

PRODUCT SALE AGREEMENT

This Product Sale Agreement (this “Agreement”) is entered into effective upon the date of purchase (the “Effective Date”) between Nihon Tokushu Kogaku Jushi Co., Ltd., a corporation established and existing under the law of Japan having its head office at 2-16-10 Hasune, Itabashi-Ku, Tokyo 174-0046 Japan (“Seller”) and a Buyer (“Buyer”) (collectively the “Parties” or individually a “Party”).

RECITALS

WHEREAS, Seller desires to sell an acrylic Fresnel lens to Buyer, and Buyer desires to purchase such product from Seller;

NOW, THEREFORE, the Parties mutually agree to enter into this Agreement in accordance with the terms and conditions stated herein.

Article 1. Definitions

For purposes of this Agreement, including any Exhibits, the following terms shall have the following meanings:

- 1.1 “Delivery Date” shall have the meaning set forth in Article 3.
- 1.2 “Product” shall mean an acrylic Fresnel lens as described in Exhibit “A”.
- 1.3 “Purchase Price” shall have the meaning set forth in Article 2.2.

Article 2. Sale of Product

- 2.1 Seller shall sell to Buyer, and Buyer shall purchase from Seller the Product.
- 2.2 The price of the Product (the “Purchase Price”) will be the price agreed upon in email correspondence between Buyer and Seller EXW (Incoterms 2010).

Article 3. Delivery

- 3.1 Seller shall deliver the Product to the carrier designated by Buyer at the point of delivery designated in Article 2.2 on or before the delivery deadline. The actual date of delivery shall be referred to herein as the “Delivery Date”. Seller will inform Buyer by email as soon as possible, but in no event less than 30 business days prior to the promised delivery date, of any possible delay in the delivery of the Product.
- 3.2 Upon Buyer's receipt of the Product, Buyer shall conduct a visual inspection of the Product. If, as a result of the visual inspection, Buyer discovers a non-conformity to this Agreement (a “Non-Conformity”) (e.g. wrong model), (i) Buyer shall inform Seller of the Non-Conformity within 30 business days after its receipt of the Product (such initial notice (*tsuchi*) shall not be treated as a claim (*seikyu*) for purposes of

this Agreement), and (ii) the Parties shall resolve the situation through a claim process applying the same claim deadlines and remedies as set forth in Article 6. Any Non-Conformities that are not and cannot reasonably be ascertained by a visual inspection (e.g. Product quality problems and other Non-Conformities that become apparent only upon the use of the Product) shall be subject to the warranty provisions of Article 6. In such cases, (i) the deadline for the initial notice (*tsuchi*) of the Non-Conformity shall be the same as the deadline for the warranty claim (*seikyu*), and (ii) the initial notice of the Non-Conformity shall be deemed to be given at the time the warranty claim is made.

3.3 Special Notes Regarding the Molds

- (i) Seller will not use the mold(s) except for manufacturing purposes as instructed by the Buyer.
- (ii) The mold(s) manufactured by Seller will be kept in-house to ensure confidentiality and quality control of the mold(s). We strictly prohibit the removal of the mold(s) from Seller's property.
- (iii) Duplicating, or attempting to duplicate a mold by using a product created from Seller's original mold is strictly prohibited. Buyer shall contact Seller in the event that the Buyer requires a copy for reasons such as mass production.
- (iv) Seller will provide a mold disposal certificate in the event that the mold is returned.
- (v) The molds are stored in-house and managed by Seller's employees. However, the molds may naturally become defective over time. Seller does not accept responsibility for deterioration/damage of molds due to aging and/or natural disasters.
- (vi) If Seller receives no orders to use the mold(s) for two years or more, Seller will contact Buyer to discuss plans for future use. If there are no future orders planned using the mold(s), Seller will proceed with the disposal of the mold(s) with permission from Buyer.

Article 4. Payment

- 4.1 Buyer shall pay Seller the Purchase Price as follows: (i) the full Purchase Price shall be payable within 7 days after Buyer's receipt of Seller's invoice, which shall be issued promptly after the execution of this Agreement. Shall payment not be received within 7 days after Buyer's receipt of Seller's invoice, the order will be considered as cancelled. Seller's obligation to deliver the Product shall be conditioned on Buyer's payment of Seller's initial invoice referenced above.
- 4.2 Buyer shall pay Seller the Purchase Price by online payment system or wire transfer to a bank account designated by Seller. Buyer shall be responsible for any fees charged by the online payment systems or banks in connection with such transactions.
- 4.3 All sales, consumption, value-added, or similar taxes assessed on the sale of the Product will be the responsibility of Buyer.

