

HAMAMATSU CORPORATION
TERMS AND CONDITIONS

THE ORDER FOR THE GOODS (THE "GOODS") SPECIFIED ON THE FACE HEREOF IS UPON THE FOLLOWING EXPRESS TERMS AND CONDITIONS WHICH TOGETHER WITH SAID ORDER SHALL CONSTITUTE THE ENTIRE CONTRACT (THE "CONTRACT") BETWEEN HAMAMATSU CORPORATION (THE "SELLER") AND THE BUYER (THE "BUYER") SHOWN ON THE FACE HEREOF.

I. TERMS AND CONDITIONS. All terms and conditions relating to the sale of the Goods or rendering of services by Seller are set forth herein subject to change by seller without notice. This Contract supersedes Buyer's order blank, confirmation or manifest and any other contract or confirmation relating to the Goods between Buyer, Seller, and any broker, agent or employee of either party. This contract contains the final and complete agreement between the parties and there are no representations or warranties, expressed or implied, with respect to the Goods, except as specifically set forth herein. This Contract may not be changed or terminated orally, and no change, termination or waiver of any provision hereof or of any right hereunder shall be binding on Seller unless it is in writing and signed by a duly authorized officer of Seller. No waiver by Seller of any default shall be deemed a waiver of any subsequent default. Failure of Seller to object to provisions contained in any order or other communication from Buyer shall not be construed as a waiver of any right or remedy of Seller hereunder, nor acceptance of any such provisions.

II. PRICES AND PAYMENT. The prices and terms of this Contract are not subject to any anticipation or any discount to any rebate or modification, or to any trade custom, except as shown on the face hereof. Notwithstanding the foregoing, in view of Seller's fluctuating costs, currency fluctuations, and other factors affecting Seller, prices set forth in this Contract for the Goods are subject to change by Seller from time to time without notice. Unless otherwise indicated on the face hereof, each shipment of the Goods (whether or not it is an installment shipment) must be paid for in full within 30 days of the date of the invoice for such shipment, subject to any right of seller contained in this Contract to demand earlier payment. Invoices must be paid in the currency in which they are issued. All bank fees for EFT payments, for remitting bank and/or receiving bank, are the responsibility of the customer. Invoices are to be paid in full.

**The following are instructions for Electronic Funds Transfer:

*In US Dollars: Please instruct your bank to transfer money to Mizuho Corporate Bank LTD, NY Branch -ABA 026004307 Beneficiary: Hamamatsu Corporation. Account # 10-757-000179, Swift Code MHCCUS33

*In JP Yen: Please instruct bank to transfer money to Bank of Tokyo-Mitsubishi UFJ, Ltd. Head Office Tokyo Japan- Swift Code BOTKJPJT Beneficiary Bank: Bank of Tokyo-Mitsubishi UFJ, Ltd.- NY Branch - Swift Code: BOTKUS33 - ABA026009632 Beneficiary: Hamamatsu Corporation - Account #090881902

III. INVOICING POLICY. Invoices will be sent to you as products are items are shipped. If a portion of your order is on backorder, placed on hold by you, or subject to other hold-ups, you will only

be invoiced for the products which have shipped. Separate invoices can be expected until your order has been completely fulfilled. If you have paid for the order with a Credit Card, the cost of the entire order will be held against your card when the initial order is placed. As products are shipped under the order, the invoiced amount of the goods shipped will be charged against the Credit Card, and a new hold will be placed on the Credit Card account for the balance of the order. The hold placed on your Credit Card can last as long as 30+ days depending on the Credit Card used. The hold of similar duration will renew unless invoicing of the entire order takes place within the 30+ day window. You are responsible for all bank fees for EFT/ACH payments, for both the remitting bank and/or receiving bank. Invoices are to be paid in full. Hamamatsu is not responsible for any associated fees unless explicitly agreed to in writing prior to invoicing.

