

# OFS FITEL DENMARK TERMS AND CONDITIONS OF SALE

THE TERMS AND CONDITIONS OF SALE CONTAINED HEREIN ("THIS AGREEMENT") SHALL APPLY TO ALL QUOTATIONS AND OFFERS MADE AND PURCHASE ORDERS ACCEPTED BY OFS FITEL DENMARK APS ("SELLER"). IF THESE TERMS AND CONDITIONS CONFLICT WITH TERMS AND CONDITIONS OF A PURCHASE ORDER OR PROCUREMENT DOCUMENT ISSUED BY BUYER, THE TERMS AND CONDITIONS CONTAINED HEREIN SHALL GOVERN. SELLER'S ACCEPTANCE OF BUYER'S ORDER IS CONDITIONED UPON BUYER'S ACCEPTANCE OF THESE TERMS AND CONDITIONS IRRESPECTIVE OF WHETHER THE BUYER ACCEPTS THEM IN WRITING, BY IMPLICATION OR BY ACCEPTANCE OF AND PAYMENT FOR PRODUCT SOLD HEREUNDER, AND IRRESPECTIVE OF WHEN BUYER'S PURCHASE ORDER OR PROCUREMENT DOCUMENT IS ISSUED OR WHETHER IT PRECEDES OR FOLLOWS ISSUANCE OF THIS AGREEMENT. SELLER'S FAILURE TO OBJECT TO PROVISIONS CONTAINED IN ANY COMMUNICATION FROM BUYER SHALL NOT BE DEEMED A WAIVER OF THE PROVISIONS HEREIN.

**1. DELIVERY, TITLE AND RISK OF LOSS** – Unless otherwise agreed by the parties in writing, shipment will be made in a manner determined by Seller. Title (except as provided in Section 8, "RIGHTS IN INTELLECTUAL PROPERTY") and risk of loss or damage to the product shall pass in accordance with the designated Incoterm (2010) or, if none is so designated, then to Buyer at the time Seller delivers possession of the product to a carrier at Seller's plant or warehouse. Product held by Seller at Buyer's request beyond the scheduled delivery date shall be at Buyer's risk and expense. Unless otherwise agreed, freight shall be prepaid by Seller and invoiced back to Buyer. Buyer shall be responsible for expenses incurred by Seller where, at Buyer's request, Seller ships or packs product in other than its normal manner for shipment.

**2. LICENSED PRODUCTS** – No title or other ownership rights in any licensed products or any copies thereof shall pass to Buyer under this Agreement or any performance hereunder. Buyer agrees that it will not alter any notices on, prepare derivative works based on, or reproduce, reverse engineer, disassemble or decompile any software embodied in licensed products or recorded in the purchased products furnished under this Agreement.

**3. TERMINATION OR CHANGE** – Buyer shall not terminate, suspend performance, reschedule or cancel delivery or issue a "hold" order under this agreement, in whole or part, without Seller's prior written consent and upon terms that will compensate Seller for any loss or damage resulting from such action. Buyer's liability shall include, but not be limited to, the price of product delivered or held for disposition and the price of services already performed, plus Seller's loss of profits thereon, incurred costs and a reasonable allocation of general and administrative expenses. Depending on the product or service, any such termination shall be subject to a minimum termination charge of fifteen percent (15%) to twenty five percent (25%) of the total amount of the sales terminated.

**4. TERMS OF PAYMENT** – Buyer shall pay the invoiced amount within thirty (30) days from the date of Seller's invoice. Delinquent payments are subject to an interest charge at the rate of one and one-half percent (1-1/2%) per month, or portion thereof. Orders are subject to a maximum outstanding credit limit (measured counting all outstanding invoices, whether or not past due, combined with the value of all accepted orders) as reasonably determined by Seller. Seller may refuse to accept purchase orders, if such acceptance would result in Buyer exceeding such credit limit. The amount of credit or terms of payment may be changed or credit withdrawn by Seller at any time. Each shipment shall constitute an independent transaction and Buyer shall pay for same in accordance with the specified payment terms. If shipments are delayed by Buyer, Seller may invoice Buyer when Seller is prepared to ship.

