

1. **Definitions.** "Deliverables" means the goods, materials, products, software, technical data, intellectual property, drawings, personal property, personnel, services or items identified and/or listed in this purchase order for Buyer's internal use and resale.
2. **Acceptance of Purchase Order.** This purchase order constitutes Buyer's offer to Seller and shall become a binding contract upon the terms and conditions stated in this purchase order upon acceptance by Seller by any expression of acceptance, or commencement of performance, whichever occurs first. Any terms and conditions proposed by Seller in acknowledging or accepting Buyer's offer which are different from or in addition to the terms set forth in this purchase order shall not be binding upon Buyer and shall be void and of no effect, except to the extent expressly accepted in writing by Buyer's authorized procurement representative(s).
3. **Data.** Seller acknowledges that it has in its possession all applicable specifications, drawings and documents (including, without limitation, statements of work) necessary to perform its obligations under this purchase order at the price and schedule stated on this purchase order or its attachments. All such documentation shall be deemed to be a part of this purchase order.
4. **Packing and Shipping.** Deliveries shall be made as specified on this purchase order without charge for packaging or storage unless otherwise agreed in writing by Buyer. Deliverables shall be suitably packed to secure the lowest transportation costs and in accordance with the requirements of the carriers of the releases or orders subject to this purchase order. Seller shall use the carrier(s) selected by Buyer if Buyer so requests. Buyer's order numbers must be plainly marked on all packages, bills of lading and shipping orders. Buyer's count or weight shall be conclusive. Seller shall not ship in advance of schedule or make partial shipment unless otherwise agreed in writing by Buyer. Risk of loss shall be retained by Seller until delivery of the Deliverables at the location specified on this purchase order. Delivery according to schedule is a material condition of this purchase order.
5. **Taxes and Duties.** The prices stated in this purchase order include all applicable taxes and duties, except state and local sales and use taxes, which by statute may be passed on to Buyer. Such sales and use taxes shall be separately itemized in Seller's invoice. This purchase order shall include all related customs duty and import drawback rights, if any, including rights developed by substitution and rights, which may be acquired from Seller's suppliers, which Seller shall transfer to Buyer. Seller agrees to inform Buyer of the existence of all such rights, and to supply such documents as may be required to obtain such drawbacks, unless waived in writing by Buyer. Seller agrees to certify to Buyer the country of origin for Deliverables delivered under this purchase order.
6. **Payment and Prices.** Unless different payment terms are expressly stated on this purchase order, payment terms shall be thirty (30) days from Buyer's receipt of Seller's correctly presented invoice. A "correctly presented" invoice will contain this purchase order number sent to the billing address on this purchase order. Seller represents that prices quoted to or paid by Buyer shall not exceed current prices charged to any other customer of Seller for deliverables which are the same or substantially similar to, and in the same or substantially similar quantities as the Deliverables. Seller shall refund or Buyer may set off against subsequent invoices any amounts paid by Buyer in excess of such price(s).
7. **Set-off.** Buyer shall be entitled at all times to set off any amount owing at any time from Seller to Buyer (or any of Buyer's affiliates and subsidiaries) against any amount payable at any time by Buyer (or any of its affiliates and subsidiaries) to Seller.
