



APPLIED OPTOELECTRONICS, INC.
TERMS AND CONDITIONS OF SALE

The Terms and Conditions of Sale contained herein constitute the entire agreement (“**Agreement**”) between Applied Optoelectronics, Inc. and its parent and subsidiaries (“**AOI**”) and you (“**Customer**”). AOI will not be bound by any terms of Customer’s order. No form of acceptance except AOI’s written acknowledgement sent to Customer, or AOI’s commencement of performance, shall constitute valid acceptance of Customer’s order. Any such acceptance is expressly conditioned on assent to the terms hereof and the exclusion of all other terms. Customer shall be deemed to have assented to the terms hereof, whether or not previously received, upon delivery of any Product (defined below) shipped by AOI. If tender of these terms is deemed an offer, acceptance is expressly limited to the terms hereof.

1. **PRODUCTS.** “**Products**” means any products offered for sale currently and identified on (a) any of AOI’s written proposals or quotations, (b) current applicable price lists, or (c) any of AOI’s invoices. Alterations to any Product which AOI deems necessary to comply with specifications, changed safety standards or governmental regulations, to make a Product non-infringing with respect to any intellectual property or other proprietary interest, or to otherwise improve a Product may be made at any time by AOI without prior notice to, or consent of, Customer and such altered Product shall be deemed fully conforming.
2. **ORDERS.** Customer shall purchase Products by issuing a written purchase order signed by an authorized representative, indicating specific Products, quantity, price, total purchase price, shipping instructions, requested delivery dates, bill-to and ship-to addresses, tax exempt certifications if applicable, and any other special instructions. Any contingencies contained on such order are not binding upon AOI. All orders are subject to acceptance by AOI, who will accept or reject orders according to AOI’s then current processes. Every purchase order issued by Customer to AOI following the effective date of this Agreement shall be governed by and be deemed to include the provisions of this Agreement.
3. **PRICES.** All prices are (a) firm for thirty (30) days from the date of the written quotation, (b) FCA AOI factory, Sugar Land, Texas [Incoterms, 2000] (shipping costs and risk of loss from the FCA point of shipment are the responsibility of Customer) and (c) exclusive of Taxes (defined below) and all handling or other charges including insurance, brokerage fees, transportation or special packaging (“**Charges**”). For products shipped freight prepaid or insured, AOI will bill Customer a freight/insurance charge. All sales are final. Title to Products shall pass from AOI to Customer upon delivery to the shipping carrier at the FCA point. Any tax or other charge which AOI is liable to collect on behalf of any governmental authority (“**Taxes**”) as a result of the sale, use or delivery of Products, including duties, value added and withholding taxes, is the responsibility of the Customer, and if paid by AOI shall be charged to the Customer as a separate line item on the invoice, to the extent possible.
4. **TERMS OF PAYMENT.** Upon credit approval by AOI, payment terms shall be cash upon delivery or, at the option of AOI, net thirty (30) days from the date of the shipment. AOI reserves the right to require alternative payment terms, including TT advance or letter of credit of payment in advance. All payments must be in United

States dollars. If at any time Customer is delinquent in the payment of any invoice or is otherwise in breach of this Agreement, AOI may, at its discretion, withhold shipment (including partial shipments) of any order or may, at its option, require Customer to pre-pay for further shipments. All payments not received when due shall be subject to an additional charge of one and one half percent (1.5%) per month (annual rate 19.56%) of the unpaid amount or the maximum rate permitted by law, whichever is less, until the date of payment, as well as AOI’s costs of collection, including attorneys’ fees and costs, including court costs and cost of arbitration. In return or exchange for the credit extended by AOI to Customer on account, Customer gives AOI a continuing security interest in rights, title, and interest in Product(s) currently and hereafter acquired on account or otherwise purchased under this Agreement to secure payment for those Products purchased. Customer shall execute and deliver, in a form acceptable to AOI, in AOI’s sole opinion and judgment, all documents which are necessary to perfect and maintain the security interest in the collateral, including assignments, financing statements, and certificates of title or registration. Non-payment by Customer of any outstanding invoices shall be deemed an extension of credit by AOI for purposes of the above security interest provisions only. There is no set-off right for the Customer.

