



"The Mid-IR Fibers and Devices Company"

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IRflex's General Terms and Conditions of Sale

1. Acceptance of Terms

1.1 The Terms and Conditions of Sale contained herein apply to all quotations made and purchase orders accepted by IRflex Corporation ("IRflex") to any person (a "Buyer") for the purchase and sale of IRflex's products (the "Product"). THESE TERMS AND CONDITIONS OF SALE SHALL BE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE TERMS AND CONDITIONS BETWEEN IRFLEX AND THE BUYER. Exclusion of any Terms and Conditions of Purchase proposed by Buyer, i.e., divergent terms and conditions set forth by the Buyer, which are not included in IRflex's Terms and Conditions of Sales, will not be honored if IRflex has not expressly and in writing consented to. Buyer confirmations referring to the buyer's own Terms and Conditions of Purchase will be deemed insignificant or invalid.

2. Quotation and Order Acceptance Confirmation

- 2.1 All price quotations are non-binding and are subject to confirmation. Orders come into force only after IRflex issues order acceptance confirmation.
- 2.2 Budgetary quotations and estimates are for preliminary information only and shall neither constitute offers, nor impose any responsibility or liability upon IRflex.
- 2.3 Prices quoted relate only to the products referenced and do not include intellectual property, industrial property, or patent rights of any kind, nor shall they include product testing other than IRflex's standard tests.
- 2.4 If the order confirmation does not expressly designate them as binding product, details, drawings, images and performance descriptions contained in our Technical Datasheet, price lists, and documents related to our quotations are customary approximate values only.
- 2.5 IRflex reserves the sole proprietorship for all our cost estimates, drawings, plans and other offer documents. The copyrighted exploitation rights remain with IRflex exclusively.
- 2.6 Sales by sample, nonstandard products, customized products are best R&D effort based, only warrant the technical correctness of the specimens. IRflex does not take on any assurances of applicability whatsoever.

3. Prices and Payment

- 3.1 Unless otherwise agreed, prices shall be quoted and invoices shall be rendered and paid in US currency.
- 3.2 Unless otherwise agreed to in writing by IRflex, all Product shall be delivered EXW (Ex Work) (Incoterms 2010) from IRflex's facility point of shipment, which is exclusive of transportation, insurance, taxes, customs fee, duties and other charges related thereto, and Buyer shall report and pay any and all such charges and hold IRflex harmless therefrom. Shipping and handling charges if prepaid by IRflex, these amounts will be added to the invoice.
- 3.3 If Buyer does not purchase the entire quantity upon which these prices were based, buyer will pay the higher price specified by IRflex for the quantity actually purchased.
- 3.4 All payments are due and payable in ten (10) days from date of invoice. IRflex 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 2% per month, or the maximum rate permitted by law.

- 3.5 Payment by credit card is available through PayPal, 5% transaction fees (or the rate set upon by PayPal, whichever is higher) will be added in invoice.

4. Taxes

- 4.1 Unless otherwise specified, all prices and all billings are exclusive of all Federal, State, municipal or foreign taxes or duties of any kind whatsoever, now or hereinafter enacted.
- 4.2 Any tax or related charge that IRflex shall be required to pay to or collect for any government in connection with the Product sold, including, without limitation VAT, sales tax or use tax (though excluding tax incurred based on the net income of IRflex) shall be billed to Buyer as a separate item and paid by Buyer unless Buyer provides IRflex with a resale or a valid Tax exemption certificate acceptable to the authorities imposing the same, such certificate is required to be provided to IRflex prior to the initial shipment of Product.

