

# TERMS AND CONDITIONS OF COMMERCIAL SALE OF OLEDWorks LLC [Third Party Products]

## 1. TERMS OF PURCHASE

These terms and conditions of commercial sale of OLEDWorks LLC (the "Terms and Conditions") apply to and form an integral part of all transactions with OLEDWorks LLC and/or any of its affiliates including OLEDWorks GmbH ("OLEDWorks") regarding the sale by OLEDWorks and purchase by Buyer of goods manufactured by third parties (the "Manufacturer") and resold by OLEDWorks ("Third Party Products") from and at the OLEDWorks WebShop at OLEDWorks' website (the "WebShop") or otherwise, unless and to the extent OLEDWorks explicitly agrees to otherwise in writing.

Any terms and conditions set forth in any document or documents issued by Buyer either before or after issuance of any document by OLEDWorks setting forth or referring to these Terms and Conditions are hereby explicitly rejected and disregarded by OLEDWorks, and any such terms shall be wholly inapplicable to any sale made by OLEDWorks to Buyer and shall not be binding in any way on OLEDWorks.

OLEDWorks' offers are open for acceptance within the period stated by OLEDWorks in the offer (if any) or, when no period is stated, within thirty (30) days from the date of the offer, but any offer may be withdrawn or revoked by OLEDWorks at any time prior to the receipt by OLEDWorks of Buyer's acceptance thereof.

Buyer must be a business purchasing Product for commercial manufacturing or research and development purposes.

## 2. PRICING

Prices in any quotation, offer, confirmation or Agreement are in US Dollars, based on delivery EXW (INCOTERMS 2010) OLEDWorks' manufacturing facility or other facility designated by OLEDWorks, unless agreed otherwise in writing between Buyer and OLEDWorks, provided that, notwithstanding EXW, OLEDWorks may include in the pricing a transportation fee to be paid by Buyer to OLEDWorks (the "Transportation Fee") in which case OLEDWorks shall pay the carrier the amount of the Transportation Fee. Prices do not include any taxes, duties or similar levies, now or hereafter enacted, applicable to the Third Party Products or any other expenses all of which taxes, duties or similar levies and other expenses shall be paid by and the responsibility of Buyer. OLEDWorks will add taxes, duties and similar levies to the sales price where OLEDWorks is required or enabled by law to pay or collect them and these will be paid by Buyer together with the price. Without limitation to the foregoing, Buyer bears the cost and is responsible for payment of all applicable import taxes and fees and any applicable customs duties and fees.

## 3. PAYMENT

(a) Unless agreed otherwise between OLEDWorks and Buyer in writing, all payment by Buyer shall be pursuant to a credit card or other acceptable debit card provided to OLEDWorks at the WebShop.

(b) All deliveries of Third Party Products agreed to by OLEDWorks shall at all times be subject to credit approval of OLEDWorks.

(c) In the event of any default by Buyer in the payment of any fees or charges due (including a denial by the credit card or debit card company), or any other default by Buyer, OLEDWorks shall have the right to refuse performance and/or delivery of any Third Party Products until payments are brought current and OLEDWorks may suspend, delay or cancel any credit, delivery or any other performance by OLEDWorks without any liability towards the Buyer. Such right shall be in addition to, and not in lieu of, any other rights and remedies available under the Agreement or at law.

## 4. DELIVERY AND QUANTITIES

(a) Third Party Products shall be delivered EXW OLEDWorks facility in Rochester, New York or OLEDWorks GmbH facility in Aachen, Germany (INCOTERMS 2010) as designated by OLEDWorks, provided that the Transportation Fee will be included in the pricing provided to Buyer at the WebShop and paid by Buyer to OLEDWorks as set forth above in Section 2 (Pricing), and OLEDWorks shall pay the transportation fee payable to the carrier (which shall not change the risk of loss transfer to Buyer pursuant to EXW nor Buyer's responsibility for insurance costs). Delivery dates communicated or acknowledged by OLEDWorks are approximate only, and OLEDWorks shall not be liable for, nor shall OLEDWorks be in breach of its obligations to Buyer, for any delivery made within a reasonable time before or after the communicated delivery date. OLEDWorks agrees to use commercially reasonable efforts to meet the delivery dates communicated or acknowledged by it on the condition that Buyer provides all necessary order and delivery information sufficiently prior to the such delivery date.

