



AOI PURCHASE ORDER GENERAL PROVISIONS

1. **General; Quantity Contract.** This AOI Purchase Order General Provisions attachment is attached to and is a part of a corresponding purchase order ("**Order**") and/or **Quantity Contract** between Applied Optoelectronics, Inc. ("**Buyer**") and **Seller** (collectively, the "**Parties**"). Said Quantity Contract may be entered into by the Parties specifying a total quantity of items to be purchased over a given time period, and is also subject to the terms thereof and to the terms and provisions of this AOI Purchase Order General Provisions. Particular orders made under said Quantity Contract shall be made by placing one or more corresponding Orders which are also subject to the terms of this AOI Purchase Order General Provisions, as specified herein.
2. **Incorporation into Purchase Order.** Buyer hereby limits acceptance of the Order to: the terms thereof, including those appearing on the face thereof and those set forth in the body thereof; the terms and provisions of this AOI Purchase Order General Provisions; and the attachments and specifications incorporated herein and in the Order by reference. Said terms, which Seller agrees to by acknowledgement or commencement of performance or delivery, constitute the entire agreement between the Parties. Any acknowledgement hereof shall be deemed an acceptance of these terms upon receipt of such acknowledgement by Buyer, and any other terms proposed by Seller shall not be binding upon Buyer unless expressly accepted by Buyer in writing. AOI will not be bound by any terms in Seller's quotation or other document that are inconsistent with the terms of this Order. AOI's acceptance of any offer by Seller is expressly conditioned on the assent by Seller to the terms of this Order to the exclusion of all other terms. Seller shall be deemed to have assented to the terms of this Order upon any acceptance of the Order including acceptance by performance of the services contemplated by the Order.
3. **Warranties.** Seller warrants to Buyer and its customers that all items delivered and all services rendered hereunder will conform to the requirements hereof and will be free from defects. In addition to other remedies which may be available at law or in equity, Buyer, at its option, may return to Seller any nonconforming or defective item(s) or require correction or replacement of the item(s), all at Seller's risk and expense. If Buyer does not require correction or replacement of nonconforming or defective item(s), Seller shall repay such portion of the contract price or such additional amount as is equitable under the circumstances. These rights of Buyer are in addition to and shall not be limited by Seller's standard warranties. Inspection and acceptance of items by Buyer or its customer, or payment therefore, shall not relieve Seller of its responsibilities hereunder.
4. **Changes.** By written order, Buyer may, from time to time, order work suspension or make changes in drawings, designs, specifications, place of delivery, methods or shipments and packaging, and property and services furnished by Buyer. If any such change causes an increase or decrease in the price of this Order or in the time requires for its performance, Seller shall promptly notify Buyer thereof and assert its claim for adjustment within 20 days after the change is ordered, and an equitable adjustment shall be made. However, nothing in this provision shall excuse Seller from proceeding immediately with the Order as changed. Whether made pursuant to this provision or by mutual agreement, changes shall not be binding upon Buyer except when specifically confirmed in writing by a member of Buyer's Purchasing Department. Information, advice, approvals, or instructions by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect Buyer's and Seller's rights and obligations hereunder unless set forth in a writing which is signed by a member of Buyer's Purchasing Department and which expressly states that it constitutes an amendment or change to this Order.
5. **Seller's Data.**
 - (a) Seller agrees that all information, including but not limited to technical data, computer software and documentation, or other information furnished with items or required to be furnished by this Order, together with any information furnished orally, shall be free from proprietary restriction except if elsewhere authorized in this Order. Subject to provision 5(b) below, Seller's data, for which a restrictive use marking is authorized in this Order, may be duplicated, modified, distributed or otherwise used by Buyer in performance of its customer contracts. Such usage includes, as a minimum, preparation of logistics and instructional information and delivery thereof as required by such customer's contract. Any other specific rights, not inconsistent with these minimum rights, shall be listed or described in a license or agreement and made a part of this Order.
 - (b) Except as to data available to Buyer without restriction from other sources or independently developed by Buyer or released by Seller without restriction, Seller's data subject to an authorized restrictive use marking shall not without Seller's permission be: (1) used by Buyer for procurement from other than Seller; (2) used by Buyer for manufacture of items described by such data; or (3) disclosed outside Buyer or its customers.
 - (c) (1) To the extent that Seller establishes a claim to statutory copyright in any data first produced or furnished in the performance of this Order, Seller grants Buyer a royalty-free, nonexclusive, irrevocable, world-wide license to publish, distribute, translate, duplicate, exhibit, or perform any such data copyrighted by Seller with the right to grant sublicenses. (2) Seller further agrees not to knowingly include any data copyrighted by others in technical data delivered under this Order without first obtaining, at no additional cost and for the benefit of Buyer, a license therein of the same scope as set forth in provision 5(c)(1).
6. **Buyer's Proprietary Rights; Disclosure.**
 - (a) Seller agrees that any information disclosed by Buyer to Seller for the purpose of this Order shall be used only in performance of this Order. Nothing in this provision shall restrict Seller's right to use or disclose any information which is or becomes generally known to the public without breach of this provision by Seller or is rightfully obtained without restriction from other sources. Upon completion or termination of this Order, Seller shall return all such information to buyer, or make such other disposition thereof as may be directed or approved by Buyer.
 - (b) No item furnished under this Order, or tools, plans, designs, computer software, specifications, or other data for producing the same, which have been specially designed for Buyer, in connection with this Order, shall be duplicated or used by Seller or furnished to others without Buyer's prior written consent and Seller agrees that Buyer owns all intellectual property rights in said property.
 - (c) Seller agrees that it will not, without prior written approval of Buyer, publicize this Order or disclose, confirm or deny any details thereof to third parties, or use Buyer's name in connection with Seller's sales promotion or publicity without prior written approval from Buyer.
7. **Assignments and Subcontracting.**
 - (a) Neither this Order nor any interest nor claim hereunder may be assigned or delegated by Seller, nor may all or substantially all of this Order be further subcontracted by Seller without the prior written consent of Buyer. Such consent shall not be deemed to relieve Seller of its obligations to comply fully with the requirements hereof.

