

## TERMS AND CONDITIONS

- 1. ACCEPTANCE OF ORDER:** This Order is not binding upon us ("Buyer") until accepted by you ("Seller"). Acceptance of all terms and conditions of this Order shall take place when (a) Seller remits an acknowledgement of this Order to Seller, or (b) Seller delivers all or part of the items ordered pursuant to this Order. We recognize that you may for convenience use your own acknowledgement form, however it is agreed that any terms or conditions on your form which conflict with, modify, or alter any provisions of this Order shall not apply to this Order and are waived.
- 2. DELIVERY:** Time is of the essence and deliveries must be made as set forth on the face hereof. Whenever any event delays or threatens to delay timely performance of this Order, Seller will immediately notify Buyer of such event and furnish all relevant details. Receipt by Buyer of such notice will not constitute a waiver of due dates. Partial delivery or performance will not extend the specified delivery dates unless agreed to in writing by Buyer. If delivery is not completed within the time(s) specified herein, Buyer reserves the right to pursue any available rights and remedies at law or in equity. Acceptance of goods after any delivery date shall not be construed as a waiver of any right to recover for late delivery. Unless Buyer has given prior written consent, Seller shall not make partial or complete delivery of goods prior to the specified delivery date(s).
- 3. PRICE:** Seller agrees that price(s) set forth on the face of this Order are firm, and not subject to increase provided delivery dates and quantity of the Order remain the same. Unless otherwise specified on the face of this Order, the price includes all costs for packing and delivering the goods. Unless otherwise specified on the face of this Order, Buyer shall not be liable for any taxes (including value added taxes), export or import licenses, fees, duties and the like with respect to this Order other than sales taxes which Seller is required by law to collect and for which Buyer has not supplied a tax exemption number. Any taxes shall be stated separately on Seller's invoice. Seller warrants to Buyer that the prices charged for the goods identified on the face hereof do not exceed the prices charged to any of Seller's other customers purchasing the same or lesser quantities of similar goods during similar delivery times. If Seller shall sell or offer any goods of the kind and in the same or lesser quantities covered by this Order at a lower price than specified in this Order prior to the last delivery date under this Order, such lower price shall be substituted for the price specified on the face of this Order.
- 4. INVOICES:** No sooner than delivery of the goods ordered hereunder, Seller will submit invoices in duplicate showing: purchase order number, part number, description of goods, quantity of goods, unit price of goods, any applicable tax, extended totals, and any other authorized charges. A Bill of Lading or express receipt must accompany each invoice.
- 5. PAYMENT:** Unless otherwise specified on the face of this Order, payment terms shall be net ninety (90) calendar days from the date of delivery to Buyer. Payment for any goods shall not be deemed an acceptance thereof and shall be subject to adjustment for errors, shortages, defects in the goods or other failure of Seller to meet the requirements of this Order.
- 6. PACKING AND SHIPMENT:** All goods shall be packaged in a manner (i) in accordance with good commercial practice, (ii) acceptable to common carriers for shipment at the lowest rate for the goods, and (iii) adequate to insure safe arrival of the goods at the destination. Seller shall mark all containers with necessary lifting, handling and shipping information, purchase order numbers, date of shipment and the name of the consignee and consignor. An itemized packing list must accompany each shipment.
- 7. INSPECTION:** All goods ordered hereunder shall be subject to inspection and testing by Buyer prior to final acceptance. Notwithstanding any prior inspection, testing or payments, all goods will be subject to final inspection, testing and acceptance at Buyer's plant within a reasonable time not exceeding thirty (30) calendar days after delivery. In addition to any other rights or remedies available at law or in equity, Buyer may in its sole discretion (i) reject any nonconforming goods and either hold such goods for Seller's instructions upon notification to Seller or return such goods to Seller at Seller's expense, (ii) require correction of such goods at Seller's expense, or (iii) accept such goods with an adjustment in price, such adjustment to be negotiated with Seller. If, after request, Seller fails to promptly replace or correct any defective goods, then Buyer may (i) replace or correct such goods and charge Seller the cost thereof, (ii) cancel this Order, or (iii) require an appropriate reduction in price.
- 8. RISK OF LOSS:** Title and risk of loss to the goods shall pass to Buyer at the delivery point specified on the face of this Order.
- 9. INTELLECTUAL PROPERTY RIGHTS:** By accepting this Order, Seller warrants that it owns or has all rights and licenses under all patents, trademarks, copyrights, trade secrets, mask works or applications thereof as may be necessary to permit Seller to supply, and Buyer to use, the goods and/or services ordered hereunder without infringement of any party's intellectual property rights.
- 10. WARRANTY:** Seller warrants that the goods supplied pursuant to this Order: (i) will be delivered with good and clear title, free and clear of any liens or encumbrances, (ii) will perform as specified or otherwise represented by Seller, (iii) shall be in full conformance with the specifications, blueprints, drawings, samples and data or other description furnished by Buyer and/or by Seller, (iv) shall be merchantable and fit for their intended use, (v) shall be free from defects in material, workmanship, manufacture and design, (vi) do not contain and are not manufactured with any ozone depleting substances. The foregoing warranties are in addition to all other representations and warranties, whether express or implied, and will survive any delivery, inspection, acceptance or payment by Buyer.
