



TERMS OF SALE Worldwide Transactions

These Terms of Sale apply to any quote, order, order acknowledgment, and invoice, and any sale, license or delivery of all products, software, or services by Lumentum Operations LLC, 1001 Ridder Park Drive, San Jose, California, 95131, on behalf of itself and its Affiliates (collectively "Lumentum"). Lumentum does not accept, expressly or impliedly, and Lumentum hereby rejects and deems deleted, any additional or different terms or conditions that any potential or actual customer ("Customer") presents, including, but not limited to, any terms or conditions contained or referenced in any order, acceptance, acknowledgment, or other document, or established by trade usage or prior course of dealing, unless Lumentum expressly and unambiguously agrees to such terms and conditions in a duly signed writing. By ordering, accepting delivery, keeping, or using products or otherwise proceeding with any transaction after receipt of the Agreement (as defined below) or after otherwise being notified that such transactions are subject to the Agreement, Customer agrees to the terms of the Agreement. If tender of these terms is deemed an offer, acceptance is expressly limited to the terms of the Agreement.

1. DEFINITIONS.

"Affiliate" means an entity that controls, is controlled by, or is under common control with a party. "Control" and its derivatives means the legal beneficial, or equitable ownership, directly or indirectly, of more than fifty percent (50%) of the capital stock (or other ownership interest, if not a corporation) of such entity ordinarily having voting rights.

"Agreement" means a contract between Lumentum and the Customer that is formed by reference to these Terms of Sale and, where applicable, one or more sets of Lumentum's offering-specific terms (e.g., Software License Terms or Fixed Fee Services Terms) that are attached hereto or available at www.lumentum.com/terms or from Lumentum on request.

"Confidential Information" means any technical or other information related to Lumentum's Goods and Services (including, but not limited to, any documentation, services offerings, training materials, and written, visual, and oral instructions) and any information that is marked or otherwise expressly identified as confidential in writing or that should have been reasonably understood as such due to its nature, regardless of whether in tangible, electronic, verbal, graphic, visual or other form, that Lumentum discloses to Customer. Confidential Information does not include material or information that (i) is generally known by third parties as a result of no act or omission of Customer; (ii) subsequent to disclosure hereunder was lawfully received without restriction on disclosure from a third party having the right to disseminate the information; (iii) was already known by Customer prior to receiving it from Lumentum and was not received from a third party in breach of that third party's obligations of confidentiality; or (iv) was independently developed by Customer without use of Confidential Information of Lumentum.

"Delivery Date" means the earlier of the date on which (i) Lumentum puts a Good into the possession of a carrier for shipment, (ii) Customer takes possession of a Good; or (iii) Lumentum makes the Good available to Customer.

"Documentation" means Lumentum's information manuals that (i) contain operating instructions and performance specifications for the Products, Software, and/or Services; (ii) Lumentum delivers to Customer with the Products, Software, and/or Services; and (iii) Lumentum generally makes available to all users of its Products, Software, and/or Services.

"Firmware" means firmware and software that is (i) installed on tangible products, including back-up copies of such software that are delivered with such tangible products, and (ii) not referred to by Lumentum with individual product numbers and line-item prices.

"Goods" means Products, Software and Documentation.

"Intellectual Property" means any computer program or routine (in object code, source code, or embedded format, regardless of the medium on which it resides), algorithms, know-how, firmware, hardware and/or software configurations, inventions, documentation, translations, text and other works of authorship, data, databases, information, mask works, designs, utility models, symbols, logos, marks, names, procedures, processes, methods, improvements and any other intangibles as well as the prototypes, samples, copies, and other materialized forms of the foregoing intangibles.

"Product" means any tangible products or parts thereof that Lumentum agrees to deliver or delivers to Customer including any Firmware.

"Proprietary Rights" means any and all rights, title, ownership and interests in and to copyrights, mask work rights, industrial designs, trademarks, service marks, trade names, trade secrets, patents, and any other rights to Intellectual Property, recognized in any jurisdiction or country of the world, whether or not registered or perfected.

"Services" means any services provided by Lumentum, including without limitation, any Installation Services, Training Services, Software Maintenance Services, Time & Materials Services, and/or Fixed Fee Services, as applicable (such terms as defined in the applicable offering-specific terms).

"Software" means any computer software in object code, source code, or other format that Lumentum agrees to deliver or make available to Customer, excluding Firmware. For greater clarity, no licenses under these Terms of Sale shall extend to any source code.

