



Optomec, Inc.
TERMS AND CONDITIONS FOR DOMESTIC SALE

The following *Terms and Conditions for Domestic Sale*, the Quotation, and all documents referenced in the Quotation shall constitute the entire agreement (“Agreement”) between Optomec, Inc. (“Seller”) and the purchaser (“Buyer”). The Quotation terms prevail over any inconsistent or conflicting terms in this *Terms and Conditions for Domestic Sale* document. No terms or conditions other than those stated herein, and no agreement or understanding, oral or written, in any way purporting to modify these terms or conditions, whether contained in Buyer’s purchase or shipping release forms or elsewhere, shall be binding on Seller unless hereafter made in writing and signed by its authorized representative. All proposals, negotiations, and representations, if any, made prior to and with reference hereto, are merged herein. No form of acceptance except Seller’s written acknowledgment sent to Buyer, or Seller’s commencement of performance shall constitute valid acceptance of Buyer’s purchase order.

1. **RISK OF LOSS:** Unless otherwise specified on the face of this document, all sales made hereunder shall be F.O.B. Destination UCC 2012 Edition. Seller will deliver the shipment to the Buyer’s destination, where risk of loss passes to the Buyer along with title to the products priced.

2. **PRICE:** Price quotations shall remain in effect for the period of time specified in the quotation, but if no such time period is specified, billing shall be based on prices in effect at the time of shipment. Unless specifically included in the price quotation, such quotations will not include supplying pre-production or evaluation samples or supplying test data of any kind.

3. **PAYMENT TERMS:** Payment terms will be provided in the Optomec quote. Payments that have not been paid as provided in this Agreement shall be subject to an interest charge of eighteen percent (18%) per annum from the date payment is originally due.

4. **DELIVERY AND INSTALLATION:** Seller shall use its best efforts to make deliveries in the quantities and at the times specified in this order. Unless the Buyer specifies shipping instructions, which have been agreed to by the Seller, shipment and delivery will be made by the carrier and in the manner designated by the Seller. Seller shall not be liable for delays or defaults in deliveries due to causes beyond Seller’s control and without its fault or negligence. If the Buyer elects to delay shipment of the goods for an extended period of more than thirty (30) days from notice that the goods are ready to be shipped, Buyer will be charged for the goods in full as if shipped/delivered and installed/accepted, and will furthermore be charged daily storage fees as long as the goods remain in Seller’s possession. If upon receipt the Buyer elects to delay installation of the goods for an extended period of more than thirty (30) days from delivery of the goods at Buyer’s destination, Buyer will be charged for the goods in full as if fully installed and accepted. Should Buyer fail to comply, Seller retains the right to sell the goods to a third party and produce a new set of goods to fulfill Buyer’s order. Failure of the deliveries to be installed by

Buyer at their facility within a 60-day period from shipment, will begin the warranty period. Further, Buyer will be responsible for all replacement costs (including parts and labor) for any damaged components to the System associated with the delayed installation. In the event that a facility is not ready for installation (as defined in the respective Aerosol Jet® or LENS® Pre-Installation Agreement) upon the arrival of the Seller’s installation team, Buyer will have thirty-six (36) hours to cure the deficiencies of the facility or assume liability for all expenses and costs associated with the delayed installation. Acceptance of the System must occur within a reasonable time from receipt and installation or will be deemed to have occurred if Buyer is able to use and/or does use the System in a manner consistent with the System’s Installation Checklist. If the Buyer purchases an Advanced Application Workshop or other professional services offering, the Buyer must use the Workshop or services within six (6) months of the order date or shipment date, whichever is later.

If the Buyer purchases a service plan, any modification or change made to the System by the Buyer, without the Seller’s consent, is cause for immediate termination of the service plan agreement.

5. **SHIPPING, HANDLING, AND INSURANCE:** F.O.B. Destination UCC 2012 Edition. ALL SHIPPING, HANDLING, AND INSURANCE CHARGES WILL BE PAID BY THE SELLER.

6. **CONDITIONAL SALE:** All sales made hereunder are conditional on the Buyer obtaining Seller’s consent, which will not be withheld unreasonably, before reselling the System.

7. **INTELLECTUAL PROPERTY:** Subject to any license rights expressly granted herein, Seller retains all right, title and interest in all of its patents, trade secrets, trademarks, copyrights, software, inventions, technology, ideas, concepts, know-how, tooling, techniques and other proprietary materials, intellectual property and confidential information. All right, title and interest in and to any inventions, discoveries, improvements, methods, ideas, and other forms of intellectual property, which are made, created, developed, written, conceived or first reduced to practice by Seller solely, jointly or on its behalf, in the course of, arising out of, or as a result of work performed under an order, whether or not invoiced, shall be the sole and exclusive property of Seller. Buyer shall not copy, reverse engineer, disassemble, derive or subject to technical analysis any technology, component, module, hardware, firmware, software or other feature of the System. Seller’s systems are protected under United States and foreign patents and patents pending.

