

## **VESCENT PHOTONICS, INC. -- TERMS AND CONDITIONS OF SALE FOR VESCENT PHOTONICS PRODUCTS**

1. **ACCEPTANCE OF TERMS.** All sales by Vescent Photonics, Inc. and its subsidiaries and affiliates (“Vescent Photonics”) to Buyer of the units of Vescent Photonics brand products specified in the document to which these Terms of Sale are attached (the “Products”) will be governed by these terms and conditions (these “Terms of Sale”). If the terms and conditions of any offer from Buyer or any other Buyer document differ from these Terms of Sale, these Terms of Sale shall be construed as a counteroffer and will not be effective as an acceptance of Buyer’s terms and conditions, which are hereby rejected. **THESE TERMS OF SALE SHALL BE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE TERMS OF AGREEMENT BETWEEN BUYER AND VESCENT PHOTONICS.** Buyer’s failure to dissent to these Terms of Sale in writing within five (5) days of receipt thereof or Buyer’s acceptance of the Products shall constitute acceptance of these Terms of Sale. No addition to or modification of these Terms of Sale will be effective unless made in writing signed by Vescent Photonics.

2. **QUOTATIONS AND PRICES.** If the document to which these Terms of Sale are attached (the “Document”) is a price quotation, such quotation is valid for thirty (30) days. Unless otherwise stated in writing by Vescent Photonics, all prices set forth on the Document shall be exclusive of shipping, insurance, taxes, license fees, customs duties and other charges related thereto, and Buyer shall pay all such charges related thereto; provided that, if Vescent Photonics, in its sole discretion, chooses to pay any such charges, Buyer shall reimburse Vescent Photonics therefore in full upon demand. Any volume-based discounts set forth in the Document will be rescinded if Buyer fails to meet the conditions outlined in the Document and/or the corresponding Vescent Photonics quotation.

3. **PAYMENT.** Except as otherwise specified, all payments are due and payable in U.S. dollars within thirty (30) days from the invoice date. Vescent Photonics reserves the right to require alternative payment terms, including, without limitation, a letter of credit or payment in advance. Payments not made by the due date may incur, at the sole discretion of Vescent Photonics, a late payment service charge of the lesser of one and one-half percent (1-1/2%) per month or the maximum rate permitted by law, computed from the date payment was due. All payments, including deposits, shall be non-refundable. Vescent Photonics shall retain a purchase money security interest and/or other security interest in the Products, and in any proceeds thereof, including insurance proceeds, until Buyer has made all payments required hereunder. Buyer agrees to take any acts (including executing and delivering all documents) reasonably requested by Vescent Photonics to protect, maintain, and perfect Vescent Photonics’ security interest.

4. **SHIPPING.** Shipping and delivery dates are estimates only, and in no event shall Vescent Photonics be liable for any delay in delivery or assume any liability in connection with shipment. All Products shall be delivered F.O.B. Vescent Photonics’ place of shipment. Shipment costs shall be prepaid by Buyer if requested by Vescent Photonics. If Vescent Photonics insures shipment, Buyer shall pay insurance costs as invoiced by Vescent Photonics. Risk of loss and damage thereto shall pass to Buyer upon Vescent Photonics’ tender of delivery thereof to a carrier at the F.O.B. point, and any loss or damage thereafter shall not relieve Buyer from any payment obligation. The carrier shall not be deemed an agent of Vescent Photonics.

5. **WARRANTY.** Vescent Photonics hereby warrants to Buyer, that during the applicable Warranty Period (as defined below) the Products will conform to Vescent Photonics’ published specifications and will be free of defects in materials or workmanship when used, installed and maintained in accordance with Vescent Photonics’ published specifications. Vescent Photonics’ sole liability and Buyer’s sole and exclusive remedy for breach of warranty shall be limited to, at Vescent Photonics’ option, either repairing or replacing the defective components of the Product or crediting Buyer for the amount Buyer has paid to

