

# Photop Technologies, Inc.

# Terms and Conditions of Sale

All orders received by Photop Technologies, Inc., a California corporation ("Photop"), are expressly conditioned upon the following conditions of sale, unless otherwise specified by Photop on its order acknowledgement:

## 1) Acceptance

Any additional or different terms set forth in any purchase order or other communication from Buyer are objected to and not binding upon Photop unless and until accepted in writing by an authorized representative of Photop.

## 2) Standard Warranty

Photop warrants to the Buyer of each product of Photop's and its affiliates' own manufacture ("Product") that each Product will be free from defects in materials and workmanship subject to the following conditions:

The obligations of Photop under this standard warranty shall be limited to either, at the option of Photop: (1) the replacement or repair of any defective Product upon the shipment of such Product, freight prepaid by Buyer to the location designated by Photop; or (2) the provision to Buyer of a credit against future purchases in an amount equal to the purchase price of the defective Product.

IN NO EVENT WILL PHOTOP BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF BUYER. THE FOREGOING REMEDIES ARE THE SOLE AND EXCLUSIVE REMEDY OF BUYER FOR ANY BREACH OF WARRANTY UNDER THIS AGREEMENT.

All claims under this standard warranty must be made within ONE (1) YEAR after the date on which the Product was delivered to Buyer. In the case of a replacement or repair of a Product, Buyer shall only ship a defective Product to Photop after an authorized representative of Photop has provided a Return Authorization ("RA") number for such warranty claim. Returns will be subject to a 15% restocking fee.

With respect to such returns, Buyer is solely responsible for properly packaging any Product to be returned to Photop under this standard warranty. Products must be packaged in their original manufacturer's packaging or equivalent. Products must be packaged in separate shipping containers with RA numbers clearly marked on the outside of the shipping containers. If there are questions regarding proper packaging and shipping, contact Photop for guidelines. Photop will not be responsible for replacing or repairing any Product damaged while in transit to Photop due to faulty or deficient packaging.

This standard warranty shall be void and shall not apply with respect to any Product which, upon inspection by Photop, shows evidence of damage as a result of abuse, misuse, mishandling, accidental damage, alteration, negligent handling, or improper installation or application, or as a result of alteration or other causes beyond the control of Photop.

This standard warranty shall not apply to goods or parts included in or supplied with Products; such goods or parts carry only such warranties, if any, as are provided by the manufacturers of such goods or parts, which warranties may be more restrictive than the standard warranty provided by Photop.

With respect to any previously-purchased Product, Photop shall have no obligation to install updates or upgrades to any components in such Product, even if the exclusion of such updates or upgrades of such components renders such Product obsolete when compared to a new Product of a substantially similar type.

THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION CONTAINED HEREIN. THIS WARRANTY VOIDS AND EXCLUDES ANY AND ALL OTHER WARRANTIES OR REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED OR ARISING UNDER ANY LAW, RELATING TO THE PRODUCTS, INCLUDING BUT NOT LIMITED TO WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND/OR FITNESS FOR ANY PARTICULAR PURPOSES.

NO PERSON, FIRM, OR CORPORATION IS AUTHORIZED TO ASSUME ON BEHALF OF PHOTOP ANY ADDITIONAL OBLIGATION OR LIABILITY NOT EXPRESSLY PROVIDED HEREIN, EXCEPT IN A WRITING DULY EXECUTED BY AN OFFICER OF PHOTOP.

## 3) Limitation of Liability

In no event shall Photop be liable for any incidental or consequential damages. The liability of Photop on any claim of any kind shall in no event exceed the price of the Product which gives rise to the claim. Except as to title, all such liability shall terminate upon expiration of the warranty period of the Product.

The invalidity of any of the previous paragraphs shall not affect the preceding paragraph or any other paragraph in this agreement.

## 4) Patent Infringement

Buyer shall hold Photop harmless against any expense or loss resulting from infringement of patents or trademarks arising from compliance with Buyer's designs or specifications.

