

Trioptics, Inc., Standard Terms & Conditions for Sale of Goods

Version 2.2 – 2019-10-11

Definitions

In this document the following words shall have the following meanings:

- "Buyer" means the organization or person who buys Goods;
- "Effective Date" means the first date that the Seller and the Buyer commenced discussions regarding any Goods or contemplation of any Goods;
- "Goods" means the articles to be supplied to the Buyer by the Seller;
- "Intellectual Property Rights" means all current and future rights in copyrights, trade secrets, trademarks, mask works, patents, and other intellectual property rights, including, in each case whether unregistered, registered or comprising an application for registration, and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of the foregoing that may exist anywhere in the world; and
- "Seller" means Trioptics, Inc.

General

These Terms and Conditions shall apply to sales of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between the parties, including any standard or printed terms tendered by the Buyer in a purchase order or similar document, unless the Buyer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been acknowledged and approved by the Seller in a writing signed by the Seller. It is expressly acknowledged and agreed by the Buyer that these Terms and Conditions shall supersede any terms and conditions of the Buyer attached to any purchase order or similar document, and that the Seller's performance under any such purchase order or similar document shall not constitute a waiver by the Seller of the applicability of these Terms and Conditions to such transaction or acceptance by the Seller of any such terms and conditions of the Buyer attached to any such purchase order or similar document.

Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed to by the Seller in a writing signed by the Seller.

Price and Payment

The price shall be the Recommended Retail Price less agreed discount, unless otherwise agreed in writing between and signed by the parties. The price is exclusive of VAT or any other applicable taxes, costs, and expenses (including packaging and shipping costs and expenses).

Credit terms may be offered subject to satisfactory credit vetting of the Buyer by the Seller. The offer of credit will be at the sole discretion of the Seller on each transaction without regard to the extension or not of credit on a previous transaction with the Buyer.

Where credit is offered, payment of the price and VAT and any other applicable costs (collectively, "Price") shall be due within thirty (30) days of the date of the invoice supplied by the Seller, unless otherwise agreed in writing signed by the Seller. In cases where credit is not offered full payment of the Price will be required before release of Goods by the Seller.

The Seller shall be entitled to the option to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 1.5% percent per month or portion thereof.

If payment of the Price or any part thereof is not made by the due date, the Seller shall be entitled to:

1. require payment in advance of delivery in relation to any Goods not previously delivered; and/or
2. refuse to make delivery of any undelivered Goods without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery

Description

Any description given or applied to the Goods is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer hereby affirms that it does not in any way rely on any description when entering into the contract.

Sample

Where a sample of the Goods is shown to and inspected by the Buyer, the Buyer accepts that such a sample is representative in nature and the bulk of the order may differ slightly as a result of the manufacturing process.

Delivery

Unless otherwise agreed in writing signed by the Seller, delivery of the Goods shall take place at the address specified by the Buyer on, or as close as possible to the date required by the Buyer. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.

If the Seller is unable to deliver the Goods because of actions or circumstances under the control of the Buyer, then the Seller shall be entitled to place the Goods in storage until such times as delivery may be effected and the Buyer shall be liable for any expense associated with such storage.

For international shipments, EXW (Ex Works) shipping terms will be the method the Seller chooses. The shipping terms are pre-defined 2010 Incoterms published by the International Chamber of Commerce (ICC).

For domestic shipments, FedEx (Federal Express) and/ or UPS (United Parcel Service) are methods the Seller chooses for domestic shipping.

Cancellation

During manufacture of the Goods, should the Buyer decided to cancel the order, the Seller has the sole right to invoice the Buyer for the amount totaling the cost for the current state of Goods and man hours performed to complete the work up till the point of cancellation.

Limited Warranty

The Seller warrants for a period of 1 year following delivery of the Goods which were delivered to the Buyer are free from defects in materials and workmanship under normal use.

The Seller warrants for a period of 1 year following performance of the service that its Maintenance Support Services will be performed consistent with generally accepted industry standards.

The Seller warrants that for a period of 1 year commencing upon date of delivery or installation, whichever is earlier, that when operated in accordance with the documentation and other instructions provided by the Seller, the Software & Hardware will perform substantially in accordance with the functional specifications set forth in the documentation.

Software

Seller represents and warrants to Buyer that it owns or controls rights in the software supplied as part of the Goods sufficient to grant the rights granted to the Buyer without the need for any third party consents or approvals.

If the subject matter of the contract is also or exclusively the delivery or provision of software, the following provisions shall apply, unless a separate license agreement has been concluded:

The Buyer receives a non-exclusive, right to use the software without restrictions in time or territory. If the Buyer does not use the goods and services according to this contract himself, sells or provides them in isolation or together with other goods or services to third parties (end customers), only the end customer is entitled to the rights specified. The Buyer has the obligation to including the terms of this section into her contract with the end customer.

The software may only be used to the extent permitted by the contractual agreement. In the case of a device license, the software may only be installed and used on one (1) device at a time. Any use beyond the extent agreed is a breach of contract.

