

## Thorlabs' General Terms and Conditions of Sale

### 1. Acceptance of Terms.

All sales by Thorlabs and its subsidiaries and affiliates ("Thorlabs") to any person (a "Buyer") of the units of products specified in the document to which these Terms and Conditions of Sale are attached or referred to (collectively, the "Products") will be governed by these Terms and Conditions of Sale. These Terms and Conditions of Sale shall also apply to all proposals or quotations made by and purchase orders accepted by Thorlabs in connection with any Products. If the terms or conditions of any purchase order, offer or acceptance from Buyer or supply or other agreement differ from or seek to add to or supplement these Terms and Conditions of Sale, these Terms and Conditions of Sale shall constitute a counter-offer and will not be effective as an acceptance of Buyer's differing, additional or supplemental terms and conditions, all of which are hereby rejected. Thorlabs' failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of the provisions herein. **THESE TERMS AND CONDITIONS OF SALE SHALL BE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE TERMS OF AGREEMENT BETWEEN THORLABS AND BUYER.**

### 2. Prices and Payment.

Any proposal or quotation issued by Thorlabs does not constitute an offer to supply the Products. All proposals or quotations issued by Thorlabs are subject to confirmation and are non-binding. Unless otherwise agreed to by Thorlabs in writing, all prices for the sale of Products for delivery in the United States and all countries not mentioned below are stated in and to be paid in United States Dollars, and all prices for the sale of Products for delivery from (i) the United Kingdom are stated in and to be paid in British Pound Sterling, (ii) Sweden are stated in and to be paid in Swedish Krona, (iii) Japan are stated in and to be paid in Japanese Yen, (iv) China are stated in and to be paid in Chinese Renminbi, and (v) to all other European countries are stated in and to be paid in Euros. All payments are due and payable in thirty (30) days from date of invoice. Thorlabs reserves the right to require alternative payment terms, including without limitation letter of credit or payment in advance. Payments not made by the due date shall be subject to a late payment charge of the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by law.

### 3. Deliveries/Delay in Delivery.

All delivery times are estimates only, and in no event shall Thorlabs be liable for any delay in delivery or

assume and liability in connection with shipment. Unless otherwise agreed to in writing by Thorlabs, all Products shall be delivered FCA (Incoterms 2010) from Thorlabs' facility point of shipment. Title in, and risk of loss or damage to, all or any portion of the Products shall pass to Buyer upon delivery of the Products to the carrier at Thorlabs' facility point of shipment. Unless specifically delegated in writing, Thorlabs shall have the exclusive right to file export declarations (including Automated Export System entries) and Buyer may not authorize or appoint any United States agent (including without limitation any freight forwarder recommended by Buyer) to complete such filings.

### 4. Limited Warranty.

Subject to the limitations set forth in these Terms and Conditions of Sale, Thorlabs warrants (the "Limited Warranty") that all Products sold by Thorlabs will conform to Thorlabs' published specifications for such Product and shall be free from defects in materials and workmanship under normal use, handling and service as follows:

**Opto-Mechanical Components:** Lifetime Warranty.

**Optical Tables and Breadboards (excluding support systems):** Lifetime Warranty.

**Lasers and Imaging Systems:** The lesser of one year and (to the extent applicable) the number of hours specified in the operating manual for such laser.

**Opto-Electronics, Control Electronics, Optics, Motion Control Product Lines, and Support Systems for Optical Tables and Breadboards:** Two year warranty, provided that the light source (bulb, LED and/or laser diode) is warranted for the lesser of one year or (to the extent applicable) the number of hours specified in the operating manual.

**Products Bearing Stamped Expiration Dates:** The date noted by the stamp or marking.

**Non-Thorlabs Branded Products:** The warranty stated by the manufacturer.

**Electronics With Hermetically Sealed Chambers:** Two years for electronics and Five years for hermetically sealed chambers.

**Products in Need of Regular Calibration (e.g. sensors, polarimeters, power meters etc.):** Two years.

**Microscopy and PI Piezo Products:** One year warranty from date of installation.

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**Fiber cleaving, splicing and/or recoating systems:** One year warranty.

**Interferometric Fiber Inspection Systems:** One year warranty.

**Cameras with no sensor face plate:** Thirty days for sensor, two years for electronics.

Thorlabs shall have no obligation under the Limited Warranty or otherwise, and this Limited Warranty does not apply to (i) Products which are (a) identified by Thorlabs as a pre-production product, sample, alpha, beta or similar product or a prototype, (b) specials, modifications, or customized items (including custom patch cables and customer Fiber Splicing Software) meeting the specifications provided by Buyer; (c) electrostatic-sensitive items whose static protection packaging has been opened, or items that are fragile to the touch, once removed from its packaging; (d) repaired, modified or altered by any party other than Thorlabs; (e) used in conjunction with equipment not provided by, or acknowledged as compatible by, Thorlabs; (f) subjected to unusual physical, thermal, or electrical stress; (g) damaged due to improper installation, misuse, abuse, or storage; or (h) damaged due to accident or negligence in use, storage, transportation or handling, or (ii) the use, fit or function of Products that are assembled or constructed from a kit, or (iii) to software supplied or made available by Thorlabs for use in connection with certain Products.

