

# SALES TERMS AND CONDITIONS

The products subject to this order of acknowledgement ("Products") will only be sold on the terms and conditions stated below, and the submission of an order will be deemed to constitute Buyer's acceptance thereof unless different terms are previously agreed to in writing signed by the Seller.

1. **SPECIFICATIONS:** The specifications applicable to the Products shall be the Seller's standard specifications or, in the case of items other than Seller's standard Products, such specific actions as agreed to in writing by Seller and Buyer.

2. **CHANGES:** Seller reserves the right to make process and design changes in the Products which do not adversely affect form, fit or function without prior approval or notification to Buyer. Buyer may request changes in process or design of the Products only if Buyer agrees to accept such changes in delivery or price which are in Seller's judgment, reasonably necessitated thereby. Should Buyer request changes which are, in Seller's judgment beyond the ability of Seller to produce or deliver within the schedule or for the price proposed by Buyer. Seller shall have the right to reject or cancel Buyer's order and, if production on the order has commenced or expenses have been incurred or commitments made as a consequence thereof, Buyer shall pay reasonable cancellation charges based on Seller's costs and commitments.

3. **SHIPMENTS:** The method of packing and shipment of the Products sold hereunder shall be at the discretion of the seller.

4. **DELIVERY:** The delivery schedule appearing on the face side hereof is approximate only. Seller will make reasonable efforts to deliver in accordance therewith, but shall have no liability for failure to do so. Pro rata payments will be due from buyer as deliveries are made by Seller. If delivery is delayed as a result of any action or inaction of Buyer, Seller may invoice Buyer for the Products as of the scheduled delivery date and may charge buyer for warehousing and other expenses incurred because of the delay.

5. **QUANTITY VARIATION:** Any variation in quantities of the Product(s) shipped over or under the quantities ordered (not to exceed 5% for Standard Products and 10% for Custom Products) shall constitute compliance with Buyer's order and the unit price will continue to apply.

6. **EXECUSABLE DELAY:** Seller shall not be liable for delays or defaults in delivery due to acts of God or public enemies, war or military activity, riots, insurrection or sabotage, fires, floods, explosions, or other catastrophes, unusually severe weather, accidents, epidemics or quarantine restrictions, acts of local, state or national governments or public agencies, labor disputes or shortages, energy or material shortages, utility or communication failures or delays, delays of a supplier of Seller, or causes beyond the reasonable control and without the fault or negligence of Seller. In the event of any such delay, the date for delivery shall be deferred for a period equal to the time lost by reason of the delay.

7. **TITLE:** Seller's obligation with respect to delivery ceases upon its tendering possession of the Products to the first common carrier at Seller's facility. Thereafter, all risk of damage, loss or delay in transportation shall be borne by Buyer.

8. **PRICES:** The prices stated on the face hereof apply to Products scheduled for shipment no more than twelve (12) months from the date of receipt of Buyer's order by Seller. Seller reserves the right to increase its prices for later shipments upon ninety (90) days notice. Buyer shall have thirty (30) days from the date of such notice to cancel its order, without charge, with respect to any Products not scheduled for shipment prior to the effective date of the price increase. All costs of shipping the Products to buyer, including without limitation, freight insurance (for either Buyer's or Seller's benefit) and special packing or handling, shall be in addition to the stated prices and shall be paid by Buyer. Payment of all sums invoiced to Buyer shall be in U.S. currency. Seller shall be entitled to interest on all unpaid sums from the due date at the rate of 1 1/2% per month or the maximum rate permitted by law, whichever is lower.

9. **TAXES:** In addition to the stated prices, Buyer shall pay Seller the amount of any excise, sales, use or other taxes incident to the sale of Products hereunder for which Seller may be liable or which Seller is required by law to collect unless Buyer provides Seller with a proper tax exemption certificate.

