

LPKF Laser & Electronics North America GENERAL TERMS AND CONDITIONS



LPKF Laser & Electronics provides all systems, equipment, accessories, tools, supplies, and related items (collectively "Products") subject to the following terms and conditions:

1. Shipment: All LPKF prices are FCA from LPKF's primary site in Tualatin, Oregon or from LPKF sites in Garbsen, Fürth, or Suhl Germany, as designated by LPKF ("LPKF Site"). Prices include import duties to the United States, if applicable, unless stated otherwise. Costs of shipping and insurance shall be paid by Customer, as well as all federal, state and local taxes, excise taxes and tariffs. Customer shall reimburse LPKF for any taxes which LPKF may be required to pay on the Customer's behalf.

2. Payment Terms: All amounts must be prepaid, except to extent of credit approval. Upon such approval, payment terms are net 30 days from invoice date unless stated otherwise. LPKF may invoice any deferred amounts on or after the agreed Ship Date. A late fee of 1.5% per month will be charged on all amounts owing over 30 days after invoice date. Until received payment in full, LPKF shall have a security interest in all Products, and LPKF may file any UCC forms necessary to perfect such security interest.

3. Delivery and Acceptance: LPKF shall arrange for delivery of the Products to the site specified by Customer. The date on which the foregoing is achieved shall be the "Delivery Date". Following the Delivery Date, Customer shall promptly conduct any tests it deems necessary to assure itself that the Products meet the Acceptance Criteria, and Customer shall execute an Equipment Acceptance immediately following such tests. In any event, The Products shall be deemed to be finally accepted by Customer fourteen (14) days following the Delivery Date, unless written notice has been delivered to LPKF specifying any deficiencies. The date of final acceptance shall be referred to as the "Final Acceptance Date". Upon receipt of a notice of deficiency, LPKF shall make reasonable efforts to correct the specified deficiency, and shall notify Customer when such efforts are complete. The procedures and time limit set forth above for testing and notice following the Delivery Date, shall then apply commencing upon LPKF's notice to Customer that LPKF's correction efforts are complete.

4. Warranty:

4.1 LPKF warrants that all hardware components of the Products will generally conform to, and perform in accordance with, published Product specifications as of the agreed Ship Date, and for a period of one (1) year thereafter. Subject to the foregoing, all Products are sold "AS-IS" without any other representations and warranties. LPKF expressly disclaims any warranties, express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose, with respect to all Products provided by LPKF.

4.2 In the event of a warranty claim, Customer may return hardware components to the LPKF Site; thereafter the sole obligation of LPKF shall be to repair or replace the Products, at the election of LPKF. Customer pays shipping and insurance to LPKF Site, and LPKF pays shipping and insurance back to Customer. Title remains with Customer, who is solely responsible for the Products except while the Products are at the LPKF Site.

4.3 LPKF may attempt to repair Products through shipment of a replacement board or module; LPKF will supply the replacement board or module on an exchange basis; Customer shall promptly return all replaced boards or modules to LPKF and Customer pays shipping and insurance.

4.4 Warranty claims for laser systems and components shall be conditioned upon Customer providing accurate record of all data pursuant to operating manual. Warranty does not include preventative maintenance of laser systems or components. Warranty service may be provided at customer site, by sending replacement parts or by providing loaner components.

4.5 The foregoing shall constitute Customer's sole remedy against LPKF. LPKF shall have no further liability in any way arising in connection with the use, maintenance, storage, transport, or operation of the Products, whether such liability may be based on breach of warranty, breach of contract, negligence,

strict liability, tort liability, product liability, or any other theory.

5. Factory Support: LPKF offers technical factory support for Products owned by the Customer which originally purchased and has continuously remained the sole owner of such Products, for the life of the Products, provided software upgrades are kept current at all times.

6. Extended Warranty Service: Extended annual support is available beyond initial warranty period. This includes telephone support, system repair at LPKF Site or customer site, one on-site maintenance visit per year, and travel costs and expenses. Contact LPKF for applicable annual cost. Extended warranty must be purchased at least 30 days before current annual warranty expires, and at least 200 hours of operating time before current annual warranty expires. Milling motors and laser sources are excluded from extended warranty coverage unless stated otherwise.

7. Service (Non-warranty): For Products not covered by warranty, service is available at LPKF or customer site, on a time and material basis. Customer is responsible for shipping and insurance both ways. Title remains with Customer, who is solely responsible for the Products.

