

## PHOTON AUTOMATION INC. TERMS AND CONDITIONS OF PURCHASE

1. **PARTIES, GOODS DEFINED AND OTHER TERMS.** The relationship between any seller or vendor as described in any goods, products, or equipment sales instruments or agreements entered (collectively "**Seller**") with Photon Automation, Inc., and its affiliated and related companies, subsidiaries, officers, directors, employees and agents (collectively "**Photon**") for the purchase of any goods, materials, merchandise, services, items or products (collectively "**Goods**") covered thereby is conditioned upon the terms and conditions contained in this instrument, and Photon's purchase order and subsequent purchase orders, as may be amended and supplemented from time to time (collectively "**Agreement**"). Upon the commencement by Seller of any work or the supply of any Goods, or the performance of any service required under this Agreement, including, but not limited to, the shipment of any Goods, Seller shall be deemed to have agreed to all the terms and conditions contained in this Agreement. Photon specifically objects to the inclusion of and rejects any different or additional terms or conditions proposed by Seller in acknowledging or accepting this Agreement. Any additional or different terms proposed by Seller shall not be binding upon nor of force or effect on Photon unless specifically accepted in writing and signed by an authorized representative of Photon.
2. **TERMS OF PAYMENT.** Unless otherwise agreed to in writing by Photon, Photon shall pay any undisputed invoice ninety (90) days from receipt of said invoice or Goods, whichever is later.
3. **TRANSPORTATION.** Except as otherwise agreed by Photon in the purchase order, all delivery of Goods will be made on terms DDP (Incoterms 2010) Photon's named location. As such, Seller will bear all risks and costs, including duties, taxes and other charges, of delivering the Goods, cleared for importation, to Photon's named destination. No charges of any kind, including but not limited to, taxes and expenses incurred for boxing, cartage or insurance, will be allowed unless specifically agreed to by Photon in writing. Prices will cover net weight of material, unless otherwise specified herein. Seller assumes all risk of loss and liability arising out of or related to the transportation of the Goods to Photon, including but not limited to any and all liability for environmental contamination or damages occurring during said transportation.
4. **REJECTIONS.** All purchases are subject to inspection and rejection notwithstanding prior payment. If any of the Goods ordered are found at any time to be defective in material or workmanship, or otherwise not in conformity with the requirements of this Agreement, including any applicable drawings and specifications, Photon, in addition to such other rights, remedies and choices as it may have by contract or by law, at its option and sole discretion may: (a) reject and return such Goods at Seller's expense for transportation both ways and all related labor and packing costs and Seller will promptly refund to Photon all prior payments received by Seller; (b) require Seller at its sole expense to replace the rejected Goods to a revised schedule submitted by Photon; or (c) require Seller to inspect the Goods and remove and replace nonconforming Goods with Goods that conform to this Agreement. If Photon elects option (c) above and Seller fails to promptly make the necessary inspection, removal and replacement, Photon may at its option inspect and sort the goods and Seller shall pay the costs thereof, in addition to any other remedy available to Photon.
5. **CONFIDENTIAL OR PROPRIETARY INFORMATION.** Any knowledge or information which the Seller shall have disclosed or may hereafter disclose to Photon, and which in any way relates to the Goods, shall not, unless otherwise specifically agreed to in writing by Photon, be deemed to be confidential or proprietary information, and shall be acquired by Photon free from any restrictions (other than a claim for patent infringement) as part of the consideration for this Agreement. All technical and other information obtained or learned by Seller as a result of this relationship and all technical and other information furnished by Photon and Seller shall remain Photon's property and, unless otherwise consented to in writing signed by Photon's authorized representative, shall be used only for performance of the work under this Agreement. Seller agrees to keep confidential all methods, processes, techniques, shop practices, formulas, compounds, compositions, equipment, designs, drawings, blueprints, specifications, research data, product pricing, marketing and sales information, customer lists, plans and information provided or know-how and trade secrets owned by Photon or in Photon's possession and disclosed to Seller as a result of this Agreement. Until such information has been published or disclosed to the general public, Seller agrees not to use such information for itself or others, or to disclose such information to others, and then only with Photon's written consent.
6. **CANCELLATION.** Photon may cancel all or any part of this Agreement if shipment or delivery is not made by the date specified on the purchase order hereof. Further, all or any portion of this Agreement may be cancelled or suspended by Photon, without liability, if such cancellation or suspension is caused by compliance with any law, order, regulation, request or imminent action of any government entity. Photon is not committed to purchase any particular volume of Goods, except for the quantity of Goods specified in a written purchase order.
