



1. Acceptance of Terms

All purchase orders, agreements or contracts (collectively referred to as "Purchase Order") issued or entered into by Optrex America, Inc. ("Optrex America") shall be subject to the terms and conditions set forth herein. Supplier will be deemed to have accepted these terms and conditions by returning a signed copy of any Purchase Order, agreement or contract or by beginning performance pursuant to Optrex America's Purchase Order. Acceptance of any Purchase Order is expressly limited to acceptance of these terms and conditions. Additional or different terms and conditions in any order acknowledgement, invoice or other document issued by Supplier are objected to and hereby rejected. These terms and conditions shall survive any completion, expiration or termination of a Purchase Order.

2. Packaging and Shipment

Unless otherwise specified by Optrex America, all goods shall be packed, packaged, marked, and otherwise prepared for shipment in a manner which is (i) commercially reasonable, (ii) acceptable to common carriers for shipment at lowest applicable rates and in accordance with any applicable laws or regulations, and (iii) adequate to ensure safe arrival of the goods at the named destination. Supplier shall include a numbered packing list with each shipment, including identifying which package in a shipment has the packing list inside it. Optrex America will only pay for quantities ordered, and all overshipments will be held at Supplier's risk and expense for a reasonable time. All disposal, return shipping and storage charges will be at Supplier's expense. Supplier may not deliver any partial order, or any complete order before its requested delivery date, without Optrex America's prior written consent. No partial or complete delivery shall be accepted more than 3 days before or after the date or dates shown on Optrex America's Purchase Order.

3. Invoices

Supplier shall submit separate invoices for each Purchase Order. All invoices shall contain the following information: Optrex America's Purchase Order number, item number, description of item, quantities, unit prices, extended totals, Supplier's packing slip number and any applicable sales, use or other taxes. Upon Optrex America's request, Supplier shall furnish to Optrex America bills of lading and proof of delivery. Payment of an invoice shall not constitute acceptance of items by Optrex America, and all payments shall be subject to adjustment for errors, shortages, defects, or other failure by Supplier to meet the requirements of any Purchase Order. Optrex America may at any time set off any amount owed to Supplier or its affiliated companies against any amount owed to Optrex America. Payment and discount periods shall commence per the terms of the Purchase Order and after receipt by Optrex America of both the items purchased hereunder and a proper invoice or invoices covering same. Optrex America expressly reserves the right to return to Supplier for correction any and all invoices containing errors and/or not in agreement with any Purchase Order. In such instances, terms will begin upon receipt of the revised invoice. All payments are to be credited by Supplier against the invoice referred to on the payment.

4. Shipping Terms

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All goods shall be delivered per the specified instructions on the face of the Purchase Order or as otherwise designated in writing by Optrex America. Failure to follow the Optrex America routing instructions may result in vendor charge back fees.

5. Warranties

- A. Supplier warrants that all items, including all goods or services, furnished under a Purchase Order: (i) are and shall be of good and merchantable quality and workmanship; (ii) are and shall be free from defects, including both latent or obvious defects; (iii) are and shall be in strict compliance with any plans, specifications or samples specified or furnished by or to Optrex America and any representations or warranties made or published with respect to such items; (iv) are in compliance with any applicable standards or requirements of all Federal, State and local laws; and (v) are and shall be of sufficient design and materials to safely accomplish their intended purpose. Optrex America's approval of Supplier's materials or designs shall not relieve Supplier of the warranties set forth in this Section 5 or elsewhere.
- B. Supplier further warrants that all items provided shall be fit and suitable for any special or unusual purpose intended by Optrex America which are or should be known to Supplier. Supplier shall comply with all other warranties that are implied or provided for by law.
- C. Supplier warrants that all items sold to Optrex America are sold free and clear of all liens, claims, encumbrances and security interests, that Supplier has good marketable title thereto, and that the items do not infringe any third party's patents, copyrights, trademarks or other intellectual property rights.
- D. The foregoing warranties are cumulative and are in addition to all other warranties at law, in equity or under any Purchase Order. In the event of any breach of any of the foregoing warranties, Optrex America may, at its sole option, either require Supplier to replace or repair any defective or non-conforming items, at no cost whatsoever to Optrex America, immediately upon Optrex America's written demand to Supplier, or otherwise pursue any other remedy provided by law or in equity. In addition, Supplier hereby agrees to defend, indemnify and hold Optrex America harmless of and from any and all costs, claims, liabilities, damages, attorneys' fees and causes of action whatsoever arising out of or in connection with any breach by Supplier of any of the foregoing warranties. All of Supplier's warranties shall extend to Optrex America, Optrex America's direct and indirect customers, and Optrex America's affiliates, successors and assigns.