Vescent Photonics for the applicable Product. Vescent Photonics' liability shall apply only to Products which are returned to the factory or authorized repair point, with shipping charges prepaid by Buyer, and which are, after examination, determined to Vescent Photonics' satisfaction to be defective due to defects in materials or workmanship. Vescent Photonics will only accept returns authorized by a Vescent Photonics customer service representative and with a valid RMA number. This warranty does not apply to Products which are designated by Vescent Photonics as "Pre-Production Products", e.g. Alpha, Beta or Prototypes or are Products which have been repaired or modified without Vescent Photonics' written approval, or subjected to unusual physical, thermal, optical or electrical stress, improper installation or cleaning, misuse, abuse, accident or negligence in use, storage, transportation or handling. The "Warranty Period" during which this warranty applies varies with Product type as follows: (a) for standard Vescent Photonics lasers in which a counter is incorporated (i.e. lasers with counters for which Vescent Photonics has published a datasheet and has not been obsoleted by the time of order placement) – one (1) year after the date of original shipment or 3,000 hours of use, whichever occurs first; (b) for standard Vescent Photonics products other than lasers with counters, (i.e. products for which Vescent Photonics has published a datasheet and has not been obsoleted by the time of order placement) – one (1) year after the original shipment; (c) for any other Product including, without limitation all product types as set forth in sections a and b of this clause 5 which are in any way customized, build-to-order, otherwise non-standard and/or are subject of a blanket purchase order – one (1) year after the date of original shipment unless otherwise agreed in writing on a case by case basis. If in relation to any Product Vescent Photonics offers as an additional purchase option a warranty period over and above that which is set out in sections b and c of this clause 5 ("Extended Warranty") and Buyer exercises such option then the Warranty Period shall be the duration as specified on such Extended Warranty commencing on the date of original shipment. Any Extended Warranty option is only available at the time of and on the same order as the original Product purchase. Vescent Photonics will extend the applicable Warranty Period by sixty (60) calendar days for the specific characteristic of the Product that is repaired by Vescent Photonics during the Warranty Period. For Products that are discontinued, Vescent Photonics' liability shall terminate at the end of the applicable Warranty Period or one (1) year from the date of discontinuity, whichever occurs first. Except for the warranty stated herein and to the extent permitted by applicable law VESCENT PHOTONICS SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT.

**6. LIMITATION OF LIABILITY.** To the extent not prohibited by applicable law: (a) Vescent Photonics' aggregate liability to Buyer for claims relating to the Products, whether for infringement, breach or in tort, including negligence, is limited to the amounts Buyer has paid to Vescent Photonics for the Products; and (b) VESCENT PHOTONICS WILL NOT BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THESE TERMS OF SALE, THE DOCUMENT, THE PRODUCTS OR THE SALE, INSTALLATION, MAINTENANCE, USE, PERFORMANCE OR NON-PERFORMANCE OF THE PRODUCTS (INCLUDING, BUT NOT LIMITED TO, REPLACEMENT COSTS OR LOSS OF BUSINESS, REVENUE, PROFITS, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), HOWEVER THEY ARISE, WHETHER FOR BREACH OR IN TORT, INCLUDING NEGLIGENCE, EVEN IF VESCENT PHOTONICS HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The parties acknowledge that if Vescent Photonics provides the Products to Buyer, it does so in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential basis of the bargain between the parties. Liability for damages will be limited and excluded as set forth in this paragraph, even if any exclusive remedy provided for in these Terms of Sale fails of its essential purpose.

**7. INTELLECTUAL PROPERTY RIGHTS.** Any Intellectual Property Rights on a worldwide basis, including, without limitation, patentable inventions (whether or not applied for), patents, patent rights, copyrights, work of authorship, moral rights, trademarks, service marks, trade names, trade dress trade secrets and all applications and registrations of all of the foregoing resulting from the performance of these Terms of Sale that is conceived, developed, discovered or reduced to practice by Vescent Photonics, shall be the exclusive property of Vescent Photonics. Specifically, Vescent Photonics shall exclusively own all rights, title and interest (including, without limitation, all Intellectual Property Rights throughout the world)

in and to the Products and any and all inventions, works of authorship, layouts, know-how, ideas or information discovered, developed, made, conceived or reduced to practice, by Vescent Photonics, in the course of the performance of these Terms of Sale.

