

The following terms and conditions apply to all goods and services (“Goods”) provided or sold by Optrex America, Inc. (“Optrex America”) to customer of Optrex America (“Buyer”). These terms and conditions shall become part of any purchase order and/or sales contract and supersede any and all prior agreements, correspondence, quotations or understandings between Optrex America and Buyer unless Optrex America specifically agrees otherwise in a signed writing. No additional, inconsistent or contrary terms in any document issued by Buyer shall become part of any contract for any sale of Goods to Buyer, and any such terms are hereby rejected by Optrex America.

**1. PURCHASE ORDERS**

All purchase orders of Buyer shall, unless otherwise agreed in writing by Optrex America, be in writing and shall set forth the quantity of the Goods desired, the model number or type of Goods, the desired delivery date, the price, and all relevant information necessary to effectuate shipment of the Goods by Optrex America. All purchase orders shall be subject to acceptance of these terms and conditions of sale in their entirety.

**2. ACCEPTANCE**

Optrex America accepts purchase orders by return of an acknowledgment copy of a purchase order, Optrex America’s order acknowledgment, or by shipment of any of the Goods. All orders are subject to acceptance or rejection by Optrex America, at its sole discretion. Optrex America’s acceptance of any purchase order is subject to any credit terms required by Optrex America, including but not limited to cash on delivery or due upon receipt. Optrex America reserves the right to delay or cancel shipments or require prepayment of any orders where, in the opinion of Optrex America, Buyer’s payment record or financial conditions warrant.

**3. CANCELLATION**

With written notice of the intent to cancel the order and payment of a cancellation charge to Optrex America of 15% of the purchase amount of the canceled Goods, Buyer may cancel Standard Goods, as defined by Optrex America’s Standard Parts List, that have no scheduled shipment dates or have scheduled shipment dates more than 120 days from the cancellation date, unless otherwise specified in negotiated agreements (i.e., a non-cancelable, non-stock adjustable purchase agreement is specified.) Buyer may not cancel Non-Standard Goods, as defined by Optrex America’s Standard Parts List, at any time after order placement and will be liable for the entire purchase amount.

**4. CHANGES**

Subject to acceptance or rejection by Optrex America, Buyer may issue written change notices relating to the volume of the Goods ordered. Such changes issued by Buyer are restricted to: (a) increases in required quantity; (b) shipment schedule changes falling outside Optrex America’s production cycle (i.e., schedule changes must be implemented no earlier than the previously committed delivery date); (c)

changes in place of delivery (with one week prior notice) and (d) changes in method of shipment or type of packaging (with one week prior notice). Shipments on an order may be “pushed out” or delayed one time only, up to a maximum of two weeks. No other change orders shall be permitted without prior written approval of Optrex America.

**5. PRICES/TAXES**

All prices are exclusive of federal, state, local and other excise, sales, use, property, transportation, occupational and other taxes relating to the sale, together with penalties and expenses, all of which shall be paid by Buyer. Buyer shall be responsible for collecting and/or paying any and all such taxes whether or not they are stated in any invoice for Goods shipped and shall indemnify Optrex America with respect thereto. Optrex America, at its option, may at any time separately bill Buyer for any taxes not included in Optrex America’s invoice, and Buyer shall pay said taxes, or in lieu thereof, shall provide Optrex America with a tax exemption certificate acceptable to the taxing authorities.

**6. DELIVERY AND RISK OF LOSS**

All delivery dates are approximate and based on the prompt receipt of all necessary information from Buyer. All shipments shall be Ex Works Optrex America’s facility in Plymouth, Michigan unless otherwise agreed upon in writing by Optrex America. Buyer assumes the risk of damage to or loss of Goods at the time Optrex America delivers such Goods to the first common carrier at Optrex America’s facility.

All damage to or loss of the Goods during shipment from Optrex America to Buyer are the responsibility of the Buyer and the freight carrier. Upon acceptance of a shipment with visible damage, the damage must be noted on the carrier's delivery record.

All claims that the Goods were damaged before shipment from Optrex America or that Optrex America’s shipment of Goods did not contain the specified number of Goods or was otherwise inconsistent with Optrex America’s shipping documents must be communicated to Optrex America in writing within 48 hours after delivery of the Goods. Claim validation requires Buyer to hold all packaging materials for verification of Supplier markings. Buyer shall be barred from making any claims if the requirements of this section are not fully followed.

