

## Terms and Conditions of Commissioned Manufacturing and Processing

Sialon Co., Ltd. (hereinafter referred to as “Sialon”) manufactures Product including phosphors etc. or processes Object for Processing according to this Terms and Conditions and Individual Contract on a commission from its customers (hereinafter referred to as “Customer”).

Sialon requests Customer to order manufacturing of Products including phosphors etc, or processing of the Object for Processing, subject to this Terms and Conditions and pursuant to the prescribed ordering procedure. Upon receiving an order from Customer, Sialon deems that Customer has agreed to this Terms and Conditions. Please be noted that this Terms and Conditions are subject to change without notice.

### Article 1 (Definition)

1. “Products” collectively means the phosphors or other products, which is designated by Customer each time by its order form, mentioned in Article 4 below from among various phosphors developed by Customer or Sialon or other products designated by Customer.
2. “Manufacturing” means manufacturing of the Products specified in the preceding paragraph.
3. “Object for Processing” means an object, which is developed or owned by Customer, and designated by Customer each time for processing by its order form specified in Article 4 below.
4. “Processing” means one or more processing tasks performed on the Object for Processing specified in the preceding paragraph, which shall be designated by Customer each time by its order form specified in Article 4 below.
5. “Processed Item” means an item which has been processed on Object for Processing according “Processing” specified in the preceding paragraph.
5. “Commission” means Commission of Manufacturing or Processing.
- 6.”Individual Contract” means an individual contract related to Manufacturing or

Processing which relates to the subject matter of this Terms and Conditions.

Individual Contract includes order form (including purchase order) or/and order acceptance (including order confirmation), written estimate.

7. "Confidential Information" means any and all information, technical information disclosed by the disclosing party to the receiving party in writing or other tangible form, details and results of the Commission, facts of execution and details of the Individual Contract and business information of the party to be known to the other party in performing the Commission, which relates to the subject matter of this Terms and Conditions and an Individual Contract. Technical Confidential Information shall be marked as "Confidential Information", when said technical Confidential Information is disclosed by the disclosing party to the receiving party. Technical Confidential Information initially disclosed in non-written or non-tangible form and considered to be confidential information must be reduced to written form, marked as indicated above and delivered to the receiving party within thirty (30) days of the non-written or non-tangible disclosure in order to be considered Confidential Information.

However, the following information shall not be considered Confidential Information:

- (1) Information which is in the public domain at the time it was disclosed by the disclosing party to the receiving party;
- (2) Information which, after being disclosed by the disclosing party to the receiving party, becomes part of the public domain through no fault of the receiving party;
- (3) Information which the receiving party can demonstrate was lawfully in the receiving party's possession at the time it was disclosed by the disclosing party to the receiving party;
- (4) Information which the receiving party can demonstrate to be created by the receiving party without using the disclosing party's Confidential Information;
- (5) Information which is disclosed to the receiving party by a third party having the lawful right to disclose it; or
- (6) Information which is required to be disclosed by any law or regulation, governmental agency, provided that the receiving party has given prior written notice to the disclosing party of such disclosure and has made a reasonable attempt to ensure that the relevant organization has limited disclosure and use of the information so disclosed.

## Article 2 (Purpose)

1. Customer shall consign a Commission to Sialon pursuant to the provisions of this Terms and Conditions and the relevant Individual Contract, and Sialon shall accept such Commission consigned by Customer pursuant to the provisions of this Terms and Conditions and the relevant Individual Contract.
2. If Sialon intends to subcontract the Commission, in whole or in part, to a third party (hereinafter referred to as "Subcontractor"), Sialon shall obtain Customer's prior written consent. When Sialon subcontracts the Commission to the Subcontractor with Customer's prior written consent, Sialon shall have the Subcontractor assume similar level of obligations which Sialon assumes to the Customer hereunder, and Sialon shall assure Customer of the observance of such obligations by the Subcontractor.

