



OCEAN OPTICS STANDARD TERMS AND CONDITIONS OF SALE

Except as otherwise set forth in a distributor agreement (a "Distributor Agreement"), if any, executed by Ocean Optics, Inc., a Florida corporation ("Ocean Optics") and a purchaser of Ocean Optics' products (a "Buyer"), these terms and conditions govern all sales of products (excluding stand-alone software) ("Products") and services ("Services") by Ocean Optics to Buyer regardless of whether Buyer purchases Products and Services by a Distributor Agreement, or by written purchase orders, electronic orders, verbal or written quotations, or any other writings or communications from Ocean Optics and/or Buyer relating to the Products and Services (collectively or individually, an "Order"). "Sales Terms" shall refer to these terms and conditions as amended from time to time. Buyer may not resell any Products or Services except in accordance with a Distributor Agreement.

Agreement. All Orders are subject to acceptance by Ocean Optics. Ocean Optics' acceptance of any Order is expressly conditioned upon Buyer's acceptance of each and all of these Sales Terms. Buyer's acceptance of these Sales Terms shall be conclusively presumed from Buyer's failure to object to these Sales Terms in writing, or from Buyer's acceptance of all or any part of the Products and Services ordered.

Notwithstanding anything to the contrary contained in these Sales Terms, Ocean Optics may, from time to time change the Services without the consent of Buyer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Order.

By accepting these Sales Terms, Buyer expressly agrees to comply with Ocean Optics' code of conduct (as published on [Code of Conduct – Halma plc](#)) ("Halma Code of Conduct"). Buyer further represents and warrants that its entire business, including all related business activities, are and will remain in full compliance with the provisions set out in the Halma Code of Conduct.

Order of Precedence. No addition to or modification of these Sales Terms will be binding upon Ocean Optics unless specifically agreed to by Ocean Optics in writing. If the Order or other communications contain terms or conditions different from or in addition to these Sales Terms, acceptance of any Order by Ocean Optics shall not be considered as acceptance of such different or additional terms and conditions, or constitute a waiver by Ocean Optics of any of these Sales Terms. In case of conflict with any other document, these Sales Terms shall control. Any reference to the Buyer's purchase order or any other documents by Ocean Optics shall not affect or limit the applicability of these Sales Terms.

Packaging. Ocean Optics shall use its standard commercially reasonable packaging for the method of transportation used for each Order. Any special packaging requests made by Buyer will be accepted at the sole discretion of Ocean Optics. If accepted, all additional costs for such packaging shall be the Buyer's responsibility.

Ordering Quantities. Quantities of each Order must meet any requirements set forth in the Distributor Agreement or the Ocean Optics price list in effect at the time the Order is accepted. Ocean Optics reserves the right to increase or decrease Order quantities to achieve any applicable quantity requirements set forth in the Distributor Agreement or the Ocean Optics price list. Any such modifications to Order quantities may be made without prior notice to Buyer, and Buyer shall not impose any penalty for over (under) shipping with respect to such Order.

Transportation. Ocean Optics will use reasonable efforts to comply with Buyer's requests for method of transportation, but Ocean Optics reserves the right to use an alternate method of transportation, whether or not at a higher cost to Buyer, if the method requested by Buyer is deemed by Ocean Optics to be unavailable or otherwise unsatisfactory. In any such case, Ocean Optics shall promptly notify Buyer of such change. Any agreed delivery date indicated in a Distributor Agreement or Order is estimated but is not guaranteed. Ocean Optics will endeavor to meet the delivery date specified by Buyer. If Ocean Optics is unable to meet that date, Buyer has no claim for damages resulting from any such delay in delivery. Ocean Optics shall be entitled to make and invoice for partial shipments.

Ocean Optics shall use reasonable efforts to meet any performance dates to render the Services specified in the Order, but any such dates shall be estimates only.