5. **PERFORMANCE AND SHIPPING.** AOI will schedule shipments based on Customer’s requests and AOI’s estimated shipping capability, provided Customer’s order requests shipment within twelve (12) months from the date of the order. AOI may make partial shipments unless Customer’s order specifically objects. Performance and shipping dates specified or communicated by AOI to the Customer are best and approximate dates only as based upon information, conditions, and raw material availability at the time of the order. Delivery shall be deemed made upon transfer of possession to the carrier at the FCA point. All claims for shortage of Products ordered or for incorrect charges must be presented to AOI within ten (10) days after receipt by Customer of the particular shipment of Products. Customer shall be responsible for all Charges. Unless given written instruction, AOI shall select the carrier. AOI shall not be liable for damages or penalty for delay in delivery or for failure to give notice of any delay, and the carrier shall not be deemed to be an agent of AOI. AOI shall not be liable for any delay or failure to deliver where, in AOI’s sole judgment, such performance is rendered commercially impracticable, or where such failure to perform is on account of an act of God, act of governmental authorities, fire, earthquake or other natural disasters, labor disputes of any nature, shortage of supplies or raw materials, accident, insurrection, war, terrorism, or other causes beyond the reasonable control or without the fault of AOI or which would cause AOI to incur unreasonable expense to avoid. Requests for proof of delivery must be received in writing within 30 days after receipt of the invoice for the Product. The failure to give AOI such written notice within the 30 day period shall be considered acceptance of the invoice and a waiver by Customer of all claims for shortages. The Customer may not cancel or terminate any Customer order, in whole or in part, without the prior written consent of AOI, which consent, if given, shall be upon terms that will compensate AOI for any loss or

damage therefrom, including but not limited to, the price of Products shipped to, manufactured for, or held separately for, the Customer, and loss of profits, incurred costs, including cost of raw materials, tooling, and labor, and a reasonable allocation of general and administrative expenses relating to the Products. AOI reserves the right to change its credit terms and/or suspend performance under any order when, in the opinion of AOI, Customer's financial condition or record of payment so warrants.

6. **LIMITED PRODUCT WARRANTY.** Notwithstanding any provision to the contrary, AOI's sole and exclusive obligations to the Customer for any Product made by AOI and sold hereunder are to repair returned Product or provide a replacement Product, at AOI's sole option, for any Product which has been returned to AOI under the RMA procedure (as defined below) and which in the reasonable opinion of AOI is determined to be defective in workmanship, material, or not in compliance with the mutually agreed written applicable specification and has in fact failed under normal use on or before one (1) year from the date of original shipment of the Product. All Products which are experimental Products, prototypes, or Products used in field trials or qualification testing, are not warranted. All third parties' Products (including software) sold by AOI carry only the original manufacturer's warranty applicable to the Customer. AOI will only accept for repair, replacement or credit under warranty Products made by third parties if expressly authorized to do so by the relevant third party. Any Product repaired or replaced under warranty is only warranted for the period of time remaining in the original warranty for the Product. AOI reserves the right, at its sole option, to issue a credit note for any defective Product as an alternative to repair or replacement. The warranty provided herein shall extend to any Product which has proved defective and has failed through normal use, but excludes and does not cover any Product or parts thereof which has been accidentally damaged, disassembled, modified, misused, used in applications which exceed the Product specifications or ratings or which are inconsistent with its design intent, neglected, improperly installed or otherwise abused or is used in hazardous activities. Customer must claim under the warranty in writing not later than thirty (30) calendar days after the claimed defect is discovered. No warranty will be honored for nor would any warranty still be available for any Product one year and 30 days after the date of delivery unless the warranty claim is properly prepared and presented, and has already been received by AOI before that time. The Customer must make all claims under this warranty and no claim will be accepted from any third party. This warranty does not extend to Product(s) to the extent such Product(s) has (1) been subjected to misuse, neglect, or abuse not caused by AOI, (2) been repaired or altered by anyone other than AOI without AOI's approval, (3) been installed improperly by personnel not certified or approved by AOI, (4) been used in violation of the approved written instructions or specifications furnished to Customer, or (5) been subjected to improper temperature, humidity or other environmental conditions, and such action is the cause of the damage or malfunction. Customer is responsible for shipping and shipping expenses related to any warranty claims per the RMA procedure below.

