

## TERMS AND CONDITIONS OF PURCHASE

1. **Acceptance and Modification of Orders: Governing Law.** Any conduct by Seller which recognizes the existence of a contract pertaining to this order (“order” or “P.O.”) shall constitute acceptance by Seller of this P.O. and all of its terms and conditions. Any terms in Seller’s acceptance of Buyer’s offer which add to or differ from the terms herein are hereby objected to. Any such terms shall be void and the terms herein shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties and may hereafter be modified only by written instrument executed by the authorized representatives of both parties. If this P.O. has been issued by Buyer in response to an offer and the terms herein differ from any terms of such offer, then the issuance hereof by Buyer shall constitute an acceptance of such offer subject to the express condition that Seller assents to such different terms herein and acknowledges that this P.O. constitutes the entire agreement between Buyer and Seller with respect to the subject matter hereof. Seller shall be deemed to have so assented and acknowledged unless it notifies Buyer to the contrary in writing within 10 days of receipt hereof. **THIS ORDER SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OR PROVINCE IN WHICH BUYER’S FACILITY IS LOCATED WITHOUT REGARD TO ANY CONFLICTS OF LAWS PRINCIPLES. BUYER AND SELLER HEREBY EXCLUDE THE APPLICATION OF THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS.**
2. **Changes.** Buyer reserves the right at any time to direct changes, or cause Seller to make changes to drawings, specifications of the goods or to otherwise change the scope of the work covered by this order, including work with respect to such matters as inspection, testing or quality control, and Seller agrees to promptly make such changes. Any claim by Seller for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days from receipt by Seller of the change, within specified period Seller will receive an equitable adjustment.
3. **Termination.** In addition to any other rights of Buyer to cancel or terminate this order, Buyer may at its option immediately terminate all or any part of this order, at any time and for any reason, by verbal notice confirmed in writing, or by written notice. Buyer shall not be liable for and shall not be required to make any payments to Seller, directly or on account of any claims by Seller’s subcontractors, to include but not to be limited to, any loss of anticipated profit, unabsorbed overhead, interest on claims product development and engineering costs or rental unamortized depreciation costs, and general and administrative burden charges from termination of this order. Buyer may terminate this order for Seller’s failure to comply with any terms hereof or other default. In the event of termination for such non-compliance or default, Buyer shall not be liable to Seller for any amount: however, Seller shall be liable to Buyer for any extra expenses or damages incurred by Buyer.
4. **Price, Price Warranty; Payments.** In the event no price is contained herein, Seller’s price shall not be higher than the lowest of price last (a) quoted or (b) charged to Buyer, or (c) the market price. Seller warrants that the prices for the goods sold to Buyer hereunder are not less favorable than those currently extended to any other Buyer for the same or like goods in equal or small quantities. In the event Seller reduces its price for such goods during the term hereof, Seller shall reduce the prices hereof accordingly. Payment terms are 2% 30 days, net 90 days
5. **Taxes and Other Charges.** Except as may be otherwise provided herein, the contract price includes all applicable federal, state and local taxes and other charges in effect on the date hereof. In case of new taxes or other charges or increased rates, or the repeal of taxes or other charges or reduction of rates, contract prices shall be adjusted accordingly. Buyer shall not be liable for any taxes, duties, customs or assessments in connection with the sale, purchase, transportation, use or possession of the goods ordered hereunder, except those expressly set forth herein, if any.
6. **Sales and Use Tax.** The purchase items hereunder are to be used for one of the following purposes: (a) Resale; (b) Packaging and shipping materials to transfer merchandise to customer; (c) As an ingredient or component of an article to be sold; (d) Will be consumed or destroyed or lose its identity in the manufacture of property destined for sale; (e) Machines or specific processing equipment and repair parts or replacement thereof, exclusively and directly used by Buyer in the manufacturing of personal property; (f) Servicing by

repairing and maintaining machines and specific processing equipment, which property Buyer could purchase without tax at the time of such service; (g) Export; (h) Exempt by statute.