- IV. TAXES.** All tariffs, import and export duties, and similar imposts and taxes on the Goods, whether now existing or hereafter imposed or modified and all manufacturers' taxes, use taxes, sales taxes, or duties of any nature whatsoever which may be assessed against this order, shall be added to the price shown on the face hereof and shall be paid by Buyer; in the event Seller is required to pay any such tax or duty, the Buyer shall reimburse Seller therefore on demand or, in lieu of such payment, shall provide Seller at the time the order is submitted with exemption certificates or other documents acceptable to taxing or customs authorities.
- V. CREDIT.** This order is given and accepted subject to Seller's approval of Buyer's credit, determinable at any time and from time to time by Seller in its sole judgment, affecting the whole or any unfulfilled portion of this Contract. Seller, in its sole judgment, may at any time limit, modify or cancel the credit of Buyer both as to time and amount, and may demand and be entitled to receive payment in cash before shipment or delivery of the whole or any part of the Goods without affecting the obligation of Buyer to complete this Contract. Upon failure of Buyer to make any such payment immediately upon demand, Seller may cancel the remainder of this Contract and any other contract then existing between Buyer and Seller, and may sell all or any part of the undelivered Goods, without notice to Buyer, at public or private sale, holding Buyer liable for any damage or financial loss resulting to Seller by reason thereof.
- VI. DELIVERY.** All Goods are sold FCA place of shipment. Transportation to destination is the responsibility of Buyer, and Buyer alone shall bear the cost of freight, packaging and handling, payable by Buyer as billed. Unless specific instructions are given by Buyer, Seller will select, in its sole judgment, the method and route of shipment. The delivery of the Goods to a carrier and the issuance by it to Seller of a bill of lading or receipt, or the mailing of the Goods to Buyer or to another party designated by Buyer, shall be deemed to be complete delivery to Buyer of the Goods covered thereby, and the date of the bill-of-lading or receipt issued by the carrier, or the date of mailing by Seller to Buyer, shall be conclusive proof of the date of such delivery to Buyer. Seller's responsibility shall terminate when the Goods are delivered to the carrier or when the Goods are delivered or mailed to Buyer or other party designated by Buyer, and all risk of loss or damage in transit shall thereupon pass immediately to the Buyer. In cases of concealed damage, such damage must be reported to the delivery carrier within five (5) days of delivery, and a concealed damage report must be obtained from the carrier.
- VII. DEFERRED DELIVERY.** All Goods on which delivery is deferred at the request of or because of Buyer, or on which delivery is deferred at the option of Seller under any of the provisions of this Contract, shall be at the risk of the Buyer. Seller, in addition to any other rights or remedies

it may have hereunder, may hold and forthwith invoice such Goods for immediate payment. Seller shall hold the Goods and retain title thereto as security for the invoice value thereof and for such other sums as they may then or thereafter be due from Buyer to Seller under this Contract or any other contract between the parties. Seller shall have all rights, remedies and liens as an unpaid Seller as provided for by law. If Seller defers delivery at the request of, or because of Buyer or Seller's option, and whether or not Seller bills the Goods as above provided, Buyer shall be liable for all storage, insurance, handling and all other charges or expenses incurred by Seller by reason of the deferred delivery as well as for the interest on the Contract price of the goods at the highest rate allowable by law. At any time while Seller is so holding the Goods, it may, in its sole and absolute discretion, cancel any credit terms extended to Buyer.

VIII. INSTALLMENTS. Delivery of the Goods may be made in installments. A default in any payment by Buyer after delivery or offer of delivery of any part of installment may at the option of seller be deemed a default in the entire Contract. Upon such default or upon any other default or breach of this Contract by Buyer, Seller, at its option by giving notice in writing to Buyer of its election to do so, may cancel this Contract and such other contracts as may exist between Buyer and Seller, and/or may defer shipment of delivery until such default or breach is cured and/or may cancel any undelivered portions of this or such other order and/or may demand immediate payment of all outstanding bills of Buyer. In the event of any cancellation by Seller, Seller shall have the right to recover damages against Buyer by reason of Buyer's default or prior breach of this Contract and may sell all or any part of the undelivered Goods without notice to Buyer, at public or private sale holding Buyer liable for any damage or financial loss resulting to Seller by reason of Buyer's default or breach.

IX. PUBLICATIONS. Publications describing Seller's products are intended to be typical of design, form factor and performance, but in themselves do not constitute a specific offer to sell in accordance with stated specifications, such publications do not bind Seller in any way.