Services. With respect to the Services, Buyer shall (i) cooperate with Ocean Optics in all matters relating to the Services and provide such access to Buyer's premises, and such office accommodation and other facilities as may reasonably be requested by Ocean Optics, for the purposes of performing the Services; (ii) respond promptly to any Ocean Optics request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Ocean Optics to perform Services in accordance with the requirements of this Agreement; (iii) provide such customer materials or information as Ocean Optics may request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

Price. Unless otherwise specified, (a) all prices, quotations, shipments and deliveries by Ocean Optics are FCA Ocean Optics' facility ("Delivery Point"), Incoterms 2020; (b) all Orders are accepted subject to Ocean Optics' then-current published list price, including all applicable base prices, related extras and deductions; and (c) all agreed upon freight charges are the responsibility of Buyer. Orders are not binding upon Ocean Optics until accepted by Ocean Optics. Any quotations given by Ocean Optics will be valid for the period stated on the quotation. Notwithstanding anything herein to the contrary, where an Ocean Optics quotation or price list contains a print or other error or an ambiguity, such as a price which Buyer knew or should have known was not realistic, Ocean Optics shall be entitled to revoke its quotation or to cancel the relevant Order without having a duty to provide compensation for any costs or damage. This clause shall also apply in the event that Buyer has accepted the relevant quotation.

If Ocean Optics agrees to arrange freight for any Order, Buyer will be responsible for either the actual, average or mixed freight costs and insurance costs incurred in shipping the Products to the Buyer, as agreed by the parties prior to shipping. Ocean Optics shall not be responsible for delivery errors attributable to the freight carrier, including penalties, late charges, demurrage or other fees (collectively, "Delivery Claims"); however, Ocean Optics will submit Buyer's Delivery Claims to the carrier and make reasonable attempts to seek reimbursement for any unwarranted Delivery Claims.

Buyer agrees to reimburse Ocean Optics for all reasonable travel and out-of-pocket expenses incurred by Ocean Optics in connection with the performance of the Services.

Taxes. Any tax which Ocean Optics may be required to pay or collect under any existing or future law applicable to the sale, purchase, delivery, transportation, storage, processing, use or consumption of any Products described herein, including without limitation, taxes upon or measured by receipts from sales, shall be for the account of Buyer and may be added to the price of the Products. Buyer shall promptly pay the amount of the taxes to Ocean Optics upon demand but may, in lieu of such payment, provide to Ocean Optics tax exemption certificates acceptable to the appropriate taxing authorities.

Setoff; Deductions. Buyer shall not deduct any amounts from the amounts owed by Buyer to Ocean Optics unless specifically authorized in writing by Ocean Optics.

Credit. All Orders are subject to the approval of Ocean Optics' Finance Department. Ocean Optics may refuse to make shipment or delivery at any time if Buyer fails to fulfill the terms and conditions of payment or fails to provide security in compliance with Ocean Optics' credit policies. Ocean Optics' policies or practices may be changed at any time by Ocean Optics. Ocean Optics may require payment in full or other security in advance. Without limiting any of the foregoing, if Buyer becomes the subject of a bankruptcy or other insolvency proceeding, or fails to pay Ocean Optics' invoices as they become due, Ocean Optics reserves the right to: (a) cancel all or any part of a Distributor Agreement or Order; (b) modify the terms of payment prior to shipment; (c) require "Cash in Advance" terms; or (d) delay or cancel any Product shipment.

Default in Payment. If Buyer fails to make payments on any contract between Buyer and Ocean Optics in accordance with Ocean Optics’ terms, Ocean Optics, in addition to any other remedies available to it, may at its option (a) suspend any further shipment until such payments are made and satisfactory credit arrangements are reestablished; or (b) cancel the unshipped balance of any Order. Any amounts which are not paid when due shall bear interest from the date payment was due until the date payment is received by Ocean Optics, at a rate of interest equal to the lower of (i) 1.5% per month or (ii) the highest rate of interest permitted under applicable law. Buyer will be responsible for all costs of collection of unpaid invoices, including reasonable attorney’s fees.

Title and Risk of Loss. Title and risk of loss pass to Buyer upon delivery of the Products at the Delivery Point. As collateral security for the payment of the purchase price of the Products, Buyer hereby grants to Ocean Optics a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the New York Uniform Commercial Code.

Quality Assurance. Ocean Optics shall have no obligation to ensure that any Products purchased from Ocean Optics meet any special quality assurance specifications and/or other requirements unless such specifications and/or other requirements are set forth in the Order and expressly accepted by Ocean Optics.

