

Advanced Photonix, Inc.

("Seller")

Terms & Conditions of Sale

1. ACCEPTANCE:

Seller desires to provide its customers with prompt and efficient service. However, to negotiate individually the terms and conditions of each sales contract would substantially impair Seller's ability to provide such service. Accordingly Products furnished and services rendered by Seller are sold only on the terms and conditions stated herein. Notwithstanding any terms or conditions on Buyer's order, Seller's performance of any contract is expressly made conditional on Buyer's agreement to Seller's Terms and Conditions of Sale unless otherwise specifically agreed to in writing by the Seller. In the absence of such agreement, commencement of performance and/or delivery shall be for Buyer's convenience only and shall not be deemed or construed to be acceptance of Buyer's terms and conditions or any one of them. If a contract is not earlier formed by mutual agreement in writing, acceptance of any Product or service shall be deemed acceptance of the terms and conditions stated herein. Seller's failure to object to any term or condition contained in any communication from Buyer shall not be deemed a waiver of these terms and conditions. Notwithstanding the foregoing, steno graphical and clerical errors are subject to revision and correction. All contracts for the sale of Products shall be construed under and governed by the law of the state of California. Each product furnished by Seller shall be deemed accepted by Buyer unless notice of defect or nonconformity is received within thirty (30) days of delivery thereof. THE OFFER CONTAINED IN THIS QUOTATION IS LIMITED TO THE TERMS AND CONDITIONS SET FORTH HEREIN.

2. QUOTATION AND PRICES:

All quotations are subject to the terms and conditions stated herein as well as any additional Terms and Conditions that may appear on the face hereof. In the case of conflict between the terms and conditions stated herein and those appearing on the face hereof, the latter shall control (i.e., those on the face hereof).

Seller's prices and quotations are subject to the following:

- All published prices are subject to change without notice.
- Unless otherwise specified in writing, all quotations are firm for, and expire, thirty (30) days after the date thereof and constitute offers; provided that, budgetary quotations and estimates are for preliminary information only and shall neither constitute offers, nor impose any responsibility or liability upon Seller.
- All shipments will be billed at prices in effect on the date of acceptance of Buyer's order.
- Unless otherwise stated in writing by Seller, all prices quoted shall be exclusive of transportation, insurance, taxes (including, without limitation, any use tax, sales tax or similar tax), license fees, customs fees, duties and other charges related thereto, and Buyer shall report and pay any and all such shipping charges, premiums, taxes, fees duties and other charges related thereto, and shall hold Seller harmless therefrom.
- Prices quoted are for Products and/or non-recurring engineering only and do not include technical data, proprietary rights of any kind, patent rights, qualification, environmental or other than Seller's standard tests and other than normal domestic commercial packaging unless expressly agreed to in writing by Seller.
- Unless otherwise stated in writing, and agreed to by Seller, all tools and equipment shall remain the property of Seller. In addition, all data necessary or related to the manufacture or testing of goods for Buyer shall remain the sole property of and in the custody of the Seller. Seller is not obligated to retain any tooling or engineering data for more than three (3) years after the last use of such tooling or engineering data in the manufacture or testing of goods for Buyer.
- Prices are not subject to redetermination.
- Seller does not assume responsibility for any customer-supplied materials sent as tooling, test fixtures or components for processing.

3. PAYMENT:

Unless credit is granted, payment is due upon delivery. All payments for Products released and shipped on approved credit accounts shall be due in thirty (30) days. Past due balances shall be subject to a service charge of 1.5% per month (18% per annum), but not more than the amounts allowed by law. Partial shipments will be billed as made and payments therefor are subject to the above terms. Seller may cancel or delay delivery of Products in the event Buyer fails to make prompt payment therefor. Seller hereby retains title to the Products and a security interest in the Products until Buyer has made payment in full in accordance with the terms hereof. When requested by Seller, Buyer shall duly acknowledge this contract, and execute, acknowledge and deliver to Seller, in Seller's usual form, a supplement hereto, security agreement, financing statement or other appropriate instruments to constitute the Products as the unencumbered security for the obligations of Buyer hereunder, or to enable Seller to comply with all applicable filing or recording laws. Reservation of title is for security purposes only and shall not affect any provision elsewhere regarding risk of loss. In the judgement of Seller the financial condition of Buyer at any time does not justify continuance of production or delivery on terms of payment above specified, Seller may require full or partial payment in advance. If Buyer becomes insolvent or bankruptcy proceedings are instituted against Buyer or Buyer makes an assignment for the benefit of its creditors, any such event shall be deemed a material default hereunder, entitling Seller to cease performance under this order and to avail itself of all legal or equitable remedies it may have against Buyer.

