

## SUPPLIER TERMS AND CONDITIONS

These Purchasing Terms and Conditions (“Terms”) apply to purchases by the company (the “Buyer”) identified in a purchase order (“Order”) of non-customized or off-the-shelf items specified therein (along with any accompanying materials, information and embedded software or technology) (the “Goods”) from the supplier to which the Order is submitted (the “Supplier”). Any customized items will be subject to separate terms.

**1. APPLICATION OF TERMS.** Each Order is an offer of Buyer to purchase Goods from Supplier on these Terms. Buyer and Supplier agree that an Order will be deemed accepted by Supplier upon written notice of its acceptance or it beginning work on, or performance of, the Order, in whole or in part. Upon acceptance, the Order and these Terms shall constitute a binding and enforceable contract between Buyer and Supplier (the “Contract”). Any additional or inconsistent terms, whether included on a delivery note, invoice or otherwise, will not form part of the Contract. The Contract is the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements between the parties.

**2. CHANGES.** Buyer may make changes to an Order at any time prior to delivery, and Supplier will make all changes requested by Buyer. Supplier shall promptly notify Buyer in writing if the proposed change will affect cost or timing and provide substantiation thereof. If Buyer determines that an adjustment is appropriate, the parties will negotiate in good faith an equitable price adjustment and change in Terms. Supplier may not make any change on its own without first obtaining Buyer’s prior written consent.

### 3. QUALITY AND DEFECTS

3.1 Supplier shall only deliver Goods that, and warrants during the Warranty Period that the Goods, will: (a) not contain any unreasonably dangerous or defective condition, (b) conform to any specifications, drawings, samples and other descriptions identified in an applicable Order, (c) are merchantable and free from defects in design, materials and workmanship, (d) are/be suitable for the purposes for which goods of that type are ordinarily used, (e) comply with all applicable laws, regulations and standards; and (f) are/be free from all liens, charges and encumbrances. Supplier shall maintain quality control procedures to monitor and ensure that said standards of quality continue throughout the Contract. Supplier will test the Goods prior to delivery in accordance with industry accepted procedures and standards, and the Goods shall be at least the quality which meets such industry standards. The Warranty Period begins on the date the Goods are delivered to Buyer in accordance with the Contract and ends on the two (2) year anniversary thereof, unless a longer warranty period is set forth in the Order or generally made available by the Supplier for the applicable Goods.

3.2 Buyer may, but has no obligation to, inspect and test the Goods and failure to do so does not waive any rights or remedies that it may have. Supplier waives any right to require Buyer to conduct an inspection. If Goods do not conform with Section 3.1, Buyer will notify Supplier and Supplier shall immediately act as necessary to ensure conformity. Buyer may conduct further testing and inspection upon Supplier’s completion of any such actions and/or redelivery of the

Goods. Notwithstanding any inspection or testing by Buyer, Supplier shall remain fully responsible for the Goods and any Buyer inspection or testing shall not diminish or otherwise affect Supplier's obligations. If any Goods are the subject of a recall or other service action, Supplier shall provide written notification thereof to Buyer as soon as reasonably practicable, and Supplier shall be liable for all costs and expenses incurred by Buyer in connection with such recall or service action.

**4. INDEMNITY.** SUPPLIER IRREVOCABLY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS BUYER, ITS PARENT, AFFILIATES, AND SUBSIDIARIES AND ITS AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS AND AGENTS (THE "INDEMNITEES"), FROM AND AGAINST ALL LIABILITIES, LOSSES, DAMAGES, COSTS AND EXPENSES (INCLUDING LEGAL AND OTHER PROFESSIONAL FEES AND EXPENSES), INCLUDING THOSE BASED ON NEGLIGENCE, TORT OR OTHER CLAIMS AND EVEN IF THE INDEMNITEE WAS ADVISED OF THE POSSIBILITY THEREOF, THAT MAY BE AWARDED AGAINST, INCURRED BY OR PAID BY AN INDEMNITEE IN CONNECTION WITH: (A) SELLER'S NEGLIGENCE OR WILLFUL MISCONDUCT; (B) DEFECTIVE WORKMANSHIP, QUALITY, MATERIALS, MANUFACTURE, TESTING, INSPECTION OR DELIVERY OF THE GOODS, DAMAGE TO THE GOODS DURING MANUFACTURE, TESTING, INSPECTION OR DELIVERY, OR ANY UNREASONABLY DANGEROUS OR DEFECTIVE CONDITION IN THE GOODS; (C) AN ALLEGED INFRINGEMENT OR OTHER VIOLATION OF ANY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS CAUSED BY THE DESIGN, MANUFACTURE, TESTING, SUPPLY, USE AND/OR OR SALE OF THE GOODS, WHETHER BY SELLER OR BUYER, ALONE OR WITH OTHER PRODUCTS OR COMPONENTS THEREOF; AND/OR (D) ANY USE OF STOLEN, COUNTERFEIT OR MISAPPROPRIATED ITEMS, RESOURCES, MATERIALS, SOFTWARE OR TECHNOLOGY IN CONNECTION WITH THE DESIGN, MANUFACTURE, SUPPLY AND/OR SALE OF THE GOODS, OR OTHERWISE IN CONNECTION WITH SUPPLIER'S BUSINESS OPERATIONS.

