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Vermont Photonics Technologies Corp.

Terms and Conditions of Sale

Vermont Photonics supplies Commercial-Off-The-Shelf optical instruments and equipment to a number of high tech. industries. Vermont Photonics is the sole distributor for Moeller-Wedel Optical in the United States and complies with all applicable laws and regulations relating to sale of goods and services. This contract defines the terms and conditions of sales of goods and services from Vermont Photonics (Seller) to Customers (Buyer).

1. ACCEPTANCE OF PURCHASE ORDERS

Sales of any goods or any related services (collectively, "Products") referenced in Buyer's written Purchase Order to Seller ("Purchase Order") is expressly conditioned upon the terms and conditions set forth below. Other than as specifically provided in a separate written agreement between Seller and Buyer, any additional or different terms specified or referenced in Buyer's Purchase Order are hereby excluded and shall not be deemed effective or binding unless expressly agreed to in writing by an authorized representative of Seller, acceptance of a Purchase Order in no way constitutes such a separate written agreement. These terms and conditions represent the entire agreement between the Buyer and Seller pertaining to the subject matter of this Purchase Order and shall supersede all prior oral and written agreements, proposals, communications, and documents. No Purchase Order placed by Buyer shall be deemed accepted unless or until Seller issues a written acknowledgement. Any amendment, change order, revision, or termination to an already-accepted Purchase Order shall be subject to acceptance by an authorized representative of Seller.

2. PRICES

The price set for in Seller's Quotation ("Price") are in United States Dollars. Nothing set forth in Buyer's Purchase Order shall modify or amend the quoted prices, quantities, and/or the scope of Products offered, unless such modification or addition is agreed to in writing by Seller prior to the Purchase Order.

3. PACKAGING, SHIPPING

3.1. Seller shall pack all products in accordance with its standard commercial practices. If Buyer has any special shipping or handling requirements, Buyer shall notify Seller in a timely manner regarding any such special requirements, and Buyer shall be responsible for any increase in cost to pack the Purchase Order.

3.2. The Price does not include any shipping or handling charges, and Buyer shall incur both the cost and the risk for bringing the products to their final destination. Buyer shall provide an account number that Seller can use for the shipping costs.

3.3. In the absence of specific instructions, Seller shall select the carrier and, at its discretion, may ship "collect", prepaid or subject to invoice payment terms, but shall not be deemed to have assumed any liability in connection with the shipment, nor shall the carrier be construed as an agent of Seller.

4. DELIVERY, TITLE, AND RISK OF LOSS

4.1. Seller's quoted delivery schedule represents its best estimate and is based on current schedules and workload. Seller shall have no liability for delay or any damages or losses sustained by Buyer as a result of such estimate not being met. Partial deliveries shall be permitted.

4.2. Unless otherwise agreed to by Seller in writing, delivery shall be deemed to have occurred FOB origin for all shipments. If Buyer fails to provide a proper charge account for shipping costs, Seller shall be entitled to invoice Buyer for the Products, and reserves the right to put the articles in storage and charge the Buyer storage costs.

4.3. Title and liability for loss or damage to the Products shall transfer from Seller to Buyer upon delivery of the Products at FOB origin for all shipments.

5. PAYMENT

Buyer shall pay for all products delivered or date services performed within 30 days from the date of Seller's invoice. Payment shall be deemed to have been made when a check is received by Seller or payment is received by an electronic transfer in Seller's bank account. Seller reserves the right to assess interest on any late payments from the date due until receipt of payment in full at the lesser of (a) one and one-half percent per month compounded monthly, or (b) the maximum rate permitted by law, and to charge Buyer for any collection or litigation expenses, including reasonable attorney's fees incurred by Seller in the collection of late payment. In addition to any remedies under law, Seller may at its sole discretion suspend future deliveries or services until all delinquent payments due are received. Seller may require an advance payment or milestone payments prior to beginning performance of the Purchase Order. Seller may require Buyer to obtain a letter of credit. All payments hereunder shall be paid without any deductions, set-off, or counter-claims including for any taxes.

