

## STANDARD TERMS AND CONDITIONS OF SALE

### 1. Definitions and Agreement:

These Terms and Conditions of Sale are a part of the order or other written agreement ("Order") between the purchaser specified in the Order ("Purchaser") and **Photon Export Thin Films & Patents SL** ("Seller") for Purchaser's purchase of products ("Products") from Seller. The Order and these Terms and Conditions of Sale are sometimes referred to herein as this Agreement. Seller will not be bound by, and specifically objects to, any term, condition, or other provision which is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) which is proffered by Purchaser in any purchase order, receipt, acceptance, confirmation, correspondence, or otherwise, unless Seller specifically agrees to such provision in a written instrument signed by Seller. Seller's acceptance of any Order by Purchaser is expressly conditioned on Purchaser's agreement to these Standard Terms and Conditions of Sale.

### 2. Purchase and Sale; Special Orders.

Seller will sell to Purchaser, and Purchaser will accept and pay for, all Products ordered by Purchaser pursuant to an Order which has been accepted by Seller. All Orders are subject to acceptance by Seller either in writing or by shipping Products. Seller reserves the right to ship, as a complete Order, Orders with variances of up to 10% for custom or non-standard Orders involving precious metals ("Custom Orders"). All Custom Orders are "Final" and may not be accepted for refund for any purpose. Seller may accept any Order in whole or in part and Seller's shipment of less than all Products ordered will constitute acceptance only as to those Products shipped.

### 3. Delivery, Acceptance and Returns.

Seller will use commercially reasonable efforts to meet any delivery date specified in the Orders, but will not be liable for any failure to meet such dates. All shipments to Purchaser shall be shipped ExWorks Seller's place of business. All Products delivered to Purchaser that materially conform in all respects to the Order will be deemed accepted upon delivery. In the event the parties agree to the return of any Products (other than Products ordered pursuant to a Custom Order, which may not be returned by Purchaser), all fees and expenses, including packaging and shipment (which shall be shipped by Purchaser from Purchaser's Place of Business to Seller's place of business in Barcelona-Spain), of such returned Products or any portion thereof will be at Purchaser's expense unless otherwise agreed to in writing by Seller. Seller has no obligation or liability for any installation of the Products or to supervise such installation unless otherwise agreed to in writing by Seller.

### 4. Prices and Taxes.

Purchaser will pay Seller the prices specified in the applicable Order or, if no price is specified in the Order, the price set forth in Seller's standard price list in effect on the date that the Order is accepted by Seller. Seller reserves the right to change prices at time of order based on the availability and pricing of materials included in the Products, including, without limitation, prices for Products including precious metals that may fluctuate due to market prices. All prices are in Euros, F.O.B. point of shipment, and do not include any sales, use or other taxes, shipping or handling, unless otherwise stated in the offer or invoice. Purchaser will pay or reimburse Seller for all shipping costs, taxes and other amounts payable to governmental authorities in connection with the applicable transactions, or will provide Seller with an exemption certificate satisfactory to Seller. Buyer assumes all liability for shortage, loss, delay or damage of Products in transit. Purchaser agrees that it will keep the terms of sale and purchase price confidential and will not disclose the same to any third party without the prior written consent of Seller.

## 5. Payment:

Purchaser will pay the amount set forth on Seller's invoice in euros cash in advance, or cash upon reception stated in the offer, order or invoice or upon our approval of Pruchaser's credit within thirty (30) days from the date of such invoice for Products that are comprised of non-precious metals. Any wire or other fees associated with payment of invoices is the sole responsibility of Purchaser. Any amount not paid within such thirty (30) day period will be subject to a finance charge equal to 1.5% per month or the highest rate allowable by applicable usury law, whichever is less, determined and compounded daily from the date due until the date paid. Payment of such finance charges will not excuse or cure Purchaser's breach or default for late payment. Further, Purchaser will reimburse any costs or expenses (including, but not limited to, reasonable attorneys' fees) incurred by Seller to collect any amount not paid when due. Seller may accept any payment in any amount without prejudice to Seller's right to recover the balance of the amount due or to pursue any other right or remedy. No endorsement or statement on any payment, accompanying any payment or elsewhere will be construed as an accord or satisfaction.

## 6. Limited Express Warranty:

Seller warrants that, upon delivery, each Product will (a) be free from defects in material and workmanship, and (b) will, in all material respects, meet the specifications in Seller's accompanying or related catalogs, manuals and other documentation available from or provided by Seller or an authorized representative of Seller. The notification of existing defects at the time of delivery, and revealed after receipt of products, will be made by the client in writing within 3 days of the date of the product reception. The foregoing warranty will be in effect for thirty (30) days from the date of delivery of the Products (each, a "Warranty Period"). For products considered as consumables for example evaporation materials, crucibles, filaments and sputtering target, if a used have been given to the product during the "warranty period"; Purchaser agrees that only the remaining product will be subject to the Limited Express Warranty. If Purchaser gives Seller written notice during the Warranty Period of any Product's failure to comply with this warranty, Seller will use commercially reasonable efforts to correct the noncompliance within a reasonable period of time by: (i) repairing or modifying the non-complying Product; (ii) providing Purchaser with a replacement Product; or (iii) refunding the price paid by Purchaser to Seller for the Product, each at Seller's sole discretion. This warranty will not apply to any Product that (x) was ordered pursuant to any Custom Order or otherwise involves any precious metals, and all such Orders are "Final", (y) has been repaired or altered by unauthorized personnel, or (z) has been misused, abused, damaged or subjected to operation for which it was not intended. Furthermore, the foregoing warranty does not apply to conformance with any purity specifications. Purity specifications for items within the Products are those generally found acceptable for the purposes intended in the industry. Seller will use commercially reasonable efforts to limit the presence of undesirable or generally unacceptable elements and compounds in the items furnished hereunder, as specified in the Order. Seller is not liable for any special, incidental, indirect or consequential damages (or other damages of these types), whether or not arising out of or in connection with the agreement or breach of warranty.