## Article 3 (Fundamental Contractual Nature of Terms and Conditions)

This Terms and Conditions shall apply to all Individual Contract, unless application of this Terms and Conditions is specifically excluded or amended by an agreement prepared between Customer and Sialon each time for the Commission. If any condition contained in an order acceptance is inconsistent with order form, the condition in the order acceptance shall prevail.

## Article 4 (Contents of Individual Contract and Establishment of Individual Contract)

Customer issues to Sialon an order form in the form prescribed by Customer, which contains (1) name of Product's substance (compositional formula, etc.), quantity, desired delivery date, date of the order and other information necessary for Manufacturing of the Product, or (2) details of the Processing (its method, condition, etc.), quantity, desired delivery date, date of the order and other information necessary for the Processing.

An Individual Contract made under the preceding article shall be established when, and Sialon delivers Customer its order acceptance that contains the amount of contract price and expected delivery date stated in the written estimate.

If Customer does not request delivery of the order acceptance, Sialon may omit delivery of the order acceptance.

If any condition contained in Sialon's written estimate or order confirmation is inconsistent with that of Customer's order form, Sialon's version shall prevail.

#### Article 5 (Change of Individual Contract)

1. If it becomes necessary to change conditions of the Individual Contract after establishment of an Individual Contract, Customer or Sialon shall give prior written notice of such change to the other party, and may change the conditions of the Individual Contract after discussion between the parties.
2. If the contract price under the Individual Contract should be increased or decreased as a result of the change in conditions of the Individual Contract under the preceding paragraph, the amount of increase or decrease shall be settled separately.

#### Article 6 (Provision of Objects for Processing and Technical Information)

1. Customer shall provide Sialon with Objects for Processing in such quantity necessary and sufficient for Sialon to perform the Commission. Sialon shall not analyze or parse the Object for Processing provided from Customer.
2. Customer shall disclose and provide to Sialon with the information and material (including safety information) concerning Products, Manufacturing or the Object for Processing and Processing method, conditions and other information (hereinafter collectively referred to as "Customer's Technical Information") to the extent which Customer considers necessary for the Commission, except such information and material which cannot be disclosed or provided because of any contract between Customer and a third party or which is already disclosed or provided by a confidential contract between Customer and Sialon.

#### Article 7 (Procurement of Raw Materials, etc.)

Except for the Objects for Processing and raw materials, etc. provided or supplied by Customer, Sialon shall procure raw materials, etc. necessary for the Commission on its own responsibility and at its own cost. Provided, however, that any problem occurs in procuring raw materials, etc., Customer and Sialon shall have discussions to resolve the problem.

#### Article 8 (Delivery)

1. In accordance with an applicable individual order acceptance, etc., Sialon shall deliver the commissioned quantity of Products or the Processed Items at Sialon's expense, by the agreed delivery date and at the place designated by Customer.

2. Upon occurrence or threatened occurrence of a situation which makes it impossible to deliver all or part of the Products or the Processed Items on the agreed delivery date initially, Sialon shall immediately notify Customer of the reason of delay, expected delivery date and other relevant information, and determine subsequent steps through discussion with Customer.

Sialon shall not be responsible for the delay in delivery.

3. Customer shall conduct a receiving inspection concerning the quantity of delivered Products or Processed Items with 2(two) weeks after delivery thereof by Sialon. If a shortage of quantity is found in the receiving inspection, Customer shall promptly notify Sialon of such shortage by written document or e-mail. If Sialon has no objection against the results of Customer's receiving inspection, Sialon shall take the action specified in the following Item (1) at its own expense unless otherwise directed by Customer.

- (1) Shortage in quantity: Sialon shall deliver the shortage on or before an additional delivery date which shall be set anew by discussion between Customer and Sialon.

