

TERMS AND CONDITIONS OF SALE

PHOTONIS

Any sale by PHOTONIS USA, Inc. or other entity indicated on the reverse side hereof or attachment hereto as the seller (hereinafter referred to as "PHOTONIS") is expressly made conditional on the assent of the customer (hereinafter "Buyer") to these Terms and Conditions of Sale. Buyer's taking delivery of any part of products/services sold shall constitute such assent and a waiver of all terms and conditions in its purchase order or similar document which are different from or additional to those set forth herein.

1. PRICES AND TERMS OF PAYMENT

1.1 Unless otherwise specified by PHOTONIS in writing, prices and terms of payment shall be those set forth in the applicable Price Schedule. PHOTONIS reserves the right to change or withdraw prices for the products or services it offers for sale without prior notice. If PHOTONIS's price for any product or service is increased, the price in effect prior to the increase will apply to orders received prior to the effective date of the increase and shipped within a period of 30 days after the effective date of increase. Partial shipments or performance made within this period will not obligate PHOTONIS to make further shipments or performance at these prices after the expiration of the 30-day period.

1.2 Prices are in United States dollars payable in Lancaster, Pennsylvania, USA, unless otherwise specified.

1.3 Unless otherwise specified by PHOTONIS in writing, all taxes and other charges imposed by federal, state, local or foreign governments on the manufacture, sale, shipment, import, export or use of the products or services shall be added to the price and billed to and paid by Buyer. Buyer shall defend, indemnify and hold harmless PHOTONIS from and against all liabilities for such taxes or charges and attorneys' fees or costs incurred by PHOTONIS in connection therewith.

2. **ACCEPTANCE, MINIMUM ORDER RELEASE** – Any quotation or proposal is subject to change or cancellation by PHOTONIS at any time without notice and in any event expires 30 days from its date, unless otherwise indicated therein or extended in writing by PHOTONIS. PHOTONIS's quotation or proposal does not constitute an offer by PHOTONIS, and any order or orders placed thereon are not binding on PHOTONIS until PHOTONIS's acceptance in writing in Lancaster, Pennsylvania, USA has been sent to Buyer. The banking, negotiation, endorsement or other use of Buyer's down payment, if any, shall not constitute acceptance by PHOTONIS. THE MINIMUM ORDER AND SHIPPING RELEASE FOR ALL PRODUCTS IS \$250 IN BILLING VALUE PER ORDER.

3. **DELIVERY**- PHOTONIS shall have the right to make deliveries or perform services in installments. Partial shipments or performance will be billed as made and payments therefore are subject to the terms of payment referenced herein. All delivery indications or completion dates are estimated and are dependent in part upon prompt receipt of all necessary information to service an order. PHOTONIS reserves the right to allocate, in its sole discretion, inventories, production and services when such allocation becomes necessary. In no event will PHOTONIS be liable for any premium transportation, procurement, or other costs or losses incurred by Buyer as a result of PHOTONIS's failure to deliver products in accordance with indicated delivery/performance schedules.

4. PATENTS AND PATENT WARRANTY

4.1 Buyer agrees that PHOTONIS has the right to defend, or at its option to settle, and PHOTONIS agrees, at its expense, to defend or at its option to settle, any claim, suit or proceeding brought against Buyer on the issue of infringement of any United States patent by any product, or any part thereof, supplied by PHOTONIS to Buyer hereunder. PHOTONIS agrees to pay, subject to the limitations hereinafter set forth, any final judgment entered against Buyer on such issue in any suit or proceeding defended by PHOTONIS. Buyer agrees that PHOTONIS at its sole option shall be relieved of the foregoing obligations unless Buyer notifies PHOTONIS promptly in writing of any such claim, suit or proceeding, and at PHOTONIS's expense, gives PHOTONIS proper and full information and assistance to settle and/or to defend any such claim, suit or proceeding. If the product, or any part thereof, furnished by PHOTONIS to Buyer becomes, or in the opinion of PHOTONIS may become, the subject of any claim, suit or proceeding for infringement of any United States patent, or in the event of an adjudication that such product or part infringes any United States patent, or if the use, lease or sale of such product or part is enjoined, PHOTONIS may, at its option and its expense: (1) procure for Buyer the right under such patent to use, lease or sell, as appropriate, such product or part, or (2) replace such product or part, or (3) modify such product or part, or (4) remove such product or part and refund the aggregate payments and transportation costs paid therefore by Buyer less a reasonable sum for use, damage and obsolescence. PHOTONIS shall have no liability for any infringement arising from: (i) the combination of such product or part with any other product or part whether or not furnished to Buyer by PHOTONIS, or (ii) the modification of such product or part unless such modification was made by PHOTONIS, or (iii) the use of such product or part in practicing any process, or (iv) the furnishing to Buyer of any information, data, service or application assistance. Buyer shall hold PHOTONIS harmless against any expense, judgment or loss for infringement of any United States patents or trademarks which results from PHOTONIS's compliance with Buyer's designs, specifications or instructions. PHOTONIS shall not be liable for any costs or expense incurred without PHOTONIS's written authorization, and in no event shall PHOTONIS's total liability to Buyer under, or as a result of compliance with, the provisions of this paragraph exceed the aggregate sum paid to PHOTONIS by Buyer for the allegedly infringing product or part, exclusive of any refund under option (4) above. The foregoing states the entire warranty by PHOTONIS,

