



**TOSOH QUARTZ, INC.**

**TOSOH QUARTZ, INC.  
Terms & Conditions (TQI as Seller)**

**REQUEST FOR QUOTATION, PLACEMENT OR ACCEPTANCE OF ORDER.** A request for quotation, placement or acceptance of an order by your company ("**Buyer**") shall constitute an acceptance of these terms and conditions ("**Terms**"). Any of the Buyer's terms and conditions that are in addition to or different from these Terms and that are not separately agreed to by Tosoh Quartz, Inc. ("**Seller**") in writing, are objected to and shall be of no effect. All offers shall be deemed accepted by Buyer upon transmission to Seller of Buyer's acceptance of the offer in any reasonable manner. The Buyer's purchase order, or the Buyer's acceptance of a quotations for goods by the Seller, constitutes an offer by the Buyer to purchase the goods specified in it on these Terms. No offer placed by the Buyer shall be accepted by the Seller other than by written confirmation or acceptance issued and executed by the Seller or (if earlier) by Seller providing the goods, at which time the agreement between the parties will be established. These Terms shall apply to and be incorporated into the agreement between the Parties and prevail over any term or conditions contained, or referred to, in the Buyer's purchase order, confirmation of order, acceptance of a quotation or specification, or any inconsistent terms or conditions implied by law, trade custom, practice or course of dealing. Quotations are given by the Seller on the basis that no agreement shall come into existence except in accordance with these Terms. The Seller shall not be bound by and reserves the right to correct, before and after the agreement between the parties is made, any typographical, clerical or other obvious error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller. The Buyer shall be responsible for giving the Seller within a sufficient time any information known to the Buyer that the Seller requires to perform its obligations under the agreement between the parties.

**PRICE.** The price of the goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's relevant published price list current at the date of acceptance of the order by the Seller. Unless otherwise agreed, prices shall be exclusive of costs of packaging, carriage and insurance. Seller reserves the right to revise the pricing if there is any change in quantity, inventory availability, size, finish or method of shipment different from those contained in the original order. Seller reserves the right, by giving notice to Buyer at any time before delivery, to increase the price of the goods to reflect an increase in costs that is due to factors beyond the Seller's control (including, without limitation, any foreign currency exchange fluctuation, increase or imposition of taxes or duties or increase in the costs of labor, materials or other costs of manufacture) or that is due to any change in delivery dates, quantities, specifications for the goods that is requested by the Buyer, or any delay caused by failure of the Buyer to give the Seller correct or adequate information or instructions. Except as otherwise stated under the terms of any quotation or in any price list of Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on the basis of FOB[port of shipment], which for purposes of this agreement is defined as that term is defined in Incoterms. Incoterms means the international rules for the interpretation of trade terms published by the International Chamber of Commerce. Where the Seller agrees to deliver the goods otherwise, the Buyer shall be liable to pay the Seller's charges for transport, additional packaging and insurance. The Buyer shall meet the cost of any special packaging requested by the Buyer or any packaging rendered necessary by any particular method of delivery. All prices for the goods are exclusive of any applicable value added or any other sales tax, or duty or import or export duty, or brokers' fees or clearance fees that may be chargeable (whether or not required to be paid to enable the goods to be shipped from one country to another) and for which the Buyer shall be additionally responsible for paying. Failure to pay any such taxes, duties or fees shall not entitle the Buyer to withhold or delay payment of the price. Any additional expenses or charges incurred by the Seller resulting from such failure shall be for the Buyer's account. All prices and discounts are confidential and shall not be disclosed to any third party without the Seller's written consent.

**RETURNS.** No product may be returned without the Seller's consent. The Seller reserves the right to impose a 20% restocking charge for approved returns. Payment for all in-bound and out-bound freight charges on approved returns will be the responsibility of the Buyer unless prior arrangements have been agreed to by Seller.

**CANCELLATIONS.** No order may be canceled by Buyer without Seller's written approval. Seller may, at its sole discretion, condition its approval of the canceled order upon Buyer paying a cancellation charge equal to Seller's actual costs to obtain materials necessary to fill the order, and/or Seller's actual costs for work in progress or finished goods.

**PAYMENT TERMS.** **Terms of payment shall be set forth on the face of the quotation or invoice.** Terms are calculated from the date of invoice. All payments are to be made in sterling by transfer to such bank account as the Seller may from time to time notify Buyer in writing. If payment of an invoice is not made in full by the due date a) the Buyer shall pay interest on any unpaid balance after the required payment date, both before and after judgment, at a rate of 6% over Barclays Bank Base Rate from time to time without prejudice to any other rights or remedies that the Seller may have; b) the Seller may cancel the agreement between the parties or suspend any further deliveries to the Buyer whether under that agreement or not; and c) the Seller may appropriate any payment made by the Buyer to such of the goods (or goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer). Payments shall be made without right of setoff. Seller shall have the right to suspend credit or to modify credit terms when, in Seller's sole discretion, the Buyer's financial condition so warrants. In the event the Seller is required to institute any type of action or proceeding to recover any obligations due Seller by Buyer, Seller may receive, as an additional item of damages, reasonable collection and legal fees incurred by Seller in pursuit of any obligations due from Buyer.

