



NOTICE

Our preferred PO submission method is via email, but we will accept delivery to our physical address also. Please submit all emailed purchase orders either to sales@Vescent.com or directly to your sales representative's email. We no longer accept POs via FAX.

**Vescent Technologies, Inc.
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Tel No. (303) 296-6766 (Main Line)



VESCENT TECHNOLOGIES, INC. -- TERMS AND CONDITIONS OF SALE FOR VESCENT PRODUCTS

1. **ACCEPTANCE OF TERMS.** All sales by Vescent Technologies, Inc. (dba "Vescent") and its subsidiaries and affiliates to Buyer of the units of Vescent brand products specified in the document to which these Terms of Sale are attached (the "Products") will be governed by these terms and conditions (these "Terms of Sale"). If the terms and conditions of any offer from Buyer or any other Buyer document differ from these Terms of Sale, these Terms of Sale shall be construed as a counteroffer and will not be effective as an acceptance of Buyer's terms and conditions, which are hereby rejected. **These Terms of Sale shall be the complete and exclusive statement of the Terms of Agreement between Buyer Vescent.** Buyer's failure to dissent to these Terms of Sale in writing within five (5) days of receipt thereof or Buyer's acceptance of the Products shall constitute acceptance of these Terms of Sale. No addition to or modification of these Terms of Sale will be effective unless made in writing and signed by Vescent.
2. **QUOTATIONS AND PRICES.** If the document to which these Terms of Sale are attached (the "Document") is a price quotation, such quotation is valid for thirty (30) days. Unless otherwise stated in writing by Vescent, all prices set forth on the Document shall be exclusive of shipping, insurance, taxes, license fees, customs duties and other charges related thereto, and Buyer shall pay all such charges related thereto; provided that, if Vescent, in its sole discretion, chooses to pay any such charges, Buyer shall reimburse Vescent therefore in full upon demand. Any volume-based discounts set forth in the Document will be rescinded if Buyer fails to meet the conditions outlined in the Document and/or the corresponding Vescent quotation.
3. **PAYMENT.** Except as otherwise specified, all payments are due and payable in U.S. dollars within fifteen (15) days from the invoice date. Vescent reserves the right to require alternative payment terms, including, without limitation, a letter of credit or payment in advance. Payments not made by the due date may incur, at the sole discretion of Vescent, a late payment service charge of the lesser of one and one-half percent (1½%) per month or the maximum rate permitted by law, computed from the date payment was due. All payments, including deposits, shall be non-refundable. Vescent shall retain a purchase money security interest and/or other security interest in the Products, and in any proceeds thereof, including insurance proceeds, until Buyer has made all payments required hereunder. Buyer agrees to take any acts (including executing and delivering all documents) reasonably requested by Vescent to protect, maintain, and perfect Vescent's security interest.
4. **SHIPPING.** Shipping and delivery dates are estimates only, and in no event shall Vescent be liable for any delay in delivery or assume any liability in connection with shipment. All Products shall be delivered F.O.B. Vescent's place of shipment. Shipment costs shall be prepaid by Buyer if requested by Vescent. If Vescent insures shipment, Buyer shall pay insurance costs as invoiced by Vescent. Risk of loss and damage thereto shall pass to Buyer upon Vescent's tender of delivery thereof to a carrier at the F.O.B. point, and any loss or damage thereafter shall not relieve Buyer from any payment obligation. The carrier shall not be deemed an agent of Vescent.
5. **WARRANTY.** Vescent hereby warrants to Buyer, that during the applicable Warranty Period (as defined below) the Products will conform to Vescent's published specifications and will be free of defects in materials or workmanship when used, installed and maintained in accordance with Vescent's published specifications. Vescent's sole liability and Buyer's sole and exclusive remedy for breach of warranty shall be limited to, at Vescent's option, either repairing or replacing the defective components of the Product or crediting Buyer for the amount Buyer has paid to Vescent for the applicable Product. Vescent's liability shall apply only to Products which are returned to the factory or authorized repair point, with shipping charges prepaid by Buyer, and which are, after examination, determined to Vescent's satisfaction to be defective due to defects in materials



or workmanship. Vescent will only accept returns authorized by a Vescent customer service representative and with a valid RMA number. This warranty does not apply to Products which are designated by Vescent as “Pre-Production Products”, e.g. Alpha, Beta or Prototypes or are Products which have been repaired or modified without Vescent’s written approval, or subjected to unusual physical, thermal, optical or electrical stress, improper installation or cleaning, misuse, abuse, accident or negligence in use, storage, transportation or handling. The “Warranty Period” during which this warranty applies varies with Product type as follows:

