



# LUNA OPTOELECTRONICS INC.

## PURCHASE ORDER TERMS AND CONDITIONS

### **1. General.**

This Purchase Order constitutes Luna Optoelectronics Incorporated's, hereinafter referred to as (Buyer's) offer to purchase the materials or services described herein. It becomes a binding contract on the terms provided herein when it is accepted either by acknowledgment or by performance: provided, however, that orders in excess of \$100,000 are to the approval of Buyer's Board of Directors, notwithstanding, any terms or conditions on Seller's sales order. Buyer's purchase and/or performance hereunder is expressly made conditional on Seller's agreement to the terms and conditions of this Purchase Order, unless otherwise specifically agreed to in writing by Buyer. In the absence of such agreement, acceptance of delivery of any product or service shall not be deemed to be acceptance of Seller's terms and conditions. Buyer's failure to object to any term or condition contained in any communication from Seller shall not be deemed a waiver of these terms and conditions. Acceptance of the Purchase Order is hereby expressly limited to the terms hereof. All rights and remedies conferred upon Buyer hereunder shall be cumulative and in addition to, and not in lieu of, any rights and remedies conferred upon Buyer by law.

### **2. Shipping.**

All materials or articles furnished by Seller hereunder shall be shipped in accordance with shipping instructions provided by Buyer, or, if no such instructions are provided, by best route and mode of transportation. Seller shall be liable for any costs, loss, damage, liability or excess shipping costs incurred by and for the account of Buyer as a result of Seller's failure to comply with paragraph. When the applicable carrier's tariff does not include insurance, all shipments must be forwarded properly insured. No charge will be allowed for cartage, packing or handling unless specifically agreed to in writing by Buyer. When the terms of the delivery are FOB destination, all transportation costs, including insurance charges, shall be at Seller's expense. Delivery must be affected within the time stated in this Purchase Order. Unless otherwise agreed to in writing by Buyer, no parcel or C.O.D. shipments will be accepted.

### **3. Excessive and Early Shipments.**

Unless otherwise specified herein, the quantity set forth herein is the net quantity to be delivered, and no payment shall be made for shipments in excess of such quantities unless authorized by Buyer in 933-11-009, Rev A

writing. Shipments received in advance of the scheduled delivery date may, at Buyer's option, be returned at Seller's sole risk and expense.

### **4. Payment and Discount.**

All prompt payment discount periods applicable hereto shall commence on the date Buyer receives the articles or materials or the date Buyer receives a correct invoice therefore, whichever is later. Unless a greater discount is granted by Seller or as otherwise specifically agreed to in writing by Buyer, Buyer shall receive either a prepayment discount or four percent (4%) for full payment prior to delivery or a prompt payment discount of two percent (2%) for full payment within ten (10) days after delivery.

### **5. Warranty.**

Unless a greater warranty period is granted by Seller or as otherwise specifically agreed to in writing by Buyer, Seller warrants for a period of ninety (90) days after delivery of all materials and articles delivered hereunder to comply with Seller's specifications therefore, to be free from defects including defects in labor, materials, designs and fabrications, and to fully comply with all applicable laws, regulations and industry standards. The foregoing warranties shall inure to the benefit of Buyer, its successors, assigns and customers and to users of Buyer's products, and shall survive acceptance and use of and payment for such articles or materials.

### **6. Inspection.**

All materials and articles to be furnished hereunder are subject to final inspection by Buyer after receipt thereof, and Buyer, in addition to any other rights of Buyer, may reject or revoke acceptance of all or any portion of such materials and articles which fail to conform to the requirements of this Purchase Order. Any materials or articles so rejected will be returned to Seller at Seller's sole risk and expense, and Seller will promptly refund any payment theretofore made by Buyer on account thereof. Buyer may inspect the materials and workmanship and quality processes covered by this Purchase Order from time to time at any reasonable time and at any reasonable place. The seller may at any reasonable time and at any reasonable place inspect the Buyers handling of materials supplied under this Purchase Order.

## **7. Change in Specifications.**

Buyer reserves the right by notice to Seller, whether written or oral, to make changes in specifications, drawings, delivery date, quantity or shipment instructions applicable to any material and/or services covered by this Purchase Order. Any differences in the price applicable to, or the time required for performance of, this Purchase Order resulting from changes specified in such notice to Seller shall be equitably adjusted and this Purchase Order shall be modified in writing accordingly; provided, however, that no increase in price or delivery time shall be made unless Buyer receives from Seller a claim in writing for such increases within ten (10) days after receipt by Seller of such notice to make changes.

