



Leading Optical Innovations

SPECIALTY PHOTONICS DIVISION

Terms and Conditions of Sale

- Prices.** The prices of the products of **OFS Fitel, LLC, Specialty Photonics Division** to be sold hereunder are as listed on the front of this form or as otherwise agreed in writing between **OFS Fitel, LLC, Specialty Photonics Division** and Purchaser. Seller's prices are subject to change without notice. Prices do not include sales, use, excise or similar taxes, customs duties, or fees, which shall be the responsibility of the Buyer.
- Orders.** All orders are subject to approval at Seller's office in Avon, CT. Furthermore, all orders are subject to a minimum 500 U.S. dollars.
- Payment Terms.** All payments shall be made in U.S. dollars. Payment is due in full thirty (30) days after the date of the invoice. Interest at the rate of one and one-half percent (1-1/2%) per month will be charged on all overdue accounts unless a lower rate is required by law.
- Shipment.** Freight charges will be prepaid and charged unless otherwise agreed to in writing. If **OFS Fitel, LLC, Specialty Photonics Division** agrees to act as Purchaser's agent to arrange delivery of products, (a) purchaser will provide full address to which products are to be delivered, (b) method and route of shipment are at **OFS Fitel, LLC, Specialty Photonics Division's** discretion, (c) all expenses of shipment are for the Purchaser's account, (d) all shipments will be insured at the Purchaser's expense and made at the Purchaser's risk and (e) Purchaser will indemnify, defend and hold harmless **OFS Fitel, LLC, Specialty Photonics Division** from and against all claims, losses, liabilities and expenses (including attorney's fees and other litigation or settlement costs) arising out of any acts of **OFS Fitel, LLC, Specialty Photonics Division** while so acting as Purchaser's agent.
- Limited Warranty.** **OFS Fitel, LLC, Specialty Photonics Division** warrants that products delivered under this order will be free from defects in material and workmanship for 90 days from date of shipment. This warranty does not extend to any products which have been subject to misuse, accidental or improper installation, maintenance or alteration, nor does it extend to products which have been cabled, installed, repaired or altered outside **OFS Fitel, LLC, Specialty Photonics Division's** plant unless authorized in writing by **OFS Fitel, LLC, Specialty Photonics Division** or unless cabling, installation, repair or alteration is performed or contracted for by **OFS Fitel, LLC, Specialty Photonics Division**, nor does this warranty extend to any labor charges for removal and/or replacement of the non-conforming or defective product or part thereof. THIS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR AGAINST INFRINGEMENT OF PATENTS OR OTHER INTELLECTUAL PROPERTY RIGHTS. **OFS Fitel, LLC, Specialty Photonics Division** shall have no liability for special, indirect, liquidated or consequential damages (including but not limited to damages for lost profits, or injury to persons or property). **OFS Fitel, LLC, Specialty Photonics Division's** liability under this warranty shall be limited at **OFS Fitel, LLC, Specialty Photonics Division's** option, to repairing at **OFS Fitel, LLC, Specialty Photonics Division's** plant or replacing, with transportation charges prepaid by Purchaser, the product or component part thereof that is proved to be other than as herein warranted or providing credit for the purchase price thereof.
- Returned Material.** Products may be returned only with **OFS Fitel, LLC, Specialty Photonics Division's** written permission and accompanied by a return authorization number issued by **OFS Fitel, LLC, Specialty Photonics Division** to Purchaser. Only defective or unused products which have been invoiced to the Purchaser within the previous thirty (30) days, will be considered for return. Non-defective products accepted for credit are subject to a restocking fee and a service charge of twenty percent (20%) to one hundred percent (100%) depending on the nature of the product. Products returned for credit must be returned in freight prepaid, in good saleable condition with **OFS Fitel, LLC, Specialty Photonics Division's** original label intact and legible, transportation charges prepaid by Purchaser.
- Claims, Indemnification.** The liability of **OFS Fitel, LLC, Specialty Photonics Division** with respect to a claim of any kind, whether as to quality or amount of products delivered or for non-delivery of products, shall not exceed the invoice price of the quantities of products as to which the claim is made. Purchaser shall be responsible for inspecting and testing all products delivered to it hereunder upon receipt and before use by Purchaser. Any claim with respect to products must be made not later than the earlier of thirty (30) days after the date of shipment thereof or prior first use thereof, and failure by Purchaser to give **OFS Fitel, LLC, Specialty Photonics Division** written notice of claim or to obtain from **OFS Fitel, LLC, Specialty Photonics Division** return material authorization (RMA) number for return with respect to any products within such time shall constitute a waiver by Purchaser of all claims with respect to such products. Products which conform to samples supplied to Purchaser and prequalified or previously accepted and any products used by Purchaser, shall be deemed satisfactory and Purchaser shall have no right to make claims with respect to such products. Purchaser assumes all responsibility and liability for injury or damages resulting from its handling, possession, use or sales of products supplied hereunder including, but not limited to any injury or damage resulting from the use of product in Purchaser's manufacturing operations or in combination with other substances or products, and agrees to defend and indemnify **OFS Fitel, LLC, Specialty Photonics Division** from and against all claims, losses, liabilities and expenses (including attorneys' fees and other litigation or settlement costs) arising out of such handling, possession, use or sale.
- Special Tooling and Equipment.** Any special tooling, special test equipment, designs or other facilities which are acquired, produced or used within proprietary processes by **OFS Fitel, LLC, Specialty Photonics Division** in connection with this order shall remain the property of **OFS Fitel, LLC, Specialty Photonics Division**, notwithstanding anything to the contrary found elsewhere in this order.
- Patents, etc.** Unless otherwise agreed in a writing signed by both **OFS Fitel, LLC, Specialty Photonics Division** and Purchaser before Purchaser's first order with **OFS Fitel, LLC, Specialty Photonics Division**, **OFS Fitel, LLC, Specialty Photonics Division** shall not be liable for the indemnification of Purchaser of damages resulting from the infringement of any United States or foreign country third party patent rights arising out of or in connection with any product. In the event that any product supplied hereunder gives rise to any such third party patent infringement, or allegation thereof, **OFS Fitel, LLC, Specialty Photonics Division** expressly retains the right to refer complaining parties to Purchaser for settlement and to include Purchaser as party-defendant in any suit based on such infringement. Purchaser shall indemnify and hold **OFS Fitel,**