**8. CHANGES, DELAYS OF SHIPMENT, OR CANCELLATION.** **AGGREGATE ORDERS FOR STANDARD PRODUCTS NOT EXCEEDING \$5,000:** All orders of Vescent Photonics manufactured products, excluding orders for standard product exceeding \$5,000 in aggregate, OEMs, and custom orders may be cancelled upon approval and may be subject to restocking fees. **OEM, CUSTOM ORDERS AND AGGREGATE ORDERS IN EXCESS OF \$5,000:** Buyer's order for standard product exceeding \$5,000 in aggregate and OEM, or custom products may only be changed, delayed, or cancelled with the prior written consent of Vescent Photonics. If Vescent Photonics, in its sole discretion, accepts such change, delay or cancellation, buyer shall compensate Vescent Photonics for any resulting loss or damage including, without limitation, the cost of labor, materials, and overhead expenses or upon cancellation, a fee for minimum of sixty-five (65) percent of the amount remaining on the purchase order as of the date of cancellation. In addition, customer initiated delays of shipments exceeding 180 days from the original delivery date will be deemed a cancellation and fall under this cancellation policy.

**9. REMEDIES.** Vescent Photonics shall have the right to terminate any order, or to delay the shipment thereof, by reason of Buyer's bankruptcy or insolvency, breach of any terms herein, unauthorized assignment, or the pendency of any proceedings against Buyer under any statute for the relief of debtors.

**10. EXPORT CONTROL.** Buyer shall comply with all applicable laws, regulations and treaties relating to the sale and destination of the Products, including, without limitation, U.S. export control regulations. Buyer agrees not to sell any of the Products in any territory or country prohibited by applicable U.S. laws and to obtain representations from its customers that they will not resell or transfer any of the Products to such countries or territories. Buyer will defend, indemnify and hold Vescent Photonics harmless for any damages or costs to Vescent Photonics arising from Buyer's failure to comply with these terms.

**11. INSPECTION.** All Products delivered hereunder shall be deemed accepted by Buyer, unless written notice of defect or nonconformity is received by Vescent Photonics within ten (10) days of receipt of Products at Buyer's designated receiving address; provided that Buyer may only reject Products for failure to meet the Products' specifications.

**12. APPLICABLE LAW.** This Agreement, and any disagreement arising thereof, will be governed by the laws of the State of Colorado without regard to that State's choice of laws, with exclusive jurisdiction and venue in the Colorado state courts of Boulder County, Colorado (or, if there is exclusive federal jurisdiction, the United States District Court for the State of Colorado). Buyer shall bring action relating to any dispute Buyer may have hereunder within one (1) year of the accrual of such dispute.

**13. MISCELLANEOUS.** Nothing in these Terms of Sale or the sale of the Products shall imply any license or other rights with respect to any intellectual property rights of Vescent Photonics or its suppliers, and Vescent Photonics reserves all such rights. All waivers of any right hereunder must be in writing and signed by Vescent Photonics. Waiver of a breach by the other party of any provision of these Terms of Sale shall not be deemed a waiver of future compliance therewith, and such provision shall remain in full force and effect. If any provision of these Terms of Sale is held invalid by any U.S. law or regulation or by any U.S. court having valid jurisdiction, such invalidity will not affect the enforceability of other provisions. These Terms of Sale and Buyer's rights hereunder may not be assigned by Buyer without the prior written consent of Vescent Photonics, and any unauthorized assignment by Buyer shall be void. These Terms of Sale constitute the entire agreement between Buyer and Vescent Photonics with respect to Buyer's purchase of the Products and supersedes all prior agreements and understandings with respect to such purchase and may not be changed or amended, or superseded by conflicting terms and conditions submitted by Buyer, except by a written instrument signed by an authorized Vescent Photonics representative.