**5. TAXES** – Any tax, duty, fee, or related charge that Seller shall be required to pay to or collect for any government upon or with respect to services rendered or the sale, use or delivery of products shall be billed to Buyer as a separate item and paid by Buyer, unless a valid exemption certificate is furnished by Buyer to Seller.

**6. PRODUCT CHANGES** – Seller may at any time (i) make changes in the products that do not materially affect physical or functional interchangeability or performance or (ii) make more substantial changes or discontinue delivery of the product when required for purposes of safety.

## 7. WARRANTY –

**a) Products.** Seller warrants to Buyer that products of its manufacture will be on the date of shipment of the product, free from defects in material and workmanship and will substantially conform to Seller's written specifications provided to Buyer or to the specifications, if any, identified in an order and agreed to in writing by Seller, other than specifications specifying performance for a period of time. If any defect in material or workmanship or failure to meet said published specifications (a "defect") appears in the product, Seller will, at its option, either repair or replace the defective product without charge at Seller's manufacturing or repair facility or credit or refund the purchase price of the defective product provided: (i) the defect appears within the applicable warranty period below; (ii) Buyer notifies Seller in writing of the claimed defect within thirty (30) days after Buyer knows or reasonably should know of the claimed defect; and (iii) Seller's examination of the product discloses that the claimed defect actually exists. The warranty period for Seller's products commences on date of shipment and extends in accordance with the following table:

Product	Warranty Period
Cable	12 months
Fiber	12 months
Specialty fiber, cable, or other specialty products	3 months, except for high power laser products, which is two (2) years

Buyer shall follow Seller's instructions regarding return of defective product, and no product will be accepted for repair, replacement, credit or refund without the written authorization of and in accordance with Seller's instructions. Replaced products shall become Seller's property. In no event shall Seller be responsible for deinstallation or reinstallation of defective products or for the expenses thereof. If Seller determines that the returned products are not defective, Buyer shall pay Seller all costs of handling, inspection, repairs and transportation at Seller's then prevailing rates. Repairs and replacements covered by the above warranty are warranted to be free from defects as set forth above except that the defect must appear (i) within (3) months from the date of repair or replacement or (ii) prior to the expiration of the applicable warranty, whichever is later.

With respect to products not manufactured by Seller, Seller, to the extent permitted, extends the warranties and affords the remedies to Buyer given to Seller by its vendor of said products.

Seller makes no warranties with respect to experimental products or prototypes or to products which have been subjected to misuse, neglect, accident or abuse or have been improperly installed, operated, stored, maintained, repaired or altered by anyone other than Seller, or had their serial numbers or month and year of manufacture or shipment removed, defaced or altered.

**b) Services.** Seller warrants to Buyer that any services provided to Buyer hereunder shall be performed in a professional manner consistent with industry standards. Buyer shall notify Seller within the earlier of (i) thirty (30) days after Buyer knows or reasonably should know that any services provided by Seller are in breach of this warranty and (ii) three (3) months after completion of the services. If Seller has breached this warranty for services, Seller shall, at its option, re-perform the service to correct any non-conformity or cancel the order for services and return or credit the portion of the service fee paid to Seller for such non-conforming services.

**c) Exclusive Remedy.** EXCEPT AS STATED IN THIS SECTION 7, SELLER, ITS SUBSIDIARIES AND AFFILIATES, SUBCONTRACTORS AND SUPPLIERS MAKE NO WARRANTIES EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AS WELL AS OTHER IMPLIED WARRANTIES, IN LAW OR EQUITY. BUYER'S SOLE AND EXCLUSIVE REMEDY SHALL BE SELLER'S OBLIGATION TO REPAIR, REPLACE, RE-PERFORM, CREDIT, OR REFUND AS SET FORTH ABOVE.