8. **Warranty.** Seller warrants that all Deliverables will conform to applicable specifications, drawings, descriptions, and samples, and will be of new manufacture, good workmanship and materials, and free from design defect, claim, encumbrance or lien, and be suitable for the purpose intended by Buyer. Seller warrants that it has full title, right, power and authority to enter into this purchase order and perform its obligations under the purchase order. Seller warrants that Deliverables that are services shall be performed in a professional and workmanlike manner. If the Deliverables delivered under this purchase order do not meet the warranties specified in this purchase order or other applicable warranties, Buyer may, at its option, return at Seller's expense, the defective or nonconforming Deliverables for credit, refund or set-off, or require Seller to correct or replace, at no cost to Buyer, any defective or nonconforming Deliverables, including, without limitation, re-perform any Deliverables that are services. Return shipping to Buyer of corrected or replacement Deliverables shall be at Seller's expense. Deliverables required to be corrected or replaced (including, without limitation, the re-performance of any Deliverables that are services) shall be subject to this Section 8 and Section 9 (Inspection) in the same manner and to the same extent as Deliverables originally delivered under this purchase order. Seller's warranties shall run to Buyer, its affiliates, subsidiaries, customers or users of the Deliverables and shall not be deemed to be exclusive of any other remedy at law or in equity available to Buyer, its affiliates, subsidiaries, customers or users of the Deliverables. Buyer's inspection, approval, acceptance, use of, or payment for all or any part of the Deliverables shall in no way affect its warranty rights. Seller shall at its expense indemnify, defend

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and hold harmless, Buyer, its directors, officers, employees, affiliates, subsidiaries, agents, customers and end users, from any and all loss, damages or liability (including, without limitation, reasonable legal fees and costs) arising out of or resulting in any way from any defect in the Deliverables, or from any act or omission of Seller, its agents, employees or permitted subcontractors in connection with the Deliverables. This indemnification shall be in addition to Seller's warranty obligations. Deliverables, or from any act or omission of Seller, its agents, employees or permitted subcontractors in connection with the Deliverables. This indemnification shall be in addition to Seller's warranty obligations.

9. **Inspection.** The Deliverables may be inspected and/or tested by Buyer at any time, place and stage of production or distribution, and if at Seller's premises, Seller, without additional charge, shall provide all reasonable facilities and assistance required for safe and convenient inspection and testing. The foregoing shall not relieve Seller of its obligation to permit Buyer full and adequate inspection and testing away from Seller's premises. Payment shall not constitute Buyer's acceptance of the Deliverables nor impair Buyer's right to inspect and/or test the Deliverables or exercise any of its remedies. Upon notice of rejection of defective Deliverables, risk of loss of such Deliverables shall be upon Seller until redelivery, if any, to Buyer. Rejected Deliverables may be returned to Seller or held by Buyer, both at Seller's risk and expense, subject to Seller's disposal instructions.
10. **Default.** Buyer may, by written notice to Seller, cancel this purchase order or any release or order subject to this purchase order for default, (a) if Seller fails to deliver the Deliverables strictly within the time specified in this purchase order, or if no time is specified, within a reasonable time; (b) if the Deliverables delivered do not conform to this purchase order or if Seller fails to perform any of the other provisions of this purchase order, or so fails to make progress as to endanger performance of this purchase order in accordance with its terms; or (c) if Seller's financial condition shall at any time become unsatisfactory to Buyer. Upon such cancellation, Buyer shall not be liable to Seller for any amount. Seller will deliver to Buyer any of the Deliverables for which Buyer shall make written request prior to or upon cancellation, for which Buyer will pay Seller the fair value of any such Deliverables so requested and delivered. Buyer may pursue any remedies available at law or in equity and Seller shall be liable to Buyer for any and all damages suffered by Buyer by reason of Seller's default. Seller shall cooperate with any transition of the delivery of the Deliverables as reasonably requested by Buyer.
11. **Change Orders and Deliverable Substitution.** Buyer shall have the right by written notice to change the terms of this purchase order, the drawings, specifications or other descriptions, the time, method or place of delivery or the method of shipment or packaging or to suspend delivery of the Deliverables. Upon receipt of such notice, Seller shall proceed promptly to make such changes. If any such change causes a change in the cost of the Deliverables or in the time required for performance, Seller shall provide prompt notice to Buyer of any such change and an equitable adjustment shall be negotiated promptly and this purchase order shall be modified in writing accordingly. Seller shall not substitute or replace or add new raw materials or components in the Deliverables or change the specifications related to such Deliverables without first notifying Buyer in writing and receiving Buyer's written consent.
