

## Lumibird Photonics USA, Inc. Terms and Conditions

**Supplier represents, warrants, and agrees:** The Work provided under this Contract is new and not used or aged unless explicitly stated in the Purchase Order (PO). The Work must strictly comply with all requirements of the Contract, including the specifications referenced in the PO. The Supplier will promptly notify Lumibird Photonics USA, Inc. (“LPUSA”) of any changes to the manufacturing process, location, supply base, or other factors that may affect compliance with the Work. The Work must be free from any liens, licenses, claims, and encumbrances. It must be performed by qualified personnel with due diligence and in accordance with the applicable industry quality standards. Furthermore, the Work is considered a Commercial Off-The-Shelf (COTS) item as defined by Federal Acquisition Regulation (FAR) § 2.101.

The Work must strictly comply with all applicable laws and regulations and must not infringe, violate, or misappropriate the rights of any third party. It must not include any open-source software or code governed by an open-source license. The Work must also be free from chemical substances prohibited by the Environmental Protection Agency (EPA) under the Toxic Substances Control Act Management Action, asbestos mineral fibers, and conflict minerals as defined by the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010.

**Acceptance:** Acceptance of this order by Seller is expressly limited to the terms and conditions contained in this order. Any term or condition stated by the Seller in any prior proposal, or stated on Seller’s acknowledgement form is deemed by Buyer to be a material alteration of this order and is hereby objected to by Buyer. Any such terms or conditions shall be totally inapplicable to this order, unless specifically agreed to in writing and signed by Buyer. Acceptance of goods or services covered by this order will not constitute acceptance by Buyer of Seller’s terms and conditions. Any of the following acts by Seller shall constitute acceptance of this order and all of its terms and conditions: signing and returning a copy of this order or an acknowledgment form, delivery of goods ordered, or informing the Buyer in any manner of commencement of performance.

**Delivery, Shipping:** On time delivery is of utmost importance. Seller shall be held liable for premium transportation costs if contract delivery schedules are not met. Buyer has the right to refuse goods, without penalty, which do not arrive according to the schedule contained in the purchase order. Seller may also be liable for all costs and liabilities incurred by the Buyer as a result of late or lost deliveries, including without limitation, all costs incurred by the Buyer in purchasing goods elsewhere. Acceptance by the Buyer of a late delivery shall not constitute a waiver or prejudice the Buyer’s claim for any damage the late delivery may have caused. Loss of, or damage to goods not packed in such a manner as to insure proper protection to same shall be borne by Seller. Each package of goods shipped must contain a complete packing list, referencing the purchase order and Buyer’s in house part numbers.

**Warranty:** Seller, by accepting this order, warrants that the items and/or services to be furnished will be in full conformity with Buyer’s specifications, drawings and data, and will be fit for the use intended by the Buyer. Seller agrees that this warranty shall survive the acceptance (installation) of the items and services. All warranties of Seller, or Seller’s subcontractors or suppliers shall remain in effect as to each item and each increment of service, for a minimum of one year after final acceptance or the length of the published standard warranty (after final acceptance), regardless of when delivery occurred or when payment was made.

**Inspection and Rejection:** Upon request, all inspections records related to the items shall be available to the Buyer during the performance of this PO. No inspections or acceptance of the items shall relieve the Seller from responsibilities for any defects in the items, or for latent defects. If items shipped are rejected, upon notifying the Seller in writing, Buyer may purchase like goods elsewhere and/or obtain like services elsewhere and charge Seller with any loss (direct or indirect) sustained by Buyer (including any difference between the price paid by Buyer as specified on the face hereof), plus all costs of collecting the same. Buyer shall not be obligated to pay for any goods shipped and/or services rendered when rejected, including all associated shipping charges. Upon specific notification by Buyer, Seller shall promptly repair or replace each defective item, or issue full credit.

**Proprietary, Patents, and Confidentiality:** All information obtained by Seller from Buyer, including all drawings and or specifications, shall be: considered proprietary, received in strict confidence, and shall remain the property of Buyer. Seller shall not disclose this information to any other party, except for the purpose of performance for this PO, without prior written consent from Buyer. Seller shall take all reasonable precautions to protect confidentiality of such information. Seller also warrants the items furnished hereunder do not infringe or violate any United States or Canadian patent, trademark, copyright, trade secret or any other proprietary right of any third party.

**Force Majeure:** Buyer shall not be liable for any default hereunder due to acts of God or of the public enemy, acts of the American government or any agency thereof, fire flood, epidemic, or quarantine restrictions, strikes, and freight

embargoes, or to other causes whatsoever that are beyond the immediate and direct control of the Buyer. Buyer may, without liability, by written notice to Seller either a): cancel this PO, in whole or part, as to any undelivered goods and/or unrendered services or b): suspend/delay, in whole or in part, deliveries of goods and/or acceptance of services by Seller for the period and to the extent of such prevention, impairment, delay or restriction. This contract shall be interpreted according to the laws of the State of Montana.

