

Optomec, Inc.
TERMS AND CONDITIONS OF PURCHASE

This purchase order constitutes an offer by Optomec, Incorporated ("Buyer") to the supplier to whom this purchase order is issued ("Seller") to purchase the articles, materials, services, or equipment covered by this purchase order (the "Product") exclusively upon the terms and conditions of purchase set forth below (or incorporated herein by reference) and shall become a bonding contract including such terms and conditions upon either issuance of an order acknowledgment hereof by Seller or substantial performance hereunder by Seller (the "Agreement"). No contrary or additional terms or conditions of sale proposed by Seller will be accepted by Buyer and any such proposed contrary or additional terms are to be construed as proposals for addition to this Agreement, which are hereby rejected unless otherwise indicated in a written instrument executed by an authorized officer of Buyer making specific reference to this purchase order and the specific contrary or additional term proposed by Seller. Seller's performance pursuant to this order shall be deemed unqualified acceptance of the terms and conditions of purchase set forth below.

1. **PRICE:** The price for the Product sold hereunder shall not be higher than that appearing on the face of this purchase order, or if no price appears thereon, then not higher than the last price quoted by Seller.

2. **WARRANTY:** All Products sold and delivered to Buyer hereunder shall be in full conformity with Buyer's specifications set forth or referred to on the face hereof or if none are set forth or referred to, shall be conforming with Seller's published specifications and samples provided to Buyer. All Products sold and delivered to Buyer will be new, fit and sufficient for the use intended by Buyer and will be merchantable and of good quality and workmanship and free from defects. The foregoing warranty shall survive any acceptance of the Products by Buyer and shall be in addition to any warranty expressly furnished or represented to Buyer by Seller. Seller will defend, indemnify, and hold harmless Buyer and its customers from and against any and all costs (including reasonable attorneys' fees incurred), expenses, damages, losses, liabilities, penalties, and judgments attributable to any Product delivered hereunder that fails to conform to the warranty set forth herein or which is otherwise implied by applicable law.

3. **INSPECTION:** All Products sold and delivered hereunder shall be subject to final inspection and acceptance by Buyer at its facility, notwithstanding prior payment or inspection at Seller's facility. Acceptance of any Products shall not alter or affect the warranties of Seller referenced above. Buyer may, at its option, either hold rejected products for Seller's instructions and at Seller's risk, or return them to Seller at Seller's expense and require their correction, and Seller shall promptly reimburse Buyer for any and all damages sustained by Buyer as a result of failure of Products to conform to the provisions and specification set forth in this purchase order.

4. **CANCELLATION:** Buyer reserves the right to cancel this order or any part thereof, or terminate this Agreement at any time, and Buyer's sole responsibility to Seller shall be to pay the agreed price for such Products as have been delivered as of the time such cancellation is effective.

5. **DELIVERY AND TIME:** Unless otherwise specified on the face of this purchase order, terms of delivery of the Products are F.O.B. destination with freight prepaid. Because Buyer's business and operations are in part dependent on receipt of the Products that are the subject of this Agreement, timely delivery of the Products is essential to

the performance of Seller's obligations hereunder. If the Seller fails to ship the Products by the Delivery Date set forth in the Purchase Order, Seller shall pay to Buyer 1% of the purchase price per week as the delay penalty, not to exceed 5% of the Purchase Order hereunder, until Seller delivers the Products, provided that Buyer has met its obligations with regards to all payments due Seller under the terms and conditions of this Agreement. Deliveries shall be made at the times and of the quantities specified on the face of this purchase order, and Seller shall not, without the written consent of Buyer, make shipments in advance of such schedule. Buyer may order expedited routing in place of scheduled routing if necessary, to meet the schedule or recover time lost by any delay, in which event, any excess transportation costs shall be paid by Seller. Seller shall also pay Buyer for any cost incurred by Buyer, including but not limited to hotel, transportation, and travel, to Seller's place of business to ensure timely delivery of the Products to Buyer due to Seller's failure to maintain the agreed upon schedule. Buyer may postpone delivery of any Products covered hereby. Overshipments may be returned by Buyer at Seller's expense or retained by Buyer at no increase in price. Seller shall not make any commitment or production arrangements in excess of the amounts, or in advance of the time, necessary to meet Buyer's delivery schedule for Products.

6. **EXCUSABLE FAILURE OR DELAY:** Neither Buyer nor Seller shall be held liable for the failure or delay in delivery or acceptance of Products where such failure or delay is attributable to any act of God or of the public enemy, war, compliance with laws, governmental acts or regulations, in any case, not in effect as of the date of this purchase order, fire, flood, quarantine, embargo, epidemic, unusually severe weather or other causes similar to the foregoing beyond the reasonable control of the party so affected. The party seeking to avail itself of any of the foregoing excuses must promptly notify the other party of the reasons for the failure or delay in delivery or acceptance and shall exert its best efforts to avoid further delay.

