

## TERMS AND CONDITIONS OF PURCHASE ORDER

1. **Offer and Agreement.** This Purchase Order constitutes the complete agreement between the parties. No variation in any of the terms, conditions, deliveries, prices, quality, quantity or specification of this order: regardless of the wording of SELLER's acknowledgment shall be effective without BUYER's written consent. Acceptance of this order is expressly limited to these terms. Unless otherwise provided herein, any written acknowledgment of this Purchase Order or the delivery of any Products or the furnishing of any services in accordance with this Purchase Order shall constitute acceptance by SELLER of this Purchase Order subject to all its terms and conditions. The waiver by BUYER of any rights under this Purchase Order in any one or more instances shall not constitute a waiver by BUYER of any other right hereunder or of such rights on a future occasion. For the purposes hereof, Products shall be defined as those goods, materials, equipment or other tangible items as set forth in this Purchase Order.
2. **Pricing and Taxes.** All transactions will be in U.S. Dollars. The BUYER will reimburse the SELLER only for applicable state and local sales and use taxes, unless the BUYER advises SELLER that an exemption applies. Taxes payable by the BUYER shall be billed as separate items on the SELLER's invoices and shall not be included in the SELLER's prices. The BUYER shall have the right to contest any such taxes that the BUYER deems improperly levied at BUYER's expense by the SELLER. SELLER shall deliver the Products to the BUYER free and clear of all liens, claims and encumbrances. The BUYER assumes no liability for Products produced, processed or shipped in excess of the amount specified in the Purchase Order.
3. **Delivery and Scheduling.** The SELLER shall notify BUYER in writing within two (2) business days of receipt of Purchase Order if SELLER is unable to make any scheduled delivery. The absence of such notice constitutes acceptance of the delivery schedule on the Purchase Order. The BUYER may reschedule any Purchase Order in whole or in part prior to the delivery date at no additional charge. BUYER may place any portion of a Purchase Order on hold by notice that shall take effect immediately upon receipt. Purchase Orders placed on hold will be rescheduled or terminated in accordance with Cancellation section, within 180-days.
4. **Packing and Shipment.** All Product shall be prepared for shipment following good commercial practice, in a manner that is acceptable to common carriers for shipment at the lowest rate and is adequate to ensure safe arrival. SELLER shall mark all containers with necessary lifting, handling and shipping information, purchase order number, date of shipment and names of BUYER and SELLER. As directed by BUYER, Product shipments will be managed by either BUYER or SELLER according to the following terms: (a) BUYER managed shipments shall be shipped Delivered Duty Paid, Buyers Dock (DDP: Buyer's Dock, Incoterms 2010). Title and risk of loss shall pass to BUYER upon delivery of Products to BUYER's dock, or (b) SELLER managed shipments shall be shipped Free Carrier, SELLER's Dock (FCA: Supplier's Dock, Incoterms 2000). Title and risk of loss shall pass to BUYER upon delivery of Products to BUYER's agent at the SELLER's dock.
5. **Cancellation.** BUYER may cancel purchase orders in whole or in part at any time for its sole convenience by giving written notice of termination to SELLER. Upon SELLER's receipt of such notice, SELLER shall unless otherwise specified in such notice, immediately stop all work hereunder, give prompt written notice and cause all of its vendors or subcontractors to cease all related work and, at the request of BUYER, return any materials provided to SELLER by BUYER. There shall be no charges for termination of purchase orders for standard items or for services not yet provided. BUYER will be responsible for payment for authorized items and services already provided but not yet invoiced. The determination of whether an item is standard shall be the SELLER's standard comparable item as currently sold in the general marketplace. SELLER's claim for cancellation fee may include the documented and substantiated unrecoverable net cost of custom work in process and claims from SELLER's suppliers, up to a maximum of forty percent (40%) of the outstanding Purchase Order for all deliveries scheduled within thirty (30) days of the cancellation notice, and up to a maximum of twenty percent (20%) for all deliveries scheduled within thirty-one to ninety (31-90) days of the cancellation notice. No cancellation fee will be paid for deliveries scheduled beyond ninety (90) days. In no event shall such a claim exceed the total price for the Products terminated. Upon payment of Seller's claim, BUYER shall be entitled to all work and material paid for. Notwithstanding anything to the contrary, SELLER shall not be compensated in any way for any work done after receipt of BUYER's notice, nor for any costs incurred by SELLER's vendors or subcontractors after SELLER receives the notice, nor for any costs SELLER

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could reasonably have avoided, nor for any indirect overhead and administrative charges or profit of SELLER. Any claim for cancellation charges must be submitted to BUYER in writing within thirty (30) days after receipt of BUYER's termination notice.