**Compliance with Law, Indemnity:** Seller shall comply with all federal, state, and local laws, ordinances and regulations as well as all executive and administrative orders, rules or regulations applicable to the manufacture, sale, delivery, packaging or labeling of the goods ordered in Seller's performance of any service hereunder, including without limitation, the Fair Labor Standards Act of 1938, as amended. Upon request, Seller will furnish Buyer a certificate of compliance with any such laws, orders or regulations in such form as Buyer may require. If any work is done or service performed on Buyer's premises, Seller shall defend, indemnify and hold Buyer and our customers harmless from and against any liability, loss and/or cost of expense. Ex Order 11246, as amended, section 402 of Vietnam Era Vet. Readjustment Act of 1972, as amended and Sec. 503 of the Rehabilitation Act of 1973, as amended, contain required contract clauses relative to Equal Employment Opportunity and Affirmative Action are incorporated herein by specific reference, where applicable. compliance with Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Conflict Minerals). If Seller is exempt from Conflict Mineral compliance and uses 3TG minerals in supplied product, Seller shall notify Buyer accordingly.

**Commercial Items/Indemnity:** Seller shall provide only Products which are "commercial items," as that term is defined in the United States ("U.S.") Federal Acquisition Regulations ("FAR") at FAR 2.101, unless stated otherwise in the Purchase Order, or otherwise agreed in advance and in writing. In the event Buyer is subject to any liability, damage, or expense, including without limitation, U.S. government ("U.S. Government") withholding of payments, due to a finding or determination by the U.S. Government's contracting officer that an item designated as a commercial item is not a commercial item, then SELLER AGREES TO INDEMNIFY AND HOLD BUYER AND ITS AFFILIATES HARMLESS TO THE FULL EXTENT OF ANY SUCH LIABILITY, DAMAGE, OR EXPENSE RESULTING IN WHOLE OR IN PART FROM SUCH FINDING OR DETERMINATION. Additionally, in the event of such finding or determination, the FAR and U.S. Defense Acquisition Regulation Supplement ("DFARS") clauses, and the applicable cost accounting standard appendix, if any, as is determined to be applicable pursuant to appropriate regulations, shall be applicable as of the effective date of the Purchase Order.

**Counterfeit Parts Policy:** Only new and authentic materials are to be used in products delivered to Buyer. No counterfeit or suspect counterfeit parts are to be contained within the delivered product. Parts shall be purchased directly from the OCM's/OEM's or through the OCM's/OEM's Authorized Distributor. Independent Distributors (Brokers) shall not be used without the written consent from the Buyer. Supplier shall be liable for the cost of Counterfeit Parts and Suspect Counterfeit Electronic Parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts.

**Cancellation:** Upon written notice to Seller, Buyer may cancel all or any separable part of the Purchase Order. Seller immediately shall stop all work on the Products, place no additional orders, and cancel its existing orders on the best possible terms. Pending Buyer's instructions, Seller shall preserve and protect Products on hand, work in progress, supplier data, and completed Products, both in its own and in its supplier's facilities. Buyer shall have the immediate right to remove from Seller's premises the Products and all drawings, records, and parts paid for by Buyer. Buyer's only cancellation payment, if any, shall be that amount that reflects the part of the Purchase Order satisfactorily performed before cancellation, less money already paid to Seller. Seller is not entitled to recover for lost profits or other consequential or incidental damages.

**Changes:** Buyer may make changes in the character or quantity of the Products, or in the manner or time of performance of the Purchase Order. Buyer's changes must be communicated to Seller in writing signed by a duly authorized representative of the Buyer. An equitable adjustment in the price and time for performance will be made by the parties in writing if such changes result in a decrease or increase in the Seller's cost or time of performance. Seller shall make no change or revision without Buyer's prior written consent, and any change requested by Buyer shall be subject to review by Seller for impact on Seller's warranty. No claim by Seller for an adjustment in the price or in the time of performance shall be considered unless presented to Buyer in writing within ten (10) days after Seller learns of the claim.

**Export Control:**

a) SELLER shall comply with all applicable United States export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751- 2799aa-2, the International Traffic in

Arms Regulation (ITAR), 22 C.F.R. 120 et seq., the Export Administration Act, 50 U.S.C. app. 2401-2420, the Export Administration Regulations, 15 C.F.R. 730- 774, and the regulations of the Office of Foreign Assets Control (31 C.F.R. Parts 500-595). SELLER shall obtain all required export licenses and agreements necessary to perform SELLER's Work, as applicable.

b) Without limiting the foregoing, SELLER shall not transfer any export-controlled item, data or services, to include transfer to a person who is not a "U.S. Person" as defined in the ITAR (22 C.F.R. 120.15), without the authority of a United States Government export license, technical assistance agreement, or other authority. The restrictions on the transfer of export controlled data apply equally to data furnished by Lumibird Photonics USA, Inc. and to any such data incorporated in documents generated by SELLER. Additionally, no disclosure of data furnished by Lumibird Photonics USA, Inc. can be made unless and until Lumibird Photonics USA, Inc. has considered the request and provided its written approval through contractually authorized channels. SELLER will strictly comply with the conditions in any such approval and in the export license or other Government authorization for such disclosure.

