

## Standard Terms and Conditions of Sale

Optimet – Optical Metrology Ltd. ("Optimet") provides the following Standard Terms and Conditions of Sale ("**Terms and Conditions**"), which apply to all quotations and sales made by Optimet. All purchases of products ("**Goods**" or "**Products**") from Optimet by customer, owner, or its agent ("**Purchaser**") are subject to these Terms and Conditions, and no provision printed or otherwise, contained in any order, acceptance, confirmation, or acknowledgement which is inconsistent with, different from, or in addition to these Terms and Conditions is accepted by Optimet unless specifically agreed to in writing by a duly authorized officer of Optimet.

**ORDERS:** By submitting an order to Optimet or by using any Goods that were purchased from Optimet, Purchaser agrees to be subject to these Terms and Conditions of Sale in their entirety. All orders must be bona fide commitments showing mutually agreed prices, quantities and shipping terms. If an order is submitted to Optimet in response to a written Optimet quotation, the order must contain the Optimet Quotation number. No order or other commitment, whether or not submitted in response to a quotation by Optimet, shall be binding upon Optimet until such order or other commitment is accepted in writing by Optimet. Confirmation of Purchaser's order by Optimet is subject to verification of Purchaser's credit worthiness.

**TIME LIMIT.** All quotations are valid for a period of thirty (30) days, unless otherwise specified in writing.

**SHIPMENT.** Unless otherwise agreed in writing by the parties, pricing and shipping terms shall be Ex-works Optimet's plant in Jerusalem. If the Purchaser has not issued inspection or shipping instructions by the time the Goods are ready for shipment, Optimet may select any reasonable method of shipment, without liability by reason of its selection. Shipments made on Purchaser's behalf shall be insured at Purchaser's expense. If Optimet is required to arrange for shipment of the Goods or any parts thereof, Purchaser shall reimburse Optimet for all freight, insurance and other shipping related costs and Purchaser will pay Optimet a handling fee for each such shipment. Shipment of Goods held by reason of Purchaser's request or inability to **receive Goods will be at the risk and expense of Purchaser. In no event shall Optimet be liable for any delay in delivery (provided that Optimet timely delivers the Products to the carrier as provided above), or assume any liability in connection with shipment, nor shall the carrier be deemed an agent of Optimet.**

**OBLIGATION TO INSPECT.** Purchaser shall inspect all Products promptly upon receipt. The furnishing by Optimet of a Product to Purchaser shall constitute acceptance of that Product unless Optimet receives a written notice of defect or nonconformity within seven (7) days after receipt by Purchaser, provided, that such acceptance shall not relieve Optimet of its warranty obligations hereunder.

**PRICES AND PAYMENT TERMS.** The prices for all Products shall be as set forth in the accompanying Optimet quote and/or order acknowledgment. Payments will be made in accordance with the specified payment schedule, including the payment period, in the purchase order that was accepted by Optimet. Unless otherwise specified in a purchase order that was accepted in writing by Optimet, all payments are due net thirty (30) days from the date of invoice. Purchaser's failure to make payment when due will be a material breach of the order and these Terms and Conditions. Optimet, at its sole discretion, may charge the Purchasers for a late fee of 1.5% per month on the outstanding amount until the date of actual payment. In addition, Optimet, at its sole discretion and without incurring any liability, may suspend its performance until such time as the overdue payment is received or until written approval by Optimet of an alternative payment schedule has been issued. In the event of such suspension of performance by Optimet, there will be an equitable adjustment made to the delivery schedule and order price reflecting the duration and cost resulting from such suspension. Purchaser may only suspend the order upon Optimet's written consent. In the event of such Purchaser's order suspension, the delivery time will be changed, taking into account the suspension, and Purchaser will promptly pay Optimet for all costs and related overhead costs resulting from such suspension. Optimet will equitably re-price the Goods and services if the cumulative suspension exceeds ninety (90) days. If in the judgment of Optimet, Purchaser's financial position does not justify the terms of payment specified, Optimet may require full or partial payment prior to shipment of the Goods. Purchaser agrees to furnish Optimet with the required credit information.

**TAXES.** Federal, state, or local indirect taxes, including but not limited to sales and/or use taxes, VAT taxes, GST taxes, transfer taxes or any similar tax are not included in the prices set forth herein. In the absence of proper evidence of exemptions supplied to Optimet, Purchaser will reimburse Optimet for all taxes, excises, duties, imposts or other charges which Optimet may be required to pay any government (national, state or local) upon, or measured by the production of any phase or part of the production, storage, sale, transportation, delivery and/or use of the Goods.