10. **WARRANTY:** Seller warrants that the Products sold to Buyer hereunder will be free from defects in material and workmanship furnished by Seller and will conform, within normal commercial tolerances, to applicable specifications. This warranty shall apply only when Buyer has given Seller written notice of such defect on nonconformity within ninety (90) days after delivery of the Products by Seller and the warranty does not extend to any Product which has been subjected to abuse, misuse, neglect or accident, nor to any Product which has been repaired or altered by other than Seller. **THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, AS TO MERCHANT ABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESCRIPTION, QUALITY, PRODUCTIVENESS, OR OTHERWISE.**

11. **RETURNS:** Written authorization must be obtained from Seller prior to the return of any Products for any reason including return for repair, replacement or credit, issuance of credit for any returned Products shall be made at Seller's option upon Buyer's request. Seller shall have the right prior to return to inspect at Buyer's plant any products claimed to be defective or nonconforming. Risk of loss or damage to any products returned to Seller for adjustment shall remain with Buyer until they are received by Seller. Shipping charges for returned Products will be paid by Seller only for Products repaired or replaced pursuant to warranty. Otherwise such charges will be Buyer's responsibility.

12. **EXPERIMENTAL PRODUCTS:** If Seller delivers Products identified as "prototypes", "samples", "for engineering approval", "on consignment", "for evaluation" or terms of similar import. Buyer agrees that such Products are confidential and experimental in nature, that buyer will limit their availability only to those of its employees as are necessary to carry out the testing and evaluation contemplated by the parties and to no others, and that all information concerning such Products received or generated by Buyer shall become and remain the proprietary property of Seller and shall not be disclosed to any third party. Buyer's receipt, use and evaluation of such Products are subject to all the terms of Paragraph 20 hereof ("Limitation of Liability"). It is anticipated that charges may be made in the manufacture of such Products based on such tests and, therefore, Buyer shall communicate to Seller the data accumulated during its testing and evaluation of the Products.

13. **TOOLING:** Unless the Buyer pays the full cost of special tooling and other equipment necessary to manufacture the Products, such tools and equipment shall remain the property of Seller. Seller may charge Buyer for the cost of maintenance and rework of such tools and equipment owned and provided Buyer.

14. **INFRINGEMENT:** Buyer shall indemnify, defend and hold harmless Seller, its officers, agents and employees against any expense, loss, attorney's fees, costs, damage or liability arising out of all claims or actions for infringement of patents or copyrights, misappropriation of trade secrets or wrongful use of designs,

trademarks or trade names based on Product designs or specifications supplied by buyer.

15. **PROPRIETARY RIGHTS:** Sale of the Products to Buyer does not convey a license, implied or otherwise, under any patent in which Seller has an interest, nor does it convey rights to any descriptive data, including, but not limited to, seller's manufacturing drawings, secrets, processes or tooling.

16. **FINANCIAL RESPONSIBILITY:** If buyer fails to fulfill the terms of payment for any shipment of Products, or if Seller shall have a reasonable doubt at any time as to Buyer's ability to pay for Products ordered, Seller may, at its option, (I) change the terms of payment or (II) defer further production and shipments until satisfactory performance has been made by Buyer and Seller is satisfied as to Buyer's financial ability, such change or deferment shall not prejudice any claim for damages Seller may otherwise have against Buyer.

17. **CANCELLATION:** (a) Seller may, at its option, cancel Buyer's order if (I) Buyer's payments are in default or Buyer breaches any material provision hereof, (II) any cause specified in Paragraph 6 of hereof ("Excusable Delay") makes it commercially impracticable in Seller's judgment to deliver the Products within a reasonable time, or (III) Buyer becomes insolvent or the subject of a proceeding under any bankruptcy law. Such cancellation shall not prejudice Seller's rights to any amounts then due or affect any other rights. Seller may have applicable provisions of controlling law. (b) Buyer may cancel the remaining unfulfilled portion of its order upon written notice to Seller and upon payment of reasonable cancellation charges invoiced by Seller which may include the profit to be made on the cancellation portion of the order and shall take into account the Products already produced or in process, the expenses already incurred and the commitments already made as a consequence of the order. In no event will the cancellation charges exceed the purchase price of the cancelled Products.