#### Article 9 (Payment of Individual Contract Price)

1. When Sialon delivers Products or Processed Items in such quantity specified in the relevant order acceptance etc., Sialon shall issue a bill to Customer. Customer shall pay Sialon the contract price (including consumption tax, etc.) pursuant to the bill. The bank transfer fee shall be borne by Customer.
2. When Sialon does not deliver the whole quantity of Products or Processed Items specified in the order acceptance etc., the amount required to be paid by Customer is not the total amount of contract price but a portion of the contract price corresponding to the quantity of Products or Processed Items actually delivered to Customer.

#### Article 10 (Progress Reporting)

Customer may request Sialon to report the progress of Commission at any time. If requested by Customer, Sialon shall report the progress of Commission without delay.

#### Article 11 (Prohibition of Provision and Sale)

Sialon shall not provide, transfer or sell to any third party all or part of those Products or Processed Items which have been obtained under this Terms and Conditions and an individual contract, without obtaining prior written consent of Customer.

Provided, however, that Sialon may provide or transfer to a third party those Products, including phosphors, which are developed or owned by Sialon or to which Sialon has any right. In addition, Sialon may accept an order from a third party for a processing work similar to the Processing.

#### Article 12 (Confidentiality and Prohibition of Unintended Use)

Sialon shall keep in confidence Customer's Confidential Information, and shall not disclose, leak or provide the same to any third party without obtaining prior written consent of Customer. In addition, Sialon shall not use or utilize the Customer's Confidential Information and Product or Object for Processing for any purpose other than the purposes of the Individual Contract approved by Customer. Sialon shall not recklessly copy Customer's Confidential Information without obtaining Customer's prior permission.

Provided, however, that Sialon may use and provide those Products, including phosphors, Processing Item to a third party or disclose to a third party the information of those Products, including phosphors, Processing Item which are developed or owned by Sialon or to which Sialon has any right.

2. Sialon may disclose Customer's Confidential Information only to its officers and employees who are directly involved in the Commission. Sialon shall impose on such officers and employees a duty of confidentiality similar to the duty assumed by Sialon to Customer, and Sialon shall assure Customer of the observation of duty by the officers and employees.
3. If Sialon and Customer have concluded a nondisclosure agreement in connection with a Commission, Sialon and/or Customer shall strictly observe the duties of confidentiality and restricted use specified in the nondisclosure agreement.
4. After termination or expiration of the Commission, or before termination or expiration of the Commission, if so directed by Customer Sialon shall promptly

return all of Customer's technical information (including its copies), and remaining Objects for Processing.

5. Customer shall keep in confidence Sialon's Confidential Information. Customer shall not disclose, leak or provide the said information to any third party without obtaining Sialon's prior written consent. In addition, Customer shall not use or utilize Sialon's Confidential Information for any purpose other than the purposes of an Individual Contract approved by Sialon. Customer shall not recklessly copy Sialon's Confidential Information without obtaining Sialon's prior permission.

#### Article 13 (Ownership of Industrial Property Right, etc.)

Any and all industrial property rights, including inventions and devices, newly obtained through the Commission and any other right and knowledge obtained as a result of the Commission shall attribute to Customer; provided, however, that the industrial property rights, etc. already owned by Sialon, and the Products including the phosphors to which Sialon has rights or the processing technology specific to Sialon, or inventions, devices, etc. obtained independently by Sialon shall attribute to Sialon.

#### Article 14 (Limitation of Responsibility)

1. In performing the Commission under these Terms and Conditions and an Individual Contract, Sialon and its Subcontractor shall perform the Commission with its responsibility and at its cost. Sialon shall assume responsibility for any accident which may occur in performing the Commission, and Customer will not be responsible for it unless such accident occurs by a cause attributable to Customer.
2. In the event that any Product or Processed Item does not meet the standard, performance, function or other requirements expected by Customer, Sialon shall not be responsible for such insufficiency.
3. If a loss occurs to Customer from using and providing or selling to third party any Product or Processed Item, Sialon shall not be responsible for such loss.
4. If an action or other proceeding is instituted and a claim for damages, etc. is made against Sialon by a third party, alleging that Sialon infringes industrial property

rights of the third party in connection with the Commission, Sialon shall inform it to Customer and Customer shall resolve the dispute on its responsibility and at its expense, and indemnify and hold Sialon harmless from the dispute.