6. Inspection

- A. Optrex America is not obligated to inspect or test any goods and/or services, but all goods and/or services purchased shall be subject to inspection and test by Optrex America to the extent practicable at all times and places, including the place of manufacture, and in any event, prior to full acceptance. If inspection or test is made by Optrex America at Supplier's premises, Supplier, without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of Optrex America's inspectors. No inspection or test made prior to final inspection and acceptance shall relieve Supplier from responsibility for defects or other failure to meet the requirements of any Purchase Order. In addition, no inspection or test, including any final inspection or acceptance by Optrex America, shall limit or terminate the

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warranties provided above.

- B. In addition to any other remedy available to Optrex America under a Purchase Order or otherwise, if any item is defective in material or workmanship, or otherwise not in conformity with the requirements of a Purchase Order, Optrex America shall have the right to (i) reject it without correction; (ii) require its correction; (iii) accept it with an adjustment in price; or (iv) return it to Supplier for full credit.
- C. Notwithstanding any prior inspections or payments, all goods and/or services shall be subject to final inspection and acceptance at Optrex America's designated delivery point within a reasonable time after delivery. Optrex America may revoke its acceptance of the goods at any time, whether or not the goods have been paid for and whether or not a substantial modification to the goods has been made, if there is a substantial defect in the goods which could not have been discovered during Optrex America's normal inspection procedures or which would not normally be discovered until the goods are used.

7. Changes

Optrex America may at any time, by an amended Purchase Order, suspend performance, increase or decrease the ordered quantities, or make changes in the general scope of a Purchase Order, including any one or more of the following (i) applicable drawings, designs, or specifications (ii) method of shipment or packing, and/or (iii) place of delivery. If any such change causes an increase or decrease in the cost of or the time required for performance of the Purchase Order, Supplier shall have ten (10) days from date of Supplier's receipt of the notification of change to request a reasonable adjustment in the purchase price or delivery schedule, or both. If Optrex America agrees to such adjustments, Optrex America shall issue a modified Purchase Order accordingly. Any request by Supplier for any adjustment after the ten (10) days will be deemed rejected, and Supplier shall perform under the Purchase Order as changed or amended. Supplier shall provide access to its records and facilities for Optrex America and its representatives to verify the basis for any adjustment requested by Supplier. Unless approved in writing in advance by Optrex America, Supplier shall not make any changes in the design or specifications of any goods or in their manufacturing process or manufacturing location, even if such changes do not materially alter the form, fit or function of the goods.

8. Assignments

Supplier shall not assign, transfer or subcontract its rights or obligations under a Purchase Order, or any part thereof, to any third party without the prior written consent of Optrex America, and any attempted assignment, transfer or delegation without such prior written consent shall be null and void. Notwithstanding the foregoing, all Purchase Orders shall be binding upon and inure to the benefit of the parties' respective successors, assigns, heirs, administrators, executors and legal representatives.