X. APPROVAL BY SELLER. All orders are subject to approval by an authorized office of Seller; no salesman is authorized to bind Seller.

XI. MINIMUM BILLING. All orders are subject to a minimum billing of \$50, exclusive of transportation or other costs. Some products have minimum quantity purchase requirements.

XII. NO QUOTATION. This is a Contract and not a quotation unless the word "QUOTATION" is marked on the face hereof. All quotations are subject to the terms and conditions of sale set forth herein.

XIII. FORCE MAJEURE: SHIPPING DELAY. Seller shall not pay or be liable for any penalty or any damages, either liquidated or otherwise for late delivery or installation. Shipping dates are approximate whether or not specifically set forth on the face hereof. Shipping dates are dependent upon prompt receipt from Buyer of all information necessary for the proper processing of Buyer's order. In the event there is any delay by Buyer in furnishing complete information, the date of shipment may be extended for a reasonable time, taking into account Seller's production schedule. Seller shall not be liable for any non-performance or delay in the delivery or shipment of Goods, or any other delay in performance under this Contract, when such nonperformance or delay is caused directly or indirectly by any cause beyond Seller's reasonable control (whether or not now in contemplation of either of the parties), including but not limited to force majeure, acts of God, acts of Buyer, strikes, labor disputes, epidemics, floods,

quarantine restrictions, civil commotion, war, hostilities, insurrection, riot, rules, law, orders, actions, seizures, requisitions, priorities, preferences, instructions, regulations, restrictions or actions of any government or any agency or subdivision thereof; casualties, fires, accidents, embargoes, quotas, transportation delays, shortages of labor, materials, goods, fuel, power or transportation facilities, detention of goods by customs authorities, sinking of vessels, loss of goods in public or private warehouses, or inability to procure or delay in procuring materials, goods, labor or manufacturing facilities from Seller's usual sources or in its usual manner. In any such event Seller shall have the right, at its election and without any liability to Buyer, to (a) cancel all or any portions of this Contract, or (b) perform this Contract as so restricted or modified, and Buyer shall accept such restricted or modified performance, or (c) perform this Contract within a reasonable time after the cause for non-performance or delay has terminated. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept subsequent deliveries or pay for prior deliveries.

XIII. PENALTIES OR DAMAGES. Seller will not pay or be liable for any penalty or damages of any kind, either liquidated or otherwise, with respect to any order unless specifically approved in writing by an authorized officer of Seller.

XIV. STOPPING WORK OR CANCELLATION. In the event of a request to stop work or to cancel the whole or part of any order, Buyer shall make payments to Seller as follows:

- a) Any and all work that can be completed within 30 days from date of notification to stop work on account of cancellation, shall be completed, shipped, and paid in full.
- b) For all other work in progress and all materials and supplies procured or for which definite commitments have been made by Seller in connection with the order, Buyer shall pay Seller upon demand all of Seller's costs, losses and expenses, including but not limited to costs of materials, supplies, wages, overhead and cancellation of commitments in connection with or arising out of stopping and redirecting production, determined in accordance with good accounting practice, plus 15% of all such costs, losses and expenses.

XV. PATENT INFRINGEMENT. Buyer agrees to indemnify Seller from and against any and all claims, loss, cost, damage, and expenses, including reasonable attorneys' fees, with respect to any patent infringement claim arising out of or in any way connected with (a) application or use of the Goods, or (b) Goods built by Seller in accordance with Buyer's designs.

XVI. DESIGN CHANGES. Seller reserves the right to make changes in the design of the Goods if such changes, in Seller's sole judgment, tend to improve the performance or otherwise benefit the Goods.

XVII. IMPROPER INSTALLATION OR MISAPPLICATION. Seller is not responsible for damages to apparatus or Seller's equipment or products because of improper installation or misapplication of the Goods.

XVIII. RETURN OF GOODS. If Buyer wants to return any Goods:

- (a) In no case are Goods to be returned without first obtaining Seller's written permission. All parts received without an RMA will be refused. If you need to return parts back please contact us 908-231-0960 or order@hamamatsu.com to receive a Return Authorization Number.

