

## **Northstar Photonics Terms & Conditions**

1. **TERMS AND CONDITIONS.** No terms and conditions other than the terms and conditions set forth in this Order, including any terms and conditions in any document attached hereto or incorporated by reference shall be binding upon Northstar Photonics unless accepted by it in writing and signed by Northstar Photonics. Notwithstanding any other provision of this Order, Northstar Photonics expressly reserves the right to revoke this Order at any time prior to receipt of notice of acceptance by Seller. All terms and conditions contained in any prior proposal or acknowledgement of this Order which are different from the terms and conditions of this Order are hereby rejected and shall not be binding on Northstar Photonics, whether or not they would materially alter this Order, and Northstar Photonics hereby objects thereto. The Seller will notify and receive approval from Northstar Photonics if there are any changes (i.e. specifications not met, etc.) to the item being ordered. Seller will be deemed to have assented to all terms and conditions contained herein if any part of the good ("Products") and or services ("Services") (collectively "Goods") covered by this Order is shipped or an invoice is presented in connection with said Goods.
2. **PRICE.** Unless otherwise approved in writing by Northstar Photonics, prices for all Goods are as noted on this Purchase Order. If no price is specified herein, the price shall be either the price last quoted or paid or the Seller's standard price for merchandise of like quality and quantity, whichever is lower.
3. **QUANTITY.** Northstar Photonics' count will be accepted as final and conclusive on all shipments not accompanied by a packing list. Unless expressly provided for to the contrary on the face of this Order, all shipments are to be made F.O.B. destination, and the Seller shall bear all cost for cartage, boxing, or containers as required.
4. **SHIPMENT.** All material shall be properly packed for shipment. Package according to specified drawing specs if applicable. Seller shall comply with Northstar Photonics' standard routing and shipping instructions issued by Northstar Photonics. If such instructions are not attached hereto or have not been previously received, instructions must be requested from Northstar Photonics immediately. No additional charge will be allowed for packing, crating, freight, express or cartage unless specified on the face of the Order. Any loss or damage, whenever occurring, which results from Seller's improper packaging or crating shall be borne by Seller. All items shall be properly identified with Northstar Photonics' Order number releasing shipments against this Order and the Order item number or other identification number shown.
5. **DELIVERY & QUALITY.** Time and quality are of the essence. Delivery of all Goods must be made in accordance with the schedule and requirements set forth in the Purchase Order. Northstar Photonics PO number & part number to be referenced on all packing lists and invoices. Included in the requirements, the following documentation must be supplied, (if applicable):

1. Include RoHS 3 certificate required with shipment.
  2. Include a signed CoC required with shipment:  
CoC and/or test report must include revisions of standards to which the material is tested.
  3. Include Coupons/Samples with shipment when required.
  4. Include Materials Certificate.
  5. Include Plating Certificate.
  6. Include FAIR (1st Article Insp Report).
  7. MSDS is required for all Hazardous Material orders, including expiration date.
  8. All material to be packaged properly.
  9. Include Packing Slip.
- a. All incoming deliveries will be measured for On-Time delivery and Quality Performance. All Sellers are required to meet at a minimum: On-Time delivery performance of 97% or greater, and Quality performance of 97% or greater. Northstar Photonics may cancel this Purchase Order in its entirety (or as to Goods not delivered on time) upon written notice to the Seller. Northstar Photonics will have no liability for any damage resulting directly or indirectly from such cancellation. Goods shipped to Northstar Photonics in advance of delivery schedules may be rejected or returned at the Seller's expense. If the Goods are not delivered in accordance with the schedule set forth in this purchase Order, Northstar Photonics reserves the right to cancel the contract in whole or in part and to recover from the Seller any expenditure reasonable incurred by Northstar Photonics in obtaining the Goods in substitution from another Seller.
  - b. Delivery shall be deemed complete as follows:
    - i. For goods, when the goods have been received and accepted by Northstar Photonics, notwithstanding delivery to any carrier.
    - ii. For services, when the services have been performed, received, and accepted by Northstar Photonics.