9. Insurance

- A. Supplier will, at no cost to Optrex America, maintain the following minimum insurance in full force and effect throughout the term of this Agreement:
 - i. Commercial general liability, including products/completed operations and personal

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injury coverage, with coverage of not less than Ten Million dollars (\$10,000,000) combined single limit per occurrence and Twenty Million Dollars (\$20,000,000) annual aggregate;

- ii. Umbrella liability, including products/completed operations, with limits of not less than Five Million dollars (\$5,000,000) each occurrence;
- iii. Automobile liability with limits of not less than Five Hundred Thousand Dollars (\$500,000) each accident, bodily injury and property damage combined;
- iv. Workers' compensation and employer's liability in compliance with all statutory regulations in any state or country where any of the goods are manufactured or delivered or services are performed;
- v. Electronics Errors and omissions coverage which covers claims arising out of design specifications provided by Suppliers; and
- vi. Property Insurance, all-risk, subject to standard exclusions which covers Optrex America property while in Supplier's care, custody or control.

B. All insurance coverage which Supplier is obligated to carry pursuant to this Section 9 will:

- i. Name Optrex America and any other party which Optrex America may reasonably designate as an additional insured (excepting workers' compensation and employer's liability); and
- ii. Provide a 30-day notice period for cancellation or reduction in coverage or limits.

C. Supplier will deliver to Optrex America's Procurement Department (46723 Five Mile Road, Plymouth, MI 48170) one or more certificates of insurance showing evidence of the coverages required above.

10. Non-Infringement of Third Party Rights

In performing its obligations under a Purchase Order, Supplier may either generate new intellectual property or use existing intellectual property that Supplier currently owns. Supplier warrants and represents that Supplier is the sole legal owner of any preexisting intellectual property or technology that Supplier will use in providing goods or services to Optrex America and that the use of such preexisting technology by Supplier does not and will not violate or infringe any rights of any third party whatsoever.

11. Indemnification

Supplier shall protect, indemnify and hold Optrex America and its employees, shareholders, affiliates, agents, officers, directors, customers, distributors, and representatives harmless from and against any and all actions, causes of action, claims, liabilities, losses, damages, costs or expenses, attorney's or other legal fees, or recall expenses and / or settlements or compromises arising out of or relating to:

- A. Any actual or alleged infringement of any patent, trademark or other intellectual property right arising from or in connection with the purchase, sale, resale or use of any goods or services purchased from Supplier; and/or

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- B. The death of or injury to any person or damage to any property actually or alleged to have been directly or indirectly caused by the purchase, sale, resale or use of any goods or services purchased from Supplier; and/or
- C. Any alleged defects or malfunctions directly or indirectly related to any goods or services provided by Supplier to Optrex America.

Optrex America shall notify Supplier of any infringement claim and permit Supplier, at Supplier's sole expense, to defend or settle such claim, subject to Optrex America's prior written approval of any settlement. If any goods or services are determined to infringe any intellectual property of any third party, Supplier shall, at Optrex America's option, either: (i) obtain from such third party, at Supplier's sole expense, the right for Optrex America and Optrex America's customers to continue using the infringing goods and/or services; or (ii) modify the goods and/or services, at Supplier's sole expense, to render them non-infringing while maintaining substantially identical fit, form and function; or (iii) refund to Optrex America the total purchase price paid by Optrex America for all infringing goods and services.

12. Patent and Data Rights

Supplier agrees to promptly disclose to Optrex America, and hereby assigns to Optrex America, each invention conceived or first actually reduced to practice during the performance of any Purchase Order. Supplier hereby grants to Optrex America and its affiliated companies a royalty-free, non-exclusive, unrestricted, irrevocable, world-wide license to use, duplicate or disclose for any purpose whatsoever, and to authorize others to do so, all data and information (including but not limited to writings, recordings, pictorial reproductions, drawings, computer programs, other graphic representations, and works of any similar nature) required to be furnished and/or actually furnished to Optrex America under any Purchase Order.