8. **SOFTWARE:** Any Seller and third party software or firmware (collectively “Software”) delivered by Seller to Buyer hereunder is licensed, not sold. Seller grants to Buyer a non-exclusive, nontransferable license to use the Software only in executable object code and only for the purpose of operating the System. Buyer may not modify, adapt, translate, reverse engineer, decompile, disassemble or create a derivative work based upon the Software or allow others to do so except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. Buyer shall not make or distribute unauthorized copies of the Software, and shall acquire no rights of ownership in the Software. Title to and ownership of the Software and all extensions, enhancements and modifications thereof shall remain at all times with Seller and/or its licensors.

9. LOGO USE: Buyer is required to abide by and agree to Seller's *Third Party Usage Agreement for Optomec, Inc. Logos*.

10. CONFIDENTIALITY: Both Parties shall protect as proprietary and keep confidential all proprietary information including, but not limited to, designs, processes, drawings, specifications, reports, data, and other technical or business information and the features of all parts, equipment, tools or fixtures, and other items furnished or disclosed by either Party (collectively, "Confidential Information") and designated as being confidential. Such disclosed proprietary information shall only be used in the performance of this Agreement and shall not be disclosed to any third party without the Disclosing Party's consent. Both during the term of this Agreement and for a period of five (5) years thereafter, both parties agree to keep in confidence such Confidential Information, unless: (a) it is now or subsequently becomes generally available to the public through no fault or breach on the part of the Receiving Party; (b) the Receiving Party can demonstrate to have had rightfully in its possession the Confidential Information prior to disclosure to the Receiving Party by the Disclosing Party; (c) it is independently developed by Receiving Party without the use of any Confidential Information; or (d) the Receiving Party rightfully obtains the Confidential Information from a third party who has the right to transfer or disclose it. Both Parties agree to use all reasonable precautions to ensure that all such Confidential Information is properly protected and kept from unauthorized parties or disclosure. If requested by either Party, the Receiving Party agrees to promptly return to the Disclosing Party all materials, writings, equipment, models, mechanisms, and the like obtained from or through the Disclosing Party, including, but not limited to, all Confidential Information, all of which the Receiving Party recognizes is the sole and exclusive property of the Disclosing Party. The terms of this confidentiality clause are to be enforceable simultaneously with any prior agreed upon written Non-Disclosure Agreement(s) between the Parties.

11. DEFAULT: Failure by Seller or Buyer to meet the terms of this Agreement, other than for payment, shall constitute a condition of default. Upon receipt of written notice of a condition of default, the defaulting party shall have thirty (30) days to cure the condition of default. If the condition of default is not cured during this period, this Agreement shall terminate thirty-one (31) days after written notice of the condition of default was received. The parties shall proceed as specified in section 12 (b).

12. TERMINATION: (a) Seller shall have the right to cancel purchase orders of the Buyer in the event the Buyer fails to comply with the terms of payment specified in this Agreement or in any prior or subsequent purchase order included herein. In the event Seller shall have reasonable grounds to doubt, at any time, the Buyer's financial responsibility to perform under this Agreement, the Seller shall demand, in writing, adequate assurances of performance from the Buyer and shall, until such assurances are received from Buyer, suspend its performance under this Agreement. Upon receipt of a justified demand, as provided hereunder, Buyer's failure to provide adequate assurances of performance, acceptable to the Seller, within thirty (30) days of the receipt of such notice, shall be considered a repudiation of the Agreement and shall entitle the Seller to proceed as specified in section (b) of this paragraph. (b) Except as otherwise provided herein, this Agreement is subject to termination in whole or in part, at the election of Buyer upon delivering thirty (30) days advance written notice to Seller. Upon receipt of such termination notice, Seller shall forthwith discontinue all work and the incurring of any additional expenses relating hereto except as may be directed by Buyer in the termination notice. In such event, July 20, 2017

Buyer shall pay such amount as Seller and Buyer may agree is to be paid by reason of the termination. In the event of failure to agree upon the amount to be paid by reason of the termination, Buyer will pay to Seller and Seller agrees to accept in full payment: (i) The stipulated price with respect to products completed in accordance with Buyer's order, (ii) Seller's cost and expense, including a reasonable allowance for profit, in connection with the unfinished work and raw materials on hand acquired for the completion of this Agreement, and (iii) Cost or damages of completion or cancellation (as the case may be and at the election of Seller) of contracts for raw materials ordered specifically for this Agreement. Provided that the total payments under (ii) and (iii) shall not exceed the stipulated price with respect to the same products, if finished, less the estimated cost of finishing work and unprocessed raw materials on hand acquired by Seller in connection with this Agreement. Nothing in this paragraph shall in any way modify any other provision of these terms and conditions relating to cancellation or termination by Buyer.

