

NuPhotonics Standard Terms and Conditions of sales

1) APPLICABILITY

The terms and conditions govern the sale by NuPhotonics of NuPhotonics products to the customer. These terms and conditions constitute an agreement between NuPhotonics and the customer and may not be changed unless an amendment is signed by NuPhotonics CEO. NuPhotonics acceptance of the customers order is conditioned upon the customers acceptance of these Terms regardless of the form and timing of the customers acceptance. Customers who have additional different terms and conditions will not apply and are deemed rejected by NuPhotonics. Customers who purchase NuPhotonics products constitute customers acceptance of the terms and conditions.

- “NuPhotonics” means NuPhotonics LLC. All intellectual property is property rights of NuPhotonics LLC.
- “Custom Product” Can have the following meaning, i) standard product modified for customer requirements or non-published standards, ii) A product designed, configured, test, or manufactured to meet customer requirements.
- “Product” “product” means, as provided by NuPhotonics to customer, any hardware and its associated Firmware.
- “Standard Product” standard products are based on NuPhotonics published specifications that are routinely offered for sale by NuPhotonics to broad base of customers.
- “Firmware” Means any software, computer program, or data structures embedded or running on a product to enable its basic operation and updates.
- “Force Majeure” Means any act or occurrence that is beyond NuPhotonics reasonable control. This includes but not limited to civil commotion, act of god, pandemic, epidemic, strike or other stoppage of labor (whether partial or total), regulation or order of any government or governmental body (including any court or tribunals), fire, flood, earthquakes or any natural disaster, shortages of materials, declared acts of terrorism, disruption of normal production, inadequate yield of products respite reasonable efforts, or an interruption of means of transportation.

2) ORDERS

If the customer would like to purchase products, it must submit a purchase order to NuPhotonics. Orders purchased through NuPhotonics authorized dealers are subject to the same terms and conditions as purchases ordered directly from NuPhotonics. No order will be binding on NuPhotonics unless the customer agrees to the Terms and conditions. When a customer purchases a product it is an act of acceptance and are binded by the terms and condition. Orders must specify delivery dates in accordance with the lead time quoted by NuPhotonics. Customer agrees that all orders are non-cancellable and non-refundable once acknowledged by NuPhotonics.

3) PRICES

Prices are based on “USD” “United States Dollar” as stated on NuPhotonics valid quotation. Prices exclude delivery charges and are valid for the quoted period indicated on the quotation. Special shipping instructions must be agreed upon and will be billed additionally and separately.

Prices exclude any sales, value added, GST, Withholding, or other tax or customs duties and fees, which the customer shall pay in addition to the purchase price if application. Customers who claim exemption from Tax, customer must provide certificate of exemption appetible to the relevant taxing authority.

Customers shall provide VAT-ID numbers to support VAT exemptions of intra-community suppliers where appropriate as governed by application national legislation. It is the responsibility of the customer to inform NuPhotonics immediately if the VAT-ID number provided becomes invalid or changes. NuPhotonics reserves the right to retroactively charge VAT if VAT has been incorrectly exempted.

NuPhotonics reserves the right to increase prices of products scheduled for shipment upon written notice to the Customer. Customer may reject the price increase in writing in which NuPhotonics will cease filling any customer orders affected for the price increase. Customers are required to submit a written reject within ten (10) days following the notice, failure to submit written rejection of the price increase will result in the price increase becoming effective at the end of the ten (10) days.

4) Delivery

NuPhotonics will endeavor to ship on NuPhotonics acknowledgement delivery date (“Acknowledged date”). NuPhotonics will update the acknowledge date prior to delivery by providing written notice to customer. “Delivery” occurs when NuPhotonics places the product at customers or customers representatives disposal in accordance with the incoterms or other shipping terms specified by NuPhotonics in its written order acknowledgement. NuPhotonics reserves the right to make partial delivers which may be separately invoiced. Delivery delay will not relieve the customer of its obligation to pay for Products or to accept subsequent deliveries.

Any delivery date, lead time, or shipment dates (requested or quoted) provided by NuPhotonics are estimates only and does not act as a guarantee. NuPhotonics is not liable for any loss, damage, cost or expense for any failure to deliver in accordance with the given lead time or shipment date. NuPhotonics reserves the right to deliver products in installments for any reason NuPhotonics deems reasonable.

