortage in quantity, length, or weight will be considered unless the carrier's delivery document is endorsed with full particulars of the alleged damage or shortage and notice in writing is given to the Company and the carrier within seven days from the date of receipt of the consignment. The Customer shall be responsible for filing and negotiating any claims against the carrier.

17. **Warranties, Indemnification, and Limitation of Liability:**

- (a) To the extent permitted by Schedule 2 to the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the *Fair Trading Act 1999* (Vic) (the "**Australian Consumer Law**"), any term, condition, warranty, or guarantee which would be implied by law as a term of this agreement is excluded.
- (b) Subject to the following provisions, all Items that are subject of a sale are warranted for a period of twelve months from the time of delivery or if agreed in writing between the Company and the Customer for a period of twelve months from the time of installation.
- (c) The Company has taken reasonable care in the preparation of product data, specifications, drawings, design details and performance figures contained in the Company's published literature, however, they are given by the Company as a guide only and are not tailored or targeted to the Customer's specific circumstances or requirements. Except where paragraph (m) applies, and to the fullest extent permitted by law, the Company does not accept any liability for the accuracy of this material, and for any injuries, expense, or loss from or for the results obtained using, such material, by the Customer or any of its servants, agents, or contractors.
- (d) Except where paragraph (m) applies, and to the fullest extent permitted by law, all orders are accepted on the understanding that the Customer will be responsible for determining that the Items sold or manufactured by the Company are suitable for a particular application.
- (e) Customer supplied goods or materials are accepted for processing by the Company at the Customer's own risk. Whilst the Company will use its endeavours to carry out the instructions of the Customer, all items are accepted, treated, processed, and stored entirely at the risk of the Customer and to the fullest extent permitted by law, no liability whatsoever (including arising from negligence) is accepted by the Company.

- (f) Except where paragraph (m) applies, and to the fullest extent permitted by law, if any defect or failure in the Items supplied becomes apparent under proper use within twelve months from the date of delivery and the Company is notified of the details, the Company will either, at its option, supply fresh goods in replacement or arrange repair of the original Item free of charge, provided the Company and its applicable supplier(s) are satisfied that the defect or failure is due solely to faulty workmanship or the use of faulty materials and that the relevant Items have not received maltreatment, inattention, interference, or other improper use by any person other than the Company.
- (g) Owing to the obligations placed upon it, the Company reserves the right not to accept any claim for loss of Items advised but not delivered unless notice is given in writing to the Company and the carrier within twenty-one days of the date of the advice note, or in the case of exported Items, within a reasonable time from date of shipment.
- (h) Except where paragraph (m) applies, and to the fullest extent permitted by law, no liability will be accepted by the Company or the supplier(s) the Company represents nor is any guarantee or other undertaking given or implied in respect of any act or omission by the Company in respect of the following:
 - (i) if performance figures are not obtained unless the specification to which the Company is working lays down such figures or unless the Company has made a specific guarantee in writing.
 - (ii) for liquidated damages suffered by the Customer or others consequent to the supply of Items later than the date of dispatch confirmed by the Company, unless expressly confirmed in writing by the Company.
 - (iii) for loss, damage, or delay caused by government order, war, civil commotion, force majeure, accidents, fires, strikes, lockouts, or delay in obtaining raw materials through shortage or advantage in price thereof or any other cause beyond the reasonable control of the Company.
- (i) Items are not designed or developed to enable the Company to provide any guarantee that Items will not be affected by attack by termites, rats, or other animals or organisms, unless otherwise specified by the Company. Where an organic repellent is incorporated in PVC-sheathed cable offered for use and buried directly in the ground, the Company advises that this protection cannot be regarded as completely effective. Where Nylon or double brass tapes are used for better protection, the Customer should note that the Company will still not accept liability should such attack occur.
- (j) To the fullest extent permitted by law, the provisions contained in this paragraph 17 are in lieu of and exclude all other warranties, conditions, and liabilities, expressed or implied, whether under common law statute or otherwise and whether relating to negligence, deliberate conduct, or any other cause, in relation to Items supplied by the Company, and no variation of these provisions shall be binding on it unless expressly accepted in writing by the company.
- (k) Except where paragraph (m) applies, and to the extent permitted by law, the Company's total aggregate liability under or arising in any way out of these Terms and Conditions, whether in contract, tort (including negligence), strict liability, under statute or otherwise, shall not exceed in the aggregate the amounts paid by the Customer to the Company under these Terms and Conditions.
- (l) Except where paragraph (m) applies, neither party has any liability to the other party, nor will either party be entitled to make any claim against the other party, in respect of any indirect or consequential loss, or any loss of revenue, loss of profit, loss of business, or loss of opportunity, which is suffered, incurred, or sustained by a party as a result of any act or omission of the other party, as a result of a defect or failure in the Items, or as a result of a breach of these Terms and Conditions.

(m) If the Customer is a Consumer:

- (i) paragraphs (d), (f), (h), (k), and (l) do not apply to any liability of the Company for failure to comply with a consumer guarantee applicable to these Terms and Conditions under the Australian Consumer Law (“**Consumer Guarantee**”);
- (ii) subject to paragraph (n), unless Items provided under these Terms and Conditions are goods “of a kind ordinarily acquired for personal, domestic or household use or consumption”, as that expression is used in section 3 of the Australian Consumer Law, the liability of the Company for any loss, damage, cost, or expense, however caused (including by tort (including negligence)), suffered or incurred by the Customer because of a failure to comply with a Consumer Guarantee is limited to the Company (at its election):

(A) resupplying the Item; or

(B) paying the cost of having the Item supplied again; and

(n) paragraph (m) does not apply if it is not ‘fair or reasonable’ for the purposes of section 64A of the Australian Consumer Law for the Company to rely on it.

