

**Schedule 3B**  
**Terms and conditions of purchase made between Purchaser and Supplier as named in the Purchase Order**  
**("Terms and Conditions")**  
**(To which Supplier agree by acceptance of Purchase Order)**

This document is an integral part of Purchase Order which refers to.

**1 Definitions**

- 1.1 In these Terms and Conditions, the following definitions apply:  
"Agreement" means the binding agreement, created by the Supplier's acceptance of the Purchase Order in accordance with Clause 1.2 below, comprising these Terms and Conditions and the Purchase Order.  
"Applicable Law" means all laws, rules, regulations and executive or judicial orders applicable under the Governing Law of this Agreement and where the context so requires, in any jurisdiction where the Agreement is made.  
"Development Work" means all work necessary to develop and/or manufacture the Goods so that the Goods and/or Services meet all Specifications and are fit for their intended purpose. Development Work includes, without limitation, all initial technical discussions (for example, brainstorming sessions) between Supplier and Purchaser, regardless of whether Purchaser and Supplier have signed a definitive contract at the time of such discussions.  
"Goods" means the goods as set out in and more particularly described in any Purchase Order and/or other supplemental document between the parties.  
"Intellectual Property Rights" means any trademark, service mark, patent, utility model, design right, copyright (including any right in computer software) and any trade secret, know-how or any right or form of protection of a similar nature or having equivalent or similar effect to any of those which may subsist anywhere in the world, including any trade dress, trade or business name.  
"Price" means the price of the Goods and/or Services as set out in the Purchase Order.  
"Products" means the Goods and the Services.  
"Purchase Order" means the purchase order to be issued by the Purchaser for the supply of the Goods and/or Services by the Supplier to the Purchaser.  
"Purchaser" means the purchaser named on the Purchase Order.  
"Services" means the services as set out in and more particularly described in any Purchase Order and/or other supplemental document between the parties.  
"Specification" means any specification (including design, composition, technical quality, reliability standards, and storage, delivery and packing requirements) in any medium including, drawings, data, descriptions, trial products, sample products, samples of accessories and raw materials or other information relating to the Goods and/or Services and as shall be amended by Purchaser from time to time.  
"Supplier" means the supplier named on the Purchase Order or to whom the Purchase Order is issued.
- 1.2 This Purchase Order is acknowledged and confirmed by Supplier to constitute an individually legally binding contract between Supplier and Purchaser subject to these Terms and Conditions.

**2 Supply of Products.**

- 2.1 Purchaser desires to purchase the Products from Supplier and Supplier agrees to sell such Products to Purchaser in accordance with the Agreement.  
2.2 Supplier shall ensure that the Products comply with the Specifications unless otherwise specified in the Purchase Order.

**3 Changes.**

- 3.1 Purchaser may amend the (i) Purchase Order, (ii) Price, (iii) Specifications, and (iv) delivery instructions, including, methods of packaging or shipment, with Supplier's written consent, which consent, however, shall not be unreasonably withheld or delayed. Purchaser shall make a reasonable adjustment to the Price or other terms as a result of any such change.  
3.2 Supplier, however, shall not be allowed during the term of this Agreement to terminate or modify any Purchase Order, or to adjust the Price, or to make any changes to the Specifications whether based on its loss of anticipated profits or otherwise, without Purchaser's prior written consent.  
3.3 In the event that any materials used by Supplier in making the Goods or performing the Services become unavailable, Supplier shall locate and propose to Purchaser a source for alternative materials for use in making the Goods or performing the Services. Purchaser shall, in its sole discretion, determine whether the use of such alternative materials is acceptable, and whether an adjustment to the Price or other terms will occur as a result of such change. If Purchaser does not agree to the alternative materials, the relevant Purchase Order shall be terminated.

