



## HIGHYAG Lasertechnologie, Inc. Terms and Conditions of Sale

All sales of products and services of HIGHYAG LASERTECHNOLOGIE, INC. ("Seller") are made on the following terms and conditions (these "Terms of Sale"). The products and services being sold by Seller are referred to below as the "goods" and the purchaser is referred to as "Buyer."

### 1. Formation of Contract

Any written quotation of the Seller is (except as otherwise stated therein) (a) an offer to sell the goods in accordance with these Terms of Sale and (b) valid for acceptance for up to thirty (30) days from the date thereof (subject always to any written extension or earlier withdrawal by Seller). Any published price list of Seller does not represent an offer open for acceptance. Seller shall sell the goods to the Buyer in accordance with any Buyer order (x) that constitutes a valid and unqualified acceptance of Seller's written quotation, and (y) that Seller, at its sole discretion, accepts either in whole or in part. Any conforming customer order will be accepted by means of Seller's standard sales order acknowledgement document; such acceptance shall form a contract governed solely by these Terms of Sale (a "Contract"). Any additional or different terms set forth in any purchase order or other communication from Buyer are objected to and not binding upon Seller unless and until accepted in writing by an authorized representative of Seller.

### 2. Payment Terms

Payment in full of the price is due thirty (30) days after shipment, without discount. The price excludes (as applicable) any and all value-added or similar sales or other taxes levied upon the goods and any and all additional costs and charges incurred by Seller for shipping, insurance and special handling, all of which shall be charged to Buyer in addition to the price. Payment must be made at Seller's office as identified on the applicable acknowledgement of Seller. Dollar amounts are expressed in United States Dollars.

### 3. Late Payment, Adequate Assurances

(a) If any payment is more than fifteen (15) days past due, Seller may, in its sole discretion, be entitled to suspend performance of any or all of its obligations under these Terms of Sale or any Contract until all such outstanding payments are made and received by the Seller in full, and in the event of any such suspension the Seller shall not be liable to Buyer for any losses, loss of profit or any indirect, special or consequential losses, damages, costs, expenses or other claims. (b) If at any time Seller determines that Buyer's financial condition or credit rating does not justify a sale on credit, or if Buyer shall at any time be in default in any indebtedness or obligation owing to Seller, then Seller may require advance payment or may ship C.O.D.

### 4. Delivery and Risk of Loss

Delivery shall be Ex Works (INCOTERMS 2020) Seller's plant or other point of origin, but risk of loss of the goods shall pass to Buyer upon identification of the goods to the Contract. Shipping dates are estimates only, and time is not of the essence. Seller may ship all the goods at one time or in portions from time to time. Seller shall have the right to determine the method of shipment and routing of the goods, unless otherwise specified by Buyer.

**5. Passage of Title**

Legal and beneficial title in any goods shall remain in Seller until payment in full has been received by Seller for all sums due to Seller by Buyer. Until such time that Seller receives full payment of all sums due to Seller, Buyer shall hold the goods as Seller's trustee and Seller may require return of the goods. For the purpose of recovery of the goods Buyer grants Seller an irrevocable license to enter on any premises where the goods are situated (or are reasonably thought to be situated) to repossess them and Buyer agrees to pay all and any costs of repossession. Buyer will at all times store the goods separately from any goods, assets and property of Buyer or of any other party and in such a way as to enable the goods to be clearly identified as Seller's property. Notwithstanding the above, risk in the goods shall pass as provided in Section 4.

**6. Taxes**

Seller's price does not include any privilege, occupation personal property, value-added, sales, excise, use or other taxes, and Buyer shall be liable for all such taxes, whether or not invoiced by Seller.

**7. Changes**

Seller shall have the right to make design or engineering changes in its parts, equipment, processes and methods of manufacture, but shall make no changes in operational or dimensional specifications submitted by Buyer without Buyer's prior approval.

**8. Blanket Purchasing Agreement**

If Seller's acceptance of an order from Buyer results in a blanket purchasing agreement under which Buyer will from time to time issue to Seller "releases" with respect to portions of the goods, then, except to the extent otherwise expressly agreed in writing by Seller, (i) Seller shall be permitted to ship all goods released within days after Seller receives the release, notwithstanding any contrary provision in the release, (ii) any delivery date(s) specified in any release shall be extended automatically to the extent that Seller is not reasonably able to meet such date(s) and (iii) Buyer shall be obligated to release the entire quantity of goods provided for in the agreement within days after the date on which the agreement is formed.