12. **Title.** Title to and the right of immediate possession of all articles, tooling, equipment, software, or materials furnished to Seller or paid for by Buyer directly or indirectly for use by Seller in connection with this purchase order shall be and remain in Buyer. Seller shall be (a) responsible on a replacement cost basis for all loss or damage to such articles, tooling, equipment, software or materials while in its possession and insure its risk in this respect with adequate all risk property insurance; (b) clearly mark the same as belonging to Buyer, keep it segregated in Seller's facility and treat it confidentially as provided in this purchase order; (c) keep the same in good operating condition; and (d) use the same exclusively in connection with the delivery of the Deliverables for this purchase order and not for any production of larger quantities than specified or in advance of normal production schedules, except with Buyer's prior written consent. Upon completion of this purchase order, all articles, tooling, equipment, software, or materials furnished to Seller or paid for by Buyer shall be disposed of by Seller at Seller's expense as Buyer directs in writing. All Deliverables shall be the sole and exclusive property of the Buyer, and where applicable, shall be considered "works made for hire" under the U.S. Copyright Act (Title 17, United States Code).
13. **Intellectual Property and Proprietary Rights.** Seller shall at its expense indemnify, defend and hold harmless, Buyer, its directors, officers, employees, affiliates, subsidiaries, agents, customers and end users, from any and all loss, damages or liability (including, without limitation, reasonable legal fees and costs) for or on account of, or resulting from, any claim of infringement of any existing or future copyrights, patents, or trademarks, misappropriation of any trade secrets, or violation of any other intellectual, proprietary or industrial rights, with respect to any of the Deliverables. The fact that Buyer furnishes specifications to Seller with respect to any of the Deliverables shall neither relieve the Seller from its obligations under this purchase order nor limit Seller's liability in connection with the Deliverables, nor constitute an undertaking by Buyer to hold Seller harmless against any such claim which arises out of compliance with the specifications.

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14. **Confidential Information.** Seller shall not disclose to any third party or use any confidential information of Buyer's concerning this purchase order or other material intended for use in connection with this purchase order without Buyer's prior written consent. Any knowledge or information which Seller may disclose to Buyer in connection with the purchase of any of the Deliverables shall not, unless Buyer otherwise specifically agrees in writing, be deemed to be confidential information and shall be acquired free from any restriction as part of the consideration for this purchase order.
15. **Termination.** At any time Buyer, at its option, may terminate this order for convenience in whole or in part by written notice. A stop work order or any other form of written notice requiring Seller to immediately cease performance under this purchase order shall obligate Seller to immediately stop work and take any actions necessary to mitigate the impact of such notice.
16. **Compliance with Law.** Each party shall comply with all applicable laws, including without limitation, government export control, and privacy and data protection laws.
17. **Delays.** Whenever an actual or potential labor dispute or other event beyond the reasonable control and without the fault or negligence of the Seller is delaying or threatens to delay the timely delivery of the Deliverables, Seller shall immediately give written notice of delay, including all relevant information regarding the delay, to Buyer. In addition, Seller shall take all reasonable steps to avoid or remove the cause of such delay and mitigate the harm of such delay to Buyer and will resume performance (if suspended) as soon as the cause of delay is removed. In the event the Seller's performance is delayed or is expected to be delayed by more than five (5) business days, the Buyer upon written notice to Seller may terminate this purchase order for its convenience in accordance with Section 15 of this purchase order.
18. **Assignment and Subcontract.** Neither this purchase order nor any duty or right under this purchase order shall be delegated, assigned or subcontracted without the prior written consent of Buyer. Any assignment not made in accordance with the terms and conditions of this Section is void and of no effect.
19. **Advertising.** Seller shall not, without the prior written consent of Buyer, in any manner advertise or publish the fact that Seller has contracted to furnish Buyer the Deliverables under this purchase order.
20. **Personal Injury and Property Damage Indemnification.** Seller agrees at its expense to indemnify, defend, and hold harmless Buyer, its directors, officers, employees, affiliates, subsidiaries, agents, customers and end users from any and all loss, claims and liability, including, without limitation, reasonable legal fees and costs, for death, injury or disability of any person or damage to or destruction of property (including, without limitation, the loss of use of any property or the presence of hazardous substances at any property) caused by or resulting from the acts or omissions of Seller, its agents, suppliers or employees in connection with the performance of this purchase order. During the performance of this purchase order, Seller shall maintain in full force and effect, at its sole cost and expense, reasonable insurance coverage (based on the size and revenues of Seller's business and industry norms) covering activities performed under this purchase order. Such policies shall name Buyer, its directors, officers, employees and agents as additional insured's covering activities performed under this purchase order. All policies shall provide that coverage may not be materially changed, canceled or non-renewed without thirty (30) days prior written notice to Buyer. The insurance requirements set forth in this purchase order are not intended and shall not be construed to modify, limit or reduce the indemnifications made in this purchase order by Seller to Buyer or to limit Seller's liability under this purchase order in any manner. Seller shall furnish Buyer with certificates of insurance for the coverages required under this purchase order prior to performance under this purchase order. Such insurance shall be primary to, not contributing with, and not in excess of, coverage which Buyer may carry. Seller's insurance shall contain a severability of interest provision. The insurance afforded by these policies applies separately to each insured against whom claim is made or suit is brought, in the same manner as such insured would be covered if the policy insured only such party.
