

Process Photonics

Terms and Conditions of Purchase

- 1. Definitions.** (a) “Buyer” shall mean Process Photonics Incorporated; and (b) “Seller” shall mean the person or company to whom this Purchase Order is addressed; and (c) “Product” shall mean the product or products proposed for purchase by Buyer; and (d) “Purchase Order” shall mean any order from Buyer to purchase Product and these Terms and Condition of Purchase.
- 2. Seller’s Acceptance of Purchase Order.** Buyer’s offer to purchase the Product specified in this Purchase Order is expressly conditioned upon acceptance of these Terms and Conditions of Purchase. Buyer hereby objects to any additional or different terms contained in any document provided to Buyer by Seller, none of which will be binding upon Buyer unless specifically agreed to in writing signed by an officer of Buyer. Failure by Buyer specifically to object to provisions contained in any document provided by Seller shall not in any way be deemed an alteration to or waiver of these terms and conditions. Acceptance by Seller of this Purchase Order shall be deemed to have occurred upon the earlier of: (a) written, telephonic, or telegraphic acceptance by Seller within thirty (30) days from the date hereof or, (b) delivery to Buyer of conforming Product. Buyer reserves the right to revoke this offer at any time prior to its acceptance by Seller.
- 3. Purchase Price.** The price for the Product shall be as specified herein and includes all charges, including but not limited to, taxes, inspection, packaging and shipping, unless specified otherwise.
- 4. Delivery and Title.** Delivery shall be FOB carrier at Seller’s shipping point (“Delivery”) and title shall pass to Buyer upon Delivery. Seller shall ship Product freight collect using the carrier specified by Buyer, in a single shipment. Buyer reserves the right to reschedule date(s) of delivery of Product by Seller at any time prior to shipment without incurring any fee. Delivery of Product more than three (3) business days in advance of the Delivery Date (as defined in point 5 below) may at Buyer’s option be returned to Seller at Seller’s expense, or such delivery may be refused by Buyer. The Purchase Order number must appear on all invoices, packing slips, waybills, and shipping labels.
- 5. Time of the Essence.** The delivery date shall be the date specified herein (“Delivery Date”). Time is of the essence in the delivery of Product to Buyer on the Delivery Date. Seller shall immediately inform Buyer if it is or will be unable to deliver Product on the Delivery Date. Buyer reserves the right to collect from Seller any charges or additional costs that it may incur as a result of Seller’s failure to deliver Product on the Delivery Date.
- 6. Buyer’s Acceptance of Product.** Buyer’ acceptance of Product shall be contingent upon final inspection and testing by Buyer that the Product conforms to the specifications provided by Buyer and that all required supporting documentation for the Product has been delivered. In no event shall payment be deemed to constitute acceptance.
- 7. Payment.** Unless otherwise specified herein, payment terms will be Net 30 days from Buyer’s receipt of invoice provided Buyer has accepted the Product. Seller shall provide a separate invoice for each shipment and all invoices shall include the Purchase Order number. Seller shall send invoices to the Buyer separately and shall not include invoices with the Product shipment.
- 8. Warranty.** Seller warrants for a period of twenty-four (24) months from the Delivery Date that all Product is free from defects in design, material and workmanship, and that it conforms to all specifications provided by Buyer. Seller’s Product warranty includes all implied warranties, including but not limited to merchantability and fitness for a particular purpose. Seller further warrants that all Product is free from any lien and title encumbrances. At Buyer’s option Seller shall either a) repair or replace all non-conforming Product within thirty (30) days of notification of non-conformance by Buyer; or b) refund or credit, at Buyer’s option, the full purchase price for such Product and any expense or damage resulting from such Product. These warranties shall run to Buyer, its successors, assigns, customers and other transferees. The warranties and remedies contained herein shall be in addition to those available in law or equity.