## 7. Disclaimer and Release.

The warranties, obligations, and liabilities of Seller and the remedies of purchaser set forth in this agreement are exclusive and in substitution for, and purchaser hereby waives, releases and disclaims, all other warranties, obligations and liabilities of seller and all other rights, claims and remedies of purchaser against seller, express or implied, arising by law or otherwise, with respect to the products and any other goods or services delivered under this agreement, including, but not limited to: (a) any implied warranty of merchantability or fitness for a particular purpose; (b) any implied warranty arising from course of performance, course of dealing or usage of trade; (c) any obligation, liability, right, claim or remedy in tort, whether or not arising from the negligence

(active, passive or imputed), product liability or strict liability of seller; and (d) any obligation, liability, right, claim or remedy for infringement.

## 8. Title.

This sub-section applies if applicable law provides (as do the laws of Spain) a purchase-money security interest, or similar rights, in favor of the seller of goods: Title and risk of loss or damage passes to Purchaser when the goods are put into possession of the freight carrier for delivery to Purchaser. Purchaser grant to Seller, and Seller retain, a security interest in the goods to ensure Purchaser fully pay for the goods. Purchaser agrees not to take any action that would interfere with Seller security interest until Purchaser fully pay for the goods.

This sub-section applies if applicable law does not provide a purchase-money security interest, or similar rights, in favor of the seller of goods: Risk of loss or damage passes to Purchaser when the goods are put into possession of the freight carrier for delivery to Purhcasr. Seller retain sufficient title in the goods to ensure Purchaser fully pay for the goods. Purchaser agree not to take any action that would interfere with Seller title until Purchaser fully pay for the goods.

## 9. Excused Performance.

Seller will not be responsible for or be considered to be in breach of or default under this Agreement on account of any cause beyond Seller's reasonable control or not occasioned by Seller's fault or negligence (including, but not limited to, Seller's inability to procure materials, parts, equipment or services).

## 10. Limitations of liability.

Seller's liability (whether in contract, tort or otherwise, and notwithstanding any fault, negligence, strict liability or product liability of seller) with regard to any product or other goods or services furnished under this agreement will not exceed the purchase price paid by purchaser to seller for the same. Further, seller will not in any event be liable for any special, incidental, consequential or indirect damages, or for loss of revenue, loss of business or other financial loss, arising out of or in connection with any product or other goods or services furnished under this agreement.

## 11. Return of Products:

To request authorization to return Products, you will need to (a) obtain our return authorization form (RMA), (b) complete the form and (c) submit that form to us. If we agree to the return, we will issue you a return authorization number. All returns will be governed by our product return policy then in effect.

## 12. Intellectual Property.

Seller engineering and manufacturing know-how, drawings, prints, specifications and instructions (all regardless of the form in which they exist) developed and/or used by Seller to manufacture products, and all software source code, are and will remain Seller exclusive property.

## 13. Unenforceable Provision.

The invalidity or unenforceability of any provision of this Agreement will not affect the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provision were replaced with a valid and enforceable provision as similar as possible to the one replaced.

## 14. Nonwaiver.

Any failure by Seller to insist upon or enforce performance by Purchaser of any of the provisions of this Agreement or to exercise any right or remedy under this Agreement or applicable law will not be construed as a

waiver or relinquishment to any extent of Seller's right to assert or rely upon any such provision, right or remedy in that or any other instance; rather the same will be and remain in full force and effect.

### **15. Applicable Law.**

This Agreement will be interpreted, construed, and enforced in all respects in accordance with the laws of the Spain, without reference to its choice of law principles. The U.N. Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

### **16. Jurisdiction**

If any discrepancy, difference, or disagreement should arise between the Purchaser and Seller regarding the application of these Standard Terms & Conditions of Sale and their interpretation, their execution shall exclusively abide by the resolution of said discrepancy, difference, or disagreement decided by the Courts of Law of Barcelona.

### **17. Survival.**

The provisions of the Agreement shall, where the context so requires, continue in full force and effect notwithstanding any termination or suspension of the Agreement or the issuance of any payment.

### **18. Entire Agreement.**

This Agreement constitutes the entire agreement, and supersedes any and all prior agreements, between Seller and Purchaser with regard to the Products. No amendment, modification, or waiver of this Agreement will be valid unless set forth in a written instrument signed by the party to be bound.

### **19. Force Majeure.**

If Seller is prevented from or hindered in making delivery of Product or the making of delivery is delayed by reason of force majeure (which shall be deemed for this purpose to include war, civil commotion, act of terrorism, hijacking, strike, walkout, industrial dispute, fire, explosion, storm, tempest, flood, act or omission of any governmental, licensing or other similar body or of a person or body for the time being exercising the power and authority of such body or any further cause not within the direct control of the Seller), Seller shall be under no liability whatsoever in respect thereof and the time for delivery by Seller shall be extended for a period equal to that during which delivery is so prevented, hindered or delayed; notwithstanding the foregoing, however, Seller may, if it so chooses, by notice in writing given to Purchaser, advise that it will not make the delivery affected by the force majeure.