To the extent any Product is incorporated into any other instrument or device, Thorlabs makes no representation with respect to the safety, efficacy, accuracy, reliability, use, or fitness for intended purpose of such Product in such integrated product or in such application. To the extent so incorporated into any other instrument or device, or used in such application, Buyer hereby agrees to indemnify and hold Thorlabs harmless from any claims, suits, liabilities, losses, damages, expenses (including reasonable attorneys' and experts' fees and expenses) and costs arising from or relating to any defects in and/or the use of any Product and such integrated product, and/or the failure of any Product or such integrated product to comply with any applicable laws or regulations. Major sub-systems manufactured by other firms but integrated into any Product are covered by the original manufacturer's warranty and Thorlabs makes no warranty, express or implied regarding such sub-systems.

Subject to Buyer's compliance with the procedures set forth in paragraph 6 below, Thorlabs' sole obligation,

and Buyer's exclusive remedy for any defective Product, shall be limited, at Thorlabs' option, to either repairing or replacing, free of charge for materials or labor, any Product (or its relevant parts) which is proved not in compliance with the Limited Warranty during the applicable warranty period. No other Product returns are permitted without Thorlabs' written consent. Any repaired or replacement Product shall carry the Limited Warranty, however, such Limited Warranty shall begin from the start date of its original warranty period.

**TO THE FULLEST EXTENT PERMITTED BY LAW, AND EXCEPT FOR THE LIMITED WARRANTY EXPRESSLY SET FORTH ABOVE, AND SUBJECT TO PARAGRAPH 5 BELOW, THE PRODUCTS ARE PROVIDED "AS IS" AND THORLABS EXPRESSLY EXCLUDES AND DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, CONDITIONS AND OTHER TERMS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE PRODUCTS AND THEIR PERFORMANCE, INCLUDING ANY WARRANTY OF MERCHANTABILITY, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**5. Limitation on Liability.** To the extent not prohibited by applicable law:

**UNDER NO CIRCUMSTANCES, AND REGARDLESS OF THE NATURE OF THE CLAIM, SHALL THORLABS BE LIABLE TO BUYER FOR LOSS OF PROFITS, SALES OR BUSINESS, LOSS OF ANTICIPATED SAVINGS, WORK STOPPAGE OR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, COVER, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED UNDER THESE TERMS AND CONDITIONS OF SALE, EVEN IF APPRISED OF THE LIKELIHOOD OF SUCH LOSSES, AND REGARDLESS OF THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.**

**CONSEQUENTLY, THORLABS SHALL HAVE NO LIABILITY FOR ANY PERSONAL INJURY, PROPERTY DAMAGE OR OTHER LOSS BASED ON THE USE OF THE PRODUCT IN COMBINATION WITH OR INTEGRATED INTO ANY OTHER INSTRUMENT OR DEVICE. HOWEVER, IF THORLABS IS HELD LIABLE, WHETHER DIRECTLY OR INDIRECTLY, FOR**

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**ANY LOSS OR DAMAGE ARISING UNDER OR RELATED TO THESE TERMS AND CONDITIONS OF SALE OR THE TRANSACTIONS HEREUNDER, REGARDLESS OF CAUSE OR ORIGIN, THORLABS' TOTAL, CUMULATIVE LIABILITY SHALL NOT IN ANY CASE EXCEED THE PURCHASE PRICE OF THE APPLICABLE PRODUCT WHICH SHALL BE THE COMPLETE AND EXCLUSIVE REMEDY AGAINST THORLABS.**

### **6. Product Return/Repair Policy.**

**A.** Buyer will notify Thorlabs about the occurrence of defective or non-operational Product and request a "Return Authorization Number" (hereinafter referred to as "RMA#") from Thorlabs for the items Buyer would like to return for repair or replacement by e-mail to the attention of the Customer Service Manager. This RMA# is to be used for all correspondence and shipping documents that relate to the Product.

**B.** Buyer will ship the defective or non-operational Product to Thorlabs. Buyer is responsible for shipping cost.

**C.** Upon receipt of the returned Product, Thorlabs will test the Product to verify the defective status of the component within the terms of the Limited Warranty and communicate such results to Buyer.

**D.** Thorlabs will either send a repaired or replacement Product after verifying that the Product returned under the RMA# is in fact defective within the terms of the Limited Warranty. Thorlabs is responsible for shipping costs of replacement Product to the Buyer.

### **7. Intellectual Property Rights: Software.**

Any intellectual property rights on a worldwide basis, including, without limitation, patentable inventions (whether or not applied for), patents, patent rights, copyrights, work of authorship, moral rights, trademarks, service marks, trade names, trade dress trade secrets and all applications and registrations of all of the foregoing resulting from the performance of these Terms and Conditions of Sale that is conceived, developed, discovered or reduced to practice by Thorlabs, shall be the exclusive property of Thorlabs. Specifically, Thorlabs shall exclusively own all rights, title and interest (including, without limitation, all intellectual property rights throughout the world) in and to the Products and any and all inventions, works of authorship, layouts, know-how, ideas or information discovered, developed, made, conceived or reduced to practice, by Thorlabs, in the course of the performance

of these Terms and Conditions of Sale.

