

PHOTON AUTOMATION, INC. TERMS AND CONDITIONS OF SALE

The relationship between any buyer or purchaser as described in any sales or purchase instruments or agreements entered (collectively “**Buyer**”) with Photon Automation, Inc., and their affiliated and related companies, subsidiaries, officers, directors, employees and agents (collectively “**Seller**”) for the purchase of any goods, equipment, materials, merchandise, services, items or products (collectively “**Goods**”) covered thereby is conditioned upon the terms and conditions contained in this instrument, the initial invoice and subsequent invoices, as they may be amended and supplemented from time to time (collectively “**Agreement**”). Any performance or fulfillment by Seller of any purchase order or similar document from Buyer shall not constitute Seller’s acceptance of any terms or conditions purported to be imposed by Buyer. Any additional or different terms or conditions proposed by Buyer are objected to and will not be binding upon, nor of force or effect on, Seller, unless specifically accepted in writing and signed by an authorized representative of the Seller.

1. **Terms of Acceptance.** If Seller accepts Buyer’s order or offer, it does so provided Buyer agrees only to the terms and conditions of this Agreement, all of which are accepted by Buyer; and this Agreement supersedes Buyer’s order form, if any; and supersedes and cancels all prior communications between the parties. This Agreement shall become a binding contract either when signed and delivered by Buyer to Seller and accepted in writing contemporaneously with the order by Seller, or at Seller’s option, when Buyer shall have given to Seller specifications, delivery dates, shipping instructions or instructions to bill and hold as to all or any part of the Goods herein described, or when Buyer has received delivery of the whole or in any part thereof, or when Buyer has otherwise assented to this Agreement. Seller reserves the right to consider order add-ons as separate and new orders subject to this Agreement.

2. **Representations, Limited Warranties and Disclaimers.** Seller represents and warrants the Goods shall be free of defects in material and workmanship for a limited warranty period of thirty (30) days after delivery or as otherwise provided for in Seller’s product literature for the particular Goods in question, which literature is made a part hereof. Seller’s complete responsibility for its warranty is limited to the furnishing of sufficient goods to replace defective Goods. The warranty does not cover the following: periodic checks, maintenance, repair, and replacement of parts due to normal wear and tear; abuse or misuse, including, but not solely limited to, the failure to use the Goods for their normal purposes or in accordance with Seller’s instructions on usage and maintenance; defects resulting from usage of the Goods in conjunction with accessories that are not approved by Seller for use with the Goods; and any defect due to materials, designs or specifications provided to Seller by Buyer. SAID EXPRESSED WARRANTIES ARE THE SOLE WARRANTIES PROVIDED AND SELLER HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF

MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE OR USE.

3. **Examination of Goods.** Buyer shall make an examination as to quantity of any Goods delivered hereunder immediately upon receipt and failure of Buyer to give notice of any claims within 30 days after receipt of such Goods shall be an unqualified acceptance of such Goods and a waiver of Buyer of all claims with respect thereto. If any Goods are defective or do not otherwise conform, Buyer shall give Seller written notice of such defect or non-conformity and a reasonable opportunity to cure, which opportunity shall be a minimum of 30 days after written notice of defect or non-conformity has been received by Seller.

4. **Freight.** The Buyer shall pay all freight on all orders for Goods, FOB Seller’s plant.

5. **Right to Reject, Rescind or Cancel.** Seller shall have the right to rescind all or part of any offer, order or this Agreement if: (a) Buyer breaches or fails to perform any of its obligations under this Agreement; (b) Buyer becomes insolvent; (c) proceedings are instituted by or against Buyer under any federal or state bankruptcy of insolvency laws; (d) Buyer ceases operations; or (e) Seller determines in its full discretion that it elects to reject, cancel or rescind. With all orders being individually entered and processed immediately upon receipt, Seller reserves the right to charge back to the Buyer all costs incurred from either cancellation or any changes on the order.

6. **Shortage Claims.** All claims for shortages must be made within 30 calendar days of date of shipment. All claims for damages or shortages resulting from shipment handling must be made to the carrier.

7. **Returned Goods.** No returned Goods from any source will be accepted by Seller, without written approval, together with shipping instructions, from Seller. If permission is granted, the returned Goods will be subject to a 20% handling charge plus freight cost. Non-standard items or fabricated items are not returnable.