**7. LIMITED WARRANTY**

Optrex America warrants that the Goods shall be free from defects in workmanship and materials for a period of one (1) year from the date of shipment from Optrex America to Buyer unless otherwise specified in a writing signed by Optrex America. If during the warranty period the Goods should prove defective as determined by Optrex America, Optrex America shall, at Optrex America’s option, either (i) repair or replace the Goods or any defective part; or (ii) refund the purchase price paid to Optrex America for the defective Goods. Optrex America shall have the option of requiring the return of the defective Goods to establish any claim. Optrex America and Buyer acknowledge that Optrex America’s sole and

exclusive obligation shall be to repair, replace or refund the purchase price of the Goods as provided herein. OPTREX AMERICA'S LIMITED WARRANTY HEREIN IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES OF OPTREX AMERICA (AND THE MANUFACTURER OF THE GOODS AND THEIR SUBSIDIARIES AND AFFILIATED COMPANIES), WHETHER EXPRESS, IMPLIED, OR STATUTORY, OR OTHERWISE CREATED UNDER APPLICABLE LAW INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY AND ANY WARRANTY OF FITNESS FOR PARTICULAR PURPOSE OR USE. IN NO EVENT SHALL OPTREX AMERICA, THE MANUFACTURER OF THE GOODS, THEIR SUBSIDIARIES AND AFFILIATED COMPANIES, BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, WHETHER OR NOT CAUSED BY OR RESULTING FROM THE NEGLIGENCE OF OPTREX AMERICA. IN ADDITION, THIS WARRANTY SHALL NOT APPLY TO ANY GOODS OR PORTIONS THEREOF WHICH HAVE BEEN SUBJECTED TO ABUSE, MISUSE, IMPROPER INSTALLATION, MAINTENANCE OR OPERATION, ELECTRICAL FAILURE OR ABNORMAL CONDITIONS, AND TO GOODS WHICH HAVE BEEN TAMPERED WITH, ALTERED, MODIFIED, REPAIRED OR REWORKED BY ANYONE NOT APPROVED BY OPTREX AMERICA.

No agent, employee or representative of Optrex America (or any distributor, dealer or sales representative of Optrex America) has the authority to bind Optrex America to any affirmation, representation or warranty concerning the Goods and unless such affirmation, representation or warranty is specifically included in these terms and conditions of sale, it will not form a part of the basis of these terms and conditions of sale and shall in no way be binding upon Optrex America or enforceable by the Buyer.

**8. LIMITATION OF OPTREX AMERICA'S LIABILITY**

THE TOTAL LIABILITY OF OPTREX AMERICA OR THE MANUFACTURER OF THE GOODS SHALL NOT EXCEED, UNDER ANY CIRCUMSTANCES, THE AMOUNT ACTUALLY PAID TO OPTREX AMERICA WITH RESPECT TO THE PRODUCT WHICH GIVES RISE TO THE CLAIM, LOSS OR DAMAGE, REGARDLESS OF THE NATURE OF THE DAMAGES OR LOSSES OR THE LEGAL THEORY OR BASIS FOR LIABILITY.

IN NO EVENT WILL OPTREX AMERICA BE LIABLE TO BUYER FOR ANY COLLATERAL, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY LOST INCOME, LOST PROFITS OR LOST USE OF THE GOODS, REGARDLESS OF THE NATURE OF THE DAMAGES OR LOSSES OR THE LEGAL THEORY OR BASIS FOR LIABILITY.

**9. PATENT INFRINGEMENT**

Optrex America's liability for patent infringement (and the liability of the Manufacturing and Selling Parties) is limited to Optrex America's defense of any

suit or proceeding brought against Purchaser based on a claim that the Products sold hereunder, when employed in the manner intended by Optrex America, constitutes an infringement of any patent of the United States. If Purchaser's use of the Products in the manner intended by Optrex America is finally enjoined, Optrex America shall, at its option, procure for Purchaser the right to continue using the Products, replace the same with non-infringing Products, modify the Products so that they become non-infringing, but equivalent to the Products sold hereunder, or refund the purchase price (less allowance for use, damage or obsolescence). Optrex America makes no warranty against patent infringement resulting from portions of the Products made to Purchaser's specifications or the use of Products in combination with any other Products or in the practice of any process and if a claim, suit or action against Optrex America or its affiliated companies is based thereon, Purchaser shall defend, indemnify and save Optrex America and its affiliated companies harmless from and against any and all claims, losses or damages arising therefrom.

**10. PACKAGING AND SHIPPING**

All Goods will be prepared and packaged for shipment by Optrex America in a commercially reasonable manner. All packages should be clearly marked with an appropriate description of the Goods and the part number and quantity within each package. Nominal charges for odd lot size boxing, packaging, or handling may be imposed and included in shipping and handling charges.

Shipment dates for all Goods are approximate only. Optrex America reserves the right to make partial shipments, but will attempt to minimize such partial shipments.

**11. INVOICES AND PAYMENTS**

Individual invoices will be issued for each shipment, at the time of shipment, under a purchase order. Unless otherwise specified, payment by Buyer shall be made within 30 days of the invoice date. At no time will credit terms in excess of net thirty (30) days from the date of Optrex America's invoice be granted without Optrex America's written approval. Optrex America reserves the right to charge interest at the rate of 1.5% per month (but not more than the maximum percentage permitted by law) on all balances not paid by Buyer within the designated net terms. Payments of Optrex America's invoices are not subject to adjustment for any reason except as expressly agreed to in writing by Optrex America.

