

# Terms and Conditions of Sale



GENERAL - THESE STANDARD TERMS AND CONDITIONS OF SALE (THESE "STANDARD TERMS") APPLY TO ALL QUOTATIONS ISSUED BY, AND TO ALL PURCHASES OF PRODUCTS, MATERIALS OR RELATED SERVICES ("GOODS") BY THE GOOCH & HOUSEGO ENTITY THAT IS PARTY TO THIS ORDER ("SELLER"). THESE STANDARD TERMS CONTROL OVER ANY CONFLICTING TERMS SET FORTH IN ANY PURCHASE ORDER OR OTHER DOCUMENT PROVIDED BY THE BUYER OF THE GOODS (THE "BUYER"). THE PURCHASE OF GOODS BY BUYER SHALL CONSTITUTE BUYER'S ACCEPTANCE OF THESE STANDARD TERMS. SELLER'S FAILURE TO OBJECT TO BUYER'S TERMS IN WRITING SHALL NOT BE CONSTRUED AS ACCEPTANCE OF BUYER'S TERMS. THESE STANDARD TERMS MAY NOT BE ALTERED EXCEPT IN WRITING SIGNED BY AUTHORIZED REPRESENTATIVES OF EACH PARTY. GOOCH & HOUSEGO is defined as including all affiliated Gooch & Housego companies, where "affiliated" signifies a controlling interest.

## 1 PRICES, PAYMENTS, AND TERMS

- A. Unless otherwise agreed in writing by Seller, quoted pricing shall automatically expire on the expiration date listed in the Quotation or 30 days from date of issue, whichever is later. Quotations are subject to withdrawal by Seller upon notice to Buyer. Seller has the right to re-quote and/or re-price Goods based on any changes made to the current design, specifications, quantities, delivery schedule, material, manufacturing process, freight/shipping, or foreign or domestic legislation enacted by any level of government, including, without limitation, tax legislation, which increases the cost of producing, warehousing, or selling Goods purchased hereunder.
- B. A Quotation accepted by Seller (an "Order") may not be cancelled by Buyer without the written consent of Seller.
- C. Unless specified otherwise in the Quotation, all payments are to be made in US funds net 30 days from date of Seller's invoice. Prices and charges do not include any federal, foreign, state or local taxes, fees or duties, including, without limitation, sales, use, property, import/export, value added, excise, VAT or other similar taxes. Buyer shall be responsible for all such taxes. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to breach, bankruptcy or otherwise.
- D. Amounts past due are subject to a service charge of 1.5% per month (or fraction thereof) or the maximum rate permitted by law. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, reasonable attorneys' fees and court costs.
- E. Upon Buyer's failure to submit full or partial payment upon request, Seller may cancel or delay any or all Orders and adjust those prices in effect at such time. Seller may also demand different terms of payment and assurance of Buyer's due payment. Any such demand may be oral or written and Seller may, upon the delivery of such demand, stop production and suspend shipments. If, within the period stated in such demand, Buyer fails or refuses to agree to such different terms of payment or fails or refuses to give adequate assurance of due payment, Seller may, at its option, treat such failure or refusal as a repudiation of the portion of the Order which has not been fully performed, or Seller may resume production and may make shipment under reservation of possession or of a security interest and may demand shipment against tender of documents of title. Until such time as Seller has fully paid for Goods shipped, Seller retains, and Buyer hereby grants to Seller, a purchase money security interest in such Goods and Buyer will assist Seller in taking any necessary action to protect such security interest.
- F. The Seller reserves the right, by giving Written notice (including via email) to the Buyer at any time before delivery, to increase the price of any Goods and/or Services to reflect any increase in the cost to the Seller which is due to any change in delivery dates, quantities or specifications for the Goods and/or Services which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions. The Seller also reserves the right to increase the price of any Goods and/or Services to reflect any increase in input costs incurred by the Seller beyond those anticipated when the quotation price was provided by giving at least 30 days advance written notice.
- G. ALL SALES ARE FINAL. GOODS CANNOT BE RETURNED WITHOUT SELLER'S PRIOR WRITTEN CONSENT.