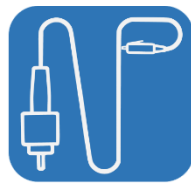
In the event of shipment errors which include but not limited to Wrong product, quantity, or shipment to the wrong location, it is the sole responsibility of the customer to notify NuPhotonics with written notice within thirty (30) days from the invoice date. NuPhotonics will verify the claim and ship replacement parts or correct the error, as appropriate.

5) TRANSFER OF TITLE AND ACCEPTANCE

Title and risk of loss and damage to products will pass to customer upon delivery. NuPhotonics reserves, and customer grants to NuPhotonics a purchase money security interest in all products shipped to customer until NuPhotonics receives payment in full for those products and any related charges and any account balance in NuPhotonics favor.

6) PAYMENTS

All payments shall be made in U.S dollars Each shipment (including partial shipments) will constitute an independent transaction and will be separately invoiced. Customers shall pay for same in accordance with the specified payment terms without regard to other shipments, deduction, or setoff. NuPhotonics may change credit or payment terms at NuPhotonics discretion if the customers financial condition or previous payment record so warrant. Customer payment failure to pay any sure due, or if Customer failures to cure any other branch of this or any other NuPhotonics agreement after (10) days prior to written notice of the breach, Customer shall reimburse NuPhotonics any expenses NuPhotonics incurs in collecting any outstanding amount due, including without limitation, attorneys fees.



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7) Rescheduled Delivery, NO RETURNS

All orders are final. Customers may not cancel orders or reject delivery of any product. No reschedule of delivery is allowed, unless NuPhotonics gives prior permission. Customers may not return products except as provided in WARRANTY (section 8) and as permitted by applicable law.

8) WARRANTY

Except as otherwise required by law, the following warranties will apply to Products paid by the customer. Products purchased through NuPhotonics Authorized dealers will be honored with the Warranty terms listed in this section. Indirect purchasers are not offered any warranty by NuPhotonics.

NuPhotonics warrants against material defects in the production units of the Product and workmanship during the warranty period. NuPhotonics further warrants that, during the warranty period, product will substantially conform to NuPhotonics relevant published technical or functional specifications in effect on the date NuPhotonics ships customers orders.

For purposes of this Section 8, the term "Warranty Period" means the period of time beginning when NuPhotonics Shipment and continuing One year for NuPhotonics Products. NuPhotonics products come with a standard one (1) year warranty from date of shipment. In the event that NuPhotonics confirms defects or non-conformance to specifications during the period, NuPhotonics will offer at its option repair or replace the affect products or refund the net purchase price. Customer shall abide by NuPhotonics policies concerning return of materials.

Some products may contain remanufactured parts equivalent to new in performance. NuPhotonics may make process or material changes affecting the performance or other characteristics of Products. NuPhotonics products supplied after such a change will continue to meet NuPhotonics published specifications, but may not be identical to Product supplied as samples or under prior orders.

The above warranties do not apply to and NuPhotonics makes no warranties with respect do die, or any other products not finished or fully encapsulated, including prototypes, and reference designs. Defects resulting from improper or inadequate maintenance; higher assembly, use with customer or third party interfacing or supplies, unauthorized modification, improper use or operation outside of the specifications; abuse, negligence, accident, loss or damage in transit; improper site preparation; unauthorized maintenance or repair.

PRODUCTS WHICH ARE NOT FINISHED OR FULLY ENCAPSULATED ARE SOLD STRICKY "AS IS". THE ABOVE WARRANTIES ARE EXCLUSIVE AND NO OTHER WARRANTY, WETHER WRITTEN OR ORAL, IS EXPRESS OR IMPLIED. EXCEPT FOR THE LIMITED WARRANTY STATE IN THIS SECTION, ALL WARRANTIES, EXPRESS STATUORY OR IMPLIED WITH RESPECT TO ANY PRODUCT, SERVICE, OR OTHER ITEMS DELIVERED UNDER THESE TERMS INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED.

9) LIMITATION OF REMEDIES AND LIABILITY

FOR PURPOSES OF THE LIMITATIONS OF LIABILITY SET FORTH HEREIN, "NUPHOTONICS" SHALL INCLUDE NUPHOTONICS, ITS AFFILIATES, AND THE DIRECTION, OFFICES, EMPLOYEES, AGENTS, REPRESENTATIVES AND SUPPLIERS OF EACH OF THEM.