**4 Delivery.**

- 4.1 To the extent that these Terms and Conditions involve any purchase of the Goods, at the time of each shipment, Supplier will transmit to Purchaser, an advanced shipping notice which shall include the product number, quantity shipped or to be shipped, forwarding information and other information designated by Purchaser in the Purchase Order at least five (5) days prior to the date of delivery.  
4.2 The Supplier shall deliver and/or perform the Products to the Purchaser at the address, in the quantity and by the time set forth in the Purchase Orders.  
4.3 Time is of the essence in the performance of the Purchase Order. In the event, that the delivery of the Products to Purchaser is likely to be delayed beyond the deadline stated in the Purchase Order, Supplier shall notify Purchaser in writing in advance of the earliest possible date for delivery and/or performance of the Products;

provided that such notice shall not release Supplier from any of its liabilities for all costs (including those arising out of line stoppages or currency fluctuations), losses (including loss of profits) and consequential damages resulting from incomplete or delayed delivery and shall be without prejudice to Purchaser's other available rights and remedies, including without limitation, the right to reject in whole or in part the delivery and/or the performance of the Products. Purchaser's computation of the costs, losses and damages incurred or to be incurred by Purchaser shall be final, conclusive and binding on the Supplier (except for manifest errors).

- 4.4 Without prejudice and in addition to Purchaser's abovementioned rights and remedies, if any delivery is delayed, Supplier shall pay to Purchaser for the delay in delivery of the Products, compensation at the rate of one percent (1%) of the Price per day up to ten percent (10%) of the Price.  
4.5 Shipments in excess of quantities specified in the Purchase Order may be returned to Supplier, and Supplier shall pay Purchaser for all return handling and transportation expenses. Purchaser shall be entitled to set-off any monies owing by Purchaser to Supplier against any monies incurred in respect of such handling and transportation expenses.  
4.6 Purchaser reserves the right to accept, at its sole discretion, in whole or in part, any Products delivered in excess of the quantity specified in the Purchase Order and may, but shall not be obliged to, make such payment as Purchaser considers appropriate in respect of the excess Products accepted.  
4.7 Purchaser reserves the right, at its sole discretion, in the event that it has a need to postpone delivery from time to time, to require Supplier to deliver the Products later than the time originally specified in the Purchase Order. In any such case, Supplier shall use its best efforts to comply with such request.

**5 Receipt and Inspection.**

- 5.1 The title to and risk of loss or damage to the Goods shall pass from Supplier to Purchaser at the time of delivery of the Goods to the Purchaser. Purchaser reserves the right to inspect the Products in accordance with the Specifications. Purchaser may reject any Products that are defective, damaged or non-conforming to the Specifications or in breach of Supplier's warranties within one (1) year after taking delivery thereof (notwithstanding that it may have earlier accepted the Products as being in order). Payment to Supplier or inspection or testing by Purchaser shall not be construed as acceptance by the Purchaser or agreement by the Purchaser that the Products conform to the terms and conditions of the Agreement and shall not relieve Supplier of its obligations under the Agreement and these Terms and Conditions.  
5.2 In the event of Purchaser's rejection of any Products or revocation of acceptance, for whatever reason, title to and risk of loss or damage shall be treated as never having passed to Purchaser and as being retained by Supplier. Acceptance of any Products under any Purchase Order shall not bind Purchaser to accept future shipments, nor deprive it of the right to return the Products already accepted, nor constitute a waiver of any other right or remedy of Purchaser.  
5.3 If any Products are rejected (or any acceptance revoked), Supplier shall, at Purchaser's request and at no additional cost to Purchaser, promptly deliver replacement Products conforming to the Specifications and delivery instructions.  
5.4 After the Goods have been duly rejected, the rejected Goods may be returned to Supplier, and Supplier shall pay Purchaser for all return handling and transportation expenses. Purchaser shall be entitled to set-off any monies owing by Purchaser to Supplier against any monies incurred in respect of such handling and transportation expenses.  
5.5 Title to any equipment and supplies that may be furnished by Purchaser to the Supplier for performance of any obligations under the Agreement shall rest with the Purchaser, and any such equipment shall be returned to the Purchaser at the conclusion of the Terms and Conditions or when no longer needed by the Supplier. Such equipment, when returned to the Purchaser, shall be in the same condition as when delivered to the Supplier, subject to normal wear and tear, and the Supplier shall be liable to compensate Purchaser for the actual costs of any loss of, damage to, or degradation of the equipment that is beyond normal wear and tear.