- (b) Goods built to order are not subject to return for credit under any circumstances.
- (c) Any Goods returned without Seller's written permission will remain the property of the sender and Seller will not be liable for loss by theft, fire, or other damage.
- (d) All transportation charges in connection with return are to be borne by Buyer.
- (e) Goods must be securely packed to reach Seller without damage. Any cost incurred by the Seller to put goods in first class condition will be charged to Buyer.
- (f) In no case are goods to be returned for Re-Stocking without first obtaining written authorization from Seller. All goods approved to be returned for re-stocking will be subject to 25% Re-Stocking fee.

XIX. GOVERNMENTAL REGULATIONS. If the Goods are, or hereafter become, subject to governmental control, allocation, regulation, or restriction, necessary and proper preference rating certificate or certificates will be supplied by Buyer.

XX. PACKING. Prices include Seller's standard packing for domestic shipments. Additional packing expenses for export or special packing to meet Buyer's specifications will be paid by Buyer upon demand.

XXI. SPECIAL INSPECTION AND TESTING. Unless specifically set forth in this Contract, orders requiring special inspection and testing are subject to price adjustment to reflect the increased cost.

XXII. SPECIAL JIGS, PHOTOMASKS, DIES OR TOOLS. Regardless of any changes made to special jigs, photomasks, dies or tools, such items remain the property of Seller unless otherwise specifically agreed. They may be disposed of when, in Seller's opinion, they have become obsolete.

XXIII.SELLER NOT LIABLE: NO CONSEQUENTIAL DAMAGES. Seller shall not be liable for Buyer's costs, prospective profits or goodwill, or for any other special, indirect or consequential damages of any kind, nor shall recovery or any kind against Seller be greater in amount than the purchase price of the specific Goods sold and causing the alleged damage. Buyer assumes, and Buyer shall hold Seller free and harmless from all risk and liability for expense, loss, damage or injury to persons or property of Buyer or others arising out of use or possession of any Goods sold hereunder.

XXIV.SUCCESSORS AND ASSIGNS. This Contract and the covenants herein contained shall be binding upon and insure to the benefit of the successors and assigns of each party except that Buyer may not assign this Contract in whole or in part without the prior written consent of Seller. Seller may assign this Contract in whole or in part.

XXV. Export Control Some Goods may be subject to US and or Japanese Export Regulations. Buyer agrees as one of the terms of purchase not to export such Goods without having obtained and executed proper export licenses from the United States Government. Further, if Buyer requires Seller to export such Goods from the United States, Buyer agrees to furnish import certificates and other documents as may be required by the United States Government to enable Seller to obtain export licenses from the United States Government. In the event the United

States Government fails to grant an export license, Seller shall be considered blameless, and Buyer's obligations hereunder shall remain unchanged.

XXVI.ACCEPTANCE OF GOODS. Buyer shall inspect the Goods immediately upon their arrival and shall within five (5) days of their arrival give written notice to Seller of any claim that the Goods do not conform with the terms of this Contract. If Buyer shall fail to give such notice, the Goods shall be deemed to conform and Buyer shall be bound to accept and pay for the Goods in accordance with the terms of this Contract. Buyer expressly waives any rights it may have to revoke acceptance after such five (5) day period.

XXVII.INVALID TERMS. If any one or more of the terms and conditions of this Contract should be declared invalid by a court of law, such term or terms shall be considered deleted from the Contract, and all other terms and conditions shall remain in full force and effect.

XXVIII.ARBITRATION. Any controversy or claim arising out of or relating to this Contract or the breach thereof, shall be settled by arbitration held in New York City in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any Court having jurisdiction thereof.

XXIX.FAIR LABOR STANDARDS ACT. Seller agrees that the Goods and any services rendered will be in compliance with the Fair Labor Standards Act, as amended, and agrees to so certify on its invoices.

XXX. EXECUTIVE ORDER 11246. Seller agrees it will fulfill this Contract in compliance with Executive Order 11246 and all other applicable Federal laws, regulations and orders pertaining to nondiscrimination in employment.

XXXI.OCCUPATIONAL SAFETY AND HEALTH ACT. Seller agrees that the Goods will be in compliance with the Williams-Steiger Occupational Safety and Health Act of 1970, as amended, and all rules, provisions and regulations issued pursuant thereto.

