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## STANDARD TERMS AND CONDITIONS OF SALE

All sales made by Optoplex Corporation (“**Optoplex**”) to the buyer (“**Buyer**”) are expressly conditioned on buyer’s acceptance of the following terms and conditions. These terms and conditions constitute the entire agreement between Optoplex and Buyer (“**agreement**”) and supersede all previous negotiations, discussions and understandings, whether oral or written, between the parties with respect to the subject matter hereof. Optoplex 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 by a writing signed by an authorized representative of Optoplex. Neither Optoplex’s commencement of performance nor delivery shall be deemed or construed as acceptance of buyer’s additional or different terms and conditions. Any additional or different terms or conditions in buyer’s purchase order or any other document received by Optoplex from buyer are expressly excluded. All purchase order acceptances shall be conditioned upon buyer’s unqualified acceptance of the terms and conditions set forth herein, which may be made by written acceptance or by receipt by buyer of delivery of any products and failure to return such products to Optoplex within five (5) days of delivery. The terms and conditions under this agreement shall apply whether or not they are attached to or enclosed with products to be sold hereunder.

**1. Order and Acceptance** All orders for Optoplex’s suite of products (“**Products**”) shall be made by written purchase order sent to Optoplex via postal mail or email, or by facsimile if a confirming written purchase order is received by Optoplex within five (5) days of said facsimile order. All purchase orders shall reference this Agreement. No purchase order shall be binding upon Optoplex until accepted in writing by Optoplex and Optoplex shall have no liability to Buyer with respect to purchase orders that are not accepted. Buyer shall submit purchase orders to Optoplex in accordance with Optoplex’s lead times then in effect.

**2. Delivery, Shipment and Acceptance** Optoplex shall use reasonable efforts to deliver products at the times specified in Optoplex’s acceptance of Buyer’s purchase order, provided, however, that all delivery dates are estimates only and deliveries may be made in installments. All products delivered hereunder will be packed according to Optoplex’s standard practice, marked for shipment to the address specified in Buyer’s purchase order, and shipped F.O.B. Optoplex’s manufacturing facility at 3374 Gateway Boulevard, Fremont, California 94538, U.S.A. (“**Delivery Point**”), at which time risk of loss and title pass to Buyer. All freight, insurance and other shipping expenses from the Delivery Point shall be borne solely by Buyer. Buyer shall accept or reject Products within fifteen (15) days after receipt for failure to substantially conform to Optoplex’s published specifications. If Buyer fails to notify Optoplex in writing of its rejection and reasons thereof within such period, Buyer shall be conclusively deemed to have irrevocably accepted the Products. Products rejected by Buyer may be returned only in accordance with the procedures set forth in Section 10 below.

**3. Modifications** Optoplex may at any time, without incurring any liability to Buyer with respect to any previously placed purchase order, modify the specifications of Products sold by Optoplex and substitute Product units manufactured to such modified specifications, provided such modifications will not materially affect overall product performance.

**4. Price** Prices for Products shall be those prices set forth in Optoplex’s quote(s) to Buyer (“**Purchase Price**”) subject to the terms and conditions set forth within the quote(s). Optoplex may at any time, in its sole discretion, revise Purchase Prices upon written notice to Buyer prior to Optoplex’s acceptance of the purchase order from Buyer.

**5. Payment** Standard payment terms are net thirty (30) days from the date of Optoplex’s invoice, unless otherwise different payment term is offered specifically in writing by Optoplex. Buyer shall make all payments in United States Dollars by certified check or wire transfer to an Optoplex designated bank account. Any amounts not paid when due shall be charged the greater of \$25 (USD) or bear interest at a rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by law, and are liquidated damages, not a penalty.

**6. Taxes** Purchase Prices do not include any taxes, and Buyer shall be responsible for, and pay, any and all taxes (including without limitation, withholding, sales, excise, value-added and use taxes), customs or other

import duties, and tariffs paid or payable (however designated, levied or based), exclusive of taxes based solely on Optoplex’s net income.