c) Further, a United States Government export license, export agreement, or applicable license exemption or exception shall be obtained by SELLER prior to the transfer of any export-controlled item, data or services to any U.S. Person that is employed by any "Foreign person" within the meaning of 22 C.F.R. 120.16.

d) SELLER shall notify in writing the Lumibird Photonics USA, Inc. Purchasing Representative if any use, sale, import or export by Lumibird Photonics USA, Inc. of Work to be delivered under this Contract is restricted by any export control laws or regulations applicable to SELLER.

e) SELLER shall immediately notify in writing the Lumibird Photonics USA, Inc. Purchasing Representative if SELLER is listed in any Denied Parties List or if SELLER's export privileges are otherwise denied, suspended or revoked in whole or in part by any government entity or agency.

f) If SELLER is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, SELLER represents that it maintains an effective export/import compliance program in accordance with the ITAR and it is registered with the United States Office of Defense Trade Controls (unless covered by one of the exemptions set forth in 22 C.F.R. 122.1) as required by the ITAR.

g) Where SELLER is a signatory under a Lumibird Photonics USA, Inc. export license or export agreement (e.g. Technical Assistance Agreement, Manufacturing License Agreement), SELLER shall provide immediate written notification to the Lumibird Photonics USA, Inc. Purchasing Representative in the event of changed circumstances affecting said license or agreement.

h) SELLER acknowledges and confirms that if under this contract SELLER manufactures, exports, or brokers defense articles, related technical data or defense services as defined on the United States Munitions List (Part 121 of the ITAR), SELLER is so registered with the Directorate of Defense Trade Controls (DDTC), Department of State. (applicable to companies operating in the U.S. only).

**Federal Acquisition Regulations & Flow Down Clauses:** Seller acknowledges that Lumibird Photonics USA, Inc. is a U.S. Government contractor and agrees to comply with the Government acquisition regulations and flow down provisions as set forth on 06-P-012, Lumibird Photonics USA, Inc FAR and DFARS Flowdown Provisions, found at <https://www.lumibird.com/cga-gpc/> except the word "Buyer" shall be substituted for the words "Contracting Officer" and the term "Seller" shall be substituted for "Contractor" wherever such words appear. Seller shall include in each lower-tier subcontract or purchase order the appropriate flow down clauses as required by the FAR and agency supplements, including the DFARS. 20.

**Subcontractors AND Suppliers:** If a portion of the work involved in the performance of the Purchase Order is subcontracted to another party, and before using such subcontractors or suppliers in the performance of the Purchase Order, Seller shall obtain Buyer's written consent and incorporate these Terms and Conditions into the subject subcontracts, including key characteristics where required.

**Compliance with Requirement to Submit Cost or Pricing Data:** Should Buyer require Seller to submit cost or pricing data under this Purchase Order, or in entering into this Purchase Order, Seller agrees to submit current, accurate, and complete cost or pricing data and certify that the cost or pricing data is current, accurate, and complete as of the date specified by Buyer. Should Seller fail or refuse to comply with this requirement, Seller shall indemnify, defend, and hold harmless Buyer, its Affiliates, and their respective successors and assigns, from and against all liability, cost, and expense that it may incur in connection with such failure or refusal, including, without limitation, the amount (plus any related interest assessed by the U.S. Government) by which Buyer's contract price may be

adjusted because either the prime contract or the Purchase Order is determined by the U.S. Government to have been defectively priced because of such failure or refusal.

**Cyber Security:** The Seller and each of its subsidiaries have taken all technical and organizational measures necessary to protect the information technology systems and data used in connection with the operation of the Seller's and its subsidiaries' businesses. Without limiting the foregoing, the Seller and its subsidiaries have used reasonable efforts to establish and maintain, and have established, maintained, implemented and complied with, reasonable information technology, information security, cyber security and data protection controls, policies and procedures, including oversight, access controls, encryption, technological and physical safeguards and business continuity/disaster recovery and security plans that are designed to protect against and prevent breach, destruction, loss, unauthorized distribution, use, access, disablement, misappropriation or modification, or other compromise or misuse of or relating to any information technology system or data used in connection with the operation of the Seller's and its subsidiaries' businesses ("Breach"). There has been no such Breach, and the Seller and its subsidiaries have not been notified of and have no knowledge of any event or condition that would reasonably be expected to result in, any such Breach. In the event of a Breach, Seller shall notify Buyer of such event, including the mitigating actions taken.

**IT IS SELLER'S RESPONSIBILITY TO ADVISE THE BUYER, IN WRITING, WITHIN TEN DAYS OF PLACEMENT OF ORDER SHOULD THE SELLER BE UNABLE TO HONOR ITS COMMITMENTS HEREUNDER.**