7. **INTELLECTUAL PROPERTY WARRANTY AND INDEMNITY:** Seller warrants that the Products delivered to Buyer hereunder, and the use of the Products for their normal purposes, will be free from any claims of alleged infringement of patent, copyright, trademark, service mark, trade secret, or any other intellectual property right of any other party. If any third party asserts any such claim or allegation against Buyer or its customers, Seller shall defend, indemnify and hold harmless Buyer and its customers from and against any and all costs (including reasonable attorneys' fees incurred), expenses, losses, damages, liabilities, penalties, or judgments relating to such claim or allegation.

8. **ASSIGNMENT OF WORK PRODUCT TO BUYER:** All work product developed by Seller in connection with its performance under this Agreement, including but not limited to, computer files, concepts, ideas, designs, discoveries, drawings, inventions, models, plans, programming, schedules, specifications, technical documentation, software, or source code ("Work Product") is Buyer's property and all right, title, and interest, including but not limited to, copyright interest, shall belong exclusively to Buyer and shall be assigned to Buyer accordingly. Seller is not permitted to retain copies of such Work Product and shall deliver all Work Product to Buyer with the Products ordered hereunder. Seller shall not photograph or otherwise visually document any Work Product except for archival purposes. This Agreement transfers all right, title, or interest, including without limitation, copyright and patent interest that Seller may otherwise have in such Work Product to Buyer. Seller will at Buyer's request execute and deliver such documents as in Buyer's opinion may be

necessary, proper, appropriate, convenient or expedient to protect, register, enforce, or evidence further Buyer's ownership of such Work Product. Seller warrants and represents that any tangible Work Product developed by it pursuant to this purchase order will be either original to Seller, in the public domain, or obtained by Seller with the written consent of the owner thereof to use such other works or intellectual property in or to develop the Work Product. Seller shall defend, indemnify, and hold harmless Buyer and its customers from and against any and all costs, including reasonable attorneys' fees incurred, expenses, losses, damages, liabilities, penalties, or judgments relating to any claim or allegation that any Work Product infringes any intellectual property right of any third party.

9. INDEMNITY FOR INJURY TO PERSONS OR PROPERTY: Seller will defend, indemnify, and hold harmless Buyer and its officers, directors, employees, and affiliates from and against any and all costs, including reasonable attorneys' fees incurred, expenses, damages, liabilities, penalties, personal injuries, or judgments suffered or incurred by an individual or to any real or personal property attributable to the Products, their use, or to Seller's actions or omissions.

10. CONFIDENTIALITY: All data and other information obtained by Seller from Buyer in connection with this purchase order, and any Work Product to be delivered to Buyer hereunder, shall be held in strict confidence by Seller and used solely for the purposes originally intended in connection with this purchase order. Seller shall treat such data, information and Work Product with the same degree of confidence that it uses to protect its own proprietary or confidential information, but not less than a reasonable standard of care, and shall ensure that each of its employees to whom such data, information, or Work Product is known is bound to maintain the confidentiality of such data, information, or Work Product by separate agreement with Seller or by operation of law.

11. NO ASSIGNMENT: Neither this purchase order, the Agreement, nor any right or obligation of Seller hereunder may be assigned or delegated by Seller, by contract, merger, operation of law, or otherwise, to any other party without the prior consent of Buyer which may be granted at Buyer's sole discretion. Seller is not permitted to engage subcontractors in connection with the performance of its obligations to Buyer hereunder without the prior consent of Buyer.

12. INDEPENDENT CONTRACTOR: Nothing in this purchase order or Agreement is intended to, or does, create any joint venture, partnership, agency, or similar relationship between Buyer and Seller, other than a buyer and seller relationship. Seller shall not be, and is not authorized to represent itself as an agent or representative of Buyer for any purposes.

13. WAIVER: Buyer's failure to insist in any one or more instances upon the full performance by Seller of any term, covenant, obligation, covenant, or condition imposed on it by this Agreement shall not be construed as a waiver of any right available to Buyer hereunder with respect to such nonperformance or as Buyer's condoning further nonperformance.

14. NO MODIFICATION: No change, modification, or extension of this purchase order or Agreement shall be effective against Buyer or Seller unless it is made in a writing making specific reference to this purchase order and is signed by an authorized representative of Buyer and Seller.

15. GOVERNING LAW: To the extent enforceable in the relevant forum of competent jurisdiction, this Agreement will be governed by and construed in accordance with the laws of the State of New Mexico, United States of America, irrespective of its choice of law principles. All disputes arising out of this Agreement shall be brought in the state or federal courts located in Bernalillo County, New Mexico, although to the extent that a party hereto desires to bring an action for preliminary or final injunctive relief, such party shall be entitled to bring such an action against the other party in the forum of the principal place of business of such other party. In the event that any word, phrase, clause, sentence, or other provision in this Agreement shall violate or be deemed unenforceable under any applicable statute, ordinance or rule of law in any governing jurisdiction, such provision shall not affect the rights and obligations of the Parties with regard to the remaining provisions of the Agreement. The unlawful or unenforceable provision shall be replaced by a lawful and enforceable provision, which so far as possible results in the same economic effects as the unlawful or unenforceable provision. If the Parties cannot agree upon a substitute provision, then the Courts shall do so on their behalf.