**LIMITED WARRANTY; DISCLAIMER OF WARRANTIES.** Optimet warrants that the Goods sold hereunder shall be free from material defects in workmanship or materials and conform in all material respects to Optimet specifications, which are available upon request, or Purchaser's supplied and accepted specifications, for one (1) year following the day of the original shipment from Optimet. This warranty does not cover Purchaser-furnished materials; and will not apply with regard to installation and/or assembling into Purchaser's set or system. All warranty claims must be submitted in writing to Optimet within the applicable warranty period and all nonconforming Goods must be returned to Optimet, at purchaser's cost and expense, before Optimet replaces the same

or refunds the purchase price to the Purchaser as set forth below. No Goods shall be returned to Optimet without obtaining a Return Material Authorization (RMA) number first which must be clearly marked on the outside of the shipping container.

Optimet' liability for breach of warranty shall be limited to, in Optimet' sole discretion, (i) repairing or replacing Goods that Optimet determines do not conform to the foregoing warranty, or (ii) refunding the sales price received by Optimet in respect of the non-conforming Goods. This remedy shall be the Purchaser's sole and exclusive remedy for any defect or nonconformity in the Goods. This warranty extends only to the immediate purchaser from Optimet and does not extend, expressly or impliedly, to any other party. In no event shall Optimet incur any obligation to repair or replace Goods which are determined by Optimet, at its sole discretion, to be defective due to (i) installation, maintenance, operation, modification, alteration, accident, neglect or use in any way other than in strict compliance with Optimet' published specifications for the Goods, (ii) the failure to maintain appropriate environmental conditions, as communicated by Seller, (iii) as the result of the use of unauthorized parts or repairs, or unauthorized modifications (iv) any repair work on the product that is performed by the Purchaser or any third party on behalf of the Purchaser (other than Optimet), or (v) modification or alteration of the Goods such that Optimet is unable to verify the defect with its standard test equipment.

EXCEPT FOR THE EXPRESS LIMITED WARRANTY STATED HEREIN, THE GOODS ARE SUPPLIED ON AN "AS IS" BASIS AND PURCHASER'S USE OF THE GOODS IS AT PURCHASER'S RISK. OPTIMET DOES NOT MAKE AND HEREBY DISCLAIMS ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES WITH RESPECT TO THE GOODS, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE AND ANY WARRANTIES OF NONINFRINGEMENT AND TITLE.

**MAINTENANCE & SUPPORT.** Optimet shall maintain and supply to Purchaser upon request and following the payment of the price for such part, spare parts for Products sold by it to Purchaser for a reasonable period following the sale of such Products. Unless otherwise agreed in writing by the parties, the product's price does not include payment for maintenance and support services. Any such maintenance and support services will be provided by Optimet only upon the entering by the parties into a written maintenance and support agreement that details of the terms of such services including the relevant fees, as shall be determined and updated by Optimet from time to time.

**GENERAL; INTELLECTUAL PROPERTY.** When furnished, designed, developed and/or manufactured by Optimet, all tools and/or dies, together with incidental fixtures and materials necessary for the manufacture of Goods ordered, shall remain the property of Optimet. All tools, dies, fixtures and/or materials will be maintained for one (1) year after shipment. Unless otherwise agreed to in writing by Optimet, Optimet shall own all right, title and interest in and to the patent, design and other intellectual property rights in and to all products sold to

Purchaser hereunder, and nothing contained herein shall give Purchaser any right to utilize any such intellectual property in any manner whatsoever except in connection with Purchaser's use of the applicable product in accordance with the documentation for the same provided by Optimet.

Goods are sold to accepted manufacturing variations or tolerances, except when otherwise agreed to by both parties.

Except for Goods that are manufactured to specifications provided by Purchaser, Optimet represents and warrants that Purchaser's use of the products sold by Optimet hereunder in accordance with Optimet specifications and documentation for the same will not infringe upon any Israeli or United States patent. Optimet will defend, indemnify and hold Purchaser harmless of, from and against any and all claims and expenses, including court costs and attorney fees, arising out of Optimet' breach of this section; provided that Optimet will have no obligation to indemnify Purchaser for any claims arising out of (i) Purchaser's use of the products in combination with any process or other products, or (ii) any drawings or specifications provided by Purchaser in connection with the products. If Purchaser provides specifications or drawings for the product to Optimet, Purchaser represents and warrants to Optimet that Optimet' use of the same in the manufacture of the products for Purchaser will not infringe upon the patent, design, trade secret or other intellectual property rights of any person or entity, and Purchaser agrees to defend, indemnify and hold Optimet harmless of, from and against any and all claims and expenses, including court costs and attorney fees, arising out of Purchaser's breach or alleged breach of this section.