"Work Product" means any tangible or intangible results or deliverables that Lumentum agrees to create or deliver, or

intentionally delivers to Customer, as a result of performing services, including, but not limited to, configurations, computer programs or other information, or customized hardware, and any Intellectual Property developed in connection therewith and Proprietary Rights related thereto.

2. ORDERING. Lumentum's quotations (unless they expressly specify otherwise) and Customer's orders are irrevocable for thirty (30) days from their respective date. Customer's orders are subject to acceptance at Lumentum's sole discretion. No form of acceptance, except Lumentum's written acknowledgment sent to Customer or Lumentum's commencement of performance, shall constitute valid acceptance of Customer's orders, with any such acceptance being expressly conditioned on assent to the terms hereof and the exclusion of all other terms. Lumentum may change its prices at any time without prior notice to Customer. Once Lumentum has accepted an order, Customer may not cancel, terminate, reschedule, suspend performance of, or issue a hold on, such order, in whole or in part, without the prior written consent of Lumentum, which consent, if given, shall be upon terms that will compensate Lumentum for any loss or damage therefrom, including but not limited to any work in process or services performed, the price of Goods and Services shipped to, manufactured for, or held separately for, Customer, and loss of profits, incurred costs, and a reasonable allocation of general and administrative expenses.

3. DELIVERY. Lumentum selects the carrier, unless Customer provides written instructions. The carrier shall not be considered Lumentum's agent. Lumentum shall deliver all Goods and Services FCA Lumentum's facility (Incoterms 2010), as designated by Lumentum. Customer takes title and bears shipping costs and risk of loss from the FCA point of shipment. Lumentum does not transfer ownership or title to any Software, Firmware, Documentation, or copies thereof; Lumentum only grants limited, non-exclusive licenses, as provided herein. Partial and installment shipments are authorized. Alterations to any Goods and Services which Lumentum deems necessary to comply with changed safety standards or governmental regulations, to make a Good or Service non-infringing, or to otherwise improve a Good or Service, may be made at any time by Lumentum without prior notice to, or consent of, Customer and such altered Goods and Services shall be deemed fully conforming. Immediately upon receipt, Customer shall visually inspect the shipment and notify Lumentum in writing of any deficiencies. Customer shall be deemed to have waived its rights to claim incorrect or incomplete delivery or packaging, unless Lumentum receives Customer's detailed written notice within ten (10) days following delivery of the Goods and Services by Lumentum. Performance and shipping dates specified or communicated by Lumentum to Customer are approximate dates only and (i) the failure to perform or ship on such dates shall not be considered a breach by Lumentum, and/or (ii) Lumentum is permitted to deliver, and Customer will accept, shipments, in whole or in part, in advance of any dates communicated by Lumentum and/or requested by Customer.

4. NO INSTALLATION. Lumentum is not obligated to customize or install any Goods and Services, unless Lumentum expressly agrees otherwise in a signed writing, in which case (i) Lumentum's Installation Services Terms shall apply additionally, and (ii) Lumentum's obligations with respect to such services shall be separate and independent of Lumentum's obligations with respect to the delivery of Goods and other Services.

5. PAYMENT. Subject to credit approval by Lumentum, which Lumentum may modify, revoke or subject to conditions (e.g., approved letter of credit) at any time, Customer shall pay Lumentum-submitted invoices in full within thirty (30) days of the invoice date, without any deductions, withholdings, or off-set. Unless Lumentum expressly states otherwise, all fees and prices quoted or invoiced exclude sales taxes, service taxes, withholding taxes, customs duties, and other taxes and charges, insurance, and costs related to transportation and special packaging requested by Customer, if any, with any such charges, taxes and/or costs being paid or reimbursed by Customer. If any withholding taxes apply, Customer shall gross up the invoiced amount to ensure that, after such withholding, Lumentum receives the full amount invoiced. If Lumentum does not receive all amounts when due (i) any due and unpaid portion of the fees shall bear interest in the amount of one and one half percent (1.5%) per month (annual rate 19.56%) or the maximum rate allowed by law, whichever is less, (ii) Lumentum may immediately suspend deliveries, licenses and/or performance of any Goods and/or Services, and (iii) Lumentum may require payment in advance for any subsequent orders or deliveries and/or further performance. At Lumentum's request, Customer shall provide an irrevocable letter of credit from a financial institution and with terms reasonably acceptable to Lumentum. All amounts are due in U.S. currency, unless Lumentum specifies otherwise in writing, e.g., a quotation or invoice. All sales are final.

