



## Photo-Sonics, Inc. Commercial Terms and Conditions

**THE PURCHASE ORDER ISSUED BY PHOTO-SONICS, INC. (“Buyer”) TO THE VENDOR LISTED THEREIN (“Seller”) IS SUBJECT TO THE TERMS AND CONDITIONS CONTAINED HEREIN.**

- A. Buyer’s order number (including letters) must appear on all invoices, packing lists, shipping cartons and correspondence. A packing list must accompany all shipments. The Purchase Order and these Terms and Conditions constitute the entire understanding and agreement (“Agreement”) of the parties with respect to the subject matter hereof.
- B. Unless otherwise specified, Buyer’s purchases are for resale and no sales or use taxes shall be charged. Seller is responsible for supplying any required certification listed on the Purchase Order by the Buyer.
- C. The purchase order may include requirements for a Quality Management System for monitoring and quality control, including but not limited to implementation of procedures respecting design, development, specifications, testing, quality compliance, setting and verifying milestones, auditing, and other special requirements. It is Seller’s responsibility to request clarification in writing regarding any aspect of the Quality Management System.
- D. Seller shall immediately notify Buyer in writing if any quality requirements cannot be met or if any of the following occur: process changes (e.g., specification changes, design revisions, material substitutions, etc.); changes in products, services, drawings, or work instructions; change of suppliers; and changes in manufacturing facility locations.

**1. Acceptance of Contract.** All orders for goods, materials, work and services to be delivered and performed (the “goods”) become a contract subject exclusively to the terms and conditions set forth herein when accepted by written acknowledgment by Buyer and such terms and conditions constitute the entire agreement between the parties. No change in such terms and conditions shall be valid unless agreed to in writing by an authorized corporate officer of Buyer.

**2. Delivery.** Time is of the essence. Failure to deliver by the required delivery date specified in Buyer’s purchase order may result in substantial damages to Buyer due to commitments to its customers. In addition to its other remedies, Buyer may cancel an order in whole or in part

without liability if delivery is not made within the time specified on the order. Damage and/or loss resulting from improper packaging, preparation or loading shall be charged to Seller. Title to and risk of loss shall pass to Buyer, and acceptance of the goods shall take place, when such goods have been delivered to Buyer's specified destination and have passed Buyer's inspection and tests. In no event shall payment be deemed to constitute acceptance.

**3. Prices.** Buyer is liable only for the price indicated on this order. If the price is omitted from the order, Seller shall invoice at the price last quoted to Buyer or paid by Buyer for such goods in equal quantities. Seller warrants that the prices for the goods are not less favorable than those currently extended to any other customer for the same or like goods under conditions similar to those specified in Buyer's order. If Seller establishes or offers a lower price for the sale of such goods in such quantities, Seller agrees to reduce the prices hereof correspondingly. No additional charges of any kind will be allowed unless specifically agreed to in writing in advance by Buyer.

**4. Warranties.**

(a) Buyer shall have the right to all Buyer's remedies and Seller's warranties to the fullest extent provided under the Uniform Commercial Code, including, but not limited to, warranties of merchantability and fitness for a particular purpose, and such remedies and warranties shall survive inspection, tests, acceptance and payment.

(b) Seller represents and warrants that all goods delivered are free of liens or other claims of ownership. Seller further represents and warrants that all goods sold to Buyer shall be designed and manufactured in accordance with industry standards and meet Buyer's specifications, Buyer's quality policies and all applicable U.S. legal and regulatory requirements (collectively referred to herein as "Legal Requirements").

(c) Unless Buyer specifies in writing otherwise, Seller shall deliver only new goods to Buyer. No counterfeit or suspect counterfeit goods are to be delivered. Seller shall procure components for parts for the goods directly from the original component or equipment manufacturer (OEM) or through the OEM's authorized distributor. Documentation must be available that authenticates traceability to the applicable OEM. If Seller becomes aware or suspects it has furnished counterfeit goods, Seller shall immediately notify Buyer. Seller agrees that if counterfeit goods are found to have been furnished to Buyer, those items will not be returned to Seller, and Seller may be liable for all costs relating to impoundment, removal and replacement.

