



TERMS OF PURCHASE (11/2015)

1. The Agreement. This document is incorporated by reference on every purchase order document issued by Precision Optical. The "Agreement" refers to these terms and conditions and the purchase order document, together with any other documents that are transmitted with, or incorporated by reference in, the purchase order document. The Agreement constitutes the entire understanding between Precision Optical and Seller ("the Parties") and supersedes any prior or contemporaneous written or oral agreements between the Parties with respect to the subject matter of the purchase order document.

2. Acceptance. Seller accepts this Agreement by doing any of the following:

- (a) acknowledging this Agreement;
- (b) starting performance under this Agreement;
- (c) furnishing any portion of the goods or services ordered under this Agreement; or
- (d) accepting payment for any portion of the goods or services ordered under this Agreement.

Any additional or different terms proposed by Seller are objected to and rejected, unless accepted in writing by Precision Optical.

3. Payment and Delivery Schedule. Precision Optical's standard payment terms are NET 45. However, if different payment terms appear on the face of the purchase order document, then those terms control. Seller shall deliver the items ordered in the quantities and according to the delivery schedule specified in this Agreement. **Time is of the essence of this Agreement.** Precision Optical may, at Seller's expense, return to Seller items that are received ahead of delivery schedule specified under this Agreement.

4. Inspection and Acceptance. Each and every good or service purchased hereunder is subject to Precision Optical's inspection and acceptance. If the goods or services rendered are rejected in whole or in part by Precision Optical by reason of Seller's failure to comply with any of the terms, conditions, specifications, or Seller's warranties contained herein, Precision Optical, after so notifying Seller, in its sole discretion may:

- (a) return the rejected portion of such goods and/or services to Seller at Seller's expense;
- (b) hold the rejected portion of such goods for such disposal as Seller shall indicate, without invalidating the remainder of this Agreement;
- (c) reject the entire shipment of such goods and/or reject the entire services and terminate this Agreement for any balances of undelivered goods and/or unrendered services; or

(d) where Seller is a coating vendor, and the coatings for 25% or more of the parts coated under the Agreement are defective, PO reserves the right to accept and pay only for the parts that are not defective on a pro rata basis.

If goods are rejected by Precision Optical, Precision Optical may purchase like goods elsewhere and charge Seller with any loss or damage sustained by Precision Optical (e.g. any difference between the price paid by Precision Optical for such like goods and the price specified in this Agreement) plus all costs of collecting the same including, but not limited to, attorneys' fees and court costs. Precision Optical reserves any and all rights afforded to it under the Uniform Commercial Code, including but not limited to any rights to revoke acceptance.

5. Risk of Loss. The risk that the ordered goods may be lost, damaged, or delayed in transit will be borne by Seller until actual receipt of them by Precision Optical in conformity with the terms of this Agreement, unless Precision Optical specifies otherwise in a writing signed by an authorized representative.

6. Seller's Warranties. Seller's warranty obligations under this Agreement will survive, in the event this Agreement is terminated.

- (a) Seller warrants that all goods and/or services furnished under this Agreement will be:
 - (i) in full compliance with Precision Optical's specifications, blueprints, drawings and data or other description furnished or adopted by Precision Optical and with Seller's samples, if any;
 - (ii) of merchantability quality;
 - (iii) fit for the use intended by Precision Optical;
 - (iv) of good workmanship and free from defects;
 - (v) conveyed along with good title; and
 - (vi) delivered free from any security interest or other lien or encumbrance; and
 - (vii) non-infringing upon the rights of any third party, unless the goods are delivered in accordance with Precision Optical's design.
- (b) The warranties listed above are in addition to all other warranties implied in law or expressly made by Seller or offered by Seller to its customers for goods and services similar to those purchased under this Agreement. Seller's warranties run to Precision Optical and to its successors, assigns, customers, and to the users of its products. Seller's warranties will survive for a period of not less than one (1) year from the date of acceptance by Precision Optical. Waiver by Precision Optical of any condition, specification, or requirement for one or more goods or services will not constitute a waiver of such requirements for the remaining goods or services to be provided under this Agreement or any subsequent order for the same or similar goods or services.
- (c) If any goods delivered under this Agreement do not meet Seller's warranties, Precision Optical may, at its option:
 - (i) require Seller to correct at no cost to Precision Optical any defective or non-conforming goods or services by repair or replacement; or
 - (ii) return such defective or non-conforming goods at Seller's expense to the Seller and recover from the Seller the order price thereof; or
 - (iii) correct the defective or non-conforming goods or services and charge Seller with the cost of such correction.