#### Article 15 (Prohibition of Transferring Rights and Obligations)

Neither Customer nor Sialon may transfer or offer as security its rights or obligations specified in these Terms and Conditions or any Individual Contract to any third party without obtaining prior written consent of the other party.

#### Article 16 (Cancellation, etc. of Contract)

If any of the following events occurs to either party, the other party may, without taking any further action, terminate or cancel these Terms and Conditions and an Individual Contract, in whole or in part, by giving a written notice to the other party with immediate effects and claim payment and/or damages to the defaulting party for the losses incurred by the other party.

- (1) if either party accept any draft or check drawn or if either party is dishonored or general payment is suspended;
- (2) if either party becomes subjected to the disposition of cancellation, suspension, etc. of its business by competent authorities;
- (3) if petition for provisional disposition, attachment, compulsory execution or auction is filed by a third party against the either party, or disposition of the procedure for collection of tax delinquency is imposed on the either party;
- (4) if petition in/for bankruptcy, corporate arrangement, special liquidation, civil rehabilitation or corporate reorganization procedure is filed by or against the either party;
- (5) if either party adopts a resolution of dissolution;
- (6) if either party violates Japanese law or country law of Customer; or
- (7) if either party commits a breach of any provision of this Terms and Conditions or any individual contract, and in spite of the notice given to the defaulting party with reasonable notice period, the party fails to rectify the breach.

2. If Customer or a third party incurs losses as a result of cancellation of this Terms and Conditions and an Individual Contract due to any event mentioned in the preceding paragraph, Sialon will not assume any responsibility to Customer or the third party.



#### Article 17 (Force Majeure)

Neither party hereto shall be liable to the other party for failure to perform its obligations hereunder due to the occurrence of any event beyond the reasonable control of such party and affecting its performance including, without limitation, governmental orders or regulations, outbreaks of a state of emergency, acts of God, war, warlike conditions, hostilities, civil commotion, riots, epidemics, fires, strikes, lockouts or any other similar causes (hereinafter to as "Force Majeure"). Notwithstanding the foregoing, no occurrence of an event of Force Majeure shall relieve Customer of its obligation to make payment for Products or Processed Item already delivered hereunder.

#### Article 18 (Waiver)

The failure to exercise or enforce any right conferred upon any of the parties hereto hereunder shall not be deemed to be a waiver of any such right, or shall not operate to bar the exercise or enforcement thereof on any other occasion.

#### Article 19 (Severability)

If any provision of this Terms and Conditions is subsequently held invalid or unenforceable by any court or authority agent, such invalidity or unenforceability shall in no way affect the validity of enforceability of any other provisions thereof.

#### Article 20 (Effective Term)

The provisions of Article 12 (Confidentiality and Prohibition of Unintended Use) shall survive for a period of five (5) years after termination of the Commission stipulated in an individual contract, and Article 13 (Ownership of Industrial Property Right, etc.), Article 14 (Limitation of Responsibility), Article 18 (Waiver), Article 21 (Governing Law) and Article 22 (Jurisdiction) shall survive after termination of the Commission stipulated in an Individual Contract.

#### Article 21 (Governing Law)

This Terms and Conditions shall be governed by, and construed and interpreted under the laws of Japan.

#### Article 22 (Jurisdiction)

When a matter not specified herein, or a question in interpreting any provision

of this Terms and Conditions and an Individual Contract occurs, or when it becomes necessary to change any contents of this Terms and Conditions, Customer and Sialon shall resolve such matters through discussions in good faith.

If a dispute involving this Terms and Conditions and individual contract cannot be resolved through discussions, the parties agree to submit to the exclusive jurisdiction of the Tokyo District Court of Japan as the court of first instance.

End

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