5. Delivery, Title and Risk of Loss

- 5.1 IRflex will make every reasonable effort to meet any estimated delivery date set forth on its quotation and/or confirmed in the purchase order acceptance confirmation of the Buyer's order. However, IRflex is not liable for any loss whatsoever Buyer may suffer due to delay in production or shipment.
- 5.2 Delivery periods and dates quoted and/or confirmed by IRflex are estimates and non-binding if they have not been agreed upon as binding. Delivery and service periods agreed upon do, as a rule, not constitute a transaction at a fixed date. They begin upon conclusion of contract, however, not until the Buyer has fully met his obligation to submit all documents, clearances and other specifications of all details and clarifications of the technical questions pertaining to the desired product and has made the down-payment if agreed upon in the contract.
- 5.3 Every conclusion of contract is subject to the condition that our suppliers make their deliveries correctly and in time. The Buyer will be immediately notified of any temporary unavailability of services. If such delay lasts for more than 3 months, and/or it is foreseeable that it will last for more than 3 months, both parties to the contract have the right to withdraw from it. Damage claims by the Buyer are excluded. If acts of God have led to a violation of deadline, it will be reasonably prolonged. If delivery is unduly impeded or made altogether impossible by unforeseeable circumstances and situations for which IRflex cannot be held responsible, such impediments, e.g., labor disputes, regulatory action, essential interruptions of operations due to partial or total destruction of IRflex's facility, or series transport interruptions, shall be considered equivalent to acts of God. If such circumstances persist for more than 3 months, IRflex has the right to withdraw from the contract. In such case, damage claims by the Buyer are excluded.
- 5.4 Any liability of Seller for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or adjusting the invoice respecting such Products to reflect the actual quantity to Buyer for delivery.
- 5.5 If not stated otherwise in the order confirmation, all shipments of products shall be delivered ExW IRflex's facility, Danville, VA, USA. The title to the product and any risk of loss or damage thereafter to move the product from there to destination shall pass to Buyer at the time IRflex completes its delivery obligation to make the product available at its premise to be picked up by a carrier for shipment.
- 5.6 The Buyer has to provide a valid carrier with a correct account number. In the absence of written agreement to the contrary, the means of shipment will be at the discretion of IRflex. Buyer will pay for all costs of insurance (IRflex only ships the Products uninsured if Buyer does not otherwise request) and transport for such shipment and shall be responsible for all taxes, and

- any other expenses incurred including licenses and clearances required at destination.
- 5.7 Product held by IRflex at Buyer's request beyond the scheduled delivery date shall be at Buyer's risk and expenses. Freight and associated duties incurred by IRflex in shipping the Product shall be invoiced to Buyer.
- 5.8 Buyer shall be responsible for expenses incurred by IRflex when, at buyer's request, IRflex packs product in other than its normal manner.

6. Set-Up Charges

- 6.1 A non-recurring set-up charge may be imposed for any special tooling, including without limitation, dies, fixtures, molds and patterns acquired to manufacture items sold subsequent to this contract. Such special tooling shall be and remain IRflex's property notwithstanding payment of any charges therefore by buyer unless otherwise agreed to on the face hereof. Payment of charges in connection with tooling or apparatus does not constitute ownership of same. All charges in connection with the contract will be imposed only with the knowledge and acceptance of Buyer. IRflex shall have the right to alter, discard or otherwise dispose of any special tooling or other property at its sole discretion at any time.

7. Return of Product(s)

- 7.1 Product(s) may not be returned for any reason unless authorized in writing by IRflex under a Return Merchandise Authorization ("RMA"). Risk of loss and transport fees for all product(s) returned to IRflex shall be the responsibility of the buyer, except otherwise agreed. No product(s) will be accepted for return after 30 days from the date of shipping. All returns of standard product(s) are subject to a 25% restocking fee if they are undamaged, in re-sellable and like new condition. All returns of customized products are subject to a restocking fee of up to 50%.

8. Termination and change

- 8.1 Buyer shall not terminate, suspend performance, reschedule or cancel delivery or issue a "hold" order under the contract in whole or in part, without IRflex's prior written consent and upon terms that will compensate IRflex for any loss or damage resulting from such action. Buyer's liability shall include, but not be limited to, the price of product delivered or held for disposition, the price of services already performed, and for work in process, incurred costs and a reasonable allocation of general and administrative expenses, plus IRflex's loss of profits thereon. Any such termination shall be subject to a minimum termination charge of twenty-five percent (25%) of the value of the sales terminated to the Buyer. If the Buyer delays delivery of the Product, IRflex may invoice Buyer when IRflex is prepared to ship. IRflex may invoice Buyer immediately upon termination or cancellation or suspension of any order.

9. Product Warranty and Indemnity

- 9.1 IRflex warrants that the Products manufactured by IRflex shall, at the time of sale, comply with applicable IRflex's specifications, and be delivered free from defects in material and workmanship within 6 months after delivery. If the Product does not meet this warranty, IRflex shall at its option, give an appropriate credit, replace or refund the defective products up to its purchase value. All products not manufactured by IRflex are sold only with the warranties provided by the manufacturer of the products, if any. The foregoing warranty is IRflex's sole warranty with respect to any products delivered to buyer hereunder and is conditioned on (a) all claims regarding any defective goods must be made in writing to IRflex within 10 working days after delivery of the relevant product(s), and (2) the defective goods shall not have been damaged or destroyed by buyer or its personnel. This warranty applies only to buyer and may not be assigned or extended by buyer to any of its customers or other users of the product(s). This

warranty does not extend to any system into which the product(s) are incorporated. The users assume all risks and liability whatsoever in connection with the use of IRflex's product(s) and its (their) application.