SUBJECT TO APPLICABLE ALW AND NOTWITHSTANDING ANYTHING ELSE IN TEHSE TERMS, IN NO EVENT WILL NUPHOTONICS BE LIABLE FOR SPECIAL INVIDENT INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING WIHTOUT LIMITATION DOWN TIME COSTS, LOSS OF DATA, RESTORATION COSTS, LOST

PROFITS, OR COST OF COVER) REGARDLESS OF WETHER SUCH CLAIMES ARE BASED ON CONTRACT, TORT, WARRANTY OR ANY OTHER LEGAL THEORY.

EXCEPT FOR NUPHOTONICS OBLIGATION TO MAKE WARRANT REFUNDS UNDER SECTION 8 (WHICH IS LIMITED TO THE PRODUCT), AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, NUPHOTONICS LIABILITY TO CUSTOMER IS LIMITED TO LESS OF (i) THE AMOUNT ACTUALLY PAID BY THE CUSTOMER TO NUPHOTONICS FOR PRODUCT THAT IS SUBJECT TO SUCH DAMAGES OR (II) TEN THOUSAND UNITED STATES DOLLARS (\$10,000). MULTIPLE CLAIMS WILL NOT ENLARGE THIS AMOUNT.

THIS SECTION 9 APPLIES WETHER OR NOT DAMAGES WERE FORESEEABLE, EVEN IF NUPHOTONICS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIALLY PURPOSE OF ANY EXCLUSIVE REMEDY PROVIDED IN THESE TERMS. THE LIMITATIONS SET FORTH IN THIS SECTION WILL NOT APPLY TO DAMAGES FOR BODILY INURY OR DEATH PROIXMATELY CAUSED BY NUPHOTNICS, FOR WHICH CUSTOMERS HAS THE RIGHT TO PROVEN DIRECT DAMAGES.

THE REMEDIES IN THESE TERMS ARE CUSTOMERS SOLE AND EXCLUSIVE REMEDIES.

10) CONFIDENTIALITY

Customers may acquire knowledge of information relating to NuPhotonics business or Products and agrees to keep such NuPhotonics confidential information in confidence. Customers agrees not to use the NuPhotonics confidential information except as permitted by NuPhotonics in writing. Customers agrees not to copy, alter or directly or indirectly disclose any NuPhotonics confidential information. Customers agrees to use the degree of care and means that it uses to protect its own information of like kind, but in no event less that reasonable care to prevent the disclose of unauthorized use of NuPhotonics confidential information. Customers may disclose NuPhotonics confidential information which is required to be disclosed pursuant to an enforceable requirement of a government agency or law as long as customer provides prompt notice to NuPhotonics of such requirement prior to disclose. All NuPhotonics confidential information is and shall remain property of NuPhotonics. Upon NuPhotonics written request, customer shall return, transfer or assign to NuPhotonics all NuPhotonics confidential information and all copies thereof.

11) END OF LIFE

NuPhotonics may, without liability, terminate production of any product and may, in that event offer certain existing customers an opportunity to make a final buy of the product. NuPhotonics must receive an order for the final buy within the NuPhotonics stated notice period, with shipment to be completed as scheduled by NuPhotonics. Final buy Products shall under all circumstances be non-cancellable and non-returnable.

12) GENERAL

BANKRUPTCY. If customer becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receive appointed, or has its assets assigned, NuPhotonics may cancel unfulfilled obligations.

NOTICES. All notices required or permitted under these terms shall be in writing and addressed to NuPhotonics.

Force Majeure. NuPhotonics will not be liable for performance delays or for non-performance to events of Force Majeure and NuPhotonics performance will be excused for the time that Force Majeure continues. If such an event occurs, NuPhotonics may, at its option (i) extend the delivery data and/or (ii) allocate its available supply among its customers.

