

CMS CIRCUITS, INC.

PURCHASE ORDER TERMS AND CONDITIONS

1.1 ACCEPTANCE AND APPLICABILITY OF TERMS

(a) Acceptance, Terms and Conditions of Contract.

"Buyer" and "Seller" are the respective entities so identified in this Purchase Order, and the "Ordered Items" are those items (which may include both goods and services, including any components therein) that Buyer offers to purchase from Seller by delivery of this Purchase Order. The terms and conditions of this Purchase Order and any supplemental terms and conditions referenced on the front page of this Purchase Order are the only terms that govern the purchase of the Ordered Items by Buyer from Seller. Except as provided in Section 1(e) hereof, the Purchase Order and these terms comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreement, negotiations, representations and warranties, and communications, both written and oral, with respect to the purchase and sale of the Ordered Items. These terms prevail over any of Seller's general terms and conditions of sale regardless of whether or when Seller has submitted its sales confirmation of such terms.

(b) Purchase Order as an Offer.

This Purchase Order constitutes an offer by Buyer to purchase the Ordered Items specified herein, Seller's acceptance of such offer is subject to and expressly conditioned upon Seller's consent to the terms and conditions specified herein. Seller shall indicate its acceptance of Buyer's offer by verbal acceptance communicated to Buyer, by written acceptance of this Purchase Order received by Buyer, by Seller's acceptance of payment from Buyer, by commencing work on this Purchase Order in any manner, or by Seller's shipment of any Ordered Items to Buyer. If Buyer has not received Seller's acceptance within five days after the date of this Purchase Order, then Buyer may withdraw this offer without liability to Seller.

(c) Other Agreements.

If the Parties have previously entered into a separate written agreement pertaining to the purchase and sale of the Ordered Items that remains in effect, such as a supply agreement or a quality agreement, this Purchase Order is subject to the terms and conditions set forth in that agreement. In the event of any conflict between the terms and conditions of this Purchase Order and the terms and conditions of that agreement, the terms and conditions of that agreement shall prevail.

1.2 PRICE AND PAYMENT

(a) Invoices and Statements.

Unless otherwise agreed, Seller will send a separate invoice for each shipment of Ordered Items. The invoice must include the description, quantity and price of each Ordered Item shipped, and the number of this Purchase Order, including the release number if the shipment is against a blanket Purchase Order.

(b) Price.

If Seller's price for any Ordered Item is higher than the price stated in this Purchase Order for such item on the date of shipment, the Purchase Order price will prevail.

(c) Payment.

Unless otherwise indicated on the face of the applicable Purchase Order, payment shall be due ninety (90) days after the later of Buyer's receipt of either an appropriate invoice from Seller or the Ordered Items.

(d) Taxes.

Except as otherwise specifically agreed or as required by law, Seller will pay or assume all taxes imposed upon, or in connection with, the sale of the Ordered Items. If, under applicable law, Buyer is required to withhold any tax on payments to Seller, Buyer will deduct such amounts from the amounts owed under Seller's invoice and remit the applicable taxes withheld to the appropriate taxing authority. Upon request, Buyer will furnish Seller with the official receipt of payment of these taxes to the appropriate taxing authority.

(e) Set-off.

Any discount and late payment periods shall run from the later of (1) the date Buyer receives an acceptable invoice and (2) the date Buyer receives and accepts the Ordered Items. Buyer may offset any claims or amounts due to Seller under this Purchase Order or otherwise against any claims or amounts owed by Seller to Buyer by reason of this Purchase Order or otherwise.

1.3 SHIPPING, DELIVERY AND ACCEPTANCE

(a) Schedule.

Postponement by Buyer. Buyer may postpone delivery of any of the Ordered Items specified herein for up to one week (or the length of time, if any, indicated as a "Permissible Delay" elsewhere in this Purchase Order). Any material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet ordered quantities and delivery schedules are made at Seller's own risk.

Early Shipment. If Seller ships Ordered Items ahead of schedule so that Ordered Items are received by Buyer in excess of five (or in the case of international shipment, ten) working days prior to the scheduled date of receipt, Buyer reserves the right either (1) to return the Ordered Items to Seller at Seller's expense or (2) to extend the payment terms for the received Ordered Items by the number of days received early.

Delayed Shipment. If, at any time, it appears Seller may not meet the delivery schedule in this Purchase Order, Seller shall immediately notify Buyer of the cause and estimated duration of any delay. Seller shall, upon request by Buyer, take all reasonable steps to prevent such delay (or such portion thereof as Buyer requires) by appropriate methods, including (without limitation) incurring expenditures for overtime and expedited shipment by air or other means of expedited transport. Any costs incurred by Seller to reduce or prevent such delay shall be borne solely by Seller, unless the delay in delivery arises out of causes beyond the control and without the fault or negligence of Seller or its subcontractors within the meaning of Section 3.01(d) ("Termination for Default"). If because of such a delay by Seller, Buyer is required to obtain substitute items in order to satisfy the requirements of Buyer's customer, then Seller shall be liable to Buyer for any resulting costs or damages, including without limitation the excess of the cost of such substitute items over the price under this Agreement, and any costs relating to expedited shipment made necessary by Seller's delay.