and the exclusive remedy of Buyer, with respect to any alleged patent infringement by such product or part. In the event that Buyer is an authorized distributor of PHOTONIS, such warranty, subject to the terms and conditions hereof, shall be extended to the direct purchasers from such distributor of the products covered hereby.

4.2 No sale or lease hereunder shall convey any license by implication, estoppels or otherwise, under any proprietary or patent rights of PHOTONIS, to practice any process with such product or part, or for the combination of such product or part with any other product or part.

5. OTHER WARRANTIES, LIMITATION OF LIABILITY

5.1 PHOTONIS warrants that its products, at the time of shipment by PHOTONIS, possess the electrical characteristics as set forth in, and will perform, for the respective warranty periods specified in the applicable Price Schedule, in accordance with, the applicable data sheet or agreed-upon specifications when operated within the operating condition limitations set forth therein.

5.2 To assure conformance with such operating limitations, Buyer should refer to the applicable data sheet.

5.3 Such warranty does not apply: (I) if the product has been exposed to unusual or excessive environmental, mechanical, electrical, or thermal stress during the course of installation or use, or (II) if the absolute maximum ratings are exceeded for any reason including, but not limited to, equipment design and improper device installation or application, or (III) if product malfunction is the result of misuse, abuse, improper installation or application, alteration, accident, or negligence in use, storage, transportation or handling, or if the original identification markings on the product have been removed, defaced, or altered.

5.4 In order to permit PHOTONIS to properly administer this warranty, Buyer shall (I) notify PHOTONIS promptly in writing of any claims, and (II) provide PHOTONIS with the opportunity to inspect and test the product claimed to be defective. Such inspection may be on Buyer's premises and/or PHOTONIS may request the return of the product at Buyer's expense. However, PHOTONIS shall not be responsible for packing, inspection, or labor costs in connection with the return of product. In order to avoid administrative difficulties that result from unauthorized returns, Buyer shall request a formal Return Authorization from PHOTONIS before returning product for any reason.

5.5 The liability of PHOTONIS hereunder or otherwise is solely and exclusively limited to replacement, repair or credit at the purchase price, as PHOTONIS may elect, for any product which is returned by Buyer during the applicable warranty period, or services for which timely notice of defect has been given by Buyer, and which are found by PHOTONIS to be subject to adjustment under this warranty. **IN NO EVENT SHALL PHOTONIS BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSS OF ANTICIPATED PROFIT OR OTHER ECONOMIC LOSS OR FOR ANY DAMAGES ARISING IN TORT WHETHER BY REASON OF STRICT LIABILITY, NEGLIGENCE OR OTHERWISE.**

5.6 PHOTONIS's warranty as herein set forth shall not be enlarged, diminished or affected by, and no obligation or liability shall arise or grow out of, PHOTONIS's rendering of technical advice, facilities or services in connection with Buyer's order or the products furnished hereunder.

5.7 The foregoing warranty extends to Buyer of PHOTONIS and not to purchasers or users of such Buyer's products, except that if Buyer is an authorized distributor of PHOTONIS, the foregoing warranty (and no other), subject to the terms and conditions thereof, may be extended to purchasers from such distributor of the products covered hereby. **PHOTONIS MAKES NO OTHER OR FURTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR WARRANTY OF MERCHANTABILITY**

6. **INSPECTION OF PRODUCTS** – Products shall be inspected by Buyer upon delivery and services, upon performance. Notice of rejection or claim for shortages, damaged product or other non-conformity must be submitted by Buyer to PHOTONIS in writing within 30 days of shipment or performance, and must specify the particular respects in which the delivery, products or services, as applicable, are non-conforming. Buyer shall have no right to exercise any remedial rights until notice of non-conformity has been given to PHOTONIS and PHOTONIS afforded a reasonable opportunity to cure such non-conformity, if appropriate.

