

Photodigm Inc
Terms and conditions

1. Quotations.

All quotations are firm for thirty (30) days from date of quotation unless otherwise indicated in the quotation itself, limited to all quantities shippable within twelve (12) months from date of quotations. Any price indicated for quantities shippable beyond twelve (12) months is budgetary in purpose.

2. Order Acceptance.

All purchase orders are subject to approval and acceptance by an authorized representative of Seller at its general office in Richardson, Texas. The sales order contains the complete agreement between Seller and Buyer, and Seller expressly limits its acceptance to its terms. Additional or different terms in Buyer's purchase order shall not be binding on Seller, unless specifically agreed upon by Seller in writing.

3. Warranties.

Seller warrants that the products covered hereby conform to the description and mutually agreed upon specifications, if any, except best efforts will be made for prototypes and developmental work. All other warranties are excluded, whether express or implied by operation of law or otherwise, including all implied warranties of merchantability or fitness. Seller shall not be liable for consequential damages directly or indirectly arising or resulting from the breach of any of the terms hereof or from the sale, handling or use of the wafers processed. Seller's liability hereunder, either for wafer breakage, breach of warranty or for negligence, is expressly limited at the option of Seller: (A) to reprocessing of any wafers found to be defective or not to conform to the specifications set forth herein, (B) to the processing of replacement wafers supplied by Buyer, or (C) to the refund or crediting to Buyer of the price of such processing.

4. Delivery Terms.

Delivery dates are approximate and are based upon prompt receipt of all necessary information from Buyer. Unless otherwise specified by Seller, delivery will be made and title will pass to Buyer F.O.B. point of shipment. Expense and risk of loss of transporting the goods shall pass to Buyer at point of shipment.

5. Delivery in Installments.

Seller reserves the right to make delivery in installments. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of the obligations to accept and pay for remaining deliveries.

6. Payment.

Unless otherwise agreed in writing by an authorized representative of seller, terms of payment shall be all NRE and custom development charges due with the purchase order and wafer processing or standard product charges due within 30 days of shipment. Should the financial responsibility of Buyer at any time become unsatisfactory to Seller, Seller shall have the right to require payment for any shipment hereunder in advance or satisfactory security. If Buyer fails to make payment in accordance with the terms of this agreement or fails to comply with any provision hereof, the Seller may at its option, in addition to any other remedies, cancel any unshipped portion of this order, Buyer to remain liable for all unpaid accounts. In the event Buyer fails to make payment in accordance with terms of this agreement, the account shall be deemed to be delinquent and a late charge of one and one-half percent (1 1/2%) per month will be made on the unpaid balance. Buyer agrees to pay all collection costs and expenses, including reasonable attorneys fees, incurred by seller in collecting or attempting to collect such account.

7. Freight and Handling.

Unless otherwise provided in writing, freight charges on all shipments, and spotting, switching, demurrage, or drayage at destination are to be paid by Buyer. All incoming shipping and handling charges on all material on which the supplier of said material does not pre-pay or allow freight into the Seller's warehouse, and all outgoing shipping and handling charges on all shipments from Seller to Buyer shall be borne by Buyer. Any difference in the amount of freight from that shown on the face hereof as being included is for Buyer's account. Seller reserves the right to designate origin and intermediate carriers. If a specific delivering carrier is required, Buyer must designate such carrier in writing to Seller prior to shipment.

8. Taxes.

Prices do not include any present or future sales, use, excise, or similar taxes. All such taxes shall be for Buyer's account.

9. Delay.

Seller shall not be liable for any failure in performance or delay in design, manufacture, shipment or delivery of products resulting from any cause beyond Seller's control, including, but not limited to, provisions of law or governmental regulations, accident, explosion, fire, windstorm, flood or other casualty, strike, lockout, or other labor difficulty, riot, war, insurrection, shortage of or inability to secure labor, raw materials, production or transportation facilities. Shipping dates are approximate and are based on conditions at the time of quotation. Seller shall not be liable for failure or delay in performance due to prior sale of products. In the event of such delay, there will be no termination and the date of delivery shall be extended for a period equal to the time lost by reason of delay.

10. Cancellation.

No processed wafers or prototype products may be returned for credit and no order may be canceled or changed in whole or in part without the prior written consent of Seller. Shipment of processed wafers cannot be extended beyond the original shipping date specified without Seller's consent.

11. Compliance with Laws.

Seller warrants that it has and will continue during the performance of this order to comply with provisions of all federal, state and local laws and regulations from which liability may accrue to Buyer from any violation thereof. Seller warrants compliance with the Fair Labor Standards Act of 1938, as amended, in the performance of this order.

12. Export Compliance

(A) Buyer shall comply with all applicable U.S. export control laws and regulations. The items sold under this Agreement may be subject to the provisions of the Export Administration Act of 1979 and the Export Administration Regulations promulgated there under, the Arms Export Control Act and the International Traffic in Arms Regulations, and the sanctions laws administered by the Office of Foreign Assets Control ("OFAC"). Buyer acknowledges that these statutes and regulations impose restrictions on the import, export, and transfer to third countries of commodities and related technical data, and that licenses from the U.S. Department of Commerce, U.S. Department of State, or OFAC may be required before such commodities or technical data can be transferred, and that such licenses may impose further restrictions on use and further transfer of such commodities and technical data. Buyer agrees to notify Seller prior to any transfer to any parties outside of the United States. Licensee understands that the foregoing obligations are U.S. legal requirements and agrees that they shall survive any term or termination of this Agreement.

13. Assignment.

Buyer may not assign this agreement without prior written consent of Seller.

14. Specifications.

Specifications and instructions on the face hereof are in accordance with directions of Buyer and Buyer assumes full responsibility for their correctness.

15. Intellectual Property.

Photodigm retains ownership rights to all epi designs and mask designs.

16. Claims.

Claims for errors, shortages or defective goods must be made within thirty (30) days after receipt of material.

17. Waiver.

Waiver of any breach of this contract shall not be construed as a waiver of any other breach.

18. Modification.

There are no terms, conditions, understandings, or agreements between Buyer and Seller other than those stated herein and all prior proposals and negotiations are merged herein. No terms and conditions in any way altering or modifying the provisions hereof shall be binding upon seller unless in writing and signed by an authorized representative of Seller. No modification or alteration of the provisions hereof shall result from Seller's shipment of material following receipt of buyer's purchase order, shipping order, or other forms containing provisions, terms and conditions in addition to or in conflict or inconsistent with the provisions hereof.

19. Miscellaneous.

- Seller does not authorize use of processed wafers in Life support Application
- Seller provides a maximum indemnification equal to its gross revenues received from this contract.
- The Laws of the State of Texas, USA, govern this contract.