**6 Packing, Marking and Shipping.**

- 6.1 All Goods shall be properly packaged, labeled, marked and shipped at Supplier's expense in accordance with: (i) Applicable Laws; (ii) the Specifications; (iii) Purchaser's requirements notified in writing to Supplier; and (iv) other requirements set out in the Agreement.  
6.2 Supplier shall provide all packing slip, bill of lading, proforma invoice, shipping notice and any other relevant documents ("Shipping Documents") to Purchaser's Import Section at least five (5) days prior to shipping the Goods, regardless of whether transportation is being arranged by Purchaser or Supplier. Import Section will respond within 48 hours if it wishes to notify Supplier that any of the Shipping Documents require any changes. Supplier shall provide to Purchaser the revised documents with the changes and/or rectification duly incorporated within [48 hours].  
6.3 Each of the Shipping Documents shall include without limitation, country of origin, expiration date of the Goods and/or packaging, Purchaser's applicable product number, Purchase Order number, date of shipment, quantity shipped, address of Purchaser, forwarding information and any other information (i) required by

- Applicable Laws and (ii) requested by Purchaser, including serial numbers, if applicable.
- 6.4 Upon Purchaser's request, Supplier shall provide Purchaser with country of origin statements and any other documents that Purchaser deems to be necessary.
- 7 Price, Invoicing and Payment.**
- 7.1 Unless otherwise agreed in writing, Supplier shall invoice Purchaser for the Products after delivery and/or performance of the Products has been completed and not rejected by Purchaser in accordance with the Agreement. The Price shall be Supplier's full compensation for the Products. No increase in Price shall be accepted by Purchaser without prior written agreement. Invoices shall include all information, data and supporting documentation requested by Purchaser.
- 7.2 Invoices may be rejected for non-compliance with any of the provisions of this Agreement. Purchaser shall make payment of the Price to Supplier in accordance with the payment procedure established by Purchaser, which generally provides for payment to be made 90 days from the end of the month in which the invoice is issued (unless otherwise specified by Purchaser).
- 7.3 Where the Price is payable on a daily, hourly or other time-spent basis, all invoices shall be accompanied by adequate records and supporting documentation in relation to the time spent by the Supplier in delivery and performing the Products.
- 8 Warranties.**
- 8.1 Supplier warrants that it has good and merchantable title to the Products and that the Products shall,
- be free from defects in design (other than design furnished by HOYA), materials, workmanship and performance,
  - be of merchantable quality and fit for the particular purpose for which the Products are required,
  - comply with all Specifications relating to the Products,
  - provide for traceability of Products for recall purposes (or similar programs) in the event that any defect in the Products is/are detected,
  - be free and clear of all liens and encumbrances,
  - sufficiently comply with the expected usability and/or functionality,
  - comply with all Applicable Laws, and
  - comply with all other warranties implied or provided for by law.
- 8.2 Supplier shall reimburse Purchaser for all costs (including labor charges, cost of replacement of Goods and other expenses) incurred by them as a result of Supplier's breach of any warranty and/or the provisions of the Agreement and these Terms and Conditions. There are no exclusions, limitations, or disclaimers of warranties other than those that may be expressly recited in the Agreement. The warranties expressed shall be construed as consistent and cumulative with one another and with all other warranties, whether express, implied or statutory.
- 8.3 Unless otherwise provided in this Agreement, the Purchase Order or other written agreement, all warranties shall be construed liberally in favor of Purchaser and notice of breach shall be deemed sufficient if given by Purchaser within 180 days after discovery by Purchaser of the breach of warranty. Such notice may be given orally or in writing, and need only inform Supplier that the Products are defective, need repair, or require monitoring. The said notice need not include a clear statement of all objections that shall be relied upon by Purchaser as the basis for breach.
- 8.4 To the extent that the Terms and Conditions involve any performance of Services, to Purchaser by the Supplier's officers, employees, agents, subcontractors and other representatives (collectively, the "**Personnel**"), the following provisions shall apply:
- Supplier is responsible for and shall assume all risk and liabilities relating to its Personnel and property.
  - Supplier shall defend, indemnify and hold harmless the Purchaser from costs and claims arising out of death, disease, illness or personal injury to clients, officers, agents, employees and representatives of the Purchaser regardless of any fault, negligence, or breach of duty, statutory or otherwise.
  - the Supplier shall be responsible for the professional and technical competence of the Personnel it assigns to perform work under these Terms and Conditions and will select reliable and competent individuals who will be able to effectively perform the obligations under these Terms and Conditions and who, while doing so, will respect the local laws and customs and conform to a high standard of moral and ethical conduct.
