

PROCESS PHOTONICS INC. — TERMS & CONDITIONS OF SALE

DEFINITIONS: "Process Photonics" means Process Photonics INC. a Canadian corporation; "the Buyer" means the person or company to whom this quotation is addressed, and, if the addressee notifies Process Photonics upon acceptance of this quotation that it will lease the Products to an identified lessee, then "the Buyer" includes such lessee; and the term "the Product" shall mean the product or products proposed for sale by Process Photonics.

1. **Acceptance.** Process Photonics's offer to sell the Product(s) specified in this quotation is expressly conditioned upon acceptance of the terms and conditions stated herein. Process Photonics hereby objects to any additional or different terms and conditions contained in the Buyer's purchase order, none of which shall be binding upon Process Photonics unless specifically agreed to in writing signed by an officer of Process Photonics. Failure by Process Photonics specifically to object to provisions contained in the Buyer's purchase order shall not in any way be deemed an alteration to or waiver of these terms and conditions. Process Photonics's acceptance of the Buyer's purchase order must be made by written order acceptance.
2. **Prices & Shipments.** All prices are FOB carrier at Process Photonics's shipping point for shipments within the U.S. or Canada, and FCA Free Carrier (Incoterms 2000) for international shipments. Buyer is responsible for all costs of transport and insurance. Prices do not include any goods or services, technical data or documentation, proprietary rights of any kind, qualifications, testing or process performance that are not specifically stated herein. Prices are valid for 60 days from the date on a quotation unless otherwise stated on the face of the quotation. Prices for all Products are Process Photonics's published list price for the territory, unless otherwise specified on a quotation.
3. **Taxes & Other Charges.** Buyer is responsible for the ultimate payment of all federal, state, local, foreign or provincial taxes, fees or charges of any nature whatsoever imposed by any governmental authority that may be assessed or levied on materials sold hereunder. Unless otherwise stated, prices do not include such taxes which will be added to the sales price where Process Photonics has a legal obligation to collect them. If Buyer is exempt, Buyer shall provide Process Photonics with the documentation necessary to support such a claim and to allow Process Photonics to document its decision not to collect such tax.
4. **Changes.** Buyer may request changes to the Products after Process Photonics's acceptance of Buyer's purchase order, and Process Photonics will quote any changes in price, time of delivery, or other terms associated with the requested change. The proposed change shall not become effective unless and until Buyer issues a purchase order recording the change and Process Photonics has confirmed its acceptance in writing.
5. **Delivery Dates.** All delivery and shipment dates quoted are approximate and subject to Process Photonics's availability schedule. Process Photonics will make reasonable efforts to meet the delivery date(s) quoted, however, Process Photonics does not assume liability, consequential or otherwise, because of any delay or failure to deliver all or part of an order for any reason. All delivery promises are predicated upon prompt and timely receipt from the Buyer of all necessary information, material samples, documentation, etc., and should be reconfirmed at the time of Process Photonics's written order acceptance.
6. **Installation Services & Site Preparation.** In order to prevent avoidance of warranty, installation and initialization of the Product must be performed by Process Photonics employees or Process Photonics trained and authorized representatives. Installation services are not included in the purchase price of the Product sold hereunder, unless expressly so stated in this quotation. Details regarding installation services, conditions and rates, if applicable, are contained in a separate written enclosure. If Buyer has contracted with Process Photonics for installation services or such services are included in this quotation, Buyer will complete all site preparation and operating environment requirements before installation begins. Buyer will coordinate Process Photonics's installation activities with those of Buyer's personnel and any other contractors at Buyer's facility. It is Buyer's responsibility to identify and resolve all physical and procedural

conflicts at Buyer's facility without cost to Process Photonics, and to request whatever information and drawings it requires.