Technical Assistance. Unless expressly agreed to in writing by Ocean Optics, Ocean Optics assumes no obligation or liability for any technical advice provided by Ocean Optics with respect to the use of Products furnished to Buyer, or for any results occurring due to the application of such advice and Buyer shall have sole responsibility for selecting and specifying the Products that are appropriate for Buyer’s end use.

Returns. Buyer may return all Products comprised of Ocean Optics’ standard manufactured items up to 30 days from date of shipment for a refund or credit, subject to a 25% restocking fee.

For light source returns, Buyer will incur a charge for bulb replacement in addition to the 25% restocking fee.

Buyer may return any custom configured Products up to 30 days from the date of shipment for a refund or credit, subject to a 50% restocking fee.

Buyer may not return any Products without first obtaining prior authorization from an Ocean Optics customer service representative by submitting a Support/RMA Request Form at OceanOptics.com.

Buyer may not return any replacement bulbs, batteries, other consumables or software. All such sales are final.

Inspection and Rejection of Damaged Products. Buyer shall inspect the Products upon receipt. If (a) any Products arrive at Buyer’s destination in a damaged condition, (b) the Product received is different than identified in the Order, or (c) there is a shortage or overage of ordered Products (all such occurrences, “Non-conforming Deliveries”), Buyer shall immediately report the damage or shortage to the delivering carrier and to Ocean Optics and report any other Non-conforming Deliveries to Ocean Optics. Any loss or shortage caused by damage in transit will be for account of Buyer. Ocean Optics will not be responsible for (i) any damaged fibers or probes reported more than 14 days from Buyer’s documented receipt thereof, (ii) any non-external visible defect with the Products reported more than 14 days from Buyer’s documented receipt thereof, or (iii) any other Non-conforming Deliveries reported more than 5 days from Buyer’s documented receipt thereof. Any claim made against Ocean Optics with regard to Non-Conforming Deliveries shall lapse if not reported to Ocean Optics within the time periods set forth in this Section.

If Buyer timely notifies Ocean Optics of any Non-conforming Deliveries (other than any loss or shortage caused by damage in transit), Ocean Optics shall, in its sole discretion, (i) replace any damaged or incorrectly supplied Products comprising a part of the Non-conforming Delivery and supply any shortage of Products in the Non-conforming Delivery, or (ii) credit or refund the Price for any damaged, incorrectly supplied, or shortage of Products in the Non-

conforming Delivery. If directed by Ocean Optics, Buyer shall ship any damaged, incorrectly supplied, or overage of Products to Ocean Optics’ facility. Buyer acknowledges and agrees that the remedies set forth in this Section are Buyer’s exclusive remedies for any Non-conforming Delivery.

Name, Logo, Trademarks. Buyer may not use or reference Ocean Optics’ name, logo, trademark or any other intellectual property right of Ocean Optics for any purpose whatsoever, without Ocean Optics’ prior written consent.

IP Rights. As between Buyer and Ocean Optics, Ocean Optics and its suppliers own all patent, copyright, trademark, and other intellectual property and proprietary rights in and to the Products (collectively, “OCEAN OPTICS IP”), and no ownership of OCEAN OPTICS IP transfers to Buyer hereunder or by virtue of sale of a Products. OCEAN OPTICS IP is merely licensed and not sold. Buyer shall have a right to use any firmware or software embedded on or integrated in a Product subject to the “Software Terms” section below.

Express Limited Warranties. Ocean Optics warrants to Buyer that the Products will be free from defects in materials and workmanship (the “Limited Products Warranty”) for the applicable warranty period set forth below (the “Products Warranty Period”).

Product	Products Warranty Period
All standard Products including miniature fiber optic spectrometers, spectral sensors, light sources and sampling accessories, regardless of the application	3 years from date of purchase
Non-standard Products, fibers and probes, LTMS control unit and fluid handling parts	1 year from date of purchase
LTMS consumable parts	90 days from date of purchase
OEM Products	1 year from date of purchase unless otherwise stated at the time of sale

For purposes of these Sales Terms, “OEM Products” means Products which are sold to Buyer for the purpose of integration into Buyer’s finished products.

The Limited Products Warranty applicable to the particular Products shall apply to the hardware components of Products purchased by Buyer pursuant to these Sales Terms. The warranty, if any, in respect of any firmware or software embedded on or integrated in a Product is set forth below in the Section titled “Software Terms”.

