



# Supplier Purchase Order Terms and Conditions

## 1. Sale of Goods

1.1. Seller will perform the services or supply the goods (collectively referred to as “Goods”) as described and at the prices specified on the Purchase Order.

1.2. To purchase Goods, Buyer will issue a purchase order to Seller (“Purchase Order”). Seller must accept the Purchase Order on its exact terms. The Purchase Order supersedes all prior bids, quotes or forms.

1.3. The Purchase Order constitutes an offer by Buyer to purchase the Goods from the Seller subject to these terms. The Purchase Order will be accepted by the Seller expressly by phone, fax, e-mail, mail or electronic means. Delivery of the Goods by Seller or performance of services will be deemed conclusive evidence of acceptance of these terms.

1.4. Buyer reserves the right to revoke or terminate, in whole or in part from time to time, any Purchase Order at any time before acceptance. Upon receipt of such notice, Seller will immediately discontinue work on the Purchase Order, unless such notice otherwise directs. Seller will deliver to Buyer and Buyer will pay for all completed Goods up to the date of notice of termination. The provisions of this paragraph will not limit or affect Buyer’s right to terminate a Purchase Order upon default of Seller.

1.5. Seller will not substitute materials or accessories without Buyer’s written permission. Unless otherwise stated, no deviation from the quantities specified will be accepted. Buyer’s count will be accepted as final on all shipments. Excess Goods shipped without Buyer’s permission may be returned at Seller’s expense, including transportation both ways and all handling charges.

## 2. Delivery Terms

2.1. Shipments must be made to meet the date specified in the Purchase Order. The Goods will be delivered no earlier and no later than the date set forth in the Purchase Order, using the carrier and shipper number or other delivery method provided by Buyer in the Purchase Order. No additional charge for deviation will be paid unless Buyer’s pre-approval has been obtained. Buyer may reject early shipments without prejudice to its right to require timely shipment or may accept said early shipments; provided, however, that Buyer reserves the right to withhold payment on premature shipments until the agreed delivery date.

2.2. In the event a Purchase Order is not performed or delivery is not made by the time specified, Buyer may terminate the Purchase Order and/or this Agreement. In the event a Purchase Order requires delivery or performance at different times or places, and any such performance or delivery is not made by the time specified, Buyer may cancel said delivery or performance while retaining the remainder of the order in full force and effect, or may cancel that entire order.

2.3. The Seller assumes all risk of loss or damage to all articles ordered (and other materials to be furnished by Seller) until the Goods are accepted by Buyer.

## 3. Acceptance of Goods.

3.1. The Goods ordered (including but not limited to all parts, material and workmanship) may be inspected and tested by Buyer at any time or place, and will be subject to a final inspection upon receipt by Buyer. If any such inspection or test indicates that the Goods or the Goods’ parts, material or workmanship do not conform with the Purchase Order, and Seller fails to immediately cure such non-conformity, such nonconformance will be deemed a breach by Seller. Payment for Goods of any order prior to inspection will not constitute acceptance thereof and is without prejudice to any and all claims that Buyer may have against Seller.

3.2. Acceptance of Goods will not waive Buyer's right either to cancel or to return the Goods (or portion thereof) because of nonconformance with specifications; defects, latent or patent; or breach of warranty. Failure by Buyer to reject nonconforming Goods will not require Buyer to accept subsequent Goods if they have the same or any different nonconformance.

#### **4. Payment Terms.**

4.1. Supplier will issue accurate monthly invoices to Buyer for Goods. Buyer will pay accurate invoices within thirty days of receipt of the invoice. No interest will be due on late payments unless there has been prior written agreement of the parties providing for such payment. Buyer will have the option of payment with invoices with a credit card, at which time the Purchase Order will reflect those terms.

4.2. Buyer will be entitled to set off any amount owing to Buyer against any amount due or owing to Seller with respect to any invoice, provided that both parties agree that there is an outstanding amount owed.

#### **5. Warranties**

5.1 Seller warrants that the Goods will conform to the description, standards, samples and/or specifications supplied or shown by or to Buyer; the Goods will be of commercially acceptable quality and fit for the general purpose for which sold; the Goods will be free and clear of all liens and encumbrances; and no applicable federal, state, or local laws, rules, ordinances, or regulations have been or will be violated in the manufacturing, sale, packaging (including labels), delivery and installation of the Goods.

#### **6. Indemnification**

6.1 Seller hereby agrees to hold harmless, defend and indemnify Buyer, its respective officers, directors, employees, agents and insurers from and against any and all claims, demands, lawsuits, losses, damages, expenses (including reasonable attorney fees) brought by or resulting from claims by third parties based upon or arising out of any actual or alleged: (a) accidents, injuries, and damages to persons or property that occur in connection with the use, sale or consumption of any article covered by each Purchase Order, provided the Goods were used in the customary manner in which they were intended.

#### **7. Limitation on Liability**

7.1 In no event will Buyer be liable to Seller or any third party for any incidental, indirect, special or consequential damages arising out of, or in connection with these terms whether or not Buyer was advised of the possibility of such damages in advance.

#### **8. Intellectual Property Rights**

8.1. Any and all inventions, discoveries, patent applications, patents, copyrights, trademarks and trade names, commercial symbols, and trade secrets existing and owned by Buyer, or made or conceived by Buyer employees during the Term of this Agreement, will be and remain the sole and exclusive property of Buyer. Any and all inventions, discoveries, patent applications, patents, copyrights, trademarks and trade names, commercial symbols, and trade secrets existing and owned by Seller, or made or conceived by Seller's employees, will be and remain the sole and exclusive property of Seller.

