



PHOTON DYNAMICS, INC. SALES AND SERVICE TERMS AND CONDITIONS

Photon Dynamics' proposals are subject to Photon Dynamics' Sales and Service Terms and Conditions ("Terms and Conditions"). These Terms and Conditions may be modified from time to time without notice and the latest version of this document shall control. The proposal is Photon Dynamics' offer to sell or license products or to provide service. The proposal and the underlying transaction will not be binding on Photon Dynamics until the proposal is signed by Photon Dynamics. Acceptance of the proposal is strictly limited to the provisions set forth in the proposal and these Terms and Conditions. Photon Dynamics shall not be bound by, and specifically and expressly objects to, any terms or conditions whatsoever which are different from or in addition to the provisions of the proposal and these Terms and Conditions, including any terms and conditions contained on or referenced in Customer's purchase order. Customer's issuance of a purchase order or commencement of any activities pursuant to the proposal shall conclusively evidence Customer's acceptance of the proposal and these Terms and Conditions and create a binding contract between Customer and Photon Dynamics hereunder regardless of whether the proposal has been signed by Customer. Note that any preparation guides, product specifications, or other site condition related documents set forth additional requirements.

Equipment means all Photon Dynamics' hardware, excluding any Software.

Products means Photon Dynamics' Equipment, Software licenses, Software Program licenses, documentation (including manuals, training and education materials) and upgrades, accessories, or additions purchased from or supplied by Photon Dynamics.

Service and Maintenance Service mean all forms of installation, maintenance, and support for the Products as provided for in these Terms and Conditions and more specifically defined in Section 11, Maintenance Service.

Software means the object code version of computer programs and any related documentation, excluding maintenance diagnostics. Software also means the source code version where provided by Photon Dynamics. Software includes operating and application software incorporated in Equipment and Photon Dynamics' distributed Frontline Solution software programs ("Software Programs").

Proposal means any standard Photon Dynamics Product sales, product license or maintenance service proposal.

1. Installation and Training. Photon Dynamics shall install the Products after determining that Customer is in compliance with all applicable Orbotech site requirements (the "Site Requirements") set forth in the Site Preparation Guide and/or Hardware Specifications. Prior to installation and training, Customer shall not handle, attempt to operate, or operate any Products except in the presence and under the supervision of authorized Photon Dynamics' engineers, and shall prevent any third party from doing so. Following installation, Photon Dynamics shall train Customer in the use of the Products in accordance with and at the rates set forth in the proposal. Photon Dynamics shall either repair or replace at its own cost and expense any Products that cannot be successfully installed due to the negligence of Photon Dynamics or defects in the Products. In all other instances, repairs and replacements shall be at Customer's cost and expense.

2. Payment. Unless otherwise provided for in the proposal, charges for Products will be invoiced upon delivery and paid in full, without abatement, set-off, or deduction, within 30 days of invoice receipt at the address given for notices below. At Photon Dynamics' sole discretion, Customer may be subject to an interest charge of 1.5 percent per month on any outstanding balance if Customer fails to make timely payments.

3. Confidentiality Exceptions. Recipient shall not have any obligations with respect to any portion of Disclosing Party's Confidential Information which Recipient can demonstrate: (a) was already rightfully

in the possession of Recipient and at its free disposal before the disclosure to Recipient by Disclosing Party; (b) was independently developed by or for Recipient without the use of Disclosing Party's Confidential Information; (c) is subsequently disclosed to Recipient without an obligation of confidentiality by a third party who is not in breach of any obligation of confidence; (d) is or becomes generally available to the public through no breach of this Agreement on the part of Recipient; (e) is disclosed by Recipient with the prior written approval of Disclosing Party, which specifies the proposed recipient, and the purpose of the intended disclosure; or (f) is disclosed by Recipient in compliance with a valid order of a court or other governmental body having jurisdiction, provided that: (i) Disclosing Party is notified of any intended disclosure pursuant to this clause as soon as is reasonably practicable in order that Disclosing Party can attempt to quash the order or otherwise obtain a protective order; (ii) Recipient reasonably cooperates with any efforts of Disclosing Party to seek confidential treatment of the information disclosed; and (iii) Recipient shall comply with any applicable protective order or equivalent. Recipient agrees that Disclosing Party and its legal counsel may participate in any proceedings respecting the potential disclosure of the Confidential Information.

4. No License Granted. Confidential Information and all right, title, and interest therein are and shall remain at all times the exclusive property of Disclosing Party. Recipient recognizes and agrees that nothing contained in this Agreement shall be construed as granting any property rights, by license or otherwise, to any of Disclosing Party's Confidential Information, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue, based on such Confidential Information. Recipient shall not make, have made, use or sell for any purpose any product or other item using, incorporating, derived from or developed with reference to, any of Disclosing Party's Confidential Information, without entering into a separate licensing agreement with Disclosing Party. Neither this Agreement nor the disclosure of any Confidential Information hereunder shall result in any obligation on the part of either party to enter into any further agreement with the other, license any products or services to the other, or require either party to disclose any particular Confidential Information. Nothing in this Agreement creates or shall be deemed to create any employment, joint venture, or agency between the parties. Counterparty hereby acknowledges that PDI has and may in the future have active business interests with Counterparty's competitors and/or may engage in

business activities in competition with Counterparty. Nothing in this Agreement shall be construed as limiting PDI from pursuing those or any other business interests, provided that it abides by the confidentiality obligations of this Agreement, and the occurrence or existence of such similar or competitive activities, conducted by PDI or by companies with whom it deals, shall not by itself be cause for any action or allegation that PDI has failed to observe its confidentiality obligation set forth herein. Unless and until a definitive written agreement with respect to the Transaction has been executed by the parties hereto and delivered, neither party will be under any legal obligation of any kind whatsoever with respect to the Transaction except for the matters specifically agreed to herein or to enter into any business relationship whatsoever, or to purchase or offer for sale any service, item or product.