Assignment. Customer shall not assign these Terms or any of its rights or delegate any of its duties under these Terms without the prior written consent of NuPhotonics. Subject to the foregoing, these Terms will be binding upon, enforceable by, and inure to the benefit of the parties and their respective successors and assigns. Any attempted assignment in violation of this Section shall be null and void

Legal Compliance. Customer shall comply with applicable federal, state, local laws, regulations and ordinances, and other applicable laws and regulations. NuPhotonics may suspend performance if Customer is in violation of applicable laws, regulations, or ordinances. Customer acknowledges that any Products, Application Software, and/or technical information (including, but not limited to services and training) provided hereunder may be subject to export controls, including but not limited to export controls administered under the U.S. Export Administration Regulations (EAR). Upon delivery of such Products, Application Software and/or technical information (including, but not limited to services and training), Customer shall be responsible for ensuring compliance with all applicable export laws and regulations relating to the export thereof, and shall not export or re-export any Products, Application Software and/or technical information (including, but not limited to services and training) received from NuPhotonics in violation of any applicable law. Customer agrees that none of such items, nor any direct product therefrom, is being or will be acquired for, shipped, transferred, or re-exported, directly or indirectly, to prohibited or embargoed countries, nor be used for any prohibited end-use, such as nuclear activities, chemical/biological weapons, or missile projects, unless expressly authorized by the U.S. Government. If requested, Customer agrees to sign written assurances and other export-related documents as may be required to comply with U.S. export regulations or any other governmental regulatory agency requirement.

Governing Law, Attorneys Fees. These Terms will be governed by and construed in accordance with the substantive laws in force in: (a) Singapore if Customer's headquarters are in a member state of the Association of Southeast Asian Nations, Mainland China, Hong Kong S.A.R., Macau S.A.R., Taiwan, or the Republic of Korea, b) England and Wales if Customer's headquarters are the European Economic Area, or c) in the State of California, if Customer's headquarters are in any jurisdiction not described above. The respective courts of Santa Clara County, California when California law applies and the competent courts of London, England, when the law of England and Wales applies, shall each have non-exclusive jurisdiction over all disputes relating to these Terms. When Singapore law applies, any dispute arising out of or in connection with these Terms, including any question regarding its existence, validity, or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC") for the time being in force, which rules are deemed to be incorporated by reference into this section. There shall be one arbitrator, selected jointly by the parties. If the arbitrator is not selected within thirty (30) days of the written demand by a party to submit to arbitration, the Chairman of the SIAC shall make the selection. All judicial or arbitration proceedings for disputes related to these Terms will be in English. Notwithstanding any provision in these Terms, NuPhotonics or Customer may request any judicial, administrative, or other authority to order any provisional or conservatory measure, including injunctive relief, specific performance, or other equitable relief, prior to the institution of legal or arbitration proceedings, or during the proceedings, for the preservation of its rights and interests or to enforce specific terms that are suitable for provisional remedies. These Terms will not be governed by the following, the application of which is hereby expressly excluded: (x) the conflict of law rules of any jurisdiction, (y) the United Nations Convention on Contracts for the International Sale of Goods, and (z) the Uniform Computer Information Transactions Act, as enacted in any jurisdiction. The prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred in any litigation arising under these Terms.

Waiver. Neither party's failure or delay to exercise any of its rights under these Terms will be deemed a waiver of forfeiture of those rights.

Severability. These Terms shall be applied to the extent permitted by applicable law. To the extent that any provision of these Terms is determined

to be illegal or unenforceable, the remainder of these Terms will remain in full force and effect.

Nuclear/Medical Uses. NUPHOTONICS'S PRODUCTS ARE NOT SPECIFICALLY DESIGNED, MANUFACTURED OR AUTHORIZED FOR SALE AS PARTS, COMPONENTS OR ASSEMBLIES FOR THE PLANNING, CONSTRUCTION, MAINTENANCE OR DIRECT OPERATION OF A NUCLEAR FACILITY OR FOR USE IN MILITARY, NAVIGATION AND AVIATION OR MEDICAL DEVICES OR APPLICATIONS. CUSTOMER IS SOLELY LIABLE, AND SHALL INDEMNIFY AND HOLD NUPHOTONICS HARMLESS FOR ALL LOSS, DAMAGE, EXPENSE OR LIABILITY IN CONNECTION WITH SUCH USE, IF PRODUCTS OR APPLICATION SOFTWARE ARE USED FOR THESE APPLICATIONS.

Government Contracting. Unless otherwise separately agreed in writing by NuPhotonics, no provision herein shall be deemed an acceptance of any provisions required in any U.S. Government contract or subcontract relating thereto ("Government Contract") nor shall any provision of any Government Contract become part of these Terms, imposed upon or binding on NuPhotonics.

Language. These Terms are in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall not be binding on the parties hereto.