8.2. If the price to be paid is stated to include special work, tools or programming ("Special Components") used in the manufacture of the Goods, then such Special Components will be and become Buyer Intellectual Property. No Buyer Intellectual Property, Special Components, drawings or specifications supplied to Seller by, or otherwise belonging to Buyer, will be used in the production, manufacture or design of any articles other than those called for by a Purchase Order, except with the written consent of Buyer. 8.3. Upon termination of this Agreement, Purchase Order, or completion of Purchase Order, Buyer Intellectual Property, Special Components, drawings or specifications belonging to Buyer will be returned to Buyer or disposed of by Seller pursuant to Buyer's instructions.

8.4. Seller will hold in confidence any Buyer Intellectual Property that has been or will be provided to Seller and will treat Buyer Intellectual Property as Confidential Information as defined below.

## **9. Insurance.**

9.1 Seller will be solely responsible for maintaining adequate health, auto, workers' compensation, unemployment compensation, disability, liability and other insurance as is required by law or as is the common practice in Seller industry, whichever affords greater coverage. Upon request, Seller will provide Buyer with certificates of insurance or evidence of coverage.

## **10. Confidentiality**

10.1 Seller agrees to maintain in strict confidence, and not to disclose to any third party, any confidential or proprietary information of any nature whatsoever furnished by Buyer, except for information which is or becomes public or general industry knowledge. Except for information which is public or general industry knowledge, all information furnished to Seller by Buyer will be considered to be proprietary information, whether or not specifically so designated. The information furnished may include, but will not be limited to, patterns, devices, processes, compilations of information, records, specifications, drawings, computer programs, reports, databases, financial data or reports including revenue and expense of operations, cost and pricing information, past, present and future research, development, business activities, products, services and technical knowledge.

10.2 Buyer's Confidential Information may be used by Seller only in connection with the performance of completing the Goods and may only be copied or reproduced to the extent reasonable necessary for Seller to perform its obligations hereunder.

10.3 Seller Agrees to protect the Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event will either will Seller exercise less than reasonable care in protecting such Confidential Information. Access to the Confidential Information will be restricted to Seller and Seller's personnel engaged in a use permitted hereby and Seller will be responsible for any breach of the obligations by any and all persons whom it discloses Buyer's Confidential Information to.

10.4 All Confidential Information made available to Seller, including copies of the Confidential Information, will be returned or destroyed upon the completion of the Goods or request by Buyer at any time.

## **11. Compliance with Laws**

11.1 Seller will comply fully with all applicable federal, state and local laws in the performance of these Good, including, but not limited to, all applicable employment, tax, export control and environmental laws.

## **12. Consumer Safety**

12.1 Seller represents and warrants that it complies with all applicable consumer product safety laws and regulations.

## **13. General**

13.1 Entire Agreement. The terms, together with, any exhibits or attachments specifically referenced herein and Purchase Orders issued pursuant to these terms, sets forth the entire agreement and understanding among the parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements, and understandings of every and any nature among them. This Agreement may not be amended, supplemented, changed, or modified, except by agreement in writing signed by the parties. The terms and conditions of any quotation, order acceptance or other document issued by Seller will have no force or effect. In the event of any conflict or inconsistency between the terms of any Purchase Order and these terms, these terms and conditions will prevail.

13.2 Relationship of Parties. Seller will, at all times, be an independent contractor. Neither party will have any right, power or authority to enter into any agreement for or on behalf of, or to assume or incur any obligation or liabilities, express or implied, on behalf of or in the name of, the other party. This Agreement will not be interpreted or construed to create an association, joint venture or partnership between the parties or to impose any partnership obligation or liability upon either party. Each party's employees, methods, facilities and equipment will at all times be under its exclusive direction and control.

13.3 Waiver. The waiver by Buyer of Seller's nonconformance with any obligation or responsibility herein will be ineffective unless given in writing and will not be deemed a waiver of other instances of non-compliance or of any party's remedies for such non-compliance.

13.4 Force Majeure. Neither Buyer nor Seller will be liable for delays or defaults in the performance of any Purchase Order due to causes beyond its respective control, including, but not limited to Acts of God, accidents, riots, wars, government interference, non-quota related embargoes, strikes or other labor disputes. Seller will notify Buyer in writing of the cause of any such excusable delay promptly after such delay or delays by Seller. Buyer may purchase goods or obtain performance elsewhere and at Buyer's option apply such purchase to reduce the quantities due under any affected purchase order.

13.5 Term Changes. Buyer may amend these terms at anytime without prior notice by posting the amended terms on this site. All amended terms will automatically take effect once posted. The new terms will apply to all current and past Sellers and will replace all prior terms that are inconsistent.

13.6 Record Retention. Seller will retain all applicable records to Buyer's Purchase Orders for 15 years.

13.7 Notifications. Seller will promptly inform the Buyer of nonconforming product, deliveries that will not be on time, and proposed process changes that affect form or function.

13.8 Right of Access. Upon request, Seller will provide the Buyer, the Buyer's customers, and regulatory authorities access to all applicable facilities and records.

13.9 Awareness. Seller will ensure that personnel involved at all levels of Buyer's Purchase Orders are aware of their contribution to product or service conformance, their contribution to product safety, and the importance of their ethical behavior.