18. **CLAIMS:** Claims for shortages, incorrect materials or invoicing errors must be made by Buyer within twenty (20) days after receipt of shipment. Claims for non-receipt of shipment must be made within twenty (20) days after receipt of invoice. If seller has agreed to pay for any transportation charges, claims for such charges must be made within ninety (90) days after shipping date.

19. **PRODUCT LIABILITY:** Buyer shall indemnify and hold harmless Seller, its officers, agents and employees against all expense, loss, attorney's fees, costs, damage or liability arising from any claim or action for Product defect where alleged defect relates to design, labeling or manufacture specifications supplied by Buyer. At the request of Seller, Buyer shall defend at its own expense all such claims or actions, provided that Seller shall be entitled, at its election, to participate in such defense.

20. **LIMITATION OF LIABILITY:** Seller's liability for defective or nonconforming Products, whether based on breach of warranty, negligent manufacture or product liability, is exclusively limited to repair or replacement, at Seller's election, of such Products. Seller assumes no risk and shall be subject to no liability for any damages or loss resulting from the specific use or application made of the Products. Seller's liability for any other claim, whether based on breach of contract, negligence or product liability, relating to the Products shall not exceed the price paid by Buyer for such products. In no event will Seller be liable for any special, incidental or consequential damages (including loss of use, loss of profit and claims of third parties) however caused, by the negligence of Seller or otherwise.

21. **COMPLIANCE WITH LAW:** Seller warrants and certifies that it complies with all applicable statutes, rules, regulation's and orders of the United States, including those pertaining to labor, wages, hours and other conditions of hiring and employment. Optek complies with the following regulations: 41CFR60-1.4 (Executive Order 11246); 41 CFR60-250.4 (Veterans); 41CFR60-741.4 (Handicap)

22. **GOVERNMENT CONTRACTS:** (a) If the products are to be used in fulfilling a contract with the United States Government, Seller will comply with all mandatory requirements of such contract which are applicable to Seller provided that Seller has received written notice of such requirements from Buyer in sufficient time to incorporate their impact into the price and delivery schedule for such Products. In addition, Seller may at its option adopt any provisions of DAR or other federal statutes or regulations which are applicable or available to Seller.

23. **AUDITS:** Buyer shall not have the right to audit or examine Seller's financial records pertaining to the Products sold hereunder.

24. **WAIVER:** Failure to Seller to insist upon strict performance of any provision hereof by Buyer shall not be deemed to be a waiver by Seller of its rights or remedies, or a waiver by it of any subsequent default by Buyer.

25. **ASSIGNMENT:** Buyer shall not assign any of its rights or obligations hereunder without prior written consent of Seller.

26. **NOTICES:** Any notices and other communications, required or permitted to be given hereunder shall be in writing and shall be effective when delivered personally or telexed (later confirmed in writing) or, if mailed, three (3) days after air mailing, postage prepaid.

27. **CORRECTIONS:** Clerical errors or obvious errors or omissions are subject to correction.

28. **SEVERABILITY:** In the event that one or more provisions hereof should be held to be unenforceable in any respect, this document shall be construed as if such unenforceable provision(s) had not been contained herein.

29. **ENTIRE AGREEMENT:** These terms and conditions supersede all other representations, warranties, undertakings and understandings of the parties with respect to the subject hereof and may not be modified except by writing signed by an authorized employee of Seller. If Buyer and Seller have executed an overriding agreement covering the sale of Products to which this document relates, the terms of said overriding agreement shall prevail over the terms stated herein to the extent of any conflict.

30. **GOVERNING LAW:** Buyer's purchase of Products hereunder shall in all respects be governed by the laws of the jurisdiction from which Seller mails this document.

31. **RESCHEDULES:** Seller requires thirty (30) days advance notice from schedule ship date to reschedule standard products, and sixty (60) days advanced notice on all special or custom products.

33. **COMPLETED ORDERS:** Seller will consider an order for special or custom product complete if shipped within plus or minus five percent (+5%) of quantity ordered, and will invoice for actual quantity shipped.