(b) Buyer will give OLEDWorks written notice of failure to deliver and thirty (30) days within which to cure. If OLEDWorks does not deliver within such thirty (30) day period, Buyer may cancel the affected and undelivered portions of the Agreement, provided that OLEDWorks is responsible for the delay. Buyer's claim to damages due to failure to deliver and/or delay as well as claims for damages in lieu of performance shall be governed by the provisions set out in Section 10.

(c) Risk of loss in or damage to the Third Party Products shall pass to Buyer upon OLEDWorks' delivery in accordance with the applicable INCOTERMS.

(d) If Buyer fails to take delivery of Third Party Products ordered, then OLEDWorks may deliver the Third Party Products in consignment at Buyer's cost.

(e) In the event OLEDWorks' production is curtailed for any reason, OLEDWorks shall have the right to allocate its available production and Third Party Products, at its sole discretion, among its various customers and as a result may sell and deliver to Buyer fewer Third Party Products than specified in the Agreement, as the case may be, without being responsible or liable to Buyer for any damage resulting therefrom. OLEDWorks will notify Buyer of any such event without delay. Buyer's obligation for payment shall be reduced in accordance with the reduced delivery.

(f) OLEDWorks may elect, in its discretion, to cease manufacture and/or sale of a Product(s). OLEDWorks shall have no liability to Buyer in the event of any such cessation to manufacture or sell such Product(s).

## 5. FORCE MAJEURE

OLEDWorks shall not be liable for any failure or delay in performance if: such failure or delay results from interruptions in the Product manufacturing process, however, this shall not apply in cases of gross negligence or intent; or such failure or delay is caused by Force Majeure as defined below and/or by (case) law.

In case of such a failure as set forth above, the performance of the relevant part(s) of the Agreement will be suspended for the period such failure continues, without OLEDWorks being responsible or liable to Buyer for any damage resulting therefrom.

The expression "Force Majeure" shall mean and include any circumstances or occurrences beyond OLEDWorks' reasonable control - whether or not foreseeable at the time of the Agreement - as a result of which OLEDWorks cannot reasonably be required to execute its obligations including force majeure and/or default by one of OLEDWorks' suppliers. In the event that the Force Majeure extends for a period of three (3) consecutive months (or in the event that the delay is reasonably expected by OLEDWorks to extend for a period of three (3) consecutive months), OLEDWorks shall be entitled to cancel all or any part of the Agreement without any liability towards Buyer.

## 6. RETENTION OF TITLE

(a) Third Party Products shall remain OLEDWorks' property until the payment of all claims in respect of the business relationship with the Buyer, including any future claims. The retention of title shall also extend to any Third Party Products delivered by way of exchange.

(b) To the extent applicable, if the Third Party Products under retention of title should be combined in the meaning of sections 947 of the German Civil Code (BGB) with other items that do not belong to OLEDWorks, OLEDWorks shall have a right to co-ownership of the new item in the same ratio as that between the value of the Third Party Products under retention of title, including VAT, and the value of the other items processed or combined at the time of processing or combination. Buyer shall store the item on behalf of OLEDWorks free of charge.

(c) Until further notice Buyer is authorized to dispose of the Third Party Products under retention of title within the framework of its ordinary business operations. For this event Buyer hereby assigns to OLEDWorks its claims from a resale of the Third Party Products under retention of title (the resale price including VAT) - including the corresponding claims from bills of exchange and together with all ancillary claims. If Buyer should sell the Third Party Products under retention of title together with Third Party Products that do not belong to OLEDWorks at a total price the assignment shall only apply to the sum which OLEDWorks has charged Buyer for the Third Party Products under retention of title which have been sold.

(d) If Buyer's claims from the resale form part of the balance in a current account to OLEDWorks, Buyer hereby assigns to OLEDWorks its claims against its own customer in respect of the claims in the current account. The assignment shall apply to the resale price including VAT.

(e) Until further notice Buyer shall be entitled to collect the claims that have been assigned to OLEDWorks. Any assignment or pledging of such a claim shall only be permissible with OLEDWorks' written consent. If Buyer defaults on payment or fails to comply with his obligations in respect of the retention of title, Buyer shall, on OLEDWorks' request, provide the debtors with written notification of the assignment, supply OLEDWorks with all information, submit and send OLEDWorks the documents and transfer any bills of exchange. If necessary, Buyer must grant OLEDWorks access to the relevant documents.

(f) On the occurrence of the circumstances set out in Section 6 (d) sentence 3 Buyer must grant OLEDWorks access to the Third Party Products under retention of title which are still in its possession and send OLEDWorks an exact list of the Third Party Products. Buyer must separate these from other Third Party Products and return them to OLEDWorks after OLEDWorks has withdrawn from the contract.