## 6. OWNERSHIP.

- a. All tools, dies, specifications, drawings, designs, or other property furnished or paid for by Northstar Photonics in connection with a Purchase Order ("Northstar Photonics Property") will (i) be and remain the tangible and intellectual property of Northstar Photonics, marked as such and kept segregated from other property, (ii) be used only by the Seller and only in performance of the Purchase Order, (iii) not be moved from Seller's premises without Northstar Photonics' written consent, (iv) be kept free of all liens, claims, encumbrances, and restrictions, and (v) not be modified or altered by Seller or any other person. Seller will bear all risk of loss or damage to Northstar Photonics Property until it is returned to Northstar Photonics. Upon Northstar Photonics' request, Seller will deliver at its expense all Northstar Photonics Property in good condition, ordinary wear and tear excepted, to Northstar Photonics at any location designated by Northstar Photonics. Seller waives any legal or equitable rights or claims in connection with Northstar Photonics Property.
- b. Seller shall and hereby does assign to Northstar Photonics all rights, title and interest in any and all intellectual property rights with respect to any inventions (whether or not patentable), works of authorship, mask works, designations, designs, know-how, drawings,

information, ideas or expressions of ideas that Seller conceives, reduces to practice or otherwise creates in performing any Services or providing any Products pursuant to a Purchase Order.

7. **PAYMENT.** Upon submission of proper invoices, Northstar Photonics shall pay the Order price set forth herein for Goods delivered and accepted however, payment may be withheld, or portions thereof deducted, or det-offs made against Seller if Seller is not performing work in accordance with the provisions of this Order. There will be no minimum charges honored unless specifically agreed to prior to shipment. Shipments consigned directly to Northstar Photonics' customers that are shipped after the twentieth (20<sup>th</sup>) shall be considered as invoiced the following month. Northstar Photonics shall pay invoices on NET 30 terms unless otherwise agreed in writing by both parties to separate terms. Northstar Photonics will not pay late payment penalties or fines.
8. **INVOICES.** Seller must submit a Proper Invoice (defined below) to Northstar Photonics in order to be paid for the work. A "Proper Invoice" shall mean an invoice which contains, at a minimum, Vendor Name, Vendor Address, the Purchase Order number, a unique invoice number, invoice date, description of the Work being invoiced (i.e., description of the Work, quantities, unit prices, and extended totals). Northstar Photonics reserves the right to reject any and all invoices which do not follow the specifications outlined in this Section. Invoices shall be emailed to [accounting@Northstarphotonics.com](mailto:accounting@Northstarphotonics.com).
9. **IDENTIFICATION AND INSPECTION. NORTHSTAR PHOTONICS' PURCHASE ORDER NUMBER MUST SHOW ON ALL INVOICES, PACKING LIST, AND BILLS OF LADING.** All Goods are subject to Northstar Photonics' inspection, testing and acceptance at the destination. Northstar Photonics will have a commercially reasonable time after delivery of the Products to inspect and conduct acceptance tests with respect to all Goods. Acceptance of any installment will not be deemed acceptance of Northstar Photonics' entire order or any subsequent installment. Any acceptance of Goods is conditioned upon the Seller's cure of any nonconformity identified by Northstar Photonics. Failure of Northstar Photonics to reject any Goods shall not constitute a waiver of its legal rights (including the right to revoke acceptance) if Northstar Photonics subsequently discovers such Goods are non-conforming. Seller may not charge any restocking, handling or other fee or charge in connection with rejected Goods. If any nonconforming Work is discovered, Northstar Photonics may:
  - a. require Seller to repair, replace, or re-perform the Work at Seller's expense, including all related shipping and transportation costs;
  - b. return and require Seller to reimburse the purchase price of rejected goods; or
  - c. return, re-perform, repair, replace, or re-procure the nonconforming Work at Seller's expense if Seller's repair, replacement, re-performance, or reimbursement of Work is not timely or satisfactory.

## 10. CHANGES

- a. Northstar Photonics may from time to time, by written instructions or drawings issued to the Seller, make changes, issue additional instructions, require additional work, or direct the omission of work previously ordered. The provisions of this agreement shall apply to

all such written modifications. No extra work, additions, or alterations will be paid for by Northstar Photonics unless performed pursuant to and in accordance with the written order of Northstar Photonics. Northstar Photonics may cancel this order at any time, giving notice in writing. An equitable adjustment in price and for delivery schedule will be negotiated for materials completed or in process at the time of the change.

- b. Seller shall obtain prior written approval from Northstar Photonics for changes that may affect Product form, fit, or function. Examples of changes requiring prior approval include, but are not limited to, new or modified production processes, equipment, materials and tooling and end of life notifications. Additionally, Seller shall inform Northstar Photonics of significant changes e.g., changes in ownership or key personnel, relocation of or significant modification to manufacturing site, significant quality system changes and compliance status.

