

Bay Photonics LLC - Terms and Conditions of Sale

www.bayphotonics.com & www.scanninglens.com

1. General – The terms and conditions of sale contained herein (the "Agreement") shall apply to all quotations and offers to sell, purchase orders and credit card orders accepted by Bay Photonics LLC (hereinafter "Bay"). Bay's acceptance of any offer to purchase made by or purchase order issued by Buyer is expressly made conditional on the terms and conditions of sale as set forth in this Agreement irrespective of whether the Buyer accepts them in writing, by implication or by acceptance of and payment for the goods sold hereunder. These terms and conditions of sale shall govern the contractual arrangement entered into between Bay and Buyer with respect to the goods and products sold hereunder to the exclusion of any terms or conditions of purchase proposed by Buyer. Buyer's pursuit of products and acceptance of shipment indicates Buyer's acceptance of this Agreement.
2. Quotations and Pricing – Unless otherwise specified in writing, all quotations are firm for and expire thirty (30) days after the date thereof. Budgetary quotations and estimates are for preliminary information only and shall neither constitute offers nor impose any responsibility or liability upon Bay. Prices quoted relate only to the goods referenced in this Agreement and do not include intellectual property, industrial property, or patent rights of any kind, nor shall they include product testing not quoted explicitly. Quoted prices include packaging and apply only to the specific quantities of products stated, but do not include any taxes, transportation charges, insurance, customs fees or duties. All product specifications stated in product literature are subject to revision without notice. Quoted prices are subject to correction for error.
3. Order Acceptance – Orders may consist of faxed or emailed purchase orders and orders submitted electronically via the internet and our web site(s) and those of our credit card processor. All purchase orders (hereinafter called "orders") shall be confirmed in writing and signed by an authorized agent of Buyer. All orders are subject to review and final acceptance by Bay at its sole discretion. Bay specifically reserves the right to reject orders from outside of the United States and Canada. In the event of any conflict between Buyer's order terms and Bay's terms and conditions set forth herein, Bay's terms and conditions shall prevail and the issuance of such order by Buyer shall be deemed to be the Buyer's assent to the foregoing. All orders shall not specify product release dates extending for more than a period of one (1) year, unless otherwise agreed to by Bay. For orders where Bay is to manufacture, procure or otherwise supply custom products according to Buyer's specifications, Bay assumes no responsibility whatsoever in regard to violations of patents or other rights and reserves the right to ship 10% more or less than the quantities ordered.
4. Order Termination or Modification – After acceptance by Bay, Buyer's order is not subject to termination or modification, reduction in quantity or suspension or delay of shipment, except with Bay's explicit written consent. Wholly and partially cancelled orders consented to by Bay are subject to full cancellation charges, based upon shipments made, work in process, and expenses incurred by Bay up to the time of cancellation (including a reasonable profit on such expenses). Any such termination shall be subject to a minimum termination charge of twenty-five percent (25%) of the value of the sales terminated for standard products or fifty percent (50%) of the value of the sales terminated for custom products and services. If delivery of the goods referenced in this Agreement is delayed by Buyer, Bay may invoice Buyer when Bay is prepared to ship. Bay may invoice Buyer immediately upon termination or cancellation or suspension of any order.
5. Taxes – Quoted prices are exclusive of all city, county, state and federal taxes, including, but not limited to taxes on manufacture, sales, receipts, gross income, occupation, use and similar taxes. Any tax or related charge that Bay shall be required to pay to or collect for any government in connection with this Agreement, including, without limitation VAT, sales tax or use tax shall be billed to Buyer as a separate item and paid by Buyer, unless a valid exemption certificate is furnished by Buyer to Bay.
6. Delivery, Title and Risk of Loss – For all shipments, the delivery term for products sold, loaned or leased by Bay to Buyer is FOB Canton, Massachusetts, USA, unless explicitly stated otherwise by the quotation and sales acknowledgement. At Bay's option, shipment may be made from any other location(s) inside or outside of the USA. Title and risk of loss passes to the Buyer at the time Bay affects delivery to a package or freight carrier. Buyer shall bear all expenses for freight, insurance and the risk of loss in transit. Goods held by Bay at Buyer's request beyond the scheduled delivery date shall be at Buyer's risk and expense. Freight and associated duties incurred by Bay in shipping the goods, if agreed to by Bay, shall be invoiced to Buyer. Buyer agrees it is responsible for expenses incurred by Bay where, at Buyer's request, Bay packages product in other than its normal manner.
7. Shipment Date – Quoted shipping dates and lead times are approximate and are based on factory conditions at the time of the quotation. All shipment dates quoted are after receipt of the written order (ARO) signed by Buyer and final acceptance of the order by Bay, unless otherwise agreed to by Bay. Bay shall not be liable for any failure or delay in manufacture, or shipment of products resulting from any case including, but not limited to, provisions of the law or governmental regulations, accident, explosion, fire, windstorm, flood or other casualty, strike, lockout, or other

