

**ROSS OPTICAL INDUSTRIES  
FULL STATEMENT OF  
STANDARD TERMS AND CONDITIONS**

Notwithstanding any summaries of the terms and conditions of sale that may accompany any of the requests for proposals, quotes or invoices issued by Ross Optical, the following are the standard terms and conditions applicable to every sale unless expressly altered in writing or by authenticated electronic transmission by an authorized representative of Ross Optical. These standard terms and conditions will be updated and modified from time to time at [rossoptical.com](http://rossoptical.com).

**QUOTATIONS:** Quotations are in effect for 60 days after the date received by a customer unless a different period of effectiveness is requested and accepted by Ross Optical. Quoted delivery schedules are subject to change due to material availability and shop load at the time the Purchaser's order is received. Quoted prices are based upon part specifications, quantity, delivery rate, tooling and test required. Should Purchaser change any of these, Ross Optical will make an equitable adjustment in the price or prices. Purchaser will be notified promptly of any adjustment and must inform Ross Optical promptly of acceptance or rejection of the proffered price adjustment. If the price adjustment is not accepted, the contract will be considered terminated at the instance of Purchaser. [See "Termination" below.]

**PAYMENT TERMS:** If the quote or invoice accompanying or incorporating these Conditions (the "Invoice", whether one or more) does not specify cash payment in full upon shipment, the following terms are offered, subject to pending credit approval of Purchaser: 2% 10 days after invoicing, net 30 days. A "late payment" charge of 2% per month will be made on all monies due more than 30 days after invoicing. Unless cash payment in full upon shipment is specified in the Invoice, an Invoice will be submitted when the equipment or part is shipped or the services or repairs are supplied.

Unless otherwise specified in the Invoice or other written agreement between Ross Optical and Purchaser, each shipment shall be considered a separate and independent transaction, and payment therefore shall be made accordingly. If shipments are delayed at the request of Purchaser, payment shall be due when Ross Optical is prepared to make shipment. If manufacture is delayed at the request of Purchaser, payment shall be made on percentage of completion as stated in Ross Optical's special Invoice stating the basis of its calculation. Products held for Purchaser shall be at the risk and expense of Purchaser, but will normally be held for at least one (1) year unless otherwise agreed in writing by Ross Optical.

Ross Optical reserves the right to ship to its own order and make collection by sight draft with bill of lading attached or to require the posting of a letter of credit by Purchaser with similar terms in favor of Ross Optical. If in the judgment of Ross Optical, the financial condition of Purchaser does not justify continuance of production or shipment on the terms of payment specified herein or in the Invoice accompanying these Conditions, Ross Optical may require full or partial payment in advance. In the event an order for relief is entered against Purchaser under the Bankruptcy Code, Ross Optical shall be entitled, subject to any Order of the Bankruptcy Court to the contrary, to cancel any Orders then outstanding and shall receive reimbursement for its cancellation charges.

**DELIVERY:** Unless otherwise specifically provided in the Invoice, delivery of the products hereunder shall be made F.O.B. Ross Optical's place of business in El Paso, Texas. The "Shipping Point" as that term is used in these Conditions, shall be as specified in the Invoice or, in the absence of a specification shall be El Paso, Texas. Shipments of lenses in stock ordered from Ross Optical's catalog will normally be made the same day; in unusual cases, partial shipments will be made and the balance will follow in a few days. In all cases risk of loss or damage to goods in transit shall fall upon the Purchaser, whose responsibility it shall be to file claims with the carrier. Unless Purchaser specifies a method of shipment, Ross Optical will select the method at its discretion and will normally use UPS regular method. Variation in quantities shipped not exceeding five per cent (5%) more or less than the quantities ordered shall constitute compliance with the contract unless otherwise noted on the face of the quotation. The total contract price will be adjusted to reflect the quantity delivered. Shipping dates are approximate and are based upon prompt receipt of all necessary information from Purchaser. Ross Optical shall not be liable for delay due to causes beyond its reasonable control, such as: acts of God, acts or omissions of Purchaser, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine restrictions, wars, riots, suspension of transportation modes and facilities for national security reasons, acts of terrorism, or the inability to obtain labor, materials or manufacturing facilities. In the event of any such delay, the date of delivery shall be deferred for a period equal to the time lost by reason of the delay.