Replacement bulbs, batteries, and other consumables are not covered by the Limited Products Warranty.

THE LIMITED PRODUCTS WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTIES OF ANY KIND (WHETHER ARISING BY IMPLICATION OR BY OPERATION OF LAW) WITH RESPECT TO THE PRODUCTS. OCEAN OPTICS HEREBY DISCLAIMS ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED.

If Buyer discovers that any of the Products fail to meet the Limited Products Warranty within the applicable Products Warranty Period, Buyer shall promptly notify Ocean Optics. If Ocean Optics determines that the Products are in breach of the Limited Products Warranty, then Ocean Optics will, at its sole discretion, either replace the non-conforming Products at no cost to Buyer or refund the purchase price of the non-conforming Products to Buyer. If any replaced Products fail to conform to the Limited Products Warranty, and written notice of such non-conformity is provided to Ocean Optics promptly after discovery and within the original Products Warranty Period applicable to such Products or 30 days from completion of such replacement, whichever is later, Ocean Optics will replace such non-conforming Products. The original Products Warranty Period shall not otherwise be extended. **SUCH REPLACEMENT OR REFUND IS THE SOLE LIABILITY OF OCEAN OPTICS AND THE EXCLUSIVE REMEDY OF BUYER FOR ANY BREACH OF THE LIMITED PRODUCTS WARRANTY.** In no event shall any Products be returned, reworked or scrapped by Buyer without the express written consent of Ocean Optics.

Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to, or packaged together with, the Products. Notwithstanding anything herein to the contrary, the Products Warranty Period applicable to Third Party Products shall extend only for the length of the warranty period, if any, provided by the supplier of such Third Party Products.

For a period of 90 days after the date of completion of Services (the "Services Warranty Period"), Ocean Optics warrants to Buyer that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under the Order ("Limited Services Warranty"). **EXCEPT FOR THE LIMITED SERVICES WARRANTY, OCEAN OPTICS MAKES NO WARRANTIES WHATSOEVER WITH RESPECT TO THE SERVICES. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, ARE EXPRESSLY DISCLAIMED.**

If Buyer discovers that any of the Services fail to meet the Limited Services Warranty within the applicable Services Warranty Period, Buyer shall promptly notify Ocean Optics. If Ocean Optics determines that the Services are in breach of the Limited Services Warranty, then Ocean Optics will, at its sole discretion, repair or reperform the applicable Services at no cost to Buyer or credit or refund the price of such Services at the pro rata contract rate. If any repaired or reperformed Services fail to conform to the Limited Services Warranty, and written notice of such non-conformity is provided to Ocean Optics promptly after discovery and within the original Services Warranty Period applicable to such Services or 30 days from completion of such repair or reperformance, whichever is later, Ocean Optics will repair or reperform such non-conforming Services. The original Services Warranty Period shall not otherwise be extended. **THE FOREGOING REMEDIES ARE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND OCEAN OPTICS' ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED SERVICES WARRANTY.**

Conditions to Limited Warranties. Products or Services will not be considered to be in breach of the Limited Products Warranty or Limited Services Warranty, as applicable, if: (a) the Products are not stored or handled appropriately after delivery by Ocean Optics; (b) the non-conformity of the Products resulted from damages occurring after Ocean Optics' delivery of the Products, including damage occurring in transit; (c) the non-conformity is caused by accident, improper use or misuse – such as using an incorrect power supply or power current – abuse, Product modification, neglect or (other) use contrary to any instructions or the relevant user manual or use that is contrary to the purposes for which the relevant Product or component is intended; (d) the non-conformity results from the performance of repairs by someone not authorized by Ocean Optics; (e) the non-conformity is caused by installation of parts that do not conform to Ocean Optics specifications; (f) the non-conformity occurs as a result of the application of any government regulation concerning the nature or quality of the materials used for the Product; (g) the non-conformity occurs as a result of the use of the relevant Products as employed or applied at the request or on the instructions of Buyer; (h) Buyer makes further use of the Product after discovering the relevant breach of the Limited Products Warranty; (i) the damage arises from normal use, scratching and cosmetic damage not affecting the performance of the Products; or (j) Buyer fails to report the non-conformity of the Products to Ocean Optics in writing within the earlier of (I) 10 days after the Buyer has learned of the non-conformity of the Products or Services or (II) the end of the Products Warranty Period or Services Warranty Period, as applicable. If Buyer or any purchaser from Buyer shall alter or modify the Products without Ocean Optics' prior written consent, and any claims are asserted against Ocean Optics due to such alteration or modification, Buyer shall defend, indemnify, and hold Ocean Optics harmless against any and all damages, liabilities, expenses and costs in connection therewith or resulting therefrom.