7. **WARRANTIES.** In addition to all other warranties provided by law, Seller warrants as follows: (a) that the Goods sold hereunder or pursuant hereto will be free of any claim of any nature by any third person and that Seller will convey clear title thereto to Photon as provided hereunder; (b) that the Goods sold hereunder or pursuant hereto will be of merchantable quality, free from all defects in design, workmanship and materials, and will be fit for the particular purposes for which it is purchased and that the Goods are provided, assembled and installed in strict accordance with the highest professional standards, and the specifications and/or the samples, drawings, designs or other requirements (including performance specifications) approved or adopted by Photon; and (c) that the on-site response time for any warranty related issue shall be as reasonably requested by Photon; provided however, that in the event of an emergency, no later than twenty-four (24) hours from the time of Photon's notification. The parties acknowledge and agree the warranties contained in this Section shall be in addition to and shall not be construed as restricting or limiting any warranties or remedies of Photon, express or implied, which are provided by contract or law, including, but not limited to, the warranties and remedies contained in the Uniform Commercial Code. Any attempt by Seller to limit, disclaim or restrict any such warranties or remedies of Photon, by acknowledgment or otherwise, in accepting or performing this Agreement shall be null, void and ineffective without Photon's written consent.
8. **WORK FOR HIRE.** The Seller shall not use any trade marks, service marks, trade and business names, domain names, design rights, copyright, moral rights, rights in databases, patents, logos, rights to sue for passing off, trade secrets, rights in confidential or proprietary information and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world (collectively "**Intellectual Property Rights**") owned by Photon and/or licensed to Photon without Photon's prior written consent. The parties agree that all Intellectual Property Rights that may subsist anywhere in the world in and to the specifications and requirements contained in the Agreement or otherwise associated with or comprising the Goods (collectively "**Photon IP**"), shall be the sole property of Photon, with the exception of any Intellectual Property Rights that were conceived, created or reduced to practice by or for the Seller (alone or with others) prior to commencement of the Agreement and without the use of any specifications and requirements contained in the Agreement ("**Seller IP**"), all of which Seller IP shall remain the exclusive property of the Seller. The Seller hereby irrevocably transfers, assigns, and conveys

- all of its right, title, interest and any proprietary right of any kind whatsoever in and to any such Photon IP to Photon, and waives and will cause each of the employees, subcontractors, consultants and other personnel assigned to supply the Goods to waive in whole in favor of Photon any and all moral rights in and to the Photon IP. The Seller agrees that it shall never claim any right in or to any of the Photon IP, all of which is to be created for and owned by Photon. Photon may, without payment of additional compensation to the Seller, make such changes, modifications, adaptations, or revisions to the Photon IP as Photon may in its sole discretion determine or desire, and the Seller agrees that it shall never claim any rights of any nature whatsoever in any such changed, modified, adapted or revised material. Photon hereby grants to the Seller a royalty-free, non-exclusive, revocable license to use the Photon IP, solely for the Seller to supply the Goods and solely during the term of the relevant Agreement. Upon the expiration or termination of the relevant Agreement, said license will immediately end and all such Photon IP in the Seller's possession or control shall be returned or destroyed. To the extent that any Seller IP is incorporated in, or is necessary to use the Photon IP or the Goods, the Seller grants to Photon and its affiliates a royalty-free, world-wide, non-exclusive, irrevocable license to use, disclose, reproduce, modify, license and distribute such Seller IP. The Seller acknowledges and agrees any specifications and requirements contained in the Agreement are prepared and created on a "work for hire" basis and shall immediately become the property of Photon and used by the Seller under a revocable license, and shall be delivered to Photon by Seller in both printed and electronic forms to Photon's reasonable satisfaction, including without limitation that specifications shall be delivered in .PDF and Auto-CAD formats. To the extent required, the Seller shall procure that Photon is granted a unlimited, irrevocable, world-wide, perpetual, royalty-free license sufficient for Photon, its customers or any of its affiliates to make use of the Goods in the manner intended.
9. **INSOLVENCY.** Seller shall promptly notify Photon if Seller decides or is forced to cease its operations or discontinue the manufacture or supply of the Goods, or if any proceeding under the bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed or applied for or an assignment for the benefit of creditors is made by Seller. In such event, Photon may, at its sole option, terminate this Agreement without liability except for previously delivered Goods and/or modify this Agreement to acquire additional Goods from Seller to meet Photon's needs for such Goods.