**7. Security Interest** Optoplex hereby reserves a purchase money security interest in all Products sold hereunder and the proceeds thereof, in the amount of the Purchase Price. In the event of default by Buyer in any of its obligations to Optoplex, Optoplex will have the right to repossess the Products sold hereunder without liability to Buyer. These security interests will be satisfied by payment in full. A copy of Optoplex’s invoice may be filed with appropriate authorities at any time as a financing statement and/or chattel mortgage to perfect Optoplex’s security interest. On request of Optoplex, Buyer will execute financing statements and other instruments that Optoplex may request to perfect Optoplex’s security interest.

**8. Limited Warranty** Subject to the provisions of this Section 8, Optoplex warrants to Buyer that Products delivered pursuant to this Agreement shall be free from defects in material and workmanship and substantially perform to Optoplex’s applicable published specifications for a period of one (1) year from the date of delivery to Buyer (“**Warranty Period**”). Such Warranty Period cannot be changed, altered, amended or extended without a formal written amendment signed by both parties’ authorized executives. Notwithstanding the foregoing, Optoplex makes no warranty for Product defects or non-conformities that in Optoplex’s reasonable opinion arise, in whole or in part, from: (i) use of any Product in an application for which it was not intended; (ii) misuse, abuse, improper handling, neglect, unusual physical, optical or electrical stress, improper installation, repair, testing, or any other cause beyond normal usage; (iii) the combination of any Product with any product not furnished or prescribed by Optoplex; (iv) any modification of any Product by a party other than Optoplex; (v) accident, fire or other hazard; or (vi) designs, specifications or other information or materials furnished to Optoplex by Buyer.

**9. Limited Remedy** Optoplex’s sole liability and Buyer’s exclusive remedy shall be limited to, at Optoplex’s sole option, (i) repair or replacement of, or (ii) credit or refund for, within the applicable Warranty Period of any non-conforming Product of which Optoplex is properly notified pursuant to the provisions of this Section 9. Buyer shall give Optoplex prompt written notice of any alleged non-conformance with the limited warranty under Section 8 and shall provide Optoplex with all the necessary information and materials for Optoplex to diagnose and correct the problem. In order to return a Product that fails to conform to the limited warranty set forth in Section 8, Buyer shall (i) notify Optoplex in writing that such Product failed to conform with the warranty set forth in Section 8 and furnish a detailed explanation of any alleged nonconformity; (ii) obtain a Return Material Authorization (“**RMA**”) number for the nonconforming Product from Optoplex; and (iii) within thirty (30) days of receipt of the RMA number, return such Product to Optoplex, freight pre-paid, with the RMA number prominently enclosed inside the package AND clearly printed on the outside label, F.O.B. Optoplex’s manufacturing facility at 3374 Gateway Boulevard, Fremont, California 94538, U.S.A., or such other location as Optoplex may designate in writing, in each case during the Warranty Period. Optoplex agrees to reimburse Buyer for reasonable freight costs incurred in the return of a Product if Optoplex determines that the returned Product is defective and properly rejected

by Buyer. Repair or replacement of a Product shall not extend the original Warranty Period for such Product. The remedies in this Section 9 are the sole and exclusive remedies for breach of the limited warranties under this Agreement. Optoplex neither assumes, nor authorizes any other person to assume for it, any other obligations or liabilities in connection with the sale of any product.

**10. Disclaimer of Warranties** Except as expressly set forth in section 8, Optoplex specifically disclaims any and all other warranties and conditions, whether written or oral, express or implied, with respect to the products, including, without limitation, any implied warranties and conditions of merchantability, infringement or fitness for a particular purpose.

**11. Cancellation** Except as specifically set forth in this Section 11, Buyer may not cancel, reduce or reschedule any purchase order, and Buyer is liable for the entire Purchase Price of any and all purchase orders. Buyer may cancel, or reschedule the delivery date in, a purchase order only upon obtaining the prior written approval of a duly authorized representative of Optoplex. Any cancellation of purchase orders for Products is subject to a charge of fifteen percent (15%) of the total Purchase Price for such Products. In the event of any cancellation, Buyer shall have no rights in partially completed products. The provisions of Sections 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 shall survive any cancellation of this Agreement.

**12. Indemnity** Buyer shall defend, indemnify and hold harmless, at its sole expense, Optoplex from and against any and all claims, damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and expenses of litigation) arising out of or relating to any acts or omissions of Buyer or the use, distribution or sale of any Product, including without limitation, any representation, warranty, covenant or guarantee made by Buyer or its employees, agents, or representatives regarding the Products that are more protective of third parties than those provided to Buyer herein.

