



## StingRay Optics, LLC (“STINGRAY”) Terms & Conditions for Sale

### 1. Acceptance

STINGRAY accepts orders by mail fax, email or telephone. Orders must include company name, billing and shipping addresses, a purchase order or project number with reference to a STINGRAY proposal. Verbal orders must be confirmed in writing prior to shipment of the product ordered. Submission of a purchase order shall constitute acceptance of STINGRAY Terms and Conditions of Sale. All orders are subject to acceptance by STINGRAY and are effective upon receipt of a written order acknowledgement by STINGRAY.

### 2. Pricing

STINGRAY reserves the right to revise prices without notice to Buyer at any time prior to acceptance of Buyer’s purchase order unless other pricing arrangements are indicated in writing by STINGRAY and determined valid per the StingRay Price Proposal provided to the buyer. STINGRAY reserves the right to increase prices when the costs of the raw materials for the custom product ordered increases by more than 5% from the market price applicable when the order was accepted and after the engineering period and customer approval process was completed and at any time prior to the due date of the contract. All prices are FOB Keene, NH and do not include freight, duty and or insurance fees. Prices quoted are exclusive of, and Buyer agrees to pay, any federal, state or local excise, sales, use, personal property or similar tax. Buyer shall provide STINGRAY with a tax exemption certificate from the appropriate taxing authority. Prices quoted are valid for 30 days unless otherwise stated in a StingRay price proposal.

Any duties, taxes or tariff associated with importing/exporting the systems are the responsibility of the customer. All fees associated with wire transfers are the responsibility of the customer. StingRay reserves the right to submit additional invoices associated with any such fees that may be realized after submission of the final invoice for the balance due on the system is carried out.

### 3. Delivery

An estimated delivery date will be provided upon acceptance of the order based upon the workload in the shop at the time of order placement. Estimated delivery dates shall be based upon best judgment, standard raw material lead-times and production schedules and are subject to factory schedules and production limitations. After acceptance of the order, STINGRAY will use its best efforts to meet the estimated delivery date. STINGRAY is not responsible for any consequential damage caused by late delivery. STINGRAY will notify Buyer of any anticipated delay in delivery. STINGRAY reserves the right to ship early or reschedule unless the Buyer specifies otherwise.

### 4. Shipping Terms; Insurance

STINGRAY assures proper packaging for the products ordered and will ship to the customer specified location by any method selected by STINGRAY unless otherwise specified in Buyer’s purchase order. Shipping and handling charges are prepaid and added to Buyer’s invoice unless otherwise specified in Buyer’s purchase order. At STINGRAY’s discretion insurance for the shipment may be elected unless otherwise specified by the Buyer in the purchase order that the shipment is not to be insured. Any insurance requested via the carrier employed is the responsibility of the Buyer and may be added to Buyer’s invoice. STINGRAY shall not be liable for loss or damage to the goods after delivery of the product to a common carrier. Shipping terms are FCA Seller’s premises.

### 5. Terms of Payment

For customers located within the United States and Canada, payment terms are typically net 30 days for standard or pre-engineered products upon credit approval or as stated in the applicable STINGRAY price proposals. STINGRAY will accept purchase orders from customers with an existing account. In order to be considered for terms, new customers must provide bank references, account numbers and two trade references. Accounts are available to companies with satisfactory D&B ratings, government agencies and recognized educational and research institutions. STINGRAY may at any time require full or partial payment in advance of delivery, or in advance of manufacture, or satisfactory assurances or security from Buyer that invoices will be paid when due per



STINGRAY's judgment. If payment is not made when due, interest at the lower of 1 1/2 % per month or the highest rate permitted by applicable law will be charged thereon and paid by Buyer from the due date thereof until paid. In the event Buyer does not pay within the terms of this Agreement, all collection costs incurred by STINGRAY, including attorney's fees will be paid by Buyer. Time and terms of payment are of the essence and if any default therein be made by Buyer or if the financial responsibility of Buyer shall at any time become impaired or unsatisfactory to STINGRAY, STINGRAY shall have the right to terminate this Agreement or to defer or to discontinue further shipments hereunder until past due payments are made or satisfactory assurances of Buyer's financial responsibility are received by STINGRAY (without prejudice, however, to any rights or claims which STINGRAY may have in law or in equity) and such right shall continue irrespective of any prior failure on the part of STINGRAY to exercise such right. Each shipment is to be considered a separate sale.

Orders for new customers outside the U.S. and Canada must be fully prepaid in U.S. dollars or guaranteed by irrevocable letter of credit issued by a US bank complying with the payment terms specified in STINGRAY proposals. The irrevocable letter of credit must be valid for 180 days or the estimated product lead-time, whichever is longer. Repeat international customers may be requested to make a down payment with terms as determined by STINGRAY for the balance due based upon previous business.

All payments are to be made in full. All banking or financial institution fees such as but not limited to; wire transfer fees, merchant services fees will be paid by Buyer. In the event that STINGRAY is charged for these fees an invoice will be generated and sent to Buyer for payment.