- 9.2 In no event will IRflex be liable for any damages, liabilities, costs, or claims arising out of or relating to the performance of the product ordered in excess of the total price of the products.
- 9.3 IRflex shall be allowed a reasonable period to investigate any claim relating to defective Product(s) and shall be given access to buyer's relevant records and data for this purpose.
- 9.4 The above warranty does not apply to, and IRflex makes no warranty with respect to products that: are software program, experimental products or prototypes (all of which are provided "AS IS" on the R&D best effort basis).
- 9.5 All products not manufactured by IRflex are sold only with the warranties provided by the manufacturer of the products, if any.

10. Limitation of Liability.

- 10.1 Buyer's sole and exclusive remedy and IRflex's sole and exclusive liability to buyer for delivery of defective goods, whether brought under a claim alleging breach of contract, tort injuries, negligence theory, strict liability, class action, or any other legal theory, shall be limited exclusively to crediting buyer in the amount of the purchase price paid for the defective good(s) or repairing or replacing the defective good(s), at IRflex's option. In no event will IRflex be liable to buyer or any other party, under any circumstances for any special, consequential or indirect damages such as loss of capital, loss of use, substitute performance, loss of production, loss of profits, loss of business opportunity, or any other claims for damages. The warranty and remedies provided in Section 8 shall apply to the exclusion of any other warranties (express or implied, including the warranties of merchantability and fitness for a particular purpose) or remedies that might otherwise be available under applicable law, notwithstanding the fact that other damages or injuries might be reasonably foreseeable. No statement made by any IRflex employee or other representative should be interpreted as expanding the scope of the warranty provided herein.

11. Intellectual Property Warranty & Indemnity

- 11.1 With respect to intellectual property and industrial property, IRflex's sole and exclusive liability is to indemnify buyer only against valid claims based upon infringement of validly issued U.S. patents and then only with respect to product(s) comprising IRflex's regularly established line of product(s) and only when such product(s) are used for normal purposes in the form in which sold by IRflex. This indemnification does not apply to patents covering composite structures or systems into which the product(s) referenced may be incorporated by buyer. IRflex's sole obligation under this indemnification shall be the assumption of the defense of any such suit brought against buyer. IRflex shall be given exclusive control of the defense of such claim, including settlement, and buyer, at its own cost, shall assist IRflex in the conduct of such defense. IRflex's total liability hereunder shall be limited to its out-of-pocket cost up to, but not exceeding, the amount paid by buyer as the purchase price attributable to the product(s) that are the subject of the claims. Buyer assumes and will hold IRflex harmless against any patent liability for products manufactured to buyer's design or specification or specially designed by IRflex to meet buyer's requirements. Buyer grants to IRflex a royalty-free right to use, for the purpose of making the product(s) and selling them to buyer, any intellectual property or industrial property right that buyer owns or to which buyer has licensing, sublicensing or "have made" rights.

12. Export Control

- 12.1 Buyer acknowledges that IRflex's Products are subject to export control laws and regulations of the United States of America. Buyer shall not transship, re-export, divert or direct Product(s)

other than in and to the ultimate country of destination declared by Buyer and specified as the country of ultimate destination on IRflex's invoices

13. Excuse of Performance

13.1 Except with respect to Buyer's obligation to make timely payments when due, neither party shall be held responsible for any delay or failure in performance of any part of contract to the extent such delay or failure is caused by fire, flood, explosion, war strike, embargo, government requirement, civil or military authority, act of God, nature or the public enemy, inability to secure material or transportation facilities, inadequate yield of products despite IRflex's reasonable efforts, act or omission of carriers or any other causes beyond its reasonable control.

14. Choice of Law

14.1 Any sales shall be deemed to have been made in the State of Virginia, USA, and the performance of obligations hereunder shall be governed by the law of the State of Virginia and the applicable laws of United States of America.

15. Entire Terms and Conditions of Sale

15.1 Except for any written agreement between the parties relating to confidentiality of proprietary information, the terms and conditions contained herewith supersede all prior oral or written understandings between buyer and IRflex and shall constitute the entire IRflex's General Terms and Conditions of Sale, which shall not be modified or amended except by a writing signed by a duly authorized officer of buyer and IRflex.