



Terms and Conditions of Sale

PICOSECOND PULSE LABS, INC., ("PSPL") offers to sell only on the condition that Buyer's acceptance is expressly limited to PSPL's Terms and Conditions of Sale. PSPL's acceptance of any order from Buyer is expressly made conditional on assent to these Terms and Conditions of Sale unless otherwise specifically agreed to in writing by PSPL. In the absence of such written agreement, commencement of performance or delivery shall be for Buyer's convenience only and shall not be construed as an acceptance by PSPL of Buyer's Terms and Conditions of Purchase. If a contract is not earlier formed by mutual agreement in writing, Buyer's acceptance of any goods or services shall be deemed acceptance of the PSPL Terms and Conditions of Sale as stated herein.

1) PRICES

- a) All prices for U.S.A. sales are F.O.B. PSPL Dock, Boulder, CO. Prices are in U.S.A. dollars (\$). Prices are obtained from PSPL's most recent published price list. PSPL reserves the right to change prices without notice, and those prices on the most recent published price list at the time an order is accepted will apply. The only exception will be for unexpired, written price quotations previously furnished by PSPL.
- b) Unless otherwise agreed to in writing by PSPL, all price quotations expire thirty (30) days after the date of the written quotation. All prices quoted are valid only if Buyer's requested delivery date, including any change orders, is within six (6) months of the date on which the original order is accepted.
- c) Unless otherwise agreed to in writing by PSPL, all prices quoted are exclusive of all taxes (except taxes levied against PSPL's income), including state and local use, sales, property (ad valorem), and similar taxes. Buyer agrees to pay such taxes unless Buyer has provided PSPL with a valid exemption resale certificate in the appropriate form for the jurisdiction of Buyer's place of business and any jurisdiction to which equipment is to be directly shipped hereunder or unless such sale is otherwise exempt from such taxes. When applicable, such taxes shall appear as a separate item on PSPL's invoice.
- d) U.S.A. sales products will ship via UPS 2nd Day Air (UPS-Blue). F.O.B. point is PSPL Dock, Boulder, CO, and the Buyer pays all freight charges. Freight will be pre-paid by PSPL and added to the invoice.
- e) All export sales (outside the U.S.A.) are F.O.B. PSPL Dock, Boulder, CO, USA. Prices are in U.S.A. dollars (\$). All freight charges are the responsibility of the Buyer, including, but not limited to shipping, insurance, customs, duties, taxes, and broker fees.
- f) All export orders are subject to an export handling fee. Export orders requiring an Export License will be subject to an additional handling fee.
- g) All tooling or engineering charges included in an invoice shall not imply ownership of the tools or designs by the Buyer. Proprietary materials are covered in section 11 of these terms and conditions.

2) PAYMENT AND SECURITY TERMS

- a) Payment is to be in U.S.A. dollars (\$). PSPL's normal terms of payment shall be NET 30 DAYS from date of invoice (which date shall not be earlier than actual date of shipment). In the event payment is not received at the PSPL offices in Boulder, Colorado, within such 30 day period, any unpaid balance shall commence to bear interest at the rate of eighteen percent (18%) per annum or the highest rate allowed by law from the 31st day. PSPL reserves the right to change the credit terms at any time, when in PSPL's sole opinion, Buyer's financial condition or previous payment record so warrants.
- b) Buyers from countries other than the U.S.A. are required to make their payments directly by telegraph wire to PSPL's bank. PSPL is to receive payment in full with Buyer assuming all bank and wire transfer charges.
- c) Should Buyer become delinquent in the payment of any sum due PSPL, after ten (10) days from the date of written notice to Buyer, PSPL shall not be obligated to continue performance under any agreement with Buyer.
- d) Buyer hereby grants, and PSPL reserves, a purchase money security interest in each product purchased hereunder, and in any proceeds thereof, for the amount of its purchase price. Upon request by PSPL, Buyer shall sign any document required to perfect such security interest. Payment in full of the purchase price of any product purchased hereunder shall release the security interest on that product.