(o) Nothing in these Terms and Conditions is intended to exclude, restrict, or modify rights which the Customer may have under the Australian Consumer Law or otherwise which may not be excluded restricted or modified by agreement.

18. **Indemnity:**

The Customer must indemnify and keep indemnified the Company and each of its directors, officers, servants, agents and contractors (“**Indemnified Persons**”) from and against all claims, actions, demands, liabilities, loss, damage, costs, charges, and expenses of whatsoever nature arising out of or in connection with any one or more of the following:

- (a) any material breach by the Customer of any of its obligations set out in these Terms and Conditions;
- (b) any wilful, unlawful, or negligent act or omission of the Customer or any of its servants, agents, or contractors;
- (c) the presence of the Contractor’s servants, agents, or contractors on the Company’s premises; and
- (d) any injury or death, or loss or damage of property, caused by any act or omission of the Contractor or its servants, agents, or contractors.

Company holds the benefit of this clause on trust for itself and each Indemnified Person.

19. **Alteration of Conditions and Other Agreements:**

- (a) No employee, servant, or agent of the Company is authorised to alter, vary, or waive these Terms and Conditions or any one or more of them by oral agreement.
- (b) The Customer acknowledges and agrees that nothing contained in any terms and conditions of purchase or acquisition which might apart from the provision of this paragraph have been applicable to the purchase of Items by the Customer shall take precedence over or amend or in any way effect these Terms and Conditions.
- (c) The Customer confirms its acceptance of this provision by taking delivery of the Items and agrees not to subsequently attempt to amend, add to, or override the provisions hereof. In particular, it is expressly agreed by the Customer that the contractual conditions, (if any) of the Customer are excluded in their entirety.
- (d) These Terms and Conditions are to be read as including any Terms and Conditions of Sale specified by the Company’s suppliers. Where such conditions conflict with these Terms and Conditions, these Terms and Conditions will prevail to the extent of the conflict.

20. **Personal Property Securities Law:**

The Customer acknowledges that under this agreement the Customer grants Security Interest(s) (as defined in the PPS Act) to the Company and the Customer acknowledges that this agreement constitutes a Security Agreement for the purposes of the PPS Act.

The Customer will do anything reasonably required by the Company to enable the Company to register its Security Interest(s), with the priority the Company requires, and to maintain the registration.

The Security Interest(s) arising under this agreement attach to the Items when the Customer obtains possession of the Items and the parties confirm that they have not agreed that any Security Interest arising under this contract attaches at any later time.

The Customer acknowledges that the Company may perfect its Security Interest(s) by lodging a Financing Statement (as defined in the PPS Act) on the Personal Property Securities Register established under the PPS Act.

The Customer must pay the Company all registration and enforcement costs and expenses which the Company may incur in:

- (a) preparing, lodging, or registering any Financing Statement or Financing Change Statement (each as defined in the PPS Act) in relation to any Security Interests that are granted to the Company under this agreement;
- (b) maintaining those registrations; and
- (c) enforcing any Security Interests granted to the Company under this agreement.

All of the enforcement provisions of Chapter 4 of the PPS Act apply to all of the Security Interests created under or referred to in this agreement, except the following provisions of the PPS Act will not apply to the enforcement of these terms:

- (i) section 95 (notice of removal of accession), to the extent that it requires the Company to give a notice to the Customer;
- (ii) subsection 121(4) (enforcement of liquid assets – notice to grantor);
- (iii) section 130 (notice of disposal), to the extent that it requires the Company to give the Customer a notice;
- (iv) paragraph 132(3)(d) (contents of statement of account after disposal);
- (v) subsection 132(4) (statement of account if no disposal);
- (vi) section 135 (notice of retention);
- (vii) section 142 (redemption of collateral); and
- (viii) section 143 (reinstatement of security agreement).

The Company does not need to give the Customer any notice under the PPS Act (including a notice of a Verification Statement, as defined in the PPS Act) unless the notice is required by the PPS Act and that requirement cannot be excluded.

21. **Confidentiality:**

- (a) Each party agrees to keep all information of the other party that is of a confidential nature (including pricing) which is disclosed arising out of or in connection with this agreement (apart from information in the public domain or independently developed by the other party) in strict confidence. A party must only use the other party's confidential information for purposes necessary to comply with, or enjoy a benefit conferred by this agreement.
- (b) The parties agree that neither party will disclose to an "interested person" (as defined in section 275(9) of the PPS Act) or any other person, any information of the kind described in section 275(1) of the PPS Act. The Customer will not authorise the disclosure of any information of the kind described in section 275(1) of the PPS Act.

22. **Governing Law and Jurisdiction:**

These terms and conditions are governed by and must be construed in accordance with the laws of the State of Victoria, Australia. The parties submit to the exclusive jurisdiction of the Courts of that State and the Commonwealth of Australia in respect of all matters or things arising out of these Terms and Conditions.