8. **Payment Terms.** Unless otherwise agreed upon between the parties, Buyer shall pay the net amount as set forth on the invoice within 30 days. Buyer shall assume, in addition to the purchase price, all taxes, however designated, levied or based on such price of the Goods or on this Agreement, including, but not limited to, state and local sales, use, privilege or excise taxes based on gross revenue, and any taxes or amounts in lieu thereof paid or payable by Seller in respect of the foregoing, exclusive, however, of taxes on net income. Buyer acknowledges and agrees all delinquent balances will be assessed a late fee charge of eighteen percent (18%) per month, and will continue to accrue each month on unpaid balances until paid in full. Buyer shall have no right of deduction or set off against sums due Seller for Goods which have either been delivered or which Seller has undertaken to deliver.

9. **Indemnification.** TO THE FULLEST EXTENT PERMITTED BY LAW, BUYER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS SELLER, ITS EMPLOYEES, AFFILIATES, AGENTS, AND REPRESENTATIVES, FROM ANY AND ALL CLAIMS, DEMANDS, SUBROGATION CLAIMS BY BUYER'S INSURERS, CAUSES OF ACTION, CONTROVERSIES, LIABILITIES, FINES, REGULATORY ACTIONS, LOSSES, COSTS, EXPENSES (INCLUDING, BUT NOT LIMITED TO ATTORNEYS' FEES, EXPERT WITNESS EXPENSES AND LITIGATION OR ARBITRATION EXPENSES), WHETHER BASED ON STATUTORY OR COMMON LAW, TORT (INCLUDING NEGLIGENCE) OR CONTRACT LAW, WHETHER FOR PERSONAL INJURY, DEATH, OR PROPERTY CLAIMS, ARISING FROM OR IN CONNECTION WITH:

1. THE ACTS OR OMISSIONS OF THE BUYER AND BUYER'S EMPLOYEES, AGENTS OR REPRESENTATIVES;
2. THE SPECIFICATIONS PROVIDED BY BUYER;
3. THE BUSINESS RELATIONSHIP BETWEEN THE PARTIES;
4. THE GOODS USE BY THE BUYER'S CUSTOMERS OR OTHER THIRD PARTIES;
5. THE BUYER'S BREACH OF THIS AGREEMENT; AND/OR
6. THE BUYER'S USE, MODIFICATION OR ALTERATION OF THE GOODS,

INCLUDING BUT NOT LIMITED TO ANY PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY LAW CLAIMS, AND ANY ENVIRONMENTAL LAW CLAIMS (COLLECTIVELY "**CLAIMS**"). THIS OBLIGATION TO INDEMNIFY, DEFEND, RELEASE, AND HOLD HARMLESS SHALL SURVIVE TERMINATION OR ANY EXPIRATION OF THIS AGREEMENT AND SHALL APPLY WHETHER OR NOT IT IS ALLEGED THAT THE SELLER IN ANY WAY CONTRIBUTED TO THE CLAIMS OR IS LIABLE DUE TO A NON DELEGABLE DUTY. NOTWITHSTANDING THE FOREGOING, THE BUYER SHALL NOT HAVE ANY INDEMNITY OBLIGATION TO THE SELLER WITH RESPECT TO ANY CLAIMS THAT RESULT SOLELY FROM THE NEGLIGENCE OF SELLER AND THIS INDEMNITY PROVISION DOES NOT PURPORT TO INDEMNIFY SELLER SOLELY FOR ITS OWN NEGLIGENCE, BUT RATHER FOR THE NEGLIGENCE OR CONDUCT, WHETHER SOLE OR CONCURRENT, OF BUYER. BUYER, FOR ITSELF AND ITS INSURERS, EXPRESSLY WAIVES ANY AND ALL LIMITATIONS OR LIABILITY CAPS, IF ANY, ON BUYER'S CONTRIBUTION LIABILITY TO SELLER, AND ANY AND ALL STATUTORY OR COMMON LAW LIEN RIGHTS OR CLAIMS AGAINST SELLER, ARISING FROM ANY APPLICABLE WORKERS COMPENSATION OR DISABILITY ACTS, WHICH BUYER MIGHT OR COULD ASSERT AGAINST SELLER OR SELLER'S INSURERS IN THE EVENT OF THE PERSONAL INJURY OR DEATH OF BUYER'S EMPLOYEES,

REPRESENTATIVES OR AGENTS. WITHOUT LIMITING THE FOREGOING, BUYER, FOR ITSELF AND ITS INSURERS, ALSO WAIVES ANY CLAIMS, LIENS OR OTHER RIGHTS IT MAY HAVE AS A RESULT OF BEING SUBROGATED TO ANY RIGHTS OF ITS EMPLOYEES, REPRESENTATIVES OR SERVANTS.