6. **Product Specifications and Changes.** SELLER agrees that Product to be shipped to BUYER is exactly as specified, and in compliance with all drawings and revision levels and any referenced specifications as related to such Product. If Product fails to conform to the specifications, Product may be returned for credit without penalty. Upon acceptance of this Purchase Order, no changes in the Product design, Product specifications, material supplier or processes used in manufacturing the Product shall be made without BUYER's written consent, without at least six (6) months written notice. No charges for extras will be allowed unless such extras have been ordered in writing by BUYER and the price agreed upon in writing. BUYER shall have the right from time to time, by its written Change Order, to make changes or additions, within the scope of this Purchase Order, in or to (a) the drawings, specifications, or instruction for the work, (b) the quantity, or (c) the time or method of delivery or shipment. Should any change so ordered cause a material increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Purchase Order, an equitable adjustment shall be made in the order price or time of performance or both. SELLER shall, however, as a condition precedent to any right to such adjustment, submit its written claim for such adjustment to BUYER within thirty (30) days after its receipt of BUYER's Change Order. SELLER shall, unless written instructions to the contrary have been received from BUYER, proceed with the work as changed without interruption and without awaiting settlement of any such claim. No change shall be considered as an addition or alteration to or deduction or deviation from the work called for by the specifications, drawings and samples nor shall SELLER be entitled to any compensation for work done pursuant to or in contemplation of a change, unless made pursuant to a written Change Order issued by BUYER.

7. **Inspection and Acceptance.** The BUYER shall have the right to enter the premises of the SELLER during normal business hours with respect to the performance of this Purchase Order, subject to the SELLER's plant rules and regulations, security regulations and procedures as they may be applicable. All Products, materials and work in progress shall be subjected to inspection and test at all times and places. If any inspections or tests are to be made by BUYER on SELLER's premises, SELLER shall furnish, without additional charges, all reasonable facilities and assistance for safe and convenient inspections. All inspections and tests shall be performed in such a manner as will not unreasonably delay work. All shipments are subject to inspection by BUYER after receipt by BUYER at destination. If Product supplied or work performed by SELLER is found to be defective, in addition to all other rights herein, BUYER shall have the right to require the prompt correction thereof by SELLER, at SELLER's risk and expense. If correction of such work is impractical, SELLER shall bear all risk after notice of rejection, to promptly make all necessary replacements if requested by BUYER. If SELLER fails to make such replacements promptly, BUYER may make the same and back-charge to SELLER the costs incurred by the BUYER. BUYER's final inspection and acceptance may not occur until the Products are used and BUYER reserves the right to reject up to such time.

8. **Warranties & Representations.** SELLER hereby represents, warrants and agrees that all Products furnished under this Purchase Order will be new, merchantable, free from defects in design, material and workmanship and will conform to and perform in accordance with the Product specifications and drawings. SELLER warrants to BUYER that during the warranty period, SELLER will at its sole cost and expense, at BUYER's option, repair, replace or refund the purchase price of any Product which is defective in material or workmanship. SELLER is responsible for the cost and risk of loss of such non-conforming Product while in transit.

9. **Relationship.** The relationship between BUYER and SELLER is that of independent contractors. Neither party is authorized to create or assume any obligation on behalf of the other. This Purchase Order is intended solely for the benefit of the parties hereto. Nothing herein is to be construed to create any duty or standard of care to any person not a party to this Purchase Order.

10. **Software License.** As used herein, Software means any software and/or firmware provided with, embedded in or that is necessary, required or normally provided by the SELLER for the use and/or operation of Products, including bug fixes, updates, enhancements and new releases developed by SELLER during the term of

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the Purchase Order. Documentation means all user documentation necessary to instruct BUYER in the proper installation, use and operation of Software or Products that accompany either Software or Products. SELLER grants to BUYER a fully paid, worldwide, transferable, non-exclusive, perpetual license under all intellectual property rights owned or licensed by SELLER and embodied in the Software and/or Documentation to install, copy and use the Software and use and distribute the Documentation internally in the operation of the Software or Product. BUYER may make a reasonable number of archived copies of Software for back-up purposes. BUYER may copy the Documentation or portions thereof, for internal use purposes. Buyer may not reverse engineer the Software. BUYER may transfer the Software and Documentation, and all rights associated therewith, as part of the sale, lease or other transfer of all rights in Product for which the Software and Documentation were provided or required, provided that the transferee agrees to the terms and conditions of this Software and Documentation License. SELLER retains all ownership interests in and to Software and Documentation, and except for the express rights and license set forth herein, BUYER receives no other rights or license, whether by implication, estoppel or otherwise. SELLER represents and warrants to BUYER that Software will perform in conformance with the purchase specifications, that Software does not contain any viruses at time of delivery to BUYER, and that SELLER has all necessary rights, title and interest to grant the rights set forth herein to BUYER, free of any claims, liens or conflicting rights in favor of any third party.