7. **RETURNS** – Requests for the return of products because of “ordered in error” or “cancellation” (after shipment has been made), must be made within 30 days of shipment. If approval is given by PHOTONIS to return product, a minimum charge of 15% of the value of product returned will be deducted from the amount of credit issued by PHOTONIS. **NO UNAUTHORIZED RETURNS WILL BE ACCEPTED. ALL RETURNS MUST BE ACCOMPANIED BY A RETURN AUTHORIZATION NUMBER ISSUED BY PHOTONIS**

8. **CANCELLATION, HOLD, OR STOP-WORK NOTICES** – Buyer may send PHOTONIS a cancellation, hold, stop-work, or similar notice at any time applicable to any unshipped portion of any order not involving a special or custom product, and such notice will be accepted by PHOTONIS subject to the following conditions:

8.1 Any hold, stop-work, or similar notice shall be treated as a cancellation notice if and when, in the opinion of PHOTONIS, circumstances warrant such treatment;

8.2 Buyer shall pay a cancellation charge specified by PHOTONIS which shall include adjustment of the billing price to PHOTONIS's established price applicable to the quantity actually delivered, and may include, among other things, all costs, both direct and indirect, incurred and committed with a reasonable allowance for prorated expenses; and

8.3 PHOTONIS will be under no further obligation with respect to filling the order to which such notice applies.

9. **FORCE MAJEURE** – PHOTONIS shall not be under any liability whatsoever to Buyer for non-delivery or delay in delivery products/services directly or indirectly caused by unforeseen circumstances or resulting from an Act of God, outbreak of hostilities (whether or not war is declared), insurrection, riot, civil disturbance, Government Act or regulation, fire, flood, explosion, production delays, accident, theft, climatic conditions, shortage of material, strike, lockout or trade dispute (whether PHOTONIS's or another party's employees) or other cause beyond PHOTONIS's reasonable control. In the event of any deliveries/services being suspended or delayed on account of any such aforementioned event or circumstances the period of the contract shall be correspondingly extended or, if deliveries/services are suspended for six months or more, PHOTONIS may at its option, exercisable by notice in writing to Buyer, cancel the contract with respect to any undelivered products/services without liability

10. **SECURITY INTEREST** – PHOTONIS reserves a security interest in the products sold hereunder and in proceeds thereof to secure payment of the purchase price.

11. **BUYER'S SOLVENCY** – Buyer's order shall constitute a representation that Buyer is solvent, and PHOTONIS is relying upon such representation. If PHOTONIS at any time reasonably believes that Buyer is insolvent or that Buyer's credit is impaired, Buyer shall be in material breach hereof and PHOTONIS may, without liability to Buyer, withhold performance hereunder, change the payment terms including without limitation declaring all amounts to be immediately due and payable, and/or repossess products previously delivered.

12. **PHOTONIS'S DAMAGES** – If buyer wrongfully rejects or revokes acceptance of products/services covered hereby, or fails to make any payment when due, or repudiates this order, PHOTONIS shall have all the rights and remedies provided by law and, without limitation of the foregoing, may recover as damages, where permitted by applicable law, the price including a late payment or interest charge from due date at one and one-half percent (1-1/2%) per month on the unpaid balance, but not to exceed the maximum rate of interest permitted by law, and any costs of collection, including reasonable attorney's fees. As to all partially manufactured products, PHOTONIS may, at its option complete their manufacture, and hold Buyer responsible for their price. Upon recovery of the price, the products shall become the property of Buyer.

13. **BUYER'S RIGHT TO SPECIFIC PERFORMANCE** – In the event of any unexcused failure by PHOTONIS to deliver the products/services covered hereby, Buyer shall have the right to such specific performance only after diligent efforts to obtain substitute products/services.

14. **GENERAL**

14.1 No addition to, deletion from, or modification of any of the provisions of these Terms and Conditions of Sale shall be binding upon PHOTONIS, unless made in writing and signed by a duly authorized officer or employee of PHOTONIS. Oral statements, warranties, or representations made by any agent or employee or representative of PHOTONIS are not authorized by PHOTONIS and shall be of no force or effect. These Terms and Conditions of Sale are the final, complete and exclusive statement of the terms of the agreement between PHOTONIS and Buyer. ANY DIFFERENT OR ADDITIONAL TERMS PROPOSED BY BUYER ARE OBJECTED TO AND HEREBY REJECTED.

