



Terms and Conditions

All sales made by *f# Optical LLC* ("*f# Optical*") to the Buyer ("*Buyer*") are expressly conditioned on Buyer's acceptance of the following terms and conditions. *f# Optical* will not be bound by any terms of Buyer's Purchase Order or other acknowledgement form that are inconsistent with the terms herein. These terms and conditions may only be amended or waived in writing signed by an authorized representative of *f# Optical*. Neither *f# Optical*'s commencement or performance nor delivery shall be deemed or construed as acceptance of Buyer's additional or different terms and conditions.

Order and Order Acceptance

These terms and conditions shall control all sales of Products by *f# Optical*, unless otherwise specifically agreed upon to the contrary, in a separate written document executed by *f# Optical*. *f# Optical* will not be bound by any terms of Buyer's Purchase Orders, requests for proposals or terms and conditions that are inconsistent with the terms herein, unless otherwise specifically agreed upon to the contrary, in a separate written document executed by *f# Optical*. All orders for Products shall be made by written purchase order sent to *f# Optical* by facsimile, e-mail or other electronic means. All Purchase Orders shall reference these terms and conditions. All Purchase Orders issued to *f# Optical* by Buyer shall be subject to and governed only by these terms and conditions notwithstanding any preprinted or other terms and conditions on Buyer's Purchase Order, or terms incorporated therein and any contradictory terms and conditions on Buyer's purchase documents are deemed to be material alterations hereto, for which notice of objection is hereby given by *f# Optical*. Buyer's acceptance of the quote or placement of a purchase order constitutes Buyer's acceptance of these terms and conditions, all of which are incorporated by reference herein. No Purchase Order shall be binding upon *f# Optical* until accepted in writing by *f# Optical*, and *f# Optical* shall have no liability to Buyer with respect to Purchase Orders that are not accepted. Buyer shall submit Purchase Orders to *f# Optical* in accordance with *f# Optical*'s lead times then in effect. Once *f# Optical* accepts a Purchase Order, an Order of Confirmation will be issued. Quotes are not binding upon *f# Optical*.

Sales and Similar Taxes

Quoted pricing does not include any federal, state or local taxes, assessments or duties. Buyer shall promptly pay the amount of any present or future sales, use, value added, excise, and/or other similar tax (and all applicable interest or penalties) applicable to the sale of the Products hereunder, whether such amount is specified in the Purchase Order, subsequently determined or recalculated. Buyer shall reimburse *f# Optical* for any such taxes, including interest and penalties thereon, as may be paid by *f# Optical*, together with any expenses connected therewith. In lieu thereof, Buyer shall provide *f# Optical* with a tax exemption certificate acceptable to the taxing authorities.

Price & Payment Terms

Prices for Products shall be *f# Optical*'s quoted prices for the quantities specified in the quote or accepted Purchase Order; however, a quotation or estimate does not constitute a firm offer by *f# Optical* and may be altered or withdrawn without notice at any time prior to *f# Optical*'s acceptance of a Purchase Order from Buyer. *f# Optical* reserves the right to revise a Purchase Order upon written notice to Buyer. Price revisions will apply to all Purchase Orders received after the effective date of the price revision.

Unless otherwise specified by *f# Optical*, payment terms are **Net 30 days, 1% discount if paid within 10 days of the date of the invoice**. Any balances which are unpaid after thirty (30) days of the date of the invoice are subject to a one and a half percent (1.5%) interest charge per month, or the maximum amount permissible by law, whichever is greater. Buyer will pay *f# Optical*'s reasonable attorneys' fees incurred in collecting past due amounts owed. Any dispute arising out of or related to the Purchase Order shall be brought exclusively in the courts of the State of Oregon, and law should govern the sales transaction. *f# Optical* may transmit invoices by facsimile, e-mail or other electronic means.