7. **Shipping and Billing.** Detailed invoices shall be mailed, or delivered through the appropriate ERS system as instructed by Buyer, at the time of shipment. Separate packing slips must be included in each shipment showing order number, quantity, part number and description of goods herein. Terms of payment shall be as previously arranged or as specified herein. If a discount is allowed to Buyer for payment within an agreed upon period, the time for taking such discount will not begin until the latter of actual receipt of invoice or the date of delivery of the goods.
8. **Delivery; Risk of Loss.** Time and rate of deliveries of all goods and services herein specified are to be considered of the essence of this order. No shipments are to be made prior to the specified delivery date unless Seller is advised by writing or verbal notice confirmed in writing to the contrary. Buyer reserves the right to withhold payment of invoices for materials shipped ahead of schedule without Buyer's prior express approval. If delivery of items or rendering of services is not completed by the time promised, Buyer reserves the right without liability, in addition to its other rights and remedies, to terminate this P.O. by notice, effective when received by Seller, and to purchase substitute items or services elsewhere and charge Seller with any loss incurred, including, but not limited to, price and quantity differences, actual and projected account losses, and incurred time and expense losses regarding progress, deadline and general business adjustments. Without limiting the foregoing, absent Force Majeure, deliveries that are more than two (2) days late may, at Buyer's discretion, be subject to a 3% per week (or fraction thereof) penalty to be taken in the form of an invoice deduction from a subsequent invoice. In any event, Seller shall be responsible for any and all excess freight charges and any charges or fees Buyer is required to pay its Buyer(s) which are incurred due to late deliveries.

All shipping pallets and containers used by Seller shall comply with International Shipping Regulation ISPM – 15. Seller shall mark all shipping documents clearly with Buyer order numbers, part numbers, the quantity delivered, and the Country of Origin. A packing slip listing Buyer order numbers, part numbers, quantity shipped, and Country of Origin must be physically attached to each shipment. Seller shall make no material changes to the packaging of the products without the prior written consent of Buyer

Risk of loss of the goods shall pass to Buyer at the time the goods are actually delivered to Buyer, which includes a reasonable period for inspection by Buyer. Unless otherwise specified by Buyer in writing, shipping terms are CIF Buyer's facility, or in the case of international transactions, DDP Buyer's facility (as per INCOTerms 2000). All receipt quantities must match the P.O. quantity, with all overages returned to Seller at Seller's expense.

9. **Force Majeure.** Seller shall not be liable for any delay or failure to deliver, and Buyer shall not be liable for failure to take delivery of, products to the extent such failure or delay is caused by governmental regulations, war, riots, insurrection, civil commotion fire, flood, storm or any act of God, embargoes or other causes beyond such party's reasonable control and which could not have been reasonably anticipated by such party. Where either party claims an excuse hereunder, it must give written notice to the other party. Seller shall not be obligated to sell, nor Buyer obligated to purchase, at a later date, those products affected by Force Majeure.
10. **Warranty.** Seller warrants all goods and services delivered hereunder to be free from defect of material, design or workmanship and to strictly adhere to all drawings, specifications, processes, materials, compounds and other criteria of Buyer. Seller warrants goods shall be fit and sufficient for the purpose Buyer intends, to include but not be limited to dimensions, tolerances, and tensile strength. No modifications are allowed without prior written approval from Buyer. All warranties express and implied, shall survive any inspection, delivery, acceptance or payment by Buyer of goods and services. Seller further warrants that it will have title to all of the goods furnished hereunder and the right to sell such goods at the time of delivery to Buyer, and such goods, shall be new and unused (unless otherwise specified) at the time of delivery to Buyer. Seller further warrants that all items will be manufactured, processed, packaged, labeled, marked, tagged, tested, certified, weighed, inspected, loaded, shipped and sold by Seller hereunder in compliance with all applicable federal, state, provincial and local laws, rules, regulations and standards - including without limitation those relating to health, safety, environment, serial numbers, labeling and Country of Origin designations; all US FDA, toxic substances, US OSHA and US EPA regulations and other environmental standards (including, but not limited to

restrictions on the use of hazardous substances in electrical and electronic equipment (“RoHS”), collection, treatment, recycling and disposal of waste electrical and electronic equipment (“WEEE”), CE, and the like; the US Occupational Safety Health Act, the US Federal Labor Standards Act and all applicable civil rights laws, rules, regulations and orders; Executive Order 11246 and the rules and regulations promulgated thereunder; and the requirements of California Proposition 65 and its implementing regulations.

