

**THE TERMS AND CONDITIONS OF SALE CONTAINED HEREIN SHALL APPLY TO ALL QUOTATIONS AND OFFERS TO SELL AND PURCHASE ORDERS ACCEPTED BY 3S PHOTONICS ("SELLER") AND ANY QUOTATION ACCOMPANYING THESE TERMS AND CONDITIONS. SELLER'S ACCEPTANCE OF ANY OFFER TO PURCHASE MADE BY OR ANY PURCHASE ORDER ISSUED BY THE BUYER ("BUYER") IS EXPRESSLY CONDITIONED ON AND STRICTLY LIMITED TO THE TERMS AND CONDITIONS OF SALE AS SET FORTH HEREIN. BUYER ACKNOWLEDGES THAT THESE TERMS AND CONDITIONS OF SALE SHALL GOVERN ANY CONTRACTUAL ARRANGEMENT ENTERED INTO BETWEEN SELLER AND BUYER WITH RESPECT TO THE SELLER'S PRODUCTS (THE "PRODUCTS") TO THE EXCLUSION OF ANY TERMS OR CONDITIONS OF PURCHASE PROPOSED BY BUYER.**

**1. Orders and Governing Terms.** All orders shall be initiated by written order to Seller and will not be binding upon Seller unless and until accepted by Seller in writing. Seller shall not be bound by any terms of Buyer's order that are inconsistent with the terms set forth herein. All purchase order acceptances are conditional upon Buyer's unqualified acceptance of these terms that may be made by written acceptance or by receipt by Buyer of delivery of any products and failure by Buyer to return the same to Seller within 5 days following such delivery. Each purchase order from Buyer accepted by Seller shall form a separate independent contract governed by these terms and conditions of sale. All prices quoted are based on Seller's specifications and any changes or additions to those specifications require Seller's prior written approval. All prices are based on the associated quantity levels by number per order unless otherwise agreed to by the parties.

**2. Shipping and Delivery.** All products shall be packed for shipment in Seller's standard containers, marked for shipment to the address specified in Buyer's order, and, unless Seller receives specific written shipping instructions from Buyer prior to the shipment date, delivered to a carrier or forwarding agent chosen by Seller. All shipments will be F.C.A. Seller's shipping point (Incoterms 2010), unless otherwise indicated on the face of the order acknowledgement. Upon delivery to the carrier or forwarding agent, all liability on, risk of damage to or loss of the Products shall pass to Buyer. All freight, insurance and other shipping expenses, as well as any special packing expenses, shall be borne by Buyer. Quoted shipment dates are estimates only.

**3. Prices, Payment and Taxes.** Prices are based on Seller's applicable price list on the date of the purchase order. However, they may be subject to review pursuant to unscheduled interruptions in the supply chain, increases in the cost of raw materials, industrial modifications or other requests made by Buyer and/or pursuant to any other exceptional circumstances which may significantly affect Seller's costs. Seller shall invoice Buyer for each shipment. Buyer shall pay Seller without deduction **net 30 days from the invoice date**, unless otherwise indicated by Seller on the face of the order acknowledgement or invoice. Accounts outstanding for more than 30 days will be subject to a monthly charge at the rate of one and half percent (1.5%) per month or the maximum permitted by law, whichever is less, which charge shall accrue from the date payment was due. Prices are exclusive of all transportation charges, insurance costs, installation charges, sales, use, excise, VAT or other taxes (excluding tax incurred based on the net income of Seller) or duties that may be assessed against an order and such costs shall be borne by the Buyer in addition to the prices quoted or invoiced. The amount of credit granted to Buyer shall be determined by Seller in its sole discretion. Seller may elect to ship any or all Products against prior payment, letter of credit or C.O.D. Prices shall be quoted and invoices shall be paid in the currency specified in Buyer's purchase order, unless changed in Seller's order acknowledgement. If no currency is specified in Buyer's purchase order, prices shall be quoted and invoices shall be paid in Euros. In case of an account being outstanding, Seller shall be entitled, without prejudice to any other right, (i) to interrupt any further shipment to Buyer until the outstanding amount is paid and/or (ii) to take back the Products in accordance with article 4.

**4. Transfer of ownership.** Ownership of the Products is transferred to Seller until the purchase price and all other charges payable to Seller have been received in full by Seller. Buyer is bound to insure and store the Products separately without altering them or pledging them or selling them until full payment, Seller having the right to take them back. Should Buyer resell the Products prior to transfer of ownership, the proceeds therefrom would belong to Seller. Seller shall be entitled to take back the Products in case of insolvency proceedings in accordance with applicable law.