11. **Intellectual Property Indemnification.** The SELLER shall indemnify and hold harmless the BUYER, its affiliates, and their customers and each of their officers, directors, employees, successors and assigns from and against any losses, damages, liabilities, fines, penalties, and expenses including attorneys' fees that arise out of or result from any proven or unproven claim of (a) infringement of any patent, copyright, trademark or trade secret right, or other intellectual property right, private right, or any other proprietary or personal interest, and (b) related by circumstances to the existence of this Purchase Order, provided that the BUYER notifies the SELLER in writing of any such claim that it becomes aware of, and cooperates fully with the SELLER. In the event of an injunctive action, SELLER agrees at its sole cost and expense and BUYER's option to either (a) procure for BUYER the right to continue to use the Product, (b) to replace or modify the Product so that it becomes non-infringing, or (c) grant BUYER credit for the Product as depreciated and accept its return. The depreciation shall be in equal amounts per year over the life of the Product for four (4) years from date of original shipment. SELLER shall not be obligated to indemnify BUYER its subsidiaries, its and their successors and assigns, officers, employees, agents, end users and resellers, if the infringement or claim is (a) based on use of the Products in combination with other products or software not furnished by SELLER where such infringement or claim would not have arisen if such Product was used independently; or (b) the result of the adherence to BUYER'S detailed designs, and such designs are the sole cause of the claim.

12. **General Indemnification.** SELLER agrees to protect, defend, indemnify and hold BUYER harmless from and against any and all claims, liabilities, demands, penalties, forfeitures, suits, judgments and the associated costs and expenses (including reasonable attorney's fees), which BUYER may hereafter incur, become responsible for or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment and any clean up costs in connection therewith, or any violation of governmental law, regulation or orders, caused, in whole or in part by (a) SELLER's breach of any term or provision of this Purchase Order; (b) any negligent or willful acts, errors or omissions by SELLER, its employees, officers, agents, representatives or sub-contractors in the performance of this Purchase Order; or (c) defective Product. In no event shall either party be liable to the other for any special or consequential damages including loss of profits or revenue, loss of use, or increased costs of doing business. However, nothing herein shall be construed to limit SELLER's liability for personal injury, physical damage to property, or indemnity or contribution therefore.

13. **Confidentiality.** The SELLER shall view as BUYER's property any idea, data, program, technical, business or other intangible information including but not limited to designs, drawings, specifications or other manufacturing information, however conveyed, and any document, print, tape, disk, tool, or other tangible information-conveying or performance-aiding article (all together hereinafter referred to as Information) owned or controlled by the BUYER, and provided to, or acquired by SELLER under or in contemplation of this Purchase Order. SELLER will use confidential and proprietary Information of BUYER only for the purpose of

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carrying out the terms of this Purchase Order, and will not disclose such Information to any party that is not specifically authorized by BUYER to receive it. SELLER shall not advertise or publish the fact that BUYER has contracted to purchase goods from SELLER, nor shall any information relating to the order be disclosed without BUYER's written permission. SELLER shall not use the BUYER's name or trademarks in advertisements, brochures, reference lists or similar advertisements without BUYER's written permission. The foregoing shall not apply to information previously known to the SELLER free of obligation, or made public through no fault of the SELLER. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner at any time by SELLER to BUYER shall be deemed secret or confidential and SELLER shall have no rights against BUYER with respect thereto except such rights as may exist under patent laws.

14. **Waiver, Remedies & Assignment.** BUYER's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege of BUYER, or BUYER's waiver of any breach hereunder, shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type. BUYER's rights and remedies herein are in addition to any other rights and remedies provided by law or in equity. This Purchase Order or any part or interest therein, and any interest hereunder may not be assigned by the SELLER without the prior written consent of BUYER.

15. **Force Majeure.** Neither party shall be held responsible for any delay or failure in performance of any part of this Purchase Order to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or non-performing party or its subcontractors. Any party whose performance is affected by such Force Majeure shall promptly give written notice to the other party of the occurrence or circumstance upon which it intends to rely to excuse its performance. BUYER may delay delivery or acceptance occasioned by causes beyond its control. SELLER shall hold such Products at the direction of BUYER and shall deliver them when the cause affecting the delay has been removed. BUYER shall be responsible only for SELLER's direct additional costs in holding the Products or delaying performance of this Purchase Order at BUYER's request.

16. **Governing Law.** This Purchase Order shall be deemed an agreement made in the State of New Jersey and governed by the laws thereof, including the UCC, without regard for conflicts of law and without regard to any modifications of the UCC. Unless the contrary is specifically stated, all rights and remedies provided herein shall be in addition to, and not in place of, those provided by applicable law. The titles of the articles set forth above are for convenience only and shall not be applied to limit or restrict the meanings of the same. The provisions of the United Nations Convention on Contracts for International Sale of Goods shall not apply to the Purchase Order. The SELLER shall comply at their own expense with all applicable federal, state, local and foreign laws, ordinances, regulations and codes.

17. **Severability.** If any term or provision of this Purchase Order or the application to any person or circumstance shall, to any extent be invalid or unenforceable, the remainder of this Purchase Order, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Purchase Order shall be valid and shall be enforced to the fullest extent permitted by law.

18. **Entire Agreement.** These terms and conditions constitute the entire agreement between the parties hereto, and supercedes all prior arrangements, representations, statements, negotiations, understandings, if any, whether written or oral except as expressly set forth herein. Neither performance nor course of dealing nor usage of trade shall be used to interpret, construe, qualify, amend or supplement these terms and conditions. Terms and conditions contained in printed forms, including without limitation purchase orders and order acknowledgements of BUYER shall not amend or enlarge these terms and conditions, without the specific written consent of the other party. These terms and conditions may be amended only in writing, signed by the parties hereto.