7. **Credit & Payment Terms.** Unless otherwise stated on a quotation, payment terms are as follows: (a) 30% on submittal of the purchase order; (b) 60% on shipment; and (c) 10% on the earlier of successful installation or 60 days from shipment. All payment terms are conditioned upon approval of the Buyer's credit and may be withdrawn or amended at any time by Process Photonics at its discretion. Process Photonics reserves the right to change the credit terms provided herein, refuse shipment or cancel unfilled orders at any time when, in its opinion, the financial condition or previous payment record of the Buyer so warrants. If delivery dates are delayed by Buyer or Buyer has not completed the required site preparation, payments are nevertheless due when Process Photonics is prepared to make delivery according to the delivery schedule. No cash discounts for early payment will be granted unless specifically stated on Process Photonics's quotation. Buyer shall be delinquent if payment is not remitted according to the applicable terms. Interest shall accrue on delinquent invoices at the rate of 1.5 percent per month, subject to federal, state and local laws, on the amount of the unpaid balance from the original due date of the invoice. In the event Process Photonics refers delinquencies to an attorney or an agent for collection, Buyer shall pay all costs of collection, including reasonable attorney's fees. Should Buyer become delinquent in the payment of any sum due hereunder, all contractual obligations of Process Photonics to the Buyer shall terminate.
8. **Security Interest.** Buyer agrees that Process Photonics shall retain a security interest in the Products and any proceeds thereof to secure any portion of the purchase price not paid, and Buyer will, on request, execute a security agreement in such form as is required by Process Photonics. Process Photonics shall have all rights and remedies accorded by law or equity to a secured seller, including the right to enter upon the premises where the Products shall be located for purposes of removing or rendering them inoperative, and all such rights and remedies shall be cumulative. Buyer shall maintain insurance against all risks to cover full replacement value of the Products until Process Photonics has been paid in full.
9. **Cancellation Charges.** Buyer agrees to pay to Process Photonics a cancellation charge in the event it (1) cancels any order or portion thereof or (2) fails to meet any obligation thus causing cancellation. Such charges will be computed based on net invoice price as follows: twenty (20) percent for all standard component order cancellations prior to 30 days before scheduled shipment; thirty-five (35) percent for cancellations less than 30 days prior to shipment. Cancellation charges for orders involving custom or "special" Product will be 100% prorated by work completed on the order, unless otherwise stated in a quotation. Buyer agrees that this charge is a reasonable approximation of the damages that would result from its cancellation, and that the charge is not a penalty, but is used as a means to avoid the difficulty of proving the actual damages incurred by Process Photonics. No order may be canceled after shipment has occurred.
10. **Acceptance Criteria & Documentation.**
 - a) **Standard Price List Products.** Buyer agrees to accept upon delivery Products which are items from Process Photonics's standard price list and for which Buyer has not required a performance test (see (b) below) upon demonstration to Buyer's reasonable satisfaction that the Products are in material conformity to Process Photonics's published specifications in effect at the date of Process Photonics's acceptance of Buyer's purchase order.
 - b) **Custom Products & Products Ordered With Particular Performance Criteria.** If Buyer requires criteria other than Process Photonics's published specifications to become conditions of Buyer's final acceptance and payment for the Product, Buyer must specify the acceptance criteria to Process Photonics to be included in the contract signed by Process Photonics.

Buyer shall furnish or specify in writing the materials upon which the performance test will be performed, and, if material, any environmental conditions at Buyer's facility under which the Product is expected to operate, but such conditions must be within those specified as minimum

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conditions by Process Photonics. Process Photonics will then devise and describe a performance test that will reasonably demonstrate the Product's performance according to Buyer's acceptance criteria; and prior to shipment of the Product, Process Photonics will conduct the performance test at an authorized facility. An authorized representative of Buyer shall attend the performance test and, if the test is completed successfully, will accept the Product by executing Process Photonics's form of Performance Acceptance. Buyer shall then give its final authorization for any outstanding payments upon delivery to Buyer and demonstration that the Product materially complies with the agreed upon specifications. If the Buyer's authorized representative fails to execute the Company's form of Performance Acceptance or the Buyer fails to give its final acceptance of the Products, acceptance shall be deemed to have occurred on the earlier of the date on which the Products are put into operation by the Buyer or seven (7) days following the date the Products have been shown to materially conform to the agreed upon specifications.