In the event of a default by Buyer under the terms of this contract and the matter is placed in the hands of an attorney for collection, or suit is brought at law, or in equity to enforce the provisions herein, the Buyer agrees to pay Seller's reasonable attorney's fees and other legal costs in addition to the amount due under said contract.

4. DELIVERY:

Unless otherwise agreed to in writing by Seller, all transportation shall be at the expense of Buyer. Seller reserves the right to ship Products freight collect and to select the means of transportation and routing. Unless otherwise advised, Seller may insure to full value of the Products or declare full value thereof to the transportation company at the time of delivery and all such freight and insurance costs shall be for Buyer's account. Risk of loss or damage shall pass to Buyer upon delivery of the Products to the transportation company at the FOB point. Confiscation or destruction of, or damage to Products shall not release, reduce or in any way affect the liability of Buyer therefor. Notwithstanding any defect or nonconformity, or any other matter, such risk of loss shall remain in Buyer until the Products are returned at Buyer's expense to such place as Seller may designate in writing. Buyer, at its expense, shall fully insure Products against all loss or damage until Seller has been paid in full therefor, or the Products have been returned, for whatever reason, to the Seller. Any and all taxes levied on or with respect to Products after delivery thereof to the transportation company including without limitation, taxes levied on or assessed to Seller by reason of its retention of title, shall be paid by Buyer provided, however, in the event Seller, in its sole discretion, chooses to pay such taxes, then Buyer shall reimburse Seller in full upon demand. All Products must be inspected upon receipt and claims should be filed with the transportation company when there is evidence of damage, either concealed or external. As used in the clauses appearing herein or attached hereto, "delivery" shall occur when Products are delivered at the FOB point, which shall be the point of manufacture or such other place as Seller shall specify in writing.

Shipping dates are approximate and are based upon prompt receipt of all necessary information from Buyer. Seller shall not be liable for delay in delivery or nondelivery due to causes beyond Seller's reasonable control, including but not limited to acts of God, acts of Buyer, acts of civil or military authority, war, riots, priorities, fires, strikes, lockouts, delays in transportation and inability due to causes beyond Seller's reasonable control to obtain necessary labor, materials, manufacturing facilities, or compliance with any law, regulation or order, whether valid or invalid, of any cognizant government body or any instrumentality thereof whether now existing or hereafter created. Performance shall be deemed suspended during and extended for such time as any such circumstances or causes delay its execution. Whenever such circumstances or causes have been remedied, Seller will make and Buyer shall accept performance hereunder. Seller reserves the right, in its sole discretion, to allocate inventories and current production and substitute suitable materials when, in its opinion, such allocation or substitution is necessary due to any such circumstances or causes. No penalty clause of any kind shall be effective.

5. TERMINATION:

No order may be terminated by Buyer except by mutual agreement in writing and upon payment of cancellation charges subject to the following conditions: (1) Buyer will pay, at applicable contract prices for all Products which are completely manufactured and allocable to Buyer at the time of Seller's receipt of notice of termination; (2) Buyer will pay all costs, direct and indirect, which have been incurred by Seller

with regard to Products which have not been completely manufactured at the time of Seller's receipt of notice of termination, plus a pro rata portion of normal profit on the contract; (3) Buyer is responsible for bill-back charges to reflect the pricing associated with actual quantities accepted. Seller's normal accounting practices shall be used to determine costs and other charges. To reduce termination charges, Seller will divert completed parts, material or work-in-process from terminated contracts to other Customers whenever in Seller's sole discretion, it is practical to do so.

6. WARRANTY:

Except for the warranty of title, Seller warrants only that each product to be delivered hereunder shall at the time of delivery and for ninety (90) days thereafter conform to Seller's specification therefor. Seller's obligation under this warranty with respect to losses other than personal injury is limited, at Seller's option, either to the replacement or repair of or to the refunding of the purchase price of any non-conforming product subject, however, to the following conditions and procedures:

- No product shall be returned to Seller for warranty adjustment without prior authorization from Seller.
- All Products returned will be shipped to Seller's plant by Buyer, at Buyer's expense. Seller will pay return freight where adjustment is made.
- Upon receipt of the returned Products Seller will examine such Products to determine to its own satisfaction that the alleged defect did not arise as a result of misuse, neglect, improper installation, repair, alteration or accident.
- Seller will notify Buyer in the event the Products are not subject to warranty adjustment, and unless disposition instructions as to such Products are received from Buyer within thirty (30) days of such notification, the Products will be returned to Buyer, freight collect.
- Seller shall in no event be obligated hereunder for any of Buyer's cost incident to the replacement of any defective product.
- On orders for unpackaged silicon die, Seller warrants that Products meet applicable specifications prior to die bonding and lead bonding when tested under generally accepted industry practices.

