



## Purchase Order Terms and Conditions

### General

- a) Acceptance of this order is expressly limited to the terms and conditions of this order, and shall not be modified or supplemented except in writing signed by an authorized representative of Buyer.
- b) Reference in this order to Seller's proposal or quotation are only to describe the goods or services covered hereby, and do not constitute an acceptance of any terms set forth therein.
- c) Seller's written or electronic confirmation of this order, or the shipment of any goods or commencement of services hereunder, shall constitute acceptance of this order.
- d) Invoice price shall not exceed the price established on the face of this order.

### Performance

- a) Time and quantity are of the essence for this order. Unless otherwise specified, delivery times specified are the times of delivery of the goods at Buyer's designated place of delivery or destination.
- b) Seller shall at all times act in its own capacity and right as an independent contractor, and nothing contained herein shall be construed to make Seller an agent or partner of Buyer. All employees furnished by Seller shall be employees of Seller, and Seller will pay all wages and expenses of such employees and all taxes or fees relating to the employment of such personnel by Seller.

### Indemnification

- a) Seller shall indemnify and hold harmless Buyer for, from and against any and all claims, actions, damages, losses, liabilities, costs, and expenses incurred by Buyer as a result of (i) any breach of any of the covenants, agreements, representations or warranties of Seller contained herein, or (ii) any other act of omission on the part of the Seller and/or any person or entity acting on behalf of Buyer (including Seller's subcontractors). Seller shall defend any and all claims or suits based on such claims or suits at Seller's expense. Buyer, at its option, shall have the right to participate in the defense of any such claim or suit without relieving Seller of any obligations hereunder.

### Insurance

- a) Seller and its subcontractors shall maintain public liability and property damage insurance, at a minimum, in accordance with industry standards sufficient to cover the obligations set forth herein, and shall maintain proper workers' compensation insurance covering all employees performing within the scope of this purchase order. Seller shall provide a certificate of insurance upon request.

### Seller Representations/Warranties

- a) Seller represents and warrants that goods and services furnished shall be of the highest grade and quality, of good workmanship and free from any defect, and shall conform to the specifications, quality requirements, drawings, samples or other data or descriptions furnished or adopted by Buyer. Seller hereby assigns to Buyer all rights of Seller to any representation or warranties of the subcontractors of Seller or the manufacturer of the goods covered hereby.
- b) Seller shall be fully responsible for all work and service performed by any subcontractor. Seller is required to flow-down all requirements and specifications to Sub-contractors. At Buyer's option, any part of the material or work not complying with the requirements expressed or implied may be returned, at Seller's risk and expense including transportation both ways, for prompt correction of defects.
- c) Seller represents and warrants that the goods and services furnished are fully merchantable and fit for their intended or particular purpose. All goods and services are subject to final inspection by Buyer and payment shall not constitute acceptance.

- d) Buyer reserves the right to enter Seller's or Seller's subcontractors manufacturing facility for the purpose of inspecting or auditing. This right shall be extended to Buyer's customers and regulatory authorities.
- e) Seller represents and warrants that no law, rule, or ordinance of the United States, state or any other governmental authority or agency has been violated in the manufacture or sale of the goods, or performance of the services covered by this order.
- f) Seller represents and warrants that (i) the goods provided hereunder are new and do not contain anything used or reconditioned, (ii) the goods and services provided hereunder do not infringe any patent, trademark, copyright, trade secret or other intellectual property right of any third party, and (iii) seller shall notify Buyer immediately upon discovery that nonconforming product has been shipped to Buyer.
- g) Seller shall notify Buyer in writing prior to implementation of any change in design or manufacturing process that may affect form, fit, function, quality, or reliability. Notification shall be made at least (60) sixty days prior to the effective date of change.

