

**TOSOH QUARTZ, INC.**  
**Terms & Conditions (TQI as Seller)**

**REQUEST FOR QUOTATION, PLACEMENT OR ACCEPTANCE OF ORDER.** A request for quotation, placement or acceptance of an order by your company ("**Buyer**") shall constitute an acceptance of the terms and conditions contained herein. Any of the Buyer's terms and conditions which are in addition to or different from those contained herein and which are not separately agreed to by Tosoh Quartz, Inc. ("**Seller**") in writing, are hereby objected to and shall be of no effect. All offers shall be deemed accepted by Buyer upon transmission to Seller of Buyer's acceptance of the offer in any reasonable manner.

**PRICE.** Published prices and quoted prices, unless otherwise specified, are subject to change without notice and do not include any applicable taxes or duties. Seller reserves the right to revise the pricing if there is any change in quantity, inventory availability, size, finish or method of shipment different from those contained in the original order, any foreign currency exchange fluctuation, increase or imposition of taxes or duties or increase in the costs of labor, materials or other costs of manufacture.

**RETURNS.** No product may be returned without the Seller's consent. The Seller reserves the right to impose a 20% restocking charge for approved returns. Payment for all in-bound and out-bound freight charges on approved returns will be the responsibility of the Buyer unless prior arrangements have been agreed to by Seller.

**CANCELLATIONS.** No order may be canceled by Buyer without Seller's written approval. Seller may, at its sole discretion, condition its approval of the canceled order upon Buyer paying a cancellation charge equal to Seller's actual costs to obtain materials necessary to fill the order, and/or Seller's actual costs for work in progress or finished goods.

**PAYMENT TERMS. Terms of payment shall be set forth on the face of the quotation or invoice.** Terms are calculated from the date of invoice. All payments are to be made in U.S. Dollars. Any unpaid balance after the required payment date shall be subject to a finance charge of 1-1/2% per month (18% per annum) from such date. Payments shall be made without right of setoff. Seller shall have the right to suspend credit or to modify credit terms, or to withhold deliveries when, in Seller's sole discretion, the Buyer's financial condition so warrants. In the event the Seller is required to institute any type of action or proceeding to recover any obligations due Seller by Buyer, Seller shall be entitled to receive, as an additional item of damages, reasonable collection and/or attorneys' fees incurred by Seller in pursuit of any obligations due from Buyer.

**SHIPMENT.** If Buyer has not provided written routing and shipping instructions, Seller reserves the right to select carrier and routing. All shipments are F.O.B. Origin, unless other arrangements have been made.

**DELIVERY.** In no event will the Seller be responsible for loss or damage due to failure to make delivery in accordance to the delivery estimate. In addition, the Seller shall not be liable for failure in shipment or delivery caused by fires, strikes, casualties, delays in transportation, pandemics, acts of God, shortage in material, delay by subcontractor or other causes beyond the Seller's control.

**TITLE.** Title to the products sold hereunder shall not pass to the Buyer until the entire purchase price and all other obligations of the Buyer under these terms of sale are paid and performed in full.

**LIMITED WARRANTY AND LIMITATION OF REMEDIES.**

(a) Buyer has an affirmative duty to inspect all products sold hereunder for shipping damage immediately upon receipt and to notify Seller of any such damage within three (3) business days of receipt. If Seller is not notified of such damage within three (3) business days of receipt, the product will be deemed accepted by Buyer. Seller warrants that all products sold hereunder will be free from defects in materials, workmanship and thermal cracking under normal use for a period of thirty (30) days from date of installation. Seller's warranty does not extend to any defects caused by (1) improper handling or storage, (2) modification of the product without Seller's prior written consent, (3) use of the products outside their intended use/application, or (4) improper installation or use of the products. Any defective product shall be returned to Seller at Seller's expense and Seller shall bear the risk of loss of any such product while the product is in transit, provided that the Buyer has packed the product as specified below. If Buyer fails to pack the product as specified below, Seller's limited warranty will be null and void and the party seeking to enforce the warranty will have no warranty cause of action or remedy against Seller. Upon receipt of all products packed as specified below, Seller will examine the product and determine to its satisfaction that the product is indeed defective. If Seller determines that the product is defective, Seller shall at its option repair, replace or refund the amount paid for such product.

(b) THIS LIMITED WARRANTY SHALL BE THE EXCLUSIVE REMEDY FOR SUCH DEFECTS IN MATERIAL, WORKMANSHIP OR THERMAL CRACKING AND THE BUYER HEREBY WAIVES ALL OTHER REMEDIES ARISING BY LAW OR OTHERWISE. THIS WARRANTY IS THE ONLY EXPRESS WARRANTY APPLICABLE TO THE PRODUCTS AND THERE ARE NO OTHER WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF SAVE AS MANDATED BY APPLICABLE LAW.

(c) **ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.**

(d) IN NO EVENT WILL SELLER BE LIABLE FOR PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR SPECIAL LOSSES, AND/OR FOR LOSS OF PROFITS, OPPORTUNITY OR GOODWILL, WHETHER DIRECT OR INDIRECT, OR BUSINESS INTERRUPTION.