THIS EXPRESS WARRANTY SHALL EXTEND TO BUYER ONLY AND NOT TO BUYER'S CUSTOMERS OR BUYER'S NON-DOMESTIC LOCATIONS AND, EXCEPT FOR THE WARRANTY OF TITLE, IS IN LIEU OF ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF. NOTWITHSTANDING THE FOREGOING, IF ANY PRODUCT COVERED BY THIS ORDER IS DESIGNATED FOR "DEVELOPMENTAL" OR "EXPERIMENTAL" USE, NO WARRANTY WHATSOEVER, EXCEPT THE WARRANTY OF TITLE, WILL BE APPLICABLE THERETO, AND BUYER SHALL INDEMNIFY SELLER FOR ANY CLAIMS OR LIABILITY ASSERTED AGAINST SELLER IN CONNECTION WITH SUCH "DEVELOPMENTAL" OR "EXPERIMENTAL" PRODUCTS. STATEMENTS MADE BY ANY PERSON, INCLUDING REPRESENTATIVES OF SELLER WHICH ARE INCONSISTENT OR IN CONFLICT WITH THE TERMS OF THIS WARRANTY, SHALL NOT BE BINDING UPON SELLER UNLESS REDUCED TO WRITING AND APPROVED BY AN OFFICER OF SELLER.

7. DAMAGES AND LIABILITY:

SELLER'S LIABILITY FOR DAMAGES SHALL NOT EXCEED THE AMOUNT SELLER ACTUALLY RECEIVES FOR THE PRODUCT FURNISHED, OR TO BE FURNISHED, OR SERVICE RENDERED, AS THE CASE MAY BE, WHICH IS THE SUBJECT OF CLAIM OR DISPUTE. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOSS OF ANTICIPATED PROFITS, OR FOR THE LOSS OF USE, OR FOR COST OF "COVER" OR FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES. BUYER WAIVES ANY RIGHT, EXTENDING BEYOND THE WARRANTY, TO CLAIM FOR NEGLIGENCE BY SELLER IN DESIGN, MATERIAL, WORKMANSHIP OR INSTALLATION.

8. DISPUTES:

In the event that a lawsuit is filed, it is agreed that the venue will be the appropriate State Court located in Ventura County, State of California, or any other venue, at Seller's option. Buyer waives its right to litigate outside Ventura County, California, or any other venue Seller chooses. No action, regardless of form, arising out of, or in any way connected with, the Products furnished or services rendered by Seller, may be brought by Buyer more than one (1) year after the cause of action has accrued.

9. PATENTS:

- Buyer shall hold Seller harmless against any expense, damage, cost or loss resulting from any suit or proceeding brought for infringement of patents or trademarks arising from compliance with Buyer's designs, specifications or instructions.
- The sale of any product or Products by Seller pursuant to the order does not convey to Buyer any license by implication, estoppel, or otherwise, under patent claims or rights of Seller covering said product or Products, or any combination thereof with or without other devices or elements.
- With the exception of designs furnished by Buyer, all patent rights, titles, licenses, royalties, copy-rights, trade-marks, or trade-names, including disclosures and interests in any invention utilized in the performance of this contract, shall remain the exclusive property of the Seller, agreements to the contrary must be in writing signed by Seller's authorized representative.

10. COMPLIANCE WITH LAWS:

Seller represents that with respect to the Products or the performance of the services covered by this order, Seller will fully comply with all applicable federal, state and local laws including, without limitation, all requirements of the Fair Labor Standards act of 1938, as amended. Seller is an Equal Opportunity Employer. It does not discriminate in any phase of the employment process against any person because of race, color, creed religion, national origin, sex, age, veteran or handicapped status.

11. ASSIGNMENT:

Buyer shall not assign this order or any interest or rights thereunder without the prior written consent of Seller.

12. CHANGES:

Upon written acceptance by Seller, Buyer may make changes within the scope of this order in specifications, drawings, or type of Products ordered or in the time or place of delivery or order quantity. Reduction in order quantities and/or extension or delay of scheduled shipment dates will be subject to price adjustment as determined by the Seller and agreed to by the Buyer. Seller reserves the right to reject such changes and thus the original quantities, shipment dates, and prices shall remain in effect.

13. GOVERNMENT CONTRACT:

Unless otherwise stated by reference on the face hereof, all orders are considered to be commercial sales regardless of government contract or subcontract reference. Seller's pricing and production and shipping commitments shall be based on published price lists and Seller's internal accounting and production allocation procedures which shall be applied equitably to all customers as determined by Seller. Seller warrants that such prices and allocations that are made under such government contracts are the same as would have been made to Seller's "most favored customer" for the same Products or Services under identical terms of sale.

As such Seller's terms and conditions as stated in the preceding paragraphs shall supersede ASPR and other government regulations, except those which would cause Seller to be in violation of applicable Federal Laws.