6. FORCE MAJEURE AND EXCUSABLE DELAY

6.1. Seller shall not be liable for any damages of any kind for delayed or non-performance if such delayed or non-performance is due directly or indirectly to:

(a) Buyer, including omissions or failure to act on the part of Buyer or its agents or employees;

(b) An Event of Force Majeure, defined herein as including acts of God, acts of public enemies, fires, floods or unusually severe weather conditions, strikes, lockouts, disputes with workmen or other hostilities, embargoes, wars, riots or civil disturbances, epidemics or quarantine restrictions, delays or shortages of transportation, governmental action including the government's denial or failure to grant an export license or other needed government authorization;

(c) Causes beyond Seller's reasonable control, including severe accidents at Seller's plant, unforeseen production or engineering delays or inability of Seller or its vendors to secure adequate materials, manufacturing facilities or labor, or any

other acts and causes not within the control of Seller, which by the exercise of due diligence and reasonable effort, Seller would not have been able to foresee, avoid or overcome.

6.2. Seller shall notify Buyer of any delayed or non-performance due to an excusable delay or Event of Force Majeure as soon as practicable. If either such event should occur, Seller's period of performance shall be extended for a period of time equal to the duration of either such event. If the excusable delay or Event of Force Majeure extends more than six months, Seller and Buyer may mutually agree to terminate the Purchase Order or any portion thereof impacted by the excusable delay or Event of Force Majeure, and Buyer shall promptly pay Seller for any delivered Products or services performed, any works in process, any termination costs, including vendor settlement expenses, and any restocking fees.

7. WARRANTY

Subject to the terms and conditions set forth in Article 12, Limitation of Liability, as well as terms and conditions set forth in Seller warranty terms and conditions included with warrantied products, Seller warrants that the Products sold by Seller shall be free from defects, including latent defects, in material and workmanship under normal use and service when operated in accordance with Seller's operating instruction for thirty-six months from shipment. Seller's obligation and Buyer's sole remedy under the Warranty shall be limited to, at Seller's option, the repair or replacement of the nonconforming warranted Product, or any part thereof, FOB origin. Notwithstanding the foregoing, the Warranty shall not apply to an Event of Force Majeure, wear and tear, or to defects arising from or connected with Buyer's or any third party's (i) improper receipt, transport, handling, storage, maintenance, testing, installation, operation or of the Product, or (ii) alteration, modification, maintenance, overhaul, repair, neglect or foreign object damage of the Product. Seller shall have no obligation to Buyer for any failure, to the extent that it is aggravated by such continued use. The Warranty does not apply to consumable items such as tubes, fuses, bulbs, and like items. Buyer shall provide prompt written notice of the Product's failure within the Warranty period, and ensure the failed Product is properly packed and returned to Seller transportation and insurance prepaid.

8. PROPRIETARY INFORMATION

For the term of Buyer's Purchase Order, Seller and Buyer, to the extent of their right to do so, may exchange proprietary and/or confidential information not generally known to the public ("Proprietary Information"), only to the extent and as reasonably required to perform its obligation hereunder. Any document marked "Confidential" or "Proprietary" and all copies made of any such document shall be returned by the receiving party ("Recipient") of Proprietary Information to the disclosing party ("Owner") upon completion of the purpose for which they were provided, or destroyed by Recipient at Owner's direction. Neither Seller nor Buyer shall be liable for any disclosure if the data: (a) is generally available to the public (or becomes so) without breach of by Recipient; (b) was available to Recipient on a non-confidential basis from a source that had the right to disclose such information; (c) was rightfully in the possession of Recipient prior to receipt from Owner; or (d) was independently developed without use of Owner's Confidential Information. No license to a party, under any trademark, patent, copyright, mask protection right or any other intellectual property right, is either granted or implied by the conveying of Proprietary Information to such party. No use of any Seller trademark, service mark, trade name, design, logo or other trade dress may be made without the prior written consent of Seller. Any Seller mark or logo existing on the Product must not be altered or modified in any manner, combined with other elements, or rearranged without the prior written consent of Seller. None of the Proprietary Information which may be disclosed or exchanged by Owner shall constitute any representation, warranty, assurance, guarantee or inducement to Recipient of any kind and, in particular, regarding the non-infringement of trademarks, patents, copyrights or any intellectual property rights, or other rights of third persons other than the rights expressly granted herein. Buyer agrees that it will not attempt, nor

will it direct or employ others to attempt, to reverse engineer the Product, subassemblies and/or software that is developed, manufactured or sold by Seller. The ownership in all Proprietary Information disclosed by the Owner to the other pursuant to the Purchase Order shall remain with Owner. The confidentiality obligations herein shall survive for a period of five years after expiration of the Purchase Order.