Software Terms.

- (a) These terms have the following meaning for purposes of this "Software Terms" section:
- The term "Machine Code" means all software code provided for a Machine (including, without limitation, a Machine's firmware and microcode), excluding code that is licensed under a license agreement other than these Sales Terms. The term Machine

Code specifically includes any whole or partial copy of Machine Code, and any fix, patch, replacement, update or upgrade provided for Machine Code.

- The term "Machine" means a spectrometer sold by Ocean Optics subject to these Sales Terms. Machines are a subset of Products under these Sales Terms. Machine Code is deemed to be part of a Machine and is not a separate Product.

For clarity, this Software Terms section applies only to Machine Code provided with a Machine. Standalone software products are governed by their separate applicable software license agreements.

- (b) Acceptance of these Sales Terms authorizes the owner of a Machine, whether Buyer or its end user customer if Buyer is a reseller under a Distributor Agreement with Ocean Optics ("Authorized User") to use Machine Code with the specific Machine for which it is provided on a nonexclusive basis on, or in conjunction with, only the Machine for which Ocean Optics provided the Machine Code as necessary to only do the following: (i) execute Machine Code to enable the Machine to function according to its specifications; (ii) make a reasonable number of copies of Machine Code to be used solely for backup or archival purposes, provided the Authorized User reproduces the copyright notices and any other legend of ownership on any such copies; and (iii) to execute and display Machine Code as necessary to maintain the Machine. These rights will terminate when the Authorized User no longer possesses the Machine. Buyer is required to flow down the terms of this "Software Terms" section to its buyer contractually if Buyer is not the end user of the Machine it purchases from Ocean Optics.
- (c) Permitted use of Machine Code under subsection (b) immediately above is conditioned on the Authorized User not engaging in the following prohibited practices: (i) not copying, displaying, transferring, adapting, modifying, or distributing (electronically or otherwise) Machine Code, except as Ocean Optics may authorize in a Machine's user documentation or in writing to Buyer; (ii) not reverse engineering, reverse assembling, reverse compiling, or otherwise translating Machine Code, unless expressly permitted by applicable law without the possibility of contractual waiver; and (iii) not transferring the Machine Code to any third party separately from the Machine.
- (d) The Authorized User may transfer possession of Machine Code and its media to another party only with the transfer of the Machine for which that Machine Code is authorized as long as the Authorized User destroys any backup copies of Machine Code and provides the transferee with the specifications that accompanied the Machine and the terms in this "Software Terms" section.
- (e) Ocean Optics or one of its affiliates owns copyrights, patents and other intellectual property rights in Machine Code or has the right to license Machine Code. Ocean Optics or a third party owns all copies of Machine Code, including all copies made from them. Ocean Optics licenses Machine Code to only one rightful possessor of the Machine at a time.
- (f) Machine Code is provided on an as-is basis; no representation or warranty of non-infringement is made for Machine Code. Buyer may make a claim under the "Express Limited Warranties" section above if Machine Code does not permit the Machine to function according to its specifications and the issue is not a result of any modification of the Machine Code by an Authorized User or misuse of the Machine Code by an Authorized User. Such a Machine Code issue, given the Machine Code relates to the Machine, will be treated as a Product warranty claim under "Express Limited Warranties" above to the extent the claim otherwise meets the warranty terms of such section.

Export and Import Compliance. Buyer shall, at Buyer's sole expense, be responsible for strict compliance with all legal, regulatory and administrative requirements relating to the importation or exportation of the Products purchased under any Order or Distributor Agreement. Buyer shall comply with any applicable customs requirements and obtain any required licenses or approvals. Buyer shall pay all associated duties and fees. Upon written request to Ocean Optics, Ocean Optics shall promptly provide Buyer with all information and records relating to the Products necessary for Buyer to comply with any

origin marking or labelling requirements, including copies of customs information and documentation. Buyer is solely responsible for complying with all technical compliance and country of origin requirements of each country into which the Products are to be delivered.