7. Indemnity. Seller's indemnity obligations under this Agreement will survive, in the event this Agreement is terminated. Seller agrees to indemnify, defend, and hold harmless Precision Optical and its directors, officers, employees and agents as follows:

- (a) against any and all losses, damages, and expenses, including but not limited to attorneys' fees, arising from any claim or proceeding brought by a third party against Precision Optical, claiming (whether ultimately proven or not) actions by Precision Optical or Seller in breach of any of the warranties set forth above;
- (b) against any and all losses, damages, and expenses, including but not limited to attorney fees, arising from any claim or proceeding arising out of any injury, disability, or death due to products, goods, or services rendered hereunder;
- (c) against any damage to property (including property of Precision Optical) caused by Seller's products, goods, or services;
- (d) against any liens or attachments resulting from Seller's furnishing of products, goods, or services.

8. Confidentiality. Seller's confidentiality obligations under this Agreement will survive, in the event this Agreement is terminated. In addition to any separately executed non-disclosure or confidentiality agreement, the following clauses also apply to information disclosed by Precision Optical to Seller in connection with its work hereunder:

- (a) "Confidential Information" means any information owned by Precision Optical, including, but not limited to, information developed by the Seller during the course of its performance under this order. Such information may include, by way of example, technical designs; manufacturing and application know-how; specifications; customer information; financial information; personnel information; and new product developments and business plans.
- (b) Seller acknowledges that with respect to Confidential Information, Seller's relationship to Precision Optical is fiduciary in nature, and that Confidential Information may be furnished or otherwise made available to Seller by Precision Optical, or may be developed by Seller incidental to the relationship between Precision Optical and Seller.
- (c) The parties agree that in order to protect its Confidential Information, Precision Optical will have the right to bring an action to enjoin the disclosure by Seller of Confidential Information, it being acknowledged that a suit for monetary damages alone would be an inadequate remedy.
- (d) All originals and all copies of any scientific or technical data, specifications, reports, papers, articles, memoranda, or any other kind obtained from Precision Optical or prepared by Seller for work performed in connection with this order are and will remain the sole and exclusive property of Precision Optical. Seller shall treat as confidential all prices, quantities, specifications, drawings, blueprints, data, software, technology, or information supplied by Precision Optical, even if not marked as confidential.

9. Force Majeure. The following events, and only the following events, will constitute force majeure events under this Agreement: (a) acts of God or of a public enemy; (b) acts of Government; (c) fires; (d) floods; (e) strikes; (f) freight embargoes; and (i) extraordinarily severe weather. In each case, the failure to perform must be entirely beyond the control and without the fault or negligence of the party claiming the occurrence of a force majeure event. A party claiming that a force majeure event is preventing its performance under this Agreement shall provide notice to the other party as soon as a reasonably possible after the inception and, if applicable, cessation of the force majeure event. A party's notice of the inception of a force

majeure event must include a good faith estimate of the likely duration of that event. If Seller is delayed from performing hereunder, Precision Optical will be entitled to obtain elsewhere goods or services ordered under this Agreement for the duration of such delay and to reduce, pro tanto, and without any obligation to Seller, the quantity or amount of goods or services ordered under this Agreement. If Precision Optical is temporarily unable to receive or utilize the goods or services ordered under this Agreement because of a force majeure event, it may suspend Seller's performance for the period of such disability without additional liability to Seller for such suspension.

10. Changes. Precision Optical may, from time to time during the period of performance of this Agreement, by written change order, make changes within the general scope of this Agreement, including, but not limited to, changes in drawings, designs, specifications, method of shipment or packing, or place or time of delivery. It may also require additional work or direct the omission of work. If any such change causes an increase or decrease in the cost of, or the time required for, the Seller's performance, an equitable adjustment, agreed to in writing by the parties, will be made to price, delivery date, or schedule, and to any other provisions that are affected. Any claim by Seller for adjustment under this clause, which must be sent with supporting evidence, will be waived unless asserted in writing within twenty (20) days of the date of receipt by Seller of the change order. Upon the receipt by Precision Optical of Seller's timely claim, the parties will negotiate an equitable adjustment to those provisions of the Agreement that are affected by the change order. This negotiation process does not relieve Seller of the obligation to proceed promptly with its performance under this Agreement.