Cancellation

After acceptance by *f# Optical*, the Buyer's order is not subject to cancellation, change, reduction in amounts, or suspension or delay of shipment, except with *f# Optical*'s written consent. Cancelled orders consented to by *f# Optical* are subject to cancellation charges, based upon all expenses incurred by *f# Optical* up to the time of cancellation. This includes excess inventory of stock items that have been specifically allocated to the Buyer and

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exceed normal *f#* Optical inventory levels for a period, all overhead, profit and other expenses. Any cancellation or rescission by Buyer shall constitute a discharge of any claim by Buyer relating to this transaction. *f#* Optical may cancel the order in the following cases: *f#* Optical's costs have exceeded selling price to Buyer; *f#* Optical is unable to provide product due to factors beyond *f#* Optical's control.

If shipments are delayed by Buyer, payment shall become due on the date when *f#* Optical is prepared to make shipment unless otherwise agreed to in writing by *f#* Optical at time of incident. Products held for the Buyer shall be at the risk and expense of the Buyer.

Specifications Provided By the Buyer

Buyer shall indemnify, defend, and hold *f#* Optical, and their respective officers, directors and employees, harmless from any liabilities and expenses, including reasonable attorneys' fees, to the extent resulting from a claim alleging that any product sold by *f#* Optical infringes the copyright, trademark, patent, trade secret or other intellectual property right of a third party due to specifications or requirements provided by Buyer.

Changes

Buyer at any time, by a written order, may request changes within the general scope of this contract of any previously accepted Purchase Order; however, no changes are effective without written consent of *f#* Optical. If any such changes cause an increase or decrease in the cost of, or the time required for, any part of the work hereunder, an equitable adjustment shall be made by *f#* Optical by written Revision of Purchase Order to include amendment to the price or delivery schedule, or both. Pending mutual agreement of the Parties as to the Revision of Purchase Order to the prices and/or schedules, *f#* Optical shall take no action to implement any such change. *f#* Optical reserves the right to suspend work while any Revision of Purchase Order is pending. Any added expenses incurred by *f#* Optical because of delays in receipt of details, specifications, approvals, Buyer inspections or other pertinent information, or because of changes in material or design requested by Buyer, shall be chargeable to Buyer. If *f#* Optical considers that Buyer's conduct has constituted a change hereunder, *f#* Optical will notify Buyer in writing as to the nature of such conduct, its effect upon *f#* Optical's performance and the terms of the Revision of Purchase Order necessitated by such conduct.

Suspension of Work

f# Optical agrees to use its best efforts to meet scheduled delivery requirements. *f#* Optical shall not be liable for any delay in performance or in the shipment or delivery of goods or for any damages or excess costs suffered by Buyer by reason of such delay, if such delay is beyond *f#* Optical's and/or *f#* Optical's subcontractors or suppliers reasonable control. Such causes may include, but are not limited to, the direct or indirect result of, by, or in any manner arising from, fires, floods, epidemics, quarantine restrictions, accidents, civil unrest, war, acts of God, acts of the public enemy, acts of the government in either its sovereign or contractual capacity, Governmental interference or embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials, supplies, transportation and/or weather delays, or any other cause or causes similar in nature to any of those specified herein. *f#* Optical will, within a commercially reasonable time, notify Buyer of any schedule delay.

Upon receipt of payment in full for all completed work to date, Buyer may, by written notice, suspend all or part of the work to be performed under any accepted Purchase Order for a period not to exceed ninety (90) days. *f#* Optical shall resume work whenever a suspension is cancelled. If any suspension of work causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment shall be made in price or delivery schedule or both, and the Purchase Order shall be modified in writing accordingly. *f#* Optical shall invoice Buyer in the amount *f#* Optical identifies as the additional cost resulting from the change, and Buyer shall pay such invoice according to the net payment terms identified herein.

Delivery, Shipment, and Acceptance

Products held beyond scheduled shipment date at Buyer's request are subject to reasonable storage and incidental charges. All Products are shipped F.O.B. shipping point or Ex-Works from origin, unless otherwise specified by Buyer and made part of the quote and accepted by *f#* Optical. Buyer is responsible for any loss or damage to shipments after *f#* Optical has delivered the products to any common carrier. *f#* Optical shall use reasonable efforts to deliver Products at the times specified in the Purchase Order, provided, however, that all delivery dates are estimates and are not guaranteed, and deliveries may be made in installments. Under no circumstances will *f#* Optical be liable for

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any special, consequential, indirect, incidental, or liquidated damages, losses, or expenses of any kind arising from any shipping delays or failure to give notice of any shipping delays.