- a. For standard Vescent lasers in which a counter is incorporated (i.e. lasers with counters for which Vescent has published a datasheet and which have not been obsoleted by the time of order placement): one (1) year after the date of original shipment or 3,000 hours of use, whichever occurs first;
- b. For standard Vescent products other than lasers with counters, (i.e. products for which Vescent has published a datasheet and which have not been obsoleted by the time of order placement): one (1) year after the original shipment;
- c. For any other Product including, without limitation, all product types as set forth in sections a. and b. of this clause 5 which are in any way customized, build-to-order, otherwise non-standard and/or are subject of a blanket purchase order: one (1) year after the date of original shipment unless otherwise agreed to in writing on a case by case basis. If, in relation to any Product Vescent offers as an additional purchase option, a warranty period over and above that which is set out in sections b. and c. of this clause 5 (“Extended Warranty”) and Buyer exercises such option then the Warranty Period shall be the duration as specified on such Extended Warranty commencing on the date of original shipment. Any Extended Warranty option is only available at the time of and on the same order as the original Product purchase.
- d. For any non-warranty Product that has been repaired, Vescent will extend the applicable Warranty Period by sixty (60) calendar days for the specific characteristic of the Product that is repaired by Vescent. Other characteristics of the non-warranty Product will remain uncovered by any warranty.
- e. For Products that are discontinued, Vescent’s liability shall terminate at the end of the applicable Warranty Period or one (1) year from the date of discontinuity, whichever occurs first.
- f. Except for the warranty stated herein and to the extent permitted by applicable law Vescent specifically disclaims any and all warranties, express or implied, including, but not limited to, any warranties of merchantability, fitness for a particular purpose, or noninfringement.

6. LIMITATION OF LIABILITY. To the extent not prohibited by applicable law:

- a. Vescent’s aggregate liability to Buyer for claims relating to the Products, whether for infringement, breach or in tort, including negligence, is limited to the amounts Buyer has paid to Vescent for the Products; and
- b. Vescent will not be liable for any indirect, punitive, special, incidental, or consequential damages in connection with or arising out of these Terms of Sale, the Document, the Products or the sale, installation, maintenance, use, performance or non-performance of the Products (including, but not limited to, replacement costs or loss of business, revenue, profits, use, data, or other economic advantage), however they arise, whether for breach or in tort, including negligence, even if Vescent has been previously advised of the possibility of such damage. The parties acknowledge that if Vescent provides the Products to Buyer, it does so in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential basis of the bargain between the parties. Liability for damages will be limited and excluded as set forth in this paragraph, even if any exclusive remedy provided for in these Terms of Sale fails of its essential purpose.