XXXII.APPLICABLE LAW. This Contract is entered into in the State of New Jersey and shall be governed by and construed in accordance with the laws of the State of New Jersey.

XXXIII. SELLER'S RIGHTS AND REMEDIES. All Seller's rights and remedies under this Contract are cumulative, not alternative, and are in addition to all other legal and equitable rights and remedies of Seller.

XXXIV. CAPTIONS. No caption of any numbered paragraph of this Contract shall be deemed a part of this Contract.

XXXV. WARRANTIES. THERE ARE NO WARRANTIES EXCEPT FOR THOSE EXPRESSLY WRITTEN IN THE ATTACHED "STATEMENT OF ALL WARRANTIES;" ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE ARE HEREBY EXCLUDED.

STATEMENT OF ALL WARRANTIES followed on next page

**STATEMENT OF ALL
WARRANTIES
OF HAMAMATSU CORPORATION
("SELLER")**

(This document is referred to in, and is a part of the attached Contract of Sale, and relates only to the Goods covered by said Contract of Sale)

THERE ARE NO WARRANTIES EXCEPT FOR THOSE EXPRESSLY WRITTEN HEREIN; ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE HEREBY EXCLUDED.

WARRANTIES

I. LIGHT DETECTING DEVICES. All of Seller's light detecting devices are warranted to the original purchaser for a period of 12 months following the date of shipment by Seller, subject to the limitations, exceptions and conditions set forth in Paragraph V. This warranty is limited to repair or replacement, at the sole option of Seller, of any part which is defective in workmanship or materials used in manufacture.

II. DEUTERIUM LAMPS. Subject to the limitations, exceptions and conditions set forth in Paragraph V, all of the Seller's deuterium lamps are warranted to the original purchaser for a period of 12 months following the date of shipment by Seller, or for 500 hours of operation, whichever occurs first; provided, however, that if a lesser number of warranted hours of operation for deuterium lamp appears in Seller's catalog or the data sheet for such lamp, such lesser number of hours shall be substituted for 500 hours in the warranty for such lamp. In connection with the warranting of deuterium lamps, Seller in its sole judgment shall conclusively determine the actual number of hours of operation for deuterium lamps.

This Warranty is limited to repair or replacement, at the sole option of Seller, of any part which is defective workmanship or materials used in manufacture. However, if Seller is notified of such defect in such lamp and elects to replace the entire lamp, then (a) Seller will replace such lamp free of charge if Seller is notified of such defect within 90 days of

shipment by Seller or before actual operation equal to $\frac{1}{4}$ of the number of warranted hours of operation for such lamp set forth above, whichever occurs first; and (b) if Seller is notified of such defect more than 90 days after shipment by Seller or after actual operation equal to more than $\frac{1}{4}$ of the number of warranted hours of operation for such lamp set forth above, then Seller will replace such lamp at Seller's then current price, after granting a credit equal to the lesser of the following amounts; (a) the product of Seller's then current price and a fraction arrived at as follows: Subtract from 365 the number of days from shipment by Seller to Seller's receipt of notice of defect, and then divide the results by 365 or (c) the product of Seller's then current price and a fraction arrived at as follows: Subtract from the number of warranted hours of operation the actual number of hours of operation, and then divide the result by the number of warranted hours of operation. No lamp will be replaced if it has been used above the maximum current rating for such lamp published in Seller's catalog, or if it has been used in any manner not completely in accordance with the data published in Seller's catalog and in its data sheet for such lamp.

III. LIMITATIONS, EXCEPTIONS AND CONDITIONS RELATING TO WARRANTIES FOR ALL LIGHT DETECTING DEVICES AND LAMPS.

(A) All of the above warranties relating to light detecting devices and lamps are subject to the following additional limitations, exceptions and conditions: Any claim for damage of or to a shipment arising out of or in any way connected to damage in transit is not covered by any warranty and such claim must be made directly to the delivering carrier within five days of receipt of the shipment.

