



320 KALMUS DRIVE  
COSTA MESA, CA 92626

## TERMS OF SALE

- 1. Acceptance of Orders:** All orders must be approved and accepted in writing by Precision Optical ("Seller") at its office in Costa Mesa, CA. The validity of the Agreement between the Parties, as well as its interpretation, operation and effect shall be determined exclusively by the principles of law of the State of California, without regard to its choice of law provisions. Notwithstanding the preceding sentence 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).
- 2. Prices:** Seller's prices do not include sales, use, excise, personal property or similar taxes. Consequently, in addition to the prices specified herein, the amount of any present or future sales, use, excise, personal property or other similar tax applicable to the sale or use of the products hereunder shall be paid by the Buyer, or in lieu thereof, the Buyer shall provide Seller with a tax-exemption certificate acceptable to the taxing authorities. Buyer is responsible for all shipping-related charges.
- 3. Terms of Payment:** Invoices are due and payable as indicated on Seller's quotation. Failure to make any payment due under the terms of this agreement shall constitute a material breach. If, in the judgment of the Seller, the financial condition of the Buyer at any time does not justify continuation of production or shipment on the terms of payment originally specified, the Seller may require full or partial payment in advance and, in the event of bankruptcy or insolvency of the Buyer or in the event any proceeding is brought by or against the Buyer under the bankruptcy or insolvency laws, the Seller shall be entitled to cancel any order then outstanding and shall receive reimbursement for its cancellation charges which include, but are not limited to, all costs, direct and indirect, for labor, materials, tools, overhead and a profit equal to that which Seller would be entitled had the order not been cancelled. Each shipment shall be considered a separate and independent transaction, and payment therefore shall be made accordingly. If shipments are delayed at the request of Buyer, payments shall become due on the date when Seller is prepared to make shipment. Products held for Buyer shall be at the risk and expense of the Buyer. Buyer grants Seller a purchase money security interest in all articles under this agreement until such time as full purchase price is paid. Seller reserves the right to charge and Buyer agrees to pay, interest on all past due amounts at the rate of 0.5% per month or part thereof during which any balance due Seller remains unpaid. All costs of collection of unpaid amounts due Seller, including, but not limited to, court costs and Attorneys' fees shall be borne by Buyer.
- 4. Revision Change Surcharge:** Seller may assess a reasonable surcharge for drawing (REV) changes after acceptance of order.
- 5. Delivery:** Delivery quotations are Seller's best estimate on the basis of current schedules. Seller will endeavor to meet delivery schedules but in no case shall Seller incur any liability, consequential or otherwise for any delays or failure to deliver. Unless otherwise specified in writing by Seller, delivery shall be FOB Seller's plant, Costa Mesa, CA, and the method of shipment and carrier shall be selected by the Seller unless the Buyer shall have specified in writing a method of shipment and carrier ten (10) days prior to scheduled shipment. In all cases, Buyer assumes risk of loss or of damage to goods in transit and it shall be Buyer's responsibility to file claim with the carrier. If the Buyer desires insurance or valuation greater than the minimum on the shipment, it shall so notify the Seller in writing ten (10) days prior to the scheduled shipment and the cost thereof shall be an additional charge to the Buyer. If no such notice is received, shipment shall be made without insurance and at minimum valuation.
- 6. Excusable Delay:** The Seller shall not be liable for delays in delivery or failure to manufacture or deliver due to causes beyond the Seller's reasonable control, including, but not limited to, acts of God, acts of the Buyer, acts of civil or military authority, priorities, fires, strikes, floods, epidemics, war, riot, delays in transportation or car shortages, obtaining necessary labor, materials, components or manufacturing facilities.
- 7. Acceptance of Goods:** Buyer shall inspect the goods delivered hereunder immediately upon their arrival and shall within 30 days of their arrival give written notice to Seller of any claim that the goods do not conform with the terms of the contract. If Buyer fails to give such notice, the goods shall be deemed to conform, and Buyer shall be bound to accept and pay for the goods in accordance with the terms of the contract. Buyer expressly waives any rights he may have to revoke acceptance after this 30-day period.
- 8. Patents:** If the articles which are the subject hereof are to be produced according to Buyer's specifications, Buyer agrees to indemnify Seller against, and hold it harmless from all judgments, decrees, costs and expenses including fees resulting from any alleged infringements of any United States or foreign letters patent.
- 9. Packaging:** Seller will provide commercial packaging adequate, under normal conditions, to protect the goods in shipment and to identify the contents. Any special packaging agreed to by Seller will be provided at Buyer's expense.