**RETURNS AND REJECTIONS:** Goods ordered in error and returned are subject to a 25% restocking charge and possible refurbishing costs if not in original condition when returned. In case Purchaser determines that a product or part is not made to the agreed upon specifications, Ross Optical must receive notification within 30 days of receipt of the parts. Upon notification Ross Optical will advise Purchaser of the best procedure for replacing the parts. Purchaser must obtain an RMA [rejected material authorization] number before returning discrepant material. Replacement may require returning the parts to Ross Optical for reworking.

**TAXES:** The quoted prices do not include state or local sales, duties, use, excise or similar taxes. To avoid any inconvenience, please supply us with one of the following documents: (i) A tax exemption certificate from your state, or (ii) A statement on your order or letterhead that your firm will pay any applicable state taxes. Unless we are provided with one of these documents, any such taxes imposed upon Ross Optical will be either paid by Purchaser or added to our Invoice by a separate item.

**WARRANTY:** Ross Optical warrants that all catalog products will be free from defects in material and workmanship for a period of ninety (90) days. Ross Optical fully warrants that all other products or components, service, repair or parts supplied shall conform to the description in the quotation and agrees to repair or replace F.O.B. the Purchaser's place of business, any parts (excepting expendable items such as refractories and crucibles), services, or repairs that fail due to defects in material or workmanship within (1) one year of commencement of use of the product or component or eighteen (18) months after shipment, whichever occurs first, or in the case of service, repairs, or part within one (1) year of supplying such service, repair or part. If the product, service, repair or part includes software, Ross Optical warrants, for a period of one (1) year of start-up or eighteen (18) months after shipment, whichever occurs first, that the software supplied or serviced will meet its published functional specifications. Should software fail to meet the specifications, or be otherwise defective, Ross Optical shall promptly correct errors or non-conformities. If correction is not possible, Ross Optical shall replace defective software, or, at Ross Optical's option, refund the purchase price paid for such software. Orders are accepted subject to the express understanding that no "charge backs" may be imposed or offset against payments due under the Invoice for repairs, purchases of other goods or parts or any other circumstance.

The conditions of any tests of products shall be mutually agreed upon, and Ross Optical shall be notified of, and may be represented at, all tests that may be made. Any product deemed by the Purchaser not to conform to specifications shall be returned to Ross Optical for its testing or review prior to any replacement or adjustment by Ross Optical.

Other than those expressly stated herein, THERE ARE NO OTHER WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING ANY ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE, AND SPECIFICALLY EXCLUDED, BY EXAMPLE, BUT NOT BY WAY OF LIMITATION, ARE THE IMPLIED WARRANTIES OF FITNESS FOR PARTICULAR PURPOSE AND MERCHANTABILITY.

IT IS UNDERSTOOD AND AGREED THAT ROSS OPTICAL'S LIABILITY, WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY, IN NEGLIGENCE OR OTHERWISE SHALL NOT EXCEED, AND PURCHASER'S REMEDY IS LIMITED TO, EITHER (i) REPAIR OR REPLACEMENT OF THE DEFECTIVE PARTS F.O.B. PURCHASER'S PLACE OF BUSINESS OR OTHER DESIGNATED LOCATION, OR CORRECTION OF DEFECTIVE SERVICE OR REPAIR, OR AT ROSS OPTICAL'S OPTION (ii) RETURN OF THE PRODUCT AND REFUND OF THE PURCHASE OR SERVICE PRICE. UNDER NO CIRCUMSTANCES SHALL ROSS OPTICAL BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES. THE PRICE STATED FOR THE PRODUCT, SERVICE, REPAIR OR PARTS IS A CONSIDERATION IN LIMITING ROSS OPTICAL'S LIABILITY. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE TRANSACTIONS OF THIS AGREEMENT MAY BE BROUGHT BY PURCHASER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED. THE WARRANTY FOR THE EQUIPMENT, SERVICE, REPAIR OR PARTS PROPOSED IN THE INVOICE IS AS STATED IN THE ABOVE PARAGRAPHS. IT IS NOT RESTATED, NOR DOES IT APPEAR, IN ANY OTHER FORM.