(b) Quantity.

Except as otherwise specified or approved by Buyer in writing, Seller must ship exact quantities of Ordered Items specified in this Purchase Order. Notwithstanding any custom or practice to the contrary, Buyer is not required to receive or pay for any variance in the quantity of Ordered Items. Buyer may adjust Seller's invoice for over-shipment, shortage and rejection, or return excess shipments or under-shipments at Seller's expense.

(c) Charges.

No charges of any kind, including without limitation charges for boxing, packaging, transportation, cartage, storage, or freight insurance, will be allowed unless agreed by Buyer in writing. Price based on weight shall be determined according to net weight of the Ordered Items without packaging, unless otherwise agreed in writing by Buyer.

(d) Documentation.

Seller must deliver original bills of lading (or equivalent documents) to Buyer's Purchasing Department or as otherwise directed by Buyer. In the case of a drop shipment to Buyer's customer, Seller shall send to Buyer two copies of the packing list at time of shipment.

(e) Packing and Shipping.

Seller shall pack, mark and ship all Ordered Items in accordance with the requirements of this Purchase Order, and all applicable transportation regulations. Subject to the preceding sentence, Seller shall ship freight collect using an account number provided by Buyer. Buyer will not be responsible for freight charges on any in-bound freight not using approved carriers. Any prepay and add charges will be deducted from invoices unless authorized by Buyer in writing, in advance of shipment. Any declared value for insurance will be charged back to the Seller. Any expense, damage or liability incurred by Buyer as a result of improper preservation, packing, packaging, marking or method of shipment for Ordered Items shall be reimbursed by Seller upon demand.

(f) Inspection.

(1) Ordered Items Subject to Inspection. All Ordered Items are subject to inspection and testing by Buyer or its designee at all times prior to shipment by Seller.

(2) Return of Rejected Ordered Items. If any Ordered Items are found to be defective in material or workmanship (including Ordered Items damaged because of unsatisfactory packaging by Seller), or otherwise not in strict conformity with the requirements of this Purchase Order, including drawings and specifications and approved samples, if any, then Buyer, in addition to any other rights and remedies which it may have under this Purchase Order or applicable law, has the right in its sole discretion to (a) reject and return such Ordered Items at Seller's expense and to receive a full credit for any such rejected Ordered Items, (b) require correction or replacement of any such rejected Ordered Items without additional cost to Buyer, or (c) retain and use the Ordered Items with an equitable reduction in purchase price. Rejected Ordered Items returned to Seller shall not be reshipped to Buyer without prior written authorization. Seller shall bear all risks as to rejected Ordered Items after notice of rejection. Payment shall not be deemed to constitute acceptance.

(3) Seller's Quality Control System. Seller shall provide and maintain a quality control system acceptable to Buyer for Ordered Items. Records of all inspection work by Seller shall be kept accurate and complete and available to Buyer during the performance of this Purchase Order and until final inspection and acceptance of the Ordered Item, and for any longer period of time required by law (including the U.S. Federal Acquisition Regulations ("FAR") if applicable). Buyer's exercise of the right of inspection shall not constitute or be deemed to be Buyer's acceptance of the Ordered Items. Buyer's acceptance of the Ordered Items shall not relieve Seller of any obligation with respect to any warranties or conditions, express or implied, with respect to the Ordered Items, and is without prejudice to Buyer's rights in the event of latent defects, fraud, or gross errors.

(g) Title and Risk of Loss.

Seller shall not reserve title or a security interest in goods shipped to Buyer. Seller shall deliver the Ordered Items in accordance with the terms of shipment specified in the Purchase Order, and the risk of loss of the Ordered Items will transfer in accordance with such terms. Notwithstanding such terms of shipment, however, title to the Ordered Items will transfer from Seller to Buyer only upon receipt of the Ordered Items at Buyer's facility (or, in the case of a consignment arrangement, upon Buyer's use of the Ordered Items).

1.4 WARRANTY AND SERVICE

(a) Terms of Warranty.

Seller includes the following warranties and conditions with respect to all Ordered Items delivered under this Purchase Order, including packaging: The Ordered Items (1) will be merchantable, (2) will be of satisfactory quality, (3) will be free from defects in workmanship and material, and in the case of software will be free from disabling or malicious code, (4) will comply with the terms of this Purchase Order and all applicable specifications, performance criteria, drawings or samples, and, (5) to the extent such items are not manufactured pursuant to detailed designs furnished by Buyer, will be free from defects in design and suitable for their intended use. Buyer's approval of designs furnished by Seller or any approval of Seller's "First Article" shall not relieve Seller of its obligations under this warranty. The aforesaid warranties and conditions are in addition to all other warranties and conditions to which Buyer is entitled under this agreement or by law and do not constitute a waiver of any rights of Buyer, expressed or implied.

