

Onyx Optics Terms and Conditions of Sale

Form # SL 4.3-1 Revision Date: 08/22/01

By placing Purchase Order to ONYX Customer Accepts all of the following Terms and Conditions:

- 1. ACCEPTANCE OF ORDERS** - No purchase order shall be binding unless or until accepted in writing by an authorized employee of ONYX. Any terms or conditions contained in the purchase order or other instrument of Buyer, which are in addition or inconsistent with any of the terms or conditions contained in ONYX' own Terms and Conditions of Sale, shall not be binding on ONYX and shall not apply unless specifically agreed to in writing by an authorized employee of ONYX. This acceptance sets forth the entire understanding between the parties with reference to the subject matter hereof. All clauses contained in law and regulation have been considered by the parties hereto, and those clauses not included are deemed to have been specifically considered and excluded, by mutual agreement of the parties.
- 2. PRICES** - Prices apply only to the specific quantities and delivery schedule shown. Any variation in quantity, specifications and/or rate of delivery may necessitate a revision in unit price. ONYX represents that the unit prices set forth herein do not include any contingencies allowance to cover the possibility of increased costs to ONYX resulting from increases in the prices of base quotation and/or order acceptance to the date of shipment goods, ONYX reserves the right to make an equitable adjustment in the unit price reflecting said change and to invoice accordingly. Prices shown do not include Federal, State or Local taxes. Applicable taxes will be included at the time of invoice. Selling prices do not cover the cost of environmental testing unless specifically so stated.
- 3. CHANGES** - Purchase order changes of Buyer, effected subsequent to acknowledgement of Buyer's purchase order by ONYX, will not be considered effective until mutual agreement has been reached in writing between Buyer and ONYX concerning the effect of said changes on price, delivery, or other terms and conditions of sale.
- 4. DELIVERY** - The delivery date is our best estimate of the time at which material will be shipped from our factory, but ONYX assumes no liability for loss, damage, or consequential damages due to delays.
- 5. FORCE MAJEURE** - ONYX shall not be liable for any delay in delivery for non-delivery, in whole or in part, caused by the occurrence of any contingency beyond the control of ONYX or its suppliers including, but not limited to, war (whether an actual declaration thereof is made or not), sabotage, insurrection, rebellion, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof, judicial action, labor dispute, fire, accident, explosion, epidemic, quarantine, restrictions, storm, flood, earthquake, or other act of God, shortage of labor, fuel, raw material or machinery, delays of suppliers or technical failure, where ONYX has exercised ordinary care in the prevention thereof. If any such contingency occurs, ONYX may allocate production and deliveries among ONYX' customers.
- 6. REMEDIES** - IN NO EVENT SHALL ONYX BE LIABLE FOR CONSEQUENTIAL DAMAGES, SPECIFICALLY, ONYX SHALL NOT BE LIABLE FOR ANY DAMAGES, DIRECT OR INDIRECT, COSTS, EXPENSES, OR ANY OTHER FORM OF LOSS ALLEGED BY BUYER, IRRESPECTIVE OF ANY DELAY ON DELIVERY, FAILURE TO DELIVER, OR ALLEGED NONPERFORMANCE OR MISPERFORMANCE ON ONYX' PART.
- 7. CLAIMS AND REJECTED MATERIAL** - No products may be returned without ONYX' permission in writing.
- 8. SPECIFICATIONS** - ONYX is not responsible for typographical or clerical errors made in any quotations, orders or publications. All such errors are subject to correction.
- 9. TERMS OF PAYMENT** - Unless stated differently above, terms are thirty (30) days from date of invoice, with no discount allowed for earlier payment. In cases where credit is not established satisfactorily, or financial information is not available, the terms are cash with order, or C.O.D. at ONYX's option. If the purchaser becomes delinquent in payments to the company, or refuses to accept C.O.D. shipments, then the company has the right, in addition to any other remedy to which it may be entitled in law or equity, to cancel the sales order, refuse to make further deliveries, and declare due and payable immediately all unpaid amounts for goods previously delivered to the purchaser. Each shipment shall be considered a separate and independent transaction and payment thereof shall be made accordingly.
- 10. SHIPMENT** - ONYX reserves the right to ship and invoice partials of purchase orders. All shipments are made F.O.B. point of shipment (unless otherwise specified) and the costs of boxing and packing for domestic shipment is included in the quoted prices. When special domestic or export packaging is specified, involving greater expense than that customarily incurred, a charge may be made to cover such extra expenses. When ordering, method of shipment should be clearly stated. Unless otherwise specified we will normally use the best, least expensive surface transportation. Reasonable care is exercised in packaging our products for shipment and we assume no responsibility for delay, breakage or damage after having made delivery in good order to the carrier. Shipments will not be insured unless a specific request is made by the purchaser, in which case a charge will be made to pay for the costs of this coverage. All claims for breakage and damage should be made to the carrier, but at the purchaser's request. ONYX will render all possible assistance in securing satisfactory adjustment of such claims.
