



**PHENIX FIBER OPTICS, LLC
TERMS AND CONDITIONS OF SALE**

The Terms and Conditions of Sale ("Agreement") contained herein constitute the entire agreement between Phenix Fiber Optics, LLC. ("Phenix") and Purchasing Party ("Customer") with respect to the sale and purchase of Phenix Products (defined below). Phenix will not be bound by any terms of Customer's order. No form of acceptance except Phenix's written acknowledgment sent to Customer, or Phenix's commencement of performance shall constitute valid acceptance of Customer's order. Any such acceptance is expressly conditioned on assent to the terms hereof and the exclusion of all other terms. Customer shall be deemed to have assented to the terms hereof, whether or not previously received, upon accepting delivery of any Product shipped by Phenix or its Authorized Distributor(s).

1. PRODUCTS:

- 1.1. "Products" shall mean any products identified on (a) any of Phenix's or its Authorized Distributor(s) quotations, (b) current applicable price lists, or (c) any of Phenix's or its Authorized Distributor(s) invoices.
- 1.2. Alterations to any Product which Phenix deems necessary to comply with specifications, changed safety standards or governmental regulations, to make a Product non-infringing with respect to any intellectual property or other proprietary interest, or to otherwise improve a Product may be made at any time by Phenix without prior notice to, or consent of, Customer and such altered Product shall be deemed fully conforming.

2. ORDERS: Customer shall purchase Products by issuing a written purchase order directly to Phenix or to an Authorized Distributor, signed by an authorized representative, indicating specific Products, quantity, price, total purchase price, shipping instructions, requested delivery dates, bill-to and ship-to addresses, tax exempt certifications if applicable, and any other special instructions. Any contingencies contained on such order are not binding upon Phenix. All orders are subject to acceptance by Phenix, which will accept or reject orders according to Phenix's then current processes.

3. PRICES: All prices are (a) firm for 60 days from the date of quotation or as otherwise provided on Phenix's quote sheet, (b) EXW (for International deliveries) or FOB (for domestic deliveries), Phenix manufacturing facility in Bozeman, Montana USA, and (c) exclusive of Taxes (as defined herein) and all handling or other charges including without limitation insurance, brokerage fees, transportation or special packaging ("Charges"). All sales are final. Title and all risk of loss to the Products shall pass from Phenix to Customer upon delivery to the shipping carrier. Any tax or other charge which

Phenix is liable to collect on behalf of any governmental authority ("Taxes") as a result of the sale, use or delivery of Products, including without limitation, duties, value added and withholding taxes, is the responsibility of the Customer, and if paid by Phenix shall be charged to Customer as a separate item on the invoice, to the extent possible.

4. TERMS OF PAYMENT: Upon credit approval by Phenix, payment terms shall be net 30 days from the date of each shipment invoiced except as otherwise provided on Phenix's quote sheet. Phenix reserves the right to require alternative payment terms including, without limitation, a letter of credit or payment in advance. If at any time Customer is delinquent in the payment of any invoice or is otherwise in breach of this Agreement, Phenix may, at its discretion, withhold shipment (including partial shipments) of any order or may, at its option, require Customer to pre-pay for further shipments. All payments not received when due shall be subject to an additional charge of one and one-half percent (1.5%) per month of the unpaid amount or the maximum rate permitted by law, whichever is less, until the date of payment. Customer grants Phenix a security interest in Products purchased under this Agreement to secure payment for those Products purchased. If requested by Phenix, Customer agrees to execute financing statements to perfect this security interest. There is no set-off right for the Customer.
5. PERFORMANCE AND SHIPPING: Performance and shipping dates specified or communicated by Phenix to the Customer are approximate dates only and the failure to perform or ship on such dates shall not be considered a breach by Phenix. Delivery shall be deemed upon Phenix's notification to the Customer that Products are available to the Customer at Phenix's manufacturing facility. All claims for shortage of Products ordered or for incorrect charges must be presented to Phenix within 15 days after receipt by Customer of the particular shipment of Products. Customer shall be responsible for all Charges. Unless given written instruction, Phenix may select the carrier. Phenix shall not be liable for damages or penalty for delay in delivery or for failure to give notice of any delay, and the carrier shall not be deemed to be an agent of Phenix.
6. CANCELLATION: The Customer may not cancel, terminate, suspend performance of, or issue a hold on, any Customer order, in whole or in part, without the prior written consent of Phenix, which consent, if given, shall be upon terms that will compensate Phenix for any loss or damage therefrom, including but not limited to, the price of Products shipped to, manufactured for, or held separately for, the Customer, and loss of profits, incurred costs, and a reasonable allocation of general and administrative expenses relating to the Products.
7. LIMITED PRODUCT WARRANTY:
 - 7.1. Phenix warrants the Product against defects in materials and workmanship under normal use for a period of ONE (1) YEAR from the date of shipment from Phenix ("Warranty Period") to the Customer OR 100,000 cuts (as read by software and/or external counting mechanism). Should a Product defect arise and a valid claim be received by Phenix during the Warranty Period, Phenix will, at its option, repair or replace the defective Product at no charge to the Customer, provided that the Customer return the Product during the Warranty Period, with transportation and customs charges prepaid, to Phenix's service center at 2011