**5. INSURANCE.** Supplier shall, at its expense, maintain insurance in commercially reasonable amounts for operating its business, with reputable insurers, including, but not limited to: (a) worker's compensation insurance as required by applicable laws where Supplier does business; (b) commercial general liability (including personal injury and contractual liability) with limits of not less than one million US dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) in the aggregate; (c) automobile liability coverage (including for owned, non-owned and hired vehicles) with limits of not less than \$1 million per occurrence and \$2 million in the annual aggregate; (d) insurance covering loss of or damage to Goods in the course of manufacture, fabrication, assembly, testing, inspection, storage, delivery and installation; and (d) an umbrella liability insurance policy with limits of liability no less than \$5 million per occurrence. The foregoing insurance coverage shall be primary and non-contributing with respect to any other insurance or self-insurance maintained by Supplier.

## **6. DELIVERY**

6.1 Supplier agrees that the Goods shall be delivered in accordance with the Order, including (a) "Delivery at Place" shipping to the location identified in the Order, other shipping terms are set forth in the Order or otherwise mutually-agreed between the parties prior to shipment; (b) during Buyer's normal business hours; (c) via the carrier and any specific packaging specified by Buyer, and (d) with a delivery note identifying, inter alia, the Order number, date of Order,

number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered. The Supplier shall off-load the Goods as reasonably directed by Buyer. The date(s) for delivery shall be specified in the Order and are firm, and if no date is specified, then delivery shall occur within 28 days of the Order ("Due Date"). The Goods shall remain at the risk of Supplier until delivery to Buyer is complete (including off-loading and stacking), at which point ownership of and title to the Goods shall pass to Buyer. Supplier shall not be excused from timely performance by unexpected difficulty or commercial impracticality of any degree. Where the Supplier is supplying from a location which is outside of the United States, its Territories and Possessions, the Goods shall be delivered DAP Incoterms 2010 as such term is defined by the International Chamber of Commerce

6.2 If any Goods are not delivered on the Due Date then, without prejudice to Buyer's other rights and remedies available under applicable law and/or this Contract, Buyer may at its option exercise any one or more of the following remedies: (a) rescission of the Order in whole or in part; (b) refuse to accept any subsequent delivery of any Goods that Supplier attempts, without any liability to Buyer; (c) recover from Supplier any expenditures reasonably incurred by Buyer in obtaining substitute Goods from another supplier on an expedited basis; and (d) seek and obtain all such damages, losses, costs and expenses sustained by Buyer as a result of the Supplier's breach(es) or the Supplier's failure to deliver the Goods on the Due Date.

6.3 If Supplier requires Buyer to return any packaging to Supplier, that fact must be clearly stated on the accompanying delivery note and any such packaging will be returned to Supplier at its expense. Where Buyer agrees in writing to accept delivery by installments, the Contract will be construed as a single contract in respect of each installment. Nevertheless, failure by Supplier to deliver any one installment shall entitle Buyer, at its option, to treat the whole Contract as repudiated. If any Goods are delivered to Buyer in excess of the quantities ordered, Buyer shall not be responsible for the excess, which will be at Supplier's risk and returnable at Supplier's expense.

