



## **TERMS AND CONDITIONS OF PURCHASE**

1. **GENERAL PROVISIONS.** By accepting this purchase order (the "Order") and all attachments and exhibits attached hereto including but not limited to specifications, drawings, notes, instructions and other written materials and information, and/or performing hereunder, Seller agrees to comply fully with the terms and conditions of purchase set forth in this document. Acceptance of this Order is expressly limited to the terms and conditions of this Order and none of Seller's terms and conditions shall apply regarding this Order. Acceptance by Buyer of the goods, services or work delivered under this Order shall not constitute agreement to Seller's terms or conditions. Seller may not ship under reservations to our terms and conditions. Seller may accept this Order either by performance or the sending of an acknowledgement. In the event that a purchase agreement (signed by an authorized Buyer Representative) is executed by Seller and Buyer with respect to the sold products, the terms of such agreement shall prevail over any inconsistent terms contained herein.

2. **APPLICABLE LAW.** The validity, interpretation, and performance of these terms and conditions and any purchase made hereafter shall be governed by the laws of the State of California without regard to its conflict of law rules. The provisions of Article 2 of the Uniform Commercial Code shall apply to the transaction contemplated by these terms and conditions. The United Nations Convention on the International Sale of Goods shall not apply.

3. **ATTACHMENTS.** Any attachments referenced on this Order shall be deemed for all purposes to be an integral part of this Order. In the event of an irreconcilable conflict between such referenced attachments and the terms stated herein, the terms of such attachments shall control.

4. **MODIFICATIONS.** Changes, modifications, waiver, additions or amendments to the terms and conditions of this Order shall be binding on Buyer only if such changes, modifications, waiver, additions or amendments are in writing and signed by a duly authorized representative of Buyer.

5. **CHANGES.** Buyer shall have the right at any time to suspend performance hereunder, increase or decrease the ordered quantity, change the delivery date of the product or change the drawings, designs, specifications, materials, packaging, place of delivery and/or method of transportation. Seller agrees to accept such changes as though the changes were included in this Order. If such changes result in a decrease or increase in Seller's cost or in the time for performance, an adjustment in the price and time for performance may be made by the parties in writing, provided however, that Seller notifies Buyer of the request for such adjustments within twenty (20) days after receipt by it of the change notice. Except in the event of such a change request by Buyer, Seller shall not make any changes to the form, fit function to any products or any changes to the drawing, designs, specifications, materials, process, packaging, time and place of delivery or methods of transportation without Buyer's prior written consent.



6. **TERMINATION.** Buyer may terminate each Order in whole or in part at any time without cause by written notice to Seller. Such notice shall state the extent and effective date of such termination and, upon the receipt of such notice, Seller will comply with the directions pertaining to work stoppage hereunder and the placement of further orders or subcontracts hereunder. The parties shall thereupon employ their best efforts to agree by negotiation, within thirty (30) days, upon the amount of reimbursement, if any, to be paid to Seller for each Termination. Termination under this section shall not be deemed a breach of the contract with Seller. The provisions of this section shall not limit or affect the right of Buyer to terminate this Order for cause and shall not apply to a termination for cause. Seller shall mitigate its claim to the maximum extent, and in any event, no claim against Buyer shall exceed the lesser of the fair market value or actual costs of raw materials and work in progress material, which Seller shows, cannot be diverted to other uses. No claim shall be asserted or honored for any loss on expected profits, or for any consequential or incidental damages, due to cancellation of this agreement by Buyer. Buyer shall have the right to terminate this Order or any portion thereof "for cause" and without creating any liability to Buyer in the event Seller breaches any of the terms contained herein or if Buyer believes in good faith that Seller will be unable to perform its obligations hereunder or if Buyer requests that Seller provides adequate assurances of performance and Seller fails to do so within five (5) business days. In addition, this Order shall be automatically terminated for cause and without creating any liability to Buyer in the event that Seller assigns substantially all of its assets to a third party for the benefit of its creditors, files for bankruptcy or has a bankruptcy proceeding filed against it which proceeding is not dismissed within sixty (60) days after filing. Seller shall indemnify Buyer and Buyer's customers for all claims resulting from Buyer's termination for cause, including the costs of losing the business of Buyer's customers for such and subsequent orders and costs of transferring production of the goods ordered under this Order to a third party, the procurement of a third party, the procurement of a substitute product, line down charges and any other costs incurred by Buyer.