## 5) Delivery and Title

Delivery dates are approximate and are based upon prompt receipt of all necessary information from Buyer. Under no circumstances does Photop guarantee date of shipment.

Unless otherwise specified by Photop on its order acknowledgement, delivery will be made and title will pass F.O.B. point of shipment. Photop shall ship Products as it deems appropriate unless instructed otherwise in writing by Buyer.

## 6) Risk of Loss

Risk of loss or damage shall pass to Buyer upon delivery to the first carrier. Loss or damage that occurs after delivery is Buyer's responsibility.

## 7) Uncontrollable Delays

Photop shall not be liable for delivery delays due to causes beyond its reasonable control including, but not limited to, acts of God, acts of Buyer, acts of military authority, governmental priorities, labor strikes, and transportation delays.

## 8) Financial Conditions

If Photop determines in good faith that the financial condition of Buyer at any time does not justify the continuation of production or shipment on the terms of payment originally specified, Photop may require full or partial payment in advance. In the event of Buyer bankruptcy or insolvency, Photop shall be entitled to cancel any outstanding order and shall receive reimbursement for its cancellation charges.

## 9) Payment Terms

Unless terms are specifically set forth on the order acknowledgement, Buyer shall pay at such time and such terms as specified in Photop's original invoice. Any quotations shall be valid for the period stated on the quotation.

## 10) Cancellation

Buyer may not cancel its order after shipment has been made. Buyer may cancel its order prior to shipment only upon written notice and consent of Photop. If Photop consents to any such cancellation, Buyer may be required to pay cancellation charges which include lost profits and all expenses incurred in connection with the cancelled order.

## 11) Software License

To the extent that any software or source code is included with, or incorporated into, any Product, such software or source code is licensed and not sold. Photop and its licensors retains ownership over any software or source code and reserve all rights not expressly granted to you, including the right to change and improve the software or source code. Photop and its licensors do not warrant that any software or source code will be error free and shall not be liable for any incidental or consequential damages arising therefrom.

**12) Governing Law and Jurisdiction**

The validity, performance, and all matters relating to the interpretation and effect of this agreement shall be governed by the laws of the State of California, excluding its laws and rules relating to conflict of laws. All disputes arising out of or related to this agreement shall be submitted to and subject to the exclusive jurisdiction of the state and federal courts located in the State of California.

**13) Representations, Warranties and Covenants of Buyer**

Certain products sold by Photop are manufactured in China and/or Vietnam ("Photop China Products") by Photop Technologies, Inc., a Chinese corporation, Photop Suwtech, Inc., a Chinese corporation, and their affiliates (collectively, "Photop China"). Buyer represents, warrants and covenants to Photop, as of every date of delivery by Photop of Products, that: (a) Buyer understands that the Photop China Products are made in China and/or Vietnam; (b) Buyer understands that Photop is not the manufacturer of the Photop China Products but rather a distributor of the Photop China Products; (c) Buyer will not transfer, under any circumstances, to Photop or Photop China any items or technical data subject to the International Traffic in Arms Regulations ("ITAR"), or any

items or technology subject to the Export Administration Regulations ("EAR") that would require an export authorization for export to China or Vietnam; (d) all technology and technical data related to purchases of Photop China Products, including but not limited to drawings and specifications, the transfer of which is deemed necessary by Buyer and which is not prohibited by the preceding clause (c), will be sent by Buyer directly to Photop China and never to Photop; (e) Buyer's purchase of the Photop China Products from Photop does not and will not violate any provisions of applicable law or any other agreement, including but not limited to any U.S. government contract, to which Buyer is a party; (f) if Buyer is purchasing Photop China Products to fulfill a U.S. government contract, the U.S. government knows that the Photop China Products are made in China and/or Vietnam; and (g) Buyer understands that Photop and Photop China have not made and do not make any representation, warranty or certification that the Photop China Products comply with any requirements of the Federal Acquisition Regulations System ("FARS") or the Defense Acquisition Regulations System ("DFARS"). If you are uncertain whether the Products you are purchasing are Photop China Products, you agree to contact Photop for clarification.