**8. RIGHTS IN INTELLECTUAL PROPERTY** – Seller exclusively shall own all right, title and interest in and to any tooling, test equipment, designs, 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 patentable, copyrightable or subject to mask work rights or other forms of protection, which are made, created, developed, written, conceived or first reduced to practice by Seller solely, jointly or on its behalf, in the course of, arising out of or as a result of work done under this Agreement.

While Seller does not contemplate furnishing proprietary information of any kind under this purchase order to Buyer or to any governmental entity, any proprietary information pertaining to the work to be performed hereunder which may be furnished by Seller to Buyer or to such governmental entity will remain Seller's property, will be held in confidence by Buyer, will be returned to Seller upon request, and may not be used without Seller's written permission for any purpose other than its intended use hereunder. The sale of any product by Seller shall not in any way confer upon Buyer, or upon anyone claiming under Buyer, any license (expressly or impliedly) under any patent claim of Seller or others covering or relating to any combination, machine or process in which such product is or might be used, or to any process or method of making such product.

## **9. INDEMNITIES –**

**a) Seller's Indemnity.** Seller shall (i) defend or settle, at its option and expense, any claim against Buyer alleging that any product furnished hereunder, in the form in which it is furnished by Seller, infringes any European Union or United States patent, copyright or trademark; (ii) reimburse Buyer for any costs incurred at Seller's written request; and (iii) pay all damages and costs assessed by final judgment against Buyer and attributable to such claim. Seller shall have the right, at any time and at its option and expense to: (i) procure for Buyer the right to continue using such product; (ii) replace or modify any such product provided or to be provided to be free of the infringement claim and, or discontinue further deliveries of the product; or (iii) require return of such product and refund the purchase price paid less a reasonable allowance for use, damage and obsolescence. Seller's obligations hereunder are conditioned upon: (i) Buyer giving Seller prompt written notice of any such claim; (ii) Seller having complete control of the defense and settlement thereof; and (iii) Buyer cooperating fully with Seller to facilitate the defense or settlement of such claim.

**b) Exceptions.** Notwithstanding the foregoing, Seller shall have no liability for, and no obligation to defend, indemnify, or settle, any infringement or other violation of any patent or other intellectual property right or claim thereof: (i) arising from compliance with Buyer's specifications, designs or instructions; or (ii) relating to use of any product furnished hereunder in combination with any other item(s), whether or not furnished by Seller, even if such use is the product's necessary or inherent use or the use for which the product is purchased; or (iii) relating to any specialty photonics products supplied hereunder.

**c) Buyer's Use of the Products.** In addition, Buyer assumes all responsibility and liability for any injury or damages resulting from its handling, possession, use or sales of specialty photonics products supplied hereunder including, but not limited to any injury or damage resulting from the use of such products in Buyer's manufacturing operations or in combination with other substances or products.

**d) Buyer's Indemnity.** In the cases described in (b) and (c), above, Buyer shall indemnify, defend, and hold Seller harmless from and against all claims, losses, liabilities, damages, and expenses (including attorneys' fees and other litigation or settlement costs).

**10. EXPORT CONTROL** - Buyer acknowledges that the products sold under this Agreement and technical information transmitted in connection therewith may be subject to export restrictions under applicable law, including those of Denmark, the European Union and the U.S. Department of Commerce Export Administration Regulations, and Buyer agrees to comply fully with same. Buyer assures Seller that it will not transmit, sell, transfer or convey any such products, technical information or software, or goods produced through the use of same, to any country, or citizen or resident of a country, other than the United States, without first securing written consent, if required, of the U.S. Department of Commerce.