11. EXPORT AND IMPORT COMPLIANCE. Seller shall comply with the laws and regulations of the United States relating to exports and foreign transactions, including, but not limited to, the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR). In particular, Seller shall not disclose any technical data, nor deliver or export any product manufactured by use of technical data, out of the United States, or to foreign entities within the United States, without proper written authorization from the U.S. Government.

#### 12. SUSPECT/COUNTERFEIT PARTS.

- a. "Counterfeit Work" means Work that is (i) an unlawful or unauthorized reproduction, substitution, or alteration that has been mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified item from the Original Component Manufacturer (OCM) or Original Equipment Manufacturer (OEM); (ii) approved Work that has reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable; (iii) an item that does not contain the proper external or internal materials or components required by the OCM/OEM or that is not constructed in accordance with OCM/OEM specification; (iv) an item or component thereof that is used, refurbished or reclaimed but is misrepresented as being a new item; (v) an item that has not successfully passed all OCM/OEM-required testing, verification, screening and quality control but is misrepresented as having met or passed such requirements; (vi) an item with a label or other marking intended, or reasonably likely, to mislead a reasonable person into believing a non-OCM/OEM item is a genuine OCM/OEM item when it is not, including without limitation the false identification of grade, serial number, lot number, date code, or performance characteristics; or (vii) an item designated as a suspect counterfeit part by the U.S. Government, such as parts listed in alerts published by the Defense Contract Management Agency under the Government-Industry Data Exchange Program (GIDEP). Parts that have been modified pursuant to a specific Northstar Photonics purchase order requirement, such as refinished, up-screened, or up-rated parts that are properly identified as such are not considered Counterfeit Work.
- b. Seller represents and warrants that it shall not deliver to Northstar Photonics any articles, components, goods, assemblies or other items that constitute "Counterfeit Work." Seller's

warranty against Counterfeit Work shall survive any termination or expiration of this Agreement.

- c. Seller shall only purchase products to be delivered or incorporated as Work to Northstar Photonics directly from the OCM/OEM, or from a distributor expressly authorized by the OCM/OEM. Work shall not be acquired from independent distributors or brokers unless approved in advance in writing by Northstar Photonics.
  - d. Seller shall immediately notify Northstar Photonics if Seller becomes aware or suspects that it has furnished Counterfeit Work. Northstar Photonics may impound the Counterfeit Work for further investigation as to its authenticity, and Seller shall cooperate fully with any such investigation. Northstar Photonics shall not be required to return such Counterfeit Work to Seller during such investigation or thereafter. If, after investigation, Northstar Photonics concludes in its sole judgment that Work delivered by Seller constitutes Counterfeit Work, Northstar Photonics may report such facts to the GIDEP.
  - e. In the event that Work delivered under these Terms of Purchase constitutes or includes Counterfeit Work, Seller shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Contract. Notwithstanding any other provision in this Contract, Seller shall be liable for all of Northstar Photonics' internal and external costs relating to the removal and replacement of Counterfeit Work, including without limitation Northstar Photonics' costs of removing Counterfeit Work, of installing replacement Work and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been exchanged. The remedies contained in this paragraph are in addition to any remedies Northstar Photonics may have at law, equity or under other provisions of these Terms of Purchase.
  - f. Seller shall include this clause or equivalent provisions in lower tier Agreements for the delivery of items that will be included in or furnished as Work to Northstar Photonics.
13. **WARRANTIES.** Seller represents and warrants that: (a) it has and is conveying to Northstar Photonics clear and marketable title to all Products provided hereunder, free from all liens and encumbrances, and (b) all Goods furnished under this purchase Order will (1) be free from defects in design, materials, and workmanship. (ii) be of merchantable quality, (iii) conform strictly to the Specifications, (iv) be fit and sufficient for their intended purposes, (v) comply with all applicable laws, rules, and regulations, (vi) not violate or infringe upon any intellectual property right or any other right or interest, and (vii) all Goods may be freely exported outside of the United States without restriction or license. Seller also represents and warrants that it will perform the Services (if any) in accordance with industry standards except to the extent a higher standard is specified herein, in which case the higher standard applies. All warranties will survive any inspection, acceptance, delivery, payment, and termination of the Purchase Order and will inure to the benefit of Northstar Photonics and its successors, assignees, and customers. Nothing herein will limit any other Warranties, express or implied, available to Northstar Photonics under applicable law. "Specifications" means any and all specifications, drawings, samples, models, diagrams, bulletins, engineering sheets

or other materials relating to the Goods, and which are included or referenced herein or provided hereunder.