## 6. Warranties

Custom products are warranted to be free from manufacturing defects and comply with STINGRAY product specifications as described in the representative proposal. The warranty is valid for 90 days from the date of the final invoice and is subject to the return policy set forth in herein.

UNLESS OTHERWISE EXPRESSLY PROVIDED ON THE INVOICE HEREOF OR HEREIN, AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STINGRAY WARRANTS ONLY THAT THE GOODS COVERED HEREBY WILL CONFORM TO THE DESCRIPTION ON THE INVOICE HEREOF, THAT SINGRAY WILL CONVEY GOOD TITLE THERETO, FREE FROM ANY LIEN OR ENCUMBRANCE, AND THAT SAID GOODS WILL BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP UNDER NORMAL USE AND SERVICE AND PROVIDED SAID GOODS HAVE NOT BEEN REPAIRED, ALTERED OR NEGLECTED AND HAVE BEEN HELD IN NORMAL STORAGE PRIOR TO INSTALLATION. ANY CLAIM ON ACCOUNT OF DEFECTIVE GOODS OR FOR ANY OTHER CAUSE WHATSOEVER WILL CONSLUSIVELY BE DEEMED WAIVED BY BUYER UNLESS WRITTEN NOTICE THEREOF IS GIVEN TO STINGRAY WITHIN 90 DAYS OF SHIPMENT OF GOODS TO WHICH SUCH CLAIM RELATES. STINGRAY WILL BE GIVEN REASONABLE OPPORTUNITY TO INVESTIGATE ALL CLAIMS, AND NO GOODS OR PARTS THEREOF MAY BE RETURNED BY BUYER TO STINGRAY UNTIL AFTER RECEIPT BY BUYER OF DEFINITE SHIPPING INSTRUCTIONS FROM STINGRAY. GOODS SO RETURNED WILL BE REPAIRED OR REPLACED WITHOUT CHARGE, STINGRAY SHALL RESERVE THE EXCLUSIVE RIGHT TO ASSIGN FACTORY REPRESENTATIVES IN THE REPAIR OR MODIFICATION OF GOODS SUPPLIED HEREIN.

STINGRAY MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO PRODUCTS, ACCESSORIES OR PARTS FURNISHED BY STINGRAY BUT NOT MANUFACTURED BY STINGRAY. SUCH PRODUCTS, ACCESSORIES OR PARTS WILL CARRY ONLY THE WARRANTY, IF ANY, OF THE MANUFACTURER THEREOF, AND STINGRAY HEREBY ASSIGNS TO BUYER ALL OF ITS RIGHTS AND INTEREST IN THE WARRANTIES, IF ANY PROVIDED BY THE MANUFACTURERS OF SUCH PRODUCTS, ACCESSORIES AND PARTS TO THE EXTENT THAT THIS ASSIGNMENT IS NOT PROHIBITED BY THE TERMS OF ANY AGREEMENT BETWEEN STINGRAY AND THE SAID MANUFACTURERS.

THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE. THERE IS NO OTHER WARRANTY, EXPRESSED OR IMPLIED, EXCEPT AS SUCH IS EXPRESSLY SET FORTH HEREIN. STINGRAY WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL OR SPECIAL DAMAGES FOR ANY BREACH OF WARRANTY OF ANY DAMAGES FOR NEGLIGENCE OF FOR THE COST OF REMOVAL, TRANSPORTATION OR REINSTALLATION OF

DEFECTIVE OR REPLACEMENT GOODS. STINGRAY'S LIABILITY AND BUYER'S EXCLUSIVE REMEDY SHALL BE EXPRESSLY LIMITED TO THE REPAIR OF DEFECTIVE GOODS, OR THE SHIPMENT OF EQUIVALENT GOODS, F.O.B. THE SHIPPING POINT INDICATED ON THE INVOICE HEREOF, OR THE REPAYMENT OF THE PURCHASE PRICE UPON RETURN OF THE GOODS TO STINGRAY WITH STINGRAY'S APPROVAL, OR THE GRANTING OF A REASONABLE ALLOWANCE ON ACCOUNT OF ANY DEFECTS, AS STINGRAY IN ITS SOLE DISCRETION MAY ELECT.

#### **7. Return Policy**

All products should be returned if they contain a manufacturing defect or do not comply with STINGRAY specifications. If Buyer believes a product is defective or does not meet STINGRAY specifications, Buyer must return the product within 90 days from the date of the final invoice. Buyer must contact STINGRAY to obtain a RMA number along with the reason for the product return. Products returned without an RMA number will not be accepted. Buyer should pack the product in its original shipping container and return to STINGRAY, freight prepaid, externally marked with the RMA number for evaluation. If after receipt and evaluation of the product returned, STINGRAY determines that the product is not free from defects or did not meet STINGRAY specifications, STINGRAY at its sole discretion, will either refund the purchase price, repair the defect or replace the product. If the product is found to be free of defects and complies with the original product specifications, the customer will be invoiced the hourly evaluation rate in addition to costs for shipping charges to return the product to the customer's facility.