6. INTELLECTUAL PROPERTY CLAIMS.

6.1 Claims. Lumentum will defend or settle any third-party claim against Customer that Goods and Services (excluding Build to Print Products as defined in Section 10.3) as delivered by Lumentum infringe a third party's copyright, trade secret right or U.S. patent provided Customer promptly notifies Lumentum in writing, and cooperates with and provides control of the defense or settlement to Lumentum, to the extent legally permissible.

6.2 Remedies. In the event of an infringement claim under Section 6.1 (Claims), Lumentum will pay (i) infringement claim defense costs, and (ii) settlement amounts and final court-awarded damages, provided in all cases that such costs, amounts, and/or damages do not exceed the limitations provided in Section 7 below. If such a claim appears likely, Lumentum may, at its option, modify the Good or Service, procure any necessary license, or replace it. If Lumentum determines that none of these alternatives is reasonably available, Lumentum will, subject to Customer's return of the Goods or Services upon request by Lumentum, provide a prorated refund of the fees that Customer paid for such Goods or Services, depreciated on a 36 month (Software) or 60 month (Product) linear basis.

6.3 Exclusions. Lumentum has no obligation for any claim of infringement arising from: (i) Lumentum's compliance with, or use of, Customer's designs, specifications, instructions or technical information; (ii) Goods and Services modifications by Customer or a third party; (iii) Goods and Services not used as expressly provided within the Documentation, Lumentum's specifications or related application notes; or (iv) use, combination, and/or operation of the Goods and Services with products not supplied by Lumentum. This Section 6 states Lumentum's entire liability, and Customer's sole remedy, for infringement

claims. This indemnity is given to Customer solely for its benefit. Lumentum disclaims all warranties, conditions and other terms of non-infringement or title with respect to any Goods and Services.

7. LIMITATION OF LIABILITY.

7.1 Limitations. IN NO EVENT SHALL LUMENTUM HAVE ANY LIABILITY FOR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, REVENUE, OR DATA, INSTALLATION OR REMOVAL COSTS, OR COST OF COVER. THE LIABILITY OF LUMENTUM FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH ANY GOODS OR SERVICES SHALL NOT EXCEED A TOTAL AMOUNT EQUAL TO THE PURCHASE PRICE PAID OR PAYABLE BY CUSTOMER FOR THE GOODS OR SERVICES PRINCIPALLY RESPONSIBLE FOR SUCH DAMAGES WITHIN THE LAST 12 MONTHS PRECEDING THE CLAIM UNDER THIS AGREEMENT.

7.2 Scope. THE LIMITATIONS OF LIABILITY IN SECTION 7.1 (LIMITATIONS) SHALL APPLY TO ANY DAMAGES OR LIABILITIES (INCLUDING, WITHOUT LIMITATION, ANY LIABILITIES OR PAYMENTS UNDER SECTION 6 INTELLECTUAL PROPERTY CLAIMS), HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER DERIVED FROM CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR ANY OTHER LEGAL THEORY, EVEN IF LUMENTUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE UNDER THESE TERMS OF SALE OR ANY OFFERING-SPECIFIC TERMS FAIL OF THEIR ESSENTIAL PURPOSE.

8. CONFIDENTIAL INFORMATION. Customer will protect the secrecy of Confidential Information with due care. Customer will not (i) disclose Confidential Information to anyone, except to persons in its own organization who have a need to know in order to fulfill Customer's obligations or exercise Customer's express rights under the Agreement and who are bound by non-disclosure obligations requiring them to keep the Confidential Information secret; and (ii) use Confidential Information except as necessary for the performance of Customer's obligations or the exercise of Customer's express rights under the Agreement.

9. RIGHTS IN INTELLECTUAL PROPERTY AND TOOLING.

9.1 All Rights Reserved. Except as expressly agreed otherwise in writing, Lumentum and its licensors reserve all rights, title and interests, including Proprietary Rights, to (i) any Software, Firmware and/or Documentation, and (ii) all Intellectual Property in and/or related to the Goods and Services. Software, Firmware and Documentation are licensed, not sold. The use of a copyright notice on any Good or Service shall not be taken to indicate that it has been published. All right, title and interest in and to any Work Product, Intellectual Property and/or Proprietary Rights, whether or not subject to statutory protection, which are made, created, developed, written, conceived or first reduced to practice by Lumentum solely, jointly or on its behalf, in the course of, arising out of, or as a result of Services performed, and any related tooling, set-up, fitting-up and preparation charges whether or not invoiced, shall belong to and be the sole and exclusive property of Lumentum.