(b) Benefit of Warranty.

All of Seller's warranties are enforceable by Buyer, Buyer's affiliates, successors and assigns, Buyer's customers and any subsequent owner or operator of the Ordered Items. Any inspection or acceptance of such Items by Buyer shall not be deemed to alter, waive, extinguish or otherwise affect the obligations of Seller or the rights of Buyer or any other beneficiary of any warranty.

(c) Duration of Warranty.

Unless otherwise documented in this Purchase Order or otherwise agreed by Buyer and Seller, all warranties and conditions shall run from the date of receipt and acceptance of the Ordered Items by Buyer for a period of three years.

(d) Remedies.

In the event of any breach of warranty or condition, Buyer, at its option, may require Seller (1) to replace the defective Ordered Items; (2) to correct such defect or failure in whole or in part; or (3) to provide an equitable reduction in the price or refund to Buyer. Such optional right of Buyer shall not be construed to negate, replace or limit, but is in addition to, any rights of Buyer arising under this agreement or at law.

1.5 LIABILITY

(a) Representations and Warranties.

Seller represents, warrants and covenants the Ordered Items, and Buyer's customers use thereof, do not and will not infringe or violate any patent, copyright, trademark, trade secret, mask work right, or other proprietary right of others, and that Seller has, owns, will obtain, or has otherwise procured all right, title, and interest, including any necessary licenses, to the Ordered Items. Seller represents and warrants that in connection with its performance in manufacturing or otherwise supplying the Ordered Items hereunder, Seller will not infringe or violate any patent, copyright, trade secret, mask work right, or any other proprietary right of any third party.

(b) Indemnity.

Seller hereby agrees to and shall defend and indemnify, save and hold Buyer, its affiliates, agents, employees, customers, successors and assigns ("Indemnitees") harmless from and against any and all suits, claims, liabilities, losses, damages, demands, costs and expenses (including reasonable attorneys' fees) arising out of or claimed to have arisen out of or in connection with or by reason of (i) any act or omission or any breach of representations, express or implied warranties or conditions by Seller, its affiliates, agents, employees, successors or assigns or (ii) the use or sale by Indemnitees of the Ordered Items; provided, however, Buyer shall notify Seller of any such suit, claim or demand and shall permit Seller to control the defense or settlement thereof. Seller shall indemnify and hold Indemnitees harmless from any losses, liabilities, damages, or expenses, including (without limitation) attorneys' fees and costs incurred in connection therewith, which may be incurred on account of any actual or alleged infringement or violation of any applicable patent, copyright, trademark, trade secret, mask work right, or other proprietary right of others, with respect to such Ordered Items. To the extent the Ordered Items are manufactured to specific design specifications provided by Buyer, this indemnity shall not apply to any alleged or actual infringement or violation arising from the Ordered Items when such infringement or violation is proximately caused by the Buyer's specific design specifications. For the avoidance of doubt, Buyer's specification requiring compliance with an industry standard shall not be considered a specific design specification provided by Buyer.

(c) Remedies Cumulative; No Waiver.

The remedies set forth in these Terms and Conditions are cumulative and additional to any other or further remedies provided by law. No failure by Buyer to exercise any of its rights hereunder and no partial or single exercise thereof shall constitute a waiver of such rights. No waiver by Buyer of any obligation or breach of any provision or provisions hereof shall constitute a waiver of any other obligation, past or future, hereunder or any recurring breach of this or any other Purchase Order.

(d) Insurance.

Except as Buyer may otherwise agree, Seller will maintain insurance in such amount and scope as are adequate to cover its obligations under this Purchase Order, including: (i) Commercial General Liability for bodily injury and property damage including premises/operations, products/completed operations, property damage and contractual liability coverage, not less than \$3,000,000 per occurrence; (ii) if applicable, Automobile Liability covering owned, hired, and non-owned vehicles with minimum limits of \$1,000,000 combined single limit each occurrence; and (iii) if applicable, Worker's Compensation insurance in accordance with the laws of the state with jurisdiction and Employer's Liability insurance in an amount not less than \$1,000,000. If Seller will have custody of tooling, test equipment, or other property belonging to Buyer pursuant to Section 3.02(b), Seller will maintain broad form property damage insurance naming Buyer as loss payee and insuring replacement value of property in the care, custody and control of Seller, as applicable. Each of the above policies will provide Buyer with at least 30 days' prior written notice of any cancellation, non-renewal or material change in coverage.

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(e) **Limitation on Buyer's Liability.** IN NO EVENT SHALL BUYER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT OR REMOTE DAMAGES, INCLUDING LOSS OF PROFITS OR LOSS OF USE, OR FOR PUNITIVE, EXEMPLARY OR OTHER SPECIAL DAMAGES, HOWEVER STYLED, WHETHER ARISING UNDER THIS PURCHASE ORDER OR OTHERWISE.