7. **TOOLING.** Seller shall preserve all special drawings, dies, patterns, tooling or other items supplied or paid for by Buyer in good condition, and they are the property of Buyer unless otherwise specified. These items shall be returned in good condition when the work on this Order has been completed or the Order has been terminated, or at any other time as requested by Buyer. No special drawing, die, pattern, tool or other item supplied by Buyer or made by Seller for the use of or delivery to Buyer, or for use by Seller in supplying the Buyer, shall be used by Seller for any purpose other than supplying the Buyer, without Seller's first obtaining the written consent of Buyer thereto. If Buyer furnishes material, equipment, special drawings, dies, patterns, or other items for performance of this Order, all risk of loss thereof or damage thereto shall be upon Seller from the time of shipment to Seller until redelivery to and receipt by Buyer.

8. **IDEMNIFICATION.** Seller agrees to indemnify and hold harmless Buyer, its officers, agents, employees, and vendors (mediate and immediate), customers from any and all loss, expense, damage, liability, interest, cost and expenses, claims or demands either at law or in equity for any actual or alleged infringement of any patent invention, design, trademark, or copyright arising from the purchase, use or sale of materials or articles required by this Order, except



where such infringement or alleged infringement arises by reason of designs for such materials or articles originally furnished to Seller by Buyer.

9. ASSIGNMENTS. Seller may not assign or transfer any performance obligations under this Order without the prior written approval by Buyer.

10. EXCUSED PERFORMANCE. In the event that Seller is prevented from delivering or Buyer is prevented from receiving the materials or articles referred to in this Order as a result of governmental actions or regulations, except as hereinafter provided, or of fires, strikes, accidents, and other unforeseeable causes beyond the control of either party, the obligation to receive or deliver shall be suspended for a reasonable time during which such cause continues to exist.

11. PACKING AND SHIPPING INSTRUCTIONS. Unless Buyer stipulates specific packaging or shipment instructions, all items shall be suitably prepared for shipment (a) to secure the lowest transportation and insurance rates, (b) to meet carrier's requirements, and (c) to avoid any damage in transit. All shipments shall contain an easily located packing list describing the shipped material and shall clearly indicate the Order number on the outside of all packages, boxes, kegs, bails or bundles to expedite the receiving of said shipments. Seller shall mark all shipments with bare code labels meeting electronic industries association outer shipping container bar code label standard EIA-556-A. Unless otherwise provided herein, Seller shall pay for all charges for containers, crating, boxing, bundling, dunnage, drayage, storage or other packing requirements. All material shall be packed, packaged, marked and otherwise prepared for shipping in accordance with sound commercial practices to meet Buyer's requirements for obtaining the lowest transportation rates, or as otherwise specified herein. Seller shall mark all container or packages with necessary lifting, loading and shipping information. Seller shall insure that all packaging complies with the directive 94/62/EC on packaging and packaging waste (Dec. 20, 1994) as implemented by the various member states of the European Union, as well as similar laws in other jurisdictions and shall include all information required by the RoHs Directive, the WEEE Directive or other laws. Seller shall ship the product in a manner which complies with all laws, including I.C.C. regulations and which is adequate to insure safe arrival of the product at the destination.

12. DELIVERY. The obligation of Seller to meet all delivery dates, specifications, and quantities set in this Order is of the essence. Deliveries are to be made both in quantities and at times specified in this Order or such quantities and items specified pursuant to Buyer's written instructions. Seller shall immediately notify buyer in the event that its timely performance under this Order is delayed or likely to be delayed, in whole or in part, and Seller shall provide Buyer with all available information regarding the reasons for such delay. Unless otherwise specifically provided on the face of this Order, the product will be delivered DDP Buyer's facility of manufacture (Incoterms 2010). In the event this Order includes the delivery of equipment which requires installation, Seller shall install such equipment (at its sole expense) at Buyer's designated site upon request from Buyer. Title and risk in the product shall remain with Seller until they are delivered at the point specified in the Order and transferred to Buyer's possession



at which time title and risk in the products shall transfer to Buyer. Buyer may at its option, either retain items received in advance of the requested delivery schedule or return them to Seller at Seller's risk and expense. If retained, payment and discount shall be based on the schedule delivery dates. In the event that Seller fails to deliver as and when specified, Buyer reserves the right to cancel this Order, or any part thereof, without prejudice to its rights or remedies and Seller agrees that Buyer may return part or all of any so shipment made, and if this Order calls for partial shipments, the balance may be cancelled or suspended upon notice and Buyer may charge Seller with any expedited routing charges or any loss or expense sustained as a result of such failure to deliver as specified. Buyer reserves the right to return the portion of the shipment in excess of the quantity ordered, at Seller's expense.