7. **RETURN MATERIAL AUTHORIZATION (RMA) PROCEDURE.** AOI will only accept Products returned under the AOI Return Materials Authorization ("**RMA**") process and shipped pursuant to the RMA Shipping and Packaging Instructions. Failure to comply with RMA Shipping and Packaging Instructions shall render the Product warranty null and void immediately. Customer is responsible for shipping Product to AOI and for such shipping expense in all circumstances. Customer shall obtain a RMA number from AOI prior to returning any Product and return the

Product prepaid and insured to AOI to the FCA point. One RMA number per part number will be designated by AOI. Any part number not covered by the applicable RMA number will be returned to customer at Customer's sole expense. RMA numbers are issued only after Customer has completed an RMA Authorization Request form. RMAs must be accompanied by any and all test printouts, photos, photomicrographs, and any other results or characterization conducted by Customer which Customer contends set forth defect(s) in workmanship, material, or in non-compliance with the mutually agreed written applicable specification and has in fact failed under normal use on or before one (1) year from the date of original shipment of Product. Any Product which has been returned to AOI but which is found to meet the applicable specification for the Product and not defective in workmanship and material, shall be subject to AOI's regular and customary labor, materials, and administrative charges which shall be charged to the Customer. Where any Product is returned without an itemized statement of claimed defects, AOI will not evaluate the Product but will return it to the Customer at the Customer's expense. The warranty of a repaired product shall be the balance of the standard warranty from the date of repair. AOI reserves the right to test a representative sample of returned parts only and to make its return authorization for the entire requested quantity based on said sample. Alternatively, and at AOI's sole and absolute discretion, returned Product may be replaced in part or in its entirety with new Product that meets original Product specifications. In the event that Customer returns the Product to AOI under the proper RMA process and AOI, determines that it is covered under warranty and replaces or repairs the defective Product, AOI is responsible for shipping expense back to the customer only.

8. **LIMITATION OF LIABILITY.** EXCEPT FOR THE WARRANTIES STATED HEREIN FOR THE CUSTOMER, NO WARRANTY, CONDITION OR REPRESENTATION, EXPRESS, IMPLIED, ORAL OR STATUTORY, IS PROVIDED TO THE CUSTOMER OR ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY, CONDITION, OR REPRESENTATION: (A) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE; OR (B) THAT THE PRODUCTS WILL BE FREE FROM INFRINGEMENT OR VIOLATION OF ANY RIGHTS, INCLUDING INTELLECTUAL PROPERTY RIGHTS, OF THIRD PARTIES. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY HEREIN FAILS OF ITS ESSENTIAL PURPOSE. THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES HEREUNDER AND THE ONLY LIABILITY OF AOI IS EXPRESSLY LIMITED TO THE TERMS OF THIS AGREEMENT. AOI SHALL NOT BE LIABLE TO THE CUSTOMER, OR ANY THIRD PARTY, FOR ANY OTHER SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR INDIRECT COSTS OR DAMAGES, INCLUDING WITHOUT LIMITATION, LITIGATION COSTS, SHIPPING COSTS, INSTALLATION AND REMOVAL COSTS, LOSS OF DATA, DAMAGES RESULTING FROM USE OR MALFUNCTION OF THE GOODS, PRODUCTION, PROFIT, OR REVENUES, OR COST OF REPLACEMENT GOODS, ARISING FROM ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH COSTS OF DAMAGES. FOR PURPOSES OF THIS PROVISION, AOI INCLUDES AOI'S DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUB-CONTRACTORS AND SUPPLIERS. IN NO EVENT SHALL THE TOTAL COLLECTIVE

CUMULATIVE LIABILITY OF AOI, ITS EMPLOYEES, OFFICERS, AGENTS, AND DIRECTORS EXCEED THE AMOUNT PAID TO AOI, BY THAT CUSTOMER FOR PRODUCTS FROM WHICH SUCH LIABILITY AROSE DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE MOST RECENT CLAIM.