LLC, Specialty Photonics Division harmless from any and all claims, loss, damage, liability and expenses (including, without limitation, reasonable attorney's fees and disbursements and other litigation and settlement costs, regardless of outcome) arising out of any claim that any product supplied hereunder infringes any third-party patent rights.

10. **Proprietary Information.** While OFS Fitel, LLC, Specialty Photonics Division does not contemplate furnishing proprietary information of any kind under this order to Purchaser or to any governmental entity, any proprietary information pertaining to the work to be performed hereunder which may be furnished by OFS Fitel, LLC, Specialty Photonics Division to Purchaser or to such governmental entity will remain OFS Fitel, LLC, Specialty Photonics Division's property, will be held in confidence by Purchaser, will be returned to OFS Fitel, LLC, Specialty Photonics Division upon request, and may not be used without OFS Fitel, LLC, Specialty Photonics Division's written permission for any purpose other than its intended use hereunder.
11. **Force Majeure.** Failure of OFS Fitel, LLC, Specialty Photonics Division to make, or of Purchaser to request or accept any one or more deliveries (or portions thereof) hereunder when due shall not subject the party so failing to any liability to the other if such failure shall be caused or occasioned by act of God or the public enemy, governmental action, fire, explosion, flood, drought, war, riot, sabotage, embargo, strikes, or other labor trouble, failure, in whole or in part, of OFS Fitel, LLC, Specialty Photonics Division's suppliers or any subcontractor to deliver on schedule materials, equipment, or machinery to OFS Fitel, LLC, Specialty Photonics Division, interruption of or delay in transportation, shortage of fuel, energy, or utilities, or by any other event or circumstances of a similar or different nature beyond the reasonable control of the party so failing; and, at the option of the party so failing, the total quantity to be delivered hereunder shall be reduced by the quantity of the delivery or deliveries (or portions thereof) not made on account of any of the above causes. In no event shall OFS Fitel, LLC, Specialty Photonics Division be obligated to purchase products from others in order to enable it to deliver products to the Purchaser hereunder.