Permissible use includes the installation of the software on a device, loading into the main memory, as far as necessary and possible in each case, as well as the designated use by the Buyer. Under no circumstances shall the Buyer have the right to rent out or sublicense the purchased software in any other way, to communicate it in a wired or wireless form to the public or to make it publicly available to third parties, either in return for payment or free of charge.

The Buyer may not change, copy or otherwise reproduce the provided software (except in the cases prescribed by law). The Buyer is entitled to make a backup copy. The Buyer shall visibly affix a "backup copy" and a copyright notice of the manufacturer to the backup copy.

The Buyer is entitled to hand over the purchased software to a third party (e. g. end customer) by handing over the original data carrier and the documentation permanently on a permanent basis. In this case, the Buyer must completely discontinue the use of the software, remove and delete all copies installed at Buyer's premises and delete all copies (including backup copies) on other data carriers at the Buyer's premises, unless she is legally obliged to keep the software for a longer period of time. The Buyer must confirm in writing the complete implementation of the measures mentioned in this paragraph or explain to Seller the reasons for a longer storage period. In the event of a permanent transfer of the software, the Buyer is obliged to inform the Seller in writing of the name and full address of the purchaser.

The Buyer agrees to prevent the unauthorized access of his employees and other third parties to the delivered software as well as the associated documentation by means of suitable precautions, in particular the storage of the original data carriers and the backup copy in a secure location. Copyright notices, serial numbers and other features used to identify the program must not be removed or changed from the data carrier or the documentation.

Software from third party manufacturers may be part of Seller's deliveries, provided that Seller indicates this accordingly. The extent of the rights to use this software is determined primarily by the respective license conditions of the third party manufacturer. The aforementioned terms and conditions shall apply in addition. The license conditions of the third party manufacturer are to be accepted by the Buyer, otherwise the Seller is entitled to withdraw from the contract.

RISK

Risk of loss and damage regarding the Goods shall pass to the Buyer upon delivery of the Goods to the Buyer in undamaged form. Where the Buyer chooses to collect the Goods itself, risk will pass when the Goods are entrusted to it or set aside for its collection, whichever happens first.

TITLE

Title in the Goods shall not pass to the Buyer until the Seller has been paid the full and indefeasible Price for the Goods.

RETURN OF UNUSED GOODS

All goods are sold on a firm sale basis, i.e., the Seller will not take back any goods not required or sold by the Buyer, unless otherwise agreed in a writing signed by the Seller, in which case the following terms apply.

Any returns must be authorized in writing signed by an authorized representative of the Seller before any credit will be given. Buyer must request a Return Material Authorization (“RMA”) number either by email from service@trioptics-usa.com or by web form at <https://www.trioptics.com/contact-service/rma-form/>. All parcels need to be clearly labeled with the assigned RMA number when sending Goods to the Seller.

Where the Seller agrees to accept the return of Goods that are not damaged, the Buyer will be responsible for the cost of carriage and will ensure that they are carefully packaged to avoid any damage in transit. The Seller will not accept any Goods that are damaged in any way, and any such damage shall void any agreement to provide a credit. The Seller will only accept returns that appear in the Sellers current Publication List, unless otherwise agreed upon in a writing signed by the Seller.

Credit of amounts due or paid in will only be given for goods that are in saleable condition. The Buyer will be invoiced for a flat rate of twenty percent (20%) of the greater or either Price or the current Price for the Goods as a restocking fee. This does not include services (trainings, installations, etc.)

LIMITATION OF LIABILITY

The Seller shall not be liable for any all loss or damage suffered by the Buyer in excess of the price, without regard to VAT, other taxes, costs, and expenses (including packaging and shipping expenses) actually paid by the Buyer for the Good from which such loss and damage arises.

Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of the Seller for death or personal injury as a result of the Seller's gross negligence.

INTELLECTUAL PROPERTY RIGHTS

Seller shall retain and own as its sole and separate property all ideas, creations, works, processes, designs and methods that are patentable, copyrightable, registrable as a mask work, protectable as a trade secret or otherwise protectable as an Intellectual Property Right (collectively, “Technology”) that

is (i) constitutes Technology of the Seller; (ii) that the Seller owned, created, or discovered prior to the delivery of the Goods or without the use of any confidential information provided, and identified as such, by the Buyer to the Seller; or (iii) is incorporated in or related to the design, function, structure, development and/or manufacture of the Goods or related services created by either the Seller or the Buyer in connection with the Goods.