Article 5. Termination

- 5.1 If either Party commits a material breach of any of its obligations under this

Agreement and fails to correct such breach within 30 business days after receiving notice of the breach from the non-breaching Party, the non-breaching Party shall have the right to terminate this Agreement effective immediately upon written notice to the breaching Party.

5.2 If either Party (the “Insolvent Party”) is subject to any of the circumstances listed below, the other Party (the “Terminating Party”) shall have the right to terminate this Agreement, with immediate effect, upon written notice to the Insolvent Party; provided, however, that if the Insolvent Party ceases to be subject to the relevant circumstances before receiving any such notice of termination, the Terminating Party's right to terminate this Agreement by reason of such circumstances shall lapse.

(i) the Party commences a judicial or administrative proceeding under a law relating to insolvency for the purpose of reorganizing or liquidating the Party or restructuring its debts;

(ii) a third party commences any of the proceedings listed in the previous paragraph against the Party and either (a) the proceeding is not dismissed within 20 business days after commencement, or (b) any court before which the proceeding is pending issues an order approving the case;

(iii) the Party is subject to a judicial or administrative order for an attachment, preliminary attachment, preliminary injunction, execution of judgment, foreclosure of mortgage/lien, or any similar action as to any of its property;

(iv) a receiver, trustee, administrator, or liquidator is appointed or authorized to take charge of any or all of the property of the Party for the purpose of enforcing a mortgage/lien or for the purpose of general administration of such property for the benefit of the Party's creditors;

(v) a government agency that oversees/regulates the Party's business operations terminates the Party's license to operate or otherwise orders the Party to cease its business operations; or

(vi) a promissory note or check issued by the Party is dishonored by its bank.

5.3 If this Agreement is terminated in accordance with Article 5.1, or if a Party is subject to any of the circumstances listed in Article 5.2, any amounts owed by the breaching/Insolvent Party to the other Party hereunder shall become immediately due and payable, regardless of the original due date.

5.4 If either Party is not able to perform its obligations under this Agreement due to a force majeure as described in Article 13, and such force majeure continues in effect for more than 1 month, the other Party shall have the right to terminate this Agreement effective immediately upon written notice to the non-performing Party.

5.5 Articles 5.3, 5.5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 will survive the termination of this Agreement for so long as the subject matter therein is relevant. If the Product has been delivered as of the time of such termination, Articles 6 and 7 will also survive such termination for so long as the subject matter therein is relevant.

Article 6. Warranty and Limitation of Liability

- 6.1 Seller warrants that the Product will conform to the specifications for the Product contained in Exhibit “B” for a period of 1 year starting from the Delivery Date. SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, RELATING TO THE PRODUCT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 6.2 Any claim by Buyer alleging a breach of the above warranty shall be made within 1 year after the Delivery Date, in relation to a breach that occurred during the above-referenced warranty period. Buyer's sole remedy for any such breach of warranty shall be, at the option of Seller, (i) repair of the Product to cause it to conform to the warranty, or (ii) a replacement Product that conforms to the warranty. Any alleged breach of warranty that cannot be duplicated or otherwise objectively confirmed by Seller shall be deemed to not be a breach of warranty.
- 6.3 With the exception of liability relating to intellectual property, Seller shall not be liable to Buyer for any consequential or indirect damages that Buyer may suffer in relation to the Product, including but not limited to, lost profits, lost revenues, lost business chance, loss of use of the Product, and loss of use of other products or facilities. In addition, notwithstanding any other provision herein to the contrary, Seller's aggregate liability arising from the Product shall not exceed the total amount paid by Buyer to Seller for the products.
- 6.4 In no event shall Seller be liable for any direct, indirect, punitive, incidental, special consequential damages, to property or life, whatsoever arising out of or connected with the use or misuse of its products.
- 6.5 Seller’s employees or representatives, oral or other written statements, do not constitute warranties, shall not be relied upon by Buyer, and is not part of the contract for sale or this limited warranty.

Article 7. Intellectual Property Infringement

Seller shall defend and indemnify Buyer against any claim or legal action brought by a third party alleging that Buyer's use of the Product infringes the intellectual property or other proprietary rights of the third party.

Article 8. Notices

All legal notices relating to this Agreement shall be made in writing and shall be sent by registered or certified airmail, with receipt confirmed by a signed return receipt or internet tracking to the following respective addresses of the Parties or to such other addresses/ as the Parties may designate in writing from time to time in accordance with this Article. If sent by airmail, the notice shall be deemed to be received 7 business days after the date of postmark or on such earlier actual delivery date as is evidenced by the signed return receipt or internet tracking. However, if any notice is received or deemed to be received after normal business hours or on a non-business day at the

place of receipt, the notice shall be deemed to be received on the following business day.