In the event OFS Fitel, LLC, Specialty Photonics Division's supply of any product is reduced under circumstances set forth in the preceding paragraph of this Section 11, OFS Fitel, LLC, Specialty Photonics Division may allocate its entire supply to its customers and its own requirements on such basis as it shall determine, to its discretion, to be fair and reasonable.

12. **Product Discontinuance.** Should OFS Fitel, LLC, Specialty Photonics Division elect to discontinue, curtail or limit the production of any product as a result of the application of any governmental statute, regulation or order, including but not limited to any statute, regulation or order applicable to prices, transportation, energy, pollution or product safety, which, in OFS Fitel, LLC, Specialty Photonics Division's judgement, will render the production or marketing of such product economically, technologically or commercially infeasible, OFS Fitel, LLC, Specialty Photonics Division may, without penalty or other charge, terminate this agreement with respect to such product upon thirty (30) days prior notice to Purchaser.
13. **Termination by Purchaser; Failure to Purchase.** In the event that Purchaser terminates this agreement for any reason prior to purchasing and paying for the full quantity or products required to be purchased hereunder, or in the event Purchaser fails for any reason (other than OFS Fitel, LLC, Specialty Photonics Division's failure to deliver) to purchase and pay for said quantity prior to the expiration of the term hereof, upon such termination or expiration of this agreement (a) if the products not so purchased and paid for have been produced by OFS Fitel, LLC, Specialty Photonics Division prior to such

termination or expiration and are not saleable to other customers within a reasonable time (as determined by OFS Fitel, LLC, Specialty Photonics Division), Purchaser will pay OFS Fitel, LLC, Specialty Photonics Division, an amount equal to the entire contract price thereof, and (b) in all cases, Purchaser will pay OFS Fitel, LLC, Specialty Photonics Division, as liquidated damages, an amount up to twenty-five percent (25%), of the contract price for the quantity of goods which Purchaser was required to, but did not purchase.

14. **Quantity.** OFS Fitel, LLC, Specialty Photonics Division reserves the right to overship or undership +/-5% on fiber or cable products.
15. **Export Control.** Buyer acknowledges that the products sold under this Agreement and technical information transmitted in connection therewith may be subject to export restrictions under applicable law, including the U.S. Department of Commerce Export Administration Regulations ("Regulations"), and Buyer agrees to comply fully with same. Buyer assures Seller that it will not transmit, sell, transfer or convey any such products, technical information or software, or goods produced through the use of same, to any country, or citizen or resident of a country, other than the United States without first securing written consent, if required, of the U.S. Department of Commerce
16. **General.** These terms and conditions, together with the order and other material set forth on the other side of this form, set forth the entire understanding of the parties with respect to the subject matter hereof, and supersede and replace all prior discussions, writings or understandings between the parties on such subject matter. However, these terms and conditions and such order and other material may be changed or terminated only by a writing signed by both parties. No written purchase order shall affect or vary these terms and conditions. These terms and conditions are accepted by Purchaser if Purchaser either does not object within five business days or accepts delivery of products from OFS Fitel, LLC, Specialty Photonics Division, whichever is earlier. Failure of either party to insist on strict compliance with any provision hereof, or to exercise any right hereunder, shall not constitute a waiver of such provision or right in any instance. Section headings are for convenience of reference only and shall not have any effect upon the interpretation of these terms and conditions. Neither Purchaser nor OFS Fitel, LLC, Specialty Photonics Division may assign any rights or obligations under these terms and conditions or such order or other material except with the other's prior written consent, and any such attempted assignment shall be void. These terms and conditions, such order and such materials shall be governed by and construed in accordance with the law of the State of Connecticut applicable to contracts executed and performed entirely within that State.

"The provisions of Executive Order 11246 as amended, along with the rules and regulations of OFCCP relative to equal employment opportunity, the Vietnam Era Veterans Adjustment Act of 1974, the Rehabilitation Act of 1973, as well as the Small Business Act, as amended including small business concerns owned and controlled by special and economically disadvantaged individuals, to include minority business enterprises, are hereby incorporated by reference and shall be applicable to the Order unless exempted under the orders and regulations issued thereunder."

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OFS Fitel, LLC
Specialty Photonics Division
55 Darling Drive
Avon, CT 06001 USA
Phone: (860) 678-0371
Fax: (860) 674-8818
www.specialtyphotonics.com