9.2 No Reverse Engineering. To the extent legally permissible, Customer agrees not to, and shall not, reverse engineer, translate, create derivative works of, decompile, separate, and/or disassemble, any Goods or portions thereof nor allow or assist others to do so.

9.3 Actions under Mandatory Law. To the extent that Customer is expressly permitted by applicable mandatory law to take any actions that are prohibited under these Terms of Sale or any other terms of the Agreement, included, but not limited to, reverse engineering, Customer agrees to refrain from exercising such rights unless and until Customer has given Lumentum three (3) weeks' prior written notice of Customer's intent to exercise any such rights and Lumentum has not offered reasonable alternatives to Customer's exercise of the mandatory rights within such three (3) week period.

9.4 Marks and Labels. Customer acknowledges the goodwill associated with Lumentum's trademarks. Customer shall not obscure, remove or alter any trademarks, patent numbers, labels, serial numbers, product identification, copyright or other notices affixed to any Goods and Services, related documentation or packaging, without the express prior written consent of Lumentum. Customer shall display Lumentum's and its licensors' names and logos as well as the name of any Goods and Services on each copy of Software or Documentation made by Customer (provided that Customer shall not make any copies except as permitted by Lumentum in a duly signed writing).

9.5 Firmware License. Subject to the terms and conditions of this Agreement, Lumentum grants Customer a non-exclusive, limited and restricted license to use Firmware as part of the Product on, with, or for, which it is delivered or made available; Lumentum does not permit Customer to make any copies or derivative works of Firmware and Customer may not transfer Firmware, except as part of the same Product on, with, or for, which it is delivered or made available. Firmware may include license terms provided by Lumentum and/or its third-party licensors which will apply to the use of the Firmware, and take precedence over these license terms.

9.6 Documentation License. Lumentum grants Customer a non-sub-licensable, non-exclusive, non-transferable, limited license to use the Documentation that Lumentum provides for Customer's internal business purposes solely in support of Customer's use of the Goods and Services. Customer is not authorized to copy or modify Documentation, except as expressly permitted by Lumentum in a duly signed writing.

10. LIMITED PRODUCT WARRANTY AND DISCLAIMER.

Except as expressly noted otherwise hereunder, this Section 10 applies only if and to the extent Customer orders, or Lumentum delivers Products, but not, for example, if and to the extent Customer orders Software.

10.1 Limited Product Warranty. Notwithstanding any provision to the contrary (but subject to the operation of any law to the extent it cannot be excluded), Lumentum's sole and exclusive obligations to Customer for any Product made by Lumentum and sold hereunder are solely as described in this Section 10.1 and Section 10.2 below, with such obligations being limited solely to any Product which has been returned to Lumentum under the RMA procedure (as defined in Section 11) and which

in the reasonable opinion of Lumentum is determined to be defective in workmanship, material or not in compliance with the Lumentum specification applicable to the Product and has in fact failed under normal use on or before: (i) for Commercial Laser Products, the lesser of: (a) twelve (12) months from the Delivery Date; or (b) five thousand (5000) hours of Product usage; and (ii) for all other Lumentum Products one (1) year from the Delivery Date of the Product, unless otherwise stated in writing by Lumentum in accordance with Section 12.3. All third-party products (including Software or Firmware) provided by Lumentum carry only the original manufacturer's warranty applicable to Customer. Lumentum will only accept for repair, replacement or credit under warranty Products made by third parties if expressly authorized to do so by the relevant third party. Any Product repaired or replaced under warranty is only warranted for the period of time remaining in the original warranty for the Product. Customer shall have no warranty claims, unless Lumentum receives from Customer, before the end of the warranty period and within thirty (30) days of the date on which Customer first came to know, or should have known, about the warranty claim, (A) a written notice describing the warranty breach in reasonable detail (a "Warranty Claim"); and (B) information in sufficient detail to enable Lumentum to reproduce and analyze the failure.