Seller:

Nihon Tokushu Kogaku Jushi Co., Ltd.
Attention: Mr. Koichi Sato, President
2-16-10 Hasune
Itabashi-Ku, Tokyo 174-0046
Japan

Article 9. Amendment

No amendment or modification to this Agreement shall be effective unless evidenced by a writing executed by both Parties.

Article 10. Waiver

The failure at any time of either Party to enforce or require strict compliance with any provision of this Agreement shall in no way be construed as a waiver of such provision nor in any way be construed to affect the right of such Party to thereafter enforce that or any other provision of this Agreement.

Article 11. Severability

In the event that a court or other tribunal of competent jurisdiction at any time holds that any provision of this Agreement is illegal or unenforceable, such provision shall be severed from this Agreement, and the remainder of this Agreement shall not be affected thereby and shall continue in full force and effect.

Article 12. Entire Agreement

This Agreement, including any Exhibits attached hereto, contains the complete and entire understanding of the Parties with respect to the subject matter hereof and supersedes any prior negotiations, agreements, and understandings between the Parties with respect to such subject matter. Each Party specifically acknowledges that the other Party has made no representations or promises (written or oral) inducing execution of this Agreement other than those specifically stated herein.

Article 13. Force Majeure

Notwithstanding anything herein to the contrary, neither Party hereto shall be liable for its failure to perform any of its obligations hereunder if precluded by riot, epidemic, power or communication line outage, war (whether declared or undeclared), terrorist act, fire, flood, tidal wave, earthquake, or other natural disaster, nuclear accident, strike, lockout, or other labor trouble, acts or non-acts of any governmental entity or official, or any other cause beyond the reasonable control of the Party. If either Party wishes to invoke this provision, it shall promptly notify the other Party in writing of the nature

of the force majeure and the affected obligations. The Party invoking this provision shall use its best efforts to minimize the effect of the force majeure and resume performance of the suspended obligations as soon as practicable.

Article 14. No Assignment/Successors and Assigns

- 14.1 Neither Party may assign or grant a security interest in any of its rights or delegate any of its obligations under this Agreement to a third party without the prior written consent of the other Party. Any purported assignment/grant of security interest/delegation made in violation of this provision shall be null and void. Notwithstanding the above, either Party may assign all of its rights and delegate all of its obligations under this Agreement without the consent of the other Party in the case of a merger or the sale of substantially all of the assets or stock of the assigning Party, provided that the assignee assumes all of the assigning Party's obligations under this Agreement. No partial assignment or delegation shall be allowed in such a case.
- 14.2 Subject to the restrictions on assignment contained herein, this Agreement shall inure to the benefit and be binding upon the Parties and their respective successors and assigns.

Article 15. No Third Party Beneficiary

This Agreement is solely for the benefit of the Parties and their successors and assigns, subject to the restrictions on assignment contained herein, and shall not be construed to confer any rights on any third parties.

Article 16. Headings for Reference Only

All headings in this Agreement are for reference only and shall not be considered in construing the meaning of this Agreement or the intent of the Parties.

Article 17. Communications in English

All communications between the Parties relating to this Agreement shall be in the English language.

Article 18. Governing Law and Dispute Resolution

- 18.1 This Agreement as well as all claims arising out of or in connection with this Agreement or the transactions contemplated by this Agreement (including all tort and other non-contract claims) shall be governed by and construed in accordance with the substantive laws of Japan, without regard to any conflict of law principles, as if both Parties were Japan entities and this Agreement was to be performed entirely in Japan. [The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.] If any dispute arising out of or in connection with this Agreement or the

transactions contemplated by this Agreement (including any tort and other non-contract claims) cannot be amicably resolved by the Parties, the exclusive forum for resolution of such dispute shall be an arbitration in Tokyo, Japan in accordance with the Arbitration Rules of the International Chamber of Commerce before a single arbitrator, which arbitration award shall be binding on the Parties with no right of appeal. [The arbitration shall be conducted in the English language.] [The arbitrator shall set forth his/her reasoning in support of the arbitration award.] [The arbitrator shall not award any punitive damages, and the Parties waive any claims for punitive damages they may have against each other.] The prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs incurred in such arbitration.

18.2 This arbitration provision shall not apply to petitions for preliminary or temporary injunctive relief which may be brought in any court of proper jurisdiction.

Article 19. Execution in Counterparts

This Agreement may be executed in two counterparts, one signed by each Party, and the two counterparts together shall constitute one complete Agreement. [An electronic (scanned) version of an original counterpart shall be given the same effect as the original counterpart.]

Article 20. Conferral with Counsel

Each Party hereby confirms that it has conferred with qualified legal counsel regarding the legal effects of each provision of this Agreement.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement on the dates set forth under their signatures.

SELLER

BUYER

By: _____

By: _____

Name:

Name:

Title:

Title:

Date:

Date: