

## **ADDENDUM TO TERMS AND CONDITIONS OF SALE FOR ORDERS FOR THE DESIGN AND FABRICATION OF MASTER GRATINGS**

*THE FOLLOWING TERMS AND CONDITIONS SHALL APPLY, IN ADDITION TO THE NEWPORT ROCHESTER INC. TERMS AND CONDITIONS OF SALE TO WHICH THIS ADDENDUM IS ATTACHED AND IS A PART THEREOF:*

1. **GENERAL:** The terms and conditions of sale and delivery in this Addendum shall apply, in addition to Company's Terms and Conditions of Sale to which this Addendum is attached and is a part thereof, to all Orders for the design, fabrication or procurement of master diffraction gratings by Newport Rochester, Inc. (hereafter called "Company") for another party (called "Buyer"). These terms and conditions shall be deemed automatically incorporated by reference into each quotation and order. • The term "Master" shall mean and include all original items (i.e., those items that are not produced by replication), whether fabricated by Company or obtained by Company from another party, and whether produced at the initiative of Company or as requested by Buyer in its Order. • The term "Tool" shall mean and include all items replicated from the Master to be used in the manufacturing of Products. • The term "Engineering Fee" shall mean the fee payable by Buyer in consideration of Company's commitment of resources in connection with Company's undertakings and efforts outlined below in Section 2 and Section 3 below.
2. **NATURE OF THE ORDER:** Company will undertake to design, fabricate or procure a Master, either to substantially conform to the unique technical specifications described by Buyer in the Order, or to substantially match the performance specifications of an existing Master identified by Buyer in the Order.
3. **PARAMETERS OF THE ENGINEERING PROJECT:** After Company's receipt of all necessary information from Buyer, Company will undertake to design, fabricate or procure a Master that substantially conforms to Buyer's specifications as described in the Order. In the event Company, in its sole discretion, after a reasonable good faith effort, determines that it is unable, or that it is no longer willing, to design, fabricate or procure a Master, Company shall have no further obligation to continue hereunder, and will so notify Buyer. In addition, if Company designs, fabricates or procures a Master, which Company, in its sole discretion, determines does not substantially conform with Buyer's specifications, Company shall notify Buyer either that Company will not again undertake to design, fabricate or procure a Master, or that it will again undertake to design, fabricate or procure a Master. In the event Company notifies Buyer that it will again undertake to design, fabricate or procure a Master, Buyer shall notify Company, within five (5) calendar days from Buyer's receipt of such Company notice, not to commence performance. Failure to timely notify Company (as provided in the immediately preceding sentence) will be deemed an acceptance by Buyer of Company's continued performance.
4. **PAYMENT OF THE ENGINEERING FEE:** Buyer shall be obligated to pay Company the Engineering Fee whether or not Company designs, fabricates or procures a Master that substantially conforms to Buyer's specification (the determination of substantial conformity shall rest solely with Company), provided Company shall have used its reasonable good faith efforts to design, fabricate or procure a Master.
5. **OWNERSHIP, POSSESSION AND USE OF THE MASTER:** Notwithstanding Buyer's payment of the Engineering Fee, or Buyer's payment of any other fee(s) or cost(s), or rejection or non-use of the Master or otherwise, Buyer agrees and understands that Company does and shall own and shall retain any and all rights, title and interests in and to the Master(s) and the Tool(s).
6. **SPECIFICATIONS:** The specifications of all Masters and Tools are the property of the Company and are not proprietary to any other party. Accordingly (and without limitation), Company may promote any and all of its Masters and Tools, and their performance specifications, as it sees fit (e.g., via its catalog or web site, advertisements, recommendations to actual and prospective customers).

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