- 11. COMPLIANCE WITH APPLICABLE LAW:** Seller warrants that in performance of this Order it will comply with all applicable United States, foreign, international or local laws, rules, regulations or ordinances, including without limitation the requirements of Public Law 95-507, the Fair Labor Standards Act of 1938, as amended, Executive Order 11246, as amended, and the rules and regulations promulgated by the Department of Labor and the Environmental Protection Agency.
- 12. INDEMNITY:** Seller agrees to indemnify, defend and hold harmless Buyer, its parent, subsidiaries, agents, assigns and customers (collectively, the "Indemnified Parties"), from and against any and all alleged or actual claims, demands, actions, suits, proceedings and the like arising out of, or in connection with a breach by Seller of any representations or warranties in this Order, any defect in the goods purchased under this Order, or any act or omission of Seller, its agents, employees or subcontractors, and Seller shall pay all costs, losses, damages, judgments, settlements, expenses, attorney's fees, and the like whatsoever incurred by the Indemnified Parties in connection therewith; provided, however, that the foregoing indemnity and defense is conditioned on notice by Buyer to Seller of any claim for which indemnity is claimed hereunder and cooperation by Buyer in such defense.
- 13. CONFIDENTIALITY:** Seller shall treat as confidential all specifications, drawings, and other data supplied by Buyer, shall not disclose any information relating to this Order to any third party not entitled to receive it, and shall abide by all non-disclosure agreements it has with Buyer.
- 14. CANCELLATION FOR DEFAULT:** (a) Seller understands that time is of the essence for this Order; failure of Seller to deliver on time could cause Buyer's products to be unmarketable. Buyer may notify Seller of the cancellation of this Order in whole or in part, without any further liability or responsibility hereunder, if Seller (i) fails to make delivery of the goods, or to perform the services, within the time specified herein, or any extension thereof granted by written change order or amendment, or (ii) fails to replace or correct defective goods or services in accordance with any provision of this Order, or (iii) fails to perform any of the other provisions of this Order, or (iv) has so failed, in Buyer's good faith opinion, to make progress towards completion of this Order as to endanger performance in accordance with the terms hereof. (b) If all or a portion of this Order is canceled for Seller's default, Buyer may procure, upon such terms and in such manner as it may deem appropriate, goods or services substantially similar to those canceled and Seller will be liable for any excess costs occasioned thereby. (c) If all or a portion of this Order is canceled for Seller's default, Buyer may, in addition to any other rights hereunder, require Seller to transfer title and deliver, in the manner and to the extent directed by Buyer, (i) all completed goods not yet delivered and (ii) any partially completed goods that Seller has produced or acquired for the performance of the terminated portion. Payment for completed or partially completed goods delivered to and accepted by Buyer under this Section will be in an amount (not to exceed the contract price) agreed upon by Seller and Buyer; however, Seller's obligation to carry out Buyer's directions as to delivery will not be contingent upon prior agreement as to such amount. Nothing in this Section is intended to excuse Seller from proceeding with any uncanceled portion of this Order. (d) If, at any point after a notice of cancellation under this Section, it is determined for any reason that Seller was not in default, the rights and obligations of the parties shall be the same as if the notice of cancellation had been given pursuant to the "Cancellation for Convenience" provisions of this Order.
- 15. CANCELLATION FOR CONVENIENCE:** (a) Buyer may cancel this Order, in whole or in part, at any time for convenience by giving notice of such cancellation to Seller. Upon receipt of such notice, Seller shall, to the extent specified by Buyer, immediately stop all work under this Order, place no further orders and make no further commitments for materials or services to complete the cancelled portion of the work, and to the extent necessary to mitigate costs, promptly notify Seller's vendors of the cancellation to the extent they might be affected thereby. Nothing in this Section is intended to excuse Seller from proceeding with any uncanceled portion of this Order. (b) There shall be no charges for canceling this Order with respect to Seller's standard goods to the extent that such goods have not yet been shipped to Buyer. There shall be no charges for canceling this Order with respect to non-standard goods if Buyer cancels at least ninety (90) days prior to the scheduled delivery date for said non-standard goods. Otherwise, any claim for cancellation charges for non-standard goods must be submitted to Buyer in writing in the form and with the supporting documentation prescribed by Buyer within ninety (90) calendar days after the cancellation notice. Failure to submit the claim within the ninety (90) day period will constitute a waiver of all claims by Seller arising out of the cancellation. The parties shall work together to determine an equitable compensation for any cancellation claim submitted, but in no event shall Buyer be obligated to pay Seller more than the total of the following amounts: (i) the contract price for all goods actually completed in accordance with this Order prior to the notice of cancellation (to the extent not previously paid for, and provided that such completed goods are delivered to Buyer in exchange for such payment), and (ii) the actual out-of-pocket costs and unmitigable obligations incurred by Seller during the period beginning ninety (90) days prior to the notice of cancellation and ending on the date of such notice, to the extent that such costs or obligations are directly attributable to the canceled portion of this Order and are not otherwise recoverable by Seller through any reasonably available alternative disposition of materials, work-in-process, or other items within a nine (9) month period after the notice of cancellation. In no event shall Seller's claim or Buyer's liability exceed the contract price for the goods canceled.