10. **Intellectual Property.** Seller shall own all means, patents, utility models, rights in invention, copyright and neighbouring and related rights, database rights, moral rights, design rights, trademarks, trade names and get-up, goodwill, know-how, confidential information and other intellectual property rights, whether registered or unregistered and including all applications for the grant of the foregoing and all rights or forms of protection having similar or equivalent effect to any of the foregoing which may subsist anywhere in the world (collectively, "**Intellectual Property**") in the Goods. Buyer is not granted any rights or licence in respect of the Intellectual Property or the Goods, other than the right to use or resell the Goods in the Buyer's ordinary course of business and otherwise in accordance with the terms and conditions of this Agreement. Buyer shall not use, copy, adapt, transmit, distribute, modify, publish, reverse engineer, create derivative works based upon, distribute, licence, sell, transfer, publicly perform, broadcast, communicate to the public or otherwise exploit the Intellectual Property or the Goods except as expressly permitted in this Agreement or otherwise without the Seller's prior written consent.

11. **Confidential Information.** Seller and Buyer acknowledge that information to be provided by Seller to Buyer with respect to Seller's business, and information to be provided by Buyer to Seller with respect to Buyer's business and the business of either party's affiliated companies, is of independent economic value, both actual and potential, and Seller and Buyer recognize that disclosing this information could give an economic value to others and could be a serious detriment to Seller and Buyer. This confidential information includes, but is not limited to, any and all tangible and intangible information in whatever form or medium available furnished by Seller to Buyer and furnished by Buyer to Seller, including, but not limited to, computer programs, trade secrets, the fact that discussions between Seller and Buyer are taking place and the nature of such discussions, any and all data, designs, drawings, specifications, methods, processes, techniques, projects, operations, services, trade secrets, marketing, business, technical, or financial information, business records and plans, financial statements and information, customer lists and records, computer programs, receipts and expenditures, know-how, patents and patent lists, referral sources, vendors, management activities, formulas, test results, sales figures, employee names, accounting, pricing, salary information, business plans and strategies, negotiations of contracts, inventories and discoveries, mailing lists and/or any other information related to the operation of Seller or Buyer's business (collectively "**Confidential Information**").

12. **Liability and Claims Limitations.** IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR OR HAVE ANY DUTY

FOR INDEMNIFICATION OR CONTRIBUTION TO THE OTHER PARTY FOR ANY CLAIMS FOR STATUTORY OR COMMON LAW INDIRECT, EXEMPLARY, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, TREBLE OR LIQUIDATED DAMAGES, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE) SUCH AS, BUT NOT LIMITED TO, LOSS OF USE, REVENUE, PROFIT, BUSINESS OPPORTUNITIES AND THE LIKE, DEPRECIATION OR DIMINUTION IN VALUE, EVEN IF THE PARTY HAD BEEN ADVISED, OR KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. NO CLAIM OF ANY KIND, WHETHER AS TO GOODS DELIVERED OR FOR NON-DELIVERY OF GOODS, SHALL BE GREATER IN AMOUNT THAN THE PURCHASE PRICE OF THE GOODS IN RESPECT OF WHICH SUCH CLAIM IS MADE.

TO THE FULLEST EXTENT PERMITTED BY LAW, IT IS AGREED THAT NO SUIT OR CAUSE OF ACTION OR OTHER PROCEEDING SHALL BE BROUGHT AGAINST SELLER MORE THAN ONE (1) YEAR AFTER THE DATE THE GOODS WERE SOLD, WHETHER KNOWN OR UNKNOWN WHEN THE CLAIM ARISES, OR WHETHER BASED ON TORT, CONTRACT, OR ANY OTHER LEGAL THEORY. SELLER SHALL BE ENTITLED TO RECOVER FROM BUYER ALL REASONABLE LEGAL FEES, COURT COSTS, AND EXPENSES INCURRED IN CONNECTION WITH SELLER ENFORCING THE TERMS AND CONDITIONS OF THIS AGREEMENT.

13. **Severability and Waiver.** If any provision of this Agreement is held to be invalid for any reason, the other terms and conditions hereunder shall remain in full force and effect, and such provision shall be enforced to the fullest extent permitted by law. Seller's waiver of any breach, or failure to enforce any of this Agreement, shall not be deemed to affect, limit or waive Seller's right thereafter to require compliance with this Agreement.