9. INTELLECTUAL PROPERTY RIGHTS

9.1. Seller grants to Buyer a nonexclusive, nontransferable, revocable license to use a copy of any software program embedded in the Product, in object code only, for use as part of the Product (“License”). Notwithstanding the foregoing, this License is subject to the following prohibitions: (a) Buyer shall not attempt to decompile, reverse engineer, or disassemble the object code, or in any other way convert the object code into a human-readable form; (b) Buyer shall not manufacture, sell, deliver or in any way provide any products containing the object code; (c) Buyer shall not use the object code to create derivative or competing products of any kind; or (d) Buyer shall not transfer the object code to a third party for any reason without prior written consent of Seller, which may be withheld at Seller’s sole and reasonable discretion, and only then subject to Buyer executing a sub-license agreement with the same terms and conditions herein and providing Seller the sub-license agreement executed by the transferee. Any transfer must be in full compliance with U.S. Export Laws and may require additional export licenses or other authorizations to be obtained by Buyer and/or Seller. Other than the License, Seller is not granting any other rights to its intellectual property, patents, trademarks, software, or proprietary data, other than the right of Buyer to use the Product for its intended purposes.

9.2. Subject to Article 12, Limitation of Liability, and except as otherwise provided herein, Seller shall defend Buyer against any claims based on a substantive allegation that the Product directly infringes a United States patent, copyright or other intellectual property right of a third party. Seller shall have the right, at its option and expense, to (a) procure a right for Buyer to use the Product; (b) modify or replace the infringing parts of the Product so that it becomes non-infringing; or (c) request that Buyer return the article and refund to Buyer the purchase price, including all license fees, paid by Buyer. The indemnity shall not apply and Seller has no indemnity obligation for any claim based upon any of the following: (a) Seller’s compliance with Buyer’s design, specifications or design instructions; (b) alterations by Buyer or by third parties of the Product furnished by Seller not approved in writing by Seller; (c) failure of Buyer to use updated Product provided by Seller to avoid infringement; (d) use of Product in a manner, or for a purpose, for which was neither designed nor foreseeable by the Seller; (e) assembly, function or use of Product in combination with any materials and/or software not supplied by Seller; (f) a patent, trademark or copyright in which Buyer or affiliate has a direct or indirect interest by license or otherwise, or (g) Open source software. Buyer shall defend and indemnify Seller from and against any third party claim arising from any of the aforementioned circumstances.

9.3. THIS ARTICLE SETS FORTH SELLER’S ENTIRE LIABILITY, AND BUYER’S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. The indemnities are conditional on Buyer giving Seller prompt written notice of any claims being made against Buyer, Buyer not making any admission which might be prejudicial to the defense of such claim, Seller having full and sole authority at Seller’s own expense to assume the defense of the claim, and Buyer providing reasonable assistance for defense of any claim.

10. EXPORT COMPLIANCE

The Products, including any associated technology, are controlled under the Export Laws and Regulations of the United States Government, including but not limited to Export Administration Regulations and the International Traffic in Arms Regulations. The Products and any associated data cannot be exported out of the United States, re-exported or transferred to another country without the

prior approval of the US Government. Buyer shall first obtain Seller's written consent and any authorization required by the US Government, including the filing of additional export licenses or authorizations which must occur and/or be approved by the US Government prior to any export, re-export, or transfer of US original articles, data, or associated technology. If the Purchase Order requires the delivery of Product and/or performance of services outside of the United States, the Purchase Order shall be subject to the US Government approving any licenses or any other approvals or US Customs clearances required for Seller to meet the obligations of the Agreement. Buyer shall provide an end-user letter and/or non-transfer end use certificate, or other supporting documentation if requested by Seller to accompany Buyer's export license request or any other approval as required by the US Government. If the Purchase Order requires Seller to perform defense services, Seller may be required to obtain a Technical Assistance Agreement approved by the US Government and signed by Seller, Buyer and any other foreign parties before any defense services can be performed. In the event the US Government fails to grant any license or approval in a timely manner, the delay in the performance of the Purchase Order shall be considered an Event of Force Majeure.

11. GOVERNING LAW

These Terms and Conditions and any action related hereto shall be governed, controlled, interpreted and defined by and under the laws of the State of Vermont, USA, without regard to the conflict of laws provisions thereof. Each party hereby irrevocably submits the exclusive personal jurisdiction of the Courts of the State of Vermont and the venue of the courts in Windham County, Vermont. Each party agrees that the Vermont, Windham County courts shall be the exclusive jurisdiction and venue of any litigation or special proceeding to resolve any dispute or claim arising from or related to or connected with this contract, including any claims based upon statute, common law or rule. The parties hereby waive any objection to such forum based upon venue or forum non conveniens ground.

12. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, AND REGARDLESS OF THE NUMBER OF CLAIMS OR THE FORM OR CAUSE OF ACTION, WHETHER IN CONTRACT, EQUITY, STATUTE, TORT, NEGLIGENCE (ACTIVE OR PASSIVE) OR OTHERWISE, SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND, AND SHALL NOT BE LIABLE TO BUYER FOR LOSSES OF USE, DATA, PROFIT, REVENUE, INCOME, BUSINESS, ANTICIPATED SAVINGS, REPUTATION, AND MORE GENERALLY, ANY LOSSES OF AN ECONOMIC OR FINANCIAL NATURE, REGARDLESS OF WHETHER SUCH LOSSES MAY BE DEEMED AS CONSEQUENTIAL OR ARISING DIRECTLY AND NATURALLY FROM THE INCIDENT GIVING RISE TO THE CLAIM, AND REGARDLESS OF WHETHER SUCH LOSSES ARE FORESEEABLE OR WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES. EXCLUDING GROSS NEGLIGENCE OR WILLFULL MISCONDUCT, SELLER'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH A PURCHASE ORDER SHALL IN NO EVENT EXCEED ACTUAL, DIRECT, AND PROVEN DAMAGES OF THE PRICE OF THE PRODUCT DIRECTLY PURCHASED BY BUYER UNDER THE PURCHASE ORDER GIVING RISE TO THE CLAIM. THIS LIMITATION OF LIABILITY SHALL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED OR EXCLUSIVE REMEDY. TO THE EXTENT THESE TERMS AND CONDITIONS CONTAIN ANY SPECIFIC REMEDIES PROVIDED BY SELLER TO BUYER, REGARDLESS OF FORM, SUCH REMEDIES SHALL BE PROVIDED BY SELLER ON A SOLE AND EXCLUSIVE BASIS AND IN LIEU OF ANY OTHER REMEDIES, DAMAGES, OR LOSSES.

13. INSURANCE

Seller and Buyer shall each carry insurance coverage in types and amounts adequate to protect against

any losses, damages, liabilities or expenses that may reasonably be expected to be incurred under a Purchase Order, and both shall keep such insurance coverage in effect until the conclusion of the Purchase Order.

14. MODIFICATION

Any modification of these Terms and Conditions shall be valid only if it is in writing and signed by the authorized representatives of both Seller and Buyer.

15. ASSIGNMENT

Neither Party may assign or delegate a Purchase Order or any of its rights, duties or obligations regarding a Purchase Order to any other party without the prior written consent of the other party. Any attempt by either party to assign or delegate any of its rights, duties or obligations regarding a Purchase Order without such consent shall be void and of no effect. Notwithstanding the foregoing, Seller shall be permitted to subcontract its rights, duties or obligations regarding a Purchase Order to another division, affiliate or wholly-owned subsidiary of Seller and shall have the right to assign a Purchase Order to any successor by way of merger or consolidation or the acquisition of substantially all of the entire assets of Seller relating to the subject matter of the Purchase Order; provided, however, that such successor shall assume all of the obligations of Seller under the Purchase Order. Nothing in this provision is intended to preclude Seller from awarding routine subcontracts or purchase orders to vendors or other Sellers.

16. AUDIT

Notwithstanding anything set forth herein to the contrary, Buyer shall not be allowed or have the right to audit or examine Seller's books and records.

17. NO THIRD PARTY BENEFICIARIES

Except as expressly provided herein, these Terms and Conditions are for the sole and exclusive benefit of the Parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever.

18. WAIVER

If either party, at its option, agrees to waive any of these Terms and Conditions, then such waiver shall not for any purpose be construed as a waiver of any succeeding breach of the same or of any other of these Terms and Conditions; nor shall such a waiver be deemed as a course of conduct.

19. SEVERABILITY

If any of these Terms and Conditions are at any time held to be invalid or unenforceable, then such term or condition shall be construed as severable and shall not in any way render invalid or unenforceable the remainder of these Terms and Conditions, which shall remain in full force and effect.

20. PUBLIC DISCLOSURE

Except as required to obtain necessary licenses or governmental approvals, neither party shall issue any news releases, articles, brochures, advertisements, or other information releases relating to the subject matter of a Purchase Order, except as otherwise required by law, without the prior written approval of the other party.