

GENERAL TERMS AND CONDITIONS

Date: 5-18-04

These general terms and conditions apply to the purchase of Products and Services from Photo Sciences, Inc. ("Seller"), and the Buyer agrees thereto.

1. Order – No Cancellation. Once an order has been placed, it cannot be cancelled. Buyer shall be responsible for payment in full of an order upon the placing of an order.
2. Disclaimer and Limitation of Liability. Seller's responsibility for defects relating to the Products and Services is limited to the procedures described in Seller's return policy set forth below. ALL PRODUCTS AND SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, OR THE WARRANTY OF NON-INFRINGEMENT. SELLER'S MAXIMUM LIABILITY, FOR ANY REASON, AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CAUSE WHATSOEVER, SHALL BE LIMITED TO THE ACTUAL AMOUNT PAID BY BUYER FOR THE PRODUCTS AND SERVICES.
3. Force Majeure. In addition to any excuse provided by applicable law, Seller shall be excused from liability for non-delivery or delay in delivery of Products and Services arising from any event beyond Seller's reasonable control, whether or not foreseeable by either party, including but not limited to, labor disturbance, war, fire, accident, acts of terrorism, acts of God, adverse weather, inability to secure transportation, governmental act or regulation, and other causes or events beyond Seller's reasonable control, whether or not similar to those which are enumerated above.
4. Entire Agreement and Other Documents. These terms and conditions apply to all orders placed by Buyer and supersede all prior agreements and understandings of the parties with respect thereto. These terms and conditions may NOT be altered, supplemented, or amended by the use of any other document(s). Any attempt to alter, supplement or amend this document or to enter an order for Products or Services which are subject to additional or altered terms and conditions shall be null and void, unless otherwise agreed to in a written agreement signed by Buyer and Seller.
5. Non-Conforming Products. By reason of the custom nature of Seller's Products, non-conforming or defective Products will only be repaired or replaced and no refunds of monies paid by Buyer will be returned to Buyer. Buyer's obligation to pay for Seller's Products shall not be excused by nonconforming or defective Products. Seller's obligation to replace or repair is conditioned upon Buyer notifying Seller of the nonconforming Product within thirty (30) days after receipt by Buyer. Buyer must return nonconforming Products to Seller prior to repair or replacement so that Seller may properly analyze the nonconformance. Buyer shall notify Seller in writing of any defect and shall obtain Seller's approval before returning any Product. Transportation

charges on any Product returned from Buyer shall be at Seller's expense. Seller in Seller's sole and absolute discretion may condition the repair or replacement of non-conforming or defective Products upon Buyer's payment in full of Buyer's order.

6. Commercial Market. Seller provides Products in a commercial market and is not structured to be in compliance with Government/Military contract flow-down provisions and is unable to provide cost or pricing data. Seller has priced the Products and Services for commercial market. Seller's acceptance of purchase orders is contingent upon the inclusion of the clause below if applicable. If a subcontract is issued by a Government Prime or Subcontractor directly to Seller for any Product which will be incorporated in Products to be sold to the U.S. Government, a provision may be included in each Purchase Order from the Prime Contractor or Subcontractor which states: "Buyer acknowledges that Photo Sciences, Inc. is a commercial enterprise and will not comply with Government contract regulations or terms including but not limited to any requirement for cost or pricing data. Accordingly, this order is placed under Photo Science's commercial terms and conditions and specifically excludes Government prime contract flow-down provisions or regulations."
7. Payment. Payment for Products and/or Services shall be due thirty (30) days after shipment and, if not paid within said thirty (30) day period, the amount remaining unpaid shall bear interest at the rate of one and one-half percent (1.5%) per month from the date of shipment until paid in full.
8. Publicity. Buyer shall not make or authorize any news release, advertisement, or other disclosure to any third party, which shall deny or confirm the existence of this Transaction or reveal terms of this Transaction without prior written consent of Seller.
9. Choice of Law. This Transaction shall be interpreted and governed by the laws of the State of California. Buyer hereby consents to the exclusive jurisdiction and venue of the courts located in Los Angeles County, California. Buyer consents to service of process by United States mail.
10. Non-Restrictive Relationship. Nothing in this Transaction will be construed to preclude Seller from independently developing, acquiring from other third parties, distributing or marketing other Products or Services which may perform the same or similar functions as the Products or Services provided under this Transaction.
11. Title to the Product. The parties agree that title to the Product pertaining to this Agreement shall pass upon delivery to the carrier.
12. Modification. Neither this Agreement nor any of the terms of this Agreement, nor any covenant or condition contained in this Agreement may be terminated, amended, supplemented, waived, by anything other than an instrument in writing signed by both

parties. Any written amendment duly executed by the parties to this Agreement shall be binding notwithstanding the absence of any consideration therefore.

13. **Attorney Fees.** If any action at law or in equity is commenced by either party to enforce or interpret the terms of this Agreement, then the prevailing party in such proceeding or action (after appeal, if any) shall be entitled to recover from the unsuccessful party reasonable attorney fees, costs, and necessary disbursements in addition to any other relief to which the prevailing party may be entitled by law.
14. **Release re Damages.** Buyer waives and releases Seller from any liability for damages, whether direct, incidental, special, consequential, or punitive, for breach of warranty, or otherwise. In no event shall Seller have any liability for any incidental, special, consequential or punitive damages arising out of or in connection with a breach of the sale, as a result of non-conforming or defective Produces, or any other duty of Seller with respect to the Products, including, but not limited to, direct, incidental, special, consequential, or punitive damages for lost profits, lost sales or injury to persons or property.
15. **Seller's Liability.** Seller's liability on any claim of any kind, including but not limited to warranty, negligence, strict liability, and any other cause of action, for any loss or damage arising out of, connected with, or resulting from the performance or breach of the terms of sale of any Products, or from the design, manufacture, sale, delivery, resale, installation, technical direction of installation, inspection, repair, operation or use of any Products or Services or part of those Products or Services shall in no case exceed the purchase price allocable to the Products or Services or part of those Products or Services that gives rise to the claim.
16. **One-Year Limitation.** No action for breach of any term of sale or any other duty of Seller with respect to Products or Services may be commenced more than one year after delivery of the Product or Services to the Buyer.
17. **Buyer's Responsibility.** Buyer assumes all responsibility for use of the Product and for training the persons who will use the Product. Buyer shall and does hereby indemnify, defend and hold Seller harmless from any claim, demand, loss, liability, damage or expense (Including, but not limited to attorneys' fees and costs) arising in any way from use of the Product by Buyer or its employees, agents, contractors, customer assigns or successors.
18. **Indemnity.** Buyer agrees to and does hereby indemnify, defend and hold Seller harmless from any and all claims, demands, liability, losses, expenses, attorneys fees, and other obligations incurred by Seller which arise out of Buyer's acts or omissions with respect to any Products sold by Seller to Buyer or with respect to any other matter or transaction between the parties or which arise out of Buyer's violation of any law.

19. Purchase Order. If a quotation of Seller is accepted and Buyer's order form is used for the purpose, the terms and conditions set forth herein shall prevail despite conflicting language contained in the Buyer's order form. The issuance by Buyer of such an order shall be conclusively deemed to constitute Buyer's assent to the foregoing.

20. Buyer Supplied Material. Buyer understands that Photo Science will be performing contact intensive processes on the material that the buyer supplies. Buyer understands that seller assumes no responsibility for damage or destruction materials supplied by the buyer. The seller is also entitled compensation for any and all work performed on buyer supplied material.