- 11. Inspection and Rejection.** Goods are subject to inspection by Buyer notwithstanding prior payment. Rejected goods may be immediately returned at Sellers expense and credit taken at the time of the return including the cost of transportation both ways. No goods returned as defective may be replaced except as specified by Buyer. If parts are not covered by a blueprint, they must be approved in writing by Buyer with the submission of samples. Goods may be rejected and returned if inspection shows they are not strictly in accordance with the samples, specifications, drawings and other express and implied warranty requirements. Seller agrees that Buyer shall have the right to enter Seller’s facility at reasonable times to inspect the facility, goods, materials and any property or goods covered by this order. Buyer’s inspection of goods, whether during manufacture, prior to delivery or within a reasonable time after delivery, shall not constitute acceptance of any work-in-process or finished goods.
- 12. Assignment and Subcontracting.** Seller will not assign or subcontract (in whole or in part) of this order without Buyer’s written consent.
- 13. Cancellation.** Buyer may, by written notice of default to Seller, cancel this order, or any part thereof, under any of the following circumstances; (1) if Seller fails to deliver goods, perform services, in accordance with the terms specified herein, or any extension hereof by change order or amendment hereto; or (2) if Seller so fails to make progress as to endanger performance of this order, upon Buyer’s terms; (3) if Seller fails to comply with any of the other provisions of this order.
- 14. Nonconforming Goods.** To the extent Buyer rejects goods as nonconforming, the quantities of this order will automatically be reduced unless Buyer otherwise notifies Seller. Nonconforming goods will be held by Buyer for disposition at Sellers risk. Seller’s failure to provide written instructions within ten (10) days, or such shorter period as may be commercially reasonable under the circumstances, after notice of nonconformity, shall entitle Buyer, at Buyer’s option, to charge Seller for storage, handling, or to dispose of the goods, without liability to Seller. Payment for nonconforming goods shall not constitute an acceptance thereof, limit or impair Buyer’s right to assert any legal or equitable remedy, or relieve Seller’s responsibility for latent defects. In the event of a defective or non-conforming product, Buyer shall receive, at its option, either (i) a credit against Buyer’s next invoice or any other amount due and payable to Seller (or, if no amount is due and payable to Seller, Seller shall send payment to Buyer in certified funds) for the invoiced cost of the product; or (ii) a replacement for such defective or non-conforming product. Seller shall be responsible for all freight and handling charges incurred as a result of returning any defective or non-conforming product or shipping any replacement product, as well as costs associated with quarantine of defective or non-conforming products. In addition, Seller shall reimburse Buyer for costs incurred by Buyer due to defective or nonconforming product, including but not limited to product evaluation costs (inspection and/or test), air freight, re-work costs, costs associated with a product recall and actual charges or fees Buyer is required to pay its Buyers.
- 15. Relationship of Parties.** Seller and Buyer are independent contracting parties and nothing in this order shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.
- 16. Remedies.** In the event this order is not complied with in any respect, Buyer may elect to, (a) cancel this order, (b) require replacement of the goods, (c) recover all loss, damage and expense (including consequential damages) resulting from such failure by set-off or otherwise, (d) return excess or early deliveries to Seller at its expense, or (e) require delivery by any means. Seller to pay any transportation, labor and/or other expense incurred in the foregoing. Each of the rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights or remedies provided in law or equity in this order.
- 17. Buyer’s Property.** All special tools, dies, patterns, jigs, and fixtures supplied by Buyer or paid for by Buyer remain Buyer’s property. Seller agrees to comply promptly with all disposal and shipping instructions

furnished by Buyer. Seller agrees at its expense, to maintain all property in its possession which belongs to Buyer in good condition and repair and adequately insured and to indemnify Buyer for all damage or loss to such property.

**18. Patents; Indemnification and License.**

(a) Seller agrees, at its expense, to defend any suit against Buyer its parent and affiliated entities, and their respective directors, officers, employees, agents, Buyers and distributors alleging infringement of patent or invention rights arising from the sale or use of such goods or services and to indemnify and save such parties harmless from any damages, or expenses of any nature whatsoever, paid or incurred in connection with any such suit; provided, however, that this indemnity shall not apply to any such damages or expenses arising out of compliance by Seller with specifications furnished by Buyer.

(b) Seller as part consideration for this P.O. and without further cost to Buyer hereby grants and agrees to grant to Buyer an irrevocable non-exclusive royalty-free right and license to use, sale, manufacture and repair products embodying and all inventions and discoveries made, conceived or actually reduced to practice in connection with Seller's performance of this P.O.

(c) Any information, ideas, discoveries, works of authorship, designs, software, or inventions, whether patentable or unpatentable, that result from *custom development* paid for by Buyer, including without limitation any prototypes or models, will be the property of, and are hereby assigned to, Buyer. Such works of authorship shall be deemed "works made for hire" within the meaning of Section 101 of the United States Copyright Act, 17 U.S.C. §101, owned exclusively by Buyer and, to the extent such works of authorship do not constitute same, Seller hereby irrevocably assigns, transfers and conveys all ownership rights it might have in such works of authorship to Buyer, free and clear of any liens or other encumbrances.

**19. Confidentiality.** All Buyer's specifications, documents, and prototype articles are Buyer's property which are delivered for the sole purpose of Seller's performance hereto, and on the express condition that neither they nor the information contained therein be disclosed to others nor used for any purpose other than in connection with orders from Buyer without Buyer's prior express written consent. Such specifications, documents, and articles are to be returned to Buyer promptly upon its written request. The obligations under this clause survive the cancellation, termination, or completion hereof.