## 2 SHIPPING; DELAYS

- A. All sales are made ex works. Title and risk of loss passes to Buyer at the point the Goods leave the Seller's facility. Unless otherwise agreed in writing, Seller shall ship all Goods by Parcel Post, United Parcel Service, or Air Freight in its discretion. Seller shall fully insure all shipments at Buyer's sole cost and expense unless Buyer expressly instructs Seller in writing to waive insurance via the Order or otherwise. Seller shall package all Goods for shipment in a manner suitable for the method of shipment specified by the Buyer, or the method selected by Seller in the absence of instructions. Special customer packaging will be furnished only when agreed by Seller and the cost thereof shall be borne by Buyer.
- B. Unless otherwise agreed by the parties in writing, all shipping dates are approximate and shall not be deemed to represent fixed or guaranteed delivery dates. Seller will use commercially reasonable efforts to fill all Orders in accordance with the estimated delivery/shipping dates. HOWEVER, SELLER WILL NOT BE RESPONSIBLE FOR ANY DELAYS IN FILLING ANY ORDER, NOR BE LIABLE FOR ANY LOSSES OR DAMAGES RESULTING FROM SUCH DELAYS, AND NO ORDER WILL BE SUBJECT TO CANCELLATION FOR DELAYS.
- C. Buyer shall not be entitled to reschedule or delay shipping dates on an Order previously accepted by Seller without Seller's written consent. Unless otherwise agreed by the parties in writing, if shipments are delayed by the Buyer, payments shall become due on the date when the Seller is prepared to make shipment. Products held for the Buyer shall be at the risk and expense of the Buyer.

## 3 INSPECTION ON ARRIVAL; WARRANTY

- A. Upon Buyer's receipt of shipment, Buyer shall immediately inspect all Goods for any claim of shortage, error, or that the Goods do not conform to the Quotation. Any rightful rejection of Goods must be made in writing within ten (10) days after Buyer's receipt of Goods; otherwise all Goods shall be deemed finally accepted by Buyer. Buyer must notify Seller in writing within such ten (10) days period if it reasonably believes in good faith that any Goods delivered are (i) damaged, defective, or otherwise do not conform to the make, model number, UPC, SKU or other identifier, listed in the applicable Order, or (ii) delivered to Buyer as a result of Seller's error, and hold such Goods pending Seller's inspection. In the event Seller confirms that the Goods are non-conforming then Seller, in its sole and absolute discretion, shall have the option to repair or replace the Goods or refund the price for the Goods to Buyer. In the event of the foregoing, Seller shall not be liable for any damage arising from the defective delivery or delay caused thereby.
- B. Each shipment shall be considered a separate and independent transaction that shall be subject to inspection as set forth in this Section 3.
- C. Seller warrants to Buyer that the Goods, at time of shipment, will conform to the description in the Quotation and will be free from defects in materials or workmanship for a period of twelve (12) months from the date of shipment. The liability of Seller under this warranty is limited solely to repair or replacement, at Seller's option, with equivalent products or an appropriate credit adjustment not to exceed the original sales price, of Goods returned to Seller provided that (a) Seller is promptly notified in writing by Buyer upon discovery of defects, (b) the defective Goods are returned to Seller, transportation charges prepaid by Buyer, and (c) Seller's examination of such Goods confirms to Seller's satisfaction that the non-conformity or defect was not caused by Buyer's negligence, misuse, improper installation, accident, or unauthorized repair or alteration. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND NONINFRINGEMENT. THE FOREGOING WARRANTY SHALL NOT APPLY TO ANY GOODS WHICH SHALL HAVE BEEN REPAIRED OR ALTERED (EXCEPT BY THE SELLER), OR WHICH SHALL HAVE BEEN SUBJECTED TO MISUSE, NEGLIGENCE, OR ACCIDENT. THE FOREGOING CONSTITUTES SELLER'S SOLE AND EXCLUSIVE LIABILITY, AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR THE FURNISHING OF NON-CONFORMING GOODS. TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY OTHER PERSON CLAIMING BY OR THROUGH BUYER, FOR ANY SPECIAL, DIRECT, INDIRECT, OR CONSEQUENTIAL DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE (INCLUDING THE ENTRY INTO, PERFORMANCE OR BREACH OF THIS AGREEMENT), REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE WAS FORESEEABLE OR THE PARTY AGAINST WHOM SUCH LIABILITY IS CLAIMED HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

