

Thorlabs' General Terms and Conditions of Sale

1. Acceptance of Terms.

All sales by Thorlabs Lens Systems, Inc., a New Jersey corporation ("Thorlabs"), to any person (a "Buyer") of the units of optics products specified in the document to which these Terms and Conditions of Sale are attached or referred to (the "Product") will be governed by these Terms and Conditions of Sale. If the terms or conditions of any purchase order, offer or acceptance from Buyer or supply or other agreement differ from or seek to add to or supplement these Terms and Conditions of Sale, these Terms and Conditions of Sale shall constitute a counter-offer and will not be effective as an acceptance of Buyer's differing, additional or supplemental terms and conditions, all of which are hereby rejected. **THESE TERMS AND CONDITIONS OF SALE SHALL BE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE TERMS OF AGREEMENT BETWEEN THORLABS AND BUYER.**

2. Prices and Payment.

All price quotations are subject to confirmation and are non-binding. Unless otherwise agreed to by Thorlabs in writing, all prices for the sale of Product are stated in and to be paid in United States Dollars. All payments are due and payable in thirty (30) days from date of invoice. Thorlabs reserves the right to require alternative payment terms, including without limitation letter of credit or payment in advance. Payments not made by the due date shall be subject to a late payment charge of the lesser of one and one-half percent (1 ½%) per month or the maximum rate permitted by law.

3. Deliveries/Delay in Delivery.

All delivery times are estimates only, and in no event shall Thorlabs be liable for any delay in delivery or assume and liability in connection with shipment. Unless otherwise agreed to in writing by Thorlabs, all product shall be delivered FCA (Incoterms 2010) from the point of shipment. Title to and risk of loss or damage to all or any portion of the Product shall pass to Buyer upon tender of the Product for delivery at Thorlabs' plant point of shipment. Unless specifically delegated in writing, Thorlabs shall have the exclusive right to file export declarations (including AES entries) and Buyer may not authorize or appoint any U.S. agent (including without limitation any freight forwarder recommended by Buyer) to complete such filings. Buyer shall have no right to cancel any purchase order submitted by it. Buyer acknowledges that any purchase order and/or corresponding material requirement

forecasts submitted by it are firm orders that: (i) may not be cancelled; and (ii) may not be rescheduled or amended without the prior written consent of Thorlabs. Except as provided under paragraphs 4 and 6 below, Buyer has no right to return any Product purchased under these Terms and Conditions of Sale to Thorlabs.

4. Limited Warranty.

Subject to the limitations set forth in these Terms and Conditions of Sale, Thorlabs warrants (the "Limited Warranty") that all Product sold by Thorlabs shall be free from defects in materials and workmanship under normal use, handling and service for a period of one (1) year from the date of shipment of the Product.

Thorlabs shall have no obligation under the Limited Warranty or otherwise, and this Limited Warranty does not apply to (i) Products which are (a) identified by Thorlabs as a pre-production product, alpha, beta or similar product or a prototype, (b) ESD sensitive items whose static protection packaging has been opened, or items that are fragile to the touch, once removed from its packaging; (c) items repaired, modified or altered by any party other than Thorlabs; (d) items used in conjunction with equipment not provided by, or acknowledged as compatible by, Thorlabs; (e) subjected to unusual physical, thermal, or electrical stress; (f) damaged due to improper installation, misuse, abuse, or storage; or (g) damaged due to accident or negligence in use, storage, transportation or handling, (ii) the use, fit or function of Products that are assembled or constructed from a kit, (iii) to software supplied or made available by Thorlabs for use in connection with certain Products, or (iv) damage or defects found in materials supplied by Buyer upon receipt by Thorlabs.

To the extent the Product is incorporated into any other instrument or device, Thorlabs makes no representation with respect to the safety, efficacy, accuracy, reliability, use, or fitness for intended purpose of the Product in such integrated product or in such application. To the extent so incorporated into any other instrument or device, or used in such application, Buyer hereby agrees to indemnify and hold Thorlabs harmless from any claims, suits, liabilities, losses, damages, expenses (including reasonable attorneys' and experts' fees and expenses) and costs arising from or relating to any defects in and/or the use of the Product and such integrated product, and/or the failure of the Product or such integrated product to comply with any applicable laws or regulations. Major sub-systems

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manufactured by other firms but integrated into Seller's Product are covered by the original manufacturer's warranty and Seller makes no warranty, express or implied regarding such sub-systems.

Subject to Buyer's compliance with the procedures set forth in paragraph 6 below, Thorlabs' sole obligation, and Buyer's exclusive remedy for any defective Product, shall be limited, at Thorlabs' option, to either repairing or replacing, free of charge for materials or labor, any Product which is proved not in compliance with the Limited Warranty during the Warranty Period.