Software products provided or made available by Thorlabs for use with Thorlabs' Product are non-exclusively licensed pursuant to the terms and conditions of the applicable Thorlabs Software License supplied with such Product.

### **8. Cancellation.**

Unless otherwise agreed to by Thorlabs in writing, Buyer shall have no right to terminate, cancel, or rescind any purchase order for Products or any portion thereof (i) on or after the shipment date of such Product, (ii) for the sale of any custom, non-standard, or otherwise modified Products by Thorlabs, or (iii) without Buyer's payment of the applicable cancellation and/or restocking charge or fee to Thorlabs as set forth in the quotation or order confirmation issued by Thorlabs.

### **9. Miscellaneous.**

**A. Export Control Laws.** Buyer acknowledges that the Products obtained from Thorlabs are subject to export or import laws, legislation, regulations and restrictions. These may include, the U.S. International Traffic in Arms Regulations, the U.S. Export Administration Regulations, the Office of Foreign Assets Control Regulations, the European Union Dual Use Export Control Regime and any other national legislation related to trade controls. Buyer warrants that it, its subsidiaries and affiliates will not directly or indirectly export, re-export, transfer or release any Products or direct product thereof to any destination, person, entity or end use prohibited or restricted under applicable laws, regulations and legislation. This includes, but is not limited to, activities that are directly or indirectly related to the proliferation of nuclear, chemical or biological weapons, or rockets, missiles, or unmanned aerial vehicles, unless specifically authorized under all applicable export control laws and regulations. Buyer will defend, indemnify and hold Thorlabs harmless for any damages or costs to Thorlabs arising from Buyer's failure to comply with these terms.

**B. United Nations Convention.** Buyer expressly agrees that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms and Conditions of Sale.

**C. Assignment.** These Terms and Conditions of Sale and the rights of Buyer hereunder may not be assigned in whole or in part without the prior written consent of Thorlabs.

### **D. Treatment of Waste Electrical and Electronic**

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**Equipment.** In accordance with the European Directive on Waste Electrical and Electronic Equipment (WEEE, 2002/96/EC), Thorlabs will offer to take back Products delivered to a Buyer within the European Community after August 12, 2005 that constitutes an “end of life” unit under WEEE and is marked accordingly with the crossed out "wheelie bin", for recycling without charging Buyer a disposal fee. This is valid only for complete Products that have not been disassembled as understood under WEEE and that do not contain toxic substances or are otherwise contaminated with any waste. The cost of shipping the Product to Thorlabs for recycling is borne by Buyer. Buyer hereby agrees that if a Product covered by WEEE is not returned to Thorlabs for recycling, Buyer must deliver such Product to a company specialized in waste recovery and Buyer will not dispose of such Product in any other manner.

**E. Invalidity.** If any provision of these Terms and Conditions of Sale is held invalid by any governing law or regulation or by any court having valid jurisdiction, such invalidity will not affect the enforceability of other provisions.

**F. Governing Law/Entire Agreement.** Buyer acknowledges and agrees that these Terms and Conditions of Sale shall be governed by and construed in accordance with the laws of the jurisdiction from where the products are shipped, without reference to any conflict of law rule. Buyer and Thorlabs expressly agree that any disputes under these Terms and Conditions of Sale shall be resolved exclusively in the courts located within such governing jurisdiction. These Terms and Conditions of Sale constitute the entire agreement between Buyer and Thorlabs with respect to Buyer's purchase of the Products and supersedes all prior agreements and understandings with respect to such purchase and may not be changed or amended, or superseded by conflicting terms and conditions submitted by Buyer.

**G. Force Majeure.** Thorlabs shall not be liable for, nor shall Thorlabs be considered in breach of these Terms and Conditions of Sale due to, any failure to deliver or delay in delivering or failure to perform its obligations under these Terms and Conditions of Sale as a result of a cause beyond its reasonable control, including, but not limited to, act of God or a public enemy, act of any military, civil or regulatory authority, riot or terrorist action, embargo, epidemic or disease, pandemic, fire, flood, earthquake, storm or other like event, disruption or outage of communications, power or other utility, labor dispute, strike, shortage, unavailability of materials, or failure or omission of a supplier, carrier or subcontractor, or any other cause, whether similar or dissimilar to any of the foregoing.

### 10. Government Contracts.

Notwithstanding the foregoing, in the event the Buyer is a federal agency of the United States government that is subject to the requirements of the Federal Acquisition Regulations (the “FAR”), any provision contained herein (e.g. indemnification provisions) that conflict with or violate the FAR or the provisions of applicable federal common law, including without limitation the Prompt Payment Act, the Anti-Deficiency Act and the Contract Disputes Act, shall be null and void and the provisions of such applicable federal common law shall control.