(d) Seller represents and warrants that all work and services will be performed with reasonable skill and care, in a competent, professional and workmanlike manner, free from defects, and in accordance with all specifications and the best professional practices in the industry.

**5. Indemnification.** Seller shall indemnify and hold Buyer harmless against all liability, cost and expense (including, without limitation, Buyer's costs of testing and inspection, court costs and

reasonable attorney's fees) on account of all claims, liabilities, damages, or judgments arising out of or related in any way to this agreement, or goods or services provided hereunder, or claims of infringement of Intellectual Property Rights by any third party, except to the extent solely resulting from the gross negligence or intentional misconduct of Buyer.

**6. Intellectual Property Rights.** Ownership of any patents, utility models, designs, copyrights, domain names, trademarks, trade names and any other intellectual property rights, whether registered or not, as well as any trade secrets, associated with or related to the goods or services provided under this the Agreement (collectively "Intellectual Property Rights") shall vest in Buyer.

**7. Work Product.** All work product conceived, created, produced or prepared by or with the cooperation of Seller in connection with the provision of services and the goods under this Agreement shall be deemed works made for hire that are owned by Buyer (the "Works"). Works shall include without limitation, all designs, drawings, text, prototypes, patterns, images, photographs, concepts, depictions and all other Intellectual Property Rights and proprietary rights therein and thereto, whether or not fixed in a tangible medium of expression.

**8. Non-Conforming Goods.** Non-conforming goods or unauthorized substitutions will not be accepted by Buyer and any such goods will be held at Seller's risk, and all transportation charges, both to and from the original destination, shall be paid by Seller. Seller is required to notify Buyer of any nonconforming goods or services. When Buyer issues a Corrective Action Notice to Seller, a response shall be completed within fifteen (15) calendar days from receipt of the Corrective Action Notice. If Seller fails to timely respond to a Corrective Action Notice Request Buyer may refuse to accept further deliveries and/or suspend payment until an adequate response is provided or terminate the agreement. When returning re-worked material to Buyer, a Return Material Authorization (RMA) number shall be referenced on the packing slip.

**9. Cancellation.** Buyer shall have the right by written notice to cancel, suspend or modify the goods and services to be furnished by Seller under Buyer's order. Buyer shall only be liable to Seller for the agreed upon price for goods accepted by Buyer and for Seller's costs for reasonable materials and actual work performed up to the time of cancellation not otherwise usable or saleable by Seller, net of salvage value.

**10. Limitation of Liability.** Regardless of cause, fault or grounds: (a) in no event shall Buyer be liable for indirect, special, incidental or consequential damages of any kind, including, without limitation, punitive or economic damages or lost profits, regardless of whether Buyer had reason to know or in fact knew of the possibility of such damages; and (b) in no event shall Buyer's total liability exceed the purchase price due and payable by Buyer for the specific goods giving rise to the claim under this order.

**11. Default.** Buyer reserves the right, by written notice to cancel any order without liability to Buyer in the event of (i) Seller's insolvency, (ii) Seller's filing of a voluntary Petition of Bankruptcy, (iii) the filing of an involuntary petition to have Seller declared Bankrupt, (iv) the appointment of a Receiver or Trustee or Seller, or (v) the execution by Seller of an Assignment for the Benefit of

Creditors. If Seller fails to perform, or breaches any of the terms, and such breach continues for a period of ten (10) days after written notice from Buyer, Buyer reserves the right, without any liability to Buyer (i) to cancel the order in whole or in part by written notice to Seller, or (ii) after notifying Seller of such failure or breach and of Buyer's intent to exercise such right, to obtain the goods from another source, with any excess costs resulting therefrom chargeable to Seller. Seller shall be liable for Buyer's damages in connection with such breach or failure to perform including consequential damages reasonably foreseeable by Seller or of which Seller has apprised by Buyer, provided, however, the Seller shall not be responsible for delays or defaults occasioned by Force Majeure Events as defined below, but in the event of such occurrence, Buyer reserves the right to cancel the order without liability of any kind.

**12. Approved Process Seller.** Seller has been delegated process and inspection authority to ensure all applicable process and material specifications are met and documented accordingly. Seller is required, upon request, to demonstrate and provide evidence of its completion of processes to planned results and establish arrangements for the processes including:

(a) Defined criteria to review and approve the processes (qualification and approval of special processes prior to use).