**7. PRICE.** The price of the Goods will be stated in each Order. Unless otherwise agreed by the parties in writing, the Goods are exempt from sales and use tax because they are purchased for resale or will become a component of, or be incorporated into, or used or consumed in, a manufactured product for ultimate resale. If such Goods are purchased tax exempt and subsequent use makes such purchase of the Goods taxable, Buyer will calculate and pay any tax to the appropriate jurisdiction. No price changes or extra charges will be binding on Buyer, unless agreed in writing by Buyer prior to delivery. All freight and shipping costs beyond those specified in the applicable Order will be the responsibility of Supplier.

**8. PAYMENT.** Supplier shall provide an invoice to Buyer upon, but separately from, delivery of the Goods to Buyer and, to receive payments; Supplier must promptly upon request provide Buyer with valid United States tax documentation declaring status of the beneficial owner of any income generated by the payment. Buyer shall pay all properly invoiced amounts for Goods delivered within thirty (30) days of receipt of the applicable invoice. Payment will be made in U.S. dollars. If a different currency applies, it will be shown on the Order or agreed to in writing by the parties. Without prejudice to any other right or remedy, Buyer may set off and recoup against any amount owing to the Supplier any amount that Buyer determines in good faith Supplier is liable to pay to Buyer under this Contract. Payment will not constitute acceptance of nonconforming Goods, nor will it limit or affect any of Buyer's rights.

**9. CONFIDENTIALITY.** Supplier shall keep in strict confidence all non-public know-how, specifications, inventions, processes, products, launch dates, product plans, business initiatives and other information and materials received or learned from Buyer (“Confidential Information”). Supplier shall restrict disclosure of all Confidential Information and permit disclosure thereof only to employees, agents or sub-contractors with a need to know for the purpose of performing Supplier's obligations under the Contract and subject to substantially similar obligations of confidentiality, limited use and non-disclosure.

**10. ASSEMBLY AND SALE.** Supplier hereby grants to Buyer and its parent, affiliates and subsidiaries the irrevocable, worldwide license to use the Goods, including in connection with the manufacture and assembly of finished goods and in combination with other components (including hardware and software), and to make, have made, modify, distribute and sell the Goods, alone or as part of finished goods, without restriction. With respect to information, including technical information and user guides, accompanying the Goods or software embedded in the Goods (“Documentation”), Buyer is hereby granted the irrevocable worldwide license to reproduce, distribute and publicly display such Documentation in connection with its business activities. Such rights shall survive any termination of this Agreement, and Buyer may have subcontractors exercise the same rights for Buyer's benefit. The parties agree that the foregoing are licenses to rights to “intellectual property” as defined in Section 365(n) of the U.S. Bankruptcy Code, and that Buyer may fully exercise any and all of its rights under such Code (or any analogous laws outside the United States) to retain and exercise such rights.

**11. EXPORT COMPLIANCE.** Supplier is responsible for maintaining a compliance program capable of identifying the export controls applicable to the items procured by Buyer from Supplier. Supplier is responsible for notifying Buyer of the export controls applicable to all items procured from Supplier. Such notices must be provided on Supplier's invoice or on accompanying documents referenced by the invoice. Such notices must include the following information for each invoice line item: i) country of origin, ii) Harmonized Tariff System number, iii) Export Control Classification Number (ECCN), and iii) the export controls applicable to the items. Supplier agrees to indemnify Buyer for any loss, cost or expense that Buyer suffers if Supplier's provision of such information is inaccurate or incomplete. Where the Supplier is supplying from a location which is outside of the United States, its Territories and Possessions, then in addition to the obligations stated above the Supplier warrants that it will comply with all applicable export controls including by obtaining all necessary export licenses, and shall indemnify Buyer for any loss, cost or expense that Buyer suffers as a result of Supplier's failure to comply with export controls.

**12. SUPPLY CHAIN SECURITY.** Supplier will provide supply chain security information to Buyer as requested, including information about Supplier's status with regard to the US Customs Trade Partnership Against Terrorism (C-TPAT) initiative, where applicable.

**13. CONTROLLED MATERIALS.** Supplier shall comply with any Buyer requirements on controlled materials and electromagnetic and radio frequency emissions, as well as those set forth under applicable laws, rules and regulations including without limitation the RoHS or WEEE Directives and Part 15 of the Federal Communications Commission's rules, and similar enactments applicable to other relevant jurisdictions.