N. 22nd Ave, Suite 3, Bozeman, Montana 59718. Prior to return, the Customer must contact Phenix by e-mail at sales@phenixfo.com for authorization to return a Product under this warranty. Phenix may use remanufactured, refurbished or serviceable used parts and modules in making warranty repairs. Repaired or replaced Products will be covered for the remainder of the Warranty Period. This warranty does not apply: (a) to damage caused by accident, abuse, misuse, use in hazardous activities, mishandling, flood, fire, earthquake or other external causes; (b) to damage caused by improper installation, misapplication, or operating the Product for uses outside of its intended purpose; (c) to a Product that has been modified to significantly affect functionality or capability without the prior written permission of Phenix; or (d) to consumable parts, such as batteries, unless damage has occurred due to a defect in materials or workmanship

- 7.2. All third parties' Products (including software) sold by Phenix carry only the original manufacturer's warranty applicable to Customer. Phenix will only accept for repair, replacement or credit under warranty Products made by third parties if expressly authorized to do so by the relevant third party.
- 7.3. Customer must claim under the warranty in writing not later than 30 days after the claimed defect is discovered. The Customer must make all claims under this warranty and no claim will be accepted from any third party.
- 7.4. Any Product which has been returned to Phenix but which is found to meet the applicable specification for the Product and not defective in workmanship and material, shall be subject to a reasonable examination charge which may be charged to the Customer. Where any Product is returned without an itemized statement of claimed defects, Phenix will not evaluate the Product but will return it to the Customer at the Customer's expense.
- 7.5. TO THE EXTENT PERMITTED BY LAW, THIS WARRANTY AND REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REMEDIES, AND CONDITIONS, WHETHER ORAL OR WRITTEN, STATUTORY, EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, PHENIX SPECIFICALLY DISCLAIMS ANY AND ALL STATUTORY OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES AGAINST HIDDEN OR LATENT DEFECTS. IF PHENIX CANNOT LAWFULLY DISCLAIM STATUTORY OR IMPLIED WARRANTIES THEN TO THE EXTENT PERMITTED BY LAW, ALL SUCH WARRANTIES SHALL BE LIMITED IN DURATION TO THE DURATION OF THIS EXPRESS WARRANTY AND TO REPAIR OR REPLACEMENT SERVICE AS DETERMINED BY PHENIX IN ITS SOLE DISCRETION. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY HEREIN FAILS OF ITS ESSENTIAL PURPOSE.
8. SOFTWARE LICENSE AND WARRANTY: For software developed by Phenix and used with any Product, and all related documentation (collectively "Software"), Phenix does

not transfer ownership (which shall remain solely with Phenix) but only grants the Customer a non-exclusive license to use the Software.