11. Stop Work Order. Precision Optical may at any time, by written notice to Seller ("Stop Work Order"), require Seller to stop all or any part of work ordered under this Agreement for a period of up to sixty (60) days and for a further period to which the parties may agree. Upon receipt of a Stop Work Order, Seller must promptly comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work ordered under this Agreement. Within a period of sixty (60) days after a Stop Work Order is delivered to Seller, or within any extension of that period to which the parties have agreed, Precision Optical will direct Seller in writing to either:

- (a) resume some or all of the work which was stopped under the Stop Work Order; and
- (b) terminate that portion of the work covered by the Stop Work Order that Precision Optical has not directed Seller to resume, if any. The terminated portion of the work, if any, will be terminated in accordance with the "Termination for Convenience" or "Termination for Default" section of this document, whichever is applicable.

12. Termination for Convenience. Precision Optical may, by notice in writing, direct Seller to terminate work under this Agreement in whole or in part, and such termination will not constitute default. After receipt of a notice of termination, Seller shall, unless otherwise directed by Precision Optical, immediately stop all work under this Agreement and limit costs incurred on the terminated work and shall, unless otherwise directed by Precision Optical. Seller shall transfer title and deliver to Precision Optical (i) all completed work that conforms to the requirements of this Agreement; and does not exceed, in quantity, the amount authorized for performance by Precision Optical; and (ii) all reasonable quantities (but not in excess of amount authorized by Precision Optical) of work in process and materials produced or acquired for the performance of the work terminated which are of a type and quality suitable for producing

supplies which conform to the requirements of this Agreement. Upon termination for convenience, Precision Optical, after deducting any amount(s) previously paid, will reimburse Seller for the actual, allowable, reasonable, and substantiated costs incurred in performance under this Agreement. Said costs will be determined by negotiation between the parties and may not exceed the aggregate price specified under this Agreement. Seller must substantiate such costs in writing and must make related records available to Precision Optical upon its request. The provisions of this clause will not apply if this Agreement is terminated by Precision Optical for the default of Seller pursuant to the clause entitled "Termination for Default."

13. Termination for Default. Precision Optical may, by written notice of default to Seller, terminate the whole or any part of this Order in any one of the following circumstances (a) if Seller fails to deliver the goods or to perform the services within the time specified under this Agreement; or (b) if Seller fails to perform under any of the other provisions of this Agreement, or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and, in either of these two circumstances, does not cure such failure within a period of ten (10) days (or such longer period as Precision Optical may authorize in writing) after receipt of notice from Precision Optical specifying such failure. In the event Precision Optical terminates this Agreement, in whole or in part, in accordance with the provisions of this clause, Precision Optical may take over such terminated work, or appoint a third party to do so, and prosecute the same to completion by contract or otherwise, and Seller will be liable to Precision Optical for any excess costs for such work, provided that Seller shall continue its performance under this Agreement to the extent not terminated under the provisions of this clause. Precision Optical may require Seller to transfer title and deliver to Precision Optical, in the manner and to the extent directed by Precision Optical, (i) any completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and other rights (hereinafter called "manufacturing materials") as Seller has specifically produced or specifically acquired for its performance under the part of this Agreement that has been terminated; and Seller shall, upon direction of Precision Optical, protect and preserve property in the possession of Seller in which Precision Optical has an interest. Payment for completed supplies delivered to and accepted by Precision Optical may not exceed the Agreement price. Payment for manufacturing materials delivered to and accepted by Precision Optical will be in an amount agreed upon in good faith by Seller and Precision Optical. Failure to agree to such amount shall be a dispute within the meaning of the clause of this Order entitled "Disputes/Binding Arbitration." If, after notice of termination of Seller's right to proceed under the provisions of this clause, it is determined for any reason that Seller was not in default under the provisions of this clause, or that the delay was excusable under the provisions of the clause of this Order entitled "Excusable Delay," the rights and obligations of the Parties shall be the same as if notice of termination had not been issued. The rights and remedies of Precision Optical provided in this clause are in addition to any other rights and remedies provided by law or under this Order.