**DELIVERY, SHIPPING AND LICENSES.** If Buyer has not provided written routing and shipping instructions, Seller reserves the right to select carrier and routing. All shipments are F.O.B. [port of shipment], unless other arrangements have been made. If the Buyer refuses or fails to take delivery of goods tendered in accordance with the agreement between the parties or fails to take any action necessary on its part for delivery or shipment of the goods (otherwise than by reason of the Seller's fault), the Seller may, without prejudice to any other right or remedy a) store the goods (at the risk of the buyer) and charge the Buyer for the reasonable costs of storage (including insurance); and/or b) terminate the agreement with immediate effect, re-sell or otherwise dispose of the goods as the Seller may determine and recover from the Buyer any loss and additional costs incurred as a result of that refusal or failure. The Buyer shall be responsible for providing the Seller with any information that is necessary to enable the Seller to fulfill orders for the goods and to comply with all manufacturing, sales, labeling, packaging, marketing and other applicable legal requirements in the country of destination; and, complying with any legislation or regulations governing the importation of the goods into the country of destination. If any license or consent of any government or other authority is required for the acquisition, carriage or use of the goods by the Buyer, the Buyer shall obtain it at its own expense and if required by the



Seller produce evidence on demand that it has done so. Failure to obtain it shall not entitle the Buyer to withhold or delay payment of the price. Any additional expenses incurred by the Seller resulting from such failure shall be for the Buyer's account. In no event will the Seller be responsible for loss or damages due to failure to make delivery in accordance to the delivery estimate. In addition, the Seller shall not be liable for failure in shipment or delivery caused by fires, pandemics, strikes, casualties, delays in transportation, acts of God or other causes beyond the Sellers control. Seller's judgments shall be final and shall not subject Seller to any claim for damages by virtue of any shortages or failure to deliver.

**RISK AND TITLE.** Unless otherwise agreed in these Terms or in Incoterms that the parties have agreed in writing shall apply to the supply of the goods, risk of damage to or loss of the goods shall pass to the Buyer on delivery. Notwithstanding delivery, the goods shall remain the sole and absolute property of the Seller as legal and equitable owner until the Buyer pays to the Seller the price of the goods in full and the full price of any other goods the subject of any other contract with the Seller for which payment is then due. Until title in the goods has passed to the Buyer, the Buyer shall, once it has possession of the goods: a) hold the goods on a fiduciary basis as the Seller's bailee; b) store the goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party and readily identifiable as the Seller's property; c) not destroy, deface or obscure any identifying mark or packaging on or relating to the goods; d) maintain the goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller and on request produce the policy of insurance to the Seller; and e) be entitled to resell the goods in the ordinary course of its business on its own behalf as principal (and not as agent for Seller) and/or process the goods in such fashion as it may wish and incorporate them in or with any other product or products. Until title in the goods passes to the Buyer, the Buyer shall account to the Seller for any proceeds of sale of the goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any other money or property of the Buyer and third parties. Until title in the goods passes to the Buyer, the Seller may at any time require the Buyer to deliver up the goods to the Seller and, if the Buyer fails to do so immediately, the Seller may immediately repossess any such goods.

For this purpose the Buyer grants an irrevocable right to the Seller and its agents to enter any of its premises where the goods are stored to inspect and repossess the goods. The Buyer may not pledge or in any way charge by way of security for indebtedness any of the goods that remain in the property of the Seller, but if the Buyer does so, all money owing by the Buyer to the Seller shall (without prejudice to any other right of remedy of the Seller) immediately become due and payable.

**SEVERANCE.** If any provision of these Terms is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect the legality, validity or enforceability in that jurisdiction of any other provision of these Terms or the legality, validity or enforceability in any other jurisdiction of that or any other provision of these Terms. Whilst the parties consider these Terms reasonable, having taken independent legal advice, if any one or more of them are adjudged alone or together to be illegal, invalid or unenforceable, the parties shall negotiate in good faith to modify the provisions so that to the greatest extent possible they achieve the same effect as would have been achieved by the invalid or unenforceable provisions.

**GOVERNING LAW/COURTS.** English law governs this agreement and the negotiations leading to this agreement. In the event this agreement pertains to the sale of any goods outside the United States, the parties agree that the United Nations Convention for the International Sale of Goods shall not apply to this agreement. The parties submit to the jurisdiction of the English courts.