**5. Limited Warranty.** Seller warrants that all Products purchased under these terms and conditions of sale (together with any software incorporated in the Products) at the time of delivery and for a period of one year thereafter, will be free from defects in material and workmanship and will conform to Seller's specifications applicable to such Products (or such other specifications as have been accepted in writing by Seller). The foregoing warranty applies only to Products installed and operated in accordance with Seller's recommendation, and such warranty does not apply where any claimed defect or nonconformity arose as a result of Buyer's misuse, neglect, improper storage, improper installation, repair, alteration, improper testing, unusual physical or electrical stress, accident or other conditions outside the operating parameters specified by Seller with respect to any Products delivered hereunder. Seller shall have no responsibility with respect to Product defects or performance problems occurring in whole or part by reason of software or firmware not supplied by Seller or Buyer's failure to follow operating or corrective instructions provided by Seller. Seller shall be allowed a reasonable period to investigate any claim relating to defective or non-conforming Products and shall be given access to Buyer's relevant records and data for this purpose. In the event that any Products shipped by Seller do not meet the foregoing warranty, such Products shall be deemed defective and Seller, at its option and cost, will repair or replace the defective Product(s) or grant Buyer an appropriate credit, provided that (i) Seller has been promptly notified in writing by Buyer that the Product is defective with a detailed description of the defect, (ii) prior to its return to Seller, Buyer obtains a return materials authorization ("RMA") number from Seller for return of the defective Product(s) to Seller and (iii) prior to expiration of the warranty period, the defective Product is returned freight prepaid to the FCA point. Seller will pay standard freight for shipment of a repaired or replaced Product to Buyer. If Seller determines that the Products are not defective, Seller will return the Products to Buyer freight collect. Each repaired or replaced Product will have a warranty of the longer of (i) three (3) months or (ii) the period remaining of the initial warranty. In the event that Buyer does not notify Seller in writing of an apparent defect on a

Product or of a missing Product within three (3) days following delivery, Buyer shall be deemed to have accepted the delivered Products upon delivery without any reserve. No warranty shall apply to Products (i) marked or described as "sample", (ii) loaned or supplied to Buyer free of charge or (iii) sold "as is". **THIS LIMITED WARRANTY SETS FORTH THE ENTIRE EXTENT OF SELLER'S LIABILITY FOR DEFECTIVE OR NONCONFORMING PRODUCTS (WHETHER ANY DEFECT OR NONCONFORMITY IS HIDDEN OR VISIBLE). ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESSED, IMPLIED OR STATUTORY, ARE EXCLUDED. EXCEPT AS EXPRESSLY PROVIDED HEREIN, SELLER MAKES AND BUYER RECEIVES NO OTHER WARRANTY, EXPRESSED OR IMPLIED AND ALL WARRANTIES, REPRESENTATIONS, CONDITIONS, OR OTHER TERMS IMPLIED BY STATUTE OR COMMON LAW ARE EXPRESSLY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.**

**6. Limitation of Liability.** Buyer agrees that Seller's total liability to Buyer in any way connected with the sale and/or license of Products to Buyer, regardless of the form of action, shall be as set forth in Paragraph 5 (Limited Warranty), above, and shall in no event exceed the price paid by Buyer for such Products. Under no circumstances will Seller be liable for any damages resulting from failure to meet any delivery schedule, even if Seller has been advised of the possibility of such damages. **IN NO EVENT WILL SELLER OR ITS SUPPLIERS BE LIABLE TO BUYER FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS, LOST PROFITS, OR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING IN ANY WAY OUT OF THE SALE AND/OR LICENSE OF PRODUCTS. THIS LIMITATION SHALL APPLY EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.**

**7. Indemnity.** Buyer shall indemnify and hold Seller harmless against any expenses, damages, costs or losses that may be asserted by any of Buyer's customers or any other third parties in respect of any of Buyer's acts or omissions, or arising out of or connected with any claim, action or proceeding brought or made against Seller for: (i) infringement of patents or trademarks arising from compliance with Buyer's design, specifications or instructions; (ii) unfair competition; (iii) the failure or alleged failure of the goods or services to comply with Buyer's warranty; or (iv) any act or omission of Buyer.

**8. Software.** Buyer acknowledges that all software products obtained by Buyer from Seller are proprietary to Seller and its licensors and are subject to copyrights, other intellectual property rights and moral rights owned by Seller and its licensors. Any references to "purchases" of software products signify only the purchase of a license to use the software product in question pursuant to the terms of the following software license. Seller grants to Buyer a nonexclusive license to use, according to its intended use, any software incorporated in or provided to operate with the Products, together with any modifications or enhancements to such software supplied to Buyer by Seller ("Software"). Except as expressly set forth herein, no other rights are granted to or acquired by Buyer with respect to Software. Seller may not sublicense, assign or otherwise transfer its rights to use Software except upon a transfer of any Products with or for which the Software was supplied and then only if these same licensing terms and limitations are applicable to the sub licensee, assignee or transferee. Buyer acknowledges that the Software incorporates valuable trade secrets of Seller and agrees not to copy, decompile, disassemble, reverse engineer, or modify any software provided by Seller or its suppliers.