(g) If the value of this security exceeds the sum of OLEDWorks' claim by more than 20%, OLEDWorks shall at OLEDWorks' option and upon Buyer's request release the security.

(h) Buyer must immediately notify OLEDWorks in writing if any third parties should seize the Third Party Products under retention of title or take possession of the claims assigned to OLEDWorks and must give OLEDWorks every possible support in the intervention.

(i) The costs for complying with the said duty to co-operate in enforcing all rights in respect of the retention of title and for all arrangements made for the maintenance and storage of the Third Party Products shall be borne by Buyer.

(j) In case of insolvency proceedings over Buyer's property OLEDWorks is entitled to withdraw from the contract provided the Third Party Products under retention of title have not been fully paid.

## 7. SOFTWARE, DOCUMENTATION AND INTELLECTUAL PROPERTY

Subject to the provisions set forth herein, the sale by OLEDWorks of Third Party Products does not include any transfer of or license to any intellectual property rights of the manufacturer ("Manufacturer's IPR") unless and then solely to the extent the manufacturer has granted a license to OLEDWorks and/or the manufacturer grants a license to the end user. To the extent that software and/or documentation is embedded in or delivered with any Third Party Product sold by OLEDWorks to Buyer, the sale of such goods shall not constitute the transfer of ownership rights or title in such software and/or documentation to Buyer or any end-customer, and any such software and/or documentation may not be transferred to any other party and may be used solely in conjunction with and as embedded in or delivered with the goods as supplied by OLEDWorks to Buyer.

Notwithstanding anything to the contrary herein, these Terms and Conditions shall not be construed as conferring any right, license or immunity, either directly or by implication, estoppel or otherwise to Buyer or any third party under any Manufacturer's IPR or intellectual property rights of OLEDWorks or any third party other than explicitly granted under these Terms and Conditions

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Buyer shall not: (a) modify, adapt, alter, translate, or create derivative works from any software residing in or provided by OLEDWorks in conjunction with any goods; (b) assign, sublicense, lease, rent, loan, transfer, disclose, or otherwise make available such software; (c) merge or incorporate such software with or into any other software; or (d) reverse assemble, decompile, disassemble, or otherwise attempt to derive the source code for such software without written authorization from OLEDWorks except as explicitly allowed under applicable law. Buyer shall reproduce, without any amendments or changes thereto, any proprietary rights legends of OLEDWorks and/or its affiliates or its third party suppliers in any software or documentation provided by OLEDWorks.

The license terms, if any, of the Manufacturer shall apply with respect to any software licensed with respect to the Third Party Product. OLEDWorks will notify Buyer accordingly and will provide them upon request by Buyer.

### 8. DEFECTS / NON-COMPLIANCE

(a) ALL PRODUCT IS SOLD "AS IS, WHERE IS", AND OLEDWORKS MAKES NO WARRANTY, EXPRESS OR IMPLIED, WHETHER BY COURSE OF DEALING OR TRADE USAGE OR OTHERWISE, INCLUDING AS TO FITNESS FOR PARTICULAR PURPOSE, NON INFRINGEMENT OR MERCHANTABILITY, EXCEPT THAT BUYER IS ENTITLED TO THE WARRANTY(IES), IF ANY, OFFERED BY THE MANUFACTURER OF SUCH PRODUCT. No employee or agent of OLEDWorks is authorized to make any warranty other than that which is set forth herein. In the event Buyer believes that a Product does not adhere to the warranty(ies), if any, offered by the manufacturer of such Product, Buyer may contact OLEDWorks who shall serve as the initial contact point for warranty claims made against the Manufacturer.

(b) Where a warranty claim is justified and within the stated time period for raising a warranty claim (based on Manufacturer's warranties and/or terms and conditions), OLEDWorks or Manufacturer will inform Buyer of the process relating thereto.

(c) Subject to the applicable mandatory law, the warranty(ies) of Manufacturer shall extend directly to Buyer only and not to Buyer's customers, agents or representatives.

(d) Exceeding claims or claims and rights of the Buyer in connection with defective or non-conforming Third Party Products other than regulated in this Section 8 shall be excluded.

### 9. WAIVER OF INTELLECTUAL PROPERTY WARRANTY

(a) Without limitation to Section 8 above, OLEDWorks makes no representation or warranty, express or implied, regarding intellectual property or non-infringement of Product. .