14. LIMITED LIABILITY. NORTHSTAR PHOTONICS WILL NOT BE LIABLE TO SELLER FOR ANY LOST PROFITS OR BUSINESS, OR FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PURCHASE ORDER AND GOODS PURCHASE HEREUNDER. IN NO EVENT WILL NORTHSTAR PHOTONICS' TOTAL LIABILITY FOR DAMAGES TO THE SELLER EXCEED, AND NORTHSTAR PHOTONICS' AGGREGATE LIABILITY WILL BE STRICTLY LIMITED TO THE PURCHASE PRICE FOR THE PRODUCT OR SERVICE WHICH GIVES RISE TO NORTHSTAR PHOTONICS' LIABILITY.
15. CONFIDENTIAL & PROPRIETARY INFORMATION. Except as otherwise provided in this paragraph, Northstar Photonics and Seller agree that all business, technical and financial information Seller obtains from Northstar Photonics that is designated as confidential or proprietary in writing or is disclosed in such a manner that a reasonable person would understand the nature and confidentiality of the information disclosed, is and will be the confidential and proprietary property of Northstar Photonics and its licensors. This purchase Order will be treated as Confidential Information of Northstar Photonics. Confidential Information will not include information that (a) was previously rightfully known to the Seller without restriction on disclosure, b) hereafter becomes known to the Northstar Photonics, through no act or omission on the part of the Seller, (c) is hereafter disclosed to the Seller by a third party without breach of any separate nondisclosure obligation or (d) is independently developed by the Seller without reference or access to the Confidential or Proprietary Information. Except as reasonably necessary to perform its obligations hereunder, Seller shall not use or disclose any Confidential or Proprietary Information without first obtaining Northstar Photonics' express written consent. Seller will use the highest degree of care to protect the Confidential and Proprietary Information from any unauthorized use or disclosure.
16. TERMINATION.
  - a. Northstar Photonics shall have the right at any time and for any reason to terminate the Order in whole or in part by giving the Seller written Notice whereupon all work on the Order shall be discontinued and Northstar Photonics shall pay to the Seller fair and reasonable compensation for the work-in-progress at the time of termination, but such compensation shall not include, and Seller shall not be entitled to recover, loss of anticipated profits or any incidental or consequential damages.
  - b. Northstar Photonics may by notice in writing direct Seller to terminate this Purchase Order or work under this Purchase Order in whole or in part at any time for breach of any one or more of its terms. In the event of Seller's default hereunder, Northstar Photonics may exercise any and all rights accruing to it.
  - c. Seller's obligations under the warranty, patent and confidentiality provisions of this Purchase Order shall survive such termination.

17. **INDEMNIFICATION.** The Seller agrees to defend, indemnify and hold harmless Northstar Photonics from and against all liability, loss and expense (including legal fees) for all damages and or bodily injuries (including deaths) resulting from the actions, errors, omissions or negligence of the Seller, its directors, officers, employees, agents, contractors or Sellers, including, but not limited to any defect in material, any defect in services, workmanship, design of any Goods furnished, patent and/or copyright infringements or violations, and/or failure to follow or abide by this Agreement or any and all governing laws, ordinances, codes, and regulations. This indemnity will survive Northstar Photonics' acceptance of a payment for the Goods and any termination of the Purchase Order, and will not be limited in any manner by Seller's insurance.
18. **MODIFICATION.** In order to effective, any modification or change to the Purchase Order and/or these Terms & Conditions, must be made in writing and signed by an authorized Contractual Representative of the Parties.
19. **SEVERABILITY.** To the extent permitted by applicable law, the Parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event a provision of this Agreement is held to be invalid or unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
20. **ENTIRE AGREEMENT.** The Parties agree that this Agreement, including all documents incorporated herein by reference, constitute the entire agreement and understanding between the Parties and supersedes and replaces any and all prior or contemporaneous representations, agreements or understandings of any kind, whether written or oral, relating to the subject matter hereof.