## **8. Proprietary Information.**

As used herein, the terms Proprietary Information includes any information of a confidential or proprietary nature obtained from Buyer and any information obtained from Buyer which is not readily available to Buyer's competitors and which, if known by a competitor of Buyer, might lessen any competitive advantage of Buyer or give such competitor a competitive advantage. Buyer retains ownership of all Proprietary Information and all documentation which contains Proprietary Information. Seller shall not disclose, duplicate or reproduce any Proprietary Information nor shall Seller use any Proprietary Information other than in the course of performing its obligations hereunder. Seller shall take all reasonable steps to prevent the disclosure, duplication or reproduction of any Proprietary Information.

## **9. Compliance with Laws.**

In the performance of this Purchase Order, Seller shall at all times comply with all applicable industry standards and Federal, state and local laws, rules and regulations, including, but not limited to, Federal and State Workers' Compensation laws, the Fair Labor Standards Act of 1938, as amended, and all rules and regulations promulgated hereunder. Without limiting the foregoing, by accepting this Purchase Order, Seller certifies that all materials and articles to be furnished hereunder will be produced in compliance with the Fair Labor Standards Act of 1938, as amended. This Purchase Order shall for all purposes be governed by and interpreted in accordance with the laws of the State of California as such law is applied to contract between California residents made and to be performed entirely in California.

## **10. Default and Excusable Delays.**

Any failure by Seller to fully comply with any requirements of this Purchase Order, including, but not limited to, any failure to meet the delivery schedule set forth herein, shall constitute a default. Upon Seller's default, Buyer may, at its option and in addition to any other remedies, to which Buyer may be entitled, cancel all or any portion of this Purchase Order. Except as otherwise provided in the following sentence, Seller shall reimburse Buyer for any costs, loss, damage or liability incurred by Buyer by reason of Seller's default. Seller shall not, however, be liable for any additional costs, loss, and liability of Buyer resulting from any delay in delivery hereunder to

the extent delivery is impossible by reason of unforeseeable causes beyond control of Seller, which are not attributable in whole or in part to any act or failure to act by Seller, provided Seller uses its best efforts to effect delivery in a timely manner.

## **11. Termination for Convenience.**

Buyer reserves the right at any time to terminate this Purchase Order, in whole or in part, for Buyer's convenience by delivery to Seller of written notice of termination. In the event of such termination, Buyer shall pay Seller as its sole and exclusive compensation under this Purchase Order the price specified herein for the portion, if any, of Seller's performance hereunder, which has theretofore been finally accepted by Buyer. Notwithstanding the foregoing, if the articles or materials to be furnished hereunder consist of items specifically manufactured to Buyer's design or specification, Buyer, in its discretion, may elect within a reasonable time after giving notice of termination hereunder to accept delivery of all or any portion of such articles or materials, finished or unfinished, not previously accepted by Buyer, and to pay Seller as its sole and exclusive compensation thereof the lesser of: (i) the sum (not including allowance for overhead and profit) actually expended by Seller to procure and/or process such articles or materials or (ii) that portion of the contract price for such articles or materials which Buyer reasonably determines corresponds to the extent to which Seller has completed its performance with respect to such articles or materials. Buyer may exercise its right hereunder at any time, whether or not Seller is or has been in default hereunder.

## **12. Default.**

The buyer may terminate this Purchase Order or any part thereof in accordance with Federal Acquisition Regulation FAR 52.249-8, which is incorporated herein by reference for (1) default, (2) if Seller becomes insolvent, or (3) any bankruptcy proceedings are instituted by or against Seller. If this order is not placed under a government contract, FAR terms, Governments and equivalent phrases shall mean Buyer, and terms Contractor's shall mean Seller.

## **13. Government Contracts.**

If this order shows on its face that it is placed under a government contract or a subcontract hereunder or if Buyer otherwise notifies Seller that this order is placed under a government contract or a subcontract thereunder, certain clauses of the Federal Acquisition Regulation (FAR) (48 CFR, Chapter 2) and the Department of Defense FAR Supplement (DFARS) apply. These clauses are incorporated herein by reference and are contained in Buyer's Terms and Conditions of Purchase-Government Supplement.