**14. BUYER'S PROPERTY.** Materials, equipment, tools, dies, molds, drawings, specifications, data and other materials supplied by or on behalf of Buyer to Supplier, along with all intellectual property and proprietary rights therein, shall at all times remain the exclusive property of Buyer, be held by Supplier in safe custody at its own risk, be maintained in good condition until returned to Buyer, be used only as authorized by Buyer in writing and shall not be disposed of other than in accordance with Buyer's written instructions.

## **15. TERMINATION**

15.1 Buyer may, at any time and for any reason, terminate the Contract, in whole or in part and with or without cause, by giving Supplier written notice thereof. Upon such termination, all work on the Contract shall be discontinued and Buyer shall pay to Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential or incidental loss.

15.2 Either party may, by giving written notice to the other party, terminate the Contract if the other party commits a material breach of the Contract and fails to cure such breach within thirty (30) days of receipt of such notice.

15.3 Any termination of the Contract will be without prejudice to the rights and duties of the parties accrued prior to termination. The terms which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

**16. REMEDIES.** Each right and remedy of a party under the Contract is without prejudice to any other right or remedy such party may have under the Contract or applicable law. Without limiting the foregoing, if any Goods are not supplied in accordance with, or Supplier otherwise fails to comply with, any term of this Contract, Buyer may at its option exercise any one or more of the remedies set forth under Section 6.2, and/or any of the additional following remedies, whether or not any part of the Goods have been accepted by Buyer: (a) cancellation of the Contract; (b) allow Supplier, at its expense, to remedy any defect in the Goods or supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled; provided such work can be done at Supplier's location or at Buyer's facilities without disruption to Buyer's operations; (c) completion, at Supplier's expense, of any work necessary so the Goods comply with the Contract; and/or (d) seek and obtain all such damages, losses, costs and expenses sustained by Buyer as a result of Supplier's breach(es) of the Contract.

**17. ASSIGNMENT.** Supplier may not assign the Contract or any part of it without the prior written consent of Buyer. The Contract is binding on the parties and their respective successors and assigns.

**18. WORK FORCE.** When Supplier performs work on the Goods or their components, Supplier will not (a) use forced labor, regardless of form; (b) employ any person below the age of 15, unless it is part of a government approved training program benefiting the participants; or (c) engage in physically abusive disciplinary practices. If Supplier uses subcontractors to perform work on the Goods or their components, Supplier will use only subcontractors that will adhere to the foregoing requirements.

**19. FORCE MAJEURE.** Either party may at any time, upon written notice to the other party, defer the Due Date or payment, cancel the Contract or reduce the volume of Goods subject of an Order, if it is prevented from or delayed in carrying on its business due to circumstances beyond its reasonable control, including, without limitation, any act of God, governmental action, war or national emergency, riot, terrorism, civil commotion, fire, explosion, epidemic, lock-out, strike or other labor dispute (whether or not relating to either party's workforce), restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

**20. GENERAL.** Failure or delay of either party in enforcing any Term will not be construed as a waiver of any of its rights. Any waiver by a party must be in writing and will not be deemed a waiver of any subsequent breach or default on the part of the other party. The Contract shall be governed by the laws of the state of Washington (without regard to that state's choice of law rules), and the parties agree to submit to the exclusive jurisdiction of the state and/or Federal courts of King County and/or the Western District of Washington for resolution of any dispute relating to this Contract. The United Nations Convention on Contracts for the International Sale of Goods is expressly excluded as is any relevant State implementation of the Uniform Computer Information Transactions Act (UCITA). The Buyer's rights under this Contract are in addition to all rights afforded to it under the Uniform Commercial Code as enacted under applicable state law. Any legal presumption that any term shall be strictly construed against the party who drafted such term or who benefits from such term shall not be employed in construing and interpreting the Contract. To the extent any Term is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable, then such aspect(s) shall be deemed removed and all other Terms shall continue in full force and effect. Notices under this agreement shall be provided in writing, shall be sent by overnight courier (in a manner so that receipt can be confirmed) or U.S. mail (return receipt requested) to Buyer or Supplier at the address indicated in the Order. Notice shall be deemed given if sent by overnight courier, two days after sent and, if sent by U.S. mail, 5 days after it is sent.

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