9. **EXPORT RESTRICTIONS.** Customer shall obtain all licenses, permits and approvals required by any government and shall comply with all applicable laws, rules, policies and procedures of the applicable government and other competent authorities. Customer will indemnify and hold AOI harmless for any violation or alleged violation by Customer of such laws, rules, policies or procedures. Customer shall not transmit, export, or re-export, directly or indirectly, separately or as part of any system, the Product or any technical data (including processes and services) received from AOI, without first obtaining any and all licenses required by the applicable government, including the United States Government and/or any other applicable competent authority. Customer also certifies that none of the products of technical data supplied by AOI under this Agreement will be sold or otherwise transferred to, or made available for use by or for, any entity that is engaged in the design, development, production, or use of nuclear, biological or chemical weapons or missile technology. If Customer resells or otherwise disposes of any product or technical data purchased hereunder, it will comply with any export restrictions applicable to such transfer. AOI shall have no liability for delayed delivery or nondelivery resulting from denial, revocation, suspension or governmental delay in issuance, of any necessary export license or authority.
10. **RIGHTS IN INTELLECTUAL PROPERTY.** All rights, title and interest in and to any inventions, discoveries, improvements, methods, ideas, computer and other apparatus programs and related documentation, other works of authorship fixed in any tangible medium of expression, mask works, or other forms of intellectual property, whether or not subject to statutory protection, which are made, created, developed, written, conceived, or first reduced to practice by AOI solely, jointly or on its behalf, in the course of, arising out of, or as a result of work performed under an order, and any related tooling set-up, fitting-up and preparation charges whether or not invoiced, shall belong to and be the sole and exclusive property of AOI. Customer agrees not to reverse engineer all or any portion of any Product nor allow or assist others to do so. Customer agrees not to remove, alter, erase, deface or cover over any markings on the Product or its packaging.
11. **DISPUTES.** The validity, interpretation and performance of this Agreement shall be governed by and construed under the applicable laws of the State of Texas and the United States of America, as if performed wholly within the state and without giving effect to the principles of conflict of laws. AOI and Customer agree to make a good faith attempt to settle any dispute arising under or related to this Agreement without resort to legal action. If such good faith effort fails, AOI, at its option, may submit any controversy or claim arising out of or relating to this Agreement, or the breach thereof, to binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Such arbitration shall be maintained and held in Houston, Texas, or upon separate agreement by AOI and all other parties, in Dallas, Texas. Should AOI decide to submit the dispute to arbitration, the parties agree that arbitration will be the sole method of resolving such dispute and the matter may not be submitted to the courts of any jurisdiction except for enforcement of any arbitration award. In that event, any previously filed lawsuit shall be dismissed in favor of arbitration so long as AOI notifies

the other party of its intent to have the matter arbitrated, rather than litigated, within 45 days of being served with such lawsuit. AOI retains the right to seek immediate, temporary and/or injunctive relief from the courts of any jurisdiction. Except for claims by AOI for non-payment, the cost of arbitration, including the fees of the mediator(s) or arbitrator(s) shall be divided equally by the Parties except as provided in paragraph 4. Each party shall bear its own costs of preparing and presenting its case, except as provided in paragraph 4. An action for breach of contract or warranty, other than for non-payment, must be commenced within two years after the date of original shipment of the Product. The parties agree that the failure to meet that two year deadline will bar subsequently filed suits or arbitration proceedings. Any lawsuit against AOI must be filed, to the extent not precluded by arbitration, in the courts in Harris County, Texas.

12. **COMPLIANCE WITH LAWS.** Buyer shall at all times comply with all Laws. Without limiting the generality of the foregoing, Buyer shall (a) at its own expense, maintain all certifications, credentials, licenses and permits necessary to conduct its business relating to the purchase, use or resale of the Goods and (b) not engage in any activity or transaction involving the Goods, by way of resale, lease, shipment, use or otherwise, that violates any Law. Any distribution of the Products by Buyer will be in accordance with applicable laws.
13. **GENERAL TERMS.** Customer shall hold confidential and shall not use, disclose or permit others to use any confidential information identified as such in writing or orally by AOI or information which Customer knows or ought to reasonably know is confidential, proprietary or trade secret information of AOI, including trade secrets embodied in Products. Neither this Agreement nor any rights under this Agreement, other than monies due or to become due, shall be assigned or otherwise transferred by Customer (by operation of law or otherwise) without the prior written consent of AOI. No attempt to assign or transfer in violation of this provision will be binding upon AOI. This Agreement shall bind and inure to the benefit of the successors and permitted assigns of the parties. In the event that any of the terms of this Agreement, apart from payment, become or are declared unenforceable by any court of competent jurisdiction or arbitrator(s), such terms shall be limited or eliminated and rendered null and void to the minimum extent necessary so that this Agreement, and all remaining terms, shall otherwise remain in full force and effect. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of any other party or bind the other party in any respect whatsoever. AOI neither assumes nor authorizes any third party, person or entity to assume or accept any liability or obligation, or to make any commitment for AOI with regard to AOI services or the Products. This Agreement constitutes the entire agreement between the parties hereto concerning the subject matter of this Agreement, apart from existing non-disclosure agreements, and there are no understandings, agreements, representations, conditions, warranties, or other terms, express or implied, which are not specified herein. This Agreement may only be modified by a written document executed by authorized representatives of AOI and Customer. Waiver by AOI of any provision herein must be in writing and shall not be deemed to be a waiver of such provision in the future or of any other provision. Failure or delay by AOI in enforcing any right or provision herein will not be deemed a waiver. This Agreement shall be construed as to its fair meaning and not strictly for or against either party.

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