June 25, 2018

## **11. EXCLUSIVE REMEDIES AND LIMITATIONS OF LIABILITY**

**A. FOR PURPOSES OF THE EXCLUSIVE REMEDIES AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 11, SELLER SHALL BE DEEMED TO INCLUDE OFS FITEL DENMARK APS, ITS SUBSIDIARIES AND AFFILIATES AND THE MANAGEMENT, EMPLOYEES, AGENTS, REPRESENTATIVES, SUBCONTRACTORS AND SUPPLIERS OF EACH OF THEM, AND "DAMAGES" SHALL BE DEEMED TO REFER COLLECTIVELY TO ALL INJURY, DAMAGE, LOSS OR EXPENSE INCURRED.**

**B. SELLER'S ENTIRE LIABILITY AND BUYER'S EXCLUSIVE REMEDIES AGAINST SELLER FOR ANY DAMAGES CAUSED BY ANY PRODUCT DEFECT OR FAILURE, OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ANY WORK REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE SHALL BE:**

1. FOR INFRINGEMENT, THE REMEDIES SET FORTH IN SECTION 9.
2. FOR FAILURE OF PRODUCT OR WORK PERFORMED, THE REMEDIES STATED IN SECTION 7.
3. FOR DELAYS IN DELIVERY, NONE, UNLESS THE DELIVERY IS DELAYED BY MORE THAN THIRTY (30) DAYS BY CAUSE NOT ATTRIBUTABLE EITHER TO BUYER OR TO FORCE MAJEURE CONDITIONS, IN WHICH CASE BUYER SHALL HAVE THE RIGHT, AS SOLE REMEDY, TO CANCEL THE ORDER WITHOUT INCURRING TERMINATION CHARGES.
4. FOR DAMAGES TO REAL OR TANGIBLE PERSONAL PROPERTY OR FOR BODILY INJURY OR DEATH TO ANY PERSON PROXIMATELY CAUSED BY SELLER, BUYER'S RIGHT TO PROVEN DIRECT DAMAGES.
5. FOR CLAIMS OTHER THAN SET FORTH ABOVE, SELLER'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES THAT ARE PROVEN IN AN AMOUNT NOT TO EXCEED DKK 600,000.

**C. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, SELLER SHALL NOT BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR FOR LOST PROFITS, SAVINGS OR REVENUES OF ANY KIND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS PROVISION SHALL SURVIVE FAILURE OF AN EXCLUSIVE REMEDY.**

**12. PRIVACY POLICY** - By acceptance of this Agreement, Buyer hereby acknowledges and explicitly consents to Seller's Privacy Policy (<https://www.ofsoptics.com/privacy>; incorporated herein).

**13. ASSIGNMENT** – Buyer shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Seller. Any attempted assignment without the Seller's consent shall be void and ineffective.

**14. NON-WAIVER** – No course of dealing or failure of either party to strictly enforce any item, right or condition of this Agreement shall be construed as a waiver of such terms right or condition.

**15. FORCE MAJEURE** – Except with respect to Buyer's obligation to make timely payments when due, neither party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, act of God, nature or the public enemy, inability to secure material or transportation facilities, inadequate yield of products despite Seller's reasonable efforts, act or omission of carriers or any other causes beyond its reasonable control, Seller may, in the event of any such circumstances allocate at its sole discretion its available production output among itself and its other customers including at Seller's option those not under contract.

**16. CHOICE OF LAW** – Any dispute arising out of or in connection with this Agreement shall be settled exclusively by the laws of Denmark without regard to any choice or conflicts of law rules. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to the sale of product hereunder. The exclusive place of jurisdiction shall be the Danish Maritime and Commercial Court, Copenhagen, Denmark.

**17. ENTIRE AGREEMENT** – Except for any written agreement between the parties relating to confidentiality of proprietary information, the terms and conditions contained in this Agreement supersede all prior oral or written understandings between the parties and shall constitute the entire Agreement between parties with respect to the subject matter of this Agreement. This Agreement shall not be modified or amended except by a writing signed by Buyer and Seller.