10. **NON-ASSIGNMENT.** Seller shall not assign this Agreement, any interest therein, any right or obligation created thereby or any payment due or to become due thereunder without Photon's written consent. Any attempt by Seller to make such assignment shall be null and void and any such assignment by operation of law shall give Photon the option to terminate the Agreement without further liability. Seller shall remain fully liable and responsible for all obligations imposed under the terms and conditions of this Agreement regardless of any such assignment.
11. **SET-OFF.** Photon shall have the right at all times to set off any amount owing from Seller to Photon, or any subsidiary or affiliate of Photon, against any amount payable at any time by Photon in connection with this Agreement.
12. **TAXES.** The Goods sold pursuant to this Agreement are not subject to sales or use taxes. Unless otherwise agreed to in writing, signed by the parties hereto, Seller shall pay any and all taxes on the Goods.
13. **INSPECTION/AUDIT.** Photon may at reasonable times and upon reasonable notice, perform such inspections and/or audits at Seller's facilities as Photon deems necessary to assure itself of Seller's compliance with applicable laws and regulation as well as to assure itself that Seller is complying with its obligations to Photon hereunder.
14. **COMPLIANCE WITH LAWS.** Seller agrees, represents and warrants as follows: (a) Seller agrees to comply with the applicable provision of any federal, state or local law or ordinance and all orders, rules and regulations issued thereunder, and any provisions, representations, or agreements, required thereby to be included in the contract resulting from acceptance of this Agreement, including but not limited to, clauses dealing with Equal Opportunity, employment of veterans, employment of handicapped, and utilization of minority business enterprises, and such requirements are incorporated herein by reference; (b) Seller represents and warrants that in accordance with all federal, state or local environmental laws, including but not limited to OSHA, all hazardous materials contained as Goods in this Agreement are properly labeled and an applicable material safety data sheet has been submitted to Photon; (c) each chemical substance constituting or contained in Goods sold or otherwise transferred to Photon hereunder which is required or permitted to be reported for the inventory of chemical substances published by EPA pursuant to the Toxic Substances Control Act, is as of the time of sale or transfer on the list of such substances published by the Administrator of EPA.
15. **PATENTS.** Seller shall defend any suit or proceeding brought against Photon or its customers based on a claim that any article, material or apparatus, or any part thereof constituting Goods furnished under this Agreement, as well as any device or process necessarily resulting from the use thereof constitutes an infringement of any patent of the United States or otherwise, if notified promptly in writing and given authority, information and assistance (at Seller's expense) for the defense of same, and Seller shall pay all damages and costs awarded therein. In case said article, material or apparatus, or any part thereof, of any device or process necessarily resulting from the use thereof is in such suit held to constitute infringement and the use of said article, material or apparatus, part or device is enjoined, Seller shall, at its own expense and at its own option, either procure for Photon the right to continue using said article, material or apparatus, part or device; or replace the same with a non-infringing article, material or apparatus; or modify it so it becomes non-infringing, or remove said article, material or apparatus and refund the purchase price and the transportation and installation costs thereof.
16. **INDEMNIFICATION.** TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER SHALL DEFEND, INDEMNIFY AND HOLD PHOTON, ITS OFFICERS, DIRECTORS, SHAREHOLDERS AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, CONTROVERSIES, LIABILITIES, FINES, REGULATORY ACTIONS, LOSSES, COSTS, EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, EXPERT WITNESS EXPENSES AND LITIGATION AND DISPUTE RESOLUTION EXPENSES, ARISING FROM OR IN CONNECTION WITH ANY DAMAGE, ENVIRONMENTAL LIABILITY, PATENT OR INTELLECTUAL PROPERTY INFRINGEMENT, INJURY, DEATH, LOSS, PROPERTY DAMAGE, DELAY OR FAILURE IN DELIVERY OF THE GOODS, RELATING TO THIS AGREEMENT, THE BUSINESS RELATIONSHIP BETWEEN THE PARTIES, TRANSPORTATION OF THE GOODS BY THE SELLER OR A THIRD PARTY CARRIER, OR THE GOODS PROVIDED HEREUNDER, WHETHER BASED IN COMMON LAW, TORT, CONTRACT, STATUTE, INCLUDING ANY AND ALL FEDERAL, STATE OR LOCAL LAWS, OR OTHERWISE (COLLECTIVELY "**CLAIMS**"), AND REGARDLESS OF WHETHER DIRECTLY OR INDIRECTLY RELATED TO ANY ACTION OR FAILURE TO ACT BY SELLER, OR ITS REPRESENTATIVES, AGENTS, EMPLOYEES OR SUPPLIERS. HOWEVER, SELLER MAY NOT BE OBLIGATED TO INDEMNIFY PHOTON FOR THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF PHOTON WHERE SUCH INDEMNIFICATION IS CONTRARY TO LAW. IN ANY AND EVERY CLAIM AGAINST PHOTON BY ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY SELLER, THE INDEMNIFICATION OBLIGATION UNDER THIS PARAGRAPH MAY NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION

OR BENEFITS PAYABLE UNDER WORKERS' OR WORKMEN'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

17. **INSURANCE.** Seller will procure and maintain, at its own expense, for the duration of Seller's relationship with Photon and for a period of three (3) years thereafter, certain public liability, property damage, commercial general liability, excess liability, products liability and employee's liability and worker's compensation insurance as Photon may from time to time determine to be adequate to protect Photon and against the above claims and any claims under applicable workmen's compensation and occupational disease laws. Photon shall be named an additional insured with respect to any commercial general liability and excess liability insurance and Seller agrees to annually furnish Photon with such certificates.
