

ELECTRO OPTICAL COMPONENTS, INC. TERMS AND CONDITIONS OF SALE

1. **ACCEPTANCE:** Acceptance of this order is limited to the terms and conditions stated herein. Any additions, deletions or differences in the terms offered by Buyer will not be binding upon seller unless specifically agreed to in writing. Retention by buyer for a period of ten (10) days of any goods delivered by seller hereunder shall be deemed acceptance of both the goods and the terms and conditions herein.
2. **PRICES AND SHIPMENT:** All prices are F.O.B. Seller's plant. Buyer shall pay all costs of shipment, insurance and be responsible for filing and processing all claims against the carrier. Seller shall package, mark and ship all goods and supplies in accordance with the requirements of the order and shall in the absence of written agreement, secure at its discretion the most advantageous service and rates consistent with the order. Seller may deliver the goods in installments.
3. **RELEASE:** Prices apply only if the quantity hereunder is released within sixty (60) days, with shipments scheduled no more than twelve months from the date of Seller's receipt of Buyer's order; otherwise, Seller's standard prices in effect at date of release of order shall apply to the quantity shipped, and Buyer shall be invoiced for the difference in price if any.
4. **TAXES AND DUTIES:** Prices are net and not subject to trade or other discounts and do not include Federal, State, or Local Taxes applicable to goods sold in this transaction. All such taxes shall be paid by Buyer unless Buyer provides Seller with a proper tax-exemption certificate. Where Seller is required by law to collect such taxes, Seller will add such taxes to the sales price of the goods sold hereunder.
5. **TERMS AND PAYMENT:** Where Seller has extended credit to Buyer, terms of payment shall be net cash thirty (30) days from the date of invoice. Payment shall be made for the goods without regard to whether Buyer has made or may make any inspection or use of the goods. The amount of credit or terms of payment may be changed or credit withdrawn by Seller at any time. Overdue accounts will be considered grounds for rescheduling or cancellation of any or all orders at Seller's discretion. If shipments are delayed by Buyer, payments are due from the date when Seller is prepared to make such shipments. Goods held for Buyer are at Buyer's sole risk and expense. If goods are delivered in installments Buyer shall pay for each installment in accordance with the terms hereof. Buyer, for the purpose of inducing Seller to extend credit, represents that Buyer is not insolvent as that term is defined in applicable state or federal statutes. In the event that Buyer becomes insolvent before delivery of the goods or any part thereof Buyer will notify Seller immediately. A failure to notify Seller shall be construed as a reaffirmation of Buyer's solvency at each time of delivery.
6. **TITLE:** Title to all goods shall pass to Buyer at F.O.B. point.
7. **TERMINATION OR MODIFICATION:** All changes to Buyer's purchase order must be agreed to in writing by Seller prior to the effectivity of such changes unless the order is issued pursuant to a government contract. Buyer may terminate or modify this contract in whole or, from time to time, in part upon advance thirty (30) day written notice to seller. In such event, Buyer shall be liable for termination charges or increased charges due to schedule modifications which shall include an upward price adjustment based on the quantity of goods actually delivered, and all costs direct and indirect, incurred and committed for this contract together with a reasonable allowance for pro-rated expenses and profits.
8. **TERMINATION BY SELLER:** Should the financial responsibility of Buyer at any time become unsatisfactory to Seller, Seller reserves the right to require at Seller's option (i) payment for any shipment hereunder in advance or (ii) satisfactory security. In the event of any default by Buyer, including without limitation, failure to make payment, in accordance with the terms of this contract, Seller may decline to make further shipments. In such event, Buyer shall be liable for termination charges or increased charges as a result of shipping delays which shall include an upward price adjustment based on the quantity of goods actually delivered, and all costs, direct and indirect, incurred and committed for this contract together with a reasonable allowance for pro-rated expenses and profits. If Seller elects to continue to make shipments, Seller's action shall not constitute a waiver of any default by Buyer or in any way affect Seller's legal remedies for any such default or subsequent default by Buyer.
9. **BUYER MATERIAL:** Seller shall not be liable for any loss or damage from any cause, except for gross negligence or willful misconduct on the part of Seller, to property owned by Buyer and furnished to Seller or to other material delivered by Buyer to Seller. Seller is not obligated to insure material furnished to Seller by Buyer, and risk of loss of material furnished to or left with Seller shall remain with Buyer. Seller does offer insurance at minimal cost for protection of material while at Seller's facility. Details and approximate costs are available upon request.
10. **SET-UP, FIXTURES AND TOOLS:** Set-up, fixtures and tools become an integral part of Seller's equipment. Invoices covering set-up, fixtures or tools do not convey any title or interest to Buyer. Only part of such cost is ordinarily charged Buyer while Seller assumes the remainder and provides engineering time and experience in their design. For these reasons set-ups, fixtures and tools remain the property of Seller and are not removable from Seller's plant.
11. **INSPECTIONS AND ACCEPTANCE OF GOODS:**
 - a) Inspections: All inspections required as part of this order shall be limited to final inspections only. Such inspections may be performed at Seller's facility, but shall not include any areas or processes which are proprietary to Seller. Advance notification of 72 hours is required for inspections at Seller's facility.
 - b) Acceptance: Acceptance of goods supplied under this order shall occur within ten (10) days after delivery to Buyer. Failure to inspect and reject non-conforming items shall be deemed acceptance by Buyer with full responsibility for payment.
12. **DELAY IN DELIVERY:** Shipping dates are approximate only and simply represent the best estimate of the time required to make shipment. Time shall not be deemed to be of the essence hereunder. Seller shall not be liable for any loss or expense (consequential or otherwise) incurred by Buyer for any delay in delivery for any reason other than arbitrary refusal of Seller to perform. Retention of goods by Buyer for a period of ten (10) days following delivery constitutes a waiver of all claims for delay in delivery unless a written claim is delivered to Seller within the period. Seller shall not be liable for any damage or penalty for failure to ship or for delays in shipment whether reasonable or unreasonable caused by the following matters affecting the manufacture or shipping: (i) fire, floods, or other casualties; (ii) wars, riots, civil commotion, embargoes, governmental regulation; (iii) Seller's inability to obtain necessary material from its usual sources of supply; (iv) shortage of cars or trucks or delays in transit; (v) existing or future