(b) Notwithstanding the foregoing, Seller may, without Buyer's consent, assign monies due or to become due hereunder provided Buyer shall continue to have the right to exercise any and all of its rights hereunder, settle any and all claims arising out of, and enter into amendments to this Order, without notice to or consent of the assignee. Buyer shall be given notice of any assignment and all invoices shall refer to the assignment.

8. **Termination for Convenience.**

(a) This Order may at any time be terminated in whole or in part by written notice from Buyer. If such termination is for the convenience of Buyer and is not caused by Seller's failure to fulfill the requirements or make progress so as to endanger performance of this Order, Buyer, deducting any amount(s) previously paid, shall pay a proportional price for all work performed plus a profit on such work but excluding profit on direct costs incurred due to termination. The total amount to be paid by Buyer in the event of a convenience termination shall be determined by good faith negotiation between the Parties, but it shall in no event exceed the price of this Order.

(b) In the event of a convenience termination, Seller shall use its best efforts to reduce costs incurred on terminated work and, to the extent not terminated, shall diligently continue performance of the work not terminated in accordance with the terms of this Order.

9. **Termination for Default.**

(a) Buyer may, without prejudice to any other rights or remedies provided by law or under this Order, by written Notice of Default by Seller, terminate the Order in whole or in part in any one of the following circumstances: (1) If Seller has been declared bankrupt, makes an assignment for the benefit of creditors, or is in receivership; or (2) If Seller fails to perform the work or deliver the services, supplies, equipment, goods, or other deliverable items ("**Deliverables**") in accordance with the delivery or performance schedules, or any extension thereof, specified in the Order or otherwise established between the Parties; or (3) If Seller fails to perform any of the other terms of this Order, or so fails to make progress as to endanger the performance of this Order in accordance with its terms (including delivery or performance schedules), and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure.

(b) (1) If at any time it appears to Buyer that Seller has not or will not meet this Order's delivery schedule, or any extension thereof, Buyer shall have the right to require Seller to submit a revised delivery schedule together with adequate documentation to support the reasonableness of the revised schedule. The revised schedule shall provide a specific date for the delivery of each Deliverable item under this Order and shall not be submitted subject to any contingencies. (2) Such request shall not be deemed a waiver of any existing delivery schedule or any other rights of Buyer under this Order. (3) If Seller fails to submit a revised delivery schedule as specified above, or any extension thereof granted by Buyer, Seller shall be deemed to have failed to make delivery within the meaning of the "Default" provisions hereof and this Order shall be subject to termination.

(c) In the event Buyer terminates this Order in whole or in part as provided in subparagraph 9 (a), Buyer may procure, upon such terms and in such manner as it may reasonably deem appropriate, deliverables or services similar to those so terminated, and Seller shall be liable to Buyer for any excess costs reasonably incurred for such similar supplies or services; provided that Seller shall continue the performance of this Order to the extent not terminated under the provisions of this paragraph 9.