2.1 COMMUNICATIONS AND REPORTING

Seller shall not advertise or publish the fact that it has furnished, or contracted to furnish, the Ordered Items to Buyer, or disclose any details of this Purchase Order to any party, without prior written consent of Buyer.

2.2 DISPUTE RESOLUTION

Upon written notice by either party to the other, any claims, demands, misunderstandings, or unresolved disputes (together referred to as "disputes") will be referred to Buyer and Seller senior management for resolution. If the dispute is not resolved within 30 days of the date of the written notice, the dispute, upon written notice by either party to the other, will be referred to Buyer and Seller executive management for resolution. If the dispute is not resolved within 30 days of the date of the written notice, and absent written agreement of the parties otherwise, the dispute shall be referred to binding arbitration conducted in accordance with the International Arbitration Rules of the American Arbitration Association, except where those rules conflict with this provision, in which case this provision controls. Arbitration shall be conducted before a single arbitrator unless the amount in dispute exceeds \$250,000. If the amount in dispute exceeds \$250,000, it shall be decided by three arbitrators, one to be selected by each party and the two party-appointed arbitrators to agree upon the third. The arbitration shall be held within the judicial district of Buyer's main office location, or in another location if agreed by Buyer and Seller. The arbitrators shall be authorized to award costs and attorney's fees or to allocate them between the parties and their decision shall be binding upon the parties.

2.3 AUDITS/INSPECTION

(a) Inspection by Buyer.

Any authorized representative of Buyer may inspect or audit Seller or Seller's subcontractors' facilities and processes engaged in the performance of this Purchase Order, and may inspect and test Ordered Items to be delivered under this Purchase Order to the extent practicable at any time, whether before or after acceptance. If any such audit, inspection or test is made by Buyer, Seller shall provide all reasonable facilities and assistance for the safety and convenience of the personnel involved.

(b) Process Changes.

Seller shall notify Buyer not less than 90 days in advance of any proposed changes to Seller's manufacturing processes, composition or grade of raw materials used, critical process sources, equipment or facilities that may impact the quality, acceptability, reliability or on-time delivery of the Ordered Items, including any proposed relocations of manufacturing or assembly facilities that produce the Ordered Items. Any such changes must be planned and coordinated between Buyer and Seller prior to implementation and shall not be made without Buyer's written approval; if Seller implements such changes without Buyer's written agreement, this may render the Ordered Items defective and Buyer may reject the items or may terminate this Purchase Order under Section 3.01(d).

3.1 GENERAL TERMS; TERMINATION

(a) Entire Agreement.

When this Purchase Order is deemed to be accepted pursuant to Section 1.01 above, it constitutes a complete and exclusive statement of the terms of the agreement between Seller and Buyer with respect to its subject matter, subject to the terms of Section 1.01(c) regarding other written agreements. "Signing" includes the use of fax, email, electronically generated signatures or any other act intended to authenticate a party's assent to the agreement.

(b) Force Majeure.

(1) **Failure to Perform.** Buyer is not liable for delay in acceptance of Ordered Items, and Seller is not liable for delay in shipment, to the extent occasioned by events beyond such party's reasonable control and without its fault or negligence, such as war, strikes, fires, natural disasters, catastrophic weather events, acts of terrorism, acts of a public enemy, acts of governments, transportation difficulties, or other such causes.

(2) **Labor Disputes.** Seller shall immediately notify Buyer if any actual or potential labor dispute is delaying or threatens to delay the timely performance or delivery of this Purchase Order. If such a delay extends for a period greater than ten days, Buyer may terminate this Purchase Order on notice to Seller, and such a termination will be considered a Termination for Convenience under paragraph 3.01(c).

(c) Termination for Convenience.

Buyer may terminate any Ordered Item under this Purchase Order in whole or in part with ten (10) days prior written notice. In the event of such termination, Buyer and Seller agree that an equitable settlement payment for the terminated portion of this Purchase Order shall consist of Seller's provable costs to date of termination, less any value recoverable by Seller. There shall be no allowance for potential or anticipated profits, overhead costs or otherwise.

(d) Termination for Default.

(1) **Termination by Buyer.** Buyer may terminate work under this Purchase Order in whole or in part pursuant to Section 2.03(b) ("Process Changes"), or if Seller fails to: (i) deliver the Ordered Items required by this Purchase Order within ten days after Seller's receipt of notice from Buyer of Seller's failure to provide such delivery within the time(s) specified in this Purchase Order, or (ii) provide full performance of any other requirement of this Purchase Order in strict compliance with the terms hereof within ten days of Seller's receipt of notice from Buyer specifying such failure, or (iii) provide adequate assurances of progress within ten days of Seller's receipt of Buyer's demand therefor.