strikes or other labor troubles affecting production or shipment whether involving employees of Seller or employees of others, and regardless of responsibility or fault on the part of the employers; or (vi) any other contingencies affecting manufacture or shipment nor reasonably within the Seller's control whether or not of a class or kind mentioned herein. The delivery schedule hereof shall be considered automatically extended by a period of time equal to the time lost because of any delay which is excusable hereunder. In the event Seller is wholly or partially unable to perform because of any cause beyond its reasonable control Seller may allocate production and deliveries among Seller's customers or in the case of U.S. Government contracts and/or subcontracts in accordance with applicable DOD priority ratings, or may terminate this order without any further liability to Buyer.

13. **WARRANTY:** The seller as a distributor does not warranty anything, but passes on the warranty of the Manufacturer. The Manufacturer's warranty will apply unless a different period is specified and agreed to, that all items furnished hereunder will be free from defects in material and workmanship and will conform to specifications, drawings and/or other descriptions expressly made a part of this order.

Should any failure of the goods to conform to this warranty appear within the warranty period, upon notification thereof and substantiation that the goods have been properly shipped, stored and maintained, and upon return of such goods, the Manufacturer will, at manufacturer's option, repair and/or replace such goods free of charge or issue credit in lieu of such repair or replacement. **THIS WARRANTY DOES NOT COVER DAMAGE OR DEFECTS CAUSED BY BUYER'S PRODUCTION CYCLE.**

The Manufacturer's liability shall be limited to the repair or replacement of the item in warranty after return, prepaid, to Seller's factory or authorized repair facility. Return of repaired unit to Buyer or Buyer's customer shall be at Seller's expense and limited to UPS Ground. Cost shall be borne by Buyer or Buyer's customer for any other method of shipment or if the returned item is not defective. No other liability of any kind, either expressed, or implied or legally imposed, shall be deemed to exist on the Manufacturer for service under warranty. Buyer must notify the Marketing Department of the Seller of all details and request a return authorization.