18. **APPLICABLE LAW AND DISPUTE RESOLUTION.** This Agreement shall be construed under and governed by the laws of the State of Indiana, U.S.A., without giving effect to the conflicts or choice of law provisions thereof. The parties acknowledge and agree that any and all disputes arising relating to this Agreement, which exceed Seventy-five Thousand Dollars (\$75,000), shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and any judgment rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding said Rules, any arbitration hearing to take place hereunder shall be conducted in Evansville, Indiana before one (1) arbitrator who shall be a licensed attorney with extensive experience in commercial law. Each party hereby consents to a single, consolidated arbitration proceeding of multiple claims, or claims involving more than two parties. Either party may apply to any court of competent jurisdiction for injunctive relief or other interim measures in aid of the arbitration proceedings, but not otherwise. Any such application shall not be deemed incompatible or a waiver of this section. The arbitrator shall be required to make written findings of fact and conclusions of law to support their award. Notwithstanding anything to the contrary in the Commercial Arbitration Rules and supplementary procedures, the arbitrators shall not be authorized or empowered to award punitive damages and the parties expressly waive any claim to such damages. Unless otherwise agreed to in writing, signed by the parties hereto, any and all disputes arising relating to this Agreement which are less than Seventy-five Thousand Dollars (\$75,000) shall be resolved in the Superior Court of Vanderburgh County, State of Indiana, and each party hereto by performing under this Agreement, consents to the exclusive exercise of jurisdiction and venue over any matter arising in connection with this Agreement in said Court. In the event of any dispute, arbitration or litigation between the parties hereto involving this Agreement or the respective rights of the parties hereunder, the party who does not prevail in such arbitration (or litigation as applicable) 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.
19. **INDEPENDENT CONTRACTOR.** The parties acknowledge that in performing their obligations hereunder, each party is acting as an independent contractor. Nothing in this Agreement shall be construed to create a partnership, joint venture, franchise or other similar arrangement between the parties. Neither party has the authority to enter into any agreement, or make any warranty or representation on behalf of the other party, except where and to the extent specifically authorized to do so in writing. To the extent that either party utilizes its employees for the performance of its duties pursuant to this Agreement, that party shall be solely responsible for the payment of salaries and wages to such employees and matters relating thereto (including the withholding and/or payment of all federal, state and local income and other payroll taxes), workers compensation, disability benefits, and all such other legal requirements of like nature applicable to such employees.
20. **MODIFICATION OR WAIVER.** Except as provided herein to the contrary, the terms and conditions of this Agreement cannot be rescinded, modified or waived except in writing, signed by an authorized representative of Photon. No substitutes, modification or variations of the Agreement or of any of its terms or conditions shall be effective without prior written approval from an authorized representative of Photon.
21. **INTERPRETATION.** This Agreement together with material incorporated herein by reference, sets forth the entire and only agreement between the parties regarding the subject matter hereof and supersedes any and all prior or contemporaneous agreements, understandings, or proposals whether written or oral, between the parties. In the event of a conflict between this Agreement and any terms and conditions proposed by Seller, the terms and conditions of this Agreement shall control and be binding on the parties. As used in this instrument, 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.