**20. Indemnification.** Seller agrees to protect, defend, hold Buyer, its parent and affiliated entities, and their respective directors, officers, employees, agents, Buyers and distributors, harmless and indemnify same from and against any and all claims, charges, lawsuits, judgments, settlements or other losses of any nature whatsoever (hereinafter referred to as "Liabilities"), including actual or anticipated expenses relating to such Liabilities, including, but not limited to, attorney and expert fees, expenses incurred in connection with a products recall, rework, redesign, substitutions, removal, installation and packaging, loss of goodwill and/or Buyers (hereinafter referred to as "Expenses"), which Liabilities and/or Expenses are incurred or will be incurred by Buyer as a result of a latent or patent defect in the construction or design of the products or services purchased hereunder, a substitution in materials or specifications used by Seller, or a failure of Seller to comply with the terms of this P.O (including, without limitation, with Seller's representations and warranties herein), and all applicable laws, rules, ordinance and regulations. Sellers shall indemnify and hold harmless Buyer from all costs, liabilities and expenses related to the actions or inactions of, or injury to, any Seller Employees.

**21. Insurance.** Seller shall, at its sole cost and expense maintain the following insurance policies with insurers reasonable acceptable to Buyer: (1) Workers Compensation with Employer's Liability with limits of not less than \$1,000,000 for each accident; (2) Commercial General Liability insurance, including contractual liability insuring the indemnity agreement set forth in this Agreement and products-completed operations coverage with limits of not less than \$1,000,000 for property damage, bodily injury, sickness or death, in any one occurrence; (3) Automobile Liability insurance with limits of not less than \$1,000,000 applicable to property damage, bodily injury, sickness or death in any one occurrence; and (4) Excess liability insurance with limits not less than \$5,000,000 per occurrence. Each insurance policy maintained by Seller must be endorsed to (1) name Buyer as additional insureds except with respect to Workers' Compensation; and (2) to provide that Seller's underwriters and insurance companies shall not have any right of subrogation against Buyer, our subsidiaries,

owners, underwriters and insurance companies. (3) Provide that Seller's insurers shall notify Buyer in writing at least thirty (30) days prior to the cancellation of, or any change in the above insurance coverage. The insurance shall not affect or limit Seller's liability to Buyer in this contract or under law.

- 22. Hazard Communications Standards.** Seller shall provide Buyer with two (2) copies of appropriate MATERIAL SAFETY DATA SHEETS (MSDS) with Seller's initial shipment to Buyer, and with the first shipment after an MSDS is updated for any reason, including a change in processes or material of the article. If Seller's product does not require an MSDS, Seller shall provide Buyer with a statement to that effect.
- 23. Toxic Substance Control Act.** Seller warrants that each and every chemical substance transferred to Buyer is on the list of chemical substances compiled and published by the administrator of the Environmental Protection Agency pursuant to Section 8 of the Toxic Substance Control Act.
- 24. Compliance Certification.** In accepting this Order, Seller hereby certifies compliance with all applicable laws, statutes, ordinances, governmental administrative orders, rules, and regulations. In the event an exemption from any matters contained herein is claimed, Seller shall submit a statement containing the factual bases for such exemption.

**25. Equal Opportunity Clause.**

Without limiting any of the foregoing, during the performance of this P.O. Seller agrees as follows:

(1) Seller will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin. The policy and commitment also extends to the employment of Vietnam Era Veterans and to the hiring of qualified handicapped persons and disabled veterans. Such action shall include but not be limited to the following employment upgrading, demotion or transfer, recruitment or recruitment advertising layoff or termination, rates of pay or other forms of compensation: and selection for training, including apprenticeship. Seller agrees to post in conspicuous places, available to employees and applicants for employment notices to be provided by contracting officer setting forth the provisions of this nondiscrimination clause.

(2) Seller will in all solicitations or advertisements for employees placed by or on behalf of Seller state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, age, or national origin.

(3) Seller will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the labor union or workers' representative of Seller's commitments under this Equal Opportunity Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Seller will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Order 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) Seller will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Order 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of Seller's noncompliance with the Equal Opportunity Clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and Seller may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Order 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended by Order 11375 of October 13, 1967, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) Seller will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended by Order 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. Seller will take such action with respect to any subcontract or purchase order, as the contract agency may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that in the event Seller becomes involved in, or is threatened with, litigation with subcontractor or vendor as a result of such direction by the contracting agency, Seller may request the United States to enter into such litigation to protect the interest of the United States.