## **14. Termination.**

Buyer may terminate this order in accordance with the termination clause FAR 52.249-2 or 52A29-1 (short form), which are incorporated by reference. If this order is not placed under a government contract, the FAR term's Government's and equivalent phrases shall mean Buyer and the term's Contractor's shall mean Seller.

## **15. Indemnity; Insurance.**

Seller agrees to indemnify and hold harmless Buyer, its customers and all persons claiming under Buyer against all claims, demands, costs, loss, damage and liability based on (i) actual or alleged infringement of any US patent, trademark or similar right by, or (ii) actual or alleged defects in material, workmanship or design of, materials or articles furnished by Seller hereunder. Seller shall settle or defend at its expense all such claims and suits asserted or brought against Buyer and shall pay all damages, costs, fine and assessments resulting therefrom, provided, however, that Seller shall not settle any such claim or suit without Buyer's written consent. Seller further agrees to Indemnify and hold harmless Buyer, its customers, and all persons claiming under Buyer against any and all claims, demands, costs, loss, damage and liability arising out of personal injury, including death, or a loss or destruction of property attributable in any way to performance by Seller of its obligations hereunder. Without limiting the foregoing, if Seller's work hereunder involves operations by Seller or premises occupied by Buyer or Buyer's customers, Seller shall take all precautions necessary to prevent the occurrence of any personal injury or loss or destruction of property in connection with such operations, and Seller shall at all times maintain such public liability, property damage, employer's liability and workers' compensation Insurance as to fully protect Buyer and Buyer's customers against any potential liability with respect to the foregoing.

## **16. Liens.**

All materials or articles furnished by Seller hereunder shall be free of all liens and encumbrances, and at Buyer's request, Seller shall deliver to Buyer a release from all liens or other evidence thereof satisfactory to Buyer.

## **17. Property Furnished to Buyer.**

Seller shall use any design, tools, patterns, drawings information, equipment, or other property furnished by Buyer hereunder only in the performance of Seller's obligation hereunder and not otherwise, except with Buyer's written consent. All such property shall remain the property of Buyer and Buyer shall at all times have the right to enter Seller's premises and remove such property without liability to Buyer. Upon completion or termination of this Purchase Order, all such property shall be returned to Buyer. When Buyer furnishes materials to be used in the performance of this Purchase Order, all such materials, except that which become normal industrial waste or is replaced at Seller's expense, shall be returned to Buyer in the form of finished parts or unused materials. Seller shall exercise reasonable care in safeguarding all materials furnished by Buyer hereunder. Buyer reserves all patent, copyright and trade secret rights to all features of any property furnished by Buyer. Buyer does not in any way warrant the property which it furnishes.

**18. Taxes; Ceiling Prices.** The price set forth herein includes all applicable taxes excepting sales tax and such prices shall not be subject to change as a result of any changes in Seller's tax liabilities. Seller warrants that the prices involved hereunder will be as low as

the prices in effect at the date of such invoice with respect similarly situated customers of Seller purchasing comparable quantities of similar products. Seller warrants that the prices invoiced hereunder will not exceed the lower of (i) the price set forth herein or (ii) any applicable ceiling prices established pursuant to any statute, executive order, ordinance or government regulation or by any governmental policy.

## **19. Assignment.**

Neither this Purchase Order nor any interest herein shall be assigned or transferred in whole or in part by Seller by operation of law or otherwise without Buyer's written consent, and any attempted assignment or transfer without such consent will be void.

## **20. Entire Agreement; Modification.**

This document and the documents referred to herein contain the entire agreement of the parties hereto with respect to the subject matter hereof, and no terms or conditions in any modification of the foregoing provisions shall be binding upon Buyer unless hereafter made in writing and signed by an authorized representative of the Buyer. Without limiting the foregoing, no modifications shall be effected by the receipt of Seller's acknowledgment, invoices, shipping documents or other forms containing terms or conditions in addition to or different from the terms and conditions set forth herein.

## **21. No Waiver.**

Buyer's failure on any occasion to insist on strict performance of any terms or condition hereof shall not constitute a waiver or compliance with such term or condition on any other occasion or a waiver of any default.

## **22. Calibration.**

Certification with actual values and traceability to NIST, including NIST test numbers and equipment used required. If equipment is out of tolerance or needs repair, record repair work done and before and after measurements on calibration certification.

## **23. Access to Facility.**

Seller shall allow Access to Luna, its Customer, and any Regulatory authorities to all facilities involved in the order and to all applicable records. A formal Request of the visit would be coordinated in a timely manner for all parties.