CONFIDENTIALITY

“Confidential Information” means all information disclosed by the Seller to the Buyer or otherwise learned by the Buyer (whether in oral, written, or other tangible or intangible form and whether before, on, or, after the Effective Date) regarding the Seller’s technology, know-how, product plans, pricing, customer information, and other business and/or technical information, any third-party information that the Buyer is required to keep confidential. At all times, the Buyer will maintain the confidentiality of all Confidential Information with the highest degree of care (and, under no circumstance, less than the degree of care the Buyer provides (or requires) with respect to its utmost confidential information) and may only use Confidential Information to fulfill its obligations hereunder. The Buyer will protect all Confidential Information from unauthorized use, disclosure, copying, dissemination or distribution. The Buyer will not disclose, deliver, distribute, display, demonstrate or otherwise make available Confidential Information to any employees, consultants or third parties (collectively, “Permitted Disclosees”) without the Seller’s prior written and signed consent in each such case. The Buyer will (a) inform each Permitted Disclosee of the requirements of this section of these Terms and Conditions; (b) ensure that each Permitted Disclosee complies with each of the Buyer’s obligations, as set forth in these Terms and Conditions; (c) be responsible for any breach of these Terms and Conditions by its Permitted Disclosees; and (d) take all reasonable measures (including but not limited to initiating court proceedings) to enforce the terms of these Terms and Conditions with respect to such Permitted Disclosees. The Buyer will not copy or reproduce any Confidential Information except to the extent reasonably required for the performance. The Buyer will not reverse engineer, decompile or disassemble any computer program included in Confidential Information (except as permitted by law) and will not remove or obliterate markings (if any) on Confidential Information indicating its proprietary or confidential nature.

The Buyer acknowledges that each obligation in this Section is necessary and reasonable in order to protect the Confidential Information, and that monetary damages would be inadequate to compensate the Seller for any breach of this Section. Accordingly, the Buyer acknowledges and agrees as follows: (a) any such violation or threatened violation will cause irreparable injury to the Seller; and (b) in addition to any other remedies that may be available to the Seller at law, in equity or otherwise, the Seller will be entitled to obtain injunctive relief against any threatened breach of this Section or the continuation of any such breach, without the necessity of proving actual damages or posting a bond (or other security).

COMPLIANCE WITH LAWS

The Buyer and its agents and affiliates must, and must cause their respective employees to, comply at their own expense with all applicable local, national, regional and international laws, ordinances,

regulations, codes, standards, directives and international conventions, rules and agreements, including, without limitation, export and import laws, to the extent that any of the foregoing have the force of law by being directly enforceable by a governmental authority, a court or other proper tribunal.

INDEMNIFICATION

The Buyer, at its sole expense, will defend the Seller, and its directors, officers, employees, customers, contractors, affiliates and agents (collectively, "Indemnitees") harmless from and against any and all actual or threatened suits, actions, proceedings (at law or in equity), and claims (groundless or otherwise) ("Claims"), and indemnify the Indemnitees for any and all damages, payments, deficiencies, fines, judgments, settlements, liabilities, losses, taxes, costs and expenses (including, but not limited to, reasonable attorneys' fees, expert witnesses' costs and fees, costs, penalties, interest and disbursements) arising from or relating to any Claim (including third-party claims) against any Indemnitees, whether successful or not, caused by, arising out of or resulting from (a) any breach or alleged breach of any of the Buyer's representations or warranties or obligations; (b) any negligent act or willful misconduct by the Buyer or any party acting on its behalf; (c) any claims by any employee or contractor of the Buyer (including, but not limited to, employment, workers' compensation or recovery for on-the-job injury claims); (d) any bodily injury (including death) or damage to any property caused by any negligent or willful act or omission by the Buyer (or any party acting on the Buyer's behalf); or (e) any failure to comply with any applicable laws.

FORCE MAJEURE

The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God(s), strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Seller shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as the Seller considers unreasonable, it may, without liability on its part, terminate the contract.

RELATIONSHIP OF PARTIES

Nothing contained in these Terms and Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions shall be deemed to construe either of the parties as the agent of the other. Neither party will have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of the other party, whether express or implied, or to bind the other party in any respect whatsoever.

ASSIGNMENT AND SUB-CONTRACTING

The contract between the Buyer and Seller for the sale of Goods shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Buyer, without the prior written consent signed by the Seller.

ENTIRE AGREEMENT

These Terms and Conditions is the entire agreement of the parties regarding the subject matter hereof, superseding all other agreements between them, whether oral or written, regarding the subject matter hereof. In the event of a conflict between these Terms and Conditions and the purchase order or any similar document, these Terms and Conditions shall govern.

WAIVER

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

SEVERABILITY

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

GOVERNING LAW AND JURISDICTION AND VENUE

It is the intention of the parties that the laws of the State of California shall govern the validity of these Terms and Conditions and any relationship arising herefrom or form any purchase order or similar document, the construction of its terms, and the interpretation of the rights and duties of the parties, without regard to conflicts of law principles. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, these Terms and Conditions and any relationship arising herefrom or form any purchase order or similar document may be brought against any of the Parties in the courts of the State of California, County of San Bernardino, or, if it has or can acquire jurisdiction, in the United States District Court for the Central District of California, and each of the Parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any Party anywhere in the world.

MODIFICATIONS AND UPDATES

Buyer understands and expressly agrees that (i) Seller reserves the right to modify and/or update these Terms and Conditions from time to time and at any time, and (ii) all Terms and Conditions provided to Buyer prior to any such modification or update shall automatically incorporate any such modification and/or update regardless of whether or not notice of such modification or updates are provided; it being further understood by Buyer that Buyer shall be responsible for ensuring it has the most recent updated Terms and Conditions.