### 10. LIMITATION OF LIABILITY; DISCLAIMER

(a) Any claims for damages, compensation and/or reimbursement of expenses or costs of the Buyer (hereinafter referred to as "Claims for Damages"), regard- less of the legal grounds and especially due to a breach of contract, warranty, delay, tort and/or infringement of duties arising in connection with the Agreement, shall be excluded. In case of failure of delivery or delay, any Claims for Damages shall be excluded even if Buyer had set a deadline that has expired. WITHOUT LIMITATION, OLEDWORKS SHALL HAVE NO LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES.

(b) The exclusions set forth above shall not apply in the event of mandatory liability, including but not limited to liability under the Product Liability Act ("Produkthaftungsgesetz") if and solely to the extent such is applicable to the sale of Third Party Products by OLEDWorks GmbH.

### 11. CONFIDENTIALITY

Buyer acknowledges that all technical, commercial and financial data disclosed to Buyer by OLEDWorks and/or its affiliates is the confidential information of OLEDWorks, its affiliates or the Manufacturer of the Third Party Product. Buyer shall not disclose any such confidential information to any third party and shall not use any such confidential information for any purpose other than as agreed by the parties in writing and in conformance with the purchase transaction contemplated herein.

### 12. EXPORT/IMPORT CONTROLS

Buyer understands that certain transactions of OLEDWorks are subject to export control laws and regulations, including but not limited to the UN, EU and the USA export control laws and regulations ("Export Regulations"), which prohibit export or diversion of certain products and technology to certain countries. Any and all obligations of OLEDWorks to export, re-export or transfer Third Party Products as well as any technical assistance, training, investments, financial assistance, financing and brokering will be subject in all respects to such Export Regulations and will from time to time govern the license and delivery of Third Party Products and technology abroad by persons subject to the jurisdiction of the relevant authorities responsible for such Export Regulations. If the delivery of products, services and/or documentation is subject to the granting of an export or import license by certain governmental authorities or otherwise restricted or prohibited due to export/import control regulations, OLEDWorks may suspend its obligations and the Buyer's/end-user's rights until such license is granted or for the duration of such restrictions or prohibitions. Furthermore, OLEDWorks may even terminate the relevant order in all cases without incurring any liability towards the Buyer or end-user. Buyer warrants that it will comply in all respects with the export, re-export and transfer restrictions set forth in such Export Regulations or in export licenses (if any) for every Product supplied to Buyer. Buyer

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accepts the responsibility to impose all export control restrictions to any third party if the items are transferred or re-exported to third parties. Buyer shall take all actions that may be reasonably necessary to ensure that no customer/purchaser or end-user contravenes such Export Regulations. Buyer shall indemnify OLEDWorks and the Manufacturer against any and all direct, indirect and punitive damages, loss, costs (including attorney's fees and costs) and other liability arising from claims resulting from Buyer's or its customers' breach or non-compliance with this article. Buyer acknowledges that the obligations contained in this Agreement shall survive the termination of any agreement of other arrangement under which the products, software or technology was provided to Buyer. In addition, in the event of any conflict in the terms provided in this Agreement with any other document entered into between Buyer and OLEDWorks, Buyer understands that the terms of this Agreement shall control and be binding upon Buyer.

### 13. ANTI-BRIBERY

Buyer agrees that it now and in future shall comply with national law on prevention of bribery, as well as any other law transforming from ratification of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (including the US Foreign Corrupt Practices Act). In general, the law makes it illegal to bribe or make a corrupt payment to an Official for the purpose of obtaining or retaining business, directing business to any person, or securing any improper advantage.

Buyer's failure to comply with any provision of this section is grounds for immediate termination of any Agreement by OLEDWorks (or its respective affiliate(s)), without OLEDWorks' incurring any liability towards Buyer. In the event of such termination, (i) OLEDWorks shall be under no obligation to supply any Product to Buyer, (ii) Buyer shall be responsible for and indemnify OLEDWorks for any damages, claims, penalties or other losses (including attorneys' fees) that may be asserted against or incurred by OLEDWorks as a result of Buyer's breach of this section; and (iii) OLEDWorks shall be entitled to any other remedies available at law or in equity. The terms and conditions of this section shall survive any expiration or termination of this Agreement.

OLEDWorks will only do business with those companies that respect the law and adhere to ethical standards and principles. Should OLEDWorks receive any information to the contrary, OLEDWorks will inform and Buyer agrees to cooperate and provide whatever information is necessary to allow OLEDWorks to decide whether there is any basis to any allegation received and whether the Agreement should continue. Such information includes, but is not limited to, books, records, documents, or other files.