9. **Change Authorization.** Seller shall notify Buyer in writing prior to making any temporary or permanent change to materials, process (including manufacturing process), or tooling.
10. **Labeling.** Seller shall label all Product (and where applicable, the container) containing a health, poison, fire, explosion or other hazard in accordance with all applicable Federal, State/Provincial and local labeling laws.
11. **Continuity of Supply.** Upon Buyer's request, Seller shall provide to Buyer a written plan for continuity of supply to cover production interruptions caused by unforeseen circumstances, including but not limited to, fire, loss of power, or machine breakdowns.
12. **Service Part Requirements.** Seller shall provide Buyer written notification at least six (6) months in advance of its intention to discontinue any Product. Seller agrees to maintain the tooling, facilities, gauges, fixtures, and equipment required to manufacture the Product for at least (7) seven years following the end of production of the Product.
13. **Buyer's Property.** If necessary, Buyer agrees to loan Seller items to manufacture Product in accordance with Buyer's standard Product Loan Agreement.
14. **Confidentiality.** If, in connection with the purchase, use or maintenance of the Product, Buyer is requested, required, or deems it advisable to furnish data or information to Seller which it deems proprietary, confidential, or both, Seller agrees to execute Buyer's standard Non-Disclosure Agreement prior to any such disclosure by Buyer.
15. **Infringement Indemnity.** Seller shall indemnify and hold Buyer harmless, from all costs, expenses, (including but not limited to attorneys' fees) arising from any claims or alleged claims of infringement of patents, copyrights, trademarks or any other intellectual property rights relating to or arising out of the Product.
16. **Work Performed on Buyer's Premises.** The following conditions will apply if work is to be performed by Seller on Buyer's premises:
 - a. No person performing services for or on behalf of Seller shall be deemed an employee or agent of the Buyer. Seller shall comply with all applicable laws and regulations regarding worker's compensation, employer's liability, unemployment compensation, and all other applicable laws relating to or affecting the employment of labor. Seller shall indemnify and hold Buyer harmless from all costs, expenses, and damages arising from or relating to Seller's failure to comply with such laws and regulations.
 - b. The work shall be performed in a professional, efficient, and workmanlike manner by qualified workers. Seller's workers shall abide by all policies, rules, regulations, and procedures relating to the Buyer's premises.
 - c. Seller shall obtain an adequate amount of insurance coverage to insure and indemnify Buyer for any act or omission by any of its employees or agents while on Buyer's premises. Upon Buyer's request, Seller shall immediately provide Buyer with a certificate of insurance evidencing such insurance coverage.
17. **Termination.** Buyer may terminate any Purchase Order, or portion thereof, immediately upon written notice to the Seller in the event Seller breaches any of the terms and conditions herein, becomes insolvent or makes an assignment for the benefit of creditors, or a receiver or similar officer is appointed to take charge of all or part of Seller's assets. Upon termination Seller shall deliver to Buyer any material or tooling loaned to Seller by Buyer and any work in process or completed Product as requested by Buyer. Buyer's sole liability to Seller shall be to pay Seller for conforming Product accepted by Buyer prior to Seller's receipt of notice of termination and for such additional materials requested and accepted by Buyer.
18. **Buyer's Rights to Cover.** Upon any default or breach by Seller, Buyer shall have the right without prior notice to Seller, to immediately cover by making any purchase of goods or entering into a contract to purchase. Seller shall pay and be liable for any and all costs, expenses or damage, including without limitation incidental and consequential expenses or damages, arising out of Buyer in

connection with such action without regard to any expenses Buyer saved or may have saved in consequence of Seller's default or breach.

19. **Liability.** Seller shall be liable, and Buyer shall have the right to set off against, any amount or monies due or to become due to Seller hereunder, for any and all damages (including without limitation, incidental and consequential damage(s), costs and expenses (including without limitation, reasonable attorney's fees, and expenses incurred in connection with any action taken by Buyer to cover) arising in connection with or incurred by Buyer as a result of any failure of Seller to perform any of its obligations hereunder.
20. **Limitation on Buyer's Liability.** Liability of Buyer under or in connection with this Purchase Order shall be limited to the unit price of the individual Product that is the subject of the claim. In no event shall Buyer be liable for any indirect, consequential, special, or incidental damages even if Buyer has been advised of the likelihood of such losses.
21. **Authority to Export.** Seller shall comply with all export regulations of the Canadian government and shall obtain an export license from the Canadian government necessary to secure the export of the Product to the country of destination.
22. **Miscellaneous.**
 - a. **Insignia.** Material rejected or not purchased by Buyer which utilizes or carries any Buyer names, trade names, trademarks, insignia, symbols, decorative designs or evidence of Buyer's inspection (all hereinafter designated "insignia") shall have all such insignia removed prior to any sale, use or disposition thereof. Seller shall indemnify and hold Buyer harmless from any claim, expense, or damage arising out of Seller's failure to remove such insignia.
 - b. **Announcements, Press Releases.** Seller shall not issue any announcements or press releases mentioning Buyer, without Buyer's prior written consent. Seller shall not disclose to others the fact that Buyer has purchased, or plans to purchase products from Seller. Seller shall not disclose any terms and conditions of purchase without Buyer's prior written consent, except as is necessary to fulfill Seller's obligations hereunder, or as required by law.
 - c. **Remedies Not Exclusive.** No remedy of Buyer provided herein shall be deemed exclusive of any other remedy provided herein or allowed by law or equity.
 - d. **Non-Waiver.** Buyer's failure to exercise any of its rights for any period shall not constitute or be deemed a waiver or forfeiture of such rights.
 - e. **Severability.** If any term or condition herein is found to be invalid or unenforceable in part or in whole, then such term or condition, or portion thereof, shall be null and void and shall not render invalid or unenforceable any other term or condition herein.
 - f. **Assignment.** None of the rights, duties or obligations defined herein may be assigned, transferred or delegated by Seller.
 - g. **Applicable Law.** This Purchase Order shall be construed in accordance with the laws of the Province of Ontario, Canada without regards to its conflict of law provisions.
 - h. **Entire Agreement.** These terms and conditions in conjunction with this Purchase Order constitute the entire agreement between the parties with respect to the subject matter hereof and expressly supercede all proposals and prior negotiations and understandings, whether written or oral, between the parties with respect to the subject matter hereof.