11. **Warranty.** Process Photonics provides a limited warranty on the Product, the terms and conditions of which are contained in a separate written Warranty. **Process Photonics DISCLAIMS ALL OTHER WARRANTIES EXPRESS OR IMPLIED.**
12. **EXCLUSIVE REMEDIES. THE REMEDIES PROVIDED HEREIN ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES. NEITHER Process Photonics NOR BUYER SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT, TORT OR OTHER LEGAL THEORY ARISING OUT OF THE SALE, INSTALLATION, SERVICE OR USE OF THE PRODUCTS, EVEN IF PROCESS PHOTONICS HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH LOSSES, AND IN NO EVENT SHALL PROCESS PHOTONICS'S LIABILITY EXCEED THE UNIT PRICE OF THE DEFECTIVE PRODUCT OR OF THE PRODUCT SUBJECT TO LATE DELIVERY. PROCESS PHOTONICS NEITHER ASSUMES NOR AUTHORIZES ANY AGENT, EMPLOYEE, REPRESENTATIVE OR ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE, INSTALLATION, SERVICE OR USE OF ITS PRODUCTS.**
13. **Patents.** Process Photonics has no liability for any claim based upon the (a) operation or use of any Product supplied hereunder; or (b) combination, operation or use of any Product supplied hereunder with equipment, devices or software not supplied by Process Photonics; or (c) modification or alteration of any Product supplied hereunder. Buyer shall defend and hold Process Photonics harmless against any expense, judgment or loss for alleged infringement of any claim of a patent, which results from Process Photonics's compliance with Buyer's designs, specifications, or instructions. The foregoing states the entire obligation of Process Photonics with respect to infringement or the like.
14. **Authority to Export.** All orders accepted for export are subject to issuance of an export license by the Government of Canada or the USA, if required for export of the Product(s), and subject to the Buyer providing Process Photonics with the relevant import certificate or any other document necessary to secure such export license and/or to permit the import of such goods into the country of destination.
15. **Miscellaneous.**
 - a) **Applicable Laws.** This contract shall be construed in accordance with the laws of the Province of Ontario, Canada.
 - b) **Computer Software License.** Computer software provided with this order, including any subsequent improvements or updates, is furnished to Buyer in object code only under a nonexclusive, nontransferable license solely for Buyer's own use with a single system on which the software is first installed. The software may only be copied as may be necessary and incidental for use on such systems, for archival and backup purposes or to replace a worn or defective copy; provided that all such copies always include Process Photonics's copyright and other proprietary notices on the software. Buyer shall not (a) market, commercialize, sublicense or otherwise provide or make available the software or any part hereof in any form to any third party; or (b) reverse engineer, reverse compile or reverse

assemble the software in whole or in part or do anything to produce source code. Process Photonics has the right to terminate the software license if Buyer fails to cure any breach of these license terms within thirty (30) days after written notice from Process Photonics. Buyer agrees, upon termination of the license, to immediately return or destroy the software and all portions and copies thereof, as requested by Process Photonics.

c) **Confidential Data & Information.** If, in connection with the sale, purchase, use or maintenance of the Product(s), Process Photonics is requested, required or deems it advisable to furnish data or information which it deems proprietary, confidential or both, Process Photonics shall not, in any event, submit or be required to furnish such data or information until Buyer enters into an agreement concerning the handling, use, copying, retention and return of such information, the form of which agreement is available to Buyer upon request.

d) **Proprietary Rights.** Process Photonics retains for itself all proprietary rights in and to all designs, engineering details, and other data and materials pertaining to all goods supplied by Process Photonics and to all discoveries, inventions, patents and other proprietary rights arising out of the work done in connection with the goods or with any and all products developed as a result thereof, including the sole right to manufacture any such products. Buyer warrants that it will not divulge, disclose or in any way distribute or make use of such information, and that it will not manufacture or engage to have manufactured such products.

e) **Force Majeure.** Process Photonics shall not be responsible for any failure to perform the contract formed hereunder due to causes beyond its control, including, but not limited to, acts of God, labor disputes or shortages, acts of government or judicial action, or inability or delay in securing parts or components, all whether foreseen or unforeseen.

f) **Assignment.** None of the rights, duties or obligations defined herein may be assigned, transferred or delegated by Buyer.

g) **Non-waiver.** Process Photonics's failure to exercise any of its rights for any period shall not constitute or be deemed a waiver or forfeiture of such rights.

h) **Entire Agreement.** These terms and conditions in conjunction with any valid quotation provided by Process Photonics constitute the entire agreement between the parties with respect to the subject matter hereof and expressly supercedes all proposals and previous negotiations and understandings, whether written or oral, between the parties with respect to the subject matter hereof.