10.1.1 Excluded Causes. Customer has no warranty rights with respect to defects or non-conformities caused by (i) use of the Product with hardware or software that was not expressly specified in writing by Lumentum as suited for use with the Product; (ii) Customer's failure to follow Lumentum's operating instructions; (iii) failure to implement updates; (iv) changes to the Customer environment in which Product was installed; (v) acts or omissions of persons other than Lumentum or its authorized representatives; (vi) installation or maintenance of Product by someone other than Lumentum or persons certified by Lumentum; (vii) being accidentally damaged, disassembled, modified, misused, repaired or reworked (by any party other than Lumentum or its authorized agents), improperly stored or handled, used in conjunction with another product that is incompatible or of an inferior quality, or used in applications which exceed the Product's specifications or ratings, neglected, improperly installed or otherwise abused or is used in hazardous activities; or (viii) Force Majeure conditions as defined in Section 12.7 (Force Majeure).

10.1.2 Excluded Product and Components. Customer has no warranty rights with regard to any (i) consumable Product or parts thereof (e.g., parts with an expected useful life of less than ninety (90) days, such as certain batteries); (ii) Product that has been modified by someone other than Lumentum, unless such modifications were directed or approved by Lumentum in writing and made in conformance with all specifications and instructions provided in such writing; (iii) prototypes, experimental, alpha, beta, field trial or unqualified Product; (iv) any patches, updates, or revisions that Lumentum makes, at its sole discretion, available on its website or otherwise (for the avoidance of doubt, Lumentum is not obligated to make any patches, updates, or revisions available outside the scope of specific maintenance agreements); (v) build to print Product (other than provided in Section 10.3 – Build to Print) and any other Product that Lumentum provides in accordance with Customer's request, specifications, or instructions, unless Lumentum agrees in a duly signed writing that the provided Product shall be covered by the limited warranty specified in Section 10.1 (Limited Product Warranty); and (vi) Product not returned in accordance with Lumentum's RMA procedure. Additionally, to be clear, warranty rights do not include mandatory technical support (e.g., end-to-end case management, subject matter expertise via web and telephone support, in-region local language and time support). Lumentum technical support is provided under a service contract (which each customer must enter separately with Lumentum) and therefore, is treated by Lumentum as a category of service independent from warranty rights. To the extent that Lumentum provides access to technical support without a separate, valid support contract, it shall be at Lumentum's sole discretion and Lumentum may discontinue such technical support at any time. In such cases, incidents will be logged and tracked on a reasonable effort basis; Lumentum does not commit to resolving any incidents without a valid service contract. Committed service level response times are reserved for separately paid-for technical support service pursuant to contracts or standard support terms and conditions, as applicable, as defined therein.

10.1.3 Refurbished Parts and Prior Testing (for Commercial Laser Products only). Product may incorporate reconditioned or refurbished parts or subassemblies and may have been used in testing prior to sale. However, any Product sold containing such reconditioned or refurbished parts/subassemblies meets Lumentum's Product specifications for newly manufactured Products.

10.2. Exclusive Remedies. If any Product materially fails to conform to the limited warranty set forth in Section 10.1 (Limited Warranty) and actually fails during the applicable warranty period and under normal use, Lumentum shall, at its sole discretion (i) repair or replace the non-conforming Product to remedy the non-conformity identified by Customer in accordance with Section 10.1 (Limited Product Warranty); or (ii) issue a credit to Customer for the amounts paid for the Product in exchange for return of the non-conforming Product, in which case Customer's licenses to any Firmware shall be automatically revoked. Customer hereby transfers to Lumentum title and ownership of any parts that Lumentum replaces.

10.3 Build to Print. Any Product that Lumentum makes or customizes in accordance with Customer's specifications ("Build to Print Product") is excluded from the limited warranty in Section 10.1 (Limited Product Warranty). With respect to Build to Print Product, Lumentum warrants only that Lumentum performs the manufacturing services in a professional and workmanlike manner and in accordance with standards reasonably applicable to such services. Lumentum will re-perform any services which are not in compliance with this warranty if Customer notifies Lumentum of non-compliance in writing, on or before thirty (30) days immediately following completion of the applicable services. THIS SERVICE WARRANTY IS THE ONLY WARRANTY THAT APPLIES TO THE PROVISION OF CONTRACT MANUFACTURING SERVICES OR BUILD TO PRINT PRODUCTS TO CUSTOMER.