**TOOLS:** Tooling and fixtures used in processing customer parts remains the property of Ross Optical unless that tooling is supplied by Purchaser in which case Ross Optical accepts no responsibility for the tooling or dimensions or tolerances determined by the tooling. If no Orders involving the use of Purchaser's tooling are received for a period of three (3) years, Ross Optical reserves the right to scrap the tooling, unless otherwise instructed by Purchaser.

**PATENT INDEMNITY:** In the event of a claim against the Purchaser which charges that a product or component lens assembly purchased from Ross Optical infringes a U.S. patent subsisting when the equipment was shipped, Ross Optical shall, at its sole option, procure for the Purchaser the right to use the product or assembly; replace the product or assembly with a non-infringing product or assembly; modify the product or assembly to be non-infringing; or remove the product or assembly and refund the purchase price, less depreciation (at the assumed rate of fifteen percent (15%) per year), plus transportation costs; or defend, at its own expense, all suits instituted against the Purchaser insofar as same are based upon any claim that the Purchaser's operation of the equipment, or any part thereof, is an infringement of a U.S. patent under the proviso that: (a) Ross Optical be notified, in writing, by Purchaser promptly upon assertion of claim; (b) Ross Optical is given authority by Purchaser to assume full and exclusive control of the defense and settlement of the claim or suit; and (c) Purchaser provides all information and assistance to Ross Optical, at Purchaser's expense, as is reasonably necessary for the defense of the claim or suit. Ross Optical may, at its option, intervene in any suit or action brought against the Purchaser on such claim. The Purchaser shall defend and hold Ross Optical harmless against any expenses, damages, costs or losses resulting from any suit or proceeding brought for infringement of patents or trademarks arising from Purchaser's designs, specifications or instructions.

THE FOREGOING STATES ROSS OPTICAL'S ENTIRE LIABILITY FOR CLAIMS OR PATENT INFRINGEMENT. Ross Optical shall have no liability whatsoever if the claim of infringement arises out of Ross Optical's compliance with Purchaser's specifications. Ross Optical shall have no liability whatsoever if a claim of infringement is based upon the Purchaser's use of the equipment as part of a patented combination where the other elements of the combination are not supplied by Ross Optical, or in the practice of a patented process.

**SECURITY INTEREST:** Ross Optical will retain a security interest in the equipment described on this document until the full

purchase price and any charges enumerated on the invoice or invoices are paid. Purchaser's failure to pay any amounts when due will give Ross Optical the right to possession and removal of the equipment at any time upon giving at least 10 days' prior written notice. Ross Optical's taking of such possession will be without prejudice to any other remedies Ross Optical may have. The title to the equipment (excluding leased equipment) will pass to the customer upon shipment from Ross Optical. If any portion of the purchase price is deferred past the shipment date, then at the request of Ross Optical, the customer will join with Ross Optical in executing a security agreement or other documents reasonably required by Ross Optical to protect Ross Optical's security interest in a form satisfactory to Ross Optical.

**INSURANCE:** Purchaser represents that it has a program of Insurance which adequately protects its interests, and that of its employees and agents, including damage to plant, property and equipment, personal injury of any kind, directly or indirectly related in any way to the equipment, service, repair or parts supplied by Seller. Accordingly, Purchaser waives any claim against Seller for the foregoing, and on behalf of its Insurance Company, any right of subrogation in connection therewith.

