



StingRay Optics, LLC
310 Marlboro St., 2nd Floor
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StingRay Optics Purchase Order Terms and Conditions

Acceptance-Agreement: Seller's commencement of work on the goods subject to this purchase order or shipment of such goods, whichever occurs first, shall be deemed an effective mode of acceptance of this purchase order. Any acceptance of this purchase order is limited to acceptance of the express terms contained hereof. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the terms of this offer in Seller's acceptance is hereby objected to and rejected, but such proposals shall not operate as a rejection of this offer unless such variances are in terms of the description, quantity, price, or delivery schedule of the goods, but shall be deemed a material alteration thereof, and this offer shall be deemed accepted by Seller without said additional or different terms. If this purchase order shall be deemed an acceptance of a prior offer by Seller, such acceptance is limited to the express terms contained hereof. Additional or different terms or any attempt by Seller to vary in any degree any of the terms of this purchase order shall be deemed material and are objected to and rejected, but this purchase order shall not operate as a rejection of the Seller's offer unless it contains variances in the terms of the description, quantity, price or delivery schedule of the goods.

Shipment: If delivery is not made by the date indicated in this Order, Purchaser may, in addition to its other rights, cancel this Order, without any liability whatsoever. If in order to comply with Purchaser's required delivery date it becomes necessary for Seller to ship by a more expensive way than specified in this purchase order, any increased transportation costs resulting therefrom shall be paid for by Seller unless the necessity for such rerouting or expedited handling has been caused by Purchaser.

Force Majeure: Purchaser may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such goods at the direction of the Purchaser and shall deliver them when the cause affecting the delay has been removed. Purchaser shall be responsible only for Seller's direct additional costs in holding the goods or delaying performance of this agreement at Purchaser's request. Causes beyond Purchaser's control shall include government action or failure of the government to act where such action is required, strike or other labor trouble, fire or unusually severe weather.

Changes: Purchaser shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause

an increase or decrease in that cost or the time required for performance, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. Seller agrees to accept any such changes subject to this paragraph.

Price and Payment: Seller warrants that the prices for articles sold Purchaser hereunder are not less favorable than those currently extended to any other customer for the same or similar articles in similar quantities. In the event Seller reduces its price for such article during the term of this order, Seller agrees to reduce the prices hereof correspondingly. No modification or adjustment of stated price may be made without revised purchase order from the Purchaser. If the price is not stated on this Order, the price shall be lower of: the later price last quoted or paid, or the prevailing market price.

Set off: All claims for money due or to become due from Purchaser shall be subject to deduction or set off by the Purchaser by reason of any counterclaim arising out of this or any other transaction with Seller.

Delivery and Risk of Loss: Delivery shall be FOB destination unless otherwise specified on the face of this order. Each invoice shall show shipping charges as a separate item and shall contain the original or a copy of the bill indicating that payment by Vendor for shipping has been made. Notwithstanding any agreement by Purchaser to pay freight or other transportation costs. Delivery is not complete until the goods have been actually received and accepted the risk of loss or damaged prior to completion of delivery shall be upon the Vendor, and any such loss or damage to goods or materials ordered hereunder shall not release Vendor from any obligation hereunder. Purchaser reserves the right to refuse C.O.D. shipments.

Warranty: Seller expressly warrants that all goods or services furnished under this agreement shall conform to all specifications and appropriate standards, will be new, and will be free from defects in material or workmanship. Seller warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods or services, and that any goods will be adequately contained, packaged, marked and labeled. Seller warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods or services of that kind are normally used. If Seller knows or has reason to know the particular purpose for which Purchaser intends to use the goods or



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services. Seller warrants that such goods or services will be fit for such particular purpose. Seller warrants that goods or services furnished will conform in all respects to samples. Inspection, test, acceptance or use of the goods or services furnished hereunder shall not affect the Seller's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Seller's warranty shall run to Purchaser, its successors, assigns, and customers, and users of products sold by Purchaser. Seller agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly, without expense to Purchaser, when notified of such nonconformity by Purchaser, provided Purchaser elects to provide Seller with the opportunity to do so. In the event of failure of Seller to correct defects in or replace conforming goods or services promptly, Purchaser, after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller for the cost incurred by Purchaser in doing so.

Indemnification: Seller shall defend, Indemnify and hold harmless Purchaser against all damages, claims or liabilities and expenses (including attorneys' fees) arising out of or resulting in any way from any defect in the goods or services purchased hereunder, or from any act or omission of Seller, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of Seller.