21. **Hazardous Chemicals and Hazardous Materials.** Prior to shipment or transfer of any hazardous chemical(s), as defined by regulations promulgated pursuant to the Occupational Health and Safety Act ("OSHA"), Seller shall provide Buyer with a complete, up-to-date Material Safety Data Sheet and shall properly mark such hazardous chemical(s) with a label satisfying the requirements of OSHA's Hazard Communication Standard (29 CFR Part 1910.1200 et seq.). Any shipment or transfer by Seller of any hazardous material(s) (as defined by regulations promulgated by the U.S. Department of Transportation ("DOT") and Appendix A of Federal Standard number 313A), shall be conducted consistent with the requirements of DOT regulations promulgated at 40 CFR Part 171 et seq.
22. **Relationship of Parties.** The Seller and Buyer are independent contractors. Nothing in this purchase order shall be deemed to create a partnership, joint venture, franchise, employment, or agency relationship between the parties. Neither party shall have the power or authority to bind or obligate the other party.
23. **Waiver.** Any failure or delay by either party in exercising any right or remedy will not constitute a waiver.

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- 24. Entire Agreement.** Unless another agreement expressly references and incorporates this purchase order into such agreement (or otherwise makes this purchase order supplementary to such agreement) and such agreement provides for an order of precedence, this purchase order, together with any data referenced in Section 3 of this purchase order, constitutes the entire agreement and exclusive statement of the terms between the parties with respect to the purchase and sale of the Deliverables under this purchase order and terminates and supersedes all previous negotiations, communications, representations, or agreements between the parties. No alteration, modification or amendment of any of the provisions in this purchase order shall be binding unless in writing and signed by Buyer's authorized procurement representative(s). If any provision of this purchase order is held to be illegal, invalid or unenforceable by a court of competent jurisdiction, all other provisions shall remain in full force and effect.
- 25. Governing Law and Venue.** This purchase order shall be governed by the laws of the State of California, U.S.A., without giving effect to conflicts of law principles. Seller and Buyer consent to the exclusive jurisdiction of, and venue in, the state and federal courts within San Diego County, California, U.S.A.
- 26. Survival.** Any provision in this purchase order which, by its nature, would reasonably be expected to be performed after the termination of this purchase order shall survive and be enforceable after such termination.
- 27. Limitation of Liability.** In no event shall Buyer be liable for any incidental, indirect, special, and consequential or punitive damages, even if Buyer knew or should have known of the possibility of such damages.
- 28. NON-DISCRIMINATION IN EMPLOYMENT:** In accordance with Executive Order 11246, as amended by Executive Order 11375 (Equal Employment Opportunity), 38 USC 2012 (Vietnam Era Veterans Readjustment Assistance Act of 1974), Section 503 of the Rehabilitation Act of 1973 (Handicapped Regulations), and the implementing regulations found at 41 CFR 60-1&2, 41 CFR 60-250 and 41 CFR 60-741, respectively, are hereby incorporated by reference. The Seller agrees not to Discriminate against any employee or applicant for employment because of race, creed, color or national origin. The Seller will take affirmative action to ensure that Equal Employment Opportunity is implemented in employment, upgrading, demotion or transfer or recruitment advertising, layoff or termination rates of pay or other forms of compensation and selection of training including apprenticeship. All other applicable provisions of the Rules and Regulations of the Office of Federal Contract compliance are herein incorporated by reference.

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