(2) **Transfer of Completed Ordered Items.** If Buyer terminates this Purchase Order in whole or part pursuant to this Section 3.01(d), Buyer may require Seller to transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer, (i) any completed Ordered Items, and (ii) such partially completed Ordered Items and materials, parts, tools, dies, jigs, fixtures, plans, drawings, and information or similar items (hereinafter called "Manufacturing Material"), as the Seller has produced or acquired for the performance of this Purchase Order; and Seller shall, upon direction of Buyer, protect and preserve any property in Seller's possession in which Buyer has an interest. Payment for completed Ordered Items delivered to and accepted by Buyer shall be at the Purchase Order price. Payment for Manufacturing Materials delivered to and accepted by Buyer and for the protection and preservation of property shall be at a price determined by agreement of the parties.

(3) **Assignment of Rights.** If Buyer terminates this Purchase Order in whole or part pursuant to this Section 3.01(d), Seller shall provide to Buyer all information Buyer shall reasonably require concerning Seller's purchase orders, subcontracts or similar rights for materials, services or facilities necessary for the completion of this Purchase Order, and Buyer may require Seller to assign to Buyer some or all of Seller's right, title and interest in such purchase orders, subcontracts or other documents. In the event of such an assignment, (i) Buyer shall not be liable for any amount in excess of the reasonable value of the items received by Buyer (not to exceed that portion of the unpaid purchase price reasonably allocable to such items), and (ii) except to the extent of such reasonable value, Seller shall hold Buyer harmless from all liability, damages, claims, expenses, or loss, including (without limitation) attorneys' fees and costs incurred in connection therewith, related to such assigned orders, subcontracts or rights.

(4) **Seller Liable for Cost of Cover.** If Buyer terminates this Purchase Order in whole or part pursuant to this Section 3.01(d), Buyer may procure substitute items from alternate sources and in such manner as it may deem appropriate and Seller shall be liable to Buyer for the excess of the total cost of such substitute items over the total price Buyer would have paid for such items under this Purchase Order. The rights of Buyer provided in this clause shall be in addition to any other rights provided by law or this Purchase Order.

(5) **Insolvency of Seller.** Without limiting any other provision of this Purchase Order, Buyer may, by written notice to Seller, cancel the whole or any part of this Purchase Order in the event of suspension of Seller's business; insolvency of Seller; institution of bankruptcy, insolvency, reorganization, arrangement or liquidation proceedings by or against Seller; appointment of a trustee, administrator or receiver for Seller's property or business; or any assignment by Seller for the benefit of creditors. If Buyer in good faith believes that Seller may be financially incapable of performing its obligations hereunder in strict compliance with the provisions hereof, it may demand written assurances of Seller's ability to perform, and failing Buyer's receipt of such assurances within five days of Buyer's demand, Buyer may cancel the whole or any part of this Purchase Order. The circumstances described in this subsection shall be deemed defaults, which shall entitle Buyer to exercise any of its remedies described above.

(e) Applicable Law.

(1) This agreement is governed by and shall be construed and enforced in accordance with the laws of the State of California, without giving effect to the conflict of laws provisions thereof. The parties hereby exclude application of the U.N. Convention on Contracts for the International Sale of Goods from this agreement and any transaction between them related thereto.

(2) Seller shall comply with all applicable Federal, national, provincial, state and local laws, rules and regulations and, on request, shall furnish Buyer with such certificates or other evidence of compliance as may be reasonably requested by Buyer or other authorities.

(f) Assignment and Subcontracting.

Seller shall not contract with any other party to furnish any of the completed or substantially completed Ordered Items, and shall not assign any of its rights or delegate any of its duties under this Purchase Order without the prior written consent of Buyer. In the event of an assignment not prohibited hereunder, payment to an assignee in accordance with any such assignment shall be subject to setoff or recoupment for any present or future claims by Buyer against Seller or such assignee. Buyer reserves the right to make, without notice to Seller's assignee, direct settlements and/or adjustments in price (or other terms) with Seller notwithstanding any assignment, and the right to make, without notice to Seller, direct settlement and/or adjustments in price (or other terms) with Seller's assignee.

3.2 INTELLECTUAL PROPERTY/DATA RIGHTS

(a) Buyer's Intellectual Property and Rights in Inventions.

(1) All intellectual property and other rights in Buyer's intellectual property, whether in the nature of copyright, trademarks, trade secrets, or patent rights (whether registrable or not), or otherwise are to be and remain the property of Buyer absolutely. Seller undertakes that neither it nor its permitted subcontractors or any of their respective shareholders, directors, officers, employees, consultants or agents will use, reproduce, modify, adapt, or make any other use of a Buyer's intellectual property or other rights in such intellectual property without the prior written consent of the Buyer, or in any manner infringe upon the rights of the Buyer therein. Seller will not file any patent application, utility model application, or design application using or disclosing any of the Seller's intellectual property.