This warranty is exclusive and is in lieu of any implied warranty of merchantability, fitness for a particular purpose or other warranty of quality, whether expressed or implied except the warranty of title and against patent infringement.

14. **LIMITATION OF LIABILITY:** SELLER SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES SUCH AS, BUT NOT LIMITED TO, DAMAGE OR LOSS OF OTHER PROPERTY OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF PURCHASED, OR REPLACEMENT GOODS, OR CLAIMS OF CUSTOMERS TO THE BUYER. THE REMEDIES OF THE BUYER SET FORTH HEREIN ARE EXCLUSIVE, AND THE LIABILITY OF SELLER WITH RESPECT TO ANY CONTRACT, OR ANYTHING DONE IN CONNECTION THEREWITH SUCH AS THE PERFORMANCE OR BREACH THEREOF, OR FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, INSTALLATION, OR USE OF ANY GOODS COVERED BY OR FURNISHED UNDER THIS CONTRACT WHETHER ARISING OUT OF CONTRACT, NEGLIGENCE, STRICT TORT, OR ANY WARRANTY OR OTHERWISE, SHALL NOT EXCEPT AS EXPRESSLY PROVIDED HEREIN EXCEED THE PRICE OF THE GOODS UPON WHICH SUCH LIABILITY IS BASED.

15. **PATENT RIGHTS:** Seller reserves all rights in any inventions or discoveries made by Seller, Seller's employees or persons under Seller's control, under this purchase order, including title to and rights under any patent application or patent which may be issued thereon throughout the world. Such rights reside solely with the Seller, together with the exclusive power to determine whether or not and where a patent application shall be filed, and disposition of any rights thereunder. The Seller does not convey, through sale of product or goods under this purchase order, any license, expressed or implied, estoppel or otherwise, to patent rights trade names or trademarks. Seller reserves the right to grant licenses covering completed equipment assemblies, methods or processes in which Seller's products are used as components.

16. **CURE:** Seller shall have the right to cure any default, non-conforming goods or services or delivery hereunder within thirty (30) days of receipt by Seller of written notice from Buyer specifying the default or non-conformity.

17. **ATTORNEY'S FEES:** If any legal action is necessary to enforce the terms of this agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief.

18. **GOVERNMENT CONTRACTS:** If Buyer's purchase order is identified in writing as made for use under a Government Contract, only those FAR and DOD FAR Supplement Clauses, required under mandatory flowdown requirements, shall be incorporated herein by reference. Such terms and conditions, required by Federal Law, shall have precedence over the terms and conditions stated herein.

19. **WAIVER:** Seller's forbearance to insist upon strict performance of any provision of this agreement shall not be considered a waiver of Seller's rights or remedies.

20. **APPLICABLE LAW:** This agreement shall be construed and enforced in accordance with the laws of the State of California.

21. **ASSIGNMENT:** This contract may not be transferred or assigned by operation of law or otherwise, without the prior express written consent of Seller. Any attempted transfer or assignment of any rights, duties or obligations hereunder without such consent shall be void and of no force or effect.

22. **ENTIRE AGREEMENT:** This contract contains the complete and exclusive agreement between Seller and Buyer, and supersedes all prior written and oral agreements between them, with respect to the sale and purchase of the goods specified herein. No representation or statement not contained in this contract shall be binding upon Seller as a warranty or otherwise. No terms or conditions of Buyer's order forms or other instruments which are in addition to or inconsistent with the terms and conditions set forth herein shall be binding upon Seller or applied to any sale made pursuant hereto, unless expressly agreed to in writing by Seller. This contract shall not be deemed or construed to be modified amended, rescinded, canceled or waived, in whole or in part, except by written amendment executed by the duly authorized officers of Seller and Buyer.