### **Ownership and Confidentiality**

- a) Any specifications, materials, tooling or information furnished, provided on behalf of, or paid for by Buyer, shall (i) be kept confidential, (ii) remain or become Buyers' property, (iii) be used by Seller exclusively for Buyer's orders, (iv) be clearly marked as Buyer's property and segregated when not in use, (v) be kept in good working condition at Seller's expense, and (vi) be shipped to Buyer promptly on demand. Seller shall insure Buyer's property and be liable for loss or damage while in Seller's possession or control, ordinary wear and tear excepted.
- b) Information or items prepared by Seller specifically in connection with performance of this order are considered "works made for hire" under U.S. Copyright Law. Buyer shall be deemed the owner and author of such works. Seller agrees to execute such further documents and do such further acts as may be necessary to perfect, register or enforce Buyer's rights in and to such works.

### **Attorneys' Fees**

- a) If either party commences an action against the other party in connection with the subject matter hereof, the prevailing party in such action shall be entitled to recover its attorneys' fees and expenses from the other party.

### **Governing Law / Dispute Resolution**

- a) This agreement shall be deemed made in the State of Arizona, and shall be construed and interpreted solely in accordance with the laws of such state. The parties hereby submit to the jurisdiction of the state and federal courts located in Maricopa County, Arizona.
- b) Any dispute or controversy arising out of or relating to this order or any breach hereof, or the termination of any service provided pursuant to this order, shall be settled by binding arbitration in accordance with the Rules of the American Arbitration Association in the State of Arizona, subject to laws of that State. Judgement upon any award may be entered in any court having jurisdiction. Should the foregoing arbitration agreement be unenforceable for any reason, the parties hereby waive their respective right to trial by jury with respect to any cause of action, claim, counterclaim in any action, proceeding, and/or hearing.

### **Compliance with Law**

- a) Each party shall fully comply with all laws, rules and regulations, including, but not limited to the US Export Control and ITAR regulations and the Denied Parties, the Department of State and the Office of Foreign Asset Control screening requirements, applicable to such party's performance hereunder, and Seller shall ensure that Products shall at all times comply with all laws, rules and regulations of the jurisdictions in which they are marketed, sold or used. Without limiting the generality of the foregoing, Seller understands and agrees that compliance with all laws, rules and regulations regarding the recycling, content and disposal of Products after delivery thereof to Buyer, in the United States and elsewhere, shall

be the sole responsibility of Seller.

**Assignment and Set-Off**

- a) Seller will not assign this agreement or any rights hereunder, or subcontract any of its duties hereunder, without Buyer’s written consent. Any unauthorized assignment is void. All claims for monies due or to become due from Buyer shall be subject to deduction by Buyer for any set-off or counterclaim arising out of this or any other of Buyer’s purchase orders with Seller.

**Limitation of Liability**

- a) To the extent permitted by applicable law, in no event will Buyer (including Buyer’s officers, directors and employees) be liable for any lost revenues, lost profits, incidental, indirect, consequential, special, or punitive damages.
- b) Buyer will not be liable for finished work, work in process, or raw materials fabricated or procured by Seller unnecessarily in advance or in excess of Buyer delivery requirements.

**Termination**

- a) Buyer may at any time cancel this agreement in whole or in part by written notice, whereupon Seller shall terminate work pursuant to the terms of such notice and without further liability of Buyer.
- b) Buyer must acknowledge in writing all non-cancelable, non-returnable material at the time of order placement. If such goods ordered can not be sold to other purchasers, Seller shall promptly advise Buyer of the quantities of applicable work and material on hand or purchased prior to termination and the most favorable disposition that Seller can make. Seller shall comply with Buyer’s instructions regarding disposition of such work and material.
- c) Payment for non-cancelable, non-returnable material shall constitute Buyer’s only liability in the event this order is terminated. The provisions of this section shall not apply to termination by Buyer for default of Seller.

**Revision History**

REV	EFFECTIVE DATE	DESCRIPTION	AUTHOR
1.0	5/4/2009	Initial Release.	N. Sukidi