**10. Designs, Specifications, Material Furnished by the Buyer:** Seller assumes no responsibility for the performance of products manufactured to Buyer's design or specifications, nor for defects in raw material, parts, or sub-assemblies furnished by the Buyer or its agents.

**11. Warranty:** Seller warrants that all items will be delivered free from defects in material and workmanship and in conformance with contractual requirements. Seller makes no other warranties, express or implied, and specifically NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**12. Limitation of Liability:** The Seller's exclusive liability for breach of warranty shall be limited to repairing or replacing, at the Seller's option, items returned to Seller's plant at Buyer's expense within ninety (90) days of the date of delivery. The Seller's liability on any claim of any kind, including negligence, for loss or damage arising out of, connected with, or resulting from this order, or from the performance or breach thereof, or from the manufacture, sale, delivery, resale, repair or use of any item or services covered by or furnished under this order shall in no case exceed the price allocable to the item or service or part thereof which gives rise to the claim. And, in the event Seller fails to manufacture or deliver items, Seller's exclusive liability and Buyer's exclusive remedy shall be release of the Buyer from the obligation to pay the purchase price. IN NO EVENT SHALL THE SELLER BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES.

**13. Assignment:** Except as herein expressly provided to the contrary the provisions of this agreement are for the benefit of the parties to the agreement and not for the benefit of any other party. Any assignment of this order or any rights hereunder by the Buyer without written consent of the Seller shall be void.

**14. Disputes:** In the event of any dispute, claim, question, or disagreement arising from or relating to this agreement or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of 60 days, then, upon notice by either party to the other, all disputes, claims, questions, or differences 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), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. In the event that Arbitration is necessary, there shall be one (1) arbitrator, chosen by agreement of the parties. If the parties cannot agree, then the American Arbitration Association will appoint a neutral arbitrator. The place of arbitration shall be Costa Mesa, California. The decision of the arbitrator(s) shall be final and conclusive upon the parties (unless determined by a court of competent jurisdiction to have been fraudulent, capricious or arbitrary or so grossly erroneous as necessary to imply bad faith or not to be supported by substantial evidence). Judgment upon an award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction. Any action brought before the courts for appropriate injunctive or other provisional relief shall have as its venue Orange County, California. The Buyer and Seller hereby agree to the personal jurisdiction of the state and federal courts of the State of California in the County of Orange. Costs and expenses of the arbitration shall be borne equally by the parties unless otherwise provided by the arbitrator. In the disposition of the dispute hereunder, the arbitrator(s) shall be guided by the laws of the State of California, except where this order is accepted under a contract or subcontract from a department or agency of the U.S. Government in which case the arbitrator shall be guided by the law applicable to contracts with the United States as a party.

**15. Attorneys' Fees:** If any dispute, arbitration, or action at law or in equity is brought to enforce, redress or interpret the provisions of this Agreement, the parties shall bear their own respective attorneys' fees.

**16. Exports:** (a) The export and re-export of goods and related technical information under Buyer's order is subject to the export laws of the United States of America. Seller does not guarantee the issuance of any required export licenses or their continuation in effect once issued. It is a condition precedent to Seller's obligations hereunder that all required export licenses and approvals be timely granted and continue in effect during the term of this contract. (b) Buyer agrees that it will not, directly or indirectly, export or re-export any goods or technical information received from Seller to any destination if such export or re-export would violate the laws of the United States of America. Buyer agrees to indemnify and hold harmless Seller, its affiliates, stockholders, directors, officers, employees, and agents, from and against any claim, damage, injury, loss or expense (including attorney's fees and costs) resulting or arising from any breach of Buyer's obligations under this paragraph 16.

**17. Ownership of Intellectual Property:** Seller retains sole ownership of any intellectual property, including, but not limited to, manufacturing techniques and methods, drawings, designs, job travelers, and manufacturing know-how, which is conceived, developed, or generated by Seller in performance of or in connection with this contract, unless such intellectual property is specifically described as a line item on the Buyer's purchase order and paid for by Buyer.

**18. Customer-Furnished Material:** Seller will not be liable for any loss or damage from any cause whatsoever, except for gross negligence or willful misconduct on the part of the Seller, to property owned by Buyer and furnished to Seller or to other material furnished to Seller, and the risk of loss for material furnished to or left with Seller will remain with Buyer.