**TERMINATION:** In case of contract termination by Purchaser, Purchaser shall cover Ross Optical's standard shop value of costs of labor and/or material incurred up to the point of termination as determined by ROI. In the event of a conflict regarding this point, arbitration may be utilized as provided here in below. If orders for specially manufactured goods are cancelled prior to delivery, Purchaser is responsible for: (a) costs and expenses incurred by Ross Optical in processing Purchaser order or orders up to the date that Ross Optical receives the notice of cancellation; (b) any pre-production costs or productions incurred by Ross Optical up to the date it receives notice of cancellation, including materials, labor, applied overhead, shipping and receiving costs and any other directly related costs, including an add-on of 30% to compensate for Ross Optical's anticipated profit margin on the order or orders; and (c) once the specially manufactured products or parts are complete and ready for shipment, Purchaser is responsible for the contracted sales price in full, notwithstanding a later-received notice of cancellation.

**LAW:** This Agreement shall be governed by the internal laws of the State of Texas, United States of America, unless this transaction involves a Purchaser from another nation, in which case this Agreement shall be governed by the United Nations Convention on Contracts for the International Sale of Goods ("CISG"). Any claims arising hereunder, whether governed by Texas law or CISG, shall be prosecuted in either the State District Court in El Paso, Texas or the United States District Court having jurisdiction of causes of action arising in the Western District of Texas, El Paso Division.

**GENERAL:** Purchaser shall not assign its Order or any interest therein, or any rights under the Invoice, without the written consent of Ross Optical, and any such attempted assignment shall not be recognized unless consented to in writing by Ross Optical.

No additions to or modifications of any of the provisions of the Invoice or these Conditions shall be binding unless made in writing and signed by an authorized representative of Ross Optical. The Invoice, these Conditions, and any different terms suggested by Purchaser or contained in Purchaser's Order that have been expressly agreed to in writing by an authorized representative of Ross Optical, and the provisions of Articles One, Two and Nine of the Texas Uniform Commercial Code [Chapters One, Two and Nine of the Texas Business and Commerce Code], constitute the agreement of the parties regarding this sale, and supersede any oral agreements, proposals or counterproposals between the parties.

Any provisions or conditions of Purchaser's Order that are different from or in addition to these Conditions (except additional provisions specifying quantity, character of the products ordered, and shipping instructions) are considered objected to by Ross Optical unless expressly consented to in writing by Ross Optical. The mere fact that provisions or conditions of Purchaser's Order are different from or in addition to these Conditions shall not be deemed or considered to be a specific objection by Purchaser to any of these Conditions; Purchaser must specifically object in writing, within ten (10) business days of its receipt of the Invoice, to one or more of these Conditions in order to prevent their becoming a part of the contract between the parties.

Acknowledging the modern tendency of parties to do business electronically, Ross Optical agrees that messages sent by facsimile transmission and e-mails or other electronic messages involving the "authentication" of a "record," as those latter terms are used in Revised Article Nine of the Uniform Commercial Code [Chapter Nine of the Texas Business & Commerce Code], effective in most jurisdictions on July 1, 2001, will constitute, and be deemed equivalent to, a signed writing.

The sale of products, or any parts thereof, by Ross Optical does not confer upon the Purchaser any license under any patent rights of Ross Optical covering or relating to (a) the structure of any device to which the product or parts may be applied, or (b) a process or machine in connection with which they may be used.

Any dispute or controversy arising out of or relating to the Invoice, the Order, or these Conditions or the interpretation of any of the foregoing, between parties both domiciled in the United States, shall be settled exclusively and finally by arbitration. The arbitration shall be conducted in accordance with the Rules of the American Arbitration Association and shall be conducted by the Texas Arbitration and Mediation Service in El Paso, Texas, or at such other location as the parties shall agree in writing. Any such dispute or controversy between Ross Optical and a foreign Purchaser shall be arbitrated in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce. The arbitration shall be conducted in Dallas, Texas, United States of America, before a sole arbitrator. Any award rendered in any such arbitration proceeding shall be final and binding on each of the parties, and judgment may be entered thereon in a court of competent jurisdiction.