(e) Product returned to Seller for any reason requires assignment of a RMA or RAN number, as applicable, and prior approval from Seller, which will not be unreasonably withheld. Any returned product must be packed and shipped in the original container and packaging and in accordance with Seller's instructions to ensure the safety and resale value of the product. If the original container and packaging are not available, the sending party, with approval from Seller, will provide packaging sufficient to prevent damage during shipping. Failure to comply with these provisions shall invalidate any claim for breach of warranty.

**INTELLECTUAL PROPERTY INFRINGEMENT.** In the event a third party brings a lawsuit or claim against Buyer due to the infringement or alleged infringement by a product of (i) a U.S. issued patent, or (ii) a trademark, copyright or other intellectual right ("Infringement Claim"), Buyer will give prompt notice of same to Seller. Seller shall defend Buyer in such Infringement Claim and Seller shall be responsible for the legal and related costs and expenses of such defense as well as the costs and expenses of any settlement or compromise of such Infringement Claim, provided Buyer shall give Seller full and complete authority, information and assistance (at Seller's expense) for such defense and no settlement or compromise shall be made without Seller's prior

written consent. Concurrent with defending the Infringement Claim and/or in the event a Product is held to constitute infringement, Seller, at its option in its sole discretion, shall have the right to do any one or more of the following: (a) retain the right for Buyer to continue using the product; (b) modify the product so that it becomes non-infringing; or (c) remove it, grant Buyer a credit for the purchase price thereof, and cease further supply of like products. Seller's obligations do not extend to lawsuits or claims of infringement arising from (1) Seller's compliance with Buyer's design, drawing, specifications or instructions, including the design, drawing, specifications or instructions of an OEM selected by Buyer, (2) Buyer's use of the product in combination with other items or products, or (3) Buyer's manufacturing process used on the product (any circumstance listed in clauses (1) - (3), an "Exception"). The foregoing remedy is exclusive and constitutes Seller's sole obligation for any claims of intellectual property rights infringement. Buyer shall defend Seller in any lawsuit or claim of intellectual property infringement arising from an Exception, and Buyer shall be responsible for the legal and related costs and expenses of such defense as well as the costs and expenses of any settlement or compromise of such lawsuit or claim, provided Seller shall give Buyer full and complete authority, information and assistance (at Buyer's expense) for such defense and no settlement or compromise shall be made without Buyer's prior written consent.

**MAXIMUM LIABILITY.** WITH THE EXCEPTION OF SELLER'S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS SET FORTH ABOVE, TO THE EXTENT SELLER IS HELD LEGALLY LIABLE TO BUYER UNDER THIS AGREEMENT, SELLER'S MAXIMUM LIABILITY IS LIMITED TO THE ACTUAL PURCHASE PRICE OF THE PRODUCTS AT ISSUE.

**EXPORT CONTROLS.** By accepting delivery of the products, Buyer warrants and represents that products sold under this agreement are for ultimate use in the country of destination (ship to location) identified on Seller's quotation or order acknowledgement, and Buyer will not export the products outside of such country of destination without complying with any export control laws that may be applicable to such export, including obtaining a license or other clearance from a governmental agency with authority over the export.

**CONFIDENTIALITY.** Buyer shall use confidential information obtained by it in relation to the Seller only to purchase and use the products and shall not without Seller's written consent disclose or permit the disclosure of any of the information except in confidence to those of its employees, officers and professional advisers who need to have access to it and who are bound by confidentiality and restricted use obligations substantially similar to those contained herein. The provisions of this paragraph shall not apply to confidential information that: (i) the Buyer can prove was known to it before receipt; (ii) is in or enters the public domain through no wrongful act by or on behalf of the Buyer; (iii) was received from a third party without obligations of confidence owed directly or indirectly to Seller; or (iv) is required to be disclosed in order to comply with applicable law, provided Buyer shall give Seller advance notice of the required disclosure to the extent legally permitted and disclose only the information required to be disclosed. Within three days of receipt of a request to do so made at any time, even after the agreement has been fully performed by both parties, Buyer shall promptly return or destroy (at the option of the Seller) all such confidential information.

**ARBITRATION.** All disputes that may arise between the parties regarding the interpretation of the agreement and the legal effect of the agreement shall, to the exclusion of any court of law, be arbitrated and determined in accordance with the latest Commercial Arbitration Rules of the American Arbitration Association. The arbitration proceeding shall be held in Portland, Oregon. The parties recognize and consent to the above mentioned arbitration association's jurisdiction over each of them.

**GOVERNING LAW.** This agreement will be governed by and construed in accordance with the laws of the State of Oregon, USA, without regard to conflict of law principles. In the event this agreement pertains to the sale of any goods outside the United States, the parties agree that the United Nations Convention for the International Sale of Goods shall not apply.

**EFFECT OF OTHER WRITTEN AGREEMENTS.** In the event that any provision of any other written agreement signed by both Buyer and Seller (whether now or hereafter in effect) is inconsistent with any term or condition set forth herein, the provisions of such other written agreement shall govern.