**13. Intellectual Property** Optoplex retains all right, title and interest in and to the Products, including related designs, specifications and information, and any and all Intellectual Property Rights related to or derived from the Products or the manufacture, support, installation or use thereof. Nothing in this Agreement shall be construed to convey any rights in or to the Products, or any part thereof, to Buyer and Buyer hereby assigns, and shall assign, to Optoplex any and all Intellectual Property Rights, Buyer may have in or to the Products or the manufacture, support, installation or use thereof. "Intellectual Property Rights" shall mean all worldwide intellectual property rights, including without limitation all rights relating to patents, copyrights, mask work rights, trade secrets, confidential information, trademarks, service marks, trade dress, trade names and design patents.

**14. Limitation of Liability** In no event shall Optoplex be liable for any special, indirect, incidental, consequential or punitive damages (including without limitation the cost of procurement of substitute goods, damages for loss of business, use, or profits), whether based in contract, statute, tort (including negligence) or other legal theory, arising in connection with this agreement or the use or performance of the products even if Optoplex has been advised of the possibility of such damages. Optoplex's total liability to buyer or any third party for any claim or damages arising out of or relating to this agreement shall in no event exceed the purchase price paid by buyer for the products giving rise to such liability.

**15. Governing Law and Jurisdiction** This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to the conflicts of law provisions thereof. The

parties agree to submit to the exclusive and personal jurisdiction and venue of the state and federal courts within the city of San Jose, State of California.

**16. Export Control** Buyer warrants that it shall, at its sole expense, comply with any and all laws, regulations, orders, permits, prohibitions or other restrictions on the export and/or delivery of the Products, or information about the Products, which may be imposed at any time or from time to time by the United States Government, including without limitation, the Export Administration Act of 1979 (as amended), any successor legislation, and the Export Administration Regulations of the Bureau of Export Administration, Department of Commerce of the United States Government.

**17. Government Contract** If any Product sold to Buyer under this Agreement is purchased for a United States Government contract or subcontract, then the Buyer shall include such provisions in such contract or subcontract and attach such notices to the Products and other materials provided to the United States Government as will protect Optoplex's intellectual property rights and other proprietary rights to the maximum extent possible under applicable law.

**18. Bankruptcy** If Buyer (i) becomes bankrupt or insolvent, (ii) makes an assignment for the benefit of its creditors, (iii) commences to be wound up, or (iv) suffers a receiver to be appointed, Optoplex will be at liberty by notice in writing to cancel this Agreement without judicial intervention or declaration of default of Buyer and without prejudice to any right or remedy which may have accrued or may accrue thereafter to Optoplex.

**19. Force Majeure** Except for payment obligations, neither party shall be liable for failure to fulfill its obligations under this Agreement or any purchase order issued hereunder or for delays in delivery due to acts of God, man-made or natural disasters, earthquakes, fire, riots, flood, material shortages, strikes, delays in transportation or inability to obtain labor or materials through its regular sources.

**20. Assignment** Neither party may assign or delegate this Agreement or any of its rights, duties or obligations hereunder without the prior written consent of the other party, provided that Optoplex may assign this Agreement in connection with a transfer of all or substantially all of its business or assets to which this Agreement relates, whether by corporate reorganization, acquisition, sale of assets, merger or operation of law. Any attempted assignment of any rights, duties or obligations hereunder in violation of the foregoing shall be null and void.

**21. Severability** If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, the remainder of this Agreement shall continue in full force and effect and those provisions so held to be invalid will be interpreted to reflect the original intent of the parties.

**22. Waiver** No waiver of any rights shall be effective unless consented to in writing by the party to be charged and the waiver of any breach or default shall not constitute a waiver of any other right hereunder or any subsequent breach or default.

**23. Notice** All notices under this Agreement shall be in writing and shall be deemed given when: (i) delivered personally; (ii) sent by email, confirmed telex or facsimile; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested; or (iv) one (1) day after deposit with a commercial overnight carrier specifying next day delivery, with written verification of receipt. All communications shall be sent to the respective addresses set forth on the face hereof.