



PRECISION LASER TECHNOLOGY

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The following are the terms and conditions under which Precision Laser Technology LLC ("PLT") provides services and products, except as otherwise agreed to by PLT in writing:

1. **PRICES AND TAXES.** The prices will be those set forth in PLT's quotation valid at the time of order. If a quotation has expired, PLT reserves the right to extend the validity of the quotation or issue a new quotation at its discretion. Prices are F.O.B. shipping point in U.S. dollars and are exclusive of all taxes, tariffs, duties and fees. Buyer is solely responsible for and agrees to pay, either through the relevant invoice or a separately issued invoice, all sales taxes resulting from or arising out of an order. If a Buyer within the United States wishes to have the agreement or order treated as sales tax exempt, PLT must receive a resale or exemption certificate prior to shipment.
2. **ORDERS.** No order submitted by Buyer will be deemed accepted by PLT unless and until confirmed in writing by PLT's authorized representative. No order which has been accepted by PLT may be canceled by the Buyer except with the agreement in writing of PLT and on terms that the Buyer will indemnify PLT in full against all loss (including loss of profit), costs (including the cost of all labor and materials used), damages, charges and expenses incurred by PLT as a result of cancellation. Due to administrative costs, orders must be for a **minimum** of \$55.00.
3. **PAYMENT.** All payments by Buyer will be made in U.S. dollars. If Buyer continually satisfies PLT's credit approval process and requirements, then payment terms of net 30 days after the relevant invoice date shall be granted and honored. However, pursuant to the following:
 - a. If during the period of performance of an order the financial condition of the Buyer is determined by PLT not to justify the terms of payment specified, PLT may demand that alternate payment terms be made.
 - b. PLT reserves the right to make deliveries in installments, all installments to be separately invoiced and paid for by Buyer when due per invoice without regard to other scheduled deliveries. If the Buyer for any reason delays shipments in excess of 30 days, payment will become due from the date on which PLT is prepared to make shipment and storage will be at Buyer's risk and expense.
 - c. In the event of default in payment by Buyer: (i) PLT may suspend performance of its obligations; (ii) Buyer agrees to pay PLT's standard late charges plus interest on the delinquent payment from the due date thereof until such payment and all interest thereon is received at the rate of 1½ % per month; and (iii) in the event of litigation or collection activity arising out of Buyer's non-payment, Buyer will promptly pay the reasonable costs and expenses incurred by PLT, including attorney's fees.
4. **DELIVERY, SECURITY INTEREST, DELAYS.** Delivery will be F.O.B. shipping point PLT. Freight and handling charges are to be either remitted in advance or payable following receipt of an invoice. Any dates for delivery quoted by PLT or provided in an accepted order are approximations only and PLT will not be liable for delay in shipment for any reason. Title to product remains with Buyer and Buyer assumes all risk of loss upon delivery of product by PLT to the initial carrier. Insurance will be provided by PLT upon request and collected with freight and handling charges. In the absence of instructions to the contrary, PLT, on behalf of Buyer, will select the carrier but will not be deemed thereby to assume any liability in connection with the shipment nor will the carrier be construed to be an agent of PLT. Claims for loss or damage to products in transit must be made to the carrier and not to PLT. Buyer hereby grants PLT a security interest in the products and all cash and non-cash proceeds thereof as security for all of Buyer's obligations hereunder. Upon request by PLT, Buyer will promptly execute any instrument required to perfect such security interest; provided that in any event PLT is hereby

appointed Buyer's attorney-in-fact to do all acts which PLT deems reasonably necessary or desirable to perfect and continue to perfect such security interest and to protect the collateral. PLT will not be liable for any damages or penalty for delay in delivery or for failure to give notice of delay when such delay is due to the elements, acts of God, delays in transportation, delay in delivery by PLT's vendors or any other causes beyond the reasonable control of PLT. The delivery schedule will be extended by a period of time equal to the time lost because of such delay.