  - Such Personnel shall be professionally qualified and, if required to work with officers or staff of Purchaser, shall be able to do so effectively.
  - At the option of and in the sole discretion of Purchaser, the qualifications of Personnel proposed by the Supplier may be reviewed by Purchaser prior to such Personnel's performing any obligations under the Terms and Conditions.
  - Purchaser may, at any time, request the withdrawal or replacement of any of the Personnel, and such request shall not be unreasonably refused by the Supplier. All expenses related to the withdrawal or replacement of the Personnel shall, in all cases, be borne exclusively by the Supplier.
  - Supplier shall observe all health and safety rules and regulations and any other security requirements that apply at any of the Purchaser's premises.
- 8.5 The Purchaser is a company of the HOYA group and as such applies a high level of legal compliance and ethical practices. The Purchaser expects from all its providers of Products legal and ethical compliance as laid down in the HOYA Supplier Code of Conduct stored under [http://www.hoya.co.jp/english/csr/supply\\_chain\\_management.html](http://www.hoya.co.jp/english/csr/supply_chain_management.html) (the "**Code**") which forms an integral part of this Agreement. The Code might be amended from time to time by HOYA on its own discretion, such changes becoming immediately effective upon upload on the aforementioned website. Supplier shall be obliged to duly check and inform itself about the latest version in a reasonable manner.
- 9 Force Majeure.** Neither party shall be responsible to the other by reason of failure to perform obligations hereunder to the extent that the failure to perform is caused by an act of God, flood, fire, storm, earthquake, shipwreck, acts of public enemy, or acts or omissions of any sovereign government, branch or agency thereof and other similar events beyond reasonable control of Purchaser and Supplier whose performance is prevented or interfered with. The affected party shall promptly notify the other party and shall not be responsible for its failure to perform any obligation required under the Agreement and these Terms and Conditions as a result of any of the foregoing. The parties specifically agree that strikes and labor disputes at the party whose performance is prevented or interfered with shall not be included in the Force Majeure events.
- 10 Subcontracting.**
- 10.1 The Supplier may delegate or subcontract the supply of the Products to third parties ("**Subcontractors**"); provided that Supplier shall obtain the prior written consent of Purchaser for delegation or subcontracting of all or any part of the supply of the Products to a third party. Supplier shall ensure that all Subcontractors comply with and abide by the Terms and Conditions, and in no event shall Supplier or Subcontractor be released from any of its obligations under these Terms and Conditions. If Purchaser notifies Supplier that Purchaser has an objection to a particular Subcontractor, Supplier shall not subcontract to such Subcontractor any work under these Terms and Conditions and shall promptly terminate any subcontracts with such Subcontractor.
- 10.2 For the avoidance of doubt, the above shall be without prejudice to the Supplier's obligations under these Terms and Conditions.
- 11 Intellectual Property**
- 11.1 Each party will retain its rights in the Intellectual Property Rights that it acquired, generated or created prior to starting the Development Work.
- 11.2 All Intellectual Property Rights in the Specifications or arising out of the Specifications and/or Development Work shall belong to Purchaser.
- 11.3 Any invention, patentable discovery, improvement or process based on the technical data, information, proposals or opinions provided by Purchaser shall forthwith be notified to Purchaser and shall be owned by Purchaser solely.
- 11.4 Supplier undertakes to execute all such documents and deeds and take such steps as may be required to perfect, protect or enforce any Intellectual Property Right, being assigned or vested in Purchaser under or pursuant to these Terms and Conditions.
- 12 Severability.** If any court of competent jurisdiction finds any provision of these Terms and Conditions to be unenforceable or invalid in whole or in part, such finding shall not affect the validity of the other provisions of these Terms and Conditions or the remainder of the provision in question.
- 13 Governing Law.** These Terms and Conditions and all Purchase Orders shall be governed by and construed in accordance with the laws of the relevant country or territory in which the supply of the Products has occurred.
- 14 Dispute Resolution.** Any dispute, difference, controversy or claim between the parties arising out of or relating to this Agreement or the breach, termination or validity thereof ("**Dispute**") shall be resolved or settled through good faith negotiations. If the parties are unable to resolve the Dispute through negotiation, then at the election of Purchaser, the Dispute may be referred to and finally settled by arbitration in [Singapore] in accordance with [the Arbitration Rules of the Singapore International Arbitration Centre] for the time being in force.