3) SHIPMENTS, TITLE, RISK OF LOSS

- a) All delivery dates are estimated and are dependent in part upon prompt receipt of all necessary information to service an order. PSPL shall make a reasonable effort to meet any delivery date(s) quoted or acknowledged. However, PSPL will not be liable for its failure to meet such date(s). PSPL shall not be liable for any premium transportation or other costs or losses incurred by Buyer as a result of PSPL's inability to deliver product in accordance with Buyer's requested delivery date(s).
- b) All U.S.A. shipments by PSPL are made F.O.B. PSPL Dock, Boulder, CO. Title to the products (except software and documentation) and risk of loss shall pass to Buyer at the F.O.B. point. Title to software products and documentation will remain with PSPL or its licensors. Shipments are insured with the carrier only when requested by the Buyer. In this case, PSPL will prepay the freight and insurance charges and add them to the invoice.
- c) All export sales (outside the U.S.A.) are F.O.B. PSPL Dock, Boulder, CO, USA. Small packages (\$500 maximum) are shipped by express air mail with postage and insurance prepaid and added to the invoice. Pulse generators and large packages are shipped collect on the air freight carrier designated by the customer. All freight related charges are the responsibility of the Buyer, including, but not limited to shipping, insurance, customs, duties, taxes, and broker fees.
- d) Unless otherwise agreed to in writing by PSPL, all products shall be packed for shipment and storage in accordance with standard commercial practices. All packing shall conform to requirements of carrier's tariffs.
- e) PSPL reserves the right to make deliveries in installments. Partial shipments shall be billed as made, and payments, therefore, are subject to the terms of payment noted above. PSPL reserves the right to make shipments in advance of the scheduled delivery date, unless the Buyer specifically requests in writing that shipments not be made prior to the scheduled date. PSPL reserves the right, in PSPL's sole judgment, to allocate inventory and production if such allocation becomes necessary.

4) ORDER OF PRECEDENCE

- a) Acceptance by Buyer is limited to PSPL's Terms and Conditions unless these Terms and Conditions are superseded by those appearing in any applicable PSPL quotation or purchase agreement executed between PSPL and Buyer. Buyer's additional or different terms and conditions shall not apply.

b) Except as set forth in Section 4(a), Buyer's purchase of PSPL products hereunder represents acceptance of PSPL's Terms and Conditions of Sale, which constitute the entire understanding between the parties and supersede any previous communications, representations, or agreements by either party, whether verbal or written. No change or modification of PSPL's Terms and Conditions shall be valid or binding on either party unless in writing and signed by an authorized representative of each party.

5) CHANGES

- a) If Buyer issues a change order less than sixty (60) days prior to scheduled shipment and such change order causes a delivery delay, then Buyer may be subject to a fifteen percent (15%) charge based upon the list price of the affected product.
- b) In addition, any such change in delivery dates caused by Buyer establishing a delivery date greater than six (6) months from Buyer's original order shall constitute a new order for the affected products. Buyer may be required to pay an adjusted unit price based on the quantity of all goods that shall have been delivered under the original order. The current list price and volume discounts shall apply to the new order.
- c) For product or service ordered and acknowledged on a Non Cancelable, Non Returnable (NCNR) order, Buyer cannot reschedule deliveries without written approval by PSPL.

6) CANCELLATIONS

- a) For standard products and services, those items set forth in PSPL's current published catalog price list, the Buyer may terminate or cancel its order upon at least thirty (30) days advance written notice from the original scheduled shipment date and upon payment of applicable cancellation charges, which shall take into account among other things expenses already incurred and commitments already made by PSPL, including but not limited to raw materials, work in process, and finished goods. For the purposes of this section, the date of termination or cancellation shall be the date on which the written notice of termination is received by PSPL.
- b) If Buyer cancels an order for special equipment or services any time after the order is accepted by PSPL, Buyer may be subject to an additional charge of up to 100% of the equipment or service value. Special equipment or services are those items not set forth in PSPL's current published catalog price list.
- c) For product or service ordered and acknowledged on a Non Cancelable, Non Returnable (NCNR) order, Buyer cannot cancel or return product without written approval by PSPL.

7) SPECIFICATIONS

- a) Specifications quoted in the PSPL catalog are those that applied at the time of order. In an effort to constantly improve its products, PSPL reserves the right to change specifications at any time without notice and without incurring any obligation to incorporate new features in products previously sold. For custom-manufactured products, the applicable specifications shall be those agreed to in writing by the parties.
- b) A copy of the current specifications for the particular product(s) ordered is attached to the order acknowledgement.