(b) Approval of equipment and qualification of personnel; ensure personnel are aware of their contribution to product or service conformity, their contribution to product safety and the importance of ethical behavior.

(c) Use of specific methods and procedures (control of the significant operations and parameters of special processes in accordance with documented process specifications and changes thereto).

(d) Control and monitoring of the Seller's subcontractors' performance.

(e) Requirements for retention of records.

(f) Revalidation procedures.

**13. Compliance with Laws.** Seller, and its subcontractors involved in providing the goods and services hereunder, shall fully comply with all applicable laws and regulations, including, without limitation, Federal, state and local laws and regulations, export and import laws and regulations, applicable data protection laws and regulations, the U.S. Foreign Corrupt Practices Act and similar anti-bribery laws, the Walsh-Healey Act, 41 U.S.C.A. §§35-45, the Occupational Safety and Health Act of 1970, 29 U.S.C.A. §§651-678, the Fair Labor Standards Act of 1938, 29 U.S.C.A. §§201-219, as amended, 48 CFR 252.204-7012 Safeguarding Covered Defense Information and Cyber Reporting, and shall indemnify and hold Buyer harmless from any liability cost or expense (including, without limitation, Buyer's court costs and reasonable attorney's fees) resulting from Seller's failure of compliance. Seller agrees upon request to furnish Buyer with a certification of compliance with respect to any or all such laws, regulations in such form as Buyer may require.

Seller shall take all steps reasonably required to ensure that any subcontractors involved in providing the goods and services hereunder comply with all applicable laws and regulations. Seller shall provide Buyer, upon request, with identifying information for every subcontractor involved in providing the goods and services hereunder, which subcontractors are subject to approval by Buyer, which approval shall not be unreasonably withheld, conditioned, or delayed.

**14. Inspection and Audit.** Buyer and its customers shall be permitted to inspect facilities in which the products are developed, produced and stored upon reasonable advance written notice to Seller, during business hours at times reasonably convenient to both parties. Upon thirty (30) business days' written notice, Buyer shall, at a time and place mutually agreeable to the parties, have the right to audit and inspect Seller's facilities and/or records relating to Seller's obligations under this agreement and with respect to the products. Notwithstanding the foregoing, if Buyer has a reasonable belief that Seller is violating a term of this agreement or any Legal Requirements, Buyer shall be permitted to inspect Seller's facilities during normal business hours without advance notice to Seller. Seller will also grant access to Buyer, its customers, and any government entity demanding access to any Seller facility pursuant to said demand, so long as said demand is legal.

**15. Remedies.** The remedies provided Buyer herein shall be cumulative and in addition to any other remedies provided by law or equity. A waiver of a breach of any provision hereunder shall not constitute a waiver of any other breach. The invalidity in whole or in any part of any provision hereof shall not affect the validity of any other provision.

**16. Governing Law.** The contract resulting from the acceptance of Buyer's order shall be governed by and construed according to the laws of the State of California, excluding choice of law statutes to the contrary. The United Nations Convention on Contracts for the International Sale of Goods is hereby excluded. Any dispute or claim arising out of or in connection with this Agreement shall be brought exclusively in any state or Federal court with jurisdiction and venue in Los Angeles County, California, unless all such courts refuse to accept jurisdiction and/or venue.

**17. Equal Employment; Government Orders.** This Seller and any Seller-subcontractor shall abide by the requirements of 41 C.F.R. §60-300.5(a) and 41 C.F.R. §60-741.5(a). These regulations prohibit discrimination against (1) qualified protected veterans and (2) qualified individuals on the basis of disability and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities. The contract provisions set forth in Section 202 of Executive Order 11246 (equal opportunity), as amended, and the regulations promulgated thereunder (41 C.F.R. Part 60-741) and Executive Order 11625 (utilization of minority business enterprises) as amended, to the extent same are applicable to Buyer's order, are incorporated by reference herein as if fully rewritten with respect thereto. Seller agrees, upon request, to furnish Buyer a certification of compliance with such Executive Orders in such form as Buyer may require. Additional Terms and Conditions for Government Contracts, available at Buyer's website, are incorporated herein by reference for applicable government orders.