13. ACCEPTANCE AND WARRANTY. Final acceptance of material and products by Buyer will not be until after arrival at Buyer's facility from which this Order originates, unless otherwise specified herein. Seller warrants that all articles, material and work supplied by Seller under this Order conform to the requirements, specifications, drawings, samples, or other descriptions furnished or adopted by Buyer and that they are of good material and workmanship and free from defects in manufacture or design and of merchantable quality and fit for their intended purchase for the forty-eight (48) month period following Seller's shipment to and acceptance by Buyer. In addition to any express or implied warranties, Seller warrants that the product will be new and unused. Such warranties by Seller shall run to the benefit of the Buyer, its employees and customers. Buyer's approval of designs provided by Seller shall not relieve Seller of its obligation under this warranty. Seller will make process control data, inspection and test reports covering the articles or goods and their parts available for review and subject to examination by the Buyer or its authorized representative(s) to verify conformance to such applicable specifications and drawings. However, a Certificate of Conformation must accompany individual shipments when so specified on applicable drawings, or on the front of this Order. In addition to the foregoing, Seller further warrants that the product, Seller's business (including its manufacturing, operating and hiring processes) and the product documentation complies with all international, national, federal, state and local ordinances, rules and regulations (including but not limited to the Fair Labor Standards Act of the 1938, as amended, the Occupational Safety and Health Act of 1970, the Toxic Substances Control Act of 1976 and the National Traffic and Motor Vehicle Act of 1966, as amended, the Foreign Corrupt Practices Act of 1977, as amended, and all regulations of the Food and Drug Administration, the Federal Acquisition Regulation and any similar law outside the United States, as such laws have been amended, modified, or implemented and that the manufacture and sale of the product purchased under this Order complies with all laws. Seller further warrants the accuracy of all product documentation it provides to Buyer, including but not limited to custom related documents and MSDS and safety related documents.

14. INCOMING INSPECTION. Payment for the product by Buyer does not constitute acceptance of the product and Buyer reserves the right to take an adjustment (by means of credit memo or otherwise) for errors, shortages, defects in the product or other failures. Any product or materials not accepted by Buyer may be returned to Seller at Seller's expense for full credit of the purchase price. Inspection may be performed at Buyer's option on a statistical sampling



basis. Buyer may reject the entire lot if such sampling reveals any defects. At Buyer's option, the rejected lot will be either returned to Seller for replacement or credit or 100% screened by Buyer with cost of screening paid by Seller. The initial inspection performed by Buyer upon receipt of the product or material is a conditional acceptance only, and shall not waive the right of Buyer to return the product or material to Seller which exhibits or develops defects due to latent causes during or after installation or testing of the end product. Replacement product or material shall be sent freight prepaid from Seller, who will bear all costs for premium transportation when defect or replacement material would place critical time or delivery schedule constraints on the Buyer.

15. **WAIVER.** Any failure of Buyer to enforce at any time, or for any period of time, any of the provisions of this Order shall not constitute a waiver of such provisions nor of Buyer's right to enforce each and every provision herein.

16. **PAYMENTS.** Prices for the product shall be in the currency set forth on the front of this Order, or if no currency is specified thereon, in the United States Dollar. Seller warrants that the prices offered for the product hereunder are the lowest prices for these or similar products sold by Seller to other customers, and in the event of any price reduction between the acceptance of this Order and delivery of the products, buyer shall be entitled to such reduction. Seller shall send all invoices to Buyer at 575 Cottonwood Drive, Milpitas, CA 95035, Attn: Accounts Payable. All invoices shall include (a) the Order number, (b) the applicable part number, (c) a description of each item as it appears on each Order, (d) Seller's part number, (e) quantity of item, size of item, unit price, applicable taxes, extended total and any other information specified elsewhere herein. Payment of an invoice shall not constitute acceptance of supplies or services and be subject to adjustments for error, shortages, rejects or any other failure of Seller to meet the requirements of this Order. All Orders will be paid by Buyer within ninety (90) days of receipt of the goods. Each invoice must include a copy of the packaging slip. Payment of invoices shall be deemed correct unless Seller notifies Buyer of any payment discrepancies within thirty (30) days after receipt of payment.