**LIMITED WARRANTY AND LIMITATION OF REMEDIES.**

(a) Buyer shall inspect all products sold under these Terms for shipping damage immediately upon receipt and notify Seller of any such damage within three (3) business days of receipt. If Seller is not notified of such damage within three (3) business days of receipt, the product will be deemed accepted by Buyer. Seller warrants that all products sold hereunder will be free from defects in materials, workmanship and thermal cracking under normal use for a period of thirty (30) days from date of installation. Any defective product shall be returned to Seller at Seller's expense and Seller shall bear the risk of loss of any such product while the product is in transit, provided that the Buyer has packed the product as specified below. If Buyer fails to pack the product as specified below, Seller's limited warranty will be null and void and the party seeking to enforce the warranty will have no warranty cause of action or remedy against Seller under that warranty. Upon receipt of all products packed as specified below, Seller will examine the product and determine to its satisfaction that the product is indeed defective. If Seller determines that the product is defective, Seller shall at its option repair, replace or refund the amount paid for such product.

(b) Without limitation to anything in these Terms, the Seller shall not be liable for a breach of any warranty if (i) the breach arises from: fair wear and tear, willful damage or negligence on the part of the Buyer; because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the relevant product or (if there are none), good trade practice; from a defect caused by or arising from any drawing, design, specification or information supplied by the Buyer; or otherwise as a result of the fault of the Buyer; or (ii) the Buyer alters or repairs the goods without the Seller's written consent.

(c) The limited warranty in (b) above shall be the exclusive remedy for defects in material or workmanship and the Buyer waives all other remedies arising by law or otherwise. This warranty is the only express warranty applicable to products sold under these Terms and there are no other warranties that extend beyond the description on the face hereof, except as a matter of general law.

(d) All other warranties, express or implied, including but not limited to any implied warranties of merchantability, satisfactory quality and fitness for a particular purpose, are excluded to the fullest extent permitted by law. In no event shall the Seller be liable for any negligence or other tortious loss or for any of the following losses or damage (whether such losses or damage were foreseen, foreseeable, known or otherwise and whether or not the Seller is advised of the possibility of loss, liability, damage or expense): loss of revenue; loss of actual or expected profits (including for loss of profits on contracts); loss of the use of money; loss of expected savings; loss of business; loss of operating time or loss of use; loss of opportunity; loss of goodwill; loss of reputation; loss of, damage to or corruption of data; or any indirect or consequential loss or damage however caused.

(e) Products returned to Seller for any reason requires assignment of a RMA or RAN number, as applicable, and prior approval from Seller, which will not be unreasonably withheld. Any returned product must be packed and shipped in the original container and packaging and in accordance with Seller's instructions to ensure the safety and resale value of the product. If the original container and packaging are not available, the sending party, with approval from Seller, will provide packaging



sufficient to prevent damage during shipping. Failure to comply with these provisions shall invalidate any claim for breach of warranty.

(f) Nothing in these Terms shall limit the liability of the Seller to the Buyer for death or personal injury resulting from its negligence (as defined in the Unfair Contract Terms Act 1977), for fraudulent misrepresentation, for breach of the Seller's obligations arising from Section 12 of the Sale of Goods Act 1979 or for any other liability that cannot be excluded by law.

(g) Except as set out in (f) above, the aggregate liability of the Seller to the Buyer (including liability for recovery of sums paid by the Buyer and for all damages, costs and expenses) with respect to all claims under or in connection with the Agreement shall be limited to the amount of the price of the products that gave rise to liability.

(h) Unless waived in writing by the Seller, no claim, regardless of form, arising out of or pertaining to the agreement between the parties may be brought by the Buyer unless the Buyer provides to the Seller written notice of the claim within ninety (90) days of the date on which the Buyer first becomes aware or could reasonably have been expected to become aware of the cause of action.

(i) The parties record that having taken independent legal advice, they regard the limitations on the liability of the Seller in this section as in all respects reasonable, reflect a duly considered allocation of risk between the parties and are reflected in the price paid for the goods.

EFFECT OF OTHER WRITTEN AGREEMENTS. In the event that any provision of any other written agreement, past, present or future, signed by both Buyer and Seller is inconsistent with these Terms, the provisions of such other written agreement shall prevail.

RIGHTS OF THIRD PARTIES. A person who is not a party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any provision of the agreement between the parties but this does not affect any right or remedy of a third party that exists or is available apart from that Act.

CONFIDENTIALITY. Buyer shall use confidential information obtained by it in relation to the Seller only for the proper performance of its duties under its agreement with the Seller and shall not without Seller's written consent disclose or permit the disclosure of any of the information except in confidence for the proper performance of its duties under its agreement with the Seller to those of its employees, officers and professional advisers who need to have access to it. The provisions of this paragraph shall not apply to confidential information that: (i) the Buyer can prove was known to it before receipt; (ii) is in or enters the public domain through no wrongful default by or on behalf of the Buyer with effect from the date when that information enters the public domain; (iii) was received from a third party without obligations of confidence owed directly or indirectly to Seller; or (iv) is required to be disclosed in order to comply with applicable law, to the extent of the required disclosure. Within three days of receipt of a request to do so made at any time and in any event if the agreement between the parties is terminated, the Buyer shall promptly return or destroy (at the option of the Seller) all such confidential information.