(2) If this Purchase Order is for an Ordered Item for which Buyer furnishes the specifications, in whole or in part, Seller hereby conveys and assigns to Buyer (i) all its right, title and interest in and to any inventions, data and knowledge (whether covering processes, formulae, designs, techniques, assembly, manufacture or otherwise and whether patentable or not patentable) conceived or first reduced to practice in connection with such Ordered Item, and (ii) a perpetual royalty-free and fully paid-up right and license (with right to sublicense) to utilize any patents, inventions, data and knowledge of Seller, or any of its subcontractors hereunder, which are incorporated in or utilized in connection with the Ordered Item delivered hereunder. Seller agrees to keep and preserve proper engineering and other records of such inventions, data and knowledge, and to make such records available to Buyer upon request. Seller agrees to execute and deliver all such documents and instruments as Buyer may, from time to time hereafter, reasonably require in order to give effect to Buyer's rights under this Section. Seller will promptly disclose to Buyer in writing any rights acquired under clause (i) hereof.

(b) Use of Buyer's Property.

(1) Property paid for or furnished by Buyer to Seller for the production of Ordered Items, including, without limitation, tools, jigs, dies, patterns, press plates, molds, fixtures, offset negatives, material, equipment, drawings, designs and other information and things ("Buyer's Property") is deemed to be included in Seller's quoted price, is deemed to be the property of Buyer and shall be used exclusively for performance by Seller of this Purchase Order. Buyer's Property, and whenever practical, each individual item thereof, shall be plainly marked or otherwise adequately identified by Seller as being the property of Buyer, shall be safely stored separate and apart from Seller's property and shall be subject to examination by Buyer. Seller shall maintain Buyer's Property in proper condition, subject to reasonable wear and tear, and shall not encumber, destroy or dispose of such property. All Buyer's Property shall be subject to removal and return to Buyer from Seller's plant after completion or termination of this Purchase Order or of the portion hereof relating to such property, or at any time prior thereto upon the issuance of a change order reimbursing Seller for reasonable costs incurred as a result of such early removal.

(c) License to Buyer.

Seller grants to Buyer the right to reproduce, use and disclose, in connection with the use, maintenance and service of the Ordered Items, all reports, drawings and reproductions thereof, data and technical information delivered to Buyer under this Purchase Order.

(d) License to Seller.

Seller acknowledges that, to the extent indicated by notices, legends or other markings, the drawings, specifications, prints or other data furnished by Buyer under this Purchase Order constitute or contain trade secrets that are the property of Buyer. Subject to the limitations and restrictions contained in this Purchase Order, Buyer grants to Seller a nonexclusive license to use said trade secrets for the limited purpose of supplying the Ordered Items required by this Purchase Order. To the extent that said trade secrets describe the Ordered Items required by this Purchase Order, Seller agrees it will not supply identical Ordered Items that have been extracted from Buyer's data, at the direction of or for the use or benefit of, any person other than Buyer or persons designated by Buyer.

(e) Confidentiality.

All drawings, specifications, prints or other data furnished or purchased by Buyer:

- (1) Remain the property of Buyer, and Seller shall return them at any time without additional cost, upon demand of Buyer;
- (2) Shall be held secret and confidential by Seller and shall not be disclosed, in whole or in part, to any third party without the prior written consent of Buyer;
- (3) Shall not be duplicated, used or disclosed, in whole or in part, for any purpose other than the performance of this Purchase Order, and if duplicated must include any restrictive legends, copyright notices and other intellectual property rights markings and legends that appear on the versions provided by the Buyer; and
- (4) Shall be disclosed only to those employees of Seller who are directly engaged in the performance of this Purchase Order and who have been advised of the restrictions upon duplication, use and disclosure contained herein.

Confidential Information shall not include any information that: (i) is or subsequently becomes publicly available without Seller's breach of any obligation owed to Buyer; (ii) became known to Seller prior to Buyer's disclosure of such information to Seller; (iii) became known to Seller from a source other than Buyer other than by the breach of an obligation of confidentiality owed to Buyer; or (iv) is independently developed by Seller without access to the Buyer's information. Any breach by Seller of any of the foregoing shall be deemed to be a material breach of this Purchase Order on the part of Seller. In addition to any remedies that Buyer may then have, including Buyer's rights under other agreements, Buyer shall have the right to cancel this and any other unfulfilled Purchase Order that it has placed with Seller without liability. The provisions of this paragraph 3.02(e) shall survive the completion, expiration or termination of this Purchase Order.

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(f) Security

Seller will provide reasonable data protection for any personal, product and planning information regarding Buyer's organization as follows:

- (1) Seller will not share Buyer's information with any third party and will not store or process such information with any third party or in any location not previously disclosed and not having a similar level of protection.
- (2) Seller will notify Buyer immediately in the event of any security breach which results or may result in an inappropriate disclosure.
- (3) Where additional security provisions and/or flow down clauses are required they will be noted on the Purchase Order or in supporting documentation.