5. Restrictions. Recipient will not reproduce Disclosing Party's Confidential Information in any form except as required for the Transaction. Any copy of any of Disclosing Party's Confidential Information remains the property of Disclosing Party and will contain all confidential or proprietary notices or legends that appear on the original. Recipient agrees that it will not and will not permit any third party to modify, reverse engineer, decompile, create other works from, or disassemble any software programs, tangible product or media which constitute, contain or in any way embody Confidential Information or on which Confidential Information is written or recorded. Receiving Party agrees not to export, directly or indirectly, any U.S. technical data acquired pursuant to this Agreement or any products utilizing such data, outside the United States in violation of United States export laws or regulations.

6. Disclaimer. DISCLOSING PARTY IS PROVIDING CONFIDENTIAL INFORMATION ON AN "AS IS" BASIS FOR USE BY RECIPIENT AT RECIPIENT'S OWN RISK. DISCLOSING PARTY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

7. Term and Termination. This Agreement shall commence on the Effective Date and shall automatically terminate one (1) year thereafter. However, either party may terminate this Agreement at any time prior thereto upon thirty (30) days' prior

written notice to the other party. Each party's obligations under this Agreement will survive the termination or expiration of this Agreement or any relationship between the parties until such Confidential Information is or becomes generally available to the public through no breach of this Agreement on the part of Recipient. Upon termination of this Agreement, Recipient shall cease any use of Disclosing Party's Confidential Information and return to Disclosing Party or destroy, at the option of Disclosing Party, any and all copies of Confidential Information in the possession or control of Recipient and shall provide Disclosing Party with a certificate of compliance with this section signed by an authorized representative of Recipient.

8. Governing Law and Venue. This Agreement and any action related thereto will be governed, controlled, interpreted, and defined by and under the laws of the State of California, without giving effect to any conflicts or choice of laws principles that require the application of the law of a different jurisdiction. Each party hereby expressly consents to the personal jurisdiction and venue in the state and federal courts for Santa Clara County and the Northern District of California for any lawsuit filed there arising from or related to this Agreement. PDI shall be entitled to all costs and expenses, including reasonable attorneys' fees, incurred by PDI in exercising any of its rights or remedies hereunder or enforcing any provisions hereof.

9. Severability. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

10. Assignment. Either party may assign or transfer any rights or obligations under this Agreement to an affiliate without the prior written consent of or notice to the other. The terms of this Agreement shall be binding upon assignees.

11. Notices. Each party must deliver all notices or other communications under this Agreement in writing to the other party at the address listed above, by courier, by certified or registered mail (postage prepaid and return receipt requested), or by a nationally-recognized express mail service. Notice will be effective upon receipt or refusal of delivery. Each party may change its address for receipt of notice by giving notice of such change to the other party.

12. Injunctive Relief. Each party acknowledges that its breach of this Agreement may cause irreparable damage to the other party for which monetary damages would not be an adequate remedy and agrees that the other party will be entitled to seek injunctive relief under this Agreement, as well as such further relief as may be granted by a court of competent jurisdiction. The rights and remedies provided to each party herein are cumulative and in addition to any others available to such party at law or in equity.

13. Entire Agreement. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the parties with respect to such matters. No modification of or amendment to this Agreement, or any waiver of any rights under this Agreement, will be effective unless in writing and signed by both parties. The parties warrant and represent that the individuals signing this Agreement are authorized to bind their respective companies.

14. Countersignature and Copies. This Agreement may be executed in counterparts, each of which shall be deemed to be an original. The parties may execute and exchange this Agreement by imaged copy or facsimile transmission.

15. Export Control and Privacy Regulation Compliance. The parties agree to comply with all United States government export controls laws, including, but not limited to, the Export Administration Regulations ("EAR", 15 CFR. 730 – 774) administered by the U.S. Department of Commerce, Bureau of Industry and Security and the International Traffic in Arms Regulations ("ITAR", 22 CFR 120 – 130) administered by the U.S. Department of State, Directorate of Defense Trade Controls. Unless the Recipient expressly agrees in writing, Disclosing Party shall not disclose any Confidential Information which is listed on the U.S. Munitions List ("USML") of ITAR or the Wassenaar Munitions List ("ML") or if the Confidential Information is prohibited from export under the EAR. Additionally, the parties agree to comply with all applicable privacy and data protection laws, rules and regulations which are or which may in the future be applicable to the terms of this Agreement.