International Trade Compliance. Buyer shall comply with all applicable export control and economic sanctions laws and regulations (collectively, "International Trade Laws"), including but not limited to the U.S. Export Administration Regulations ("EAR") (15 CFR Parts 730 - 774) and economic sanctions regulations administered by the U.S. Office of Foreign Assets Control ("OFAC"). Buyer acknowledges that the Products are subject to the EAR, and that Buyer's export, reexport, or transfer of the Products may be subject to separate U.S. government authorization based on the proposed end-user, end-use, or destination. Buyer is strictly prohibited from directly or indirectly selling, reselling, exporting, reexporting, or transferring the Products to (i) any individual or entity that is restricted by applicable International Trade Laws or that is otherwise identified on a denied parties list, including persons identified on the OFAC Specially Designated Nationals and Blocked Persons List ("SDN List"), the U.S. Department of Commerce's Bureau of Industry and Security Denied Persons List or Entity List, or any other similar U.S. government list; or (ii) any country or jurisdiction that is subject to comprehensive U.S. sanctions, export restrictions, and/or embargoes, including Cuba, Iran, North Korea, and the Crimea, Donetsk, and Luhansk regions of Ukraine. Failure to comply with this provision will constitute a breach of these Sales Terms.

Anti-Corruption. Buyer shall:

- (a) Comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including, but not limited to, the local and national laws in the territories in which it operates, the UK Bribery Act 2010, the U.S. Foreign Corrupt Practices Act of 1977, and the United Nations Convention against Corruption.
- (b) Comply with the Halma Code of Conduct relating to bribery and corruption.
- (c) Have in place its own policies and procedures to ensure compliance with this Section.
- (d) Ensure that all parties with which it is associated or who are providing goods or services with these Sales Terms (including subcontractors, agents, consultants and other intermediaries) are aware of and comply with the requirements of this Section.
- (e) Maintain complete and accurate records of all transactions and payments related to these Sales Terms and, on reasonable request, disclose details of those transactions and payments to Ocean Optics.
- (f) On reasonable request, confirm in writing to Ocean Optics that it has complied with the requirements of this Section and, if so requested, allow Ocean Optics to verify this compliance by way of an audit of its records.
- (g) Immediately inform Ocean Optics if it suspects or becomes aware of any breach of this Section by one of its employees, subcontractors, agents, consultants or other intermediaries and provide detailed information about the breach.

Indemnification. To the maximum extent allowed by law, Buyer shall defend and indemnify Ocean Optics and its employees and agents against all sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including investigation expenses and attorneys' fees) that Ocean Optics may incur or be obligated to pay as a result of: (a) Buyer's negligence, use, misuse, ownership, maintenance, transfer, transportation or disposal of the Products; (b) Buyer's violation or alleged violation of any Federal, state, county or local laws or regulation, including without limitation, the laws and regulations governing product safety labeling, packaging and labor practices; or (c) Buyer's breach of a Distributor Agreement, Order or these Sales Terms.

LIMITATION ON OCEAN OPTICS' LIABILITY. NEITHER OCEAN OPTICS NOR ITS AFFILIATES SHALL HAVE ANY LIABILITY FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES FOR ANY REASON OR UNDER ANY THEORY OF LIABILITY WHATSOEVER, INCLUDING,

WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOST PROFITS, BUSINESS INTERRUPTION, OR OTHER PECUNIARY LOSS, EVEN IF OCEAN OPTICS OR ITS AFFILIATES HAVE BEEN MADE AWARE OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

BUYER MAY NOT INSTITUTE ANY ACTION IN ANY FORM ARISING OUT OF ANY DISTRIBUTOR AGREEMENT, ORDER OR THESE SALES TERMS MORE THAN 12 MONTHS AFTER THE CAUSE OF ACTION HAS ARISEN.

IN NO EVENT SHALL OCEAN OPTICS' LIABILITY UNDER ANY DISTRIBUTOR AGREEMENT OR ORDER EXCEED THE PURCHASE PRICE OF THE PRODUCTS OR SERVICES GIVING RISE TO THE CLAIM.