3.3 LAWS AND REGULATIONS

(a) Compliance with Laws.

Seller warrants that, in the performance of this Purchase Order, it will comply with all applicable Federal, national, provincial, state and local laws. Seller also warrants that it is, and will continue during the period of performance of the Purchase Order to be, in full compliance with the provisions of (i) the Foreign Corrupt Practices Act of 1977, as amended, 15 USC § 78 et seq., (ii) U.S. export control laws and regulations, including but not limited to the International Traffic in Arms Regulations ("ITAR") (22 CFR 120 et seq.), the Export Administration Regulations ("EAR") (15 CFR Part 730-774), the regulations administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") (31 CFR Part 500-598), (iii) the Anti-Kickback Act of 1986, 41 U.S.C. ch. 87. Seller shall indemnify and hold Buyer harmless from any liability resulting from failure of such compliance. Unless Seller notifies Buyer otherwise, Seller represents that the Ordered Items are classified as EAR99 under the Export Administration Regulations or are not otherwise subject to export regulation under U.S. law.

(b) Debarred Persons.

Buyer will not enter into any subcontract or other business relationship relating to United States Government contracts with any individual or business entity listed by a United States Government agency as debarred, suspended or otherwise ineligible for contracting. Seller, as well as any individual or entity that proposes to provide goods or services, including Ordered Items, under this Purchase Order hereby certifies that it is not listed by a United States Government agency as debarred, suspended or otherwise ineligible for contracting.

(c) Fair Labor Standards Act.

By acceptance of this Purchase Order Seller hereby certifies that the Ordered Items will be produced in compliance with all applicable requirements of the Fair Labor Standards Act of 1938 (29 USC 201-19), as amended, and of the regulations and orders issued under that Act.

(d) Equal Employment Opportunity.

(1) *EEO and Notice of Labor Rights. Seller shall, to the extent they apply, abide by (1) the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), which prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin and require affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability; (2) 29 CFR Part 471, Appendix A to Subpart A, and (3) E-Verify.*

(2) Upon receipt of any contract, subcontract or purchase order amounting to \$50,000 or more with Buyer, Seller will file with the appropriate federal agency on or before March 31 of each year or within such other period permitted or required by Executive Order 11246, as amended, complete and accurate reports on Standard Form 100(EEO-1).

(3) Seller has developed and is currently maintaining a written Affirmative Action Program at each of its establishments pursuant to all the terms of the regulations promulgated by OFCCP, including 41 CFR Part 60-2, 41 CFR §60- 741.44, and 41 CFR §60-300.44, and as contained in OFCCP's Rules and Regulations found in 41 CFR Part 60. In accordance with those regulations, the Seller agrees and certifies that if such a program has not been developed, such a program or programs will be developed within one hundred twenty days from the commencement of a covered contract, subcontract, or purchase order.

(e) Occupational Health and Safety.

(1) All items supplied under the terms of this Purchase Order shall be certified by Seller to be in compliance with the requirements and standards of the Occupational Safety and Health Act of 1970 (Public Law 91-596), as amended, and all regulations and orders promulgated thereunder. Where required, material safety data sheets will be supplied on all applicable Ordered Items. Failure of Buyer to contest a citation resulting from non-compliance of these items will not relieve Seller of liability under this warranty.

(2) Seller warrants that each and every chemical substance delivered under this Purchase Order shall, at the time of sale, transfer or delivery, be on the "TSCA Inventory" of chemical substances compiled and published by the administrator of the Environmental Protection Agency pursuant to Section 8 of the Toxic Substances Control Act (Public Law 94-469).

(3) Seller warrants that it will have on file the current Material Safety Data Sheet (MSDS) Form OSHA-20 for any material at the ordering plant before such material is shipped on this Purchase Order. If there has been any alteration in the material or the MSDS since the previous order and/or shipment, then a new MSDS must be submitted by the Seller and approved by an authorized Buyer representative prior to shipment.

(f) Conflict Minerals

Seller represents that either (i) the Ordered Items do not contain any amounts of tantalum, tungsten, tin or gold, or (ii) none of such materials contained in the Ordered Items originated in the Democratic Republic of the Congo or in any of its bordering countries, or (iii) Seller has already provided to Buyer a completed Conflict Minerals Reporting Template.

3.4 NO COUNTERFEIT PARTS.

Seller warrants that all Ordered Items delivered to Buyer will (i) be new; (ii) be and only contain materials obtained directly from the original equipment manufacturer ("OEM") or an authorized OEM reseller or distributor; (iii) not be or contain Counterfeit Items; and (iv) contain only authentic, unaltered OEM labels and other markings. As used in this Section 3.04, "Counterfeit Item" means a copy or substitute supplied without the legal right or authority to do so, or an item the material, performance or characteristics of which are knowingly misrepresented by a supplier, distributor or manufacturer at any level in the supply chain. Examples include, but are not limited to, parts that have been re-marked to conceal that they are different from those offered by the OEM; previously used parts salvaged from scrapped assemblies; and defective parts scrapped by the OEM.