14. Disputes / Binding Arbitration. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by binding arbitration in Orange County, California, in accordance with the expedited Commercial Arbitration Rules of the American Arbitration Association ("AAA") before a single arbitrator selected in accordance with the AAA Rules and without resort to the courts (except to compel arbitration, seek provisional remedies, or enter judgment in accordance therewith). Any

arbitration award shall be made in writing. Judgment upon the award rendered by the arbitrator shall be binding and final and may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Any claim, legal proceeding, or litigation arising in connection with this Agreement will be brought solely in Orange County, California. Seller hereby waives any right to a trial by jury and consents to the personal jurisdiction of the state and federal courts located in Orange County, California, for any action of proceeding for which relief may be had from such courts hereunder. During the pendency of any dispute, decision, appeal, suit, or claim covered by this clause, Seller shall proceed diligently with performance, unless such performance has been suspended or terminated. Each party shall bear the costs of preparing and presenting its case and the cost of the arbitration, including the fees and expenses of the arbitrator, will be shared equally by the parties unless the award otherwise provides. The parties hereby waive any and all protections or obligations otherwise afforded to them under the International Sale of Goods Convention Act (implementing the United Nations Convention on Contracts for the International Sale of Goods), and no provisions of said Act shall govern any controversy between them.

15. Entire Agreement. The terms and conditions of this Agreement constitute the entire agreement between the parties concerning the subject matter of this Agreement, and supersede any prior agreements or understandings concerning this Agreement, unless the parties have previously entered into a master agreement for the purchase or sale of goods covered by this Agreement, which agreement will govern in the event of any conflict with the terms and conditions of this Agreement. This Agreement may be modified only in accordance a writing signed by both parties.

16. Non-Assignment and Subcontracting. This Agreement may not be assigned by Seller, nor may Seller subcontract out all or substantially all of the work ordered hereunder, without the prior written consent of Precision Optical.

17. Attorneys' Fees. If any arbitration or action at law or in equity is brought to enforce, redress, or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, which may be set by the arbitrator or court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

18. Choice of Law.

- a) This Agreement and the rights of the parties hereunder will be governed by and construed in accordance with the laws of the State of California, exclusive of conflict or choice of law rules.
- b) Notwithstanding the provision in the preceding paragraph with respect to applicable substantive law, any arbitration conducted pursuant to the terms of this Agreement will be governed by the Federal Arbitration Act (9 U.S.C., Secs. 1-16).

19. Export Compliance. Precision Optical's documentation may contain technical data that is controlled under the Arms Export Control Act (the "AECA") and the regulations promulgated thereunder entitled the International Traffic in Arms Regulations (22 C.F.R. 120 *et seq*) (the "ITAR"). It is a violation of the AECA and the ITAR to release without a license ITAR-controlled technical data to a "Foreign Person," as defined under 22 C.F.R. 120.16, within the U.S., or to

export without a license or valid exemption ITAR-controlled technical data or defense articles. Seller agrees to comply with all applicable U.S. export control laws and regulations, including, but not limited to, the requirements of the ITAR, and the Export Administration Regulations, 15 C.F.R. 730-744. Seller agrees that it will not transfer any export-controlled items or data (including any transfer to a Foreign Person who is an employee, agent, or contractor of Seller) without the authority of an applicable export license or applicable license exemption. Seller agrees to provide to Precision Optical with any requested documentation or certifications to establish Seller's legal status under applicable export laws. Seller agrees to indemnify and defend Precision Optical against any and all costs, judgments, penalties, or fines, including, but not limited to attorneys' fees and costs, caused by Seller's failure, or alleged failure, to comply with any applicable export laws and regulations. Seller shall include the substance of this paragraph in any of its sub-tier agreements related to this Agreement.

20. Counterfeit Parts Prevention. Only new and authentic materials are to be used in products delivered to Precision Optical. No counterfeit or suspect counterfeit parts are to be contained within the delivered product. Parts must be purchased directly from the original manufacturer, or through the original manufacturer's franchised distributor. Documentation shall be available that authenticates traceability to the applicable original manufacturer. Independent distributors or brokers may not be used without written consent from Precision Optical. Original certificates of conformance must be available for all purchases. If subcontractors or contract manufacturers are used in the production of the goods order under this Agreement, then Seller must include the requirements of this paragraph in its agreement(s) with such subcontractors or contract manufacturers.