

## Innolight Technology Suzhou Ltd. Terms of Sale

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These Terms of Sale (“Terms”) govern the sale of Products and Service and the license of Software by Innolight Technology Suzhou Ltd. (“Innolight”). “Product” means any hardware or accessories sold and Software licensed under these Terms. “Software” means one or more computer programs and related documentation. “Service” means any standard support service to support Products, Software updates and maintenance, or training. “Specification” means technical information about Products published by Innolight and in effect on the date InnoLight ships the order.

### 1. SALE AND DELIVERY

- a) All orders are subject to acceptance by Innolight. Orders are governed by the applicable trade terms specified on the quotation or agreed to by Innolight.
- b) Unless otherwise indicated on the quotation, Innolight’s standard shipping term is FOB Shanghai, China, which excludes shipping and freight charges, any custom duties and local taxes. Title to Products and accessories will pass on to Customer upon shipment.
- c) Customers cannot cancel orders within 30days of the scheduled shipment date unless agreed to by Innolight. Product returns that are not due to performance issues require prior approval from InnoLight and subject to applicable charges.
- d) For Products without installation included in the purchase price, acceptance occurs upon delivery. For Products with installation included in the purchase price, acceptance occurs when the Product passes Innolight’ installation and test procedures. If Customer schedules or delays installation by Innolight more than thirty (30) days after delivery, acceptance of the Product will occur on the thirty-first (31<sup>st</sup>) day after delivery.
- e) Payment terms are stated in the quotation or acknowledgment documentation, and are subject to change if Customer’s financial condition or payment record merits such change. Innolight may discontinue performance if Customer fails to pay any sum due, or fails to perform under this or any other InnoLight agreement if, after ten (10) days written notice, the failure has not been cured.

### 2. LICENSES

- a) Innolight grants Customer a worldwide non-exclusive license to use Software for internal purposes in accordance with documentation provided with the Software. The Innolight license terms or third party license terms included with such documentation will take precedence over any other license terms. If the documentation does not include license terms, Innolight grants Customer a license to use one copy of the Software on one machine or instrument.
- b) Except as authorized by Innolight in writing or as permitted by law, Customer will not reverse engineer, reverse compile, or reverse assemble Software, modify or translate Software, or copy Software onto any public or distributed network.

### 3. WARRANTY

- a) Product warranty term is 24 months from the date of the shipment. Extended warranty beyond 24 months is available at an extra charge.
- b) InnoLight warrants the Innolight Product against defects in materials and workmanship and that the Product will conform to Specification. InnoLight warrants that Innolight owned standard Software substantially conforms to Specification.
- c) If Innolight receives notice of a defect or non-conformance during the warranty period, InnoLight will, at its option, repair or replace the affected Product. Customer will pay shipping expenses for return of such Product to InnoLight. InnoLight will pay expenses for shipment of the repaired or replacement Product.

- d) THE WARRANTIES IN THESE TERMS ARE EXCLUSIVE, AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL IS EXPRESSED OR IMPLIED. INNOLIGHT SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

#### **4. INTELLECTUAL PROPERTY CLAIMS**

- a) Innolight will defend or settle any claims against Customer that a Product infringes an intellectual property right, provided Customer promptly notifies InnoLight in writing and provides control of the defense or settlement, and assistance, to InnoLight.
- b) In defending or settling an infringement claim under Section 4(a), Innolight will pay infringement claim defense costs, settlement amounts and court-awarded damages. If such a claim appears likely, InnoLight may, at its option, modify or replace the Product or procure any necessary license. If InnoLight determines that none of these alternatives is reasonably available, InnoLight will refund Customer's purchase price upon return of the Product.
- c) Innolight has no obligation for any claim of infringement arising from Innolight's compliance with, or use of, Customer's designs, specifications, instructions or technical information; Product modifications by Customer or a third party; Product use prohibited by or outside the scope of Specifications or related application notes; or use of the Product with products not supplied by Innolight.

#### **5. LIMITATION OF LIABILITY AND REMEDIES**

- a) In no event will Innolight or its subcontractors or suppliers be liable for special, incidental, indirect or consequential damages (including downtime costs, loss of data, restoration costs or lost profits) regardless of whether such claims are based on contract, tort, warranty or any other legal theory, even if advised of the possibility of such damages. This exclusion is independent of any remedy set forth in these Terms.
- b) The limitations set forth in Section 5 (a) above will not apply to infringement claims under Section 4, or to damages for bodily injury or death.
- c) The remedies in these Terms are Customer's sole and exclusive remedies.

#### **6. GENERAL**

- a) The parties agree to comply with applicable laws and regulations. InnoLight may suspend performance if Customer is in violation of applicable laws or regulations.
- b) The parties agree that any disputes or questions arising hereunder, including the construction or application of the Agreement, shall be settled by arbitration in accordance with the rules of the Suzhou Arbitration Commission then in force. The decision of the arbitrator shall be final and binding upon the parties, both as to law and to fact, and shall not be appealable to any court in any jurisdiction, except as provided by China's Arbitration Statutes then in effect or the China Arbitration Act. The parties shall share the expense of the arbitrator equally, unless the arbitrator determines that the expenses shall be otherwise assessed.
- c) To the extent that any provision or a portion of any provision of these Terms is determined to be illegal or unenforceable, the remainder of these Terms will remain in full force and effect.
- d) These Terms and any supplemental terms applicable to the order constitute the entire agreement between Innolight and Customer, and supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder. Customer's additional or different terms and conditions will not apply.
- e) Innolight may assign or transfer any of its rights or obligations under these Terms upon notice in connection with a merger, reorganization, transfer, sale of assets or product lines, demerger or spin-

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off transaction or change of control or ownership of Innolight, or its permitted successive assignees or transferees.

- f) Resale of the Product by Customer is prohibited under these Terms without prior approval from Innolight.