17. **PRICE ADJUSTMENT.** Buyer will not accept shipment at any increase in price above that indicated on this Order. Any general price decrease announced by Seller in the classification of equipment and/or materials similar to the items described on this Order shall automatically reduce the price thereof by a comparable percentage.

18. **PAYABLES OFFSET.** Buyer shall be entitled at all times to offset any amount owing, for any reason, at any time, from Seller to Buyer against any amount payable at any time in connection with this Order.

19. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL BUYER BE LIABLE TO SELLER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING LOST PROFITS, LOST REVENUES OR LOSS OF USE) RESULTING FROM, ARISING OUT OF OR IN CONNECTION WITH THIS ORDER. IN NO EVENT WILL BUYER'S LIABILITY FOR



DAMAGES IN CONNECTION WITH EACH ORDER BE IN EXCESS OF THE PURCHASE PRICE OF SUCH ORDER GIVING RISE TO SUCH LIABILITY. BUYER SHALL NOT BE LIABLE TO SELLER FOR ANY COSTS INCURRED BY SELLER AS A CONSEQUENCE OF FORECASTS OR PROJECTIONS PROVIDED BY BUYER. NOTHING HEREIN SHALL BE CONSTRUED TO LIMIT THE LIABILITY OF SELLER UNDER THE ORDER.

20. CONFIDENTIALITY. Seller agrees to keep information provided by Buyer confidential in accordance with the terms and conditions of the nondisclosure agreement previously executed between the parties. In the event that the parties did not execute a nondisclosure agreement, Seller agrees to keep confidential and not to disclose, directly or indirectly, any information concerning the this Order to Buyer's business (except to the extent such information is available to the general public) or any other information which the other party designates as confidential, except to the extent required by applicable law.

21. RIGHT OF ACCESS. Seller agrees to permit Buyer, Buyer's customer, regulatory authority, or Government representative(s) if this Order is for a U.S. Government contract or subcontract, to verify the quality of supplies and services being provided under this Order at any production stage in Seller's facility. Verification may consist of a physical assessment/ surveillance of Seller's facilities and quality programs and/or a source inspection. The applicable quality program requirements may be as defined, documented, and furnished by the Buyer. Deficiencies identified during such verification shall be corrected by the Seller in the most expeditious manner possible. Seller shall provide all reasonable facilities and assistance for the safety and convenience of personnel engaged in such verification. Seller agrees to include into each subcontract Seller might make hereunder appropriate provisions to the same effect.

22. SALES AND USE TAX EXEMPTION. If indicated on the face of this Order that the goods ordered herein are exempt from the California Sales And Use Tax, then Buyer hereby certifies that such property is purchased for resale or will become an ingredient or component part of, or be incorporated into or used or consumed in the manufacturing process of a product produced for ultimate retail sale.

23. NOTICES. Any notices required or permitted to be given herein shall be in writing and shall be valid and sufficient if dispatched by registered or certified mail, postage prepaid, at any post office in the United States.

24. DISPUTE RESOLUTION AND ARBITRATION. Before the filing of any claim with the American Arbitration Association as outlined below, a party will serve on the other party to the terms (a) written notice of the claim, specifying the exact amount claimed and the provision of these terms and conditions or other authority for the claim; and (b) a copy of all supporting documents. Within ten (10) business days after service, the responding party will serve on the serving party (a) a written response, setting out its position and specifying the terms or other provisions relied on; and (b) a copy of all supporting documents. Within five (5) business days



after service of the response, the parties will meet to discuss resolution of the claim. Each party may bring up to three people to this negotiation, at least one of whom is a corporate officer who is not involved in the performance of the Order that is the basis for the alleged claim. The written claim notice and response and the documents produced, but not the subsequent discussion, are admissible in any subsequent proceeding. In the event that the parties are unable to resolve the disputed matter, all disputes relating to or arising out of this Order shall be resolved by mandatory, binding arbitration with the American Arbitration Association, under the rules of expedited procedure in or near Milpitas, California. The arbitrator shall be asked to render a reasoned written opinion. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

25. SEVERABILITY. If any term, condition, or provision of these terms and conditions, or portion thereof, is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. Such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

26. SURVIVAL AND INTERPRETATION. The obligations of Seller to Zollner survive termination of this Order, except as otherwise provided in this Order. No provision may be construed against Buyer as the drafting party. Section headings are for convenience or reference only, and do not affect the meaning of this Order.