**12. CREDITS AND RETURNS**

Goods may only be returned to Optrex America after obtaining a return authorization from Optrex America. Credit for return of Goods is at the sole discretion of Optrex America.

All credit memos issued by Optrex America for any reason, including but not limited to returned products or warranty claims, must be used by Buyer within 6 months after the credit memo was issued. Any credit memo that has not been used within the 6 months will be automatically forfeited and cannot be used thereafter.

**13. DRAWINGS, SPECIFICATIONS, AND TECHNICAL INFORMATION**

Drawings, specifications, designs, and other technical information furnished to Buyer by Optrex America shall remain the property of Optrex America and shall be held in strict confidence by Buyer. Such information shall not be used or disclosed to others by Buyer without Optrex America's written consent.

**14. REQUIRED NOTICE AND TIME LIMIT FOR CLAIMS AGAINST OPTREX AMERICA**

Within sixty (60) days after the date on which a claim or cause of action has accrued, Buyer must notify Optrex America in writing of any claim arising out of or in connection with any sale or use of Goods, including any claimed breach of these terms and conditions, breach of contract, tort or otherwise. Any lawsuit against Optrex America for any claim arising out of or in connection with any sale or use of Goods, including any claimed breach of these terms and conditions, breach of contract, tort or otherwise, must be filed within eighteen (18) months after the actual or scheduled delivery of the Goods, regardless of when the claim or cause of action has accrued. If Buyer fails to comply with either of these time limits, all claims against Optrex America will be forever barred.

**15. GOVERNING LAW AND ARBITRATION**

All claims and issues relating to the sale, purchase, or use of the Goods, including but not limited to the interpretation, validity, and enforcement of these terms and conditions, shall be governed by the internal laws of the State of Michigan, without reference to its conflicts of laws provisions. Buyer and Optrex America hereby agree that the U.N. Convention on the International Sale of Goods shall not apply to these terms and conditions, the purchase, sale or use of the Goods, or any other transaction between them. All controversies in any way relating to or arising out of the sale or use of the Goods (including but not limited to any common law, contract, tort or statutory claims) shall be determined exclusively by arbitration in Detroit, Michigan, pursuant to the then-existing rules of the American Arbitration Association. Judgment upon any awards made pursuant to said arbitration shall be subject to the provisions of these terms and conditions and may be entered in and enforced by any court of competent jurisdiction. All fees and costs of the arbitrator and the arbitration association shall be borne equally by the parties. Optrex America reserves the right to file a lawsuit in Michigan or any other jurisdiction where the Goods or Buyer are located for the purpose of replevying or repossessing the Goods.

**16. WAIVER OF JURY RIGHT AND PUNITIVE DAMAGES**

BUYER AND OPTREX AMERICA HEREBY IRREVOCABLY AND KNOWINGLY WAIVE ANY RIGHTS TO TRIAL BY JURY OR FOR PUNITIVE DAMAGES WHICH EITHER MIGHT HAVE FOR ANY CLAIM RELATING TO OR ARISING OUT OF THESE TERMS AND CONDITIONS OR THE PURCHASE, SALE OR USE OF THE GOODS OR OTHERWISE RELATING TO THE RELATIONSHIP OF THE PARTIES.

**17. FORCE MAJEURE**

Optrex America will not be liable for delays in production or delivery due to causes beyond its control, including, but not limited to, acts of God, acts of Buyer, acts of civil or military authorities, fires, strikes, floods, epidemics, quarantine restrictions, war, delays in transportation, and inability to obtain necessary labor, materials or manufacturing facilities.

**18. MISCELLANEOUS**

(a) These terms and conditions of sale constitute the entire agreement between Optrex America and Buyer and supersede any and all other prior or contemporaneous agreements, correspondence, quotations or understandings between the parties. Except as otherwise attached to these terms and conditions and signed by Optrex America and Buyer, there are no other agreements between Optrex America and Buyer with respect to the Goods.

(b) If any part of these terms and conditions of sale is held invalid, the remaining terms and conditions hereof shall not be affected thereby.

(c) These terms and conditions of sale may be modified, canceled or rescinded only by a written agreement signed by both parties.

(d) All rights available to Optrex America under the Uniform Commercial Code (even though not specifically enumerated), are expressly reserved to Optrex America as remedies available to it in case of Buyer's breach.

(e) Any failure by either party to enforce at any time any term or condition hereof shall not be considered a waiver of such party's right thereafter to enforce the same or any other term or condition.

(f) These terms and conditions of sale shall be binding upon the successors and legal representatives of Buyer and Optrex America.

(g) Optrex America shall be entitled to all attorneys' fees, court costs and other expenses incurred in enforcing this Agreement.