EXCEPT FOR THE LIMITED WARRANTY EXPRESSLY SET FORTH ABOVE, THORLABS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, AND EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5. Limitation on Liability. To the extent not prohibited by applicable law:

IN NO CASE SHALL THORLABS BE LIABLE TO ANYONE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES FOR BREACH OF THIS OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, OR UPON ANY OTHER BASIS OF LIABILITY WHATSOEVER, EVEN IF THE LOSS OR DAMAGE IS CAUSED BY THORLABS'S OWN NEGLIGENCE OR FAULT.

CONSEQUENTLY, THORLABS SHALL HAVE NO LIABILITY FOR ANY PERSONAL INJURY, PROPERTY DAMAGE OR OTHER LOSS BASED ON THE USE OF THE PRODUCT IN COMBINATION WITH OR INTEGRATED INTO ANY OTHER INSTRUMENT OR DEVICE. HOWEVER, IF THORLABS IS HELD LIABLE, WHETHER DIRECTLY OR INDIRECTLY, FOR ANY LOSS OR DAMAGE ARISING UNDER THIS LIMITED WARRANTY OR OTHERWISE, REGARDLESS OF CAUSE OR ORIGIN, THORLABS' MAXIMUM LIABILITY SHALL NOT IN ANY CASE EXCEED THE PURCHASE PRICE OF THE PRODUCT WHICH SHALL BE THE COMPLETE AND EXCLUSIVE REMEDY AGAINST THORLABS.

6. Product Return/Repair Policy.

A. Buyer will notify Thorlabs about the occurrence of defective or non-operational Product and request a "Return Authorization Number" (hereinafter referred to as "RMA#") from Thorlabs for the items Buyer would like to return for repair or replacement by e-mail to the attention of the Customer Service Manager. This RMA# is to be used for all correspondence and shipping documents that relate to the Product.

B. Buyer will ship the defective or non-operational Product to Thorlabs. Buyer is responsible for shipping cost.

C. Upon receipt of the returned Product, Thorlabs will test the Product to verify the defective status of the component within the terms of the Limited Warranty and communicate such results to Buyer.

D. Thorlabs will either send a repaired or replacement Product after verifying that the Product returned under the RMA# is in fact defective within the terms of the Limited Warranty. Thorlabs is responsible for shipping costs of replacement Product to the Buyer.

7. Intellectual Property Rights: Software.

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 and Conditions of Sale that is conceived, developed, discovered or reduced to practice by Thorlabs, shall be the exclusive property of Thorlabs. Specifically, Thorlabs 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 Thorlabs, in the course of the performance of these Terms and Conditions of Sale.

Software products provided or made available by Thorlabs for use with Thorlabs' Product are non-exclusively licensed pursuant to the terms and conditions of the applicable Thorlabs Software License supplied with such Product.

8. Miscellaneous.

A. Export Control Laws. Buyer shall comply with all applicable laws, regulations and treaties relating to

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the sale and destination of the Products, including, without limitation, U.S. and European 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 Thorlabs harmless for any damages or costs to Thorlabs arising from Buyer's failure to comply with these terms.

B. UN Convention. Buyer expressly agrees that the U.N. Convention on International Sale of Goods shall not apply.

C. Assignment. These Terms and Conditions of Sale and the rights of Buyer hereunder may not be assigned in whole or in part without the prior written consent of Thorlabs.

D. Treatment of Waste Electrical and Electronic Equipment. In accordance with the European Directive on Waste Electrical and Electronic Equipment (WEEE, 2002/96/EC), Thorlabs will offer to take back Products delivered to a Buyer within the European Community after August 12, 2005 that constitutes an "end of life" unit under WEEE and is marked accordingly with the crossed out "wheelie bin", for recycling without charging Buyer a disposal fee. This is valid only for complete Products that have not been disassembled as understood under WEEE and that do not contain toxic substances or are otherwise contaminated with any waste. The cost of shipping the Product to Thorlabs for recycling is borne by Buyer. Buyer hereby agrees that if a Product covered by WEEE is not returned to Thorlabs for recycling, Buyer must deliver such Product to a company specialized in waste recovery and Buyer will not dispose of such Product in any other manner.

E. Invalidity. If any provision of these Terms and Conditions of Sale is held invalid by any governing law or regulation or by any court having valid jurisdiction, such invalidity will not affect the enforceability of other provisions.

F. Governing Law/Entire Agreement. Buyer acknowledges and agrees that these Terms and Conditionals of Sale shall be governed by and construed in accordance with the laws of the State of New York (U.S.A.), without reference to any conflict of law rule. Buyer and Thorlabs expressly agree that any disputes under these Terms and Conditions of Sale shall be resolved exclusively in the courts located within such governing jurisdiction. These Terms and Conditions of Sale constitute the entire

agreement between Buyer and Thorlabs 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.

9. Government Contracts.

Notwithstanding the foregoing, in the event the Buyer is a federal agency of the United States government that is subject to the requirements of the Federal Acquisition Regulations (the "FAR"), any provision contained herein (e.g. indemnification provisions) that conflict with or violate the FAR or the provisions of applicable federal common law, including without limitation the Prompt Payment Act, the Anti-Deficiency Act and the Contract Disputes Act, shall be null and void and the provisions of such applicable federal common law shall control.