(i) Unless first approved in writing by Buyer, Seller may purchase Ordered Items only from sources which Seller can show comply with a recognized international standard relating to combatting Counterfeit Items and which ensure that the items purchased from such source are new, unused and authentic Ordered Items.

(ii) Seller shall maintain a method of tracking of the supply chain back to the manufacturer of all items included in the Ordered Items. This tracking method must clearly identify the name and location of all supply chain intermediaries from the manufacturer to the direct source of each item for Seller and shall include the manufacturer's batch identification for the item such as date codes, lot codes, serializations, or other batch identifications. Full supply chain traceability documentation includes but is not limited to OCM, OEM and authorized (i.e. franchised) supplier certificates of conformity, purchase orders and test/inspection data and/or certificates.

(iii) If Counterfeit Items or items suspected to be Counterfeit Items are furnished under this Purchase Order such goods shall be impounded by Buyer. Seller shall promptly replace such goods with Ordered Items acceptable to Buyer and Seller shall be liable for all costs relating to such impoundment, removal and replacement. Buyer may turn Counterfeit Items over to Government authorities for investigation, and Buyer reserves the right to withhold payment pending the results of the investigation.

(iv) This warranty applies in addition to Section 1.04 above.

(v) Seller shall include the substance of this Section 3.04, including this sentence, in favor of Buyer, in its subcontracts issued at all tiers pursuant to this Purchase Order. Buyer must be notified promptly in writing of any inability or unwillingness of a lower-tier supplier to comply with this provision.

(vi) Seller is reminded that any knowing or willful act to falsify, conceal or alter a material fact, or any knowingly false statement or representation in connection with the performance of work under the Contract, may be punishable in accordance with applicable law.

4.1 ADDITIONAL TERMS AND CONDITIONS APPLICABLE ONLY TO PURCHASE ORDERS PLACED UNDER GOVERNMENT CONTRACTS OR SUBCONTRACTS.

(a) U.S. Government Contracts.

If this Purchase Order indicates, or if Seller is otherwise informed, that it is issued under a U.S. Government prime contract or subcontract, such as by the inclusion of a government contract number and DPAS rating in this Purchase Order, then the provisions of Sections 4.1 and 4.2 apply to this Purchase Order, but without derogating in any way from Seller's obligations under the other Sections of this Purchase Order. If Sections 4.1 and 4.2 apply to this Order, Seller agrees to include in all of its subcontracts and orders placed in connection with this Order, provisions that conform substantially to such provisions of Sections 4.1 and 4.2. Seller agrees, upon request, to furnish Buyer with a certificate or certificates in such form as Buyer may require certifying that Seller is in compliance with all such government terms and conditions. In particular: (A) If this Purchase Order is placed under a Government contract, then all rights of Buyer under Section 2.03 extend to the Government and all agents of the Government; and (B) if FAR 52.211-14 or 52.211-15 are applicable to this Purchase Order, then Seller shall follow the requirements of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR 700).

4.2 GOVERNMENT PROCUREMENT REGULATIONS.

When the Ordered Items are for use in connection with a U.S. Government prime contract or subcontract, the following clauses set forth in the FAR as in effect on the date of this Purchase Order shall apply as required by the terms of the prime contract, or by operation of law or regulation. Further, when Ordered Items are for use in connection with a U.S. Department of Defense prime contract or subcontract, the following clauses set forth in the DFARS as in effect on the date of this Purchase Order shall apply as required by the terms of the prime contract, or by operation of law or regulation. The effective version of each clause shall be the current version as of the date of this Purchase Order, or the same version as that which appears in the Government prime contract if indicated in the Purchase Order. In the event of a conflict between the FAR and DFARS clauses and the other clauses of these Purchase Order Terms and Conditions, the FAR or DFARS clauses shall take priority. Where necessary to make the context the clauses applicable to this Purchase Order, the terms "Contractor," "Contracting Officer" and "Government" shall be revised to suitably identify the contracting parties taking into account their authority limitations set by regulation or law, except that the terms "Government" and "Contracting Officer" do not change when (1) a right, act, authorization, or obligation can be granted or performed only by the Government or the Contracting Officer or his or her duly authorized representative; (2) when title to property is to be transferred directly to the Government; (3) when modifying the word "Property" (e.g., "Government Property"); and (4) in the Patent and Data Rights clauses incorporated herein. Any reference to a "Disputes" clause shall mean the "Disputes" clause of this Purchase Order.

Index of Definitions: Term:

Index of Definitions: Term:	Defined in Section:
Buyer	1.01(a)
Buyer's Property	3.02(b)(1)
FAR	1.03(f)(3)
Indemnitees	1.05(a)
Manufacturing Material	3.01(d)(2)
Offset	3.01(g)
Ordered Items	1.01(a)
Seller	1.01(a)