#### **8. Custom Design Liability**

STINGRAY will supply theoretical optical performance data and whenever possible, as built product test data during the prototype development phase to verify compliance with the specifications. It is the Buyer's responsibility to evaluate the product functionality and performance under the conditions for which it was designed to be used. If the product is not returned according to the policy outlined in STINGRAY Terms & Conditions, the product has deemed to have been evaluated and accepted by the customer. Follow on orders for additional units of the custom product developed by STINGRAY also indicates acceptance of the product for the application for which it was designed.

#### **9. Product Misuse**

If the product was damaged or caused damage to other equipment while being used in conditions other than what it was originally intended, STINGRAY cannot be held liable as a result of the product's misuse. Consult STINGRAY prior to using any custom products outside of the conditions for which they were intended.

#### **10. General;**

Tools, fixturing and or materials necessary for the manufacture of goods ordered shall remain the property of STINGRAY and will be maintained for one year after shipment.

#### **11. Intellectual Properties**

Unless otherwise agreed to in writing by STINGRAY, STINGRAY shall own all right, title and interest in and to the patent, design and other intellectual property rights in and to all products sold to Buyer hereunder, and nothing contained herein shall give Buyer any right to utilize any such intellectual property in any manner whatsoever except in connection with Buyer's use of the applicable product in accordance with the documentation for the same provided by STINGRAY.

#### **12. No Reverse Engineering**

It is an express condition of this Contract that Buyer shall neither reverse engineer, decompile, deconstruct, disassemble, synthesize, or extract any element of and/or otherwise discover any Confidential Information, nor request nor accept any disclosure of Confidential Information from a third party who reverse engineers, decompiles, deconstructs, disassembles, synthesizes, or extracts any element of and/or otherwise discover any Confidential Information, nor otherwise attempt to derive Confidential Information contained or embodied in STINGRAY'S products. In the event that Buyer breaches any obligation set forth in the preceding sentence, or

otherwise misappropriates or makes unauthorized use of STINGRAY'S Confidential Information, any intellectual property resulting or deriving from the breach(es) shall be for STINGRAY'S benefit, and STINGRAY shall be the sole and exclusive owner of that intellectual property. Buyer will execute an assignment of invention(s) in the form approved by STINGRAY, for any intellectual property arising from a breach of this Section 12. The aforementioned provisions shall in no way be considered to abridge, supplant or otherwise limit other legal or equitable remedies available to STINGRAY for such breaches, and STINGRAY may seek redress for such breaches to the fullest extent allowable by law. The obligations in this Section 12 shall survive termination of this Contract.

### **13. Governing Law**

The sale of goods between Buyer and STINGRAY and the construction, validity and performance of this agreement shall be governed by the laws of the State of New Hampshire. Any claim arising under this Agreement which has not been resolved by mutual agreement of the parties shall be settled by arbitration, which shall be conducted within the State of New Hampshire in accordance with the Commercial Arbitration Rules of the American Arbitration Administration.

### **14. Export Law**

The Goods are subject to U.S. Government export laws and regulations. Buyer shall not export, re-export, or transfer the Goods or Confidential Information received from STINGRAY without first obtaining the appropriate US Government approvals. STINGRAY will cooperate with Buyer to obtain any export licenses Buyer seeks, but obtaining such licensing shall be the exclusive responsibility of Buyer and STINGRAY makes no representation or warranty regarding the issuance of export licenses for the Goods.

### **15. Changes and Cancellations**

Specification and or product changes made after Buyer places an order are subject to price and or delivery adjustments as required. Buyer is responsible to reimburse STINGRAY for all expenses and or losses as a result of specification and or product changes. Cancellations shall be by mutual agreement only provided that the Buyer will reimburse STINGRAY for all expenses and or losses as a result of the order cancellation. In addition, all cancellations and /or returns will be subjected to a 30% restocking fee.

In the event of a blanket order, any changes to the number of units ordered and or the time frame during which the units were to be delivered may result in a stocking fee for the products not taken per the agreed upon delivery period.

### **16. Miscellaneous**

- (a) The waiver by STINGRAY of any term, provision or condition hereunder shall not be construed to be a waiver of any other terms, provisions or conditions hereof, nor shall such waiver be deemed a waiver of a subsequent breach of the same term, condition or provision.
- (b) This Agreement, including the terms and conditions of the invoice, supersedes all prior negotiations and understandings of the parties and contains the complete and final agreement between STINGRAY and Buyer concerning the subject matter hereof and no other agreement in any way modifying any of the said terms and conditions will be binding upon STINGRAY unless made in a writing specifically referring to this Agreement and signed by STINGRAY's authorized representative.
- (c) This Agreement shall be binding upon the successors, heirs and assigns of Buyer.