7. INTELLECTUAL PROPERTY.



- a. **Intellectual Property Rights.** Any Intellectual Property Rights on a worldwide basis, including, without limitation, patentable inventions (whether or not applied for), patents, patent rights, copyrights, work of authorship, moral rights, trademarks, service marks, trade names, trade dress trade secrets and all applications and registrations of all of the foregoing resulting from the performance of these Terms of Sale that is conceived, developed, discovered or reduced to practice by Vescent, shall be the exclusive property of Vescent. Specifically, Vescent shall exclusively own all rights, title and interest (including, without limitation, all Intellectual Property Rights throughout the world) in and to the Products and any and all inventions, works of authorship, layouts, know-how, ideas or information discovered, developed, made, conceived or reduced to practice, by Vescent, in the course of the performance of these Terms of Sale.
 - b. **Reverse Engineering.** Buyer agrees not to engage in, or cause a third party to engage in, the disassembly, analysis, or testing of the product for the purpose of extracting knowledge regarding the design, material content, or fabrication methods.
 - c. **Software and Firmware ("Code").** Buyer acknowledges that the software and/or firmware components and applications, if any, either available on a stand-alone basis or embedded or accompanying the Products sold hereunder (the "Software") and any accompanying documentation (the "Documentation") are licensed to and not sold to Buyer. Vescent shall at all times have and retain title and full ownership of the Software and the Documentation, and Buyer shall receive no rights to the Software or the Documentation except for use in or as the specific Product with which or in which it was sold. No license to use the source code of the Software is provided hereunder. Buyer shall not use, distribute, license, sublicense, resell, copy, make available or otherwise transfer all or any part of the Software or the Documentation without the prior written consent of Vescent. Buyer shall not, nor shall it permit any employee or agent of Buyer to adapt, modify, copy, reproduce, reverse engineer, decompile, decrypt or disassemble the Software in any way without the prior written consent of Vescent.
8. **CHANGES, DELAYS OF SHIPMENT, OR CANCELLATION.**
- a. **AGGREGATE ORDERS FOR STANDARD PRODUCTS NOT EXCEEDING \$5,000:** All orders of Vescent manufactured products, excluding orders for standard product exceeding \$5,000 in aggregate, OEMs, and custom orders may be cancelled upon approval and may be subject to restocking fees.
 - b. **OEM, CUSTOM ORDERS AND AGGREGATE ORDERS IN EXCESS OF \$5,000:** Buyer's order for standard product exceeding \$5,000 in aggregate and OEM, or custom products may only be changed, delayed, or cancelled with the prior written consent of Vescent. If Vescent, in its sole discretion, accepts such change, delay or cancellation, buyer shall compensate Vescent for any resulting loss or damage including, without limitation, the cost of labor, materials, and overhead expenses or upon cancellation, a fee for a minimum of sixty-five percent (65%) of the amount remaining on the purchase order as of the date of cancellation. In addition, customer-initiated delays of shipment exceeding 180 days from the original delivery date will be deemed a cancellation and fall under this cancellation policy.
9. **REMEDIES TO BUYER'S INSOLVENCY.** Vescent shall have the right to terminate any order, or to delay the shipment thereof, by reason of Buyer's bankruptcy or insolvency, breach of any terms herein, unauthorized assignment, or the pendency of any proceedings against Buyer under any statute for the relief of debtors.
10. **EXPORT CONTROL.** The Buyer, whether located or based within or outside of the United States, agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C. F. R. 120 et seq.; and



the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F.R. 730-774; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, the Buyer agrees that it will not transfer to foreign persons or entities any items, data, or services it receives from the Seller that constitutes any export of controlled items, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to the Buyer or the Buyer's suppliers, without the authority of an export license, agreement, or applicable exemption or exception. The Seller agrees to notify the Buyer if any product, data, or service the Seller supplies to the Buyer is restricted by export laws or regulations. Buyer will defend, indemnify and hold Seller harmless for any damages or costs to Seller arising from Buyer's failure to comply with these terms. Buyer agrees to indemnify Seller for any fines, penalties, claims, losses, damages, costs (including legal costs), expenses and liabilities that may arise as a result of Buyer's breach of this Section.

11. **INSPECTION.** All Products delivered hereunder shall be deemed accepted by Buyer, unless written notice of defect or nonconformity is received by Vescent within ten (10) days of receipt of Products at Buyer's designated receiving address; provided that Buyer may only reject Products for failure to meet the Products' specifications.
12. **APPLICABLE LAW.** This Agreement, and any disagreement arising thereof, will be governed by the laws of the State of Colorado without regard to that State's choice of laws, with exclusive jurisdiction and venue in the Colorado state courts of Boulder County, Colorado (or, if there is exclusive federal jurisdiction, the United States District Court for the State of Colorado). Buyer shall bring action relating to any dispute Buyer may have hereunder within one (1) year of the accrual of such dispute.
13. **MISCELLANEOUS.** Nothing in these Terms of Sale or the sale of the Products shall imply any license or other rights with respect to any intellectual property rights of Vescent or its suppliers, and Vescent reserves all such rights. All waivers of any right hereunder must be in writing and signed by Vescent. Waiver of a breach by the other party of any provision of these Terms of Sale shall not be deemed a waiver of future compliance therewith, and such provision shall remain in full force and effect. If any provision of these Terms of Sale is held invalid by any U.S. law or regulation or by any U.S. court having valid jurisdiction, such invalidity will not affect the enforceability of other provisions. These Terms of Sale and Buyer's rights hereunder may not be assigned by Buyer without the prior written consent of Vescent, and any unauthorized assignment by Buyer shall be void. These Terms of Sale constitute the entire agreement between Buyer and Vescent with respect to Buyer's purchase of the Products and supersedes all prior agreements and understandings with respect to such purchase and may not be changed or amended or superseded by conflicting terms and conditions submitted by Buyer, except by a written instrument signed by an authorized Vescent representative.