**9. Defects, Remedies**

If any item of the goods that has been properly installed and not subject to abuse or misuse proves to be defective (as defined below) within twelve months after date of manufacture and if Buyer returns the goods to Seller within that period, F.O.B. Seller's plant as indicated by Seller, then Seller shall, at Seller's option, either repair or replace the defective item, at Seller's expense. If Seller fails to repair or replace any defective item within a reasonable time, then Seller shall be liable to Buyer for the lesser of (i) the reasonable costs of repair or replacement by the third party or (ii) that part of the purchase price of the defective item that shall have been paid by Buyer, but Buyer shall not obtain repair or replacement by a third party without giving Seller at least fifteen (15) days prior written notice, during which time Seller may repair or replace the defective item. An item shall be considered "defective" if it is found by Seller to have been defective in materials or workmanship and if the defect materially impairs the value of the goods to Buyer, except that if Buyer shall have approved a sample or drawings of, or specifications for, the goods, then the goods shall not be defective to the extent they conform to the sample, drawings or specifications. No warranty is provided for (a) supply items normally consumed during operation of the goods; (b) failures caused by non-Seller products; (c) failures caused by the inability of the goods to operate in conjunction with other Buyer hardware or software; (d) performance failures resulting from services not performed by Seller; or (e) development, pre-production or any form of prototype and non-qualified goods whatsoever. Warranty for the goods supplied hereunder will be voided by misuse, tampering, improper handling or storage, improper installation or repair, accident, damage or modification, failure to maintain a proper physical or storage/operating environment or improper Buyer maintenance not approved by Seller in writing. This paragraph sets forth Buyer's sole and exclusive remedies for any defect in the goods.

**10. LIMITATIONS**

EXCEPT AS STATED IN PARAGRAPH 9, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE GOODS. THE REMEDIES PROVIDED IN PARAGRAPH 9 WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND SHALL BE IN LIEU OF ANY OTHER REMEDIES OR RIGHTS THAT BUYER MAY HAVE AGAINST SELLER WITH RESPECT TO NON-PERFORMING GOODS. EXCEPT AS STATED IN PARAGRAPH 9, SELLER DISCLAIMS ALL IMPLIED WARRANTIES, CONDITIONS AND REPRESENTATIONS INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT, AND SATISFACTORY QUALITY, REGARDLESS OF THE THEORY OF LIABILITY INCLUDING, WITHOUT LIMITATION, CONTRACT, COURSE OF DEALING, USAGE OR TRADE PRACTICE. Seller shall have no tort liability to Buyer with respect to any of the goods and shall not be liable for consequential or incidental damages arising from any product defect, delay, non-delivery or other breach. Buyer shall have no right of rejection or of revocation of acceptance of the goods.

**11. Warranty Claim Procedure**

Seller will provide warranty services to Buyer consistent with Seller's current standard practices and response times at the relevant time. Where applicable, before Seller provides warranty services, Buyer agrees to follow the problem determination, problem analysis and warranty services request procedures that Seller provides in the Seller's reasonable discretion. When returning any goods to Seller for warranty service, Buyer agrees to ship such goods prepaid and suitably packaged to a location designated by Seller. If any goods are found by Seller to not be in breach of warranty, the goods will be return to Buyer at Buyer's expense and Seller may charge an evaluation and test fee not exceeding fifteen percent (15%) of the price of the goods. If the goods are found by Seller to be in breach of warranty, any replacements or repaired goods will be returned to Buyer at Seller's expense and Seller shall have sole discretion to determine whether the goods are to be replaced or repaired. Post-warranty services may be available at Seller's then-current prices.

**12. Solvency and Security Interest**

Buyer represents that Buyer is solvent. Seller retains a security interest in the goods to secure payment of the price and all other indebtedness now and in the future owing by Buyer to Seller. At Seller's request, Buyer shall sign and deliver to Seller a financing statement evidencing this security interest.

**13. Permits and Compliance**

Seller is not responsible for obtaining any permits, inspections or licenses required for installation or operation of the goods. Seller makes no promise or representation that the goods will conform to any federal, state, local, foreign or other laws, ordinances, regulations, codes or standards.

**14. Safety Features**

Buyer shall cause the end-user to install and operate the goods properly and in accordance with any written instructions that Seller provides, and Buyer shall not, and shall cause the end-user to not, remove or change any safety devices, warnings or operating instructions placed on the goods by Seller.

**15. Resale**

On any resale of the goods, Buyer shall contractually limit its buyer's rights and remedies against both Buyer and Seller to the same extent as Buyer's rights and remedies are limited under these Terms of Sale or any Contract.

**16. Quantities**

Seller may overrun or underrun the agreed-upon quantities by up to 5%, and Buyer shall pay Seller at the unit price for quantities that Seller delivers within these limits. Any claim by Buyer that Seller failed to deliver the agreed-upon quantity of goods (subject to any adjustment under the preceding sentence) must be submitted to Seller in writing within thirty (30) days after Buyer receives the goods. If Buyer fails to do so, it will be conclusively presumed that the proper quantity was delivered.

**17. Intellectual Property**

(a) All intellectual property and other proprietary rights relating to the goods (including, but not limited to, patents, copyright and trademarks) and all technical, business and similar information of Seller or which is created by Seller in course of the sales of the goods shall be, and shall remain, Seller's property.

(b) Buyer agrees not to remove, alter, obscure or deface any marks, names, notices or numbers affixed to the goods without Seller's written consent.

(c) Buyer agrees not to, and will not, whether directly or indirectly, cause, encourage, assist, permit or authorize any other person to reverse engineer, decompile, or disassemble the goods or any software contained therein, or otherwise attempt to derive software source code or other technology related to the goods.

**18. Cancellation**

(a) Buyer has no right to cancel its agreement to purchase the goods from Seller. If, however, Seller agrees in writing to permit cancellation, then Buyer shall immediately pay to Seller a cancellation charge in an amount equal to the purchase price (including any tooling charge) less allowances (in amounts determined by Seller) for (i) the realizable value to Seller of any standard components purchased or ordered by Seller before cancellation, (ii) the realizable scrap value to Seller of the remaining material and tooling purchased, fabricated or ordered by Seller before cancellation and (iii) any direct labor costs saved by Seller by reason of the cancellation.

(b) If Buyer fails to pay any indebtedness or perform any obligation owing to Seller, then Seller may consider Buyer's failure to be an anticipatory repudiation of any or all outstanding contracts providing for Seller to sell goods to Buyer, and Seller may, without liability to Buyer, cancel any or all of those outstanding contracts.

**19. Termination**

Seller may (without limiting any other remedy) at any time terminate these Terms of Sale or any Contract forthwith if the Buyer commits any breach of these Terms of Sale or if Buyer becomes bankrupt or insolvent, or if an order is made or a resolution is passed for the winding up of Buyer (other than voluntarily for the purpose of solvent amalgamation or reconstruction) or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of Buyer's assets or business, or if the Buyer makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt. Upon termination, Seller shall have no obligations to Buyer under these Terms of Sale or any Contract (save and except where Section 9 hereof applies or such obligations are expressly stated to continue notwithstanding termination). Termination shall not prejudice Seller's right to payment for the goods delivered prior to termination but not paid for in full by Buyer.

**20. Seller's Rights**

Seller has all rights and remedies given to sellers by applicable law, and Seller's rights and remedies are cumulative and may be exercised from time to time. No waiver by Seller of any right on one occasion shall be a waiver of any future exercise of that right.

**21. Time for Bringing Action**

Any action by Buyer against Seller for breach of any obligation of Seller to Buyer or for any other claim arising out of or relating to the goods or their design, manufacture, sale or delivery must be brought within one year after the cause of action accrues.

**22. Limitation of Liability**

IN NO EVENT WILL SELLER OR ITS SUPPLIERS BE LIABLE FOR ANY COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY DAMAGES FOR LOSS OF USE, OPPORTUNITY, MARKET POTENTIAL, GOODWILL, REVENUE OR PROFITS, ARISING FROM OR RELATING TO THESE TERMS OF SALE OR ANY CONTRACT, HOWEVER CAUSED AND ARISING UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO CONTRACT OR TORT (INCLUDING PRODUCTS LIABILITY, STRICT LIABILITY AND NEGLIGENCE), AND EVEN IF SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SELLER'S AND ITS SUPPLIERS' TOTAL AGGREGATE LIABILITY ARISING FROM OR RELATED TO THESE TERMS OF SALE OR ANY CONTRACT EXCEED THE AMOUNTS ACTUALLY RECEIVED BY SELLER FROM BUYER. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OR ANY OTHER FAILURE OR INADEQUACY OF ANY LIMITED REMEDY. THESE TERMS OF SALE OR ANY CONTRACT STATE THE ONLY AND EXCLUSIVE REMEDIES FOR ANY AND ALL CLAIMS MADE AGAINST SELLER OR ITS SUPPLIERS WITH RESPECT TO SELLER'S PRODUCTS AND/OR THESE TERMS OF SALE OR ANY CONTRACT. THE PARTIES AGREE THAT THIS SECTION 22 REPRESENTS A REASONABLE ALLOCATION OF RISK.

**23. Assignment**

Buyer agrees not to assign, or otherwise transfer these Terms of Sale or any Contract or Buyer's rights under them, or delegate Buyer's obligations, without Seller's prior written consent, and any attempt to do so is void. Seller may assign its rights and obligations under these Terms of Sale or any Contract without requiring any notice to or consent from Seller. These Terms of Sale and any Contract shall inure to the benefit of the permitted successors and assigns.

**24. Force Majeure**

Seller shall not be liable under any Contract for any event of any cause identified or capable of being identified as preventing any party from performing any or all of its obligations arising from or attributable to acts, events, omissions or accidents before the reasonable control of the party so affected, or any other matter beyond its reasonable control including but not limited to an act of God, fire, floods, war, terrorism, and civil disturbances or riot, acts of any government, currency restrictions, labor disputes, strikes, difficulty in obtaining materials, failure of carrier or sub-contractor or inability to obtain any necessary import or export license or other consent or permit required of any relevant authority.

**25. Applicable Law**

The laws of the Commonwealth of Pennsylvania shall govern these Terms of Sale and any Contract, including (except as modified therein) the Uniform Commercial Code as adopted in such state, as if it were an agreement solely between residents of such state to be performed entirely in such state. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Purchase Order.

**26. Independent Contractors**

The parties to these Terms of Sale and any Contract are independent contractors. No relationship of principal to agent, master or servant, employer to employee or franchisor to franchisee is established hereby between the parties. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever. Seller neither assumes nor authorizes any third party, person or entity to assume or accept any liability or obligation, or to make any commitment for Seller with regard to the goods.

**27. Severability**

In the event that any provisions of these Terms of Sale or any Contract or portions hereof or thereof are held to be invalid or unenforceable, the remainder will remain in full force and effect. Any invalid or unenforceable provision shall be replaced by the parties with valid and enforceable provisions which best meet the economic goals of the invalid or unenforceable provision.

**28. Complete Agreement, Amendment**

These Terms of Sale and any Contract contain the complete entire agreement between Buyer and Seller and replaces any prior oral or written proposals, correspondence or communications regarding the subject matter hereof. Any change in this agreement must be by a writing signed by Buyer and Seller.

**29. Interpretation**

In these Terms of Sale, unless a contrary intention appears: (a) the terms “hereof”, “hereunder” and similar expressions refer to these Terms of Sale and not to any particular portion hereof and include any agreement supplemental hereto, including without limitation any Contract; (b) words importing singular number only shall include the plural and vice versa; (c) the term “including” means “including without limitation”; (d) other grammatical forms of defined words or expressions have corresponding meanings; (e) a reference to a section, document or agreement, including these Terms of Sale, includes a reference to that section, document or agreement as amended from time to time, as permitted hereunder; and (f) the division of these Terms of Sale into sections and the insertion of headings are for convenience only, and shall affect neither the construction nor the interpretation of these Terms of Sale.