



TOPTICA Photonics, Inc. "TPI" Terms and Conditions

1. **GENERAL:** All Quotations, Products and Services provided by TPI are furnished only on the Terms and Conditions stated herein.

All orders for TPI's Products, if set forth on any forms apart from an unqualified acceptance of TPI's Quotation form, are subject to written acceptance at TPI's sales offices or its head office in Victor, NY. TPI reserves the right to reject any purchase orders. Any Quotations furnished by TPI shall expire 30 days following the date set forth on the specific Quotation form, and may be revoked, amended or otherwise revised by TPI by written notice prior to acceptance by TPI.

2. **PRICES:** All prices are subject to change without notice. Unless otherwise indicated, quoted prices are applicable only to United States sales; in Prices are exclusive of all sales and/or excise tax unless otherwise specified in writing. TPI does not report, pay or collect any tax which may be imposed on the Buyer unless such charge is separately stated on the face of the invoice for such Products. Unless indicated differently on the quotation, prices for Products are quoted F.O.B. Victor, NY and do not include shipping, duty, sales taxes, license fees, inspection fees or any other fees required for operation of the equipment.

3. **CONDITIONS OF SALE:** The client purchase order will be considered a binding purchase agreement between both parties. Buyers unqualified acceptance of TPI's Quotation form shall constitute a signed purchase order. Acceptance by Buyer of these terms may be made either by written acceptance or by receipt by Buyer of delivery of any one or any part of the Products to be delivered. Cancellation of the purchase agreement after acceptance will result in the forfeiture of the deposit.

4. **PAYMENT:** The price for each product is based on payment in accordance with one of the following payment alternatives, to be elected at time of order (if no written election is set forth, the first alternative shall be deemed elected):

a. Net 30 days from the date of invoice

b. Presentation at time of order of an irrevocable letter of credit from a credible U.S. domiciled bank, providing for payment on sight 30 days from the date of delivery. Past due balances shall be subject to a service charge of the lower of 1.5% per month or the legal maximum percentage. If Buyer fails to make prompt payment, TPI may cancel or delay delivery of Products, or may repossess the Products without notice, and/or avail itself of any available remedy.

5. **DELIVERY AND SHIPMENT:** Delivery for Products will be by a common carrier of TPI's selection unless otherwise noted in writing. Partial shipments are permissible. In the absence of specific shipping instructions, TPI will ship by the method it deems most advantageous.

6. **PERFORMANCE:** Dates indicated for delivery or other performance represent TPI's best estimate. TPI shall not be liable for any loss, damages or penalties or in any other way because of any other delay in performance or failure to give notice of any delay due to unforeseen circumstances or to causes beyond its control. For delays resulting from any such causes, performance shall be correspondingly extended.

7. **SECURITY INTEREST:** TPI hereby reserves a purchase money security interest in the Products delivered and the proceeds thereof, in the amount of the purchase price. These interests will be satisfied when the Products are paid for in full. Buyer authorizes TPI to file in any applicable jurisdiction. Financing Statements executed only by TPI, describing the Products sold herein as the collateral. On the request of TPI, Buyer will execute Financing Statements and other instruments required to perfect TPI's security interest and to pay the cost of filing or recording the same in all public offices, whenever TPI deems filing or recording to be necessary or desirable. TPI or its representatives may enter upon Buyer's premises at any reasonable time to inspect the Products until payment has been made in full.

9. **REMEDIES:** Upon any default by Buyer of any obligation under this agreement, TPI may declare all such obligations immediately due and payable, and avail itself in addition to any other remedies or all of the remedies of a secured party under the Uniform Commercial Code or other applicable law.