5. **PATENTS.** Buyer will defend, indemnify and hold PLT harmless against any loss, damages, costs, fees (including attorneys' fees) and expenses awarded against or incurred by PLT for alleged infringement of any patents, copyrights, trademarks, or other intellectual property rights of any person or entity which result from PLT's use of or compliance with Buyer's designs, specifications or instructions.
6. **WARRANTY**
Laser Service includes engraving, marking and micro-machining provided by PLT ("Laser Service").
 - a. Laser Service is warranted against defects in workmanship for a period of 30 days from date of shipment as evidenced by PLT's packing slip or other transportation receipt.
 - b. PLT's sole responsibility under this warranty will be to either repair or re-engage, at its option, any component which fails during the applicable warranty period because of a defect in workmanship, provided Buyer has promptly notified PLT in writing.
 - c. It is Buyer's responsibility to return, at its expense, the allegedly defective workmanship to PLT. Transportation charges for the return of the product to Buyer will be paid by PLT. The warranty excludes all other associated costs of shipping such as customs clearance, duties, taxes, etc. If PLT determines that the service is not defective within the terms of this warranty, Buyer will pay PLT all costs of handling, transportation and repairs at the then prevailing repair rates.
 - d. All the above warranties are contingent upon proper use of the end product. These warranties will not apply (i) if caused by accident, unusual physical, or electrical stress, neglect, misuse, failure of electric power, environmental controls, transportation, failure to maintain property, or abuses other than ordinary use; or (ii) if the laser service has been modified by Buyer or has been repaired or altered outside PLT's facility.
 - e. No person, including any business partner, agent or representative of PLT is authorized to assume for PLT any other liability on its behalf except as set forth herein. If any payment is due PLT for services performed hereunder, it will be subject to the same payment terms as the original purchase.

All Products and Services:

THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES, OBLIGATIONS, AND LIABILITIES ON THE PART OF PLT. EXCEPT FOR THE EXPRESS WARRANTIES STATED HEREIN, PLT DISCLAIMS ALL WARRANTIES ON PRODUCTS FURNISHED HEREUNDER, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. PLT WILL HAVE NO RESPONSIBILITY FOR ANY PARTICULAR APPLICATION MADE OF ANY PRODUCT AND / OR SERVICE. Any description of product or service, whether in writing or made orally by PLT or its agents, specification sheets, models, bulletins, drawings, or similar materials used in connection with Buyer's order are for the sole purpose of identifying the product and service and will not be construed as an express warranty. Any suggestions by PLT or its agents regarding use, application or suitability of the product and service will not be construed as an express warranty. No warranties may be implied from any course of dealing or usage of trade. Buyer agrees that the exclusion of all warranties, other than those expressly provided herein, is reasonable.

7. **ACCEPTANCE OF PRODUCTS.** Unqualified acceptance of products will occur upon delivery, unless PLT is notified in writing within ten days from Buyer's receipt or that Buyer is making a claim for shortages or other errors in delivery. Failure to give such timely notice constitutes a waiver of all such claims by Buyer. PLT's sole obligation for any non-acceptable services will be

limited to repair or re-engrave, at PLT's option, pursuant to the provisions of the foregoing Warranty clause.

8. CONFIDENTIALITY.

- a. Buyer and PLT each agree to use the other's Confidential Information (defined below) it receives or otherwise obtains solely for purposes of benefiting the business relationship between them. The receiving party ("Recipient") shall not duplicate any Confidential Information of the other party ("Disclosing Party") except as may be strictly necessary in furtherance of that purpose. The Recipient agrees to maintain all of the Disclosing Party's Confidential Information it receives or otherwise obtains in confidence, using at least that standard of care which it accords its own Confidential Information to protect the Disclosing Party's Confidential Information. The Recipient agrees not to disclose the Disclosing Party's Confidential Information to any other party except those of the Recipient's directors, officers, employees, agents, consultants, advisors and affiliates involved in furthering that purpose whose duties justify the need to know such Confidential Information. The Recipient who is to receive Confidential Information shall be advised of the confidential nature of the Confidential Information and shall have agreed in writing to be bound by the terms of this Section. The Recipient agrees that at no time shall it or its Agents use or knowingly permit any other person or entity to examine, use, or derive benefit from the Confidential Information. These obligations will survive for a period of three (3) years from the date of the relevant disclosure or for such longer period as such Confidential Information may be entitled to legal protection from disclosure by operation of law.
- b. "Confidential Information" means information in its broadest sense, including but not limited to computer drawings, databases, trade secrets, know-how, inventions, improvements, discoveries, techniques, business and marketing records, merchandising and marketing techniques, plans and data, strategies, new products and services, financial data, budgets, projections, work papers, files, contracts, and client and supplier information and lists; provided, however, that this Section 8 shall not apply to Confidential Information which (i) is or becomes generally available to the public other than as a result of disclosure by or through the Recipient or its Agents; (ii) was available to the Recipient on a non-confidential basis prior to disclosure by the Disclosing Party as evidenced by documentation in the Recipient's possession (unless the Recipient knows that such Confidential Information is subject to another confidentiality agreement); (iii) becomes available to the receiving party on a non-confidential basis from a source other than the Disclosing Party (unless the Recipient knows that such Confidential Information is subject to another confidentiality agreement); or (iv) was developed by or for the Recipient independently of and without reference to any of the Disclosing Party's Confidential Information. Any Confidential Information developed by PLT (alone or jointly with Buyer) in connection with any Laser Services provided by PLT will be the exclusive property of PLT.
- c. Upon the Disclosing Party's request, the Recipient shall immediately (i) return all Confidential Information it has received, including tangible items containing or representing Confidential Information and all copies thereof made by such party or its Agents; (ii) erase or destroy all Confidential Information it has received which is contained in computer memory or data storage apparatus; and (iii) destroy all materials incorporating or based on such Confidential Information which were prepared by or for such party or its Agents.
- d. Notwithstanding the foregoing, either party may disclose any Confidential Information to the extent required by a valid subpoena or order issued by a court of competent jurisdiction or by a governmental body, provided that the party subject to such requirements shall (i) immediately notify the Disclosing Party of the existence, terms and circumstances relating to the requirement, if permitted by law; and (ii) cooperate with the Disclosing Party in asserting objections or providing a defense to such requirement or obtaining a protective or equivalent order. Buyer and PLT agree that the obligations under this Section 8 are of great importance to PLT and form a substantive condition of any transaction by it. Since monetary compensation may not adequately cover the failure of such obligations, Buyer and PLT specifically agrees to submit to injunctive relief from