**9. Patent Infringement.**

**9.1. Indemnity.** Seller will, and reserves the right to, defend, at its own expense, any claim, suit or proceeding brought against Buyer to the extent it is based upon a claim that any product purchased or licensed by Buyer from Seller infringes upon any patent, copyright or trade secret of any third party. Buyer will promptly notify Seller in writing of any such claim or action and give Seller full information and assistance in connection therewith. Seller shall have the sole right to control the defense of any such claim or action and the sole right to settle or compromise any such claim or action. If Buyer complies with the provisions hereof, Seller will pay all damages, costs and expenses finally awarded to third parties against Buyer in such action. If a product sold or licensed to Buyer is, or in Seller's opinion might be, held to infringe as set forth above, Seller may, at its option, replace or modify such product so as to avoid infringement or procure the right for Buyer to continue to use such product. If neither of such alternatives is in Seller's opinion commercially reasonable, the infringing product shall be returned to Seller and Seller's sole liability, in addition to its obligation to reimburse awarded damages, costs and expenses as set forth above, shall be to refund the amount paid for such product by Buyer.

**9.2. Limitations.** Seller will have no liability for any claim of infringement arising as a result of Buyer's use of a product in combination with any items not supplied by Seller, any modification of a product by Buyer or third parties, or the use of other than the most recent release of any software provided by Seller to Buyer, if such claim would have been avoided by the use of such release.

**9.3. Entire Liability.** **THE FOREGOING STATES THE ENTIRE LIABILITY OF SELLER TO BUYER OR ANY TRANSFEREE OF PRODUCTS SUPPLIED BY SELLER CONCERNING INFRINGEMENT OR MISAPPROPRIATION OF PATENT, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS.**

**10. Blanket Orders.** Purchase orders may be scheduled over a period of 12 months from date of order (the "Order Period"). If the quantity shipped by Seller to Buyer over the Order Period is less than the quantity ordered by Buyer, then Buyer is deemed to have cancelled the unshipped portion of the order (the "Underage") and such cancellation shall be subject to Section 13 below. If the Underage results in a lower volume discount level, then Seller shall invoice Buyer, and Buyer shall pay Seller within 30 days of the invoice date, the difference between the lower volume discount level and the original discount level for the Products previously shipped under such order.

**11. Order Add-Ons.** The quantity of Products ordered under a purchase order may be increased by Buyer subject to the acceptance of Seller. Delivery dates for such increased orders shall be subject to mutual agreement by Buyer and Seller. Increase to a purchase order shall only be accepted until the day before the date of final shipment of such order.

**12. Reschedule Requests.** Requests for extension of delivery schedules must be submitted in writing to Seller a minimum of 45 days prior to scheduled shipment date and shipment dates may be rescheduled no more than twice. However, all rescheduled shipments, must occur within 90 days of the original, scheduled shipment date. If a rescheduled order results in Seller incurring any additional costs and/or fees then Buyer shall be responsible for the payment of those costs and/or fees subject to the provisions of Section 3 above.

**13. Cancellation.** Buyer may cancel an order, provided that such order has not been rescheduled pursuant to Section 12 above. To be effective, Seller must receive such cancellation, in writing, at least 60 days prior to the originally scheduled delivery date. In the event of a cancelled order, Buyer shall pay Seller, the purchase price for all finished Product(s), the material cost for all unfinished Product(s), costs for work in process and any other costs or expenses incurred by Seller including Seller's lost profits thereon, provided however, that the amount paid shall not exceed the original purchase price of the Product(s) and that any cancellation shall be subject to a minimum cancellation charge of twenty-five percent (25%) of the value of the sales cancelled.

**14. Miscellaneous.**

(a) The waiver by Seller of any default by Buyer with respect to these terms and conditions will not waive subsequent defaults by Buyer of the same or a different kind. If any provision of these terms and conditions of sale is held to be invalid by a court of competent jurisdiction, then the remaining provisions shall nevertheless remain in full force and effect.

(b) These terms and conditions of sale cannot be modified, amended, supplemented or rescinded except by a writing signed by both parties.

(c) Buyer acknowledges that the Products are subject to export control laws and regulations of the United States of America, the European Union or the country where they are delivered or used. Seller will have no obligation to sell or deliver Products until Buyer has obtained all required export authorizations. Buyer agrees that it will not use, distribute, transfer, or transmit the Products except in compliance with applicable export control laws and regulations.

(d) Neither party shall be responsible or liable for performance delays or any failure or inability to perform any of its obligations under these terms and conditions of sale (with the exception of any obligation to pay money) to the extent that such delays, failure or inability result from any cause or causes beyond the reasonable control of the party whose performance is affected, including but not limited to storms, earthquake, fire, floods, epidemics, unusually severe weather, acts of God or public enemy, public disorders, war, riot, explosion, civil unrest, strike, lockout or other labor action, electrical failure, transportation failures, confiscation and/or action of any government or governmental agency. In the event of any such delay, failure or inability, delivery dates and other affected schedules shall be adjusted accordingly.

(e) These terms and conditions of sale and the transactions contemplated herein will be governed by and construed in accordance with the laws of France without regard to the conflicts of laws provisions thereof and without regard to the U.N. Convention on Contracts for the International Sale of Goods. Any dispute arising from the conclusion, interpretation or execution of these terms and conditions of sale shall be submitted exclusively to the Commercial Court of Paris, even in case where there are several defendants and/or a request for guarantee.