10. **INSTALLATION AND ACCEPTANCE:** If installation and acceptance terms are required, final coordination of the installation requirements shall be made by Buyer and TPI no later than one (1) month prior to the scheduled date, unless otherwise agreed to in writing by TPI. Buyer shall be responsible for having the building, equipment and service ready to receive the Products on the estimated delivery date. Buyer shall provide necessary labor and service to unload the Products from the transport vehicle. Installation shall be performed under the supervision of TPI's installation engineer. Upon completion of the installation, TPI's installation engineer shall demonstrate the Product. Each Product shall be deemed accepted by Buyer upon completion of the demonstrations showing that the



Product performs according to published specifications, and Buyer agrees to execute TPI's acceptance letter upon completion of such demonstration. Use of any Product by Buyer, its agents, employees or licensees, for any purpose after delivery thereof, without express written consent of TPI, shall also constitute acceptance of the Product by Buyer.

11. **WARRANTY:** TPI warrants each Product manufactured by it to be free from defects in material and workmanship for one (1) years from the date of delivery, unless indicated differently. Laser components such as optics, crystals and flashlamps are warranted for a period of 90 days, from such date. Parts replaced or repaired under this warranty are warranted only for the remaining unexposed portion of the original warranty period applicable to the Product in which they are installed. Any Products purchased from TPI which become defective during the warranty period will be replaced or repaired by TPI at the Buyer's site or at TPI's site in Victor, NY, or any of TPI's principal's site that being the **EXCLUSIVE REMEDY** under this warranty. Buyer shall promptly notify TPI of any claim, and TPI shall have the option to inspect and test each item claimed to be defective at Buyer's site or request the Product to be shipped to TPI's site or designated facility. Buyer shall bear all freight charges within the United States for the return of any Products for warranty repair or replacement; return freight charges will be borne by TPI. This warranty does not extend to any Products that TPI determines were misused or neglected in use, storage or handling; or that were modified or serviced without TPI's authorization or which have had their original identification markings removed, altered or defaced. **TPI MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT AS EXPRESSLY SET FORTH IN THE ABOVE WARRANTY. IN NO EVENT WILL TPI BE LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGE ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE PRODUCT.**

12. **RETURNS:** In no case may Products be returned without TPI's written permission, which it may grant or deny in its sole discretion. Credit returns must be in like-new condition and within thirty (30) days of shipment. Returns when applicable are subject to a minimum 25% restocking charge and up to 100% for OEM and custom manufactured items. Generally, returns will be allowed, if at all, only due to a stocking or ordering error by Buyer.

13. **PO Cancellation:** Most of the products offered by TPI are made to order and therefore TPI will not accept a PO cancellation ten (10) days after the issuance of the PO.

14. **OEM delivery schedule changes:** TPI reserves the rights to grant or deny any such request. A price penalty may apply depending on the financial load it creates to TPI and will be handled on a case by case basis.

15. **INDEMNIFICATION:** If any product is manufactured and/or supplied according to Buyer's drawings and specifications, Buyer shall assume all responsibility for, and shall indemnify and hold TPI harmless from any liability resulting from a charge or allegation that such Product infringes or contributes to the infringement of any Letters Patent.

16. **MISCELLANEOUS:** Buyer shall be responsible for obtaining all permits and for meeting all other requirements of any kind whatsoever relating to state and local codes, regulations and ordinances.

All contracts for sale of Products by TPI shall be interpreted under and governed by law of the State of New York, United States of America without regard to conflicts of law principles. The Terms and Conditions as set forth herein shall constitute the entire Agreement between Buyer and TPI with respect to the products ordered. TPI shall not be bound by any terms in the Buyer's order which are inconsistent with the terms herein set forth. These Terms and Conditions supersede any other agreement between TPI and Buyer in connection with the products and services hereof. They cannot be modified, supplemented or rescinded except by writing, duly signed by the authorized signatures of both parties. If any part of these Terms and Conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the Terms and Conditions notwithstanding the part or parts found void or unenforceable. In case of any breach or default by Buyer, TPI shall be entitled to all its costs to enforce any or all of these Terms and Conditions, including reasonable attorney's and experts' fees and expenses and all court costs.

17. **LOCAL TAXES AND FEES:** Buyer shall be responsible for reporting and paying any and all local or state taxes and fees when shipments take place outside of New York state. TPI is required to collect sales tax on all orders delivered in New York state. Buyers must submit tax exempt forms when requested.