8) ACCEPTANCE OF PRODUCTS

Acceptance shall be accomplished by using applicable test procedures or programs established by PSPL. Acceptance shall be at the time of completion of final tests at PSPL's factory. A Certificate of Compliance will be furnished to the Buyer upon request. If in Buyer's order Buyer has indicated its intention to witness final tests, PSPL shall give Buyer at least five (5) days advance notice of the date of such tests. PSPL shall notify Buyer of any additional charges that may be associated with witnessing such tests.

9) WARRANTY

- a) PSPL warrants to the Buyer that during the applicable warranty period: (a) the products meet, in material respects, the applicable specifications for such products in effect as of the acceptance date; and (b) the products are free from material defects in materials and workmanship under normal use and service.
- b) The warranty period is specified on the particular product's specification sheet. The warranty period begins on the F.O.B. date of shipment from PSPL.
- c) PSPL's sole obligations pursuant to this warranty, and the sole remedies of the Buyer and of any subsequent purchaser, shall be limited to the repair or replacement, in PSPL's sole discretion, of any of the products that do not conform to this warranty during the applicable warranty period.
- d) This warranty shall be invalidated if the products (a) have not been installed, handled, or used in accordance with PSPL's recommended procedures; (b) have been modified; (c) have been damaged through misuse, negligence, or abuse of the Buyer or of any subsequent purchasers; (d) are damaged by causes external to the products, including (without limitation) shipping damage, power failure, fire, or accident or catastrophe of any nature; (e) have their warranty seals broken, damaged, or destroyed; or (f) have been subjected to repairs or attempted repairs by any person other than PSPL.
- e) **THE WARRANTY SET FORTH ABOVE IS MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

10) WARRANTY OR AFTER-WARRANTY REPAIR

- a) To obtain warranty or after-warranty repair service, the Buyer must return the product to the PSPL factory in Boulder, Colorado. Prior to returning the product to PSPL, Buyer must first obtain a Return Authorization from PSPL. The Buyer shall prepay all shipping charges, custom broker fees, duties, and taxes. PSPL will refuse any collect shipments.
- b) PSPL will charge a minimum fee for estimating repair costs for after-warranty service. The Buyer must approve estimated repair costs before repairs are performed.
- c) PSPL will refuse to provide either warranty or after-warranty service on any PSPL products that have damaged or missing warranty seals or evidence of attempted tampering or repairs on modules that have warranty seals.
- d) PSPL will make reasonable efforts to return repaired products to original specifications, subject to availability of critical components. This may not be possible for discontinued products.
- e) PSPL will pay for the return of warranty repaired products to Buyers within the USA only. For countries other than the USA, PSPL will return both warranty and after-warranty repaired products to Buyer, freight collect, via the carrier designated by the Buyer. Foreign Buyers are solely responsible for all shipping charges, insurance, customs broker fees, duties, taxes, etc.

11) PROPRIETARY MATERIALS

PSPL shall retain exclusive ownership in the specifications and designs and any other intellectual property created by PSPL in the course of providing products, including custom-manufactured products, to Buyer. Unless otherwise agreed to in writing by PSPL, copyrighted materials (software and printed documentation) and other proprietary materials (including designs and specifications) supplied by PSPL may not be copied except for archive purposes or to replace a defective copy. PSPL grants Buyer a nonexclusive license to use the copyrighted and other proprietary materials only when operating the associated product manufactured by PSPL. Buyer may transfer the copyrighted and other proprietary materials only upon and in conjunction with the transfer of the associated product supplied by PSPL and subject to the confidentiality obligations. Buyer and any transferee is prohibited from disassembling, decompiling, or reverse engineering the PSPL products and software or using the documentation and any other proprietary material for any purpose other than in connection with the use of associated product manufactured by PSPL. Buyer's license confers no title or ownership and is not a sale of any rights in the copyrighted and other proprietary materials.