All Products delivered will be packaged in accordance with *f#* Optical's standard practice or mutually agreed upon method and include itemized packing slips. If Buyer or the carrier refuses delivery or delays shipment or acceptance, the Products may be stored according to *f#* Optical's direction, as Buyer's agent, at Buyer's risk and expense. During any such storage, Buyer will bear the risk of loss. All costs subsequent to delivery, including but not limited to the cost of shipment and installation of the Products described herein, will be borne by Buyer unless otherwise specifically agreed in writing by the parties.

Buyer shall examine and accept or reject all products, including "Custom" products, upon receipt and prior to installation or other use. All claims for damage, shortage, and errors in shipment or improper delivery must be made in writing within five (5) business days of delivery to *f#* Optical, after which date Buyer will be deemed to have irrevocably accepted the products.

- If the products are manufactured specifically for Buyer ("Custom" order), *f#* Optical can deliver between 90% and 110% of the total order quantity of each product being ordered.

Buyer must make any claims for billing errors or adjustments in writing within ten (10) business days from the invoice date to *f#* Optical. Claims not received in writing within such period will be waived by Buyer.

LIMITED WARRANTY – IMPORTANT

Other than as expressly set forth herein or as contained in any express written warranties provided with products at delivery and to the extent permitted by law and industry, *f#* Optical makes no warranties, express or implied, including warranties of merchantability or fitness of the products for any particular purpose. *f#* Optical shall not be liable for any loss or damage resulting from the use or performance of the products. In no event shall *f#* Optical be liable to Buyer or its customers for any special, indirect, incidental, exemplary or punitive damages resulting from loss of use, interruption of business, or lost profits, even if *f#* Optical has been advised of the possibility of such damages. Notwithstanding the foregoing, in no event shall *f#* Optical's aggregate liability to Buyer and its customers exceed the amount paid for products purchased under this agreement in the prior six (6) months.

THE EXPRESSED WARRANTIES LISTED ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, INCLUDING ANY EXPRESSED ORAL REPRESENTATIONS REGARDING THE PRODUCT(S), AND EXPRESSED WRITTEN WARRANT NOT CONTAINED HEREIN OR CONTAIN IN ANY TERM OR CONDITION IN AND BUYER DOCUMENT OR CONTRACT INCLUDING ANY BUYER END USER CONTRACT, AND ANY IMPLIED WARRANTY INCLUDING WARRANTIES AS TO CONDITION, DESCRIPTION, FITNESS FOR A PARTICULAR PURPOSE, AND MERCHANTABILITY. *f#* OPTICAL DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Payment Options

The following payment options are at the option and in the discretion of *f#* Optical.

- **Check or Money Order:** Must be made in US dollars and drawn on a US bank.
- **Credit Card:** MasterCard, Visa, Discover, American Express.
- **Bank Wire Transfer:** A \$25.00 processing fee is included in the shipping/handling charge for all quotes paid by wire transfer.

Import/Export Controls

- a) *f#* Optical shall control the disclosure of and access to technical data, information and other items to be delivered under this Purchase Order and Buyer acknowledges that certain U.S. export control laws and regulations may apply to the performance of this Purchase Order, including but not limited to the International Traffic in Arms Regulations (ITAR) (22 CFR 120, et seq.), the Export Administration Regulations (EAR) (15 CFR 730-774), and regulations of the Bureau of

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Alcohol, Tobacco, and Firearms (BATF) (27 CFR 447, et seq.) (collectively, the “Export Control Laws”). Buyer shall at all times comply with all applicable Export Control Laws.