14.2 A waiver by PHOTONIS of any default by Buyer or of any of these Terms and Conditions of Sale shall not be deemed to be a continuing waiver or a waiver of any other default or of any other of these Terms and Conditions of Sale, but shall apply solely to the instance in which the waiver is directed.

14.3 This agreement may not be assigned by Buyer without PHOTONIS's written consent.

14.4 These Terms and Conditions of Sale shall be construed in accordance with the laws of the State of Delaware, USA, including where otherwise applicable the United Nations Convention on Contracts for the International Sale of Goods. In the event of any inconsistency between the terms hereof and the provisions of such Convention, the terms hereof shall prevail. Any claims arising hereunder by either party shall be brought in an appropriate court of general jurisdiction in Pennsylvania, USA, and Buyer irrevocably accepts the jurisdiction of such courts and consents

15. **TRANSPORTATION FOR NORTH AMERICAN ORDERS**

15.1 All sales are made F.O.B. the applicable PHOTONIS plant or warehouse, transportation at Buyer's expense, with title and risk of loss passing to Buyer at the PHOTONIS plant or warehouse.

15.2 In the event PHOTONIS pays transportation and insurance beyond the point of shipment to the destination specified by Buyer, all such costs will be billed as a separate item on the invoice.

16. TRANSPORTATION FOR INTERNATIONAL ORDERS

16.1 The terms "F.O.B.", "F.A.S.", "C.I.F." and/or "C&F", as used herein or on the reverse side hereof or any attachment hereto, shall be defined in accordance with "Incoterms" published by the International Chamber of Commerce.

16.2 All sales are made F.O.B. the applicable PHOTONIS plant or warehouse. Transportation from this point and consular and brokers' fees shall be at Buyer's expense. Title to and risk of loss of the products included in each shipment will pass to Buyer upon delivery to the carrier at the plant.

16.3 All shipments normally will be made via the most economical method and routing consistent with service requirements as selected by PHOTONIS.

16.4 In the event PHOTONIS pays transportation and insurance beyond the point of shipment to the destination specified by Buyer, all such costs will be billed as a separate item on the invoice.

17. PAYMENT TERMS FOR INTERNATIONAL ORDERS – Payment for the products/services specified by Buyer's order shall be made in U.S. Dollars, through the medium of an irrevocable Letter of Credit in favor of PHOTONIS, Sturbridge Business Park, Sturbridge MA, 01566 USA, Attn: Credit Department, confirmed by a bank located in the United States acceptable to PHOTONIS. Unless otherwise agreed such Letter of Credit shall be valid for a period of time sufficient to enable PHOTONIS to receive payment in full plus thirty days shall be for the total price of the product/services, including any applicable transportation and insurance costs, and in a form acceptable to PHOTONIS, and shall authorize partial payments against partial deliveries. The Letter of Credit shall provide for payment(s) to PHOTONIS at sight upon presentation to the confirming bank of PHOTONIS's sight draft(s) on the confirming bank for one hundred percent of the invoice value of each delivery, accompanied by commercial invoice(s) or by shipping documents.

The Letter of Credit shall permit shipment and shall permit presentation of non-negotiable copies of bills of lading provided they are accompanied by PHOTONIS's declaration that the originals have been mailed directly to the opening bank. All bank charges in connection with said Letter of Credit including those of the confirming bank, shall be for the account of Buyer.

Other payment terms may be negotiated between PHOTONIS and Buyer, in which case such special payment terms shall be specified in writing and become a part of the sale agreement.

18. UNITED STATES EXPORT LAWS

18.1 PHOTONIS's obligations are subject to the export administration and control laws and regulations of the United States. Buyer shall comply fully with such laws and regulations in the export, resale or disposition of products.

18.2 Quotations or proposals made, and any orders accepted by PHOTONIS from a Buyer outside the United States are with the understanding that the ultimate destination of the products is the country indicated therein. Diversion of the products to any other destination contrary to United States law is prohibited. Accordingly if the foregoing understanding is incorrect, or if Buyer intends to divert the products to any other destination, Buyer shall immediately inform PHOTONIS of the correct ultimate destination.

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