(d) Except with respect to defaults of Seller's subcontractors, Seller shall not be liable for any excess costs if the failure to perform the Order arises out of causes beyond the control and without the fault or negligence of, and despite the exercise of utmost diligence by, Seller, provided Seller gives Buyer written notice of such causes within twenty (20) days of the occurrence thereof and within the period of delivery agreed upon. Such clauses may include,

but are not restricted to, acts of God or of a public enemy, acts of Buyer, acts of a government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, and freight embargoes; but in every case the failure to perform must be beyond the control and without the fault or negligence of, and despite the exercise of utmost diligence by, Seller. If failure to perform is caused by default of Seller's subcontractor, and if such default arises out of causes beyond the control of both Seller and its subcontractor, and without the fault or negligence of, and despite the exercise of utmost diligence by, either of them, Seller shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by Seller's subcontractor were obtainable from other sources in sufficient time to permit seller to meet the required delivery schedule.

(e) If this Order is terminated as provided in this paragraph 9, Buyer, in addition to other rights afforded by this paragraph 9, may require Seller to transfer title to and deliver to Buyer, in the manner and to the extent directed by Buyer: (1) any completed Deliverables; and (2) such partially completed Deliverables and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, contract rights and the like ("**Manufacturing Materials**") as Seller has specifically produced or acquired for the performance of such part of this Order as has been terminated, and Seller shall, upon direction of Buyer, protect and preserve property in possession of Seller in which Buyer has an interest.

(f) Payment for Deliverables completed by Seller prior to such termination and delivered to and accepted by Buyer shall be at the price for such Deliverables specified in the Order. Payment for Manufacturing Materials delivered to and accepted by Buyer, and for the protection and preservation of property, shall be in an amount agreed upon by the Parties pursuant to good faith negotiation. Buyer may withhold from amounts otherwise due Seller under this paragraph such sum as Buyer reasonably deems necessary to cover the additional cost of completing the Order and to protect Buyer against loss because of outstanding liens or claims of former lien holders.

(g) If, after a notice of termination under the provisions of subparagraph 9 (a) has been issued, it is determined that the failure to perform this Order is due to causes beyond the control and without the fault or negligence of Seller or any of its suppliers or subcontractors, such notice of termination shall be deemed to have been issued pursuant to the "Termination for Convenience" provisions of paragraph 8, and the rights and obligations of the Parties shall, in such event, be governed by such provisions.

(h) The rights and remedies of Buyer provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided at law, or in equity, or under this Order.

10. **Compliance with Delivery Schedule.** Seller agrees to exert every effort, including overtime, to meet the specified delivery schedule. Any notice to Seller by Buyer as to possible delay and/or expediting action by Buyer to accomplish on-time delivery shall not constitute a waiver of Buyer's rights under this Order nor shall either or both of such foregoing actions in any way affect the responsibility of Seller to make timely deliveries of Deliverables or perform specified services in accordance with the delivery schedule prescribed by this Order.

11. **Prices.** Seller warrants that any unit prices charged herein do not exceed the unit prices charged by Seller to other customers in substantially similar transactions.

12. **Seller's Payment of Premium Transportation Costs.** Except as may be specified otherwise in this Order, deliveries shall be strictly in accordance with the delivery schedule set forth in this Order. If Seller's deliveries fail to meet such schedule, with the result that Buyer elects to call upon Seller for premium shipments, Seller will pay for all increased rates for such premium shipments.

13. **Shipping:** All shipping costs, except for Premium Transportation Costs, as described in Paragraph 12, are the responsibility of the Buyer. For both international and domestic shipments, products will be shipped Delivered Duty Paid – Buyer's Facility (DDP Incoterms

2010), title of product passes from the seller to the buyer once the buyer successfully delivers the product to the Buyer or Buyer's designated representative.

14. **Insurance.** If Seller is to perform services for Buyer at Buyer's premises, Seller must provide evidence to Buyer of adequate general liability and worker's compensation insurance coverage. All insurance coverage, with the exception of worker's compensation insurance, shall also name Buyer as an additional insured.

15. **Invoices; Escrow; Late Delivery.**

(a) Invoices in duplicate shall be mailed to Buyer's Accounts Payables Department when items are shipped. The time for payment shall not commence before Buyer's actual or scheduled receipt, whichever is later, of items at their destination or before performance by Seller in accordance with the requirements of this Order. Without limiting Buyer's other remedies, if data are deficient or are not furnished when scheduled, Buyer may withhold remaining payments (or such portion thereof as Buyer may reasonably deem equitable) until such deficiency or delinquency is cured. All shipping costs and all Federal manufacturers' and retailers' excise and state or local sales or use taxes, when applicable, must be billed as separate items on seller's invoices. Any and all tax exemption certificates shall be accepted by Seller. Invoices shall be paid by company check. If Seller requests a different mode of payment, such as wire transfer, Buyer may deduct from the payment wire transfer fees or other increased costs of such different mode of payment.

(b) In addition to any other remedies that may be available at law or in equity, Buyer shall have the right to recover from Seller by offset or otherwise the price of any items returned to Seller under the terms of this Order.