- b) Information furnished to Buyer under this Purchase Order may contain technical data, as defined in the ITAR Part 120.10 (22 CFR 120.10). Buyer shall not export, disclose, or transfer any such technical data, relating to export controlled items appearing on the U.S. Munitions List (USML) in the ITAR Part 121 (22 CFR 121), to any foreign person (whether in the United States or abroad), as defined in the ITAR Part 120.16 (22 CFR 120.16), without first complying with all relevant requirements of ITAR Parts 120-130 (22 CFR 120-130). This includes, but is not limited to the requirement for obtaining any written export authorization from the U.S. Department of State, Office of Defense Trade Controls (ODTC), or otherwise making and documenting the determination that an ITAR licensing exception or exemption applies, as the case may be. A downloadable copy of the ITAR is accessible at the ODTC website at www.pmdotc.state.gov.
- c) Buyer shall not export, temporarily import, re-export or retransfer any defense articles or export defense services to a foreign person in the U.S. or abroad without complying with all relevant requirements of ITAR Parts 120-130 (22 CFR 120-130), including the requirement to obtain any written export, temporary import or re-export or retransfer authorization from ODTC, or otherwise make and document the determination that an ITAR licensing exception or exemption applies, as the case may be.
- d) Buyer is further advised that if it engages in the United States in the business of either manufacturing or exporting defense articles as defined in ITAR 120.6 (22 CFR 120.6) or defense services as defined in the ITAR Part 120.9 (22 CFR 120.9), then Buyer is required by the ITAR Part 122 (22 CFR 122) to register with the ODTC using forms accessible at the ODTC website at www.pmdotc.state.gov. Manufacturers of defense articles who do not engage in exporting of same must nevertheless register with ODTC. Registration does not by itself confer export rights or privileges, but is generally a precondition to the issuance of any license or other approval by ODTC. Upon request by *f#* Optical, Buyer shall provide to *f#* Optical adequate proof of such registration or demonstrate that the registration is unnecessary or that an exception or exemption to such registration requirement applies to the Buyer.
- e) In addition to the foregoing ITAR requirements, information furnished to Buyer under this Purchase Order may contain technical data, as defined in the EAR Part 772 (15 CFR 772) relating to export controlled items appearing on the Commerce Control List (CCL) in the EAR Part 774 (15 CFR 774). Buyer shall not export out of the U.S. or to a foreign national in the U.S., as defined in the EAR Part 772 (15 CFR 772), any such technical data without complying with all relevant requirements of the EAR Parts 730-774 (15 CFR 730-774), including the requirement to obtain any written export authorization from the U.S. Commerce Department, Bureau of Industry and Security (BIS), or to otherwise make and document the determination that a licensing exception or exemption applies, as the case may be. A downloadable copy of the EAR is accessible at the BIS website at <https://www.bis.doc.gov/>.
- f) Buyer shall not export out of the U.S., re-export from one foreign country to another foreign country or to a foreign national outside the U.S. any commodities, technology or software (as defined in the EAR Part 772 (15 CFR 772)) without complying with all relevant requirements of the EAR Parts 730-774 (15 CFR 730-774), including the requirement to obtain any written export authorization from BIS, or to otherwise make and document the determination that a licensing exception applies, as the case may be.
- g) Buyer shall not permanently import into the U.S. articles appearing on the BATF U.S. Munitions Import List at 27 CFR 447, Subpart C, without an approved import permit issued by BATF pursuant to 27 CFR Part 447, Subpart E, unless an exception or exemption applies. Additionally, if Buyer is engaged in the business, in the U.S., of importing articles appearing on the U.S. Munitions Import List, Buyer must register with BATF pursuant to 27 CFR Part 447, Subpart D.

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Downloadable copies of the BATF regulations and forms are accessible at the BATF website at www.atf.gov.

- h) If performance under this Purchase Order requires the Buyer to export out of the U.S. machineguns, destructive devices, explosives, and certain other firearms, as defined in 27 CFR Part 479, Subpart B, Buyer shall not export such items out of the U.S. without an approved export permit issued by BATF pursuant to 27 CFR Part 478, Subpart K and 27 CFR Part 479, Subpart H. Buyer shall also obtain all necessary export licenses issued by the ODTIC regarding such exports, if applicable.
- i) Notwithstanding anything to the contrary in the foregoing paragraphs, Buyer represents that it has obtained all registrations and licenses necessary to perform this sales transaction. Buyer shall not transfer any export controlled item, technical data, technology, or service, unless the Buyer is registered with appropriate U.S. authorities and obtains all required export licenses, license exceptions, or license exemptions, as applicable.
- j) Buyer hereby represents that neither Buyer nor any parent, subsidiary or affiliate of Buyer is included on any of the restricted party lists maintained by the U.S. Government, including, but not limited to the Specially Designated Nationals List administered by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC), Denied Parties List, Unverified List or Entity List maintained by the U.S. Commerce Department's Bureau of Industry and Security (BIS), or the List of Statutorily Debarred Parties maintained by the U.S. State Department's Directorate of Defense Trade Controls (collectively, "Restricted Party Lists"). Buyer shall immediately notify the F# Optical if Buyer, or any parent, subsidiary or affiliate of Buyer becomes listed on any Restricted Party List or if Buyer's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. or non-U.S. government entity or agency.
- k) Buyer hereby indemnifies f# Optical and shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorney's fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Buyer, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under the foregoing paragraphs.