13. Liability in Connection with Site Work

Supplier shall take such steps as may be reasonably necessary to prevent personal injury or property damage during any work under any Purchase Order that may be performed by any employees, agents, or subcontractors of Supplier at Optrex America's designated site. While on such designated site, Supplier and its employees, agents and contractors shall comply with all security and safety rules and regulations imposed by Optrex America and/or the site owner (or the site lessee), including, without limitation, the provisions of site owner's (or the site lessee's) safety guidelines. Supplier shall indemnify defend, and hold Optrex America, the site owner (or the site lessee), and their respective employees, agents and contractors harmless from and against loss, liability and damages arising from or caused directly or indirectly by any act or omission of Supplier, its agents, employees, or subcontractors. Supplier shall maintain such insurance against public liability and property damage and such employer's liability and workers' compensation insurance as will protect Supplier and Optrex America and name Optrex America, the site owner and/or the site lessee as additional loss payees against the aforementioned risks and against any claims under any workers' compensation and/or occupational disease acts, including containing an endorsement covering any contractual liability assumed by Supplier under any Purchase Order.

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14. Hazardous Materials

Supplier agrees to promptly furnish to Optrex America any material safety data sheets required by the Occupational Safety and Health Administration with respect to the goods and provide any other information regarding the goods or substances contained in the goods which is necessary to enable Optrex America to comply with federal or state regulations or properly respond to any accident or situation involving hazardous or harmful substances.

15. Notice of Delays

Supplier shall immediately give Optrex America a detailed written notice of any development, occurrence or event (including but not limited to any actual or threatened labor dispute) of which Supplier becomes aware which might delay Supplier's timely performance of any obligation under any Purchase Order.

16. Confidential Information

Any specifications, drawings, samples, or other data or information furnished by Optrex America shall be treated as confidential information by Supplier, shall remain Optrex America's property, and shall be returned to Optrex America on demand. Unless otherwise agreed in writing, no information disclosed in any manner or at any time by Supplier to Optrex America will be deemed secret or confidential, and Supplier will have no rights against Optrex America with respect to such information.

17. Tooling and Documents

All specifications, drawings or other documents and data furnished by Optrex America, and all supplies, materials, tools, dies, molds, jigs, fixtures, patterns, hobs, electrodes, punches, artwork, screens, tapes, templates, machinery, special test equipment and gauges, which have been furnished, paid for or charged against Optrex America, or which have had their cost amortized shall remain at all times the property of Optrex America, treated as confidential information and delivered to Optrex America in good condition, normal wear and tear excepted, DDP (Incoterms 2000) to Optrex America's designated location, immediately upon demand. Supplier warrants that said items and information will not be used for any work or the production of any materials or parts other than for Optrex America without Optrex America's prior written permission.

18. Order Cancellation

Optrex America shall have the right to terminate any or all Purchase Orders, in whole or in part, at any time, with or without cause, by written notice to Supplier. Upon receipt of notice of termination, and unless otherwise directed by Optrex America, Supplier will: (a) promptly terminate all work under the Purchase Order on the effective date of termination; (b) transfer title and deliver to Optrex America of all finished goods, work in process, and parts and materials that Supplier reasonably produced or acquired to perform a Purchase order and that Supplier cannot use in producing goods for itself or for others; (c) verify and settle any claims by subcontractors for actual costs incurred directly as a result of the termination and ensure the recovery of materials in subcontractors' possession; (d) take actions reasonably necessary to protect property in Supplier's possession in which Optrex America has an interest until disposal instructions from

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Optrex America have been received; and (e) upon Optrex America's request, cooperate with Optrex America in transferring the production of the goods or services to a different supplier. Upon termination by Optrex America under this Section, Optrex America will be obligated to pay only the following: (i) the Purchase Order price for all finished and conforming goods in the quantities ordered by Optrex America; (ii) Supplier's reasonable actual cost of merchantable and useable work-in-process and the parts and materials transferred to Optrex America under part (b) above; and (iii) Supplier's reasonable actual costs of settling claims regarding its obligations to its subcontractors required under the Purchase Order, to the extent directly caused by the termination, but limited to the amount of the quantities of goods ordered by Optrex America and then currently outstanding. Notwithstanding any other provision, Optrex America will have no obligation for and will not be required to pay Supplier, directly or on account of claims by Supplier's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, tooling, facilities and equipment rearrangement costs or rental, unamortized capital or depreciation costs, finished goods, work-in-process or raw materials that Supplier fabricates or procures in amounts exceeding those in a Purchase Order. Optrex America's obligation upon termination under this Section will not exceed the obligation Optrex America would have had to Supplier in the absence of termination. Supplier will furnish its termination claim to Optrex America within one month after the effective date of termination. Optrex America may audit Supplier's records before or after payment to verify amounts requested in Supplier's termination claim. Optrex America will have no obligation to Supplier under this Section or otherwise if Optrex America terminates the Purchase Order or any portion thereof because of a default or breach by Supplier, and any such termination shall be without prejudice to any claims which Optrex America may have against Supplier.