(c) Escrow. Any prepayments, down payments, or deposits of any kind to be made by Buyer pursuant to the Order, including deposits for NRE, may be deposited with an escrow agent, with an escrow agreement instructing the escrow agent to deliver such payments to Seller upon Buyer's written consent and satisfaction with Seller's performance and deliveries. If Buyer does not provide such written consent to the escrow agent to release funds to Seller, upon Seller's request, then the escrow agent shall release the funds to Buyer: (1) pursuant to an order or judgment in Buyer's favor from binding arbitration or litigation; or (2) six months after Seller's or Buyer's demand for the funds from the escrow agent, if Seller has not yet received a court or arbitral judgment in its favor.

(d) Late Delivery. If Seller fails to perform the services or deliver the Deliverables in accordance with the delivery or performance schedules, or any extension thereof, specified in the Order or otherwise established between the Parties, the Parties mutually agree that, because time is of the essence, the services or Deliverables have a diminished value for Buyer and the price payable therefor shall accordingly be reduced by two-thirds of one percent (0.6667%) of the original price per calendar day of delay. Such price adjustment is without prejudice to any other rights or remedies provided by law or under this Order to Buyer.

16. **Additional Purchase Order Amendments.** Seller, upon the request of Buyer, shall negotiate amendments to this Order to incorporate additional provisions herein or to change provisions hereof as Buyer may reasonably deem necessary in order to comply with the provisions of the contract between Buyer and its customer or with the provisions of amendments to such contract. If such amendments to this Order cause an increase or decrease in the cost of, or the time required for, performance of this Order, and equitable adjustment shall be made in the price or delivery schedule, or both, pursuant to the Changes provisions specified in paragraph 4.

17. **Disputes.**

(a) Buyer and Seller agree to make a good faith attempt to settle any dispute arising under or related to this Order without resort to legal action. If such good faith effort fails, Buyer, at its option, may submit any controversy or claim arising out of or relating to this contract, or the breach thereof, to mediation and/or 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. Buyer reserves the right to abandon arbitration and pursue all available legal and equitable remedies in the event Seller does not comply with a demand for arbitration within thirty days of notice. The cost of mediation and arbitration, including the fees of the mediator(s) or arbitrator(s) shall be divided equally by the Parties unless the aware provides otherwise. Each party shall bear its own costs of preparing and presenting its case.

(b) Pending resolution of any dispute arising hereunder, Seller shall proceed diligently with the performance of this Order in accordance with Buyer's direction concerning the subject matter of such dispute. Irrespective of the place of performance, this Order shall be governed by the law of the State of Texas without regard to the conflicts of law provisions thereof.

18. **Hazardous Material.** Seller is required to follow all Buyer's Safety, Health, and Environmental procedures as well as all applicable local, state and federal environmental health and safety regulatory requirements. For each shipment of Goods, Seller shall provide Buyer, appropriate labels on Goods, containers and packing, including material safety data sheets, sufficient advance warning and notice of any hazardous or restricted material that is an ingredient or a part of the shipment, together with such special handling instructions as may be necessary to advise logistics providers, handlers of the goods and personnel of how to exercise measures of care and precaution that will comply with any applicable laws and prevent bodily injury or property damage in the handling, transportation, processing, use, or disposal of the Goods. All tasks should be completed in an environmentally friendly manner; to reduce pollution wherever possible; and minimize the use of natural resources as much as possible.

19. **Compliance with Laws.** Seller shall at all times comply with all applicable Laws and regulations. Including adhering to the Responsible Business Alliance's (RBA) code of conduct, which can be found at: <http://www.responsiblebusiness.org/code-of-conduct/>.

20. **General.** Buyer's failure to insist, in any one or more instances, upon the performance of any term of this Order, shall not be construed as a waiver or relinquishment of Buyer's right to such performance or to future performance of such a term or terms, and Seller's obligation in respect thereto shall continue in full force and effect. No waiver or modification of this Order will be binding upon either Party unless made in writing and signed by a duly authorized representative of such Party and no failure or delay in enforcing any right will be deemed a waiver. Time shall be of the essence hereunder. Seller shall perform services and make deliveries hereunder no earlier than and only to the minimum extent consistent with delivery schedules and other requirements. In the event that any of the provisions of this Order shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Order shall otherwise remain in full force and effect. This Order and the attachments and documents incorporated herein supersede all prior discussions and writing and constitute the entire agreement between the Parties with respect to the subject matter hereof. This Order shall be construed as to its fair meaning and not strictly for or against either Party.

21. **Precedence.** Conflicting provisions, if any, shall prevail in the following descending order of precedence: (1) typed or handwritten provisions set forth in this Order; (2) Buyer's Purchase Order Attachments; (3) the preprinted portion of this Order; and (4) specifications attached to or incorporated herein by reference. Buyer's specifications shall prevail over those of Seller.

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