Limitation of Liability

IN NO EVENT SHALL f# OPTICAL BE LIABLE TO THE CUSTOMER FOR ANY CAUSE OF ACTION, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, BROUGHT BY THE BUYER AGAINST F# OPTICAL, OR BROUGHT BY A THIRD PARTY AGAINST BUYER, ARISING OUT OF THE PURCHASE, OR SUBSEQUENT USE, OF THE PRODUCT, FOR DAMAGES, ATTORNEY FEES, OR COURT COSTS THAT EXCEED THE PURCHASE PRICE OF THE PRODUCT ACTUALLY RECEIVED BY F# OPTICAL FROM THE BUYER. IN NO EVENT SHALL f# OPTICAL BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES ARISING, DIRECTLY OR INDIRECTLY FROM THE PURCHASE, SUBSEQUENT USE, OR RESALE OF THE PRODUCT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL f# OPTICAL BE LIABLE TO BUYER FOR ANY LOST PROFITS, LOSS OF DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER FOR BREACH OF CONTRACT OR WARRANTY OR TORT (INCLUDING NEGLIGENCE) OR THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED FOR HEREIN.

Applicable Law

This Agreement will be governed by and interpreted in accordance with the laws of the State of Oregon, without giving effect to its provisions regarding conflicts of law. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded in its entirety. The Federal, State and local courts with jurisdiction over Lane County, Oregon will have exclusive jurisdiction and venue over any dispute arising out of any agreement between Buyer and f# Optical, and f# Optical hereby consents to the jurisdiction of such courts.

Ownership

f# Optical retains all intellectual property rights in and to all designs, engineering details, and other technology and information pertaining to the Products in any format or media (“Property”). The Products are offered for sale and are sold by *f#* Optical subject in every case to the condition that such sale does not convey and license, expressly or by implication, to manufacture, duplicate, or otherwise copy the Products or any Property related thereto. The Products are offered and sold to the Buyer on the condition that such sale does not convey any license, expressly or by implication, estoppel, or otherwise, under any patent, trademark, copyright or knowhow with respect to which Buyer can grant licenses.

Confidentiality

Prior to submission of any quote or response to any request for proposal, the parties shall have entered into a Non-Disclosure Agreement, the terms of which are mutually acceptable to the parties. The terms of such executed Non-Disclosure Agreement are incorporated into this provision as if fully set forth herein.

Notice

Any notice required or permitted to be given will be in writing and will be prepaid, and may be personally served, sent by an overnight delivery service, or by first-class mail. Any such notice will be deemed to have been given: (1) if personally given, or sent by a delivery service, when received, or (2) if mailed, three business days after deposit in the US mail with a correct address.

Waiver

The failure or delay of either Party to insist on strict compliance with any of the terms, covenants or conditions of these Terms and Conditions shall not be deemed a waiver of that term, covenant or condition, or a waiver of any other term, covenant or condition; nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or for any other items.

Entire Agreement

These Terms and Conditions constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all previous communications, written or oral, with respect to the subject matter, and no representations or statements of any kind made by any representative of *f#* Optical that are not stated herein will be binding on *f#* Optical. No course of dealing or usage of trade or course of performance will be relevant to explain or supplement any of these terms. If the Parties have entered into a separate written agreement, signed by the parties, setting forth terms and conditions for the sale of Product to Buyer by *f#* Optical, then the terms of such agreement shall control to the extent such terms and conditions are contrary to the terms herein.