10.4 Disclaimer. THE REMEDIES EXPRESSLY PROVIDED IN THIS SECTION 10 WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND SHALL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST LUMENTUM WITH RESPECT TO ANY NON-CONFORMANCE OF GOODS AND/OR SERVICES. EXCEPT AS SPECIFIED IN SECTION 10.1 (LIMITED PRODUCT WARRANTY) AND 10.3 (BUILD TO PRINT), LUMENTUM MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY PRODUCT. LUMENTUM DISCLAIMS ALL

IMPLIED WARRANTIES, CONDITIONS, AND REPRESENTATIONS INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, REGARDLESS OF THE LEGAL THEORY ON WHICH SUCH IMPLIED WARRANTY MAY BE BASED, INCLUDING, WITHOUT LIMITATION, CONTRACT, COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

11. RETURN PROCEDURE. Customer must make all claims under the warranties, and no claim will be accepted from any third party. The warranties set forth herein are non-transferable. With respect to warranty claims under this Agreement, Lumentum will accept Goods only if returned in compliance with Lumentum's Return Material Authorization process ("RMA"). Customer shall obtain an RMA number from Lumentum prior to returning any Goods and ship the Goods prepaid and insured to the local care center or FCA point, as instructed by Lumentum. If Customer returns Goods without an itemized statement of claimed defects, Lumentum will not evaluate the Goods and Services but will return them to the Customer at the Customer's expense. Any Good that is returned to Lumentum but which is found to meet the applicable specifications for the Good and/or is not defective in workmanship and materials shall be subject to Lumentum's standard examination charge in effect at the time, which shall be charged to, and paid for by, Customer.

12. MISCELLANEOUS

12.1 Compliance. Customer shall obtain all licenses, permits and approvals required by any government and shall comply with all applicable laws, rules, policies and procedures of the applicable government and other competent authorities. Customer will indemnify and hold Lumentum harmless for any violation or alleged violation by Customer of such laws, rules, policies or procedures. Customer shall not transmit, export or re-export, directly or indirectly, separately or as part of any system, the Goods or any technical data (including processes and services) received from Lumentum, without first obtaining any license required by the applicable government, including without limitation, the United States Government and/or any other applicable competent authority. Customer also certifies that (i) none of the products or technical data supplied by Lumentum will be sold or otherwise transferred to, or made available for use by or for, any entity that is: (a) located in an "embargoed" country in accordance with any applicable government list(s) including without limitation, those of the United States, (b) a 'denied' or 'restricted' party on any applicable government list(s) including without limitation, those of the United States, and/or (c) engaged in the design, development, production or use of nuclear, biological or chemical weapons or missile technology; (ii) no relevant agency or authority has suspended, revoked or denied Customer's export and/or import privileges; and/or (iii) Customer is not located in or under the control of a national or resident of, a jurisdiction where this transaction is prohibited.

12.2 Data Security. Customer and Lumentum will both ensure that all Confidential Information and any other data is handled by a method and means that is secure and compliant with applicable data protection laws, as well as compliant with any other rea-sonable data security requirements specified by either Lumentum or Customer.

12.3 Choice of Law and Jurisdiction. The Agreement and its validity, interpretation and performance, and any related dispute between the parties ("Disputes") shall be governed by the laws of the State of California and the United States of America, as if performed wholly within the State of California, and without giving effect to any principles of conflict of laws. The parties specifically disclaim the application of (i) the United Nations Convention on Contracts for the International Sale of Goods and/or its implementing and/or successor legislation and/or regulations; and/or (ii) principles of conflicts of law and that body of law applicable to choice of law. Lumentum and Customer hereby irrevocably and unconditionally submit to the jurisdiction of the courts in the State of California and all courts competent to hear appeal therefrom and such courts shall have exclusive jurisdiction over any Disputes. Customer waives its right to a jury trial. Notwithstanding the foregoing, either party may, at its sole discretion, seek injunctive relief in any court of competent jurisdiction (including, but not limited to, preliminary injunctive relief). The prevailing party in any legal proceeding brought by one party against the other party in a Dispute shall be entitled to recover its legal expenses, including, but not limited to, the costs of any court or arbitration proceeding and reasonable attorneys' fees.