## 4 PATENTS; INDEMNITY

- A. Except as otherwise provided in the following subparagraph, Seller shall defend or settle, and shall pay all settlement costs and/or damages awarded against Buyer in any suit or proceeding that is brought against Buyer alleging that the Goods, as delivered to Buyer hereunder, constitute an infringement of any United States intellectual property rights. The foregoing obligation is conditioned upon Buyer providing Seller prompt notification of the claim in writing and providing Seller the sole right to control the investigation, defense and settlement thereof. Buyer shall provide Seller such information and assistance (at Seller's expense) as is reasonably necessary for the defense and/or settlement of same. In the event of such an action, or if Seller reasonably suspects such an action, Seller shall have the right at its own expense to (i) procure for Buyer the right to continue using the Goods, (ii) to replace the Goods with comparable non-infringing items, (iii) to modify the Goods or part thereof so they become non-infringing, or (iv) remove the Goods and refund to Buyer the purchase price thereof less fair and reasonable depreciation. The foregoing states the entire liability of Seller for any infringement by the Goods or any part thereof.
- B. Notwithstanding the provisions of subparagraph A above, Buyer shall indemnify and hold Seller harmless against any claims of infringement or damages that arise from Seller's compliance with Buyer's designs, specifications, or instructions, or from Buyer's unauthorized modifications of, or combinations of the Goods with other products not approved by Seller.

## 5 TOOLING CLAUSE: DIES, TOOLS, OR FIXTURES

Buyer does not and shall not acquire any ownership interest in or to any of Seller's intellectual property rights in Seller's tooling under these Terms and Conditions despite any invoice charges for dies, tools, and fixtures (including, but not limited to photolithographic masks, reticles, or masters, whether of a mechanical, electrical, electronic, acoustic or optical nature). Any such charges represent only a portion of costs and do not account for Seller's engineering time and experience in the design. All dies, tools, and fixtures remain the property of the Seller and are not removable from the Seller's factory.

In the event Buyer pays for directly and owns the tooling:

### PROTECTION OF MOLDS AND TOOLING

- a. All Molds and Tooling are in the possession of SELLER at the risk of Buyer. SELLER does not cover such property by insurance. SELLER will take reasonable precaution to protect same while on SELLER premises. SELLER will maintain all Molds and Tooling in operation during their normal production life, limited to two years after completion of the most recent production Order. SELLER is not liable for the continued retention or availability of any Molds or Tooling after the expiration of such two-year period.
- b. When major replacement or repair to a Mold or Tooling becomes necessary due to normal wear, repairs will be made at Buyer's expense. SELLER will notify Buyer and will supply a quotation for the repair work.
- c. SELLER shall not be liable for any loss or damage to any Mold, and in no event will SELLER be liable for any loss of profits, direct, indirect, special or consequential damages as a result thereof.

### REPOSSESSION OF BUYER-SUPPLIED MOLDS, NEW MOLDS AND TOOLING BY BUYER

- a. Because of the unique requirements of injection molding optical components, the designs for injection molding tooling, molds, molding automation, coating designs, coating fixtures, and other related processes, designs, and equipment are proprietary and are the intellectual property of SELLER and are not transferable to Buyer or any third party.
- b. Buyer-Supplied Molds and New Molds will be stored at SELLER's location and will only be used to manufacture parts for Buyer or Buyer's designee, and are non-transferable except as outlined in Section 6. c.
- c. If SELLER is unwilling or unable to manufacture a Product using a Buyer-Supplied Mold or New Mold, SELLER shall, at Buyer's request, deliver such Buyer-Supplied Mold or New Mold to Buyer or as directed by Buyer, and at Buyer's sole cost and expense, subject to all U.S. export laws.

## 6 ASSIGNMENT - The Buyer shall not assign this Order or any interest therein or any rights hereunder without the prior written consent of Seller.

## 7 NO WAIVER - Failure of either party to enforce any term hereof shall not comprise a waiver of that or any other term and shall not prevent the enforcement of that or any other term at a subsequent time.