- 11 TERMINATIONS** - Any order once accepted by ONYX (i.e., to which an acknowledgement has been forwarded to Buyer by ONYX) cannot be terminated by Buyer (unless ONYX has previously expressly indicated in writing its inability to provide the item within the specifications applicable to the purchase order), without provision for cancellation costs to ONYX. Said cancellation costs shall be such as shall fully reimburse ONYX for reasonable costs incurred to the date of termination of the order, including all applicable material and labor costs, applicable administrative costs, and any loss of profit resulting from placing Buyer in backlog of orders entered. Additionally, the provisions of DFARS 252.227-1 shall apply to all orders where items are intended for end use by the Government, and where the order is terminated for convenience of the Buyer and/or the Government.
- 12. PATENTS AND RIGHTS TO TECHNOLOGY** -
Property Rights - Purchaser agrees that ONYX owns all right, title, and interest in the products to be supplied for this Purchase Order, and in all of ONYX' patents, trademarks, trade names, know-how, and trade secrets relating to the design, manufacture, operation or service of the products. Prices quoted are for products only and do not include technical data, proprietary rights of any kind, patent rights, and are exclusive of license fees.
Any technology that is developed by ONYX during the course of a purchase order remains the property of ONYX, and purchaser assumes no intellectual property rights or rights restricting ONYX in offering a similar product in the future to other customers based on this work.
Sale Conveys no Right to Manufacture or Copy - The products are offered for sale and are sold by ONYX subject in every case to the condition that such sale does not convey any license, expressly or by implication, to manufacture, duplicate or otherwise copy or reproduce any of the products.
- Confidentiality** - Purchaser acknowledges that by reason of its relationship to ONYX hereunder it may have access to certain information and materials concerning ONYX' business, plans, customers, technology, and products that are confidential and of substantial value to ONYX, which value would be impaired if such information were disclosed to third parties. Purchaser agrees that it will not use in any way for its own account or the account of any third party, nor disclose to any third party, any such confidential information revealed to it by ONYX. Purchaser shall take every reasonable precaution to protect the confidentiality of such information. Upon request by Purchaser, ONYX shall advise whether or not it considers any particular information or materials to be confidential. Purchaser shall not publish any technical description of the products beyond the description published by ONYX. In the event of termination of this contract, there shall be no use or disclosure by Purchaser of any confidential information of ONYX, and Purchaser shall not manufacture or have manufactured any devices, components, or assemblies utilizing any of ONYX' confidential information.
- 13. TAXES** - Federal, State or Local taxes, if any, must be added to the net prices and will be shown as a separate item upon invoices and shall be borne by the customer.
- 14. INSPECTION AND AUDIT** - Examination of ONYX' books and records is restricted solely to the Comptroller General of the United States to the extent authorized and required under public law.
- 15. LAW** - The validity, construction and performance of contract created by this acknowledgement shall be governed by the laws of the State of California. Customer hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof.
- 16. REMEDIES** - ONYX shall have the right to terminate any order, or to delay the shipment thereof, by reason of Buyer's bankruptcy or insolvency, breach of any terms herein, assignment without advance written approval, the pendency of any proceedings against the Buyer under any statute for the relief of debtors; if ONYX learns that the Ultimate Destination is other than shown on the face hereof or the failure of Buyer to meet any other reasonable requirements established by ONYX (including acts or omissions of Buyer which may delay production).
- 17. ULTIMATE DESTINATION** - Buyer agrees that the Ultimate Destination of these products is in the United States of America, unless otherwise stated on the face hereof, and as such Buyer will not resell or transfer these products outside the USA. If Buyer has stated that the Ultimate Destination is outside of the USA, Buyer shall comply with all applicable laws, regulations or treaties relating to the sale and destination of the products, including without limitation, U.S. export control regulations. Without limiting the foregoing, 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 indemnify ONYX for any damages or costs to ONYX arising from Buyer's failure to comply with these terms.