9. LIMITATION OF LIABILITY: EXCEPT AS SPECIFICALLY PROVIDED IN THE LIMITED WARRANTIES STATED HEREIN, PHENIX SHALL NOT BE LIABLE OR RESPONSIBLE TO THE CUSTOMER OR ANY OTHER PERSON FOR DIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY BREACH OF WARRANTY OR CONDITION, OR UNDER ANY OTHER LEGAL THEORY, INCLUDING BUT NOT LIMITED TO LOSS OF USE; LOSS OF REVENUE; LOSS OF ACTUAL OR ANTICIPATED PROFITS (INCLUDING LOSS OF PROFITS ON CONTRACTS); LOSS OF THE USE OF MONEY; LOSS OF ANTICIPATED SAVINGS; LOSS OF BUSINESS; LOSS OF OPPORTUNITY; LOSS OF GOODWILL; LOSS OF REPUTATION; LOSS OF, DAMAGE TO OR CORRUPTION OF DATA; LOSS OF OR DAMAGE TO OTHER EQUIPMENT OR PROPERTY; OR ANY OTHER INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE HOWSOEVER CAUSED.
10. EXPORT RESTRICTIONS: Customer shall obtain all licenses, permits and approvals required by any government and shall comply with all applicable laws, rules, policies, and procedures of the applicable government and other competent authorities. Customer will indemnify and hold Phenix harmless for any violation or alleged violation by Customer of such laws, rules, policies or procedures. Customer shall not transmit, export or re-export, directly or indirectly, separately or as part of any system, the Products or any technical data (including processes and services) received from Phenix, without first obtaining any license required by the applicable government, including without limitation, the United States Government and/or any other applicable competent authority. Customer also certifies that none of the products or technical data supplied by Phenix under this Agreement will be sold or otherwise transferred to, or made available for use by or for, any entity that is engaged in the design, development, production or use of nuclear, biological or chemical weapons or missile technology.
11. RIGHTS IN INTELLECTUAL PROPERTY AND TOOLING: All right, title and interest in and to any inventions, discoveries, improvements, methods, ideas, computer and other apparatus programs and related documentation, other works of authorship fixed in any tangible medium of expression, mask works, or other forms of intellectual property, whether or not subject to statutory protection, which are made, created, developed, written, conceived or first reduced to practice by Phenix solely, jointly or on its behalf, in the course of, arising out of, or as a result of work performed under an order, and any related tooling, set-up, fitting-up and preparation charges whether or not invoiced, shall belong to and be the sole and exclusive property of Phenix. Customer agrees not to reverse engineer all or any portion of any Product nor allow or assist others to do so. Customer agrees not to remove, alter, erase, deface or cover over any markings on the Product or its packaging.
12. GENERAL TERMS:
 - 12.1. The validity, interpretation and performance of this Agreement shall be governed by and construed under the applicable laws of the State of Montana and the United States of America, as if performed wholly within the state and without

giving effect to the principles of conflict of laws. The parties specifically disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods.

- 12.2. Phenix shall not be liable for any delay or failure in performance whatsoever due to acts of God, earthquakes, shortage of supplies, transportation difficulties, labor disputes, riots, war, fire, explosion, epidemics, or other occurrences beyond Phenix's reasonable control or due to unforeseen circumstances.
- 12.3. If Customer becomes insolvent or is in default under the terms of this or any other agreement between Customer and Phenix, Phenix may, at its option discontinue further performance of all or part of the order, and Phenix shall have any and all other rights available to it in law or in equity.
- 12.4. Waiver by Phenix of any provision herein must be in writing and shall not be deemed to be a waiver of such provision (or of any other provision) in the future.
- 12.5. Customer shall hold confidential and shall not use, disclose or permit others to use any confidential information identified as such in writing or orally by Phenix or information which Customer knows or ought to reasonably know is confidential, proprietary or trade secret information of Phenix, including, without limitation, trade secrets embodied in Products.
- 12.6. Neither this Agreement nor any rights under this Agreement, other than monies due or to become due, shall be assigned or otherwise transferred by Customer (by operation of law or otherwise) without the prior written consent of Phenix. This Agreement shall bind and inure to the benefit of the successors and permitted assigns of the parties.
- 12.7. If any part of this Agreement is held invalid or unenforceable, that part will be construed to reflect the parties' original intent, and the remaining portions will remain in full force and effect.
- 12.8. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.
- 12.9. Phenix neither assumes nor authorizes any third party, person or entity to assume or accept any liability or obligation, or to make any commitment for Phenix with regard to Phenix services or the Products.
- 12.10. This Agreement constitutes the entire agreement between the parties hereto concerning the subject matter of this Agreement, apart from existing non-disclosure agreements, and there are no understandings, agreements, representations, conditions, warranties, or other terms, express or implied, which are not specified herein. This Agreement may only be modified by a written document executed by authorized representatives of Phenix and Customer.