## 8 GOVERNING LAW; DISPUTES - These Standard Terms and all Orders shall be governed by, and interpreted in accordance with, the laws of the State of California. Any dispute which arises under these Standard Terms which cannot be resolved amicably by the parties shall be settled by binding arbitration, in accordance with the Commercial Rules of the American Arbitration Association in San Francisco, California. Judgment upon the award rendered may be entered in any court having competent jurisdiction. Costs and expenses of the arbitration shall be borne equally by the parties unless otherwise provided by the arbitrator(s). Notwithstanding the foregoing, claims for non-payment, fraud, or infringement of intellectual property may be brought in any court of competent jurisdiction and shall not be subject to binding arbitration.

## 9 COMPLIANCE WITH LAWS; EXPORT CONTROLS AND IMPORT LAWS AND REGULATIONS

- A. It is the policy of the Seller to comply fully with all applicable export laws and regulations. Seller's products and technology may be of US origin and/or contain parts of US origin. The export, re-export, or transfer of such products and technologies are subject to the export laws and regulations of the United States. The Seller and Buyer shall, in performance of this sale, comply with all applicable laws, executive orders, regulations (including without limitation US and European Union export administration regulations), ordinances, rules, proclamations, demands and requisitions of national governments or of any state, local or other governmental authority, including but not limited to: i) United States Export Administration Regulations (EAR), ii) International Traffic in Arms Regulations (ITAR), iii) regulations and executive orders administered by the Treasury Department's Office of Foreign Assets Control (OFAC) and iv) relevant export control and compliance laws and regulations of other countries.
- B. In the event of re-export or transfer, Buyer will ensure that all required permissions (i.e., export licenses, permits, etc., as applicable) will be obtained by the exporter.
- C. Buyer warrants that it shall not directly or indirectly export, transfer, or in any way distribute or divert any of the Seller's products, or parts thereof, or any technology to any country or territory that is prohibited from receiving such materials under any applicable law or regulation of the United States or the European Union (EU).
- D. Buyer warrants that it shall not directly or indirectly, export, transfer or in any way distribute any of the Seller's products, or parts thereof, or any technology to persons or entities named on any United States denied or restricted party list, including the Entity List at Part 744 of the Export Administration Regulations, persons designated by the US government as Specially Designated Global Terrorists (SDGTs), Specially Designated Terrorists (SDTs), Foreign Terrorist Organizations (FTOs) on the Specially Designated National (SDN) list; or other applicable government denied or restricted party list.
- E. Buyer certifies that the product, or parts thereof, software and/or technology will not be used, sold, re-exported or incorporated into products used directly or indirectly in the design, development, production, stockpiling, or use of chemical or biological weapons, nuclear programs, missiles, and maritime nuclear propulsion projects except as authorized under applicable laws and regulations relating to the manufacture, export and/or re-export of these items.
- F. Buyer certifies that it will comply with all applicable import laws and regulations, including those administered by US Customs and Border Protection.
- G. For the purposes of this EXPORT CONTROLS AND IMPORT LAWS AND REGULATIONS clause, Buyer agrees that it will provide all necessary information and transactional data required for review and, as necessary, for export authorization as determined by the Seller. Seller reserves the right to refuse and/or cancel any order if, at any time, Seller believes that any export control laws and regulations may be violated.

## 10 FORCE MAJEURE - Seller shall not be liable for any failure to perform or other loss due to unforeseen circumstances or causes beyond its control, including without limitation acts of God, strikes, material or transportation shortages, natural casualties, governmental laws or regulations, war, fire, flood, pandemics, disasters and civil unrest.

## 11 MISCELLANEOUS

- A. For those Goods that are manufactured in batches, while Seller will make every effort to fulfill the exact quantity ordered by Buyer, Seller may ship +/- 5% of ordered quantity, based upon the actual manufacturing yields achieved. Prior to the shipment of Goods and following notification by Seller, Buyer will adjust the Order to reflect the available number of units. The available number of units will then be shipped by Seller to Buyer.
- B. The parties agree that the terms and conditions set forth in these Standard Terms and the Quotation constitute the complete and exclusive agreement regarding Buyer's Order and supersede any prior communications, representations, quotations, or agreements of the parties regarding Buyer's Order, whether oral or written. These Standard Terms cannot be altered, amended, or modified except in writing executed by an authorized representative of each party.
- C. The relationship between the parties is that of independent contractors. Nothing herein shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

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