8. Returns: Chemicals and other consumable Products are nonreturnable. All other Products may be returned with advance approval only, and only within the thirty (30) day period following invoice date. All returned Products shall be subject to a 10% inspection and restocking fee. Furthermore, LPKF will inspect all returned Products, and may assess additional charges within its reasonable discretion, for damage or wear and tear affecting the Products.

9. Leasing: Products may be leased, in accordance with terms of a separate lease agreement, which requires first and last month's payment at lease signing. Leasing rate is subject to credit approval. Additional Fees, state and local taxes may apply.

10. Trademarks: LPKF, the LPKF logo, ProConduct, ProtoLaser and ProtoMat are registered trademarks of LPKF Laser & Electronics AG in the United States and/or other countries. All other trademarks or service marks are mentioned for identification purposes only, and are proprietary to their respective owners. Customer shall not infringe upon any such marks.

11. Substitutions and Modifications: LPKF reserves the right to make substitutions and modifications in the specifications of Products provided that such substitutions or modifications do not materially affect overall Product performance.

12. Safe Use and Training: Customer shall limit use of the Products to the employees of Customer, and other representatives and agents of Customer, who have received complete training and instruction in use of the Products including all safety precautions. Customer assumes full responsibility for the safe and responsible use, operation, storage, and maintenance of the Products, in full compliance with all applicable manufacturer's instruction and standards. Customer shall utilize its best efforts to ensure that all persons who operate the Products, do so in a safe and responsible manner in full compliance with such instructions and standards.

13. Release: Customer acknowledges that the use, maintenance, or operation of the Products may be hazardous, and Customer assumes full responsibility for risks of all bodily injury, death, or property damage involving the Products directly or indirectly. Customer does hereby release, waive and forever discharge LPKF, as well as the officers, directors, shareholders, agents, and employees of LPKF and LPKF's successors and assigns, regarding any and all claims for loss or damage resulting from the storage, use, maintenance, or operation of the Products whether caused by the negligence of Customer, LPKF, or other parties.

14. Intellectual Property Indemnification by LPKF

14.1 LPKF will defend, or at its option settle at its expense, all suits or proceedings instituted against Customer, and pay any award of damages assessed against Customer in such suits or proceedings, insofar as the same are based on any claim that the Products or any parts thereof furnished by LPKF constitute an infringement of any patent, copyright, or other intellectual property right. With respect to any such claim, Customer shall (i) give immediate written notice to LPKF of any actual or threatened claim, (ii) permit LPKF through its counsel to defend the same and (iii) give LPKF all needed information, cooperation, assistance, and authority. LPKF will not, however, be responsible for infringements of combination patents, process patents or copyrights covering the use of the Products in combination with other products, equipment or materials not furnished by LPKF.

14.2 If any Products are judicially determined to cause infringement and their use is enjoined, LPKF, within a reasonable time, will, at its option, either (i) secure for Customer the right to continue using the Products, or (ii) at LPKF's own expense, replace the Products with noninfringing Products, or (iii) accept Customer's return of the enjoined Products and refund the sums paid therefore. THE FOREGOING CONSTITUTES LPKF 'S ENTIRE LIABILITY AND OBLIGATION (EXPRESS, STATUTORY, IMPLIED OR OTHERWISE) WITH RESPECT TO INTELLECTUAL PROPERTY INFRINGEMENT OR CLAIMS THEREFORE.

15. Limitation of Liability: LPKF SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER LOSS, DAMAGE, OR EXPENSE, DIRECTLY OR INDIRECTLY ARISING FROM THE USE, OPERATION, MAINTENANCE, STORAGE, OR TRANSPORT OF THE PRODUCTS, ON ANY THEORY OF LIABILITY, WHETHER OR NOT LPKF HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. LPKF NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PARTY TO ASSUME FOR IT, ANY OTHER OR ADDITIONAL LIABILITY OR RESPONSIBILITY IN CONNECTION WITH THE PRODUCTS.

THIS EXCLUSION ALSO ENCOMPASSES ANY LIABILITY WHICH MAY ARISE OUT OF THIRD PARTY CLAIMS AGAINST CUSTOMER.