13. FORCE MAJEURE: Neither Seller nor Buyer shall be liable to the other for default or delay in delivering or accepting goods hereunder if caused by an Act of God, war, mobilization, riot, strike, embargo, shortage of utility, facility, material or labor, delay in transportation, breakdown or accident, or compliance with or action taken to carry out the extent or purpose of any law or regulation. When only a part of Seller's or Buyer's capacity to perform is excused under this paragraph, Seller or Buyer must allocate production, deliveries, or receipt of deliveries among various customers or suppliers then under contract for similar products during the period when Buyer or Seller is unable to perform. The allocation must be effected in a commercially fair and equitable manner. When either Seller or Buyer claims an excuse for non-performance under this paragraph, it must give notice in writing to the other party. When an allocation has been made, notice of the estimated quota made available for Buyer or Seller, as the case may be, must be given. Should such inability to perform continue for a period in excess of sixty (60) days Seller shall not be obligated to sell, nor shall Buyer be obligated to purchase, at a later date, that portion of the goods which Seller is unable to deliver or Buyer is unable to receive or use because of any of the aforementioned causes beyond the control of the parties.

14. CHANGES: Buyer may from time to time request changes in this Agreement, including but not limited to, changes in drawings, designs, specifications, method of inspection, method of packaging, order period, method of shipment, and/or place of delivery, or other provisions contained herein, by written instruction to Seller in a change order notice or letter from Buyer's Purchasing Department. Seller shall determine whether such change causes an increase or decrease in cost or time of performance of this Agreement and thereafter shall notify Buyer's Purchasing Department in writing within thirty (30) days from the date of receipt of such change order notice, or letter, or within such other time limit as agreed to by Buyer and Seller, and a mutually satisfactory adjustment shall be negotiated. The agreed to adjustment shall be incorporated as part of this Agreement by means of a written change order notice from Buyer's Purchasing Department. Seller's failure to advise Buyer's Purchasing Department that an adjustment is necessary prior to performance of the work called for by the change order notice shall constitute Seller's agreement to conform to said change order notice without an increase in price and without charge for cost of material and/or tooling rendered obsolete and that delivery will be made as specified by this Agreement. In the event that the requested change order notice is of such a nature and scope as to preclude mutual agreement between Buyer and Seller, Buyer or Seller may terminate this Agreement. Any

termination hereunder shall be considered a termination for the convenience of the Buyer and governed by paragraph 12(b) of this Agreement.

15. SALES AND OTHER TAXES: The purchase price does not include sales, use, excise or other taxes. Consequently, in addition to the purchase price specified herein, the amount of any present or future sales, use, excise or other tax applicable to the sale of products sold hereunder or the use of such products by the Buyer shall be paid by the Buyer or, in lieu thereof, the Buyer shall furnish Seller with a tax exemption certificate acceptable to the appropriate taxing authority. Buyer is also responsible for payment of all government taxes, duties and levies, including but not limited to VAT; federal, state and local sales tax; withholding tax; and import/export duties.

16. LIMITATION OF LIABILITY: IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES, OR ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA OR PROFITS, EVEN IF SUCH OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Further, Seller shall not be liable to Buyer for any loss, claim, damage, or liability of whatsoever kind or nature, including compensatory, consequential, punitive, incidental, exemplary, or special damages, which may arise from or in connection with Buyer's use, handling, or storage of any material, inks or otherwise, labeled hazardous or otherwise, used within any LENS or Aerosol Jet® process and/or System.

17. GOVERNING LAW: This Agreement is to be construed and governed in accordance with the laws of the State of New Mexico, United State of America, excluding its choice of law statutes. Jurisdiction and venue for any suit between the parties hereto arising out of or connected with this Agreement, or the goods or services furnished hereunder, shall be in the State of New Mexico, or the courts where the Buyer's principal place of business are located, as Seller may elect.

18. GENERAL: (a) Any clause required to be included in a contract of this type by any applicable law or administrative regulation having the effect of law shall be deemed to be incorporated herein. (b) Waiver by Seller or Buyer of any breach of these provisions shall not be construed as a waiver of any other breach.