

# Toyo LED Electronics Ltd

## Terms and Conditions of Proforma invoice

### 1. Definitions

Goods: means the subject matter agreed to be supplied by TOYO to its purchaser under a Proforma Invoice.

TOYO: means Toyo LED Electronics Limited

Purchaser: means the Purchaser named in a Proforma Invoice

Proforma Invoice: means a Proforma Invoice issued by TOYO to a Purchaser

2. Unless there is express reference in the Proforma Invoice to other documents or unless reference to other documents is necessary for proper identification of the Goods or specifications thereof, the Proforma Invoice contains all the terms and conditions of the sale and purchase of the Goods subject to these Terms and Conditions of Proforma Invoice and supersedes all previous communications, agreements, documents and mutual understanding, verbal or written, between TOYO and the Purchaser.

3. For Goods which are required to be produced in accordance with specific design, sample or specifications provided by the Purchaser, the Purchaser warrants that the Purchaser is either the rightful owner of all intellectual property rights or having proper authority of the rightful owner thereof to obtain supply from TOYO.

4. Save and except the Goods the intellectual property rights of which are owned by TOYO, the Purchaser agrees to indemnify and keep indemnified TOYO against all loss and damages suffered by TOYO arising from claims and demands for infringement of intellectual property rights in respect of the Goods.

5. TOYO shall have the right to receive from the Purchaser, by way of increase in the purchase price in the Proforma Invoice or by way of separate invoice for additional charge, the additional cost of TOYO incurred after the date of the Proforma Invoice by reason of sudden increase of cost of material or component used by TOYO for the purpose of the Goods, and/or by reason of TOYO accommodating the Purchaser's request for change of delivery schedule and quantity shipped in a delivery, or change of specifications of the Goods, and/or by reason of the Purchaser's delay in providing necessary information to TOYO so as to enable TOYO to meet the agreed delivery schedule.

6. If the Purchaser shall fail to take delivery of the Goods or shall fail to give the necessary instructions to TOYO to enable TOYO to arrange for delivery of the Goods, TOYO shall, without prejudice to TOYO's rights to damages and other remedies against the Purchaser, be at liberty to grant an extension of the delivery date in which event the Purchaser shall be responsible for and shall reimburse TOYO all storage and other charge thereby incurred, or to terminate the contract between TOYO and the Purchaser under the Proforma Invoice. In the event that TOYO shall terminate the contract between TOYO and the Purchaser under the Proforma Invoice, TOYO shall have the right to sell to a third party the Goods not yet delivered to the Purchaser without prejudice to TOYO's right to recover damages from the Purchaser.

7. The risk of loss of and damages to the Goods passes onto the Purchaser when the Goods are collected from TOYO or TOYO's agent or representative by the Purchaser or the Purchaser's designated transportation agent or representative, or as the case may be when the Goods are delivered by TOYO or TOYO's transportation agent to the place of delivery designated by the Purchaser.

8. The Purchaser shall have no claims against TOYO whatsoever and shall indemnify and keep indemnified TOYO against all loss and damages suffered by TOYO in respect of any design defect in the Goods where the design is provided by the Purchaser, or in respect of mistake or misdescription in drawings or in specifications provided or designated by the Purchaser, or in respect of the Purchaser's choice of components or materials.

9. TOYO shall not be responsible to the Purchaser or any other party for loss and damages caused by (a) use of the Goods not in accordance with Seller's instructions; (b) damage to the Goods caused by the willful act, omission or negligence of the Purchaser or the Purchaser's successor in title or agent; or (c) defect in parts, components or materials supplied by the Purchaser to TOYO for the production of the Goods.

10. The Purchaser shall be deemed to have accepted the Goods and shall have no right to claim TOYO against any defect in quality or physical condition of the Goods if the Purchaser does not notify TOYO of such defect and claim within a reasonable time not exceeding 14 days after (i) the date when the Purchaser shall first have the opportunity to inspect and examine the Goods, or (ii) the date when the Goods shall have been either collected by the Purchaser or the Purchaser's designated transportation agent or representative, or delivered to the place of delivery designated by the Purchaser, whichever date is the earlier.

11. Upon TOYO receiving a valid claim from the Purchaser or defect in Toyo sold Goods for which TOYO is responsible, TOYO may elect to (a) replace at TOYO's own cost and transportation expenses the defective Goods; or (b) to refund the price (if payment has already been made) of the defective Goods to the Purchaser and the Purchaser shall have no further claim against TOYO.

12. (a) The Goods supplied by TOYO to the Purchaser shall remain the sole and absolute property of TOYO until the Purchaser shall have paid the price of the Goods in full together with the full price of all other goods that have been supplied by TOYO to the Purchaser.

(b) The Purchaser acknowledges that upon receiving the delivery of the Goods by the Purchaser or the Purchaser's agent or designated representative, the Purchaser is in possession of the Goods as Bailee for TOYO until the Purchaser shall have paid the price of the Goods in full together with the full price for all other goods supplied by TOYO to the Purchaser. (c) Until such time as the Purchaser shall have acquired the property in the Goods pursuant to the terms hereof, the Purchaser shall hold the proceeds of further sale by the Purchaser of the Goods on trust for TOYO.

13. TOYO shall have right of lien on and over all tools, moulding, tooling and testing devices and equipment provided by or made at the direction and cost of the Purchaser against full payment of all sums due from the Purchaser to TOYO.

14. In the event that the Purchaser fails to make punctual payment of the invoice or debit note of TOYO, TOYO shall have the right to withhold further delivery of the Goods to the Purchaser under the same or other Proforma Invoice(s) of TOYO to the Purchaser until all overdue payments are received by TOYO. TOYO shall not be responsible for any loss or damages of the Purchaser arising from TOYO's lawful exercise of its right to withhold delivery of the Goods herein beyond original delivery schedule.

15. In the event that the Purchaser (a) makes any voluntary arrangement with its creditors (being an individual or firm), or (b) becomes bankrupt (being a company), or (c) becomes subject to an administration or receiving order, or (d) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or (e) suffers an encumbrancer of the Purchaser to take possession of all or any of the property or assets of the Purchaser, or (f) ceases or threatens to cease to carry on business, TOYO shall be entitled to cancel all uncompleted Proforma Invoices and to cease any further deliveries under all Proforma Invoices without any liability to the Purchaser without prejudice to any other right or remedy available to TOYO and all outstanding payment due from the Purchaser to TOYO under all Proforma Invoices to the Purchaser shall become immediately due and payable to TOYO notwithstanding any previous agreement or arrangement to the contrary.

16. This Proforma Invoice shall be governed by the laws of Hong Kong.