12) INFRINGEMENT

- a) Unless the products are custom-manufactured by PSPL to specifications supplied by the Buyer, PSPL shall defend any suit or proceeding brought against the Buyer that is based on a claim that one or more of the products infringes a valid U.S. patent or copyright, and pay any resulting costs, damages, and attorneys' fees finally awarded against Buyer that are attributable to such claim, provided that the Buyer (a) notifies PSPL promptly in writing of the assertion (whether or not the assertion has been made in a suit or other proceeding) by a third party of a claim of infringement; (b) gives PSPL full authority to respond to the assertion (including full authority to defend or compromise any suit or proceeding); and (c) complies fully with all reasonable requests by PSPL for information and assistance regarding the asserted infringement. If the Buyer complies with these conditions and is enjoined from continued use of the product, then PSPL shall, at PSPL's option, either (a) acquire the right for the Buyer to continue to use the product by payment of a license fee or otherwise; (b) modify the product to eliminate the infringement; (c) replace the product with a non-infringing substitute; or (d) refund the depreciated value of said product upon return of same to PSPL.
- b) Notwithstanding the foregoing, PSPL shall be relieved of all its obligations to defend the Buyer pursuant to this Section 12 and for any liability for infringement if (a) any asserted infringement is based upon the use of any of the products (or any components of any of the products) in a manner for which the product (or the component) was not designed or intended or with products not supplied by PSPL; (b) the product has been modified by or on behalf of the Buyer; or (c) the Buyer does not fulfill its obligations under this Section 12.
- c) PSPL shall have no liability for, and the Buyer agrees to indemnify PSPL and to hold PSPL harmless from, any loss or expenses (including attorneys' fees) resulting from any intellectual property infringement arising from any of the products that are custom-manufactured by PSPL to specifications or technical information supplied by the Buyer.
- d) The foregoing states the entire liability of PSPL for infringement of intellectual property rights by products furnished hereunder.

13) LIMITATION OF LIABILITY

EXCEPT AS OTHERWISE STATED IN SECTION 12, IN NO EVENT SHALL PSPL BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING LOSS OF PROFITS, LOSS OF DATA, COST OF COVER), OR PUNITIVE DAMAGES. TO THE EXTENT PSPL IS HELD LEGALLY LIABLE TO BUYER, WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, PSPL'S TOTAL LIABILITY IS LIMITED TO US \$500,000.

14) APPLICATIONS

- a) PSPL's products, including test instruments and components, are intended for use only by qualified personnel in scientific research laboratories and in communication systems. They have no suitable use or application by the general public.
- b) PSPL's products are not designed, manufactured, or intended for sale as parts, components, or assemblies for the planning, construction, maintenance, operation, or use of any nuclear power generation facility, nor for the flight, navigation, or communication of aircraft or ground support equipment, nor for any medical care or treatment, nor for use in any other application requiring control of risks and/or dangerous operations. Any Buyer using PSPL products for these applications agrees that, except as otherwise provided herein, PSPL is not liable, in whole or in part, for any claims or damages arising from such use. If Buyer uses PSPL products for these applications, Buyer agrees to indemnify and hold PSPL harmless from any claims for loss, cost, damage, expense, or liability arising out of or in connection with the use and performance of PSPL's products in such nuclear or aviation or medical or such other applications entailing risk or dangerous operations. Test equipment or components used in a static application that is not a functional part, component, or assembly of a nuclear power generation facility or of an aircraft, and that is not attached to or utilized in the flight of an aircraft, or not attached to medical equipment utilized in any medical procedure, or in other applications that do not entail risks or dangerous operations, are not subject to this paragraph.

15) CONFIDENTIAL INFORMATION

- a) Definition. "Confidential Information" shall include but not be limited to: (1) all ideas, designs, specifications, concepts, and inventions made or developed by PSPL in the course of or related to providing the products under this agreement; (2) all other trade secrets or confidential or proprietary information of either party marked as or stated to be "Proprietary" or "Confidential"; and (3) information relating to the terms of this agreement, except to the extent that the parties mutually agree to disclose such information to a third party. Unless otherwise provided in this Agreement, information shall be identified as Confidential Information orally at the time of disclosure, by using an appropriate proprietary stamp or legend, or by designating the information as confidential in writing within thirty (30) days after such disclosure.
- b) Prohibited Disclosures. Except as expressly allowed in Section 15(c) or elsewhere herein, each party agrees to maintain all Confidential Information of the other party in confidence to the same extent that it protects its own similar confidential information (but in no event less than a reasonable degree of care), to take reasonable precautions to prevent unauthorized disclosure or use of such information, and to use such Confidential Information only in connection with performing under this agreement. These restrictions on disclosure and use shall survive the termination of this agreement.
- c) Exceptions. Neither party shall be obligated to maintain the confidentiality of any information only to the extent that it (1) is or becomes generally known to the public without violation of this agreement by the receiving party; (2) was in recipient's lawful possession prior to the disclosure and had not been obtained by the receiving party directly or indirectly from the disclosing party; (3) is lawfully obtained by receiving party from a third party without restriction on disclosure; (4) is independently developed by receiving party without use of Confidential Information; (5) is released from confidential treatment by written consent of the disclosing party; or (6) is required to be disclosed to comply

with applicable laws, a court order, or governmental regulations, provided that the party required to make the disclosure provide prior written notice of the disclosure and take reasonable actions to minimize the extent of the disclosure.