The purchaser acknowledges that the Software may be licensed by Optimet from third party and that unauthorized use of the Software will create Optimet's violation of obligation contained in its Software license agreement with third party, resulting with irreparable harm. Purchaser acknowledges that the licensed software constitutes valuable trade secrets of Optimet and/or third party. Purchaser shall have no rights in or to the Software other than specified herein. Without derogating the aforementioned, Purchaser shall not sublicense, distribute, sell or otherwise transfer the Software to any third party. (4) Unless otherwise agreed in the Order Purchase, Optimet is not obligated to provide support of any kind for the Software. If provided, support services may be charged for, as concluded and updated by Optimet from time to time. (5) Software evaluation installation will not exceed ninety (90) days, Purchaser obliges not to use Product and Software thereafter. The directives of this Agreement shall apply with regard to any use of the Product and the Software received for evaluation, with the necessary amendments.

**LICENSE TO USE SOFTWARE.** Purchaser acknowledges that the software or firmware components and applications, if any, accompanying the Products sold hereunder (the "Software") are licensed and not sold to Purchaser. Optimet shall at all times have and retain title and full ownership of the Software. Upon receipt of full payment therefor, Optimet grants to Purchaser a nonexclusive, personal, nontransferable, limited and royalty-free license to use and execute such Software in object code form

only and only in conjunction with the operation of the associated Product. Purchaser shall receive no rights to the Software except as expressly provided herein. No license to use the source code of the Software is provided hereunder. Purchaser agrees that it shall not use, distribute, license, sublicense, resell or otherwise transfer all or any part of the Software or supporting documentation other than as expressly permitted hereunder without the prior written consent of Optimet. Purchaser agrees that it shall not, nor shall it permit any employee or agent of Purchaser to, adapt, modify, copy, reproduce, reverse engineer, decompile, or disassemble the Software in any way without the prior written consent of Optimet. Except as expressly set forth herein, Optimet shall have no obligations to Purchaser whatsoever with regard to the Software. Without limiting the generality of foregoing, Optimet has no obligation to develop updates or modifications to the Software or develop or provide Software development tools to Purchaser. The purchaser acknowledges that the Software may be licensed by Optimet from third party and that unauthorized use of the Software will create Optimet's violation of obligation contained in its Software license agreement with third party, resulting with irreparable harm.

**AGREEMENT NOT TO REPLICATE.** Purchaser agrees not to copy, replicate or reverse engineer the Products, use the Products as tools or molds, or to permit such actions by any third party. THE PARTIES ACKNOWLEDGE AND AGREE THAT THEY ARE ENTERING INTO THIS AGREEMENT ON THE UNDERSTANDING THAT THE PRICE FOR THE PRODUCTS TO BE PROVIDED HAS BEEN SET TO REFLECT THE FACT THAT PURCHASER AGREES NOT TO COPY OR REPLICATE PRODUCTS, TO USE PRODUCTS AS TOOLS OR MOLDS, OR TO PERMIT SUCH ACTIONS BY ANY THIRD PARTY, AND IF NOT SO ACKNOWLEDGED AND AGREED, THE PRICES FOR THE PRODUCTS WOULD HAVE BEEN SUBSTANTIALLY HIGHER.

**CHANGES, CANCELLATIONS.** Specification changes made after Purchaser places an order are subject to price adjustments and to Optimet' written approval and Purchaser will reimburse Optimet for all loss and expenses incurred by Optimet arising out of such change. Cancellations shall be by mutual agreement in writing, provided that Purchaser will reimburse Optimet for all loss and expenses incurred by Optimet arising out of such cancellation.

**TITLE AND RISK OF LOSS OR DAMAGE.** All Products will be delivered EXW Optimet's factory in Jerusalem. Title to all products (except for title to any Software which shall at all times remain with Optimet) shall pass from Optimet to the Purchaser and Purchaser shall assume all risk of loss or damage, upon delivery of the Products to the carrier, unless otherwise agreed by both parties in writing.