the courts where suitable and adequate relief may be obtained in order to give effect to these confidentiality obligations.

9. DISCLAIMER AND LIMITATION OF LIABILITY.

- A. PLT's total liability is limited to the net price of the laser services sold hereunder, excluding any charges stated separately from the service price on the invoice. Buyer's sole remedy for liability of any kind is limited to the request for PLT, at PLT's option, to refund that net price for the items and matters involved, except that in the case of a breach of warranty, buyer's sole remedy is to return the product to PLT for repair or replacement in accordance with the "Warranty" section of these terms and conditions.
- B. In no event will PLT be liable to buyer for (i) procurement costs; (ii) indirect, incidental, special, or consequential damages; (iii) any damages whatsoever resulting from loss of use, data or profits arising out of or in connection with this agreement or the use or performance of PLT services, whether in an action of contract or tort, including negligence and strict liability, even if PLT has been advised of the possibility of such damages.
- C. No action, whether in contract or tort, including negligence, arising out of or in connection with this agreement may be brought by either party more than eighteen (18) months after the cause of action has accrued, except that an action for non-payment may be brought within eighteen (18) months of the date of last payment.

10. GENERAL PROVISIONS.

- a. These terms and conditions constitute the entire Sales Agreement between the parties with respect to the subject matter hereof and supersede all proposals, oral and written, all previous negotiations and all other communications between the parties with respect to that subject matter. These terms and conditions will prevail and govern notwithstanding any different, conflicting or additional terms and conditions which may appear on any order or other document submitted by Buyer, all of which will be deemed null and void. Deviations from these terms and conditions are not valid unless confirmed in writing by an authorized representative of PLT.
- b. The rights and obligations under these terms and conditions may not be assigned without PLT's prior written consent and any attempt to do so without such consent will be void.
- c. These terms and conditions will be governed by and construed in accordance with the internal laws of the State of New York without reference to conflict of laws principles. Any controversy or claim arising out of or relating to these terms and conditions or any matter or transaction contemplated hereby will be triable only in a court with jurisdiction located in Monroe County, New York, and PLT and Buyer each irrevocably consent to that venue and to the personal jurisdiction thereof.
- d. Buyer will pay to PLT all costs, fees and expenses (including attorneys' fee) incurred by PLT in enforcing, or attempting to enforce, any of its rights under these terms and conditions or any contract of sale between them.
- e. All rights and remedies whether conferred hereby or by any other instrument or law will be cumulative and may be exercised singularly or concurrently. Failure by either party to enforce any contract terms will not be deemed a waiver of future enforcement of that nor of any other term. If any provisions of this contract are held invalid under any applicable law, rule, regulation or treaty, such invalidity will not affect other provisions of this contract, which can be given effect without the invalid provisions and to this end, the provisions of this contract are declared to be severed. Notwithstanding the above, such invalid provision or clause will be construed, to the extent possible, in accordance with the original intent of the parties.
- f. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by PLT will be subject to correction without any liability on the part of PLT.
- g. In conformity with the United States Foreign Corrupt Practices Act, Buyer and its employees and agents shall not directly or indirectly make an offer, payment, promise to pay, or authorize payment, or offer a gift, promise to give, or authorize the giving of anything of value for the purpose of influencing an act or decision of an official of any government of any country where the products are used or the United States Government (including a decision not to act) or inducing such a person to use his influence to affect any such governmental act or decision in order to assist Buyer in obtaining, retaining or directing any such business.