16. Indemnification and Further Assurances by Customer

16.1 Except for those intellectual property claims for which LPKF indemnifies Customer as set forth above, Customer shall defend and indemnify LPKF (including payment of attorney fees) against any and all claims, suits, or legal actions involving the Products, which may be asserted by the customers of Customer or other parties in privity with Customer on any theory of liability other than products liability. The parties acknowledge LPKF has no control over the design, manufacture or use of products designed or produced using the Products, and LPKF shall have no liability with respect thereto. Customer assumes all liability to third parties arising from the use of Products, and shall fully defend, indemnify, and hold LPKF harmless with respect to such liability, including payment of attorney fees.

16.2 Customer's foregoing obligation to indemnify shall include the duty to defend and indemnify LPKF as well as the officers, directors, shareholders, agents, and employees of LPKF, and its successors and assigns, against any and all claims, actions, or liability (including attorney fees), arising from the storage, use, maintenance, or operation of the Products. In the event of an actual or threatened claim, Customer shall promptly acknowledge its obligations hereunder, and shall promptly notify LPKF of all material developments with respect to the investigation, negotiation, and resolution of such claim.

17. International Sales Provisions: Customer will obtain and maintain all consents, approvals, authorizations, designations and filings, including those for currency controls, which may be required in any country in which Customer receives, uses, or stores the Products. Any and all obligations of LPKF to provide the Products, as well as any technical assistance, will be subject in all respects to such United States laws and regulations as will from time to time govern the sales, license, and delivery of technology and products abroad by persons subject to the jurisdiction of the United States, including the Export Administration Act of 1979, as amended, any successor

legislation, and the Export Administration Regulations issued by the Department of Commerce, International Trade Administration, or Office of Export Licensing. Customer agrees that, unless prior authorization is obtained from the Office of Export Licensing, it will not export, re-export, or transship, directly or indirectly, to Country Group Q, S, W, Y, or Z (as defined in the Export Administration Regulations), or Afghanistan, or the People's Republic of China (excluding Taiwan) any of the technical data (including software) delivered to Customer or the direct product of such technical data.

18. Waiver: The failure by LPKF to enforce at any times any of the provisions of these terms, to exercise any election or option provided herein, or to require at any time the performance by Customer of any of the terms herein will not in any way be construed as a waiver of such provisions.

19. Force Majeure: Nonperformance of either party, except for the making of payments, shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.

20. Disputes: The legal relations of the parties and all other matters hereunder, shall be governed by the laws of the State of Oregon, USA. Disputes may be resolved in a court of competent jurisdiction located in Portland, Oregon, and Customer consents to the jurisdiction of such court. Any legal action based on these terms and conditions must be commenced within one (1) year after the accrual of such action.

21. Restriction: Customer shall not make the Products available for use or inspection by any party other than those expressly permitted hereby to use the Products. Customer shall not modify or enhance the Products. Customer shall not design, construct, manufacture, market or sell the Products or any product which is similar to the Products, and Customer shall take reasonable steps to prevent its officers, agents, employees, and representatives from doing the same.

22. Severability: If any term or condition hereof is found unenforceable, the remaining terms and conditions will remain binding upon

the parties as though said unenforceable provision were not contained herein.

23. Time of Essence: Time is of the essence hereof with respect to each and every provision hereof in which time is a factor.

24. Successors: These terms and conditions shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

25. Attorney Fees: The prevailing party in any action or arbitration shall be awarded reasonable attorney fees at trial, on appeal, and for post judgment collection.

26. Relationship of the Parties: Neither party shall exercise any control over the activities and operations of the other party, and each party hereto is recognized as an independent contractor. Under no circumstances shall the parties be construed as partners, agent and principal, joint venturers, franchisor and franchisee, nor employer and employee.

27. Construction: The captions used herein are intended for convenience only and shall not in any way affect the meaning or construction of any provision hereof. The rule of construction that a written document is construed against the party preparing or drafting such document shall specifically not be applicable to the interpretation hereof.

28. Entire Agreement

28.1 Except as otherwise agreed by the parties in a writing signed by an officer of LPKF, these terms and conditions and any attachments constitute the entire agreement between LPKF and Customer.

28.2 The agreement may not be modified, supplemented, qualified or interpreted by any trade usage or prior course of dealing not expressly made a part of these terms in writing.

28.3 Customer acknowledges that Customer has not relied upon any warranty or representation by any person or entity except for the warranty specifically set forth herein.