labor difficulty, riot, war, insurrection and shortage of or inability to secure labor, raw materials, production or transportation facilities. In no case will Bay be liable for loss of profits, or any special or consequential damages, on account of any delay in shipment, delivery, or non-delivery, whether or not excused hereby, or for failure to give notice of any delay.

8. Payment Terms – Bay at its sole discretion allows, modifies and revokes credit. Credit is subject to approval and unless otherwise stated in the quotation or invoice, payment terms for products are net cash thirty (30) days from the date of invoice. Orders placed through Bay's online store, web site(s) and credit card processor are credit card orders, payment is due on or before shipment. Late payments will be charged interest at the rate of one and one half (1½) percent per month, eighteen (18) percent per annum, from maturity of invoice until paid in full. In the event that the stated interest rate is unlawful under the usury laws of any state, the effective interest rate in such state will be charged at the highest rate applicable to contracts permitted by the law of such state. In the event of litigation, Buyer agrees to pay Bay's attorney's fees plus reasonable expenses.
9. Warranty for Optical Assemblies & Optical Components – Laser and non-laser optics (including beam expanders, beam shapers, lenses, mirrors, windows, prisms, filters and the like) are offered and sold by Bay "as is" and without warranty. In no case is warranty considered unless (I) it is submitted to seller in writing within thirty (30) days of receipt and (II) buyer shall cease to use the goods and give seller a full written report including appropriate technical details supporting its claim. In no case is Bay liable for any labor, transportation or other expense required to replace or repair defective goods nor in any event for any general, special or consequential damages arising out of or occasioned by a defect or failure of any goods sold to buyer, nor for any loss arising from the use or resale thereof. BAY PHOTONICS LLC & WWW.SCANNINGLENES.COM SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. IN NO EVENT IS BAY LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The information and content provided by Bay is compiled from a variety of sources and is subject to change without notice as are any products, programs, offerings, or technical information. Bay makes no representation or warranty whatsoever regarding the accuracy, completeness, quality, or adequacy of technical information describing products offered by Bay.
10. Order Returns – No returns will be accepted without Bay's prior authorization. Buyer shall bear all expenses for freight, insurance and the risk of loss in transit. Damaged or failed products

including beam expanders, optics and laser optics may be returned to Bay by Seller freight prepaid for inspection and analysis by Bay and/or its designate. No replacement or substitute products are offered during the inspection and analysis period. Bay may opt to repair or replace products found to exhibit original defects in materials or workmanship at its sole discretion. Replacement parts supplied under warranty may be new or remanufactured. All shipping of warranty repaired or replacement parts is done at Seller's discretion. Expedited delivery service is available at extra cost to the Buyer.

11. Service – Prices quoted for products do not include expenses for transportation, food or lodging for Buyer to visit Bay's facility or premises for inspection of product, nor for services of Bay for supervision of installation and/or initial operation, or instruction of operating personnel, unless explicitly described in writing by Bay.
12. Assignment – Buyer shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of Bay. Any attempted assignment without Bay's consent shall be void and ineffective.
13. Jurisdiction – This Agreement and the performance of Bay's and the Buyer's obligations hereunder shall be governed by the laws of the Commonwealth of Massachusetts, the United States of America. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this Agreement.
14. Entire Agreement – Except for any written agreement between the parties relating to confidentiality of proprietary information, the terms and conditions contained in this Agreement supersede all prior oral or written understandings between Buyer and Bay and shall constitute the entire Agreement with respect to the subject matter of this Agreement. This Agreement shall not be modified or amended except in writing and signed by a duly authorized officer of Buyer and Beamexpander.com.

Revised January 12, 2008