- 16. SURVIVING TERMS:** Notwithstanding any notice of cancellation, the provisions of the Sections entitled "Intellectual Property Rights," "Warranty," "Indemnity," "Confidentiality," "Cancellation for Default," "Cancellation for Convenience," "Limitation of Liability" and "General Provisions" shall survive and continue unless they expire in accordance with their terms.
- 17. RESCHEDULING:** Buyer may reschedule shipment of the goods in whole or in part by providing Seller with at least five calendar days' notice in advance of the scheduled delivery date.
- 18. CHANGE ORDERS:** In addition to any other rights contained herein, Buyer may at any time, by written notice signed by an authorized representative of Buyer, make changes in the Order, including without limitation, changes in applicable drawings, designs or specifications, method of shipment or packing, and/or place of delivery. If Buyer's authorized changes cause an increase in the cost or the time required by Seller for performance of this Order and Seller so notifies Buyer, then an equitable adjustment will be made in the Order price or delivery schedule or both, and the Order will be modified accordingly in writing. No claim by Seller for such an adjustment will be valid unless asserted within ten (10) calendar days from the date of receipt by Seller of the notification of change; provided, however, that such period may be extended upon the written approval of Buyer. Nothing in this Section is intended to excuse Seller from proceeding with this Order as changed.
- 19. LIMITATION OF LIABILITY:** EXCEPT AS AND TO THE EXTENT EXPRESSLY PROVIDED HEREIN, OR AS OTHERWISE MANDATED BY APPLICABLE LAW, BUYER SHALL NOT BE LIABLE TO SELLER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR RELIANCE DAMAGES, LOSSES OR EXPENSES (INCLUDING WITHOUT LIMITATION LOST PROFITS) RELATING TO OR ARISING OUT OF THIS ORDER, HOWEVER CAUSED, AND WHETHER BASED ON CONTRACT, TORT, EQUITY, OR ANY OTHER THEORY OF LIABILITY, WHETHER BUYER WAS NOTIFIED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES OR EXPENSES. THE PROVISIONS OF THIS SECTION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED UNDER THIS ORDER.
- 20. GENERAL PROVISIONS:** **Assignment and Delegation** - Seller shall not sell, transfer or assign any of its rights hereunder, or delegate or subcontract any of its obligations hereunder without the prior written consent of Buyer. **Choice of Law** - This Order shall not be construed, enforced or governed by the United Nations Convention on Contracts for the International Sale of Goods; rather this Order is entered into in the State of California and shall be construed, enforced and governed solely in accordance with the laws of the State of California without giving effect to any choice of law provisions thereof. **Venue** - The exclusive venue of any action arising out of this Order shall be the Superior Court of California for the County of Santa Clara, the Superior Court of California for the County of Alameda or the United States District Court for the Northern District of California and each of the parties submits itself to the jurisdiction of such courts for the purpose of any such action. **Severability** - If any provision of this Order is held illegal, invalid, unenforceable or in conflict with any law of any governmental entity with jurisdiction over this Order, this Order shall continue in force and be interpreted and modified as necessary to give best effect to the intention of the parties as expressed herein to the fullest extent possible. **Waivers and Amendments** - The rights and obligations of the parties under this Order may be amended, changed, modified, waived or discharged (either generally or in a particular instance, either retroactively or prospectively, and either for a specified period of time or indefinitely) only by a written instrument effecting such amendment, change, modification, waiver or discharge signed by an authorized representative of the party against whom enforcement is sought. **Integration** - This Order, together with the specifications or other writings referred to herein, constitutes the entire agreement between the parties and it supersedes all prior agreements, discussions or understandings, express or implied, oral or written, with respect to the subject hereof. This Order may not be modified, supplemented, qualified or interpreted by any trade usage or prior course of dealing not expressly set forth herein. **Mediation** - If any dispute arises out of this Order, the parties agree first to try in good faith to settle the dispute by mediation. In the event of such a dispute, either party may initiate mediation by so requesting, in a writing delivered to the other party. Within ten (10) calendar days of such a request, the parties shall confer for the purpose of selecting a mutually agreeable mediator. If the parties have not been able to agree upon a mediator within twenty (20) calendar days of the request for mediation, either party may request that the Judicial Arbitration and Mediation Services (JAMS) appoint a mediator. Said mediation shall take place in the County of Santa Clara, California. **Clerical Errors** - Stenographic and clerical errors made in this Order are subject to correction.