(B) Purchasers must inspect and test all light detectors and lamps and notify Seller of any claim under Seller's warranty arising out of such inspection and test within 30 days after receipt of shipment. Failure to perform said incoming inspection shall limit each claim to a maximum of 75% of invoice value of the light detectors and lamps covered by such claim.

(C) Seller shall be released from all obligations under its warranties for damaged light detectors and lamps unless in the sole opinion of Seller the damage is due to a seal crack or a crack in a graded seal resulting directly from a manufacturing defect.

(D) Seller shall be released from all obligations under its warranties for any light detector or lamp which in the sole judgment of Seller has been damaged, altered, modified, abused, misused, or has not been opened and maintained in a proper manner and in accordance with Seller's catalog and the data sheet for the product, or has had the serial number, type number, or other identifying number obliterated or defaced.

(E) No light detectors or lamps will be accepted for return unless permission for such return has been obtained from Seller in writing, the shipment has been returned freight prepaid and insured, the detectors or lamps are packed in their original box and accompanied by the original data sheet furnished to the purchaser, and a full written explanation of the reason for rejection of each item has been furnished.

(F) Seller makes no warranty of any kind with respect to any prototype or developmental equipment or products, except where a special warranty specifically covering such equipment or products has first been negotiated with Seller and set forth in a writing signed by Seller.

VI. INSTRUMENTS. Subject to the limitations, exceptions and conditions set forth below, instruments sold by Seller are warranted as follows:

All of Seller's instruments are warranted to the original purchaser for a period of 12 months following the date of shipment to the original purchaser or a period of 12 months following

the date of shipment to the original purchaser or a period of 15 months following the date of shipment to the distributor, whichever period is completed first. This warranty is limited to repair or replacement, at the sole election of Seller, of any part which is defective in workmanship or materials used in manufacture. Purchaser must notify Seller of such defect immediately after discovery, and must give satisfactory proof of such defect or, upon request, return the defective item to the Seller in Middlesex, New Jersey, at purchaser's expense, for examination. In addition to the foregoing the following exceptions, limitations, and conditions to Seller's warranties are applicable: (A) If any expendable component or accessory, such as a battery, or discharge lamp, which Seller has incorporated in or furnished for use with instruments manufactured by Seller, fails to give reasonable service for a reasonable period of time, Seller will at its sole election, replace or repair such component or accessory. What constitutes reasonable service and what constitutes a reasonable period of time shall be determined solely by Seller in its absolute discretion after Seller is in possession of all the facts concerning operating conditions and other pertinent factors and after such component or accessory has been returned to the Seller, transportation prepaid.

(B) Notwithstanding anything to the contrary contained in this Paragraph VI, Seller makes no warranty concerning any components or accessories which are not manufactured by Seller but which are incorporated or used in connection with instruments manufactured by Seller. However, in the event of the failure of any such component or accessory not manufactured by Seller, Seller will give reasonable assistance to purchaser in seeking an adjustment from the manufacture of the item in question based on the manufacture's own warranty, if any.

(C) Seller shall be released from all obligations under its warranties for any instrument which in the sole judgment of Seller has been damaged, altered, modified, abused, misused, or has not been operated and maintained in a proper manner and in accordance with Seller's catalog and the data sheet for the product, or has had the serial number, type number, or other identifying number obliterated or defaced.

(D) Any claim for damage of or to a shipment arising out of or in any way connected to damage in transit is not covered by any warranty, and such claim must be made to the delivering carrier within five days of receipt of the shipment.

(E) Purchasers must inspect and test all instruments and notify Seller of any claim under Seller's warranty arising out of such inspection and test within 30 days after receipt of shipment. Failure to perform said incoming inspection shall limit each claim to a maximum of 75% of invoice value of the instruments covered by such claim.

(F) No instruments will be accepted for return unless permission for such return has been obtained from Seller in writing, the shipment has been returned freight prepaid and insured, the instruments are packed in their original box and accompanied by the original data sheet furnished to the purchaser, and a full written explanation of the reason for rejection of each item has been furnished.

(G) All repaired and replaced items will be delivered by Seller FOB.

(H) Seller makes no warranty of any kind with respect to any prototype of developmental equipment or products, except where a special warranty specifically covering such equipment or products has first been negotiating with Seller and set forth in a writing signed by Seller.

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