19. Waiver

Optrex America's failure to enforce at any time any of the provisions of any Purchase Order, to exercise any election or option provided therein, or to require at any time performance by Supplier of any of the provisions thereof, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of these terms and conditions or any part hereof, or Optrex America's right thereafter to enforce each and every such provision.

20. Subcontracting

Supplier may not subcontract with any other party for furnishing any of the completed or substantially completed goods or services for Optrex America without Optrex America's prior written approval.

21. Optrex America's Remedies

Optrex America may, by written notice, terminate any Purchase Order in whole or in part if: (i) Supplier fails to deliver any goods by the time(s) specified in an Purchase Order; (ii) Supplier fails to replace or correct defective items in accordance with any Purchase Order; (iii) Supplier fails to perform any of the provisions of any Purchase Order or so fails to make progress as to endanger performance in accordance with its terms; or (iv) proceedings are commenced by or against Supplier under any bankruptcy or insolvency laws or for the appointment of a receiver or trustee, or there is an assignment by Supplier for the benefit of creditors. In the event of such termination, in addition to any other remedy provided herein or by law or in equity, and without any liability to

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Supplier on account thereof, Optrex America may cancel such order, in whole or in part, and procure substitute items upon such terms and in such manner as Optrex America deems appropriate, and Supplier shall be liable to Optrex America for any additional charges, costs, damages or claims caused thereby, provided that Supplier shall continue its performance of all Purchase Orders to the extent not terminated. If Supplier breaches or defaults on any of the terms or conditions of any Purchase Order, including but not limited to any of Supplier's warranties hereunder, Supplier shall pay all damages and costs, including but not limited to lost profits, recall costs and labor charges suffered or incurred by Optrex America, resulting therefrom or from any action commenced in connection therewith, including but not limited to Optrex America's reasonable attorneys' fees. Neither Optrex America's exercise of nor its failure to exercise any rights provided hereunder will relieve Supplier from responsibility for any goods that are not in accordance with the requirements of any Purchase Order or impose any liability on Optrex America for such action or failure to act. The foregoing list of remedies is cumulative, and Optrex America shall be entitled to any and all other remedies available to it under any Purchase Order or by law.

22. Limitation of Optrex America's Liability

IN NO EVENT SHALL OPTREX AMERICA BE LIABLE TO SUPPLIER, OR TO ANYONE ASSERTING A CLAIM ON SUPPLIER'S BEHALF OR RELATING TO THIS ORDER, FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY NATURE, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, REVENUES, AND/OR TERMINATION CHARGES PAID BY SUPPLIER TO ITS SUPPLIERS.

23. Governing Law, Exclusive Forum for Supplier's Claims and Waiver of Jury Trial

All Purchase Orders shall be governed by the internal laws of the State of Michigan without regard to its conflict of laws principles. Supplier and Optrex America agree that **any action brought by Supplier regarding any Purchase Order or relating to any goods or services or the performance of Supplier or Optrex America under any Purchase Order shall be brought and pursued only by arbitration in Detroit, Michigan filed with the American Arbitration Association pursuant to its then-existing rules.** Judgment upon any awards made pursuant to said arbitration may be entered in and enforced by any court of competent jurisdiction. All fees and costs of the arbitrators and the arbitration association shall be borne equally by the parties,. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any Purchase Order or the purchase of goods or services by Optrex America.