Inspection/Testing: Payment for the goods delivered hereunder shall not constitute acceptance thereof. Purchaser shall have the right to inspect such goods and to reject any or all of said goods which are in Purchaser's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for herein may be returned to Seller at its expense and, in addition to Purchaser's other rights, Purchaser may charge Seller all expenses of unpacking, examining, repacking and reshipping such goods. In the event Purchaser receives goods whose defects or nonconformities are not apparent on examination, Purchaser reserves the right to require replacement, as well as payment of damages. Nothing contained in this purchase order shall relieve in any way the Seller from obligation of testing, inspection and quality control.

Identification: All invoices, packing lists, packages, shipping notices, instruction manuals, and other written documents affecting this Order shall contain the applicable order number. Packing lists shall be enclosed in each and every box or package shipped pursuant to this Order, indicating the content of such boxes or packages.

Bankruptcy: In the event of any proceeding, voluntary or involuntary, in bankruptcy or insolvency by or against the Vendor, including any proceeding under the United States bankruptcy laws, or in the event of the appointment, with or without Vendor's consent, of a receiver of an assignee for the benefit of creditors, Purchaser shall be entitled to cancel any unfulfilled part of this Order without any liability whatsoever.

Antitrust Assignment Clause: Vendor and Purchaser acknowledge that overcharges by manufactures are in fact borne by the Purchaser and not the Vendor. Vendor therefore, agrees to assign to purchaser any and all claims which it may have for overcharges, as to goods and materials purchased in connection with any contract between Purchaser and Vendor, arising out of antitrust or similar actions, except as to overcharges which commence after the price is established under any contract between Purchaser and Vendor and which are not passed on to the Purchaser under an escalation clause.

Termination of Convenience of Purchaser: Purchaser reserves the rights to terminate this order or any part hereof for its sole convenience. In event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause any of its supplies or subcontractors to cease such work. Seller shall be paid a reasonable termination charge, consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided.

Termination for Cause: Purchaser may also terminate this order or any part hereof for cause in the event of any default by the vendor or if the vendor fails to comply with any of the terms and conditions of this offer. Late deliveries, deliveries of products which are defective or which do not conform to this order, and failure to provide Purchaser, upon request, of reasonable assurances of future performance shall all be causes allowing Purchaser to terminate this order for cause. In the event of termination for cause, Purchaser shall not be liable to Seller for any amount, and Seller shall be liable to Purchaser for any and all damages sustained by reason of default which gave rise to the termination.

Proprietary Information-Confidentiality-Advertising: Seller shall consider all information



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furnished by Purchaser to be confidential and shall not disclose any such information to any other person, or to use such information itself for any purpose other than performing this contract, unless Seller obtains written permission from Purchaser to do so. This paragraph shall apply to drawings, specifications, or other documents prepared by Seller for Purchaser in connection with this order. Seller shall not advertise or publish the fact that Purchaser has contracted to purchase goods from Seller, nor shall any information relating to the order be disclosed without Purchaser's written permission. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Seller to Purchaser shall be deemed secret or confidential and Seller shall have no rights against Purchaser with respect thereto, except such rights as may exist under patent laws.

Quantity: Buyer need not accept any variation in quantity except as specified in this purchase order. Over-shipments may be returned to Seller at Seller's expense, which shall include a reasonable cost for Buyer's handling, or be retained by Buyer at no increase in price. To the extent that supplies covered by this purchase order are produced in accordance with drawings or specifications that are proprietary to Buyer or to buyer's customer. Seller shall not manufacture or retain supplies for the purpose of display.

Insurance: In the event that Seller's objections hereunder require or contemplate performance of services by Seller's employees, or persons under contact to Seller, to be done on Purchaser's property, property of the Purchase's customers, the Seller agrees that all such work shall not be considered employees of the Purchaser. Seller shall maintain all

necessary insurance coverage's, including public liability and Workers' Compensation insurance. Seller shall indemnify and save harmless and defend Purchaser from any and all claims or liabilities arising out of the work covered by this paragraph.

Assignments and Subcontracting: No part of this order may be assigned or subcontracted without prior written approval of Purchaser.

Limitation on Purchaser's Liability-Statute of Limitations: In no event shall Purchaser be liable for anticipated profits or for incidental or consequential damages. Purchaser's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this agreement or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services or unit thereof, which gives rise to the claim. Purchaser shall not be liable for penalties of any description. Any action resulting from any breach on the part of Purchaser as to the goods or services delivered hereunder must be commenced within one year after the cause of action has accrued.

Termination: In the event of a breach by Vendor of any of the provisions of this contract. Purchaser reserves the right to cancel and terminate this contract, upon giving oral or written notice to the Vendor. Vendor shall be liable for damages suffered by Purchaser resulting from Vendor's breach of this contract.

Sever ability: If any provision hereof shall be found to be inoperable or in violation of any law or regulation, only that provision shall be stricken from this order and the remainder of the order shall not be affected.