**18. Hazard Communication/Right-To-Know.** Seller shall comply with the OSHA Hazard Communication Standard (29 C.F.R. Section 1910-1200), all state and local right-to-know laws, and all other Federal, state and local laws regulations relating to hazardous chemicals, including without limitation, the safety data sheet and product labeling requirements.

**19. Force Majeure.** Neither party shall be held responsible for any delay or failure in performance to the extent such delay or failure is caused by flood, strike, civil, governmental or military authority, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or nonperforming party or its subcontractors ("Force Majeure Event") provided that (i) such party gives the other party prompt notice of the reason for delay or failure of performance, (ii) takes reasonable steps to mitigate the delay or failure of performance, and (iii) diligently pursues performance during and after the Force Majeure Event. In the event a party's delay or non-performance continues for a period of at least fifteen (15) days, the other party may terminate this agreement.

**20. Documentation And Certifications.** Upon request Seller shall provide documented proof of compliance (e.g., process certification, first article report, mill report, physical and/or chemical test result, etc.) with applicable specifications for each deliverable. Seller shall retain all process records, certifications, and test reports for a minimum of ten (10) years unless otherwise specified. Seller shall comply with the requirements of ISO 17025, ISO 10012 or equivalent. All certificate(s) of calibration must reflect compliance. Measuring equipment shall be calibrated against measurement standards traceable to international or national measurement standards (NIST); where no such standard exists, the basis used for calibration shall be recorded. When required by the purchase order or applicable laws and regulations, raw material must be certified as domestic from a mill in a qualified country as listed on the Bilateral Airworthiness Agreement (BAA) and/or DFARS paragraphs 252.225-714 ALT 1 and 225-872-1. See one of the following websites for complete listing of authorized countries:

BAA: [www.faa.gov/aircraft/air\\_cert/international/bilateral\\_agreements/baa\\_basa\\_listing/](http://www.faa.gov/aircraft/air_cert/international/bilateral_agreements/baa_basa_listing/)  
DFARS: <https://www.acquisition.gov/dfars>

**21. Entire Agreement.** This Agreement shall supersede and replace all prior understandings and agreements, whether verbal or in writing. The parties confirm and acknowledge that there are no other promises, covenants, understandings, agreements, representations, or warranties with respect to the subject matter of this Agreement except as expressly set forth herein. Information, advice, verbal approvals or verbal instructions by Buyer's technical representatives shall be deemed expressions of personal opinion only and shall not affect Buyer's and Seller's rights and obligations under this Agreement; all revisions and amendments to this Agreement must be in writing via a change order or amendment to the Purchase Order and executed by an authorized representative of Buyer.

**22. Confidentiality.** "Confidential Information" means any information and material in whatever form disclosed to one party by the other party and either marked as confidential or which, from its nature, content or the circumstances in which it is provided, is reasonably deemed to be

confidential including, but not limited to a party's products, techniques and processes in tangible or intangible form, demonstrations, devices, models, samples of any kind, computer programs, documents, specifications, or drawings (including but not limited to information of a general nature) and visual observation of the aforesaid. Each Party shall keep in confidence all Confidential Information and shall not disclose the Confidential Information to any third party or use the Confidential Information for any purpose other than for the purpose of provision of goods and services under the Purchase Order. A receiving party shall have the right to: (a) copy Confidential Information only to the extent necessary for the purpose of this Agreement; and (b) disclose Confidential Information only to those of its employees and employees and subcontractors who need to know Confidential Information for the purpose of this Agreement. This confidentiality obligation shall not be applied to any material or information (a) which is generally available or otherwise known to the public other than by a breach of this Agreement on the part of the receiving party; (b) which the party has received from a third party without any obligation of confidentiality; (c) which was in the possession of the receiving party prior to receipt of the same from the other party without any obligation of confidentiality related thereto; (d) which a party has developed independently without using material or information received from the other party; or (e) which a party shall disclose pursuant to a law, decree, or other order issued by a governmental authority or judicial order. The rights and obligations under this Section 22 shall survive the termination or expiration of this Agreement.