### 14. DATA PROTECTION

Personal data of Buyer will be treated in compliance with the Privacy Notice of OLEDWorks posted at the OLEDWorks website at [www.oledworks.com/privacy-policy/](http://www.oledworks.com/privacy-policy/). OLEDWorks or any other service provider commissioned by OLEDWorks will store and process personal data, particularly address and order data, for the execution of the business transactions. Storage and processing will only take place insofar as it is necessary for the execution of the business transactions.

### 15. ASSIGNMENT AND SETOFF

Buyer shall not assign any rights or obligations under the Agreement without the prior written consent of OLEDWorks in its discretion. Buyer shall have no right to withhold or reduce any payments or to offset existing and future claims against any payments due for Third Party Products sold under the Agreement or under any other agreement that Buyer may have with OLEDWorks or any of its affiliates may have and agrees to pay the amounts hereunder regardless of any claimed offset which may be asserted by Buyer or on its behalf. However, Buyer shall have the right to offset claims that are undisputed by OLEDWorks or which have been established through a non-appealable judgment. OLEDWorks in its discretion may assign all or a portion of its rights and obligations hereunder in its discretion.

### 16. GOVERNING LAW AND JURISDICTION

All offers, confirmations and Agreements are governed by and construed in accordance with the laws of the State of New York, USA, without reference to conflicts of law principles. All disputes arising out of or in connection with any Agreement shall first be attempted by Buyer and OLEDWorks to be settled through consultation and negotiation in good faith in a spirit of mutual cooperation. All disputes which cannot be resolved amicably shall be submitted to the exclusive jurisdiction of the State or Federal courts of Monroe County, New York (USA) and Buyer hereby expressly and irrevocably consents and submits to the personal jurisdiction of all such courts and waives any claim that such forum is inconvenient, provided that OLEDWorks shall always be permitted to bring any action or proceedings against Buyer in any other court of competent jurisdiction. The United Nations Convention on Contracts for the international Sale of Goods shall not apply to any offer, confirmation or Agreement. Nothing in this Section 16 shall be construed or interpreted as a limitation on either OLEDWorks' or Buyer's right under applicable law for injunctive or other equitable relief or to take any action to safeguard its possibility to have recourse on the other party.

### 17. BREACH AND TERMINATION

Without prejudice to any rights or remedies OLEDWorks may have under the Agreement or at law, OLEDWorks may, by written notice to Buyer, cancel or terminate with immediate effect the Agreement or any part thereof without any liability whatsoever, if:

- (a) Buyer violates or breaches any of the provisions of the Agreement;
- (b) any proceedings in insolvency, bankruptcy (including reorganization) liquidation or winding up are instituted against Buyer, whether filed or instituted by Buyer, voluntary or involuntary, a trustee or receiver is appointed over Buyer, or any assignment is made for the benefit of creditors of Buyer (c) the control or ownership of Buyer changes.

Upon occurrence of any of the events referred to above, all payments to be made by Buyer under the Agreement shall become immediately due and payable.

In the event of cancellation, termination or expiration of an Agreement the terms and

conditions destined to survive such cancellation, termination or expiration shall so survive.

### 18. MISCELLANEOUS

(a) In the event that any provision(s) of these Terms and Conditions shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions thereof. In the event that any provision of these Terms and Conditions shall finally be determined to be unlawful or unenforceable, such provision shall be deemed severed from these Terms and Conditions, but every other provision shall remain in full force and effect, and in substitution for any such provision held unlawful or unenforceable, there shall be substituted a provision of similar import reflecting the original intent of the clause to the extent permissible under applicable law.

(b) These Terms and Conditions, together with any additional terms and conditions agreed to or accepted by Buyer at OLEDWorks WebShop or other online purchasing tool, are the sole terms and conditions relating to the subject matter hereof, and supersede all other communications and agreements.

(c) The failure on the part of either party to exercise, or any delay in exercising, any right or remedy arising from the Agreement shall not operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy arising therefrom preclude any other or future exercise thereof or the exercise of any other right or remedy arising from the Agreement or from any related document or by law.

(d) Any notice required or permitted hereunder shall be in writing and deemed given (i) three days after being sent by regular mail, or (ii) one business day after being sent by overnight courier, in any case if sent to Buyer at the last address on record with OLEDWorks, and if to OLEDWorks, to 1645 Lyell Avenue, Suite 140, Rochester, New York, USA 14606, attn.: Bernadette Austin.