12.4 Entire Agreement. This Agreement contains the entire agreement between Lumentum and Customer concerning the subject matter of this Agreement, and apart from any existing non-disclosure agreements, this Agreement supersedes any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder. No provisions in any purchase orders, or in any other documentation employed by or on behalf of either party in connection this Agreement, regardless of the date of such documentation, will affect the terms of this Agreement, even if such document is accepted by the receiving party, with such provisions being deemed deleted. Any notices and any modifications of, or amendments to, the Agreement shall be invalid, unless (i) notices are in writing and sent by fax or by registered or certified mail, postage prepaid, or via email; and (ii) modifications and amendments are in writing and signed by duly authorized officers of both parties. Representations made by sales or technical personnel of Lumentum shall have no legal effect, unless confirmed by a senior executive of Lumentum (senior vice president or above) in writing. Furthermore, notices to Lumentum are invalid, unless and until received at the address specified in the preamble of these Terms of Sale with a copy to Lumentum Operations LLC, Attn. Legal Department, 1001 Ridder Park Drive, San Jose, California, 95131 or at such other address(es) as may be specified by Lumentum to Customer in writing as the appropriate address for notices.

12.5 Dates and Timelines. All references to days shall be to calendar days, except as expressly noted otherwise. All scheduled shipment dates, delivery dates, and other dates are non-binding estimates, unless a senior executive of Lumentum (vice president and above) expressly agrees in a duly signed writing that a certain date shall be legally binding.

12.6 No Waiver. The failure or delay of either party to exercise or enforce any right or claim does not constitute a waiver of such right or claim and shall in no way affect that party's right to later enforce or exercise it, unless such party issues an express written waiver, signed by a duly authorized representative.

12.7 Assignment and Delegation. Customer may not assign any of its rights against Lumentum, and any (purported) assignment, either voluntarily or by operation of law, is invalid. Any warranties extended by Lumentum are nontransferable and for Customer's benefit only. Lumentum may assign its rights and delegate its obligations.

12.8 Force Majeure. Any non-performance or late performance – except of payment obligations – of either party shall be excused to the extent that performance is rendered impossible or delayed by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing or late-performing party whether or not similar to the foregoing. If by reason of any such force majeure event, Lumentum's supplies of Goods and Services are limited, Lumentum shall have the right to prorate the available supply in such a manner as it, in its sole discretion, determines appropriate.

12.9 Audit. Upon reasonable notice, Lumentum or its agent(s) may inspect Customer's facilities (including computers) and records to verify Customer's compliance with these Terms of Sale and any Software license terms and payment for all Software licensed (including applicable support fees) to Customer. Customer will keep records regarding its use in sufficient detail to permit this verification. Customer shall fully cooperate with such audit, and grant all required assistance and dial-in and/or on-site access to all networks, records, materials and equipment. If, after an audit, it is determined that Customer had underpaid any amounts due, Lumentum will invoice Customer for and Customer will pay the amount of the underpayment plus interest from the date payment was due. If the underpayment is more than five (5%) percent of the amount properly due, Customer will also reimburse Lumentum for its audit expenses. Lumentum's rights and remedies under this Section 12.8 shall be in addition to and not in lieu of any other rights or remedies that are available to Lumentum at law or in equity.

12.10 Severability. If and to the extent that any of the terms of this Agreement, except payment obligations, become or are declared to be illegal by any court of competent jurisdiction, such terms shall be null and void and shall be deemed deleted from this Agreement, but only to the extent that such term is illegal, it being the intent and agreement of the parties that the Agreement shall be deemed amended by modifying such term to the extent necessary to make it legal while preserving its intent or, if that is not possible, by substituting therefore another term that is legal and achieves the same objective. All remaining terms of this Agreement shall remain in full force and effect.

12.11 No Authority. The parties to this Agreement are independent contractors. No relationship of principal to agent, master or servant, employer to employee or franchiser to franchisee is established hereby between the parties. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever. Lumentum neither assumes nor authorizes any third party, person or entity to assume or accept any liability or obligation, or to make any commitment for Lumentum with regard to the Goods and/or Services.

12.12 Interpretation. In this Agreement, unless a contrary intention appears: (i) the terms, "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular portion hereof and include any agreement supplemental hereto; (ii) words importing a singular number only shall include the plural and vice versa; (iii) the term "including" means "including without limitation"; (iv) other grammatical forms of defined words or expressions have corresponding meanings; (v) a reference to a section, document or agreement, including this Agreement, includes a reference to that section, document or agreement as amended from time to time, as permitted hereunder; and (vi) the division of this Agreement into sections and the insertion of headings are for convenient reference only, and shall affect neither the construction nor the interpretation of this Agreement.