Insurance For a period of 3 years from the date of purchase of any Products, Buyer shall, at its own expense, maintain and carry adequate liability insurance coverage appropriate to the nature and scope of its obligations under the relevant Order and these Sales Terms with financially sound and reputable insurers. Upon Ocean Optics' request, Buyer shall provide Ocean Optics with a certificate of insurance from Buyer's insurer evidencing such insurance coverage. The certificate of insurance shall name Ocean Optics as an additional insured. Buyer shall provide Ocean Optics with 30 days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Ocean Optics' insurers and Ocean Optics.

Force Majeure. Ocean Optics shall not be responsible for any delay in or impairment of performance resulting in whole or in part from fire, floods or other catastrophes, acts of God, strikes, lockouts or labor disruption, wars, riots or embargo delays, government allocations or priorities, raw material market conditions, shortages of transportation equipment, fuel, labor or materials, inability to procure supplies or raw materials, severe weather conditions, epidemics and pandemics, or any other circumstance or cause beyond the reasonable control of Ocean Optics, including any such circumstances or causes affecting Ocean Optics' suppliers, subcontractors, or any third party upon whom Ocean Optics depends for the fulfillment of its obligations under any Distributor Agreement or Order. In the event a Force Majeure event occurs, Ocean Optics may, at its option, allocate Products among its customers and potential customers.

Cancellation. Orders cannot be canceled or modified by Buyer except with the express written consent of Ocean Optics.

Termination. Ocean Optics may terminate any Order or any part of an Order as allowed by these Sales Terms. Upon such termination, Buyer agrees to and does hereby waive all claims for damages, including without limitation, any loss of anticipated profits, and to accept as its sole remedy for termination the reasonable additional costs of obtaining substitute goods of the same quantity and quality, provided such costs do not exceed the Order price. Any claim for adjustment not asserted within 90 days from the date of such termination shall be considered waived by Buyer.

Assignment. No part of any Order may be assigned by Buyer without prior written approval of Ocean Optics. Ocean Optics may cancel any Order upon written notice to Buyer in the event Buyer assigns or attempts to assign such Order without Ocean Optics' prior written consent.

Notices. All notices must be in writing and will be deemed given only when sent by first class mail (return receipt requested), hand-delivered or sent by documented overnight delivery service to the party receiving the notice, at its address indicated in the applicable Order or Distributor Agreement or by written notice.

Entire Agreement. These Sales Terms, together with the Order or Distributor Agreement, if any, make the complete and final agreement between Ocean Optics and Buyer, and supersede all prior negotiations, proposals, representations, commitments, understandings or agreements between Ocean Optics and Buyer, either written or oral, on its subject. Any other representations or warranties made by any person, including employees or other agents of Ocean Optics, that are inconsistent with these Sales Terms shall be disregarded by Buyer and are not binding upon Ocean Optics.

Modifications. No Order nor these Sales Terms may be modified or amended except in writing signed by both Ocean Optics and Buyer specifically referring to the applicable Order and/or these Sales Terms.

Waiver. Ocean Optics' failure to insist on performance of any of the terms or conditions in these Sales Terms or to exercise any right or privilege, or Ocean Optics' waiver of any breach of these Sales Terms shall not waive any other terms, conditions or privileges, whether of the same or similar type.

Severability. If any of these Sales Terms is determined to be invalid, the remaining provisions of these Sales Terms will remain in full force and effect.

Choice of Law and Venue. All Orders shall be governed by and interpreted in accordance with the laws of the State of New York, United States without giving effect to its choice of law provisions. Manufacture, shipment and delivery are subject to any prohibition, restriction, priority allocation regulation or condition imposed by or on behalf of the United States of America or any other governmental body with appropriate jurisdiction that may prevent or interfere with fulfillment of any Order. Litigation brought to contest disputes arising under any Order or these Sales Terms shall be brought only in the state or federal courts of the State of New York.

Survival. The terms of a Distributor Agreement or Order and these Sales Terms that by their nature are reasonably intended by the parties to survive its expiration or earlier termination, survive such expiration or termination.

Attorneys' Fees. If either party commences an action against the other to interpret or enforce the Order or these Sales Terms or as a result of a breach by the other party of the Order or these Sales Terms, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs and expenses incurred by the prevailing party in connection with such action.