14. **Force Majeure.** Seller shall have no liability or obligation to Buyer of any kind, including, but not limited to, any obligation to deliver Goods as a result of causes, conduct or occurrences beyond Seller's reasonable control, including, but not limited to, commercial impracticability, fire, flood, act of war, terrorism, civil disorder or disobedience, act of public enemies, problems associated with transportation (including car or truck shortages), acts or failure to act of any state, federal or foreign governmental or regulatory authorities, material shortage, pandemic, labor disputes, strikes, or failure of suppliers to make timely deliveries of materials, goods or services to Seller.

15. **Termination.** Seller may, in Seller's sole and unfettered discretion, at any time with or without cause, terminate any order related to this Agreement in whole or in part by written notice to Buyer.

16. **Arbitration and Governing Law.** Any and all disputes, complaints, controversies, claims and grievances

arising under, out of, in connection with, or in any manner related to this Agreement or the relationship of parties hereunder shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Notwithstanding anything herein, the parties acknowledge and agree the United Nations Convention on Contracts for the International Sale of Goods ("CISG") shall not apply and the parties specifically disclaim the CISG's applicability to this Agreement or the parties' relationship. The obligation to arbitrate shall extend to any affiliate, subsidiary, officer, employee, shareholder, principal, agent, trustee in bankruptcy or guarantor of a party making or defending any claim hereunder. Any decision and award of the arbitrator shall be final, binding and conclusive upon all of the parties hereto and said decision and award may be entered as a final judgment in any court of competent jurisdiction. Notwithstanding said Rules, any arbitration hearing to take place hereunder shall be conducted in Evansville, Indiana, before one (1) arbitrator who shall be an attorney who has substantial experience in commercial law issues. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Indiana (not including the choice of law rules thereof). In the event of any arbitration between the parties hereto involving this Agreement or the respective rights of the parties hereunder, the party who does not prevail in such arbitration shall pay all the prevailing party's reasonable attorneys' and experts' fees, costs and expenses incurred by the prevailing party in resolving said matter. As used herein the term 'prevailing party' shall include, but not be limited to, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought whether by compromise, settlement, or judgment. Each party hereby consents to a single, consolidated arbitration proceeding of multiple claims, or claims involving two (2) or more parties. Either party may apply to any court of competent jurisdiction for interim, temporary, or preliminary injunctive relief in aid of the arbitration proceedings, or to enforce the arbitration award, but not otherwise. Any such application to a court shall not be deemed incompatible or a waiver of this provision. The arbitrator shall be required to make written findings of fact and conclusions of law to support its award. Except as may be required by law, neither a party nor an arbitrator(s) may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. Notwithstanding anything to the contrary in said Arbitration Rules, the arbitrator shall not be authorized or empowered to award consequential, incidental or punitive damages, and the parties expressly waive any claim to such damages. By execution of this Agreement, the parties consent to the jurisdiction of the American Arbitration Association and waive any objection which either party may have to any proceeding so commenced based upon improper venue or forum non conveniens.

17. **Interpretation.** The parties have agreed and it is their intent that the battle of the forms Section 2-207 of the Uniform Commercial Code shall not apply to this Agreement or to any invoice or acceptance form of Seller relating to this Agreement. It is the parties' intent that this Agreement shall

exclusively control the relationship of the parties, and in the event of any inconsistency between any purchase order, acceptance form or otherwise sent by Buyer to Seller and this Agreement shall control. All rights granted to Seller herein shall be in addition to and not in lieu of Seller's rights by operation of the law and the Seller's remedies under this Agreement shall be cumulative. As used in this Agreement, the plural shall be substituted for the singular, and the singular for the plural, where appropriate; and words and pronouns of any gender shall be meant to include any other gender or entity. The subject headings herein have been placed and arranged for convenience and shall not be considered in any question of interpretation of this Agreement. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision shall be enforced to the fullest extent permissible and the remaining portion of this Agreement shall remain in full force and effect.

This Agreement shall inure to the benefit of and be binding upon both Buyer and Seller, their legal representatives, successors and assigns, except as limited hereinbelow. IN THE EVENT OF CONFLICT BETWEEN THIS AGREEMENT AND ANY OTHER INSTRUMENT ENTERED BY THE BUYER AND SELLER, THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL HAVE PRIORITY, PREVAIL, AND BE CONTROLLING. THIS PROVISION, AND EACH AND EVERY OTHER PROVISION OF THIS AGREEMENT MAY NOT UNDER ANY CIRCUMSTANCES BE MODIFIED, CHANGED, AMENDED OR PROVISIONS HEREUNDER WAIVED VERBALLY, BUT MAY ONLY BE MODIFIED, CHANGED, AMENDED OR WAIVED BY AN AGREEMENT IN WRITING EXECUTED BY SELLER.