**CONFIDENTIALITY.** Purchaser agrees that Optimet's Product contains valuable proprietary information and that unauthorized dissemination or disclosure of the Product, the Software or any part thereof could cause Optimet irreparable harm. Purchaser

acknowledges that the Product is Optimet's confidential information (hereinafter "Confidential Information"). Purchaser shall hold in strict confidence any such Confidential Information received from Optimet and shall protect the confidentiality of such with the same degree of care as for its own information of like importance, but no less than reasonable degree of care. Purchaser undertakes to disclose the Confidential Information only to its employees who have to be so informed on a "need to know" basis and, which are bound by a written agreement to maintain the Confidential Information in strict confidence (the "Authorized Personnel"). Purchaser shall be responsible that the obligations contained herein are strictly observed by the Authorized Personnel. Confidential Information shall be stored in well guarded area to which only the Authorized Personnel shall have access.

**GOVERNING LAW & JURISDICTION.** All matters involving the validity, interpretation, and application of these Standard Terms and Conditions of Sale will be controlled by the laws of the State of Israel without reference to the conflicts of law provisions and without reference to the provisions of any convention that applies to international sale of goods (including without limitation the Uniform Commercial Code and the UN Convention on Contracts for the International Sale of Goods ("CISG")). All disputes arising out of this Standard Terms and Condition of Sale or related to its violation or execution will be submitted to the exclusive jurisdiction of the competent court of law in Jerusalem, Israel; provided, however, that nothing herein shall prevent Optimet from commencing suit for interim relief or equitable remedies (whether temporary or permanent) in any jurisdiction it may deem fit and provided that Optimet shall be entitled to take any action against the Purchaser at his place of residence.

**CONSEQUENTIAL DAMAGES; LIMITATION OF LIABILITY.** IN NO EVENT SHALL OPTIMET BE LIABLE TO PURCHASER FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOSS OF PROFIT, COSTS OF DELAY, ANY FAILURE OF DELIVERY, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, COST OF REMOVAL AND REINSTALLATION OF GOODS, LOSS OF GOODWILL, INTERRUPTION OF BUSINESS, LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE OR OTHER ECONOMIC LOSS, WHETHER OR NOT PURCHASER HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES AND WHETHER SUCH DAMAGES ARE ALLEGED AS A RESULT OF TORTIOUS CONDUCT, BREACH OF CONTRACT OR OTHERWISE. OPTIMET' TOTAL LIABILITY FOR EACH DEFECTIVE PRODUCT, INCLUDING WITHOUT LIMITATION INTELLECTUAL PROPERTY INDEMNIFICATION, SHALL NOT EXCEED THE PRICE OF SUCH PRODUCT.

**FORCE MAJEURE.** No liability shall result from delay in performance or nonperformance (except with respect to payment by Purchaser) to the extent that it results from any cause (including without limitation, weather, fire, strike or other labor difficulty; breakdown, shortage of or inability to obtain materials,

equipment or transportation; act, order, regulation or request of governmental body or court; or other force majeure beyond the reasonable control of the party affected or obligated hereunder. If Optimet' supply of Goods is limited by any such cause, Optimet shall have the right to prorate Optimet' available supply over Optimet' own manufacturing requirements and Optimet' commitments to its customers as Optimet considers fair.

**EXPORT.** Optimet's obligation to deliver the Goods to Purchaser shall be at all times subject to all applicable export laws and regulations and conditioned upon the receipt of an appropriate export license, when such license is required under applicable laws and regulations. Regardless of any disclosure made by Purchaser to Ophir of an ultimate destination of Ophir Products, Purchaser will not export either directly or indirectly any Product purchased from Ophir nor any system incorporating said product, in violation of any applicable laws, regulations and treaties relating to the sale and transfer of the Products, including without limitation, U.S. export control laws and regulations, particularly the requirements of the U.S. Export Administration Act ("EAA"), 50 U.S.C. app. 2401-2420, including the Export Administration Regulations ("EAR"), 15 C.F.R. pts 730-774, Israeli and European export control regulations nor will sell or transfer the Products without first obtaining all required licenses and permits from the relevant authorities in the US, Europe or Israel, as the case may be, all to the extent that such licenses are required under applicable export control laws and regulations. Purchaser shall not sell or transfer any of the Products to countries or to persons or entities prohibited under applicable US, Israeli or European laws and regulations.

**NON-WAIVER OF DEFAULT; REMEDIES:** In the event of any default by Purchaser under this or any other contract between Optimet and Purchaser, Optimet may decline to make further shipments. If Optimet elects to continue to make shipments, Optimet's action shall not constitute a waiver of any default by Purchaser or in any way affect Optimet's legal remedies for any such default. All Optimet's rights and remedies, whether evidenced hereby or by any other contract or document, shall be cumulative and nonexclusive and may be exercised singularly or concurrently.

**HEADINGS.** The headings used throughout are for convenience only and will be disregarded for the purpose of construing and enforcing these Terms and Conditions.