- d) Return of Confidential Information. Upon request of either party, each party must promptly return to the other party all Confidential Information in the possession of the party and/or its agents. An officer of each party must certify the return of all Confidential Information to the other party.

16) GOVERNING LAW, JURISDICTION

- a) This agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado without giving effect to the conflict of law provision thereof. The parties hereby disclaim the applicability of the 1980 U.N. Convention on the International Sale of Goods. This agreement constitutes the complete agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations or offers, written or oral. This agreement may be amended only in writing, signed by an authorized representative of each party.
- b) The parties hereby agree that any dispute arising from this agreement shall be subject to the jurisdiction, and Buyer consents to such jurisdiction and venue, of the courts within the State of Colorado.

17) EXPORT CONTROLS

- a) Due to the high technology in the PSPL products and also the potential end use of its products by some Buyers, the United States of America Government has ruled that export licenses are required for the export of some PSPL products. All purchase orders for export of such products must be accompanied by a properly completed U.S.A. Government document, form ITA-629, "Statement by Ultimate Consignee and Purchaser" and/ or an International Import Certificate issued by the government of the importing country, as applicable. Upon receipt of all the proper documents, PSPL will then apply for the export license. Export shipping date quotations are always contingent upon receipt of the export license. Delays incurred by the procedures of the USA Office of Export Licensing in the issuing of an export license are beyond the control of PSPL.
- b) Unless otherwise agreed to by PSPL, Buyers who export from the U.S.A. products purchased hereunder assume all responsibility for obtaining any required export authorization.
- c) Buyer shall not export, re-export, or transfer technical data or products supplied by PSPL, directly or through others, or the direct product of such data, to any country or user to which such export, re-export, or transfer is restricted by United States or local country law or regulation without first obtaining any required government license, authorization, certification, or approval.

18) FORCE MAJEURE

All orders accepted by PSPL are subject to postponement or cancellation for any cause beyond the reasonable control of PSPL, including without limitation: inability to obtain necessary materials and components; strikes, labor disturbances, and other unavailability of workers; fire, flood, and other acts of God; war, domestic or international terrorism, riot, civil insurrection, and other disturbances; production or engineering difficulties; and governmental regulation, orders, directives, and restriction.

19) AFFIRMATIVE ACTION COMPLIANCE STATEMENT

- a) PSPL will take action to fulfill its role as an equal opportunity employer. We request your support in our affirmative action efforts as it relates to providing employment opportunity for minority groups and women. It is our policy not to discriminate against any employee or applicant for employment because of age, race, sex, creed, color, religion, national origin, veteran, or handicapped status. We appreciate your support of our commitment to equal employment opportunity.
- b) The EEO Clause required under Executive Order 11246, the affirmative action commitment for disabled veterans and veterans of the Vietnam Era set forth in 41 CFR 60-250.4, the affirmative action clause for disabled workers set forth in 41 CFR 60-741.40, and the related regulations of the Secretary of Labor, 41 CFR Chapter 60, are incorporated by reference in this contract of sale. By accepting this contract of sale, customer certifies that it complies with the authorities cited above.

20) MISCELLANEOUS

- a) PSPL products may have remanufactured parts that are the equivalent to new in performance.
- b) Except as may be prohibited by U.S.A. bankruptcy laws, in the event of any insolvency or any inability to pay debts as they become due by a party hereto, or voluntary or involuntary bankruptcy proceeding by or against a party hereto, or appointment of a receiver or assignee for the benefit of creditors, the other party may elect to cancel any unfulfilled obligations hereunder, except for payments due.
- c) Any required notices shall be given in writing at the address of each party set forth on the acknowledgement of order, or to such other address as either party may substitute by written notice to the other.
- d) Neither party may assign or transfer any of the rights, duties, or obligations herein without the prior written consent of the other, and any purported attempt to do so shall be null and void.
- e) PSPL's failure to exercise any of its rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights.
- f) No U.S. Government Procurement regulations shall be included hereunder and binding on either party unless specifically agreed to in writing prior to incorporation herein.
- g) Stenographical, typographical, and clerical errors are subject to correction