

PURCHASE ORDER TERMS AND CONDITIONS

1. **TERMS OF AGREEMENT.** The purchase order, together with these terms and conditions, and any attachments and exhibits, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively the "Purchase Order"), constitutes the entire and exclusive agreement between the _____ ("Buyer") and the seller (the "Seller") identified in the Purchase Order. Buyer's submission of the Purchase Order is conditioned on Seller's agreement that any terms different from or in addition to the terms of the Purchase Order, whether communicated orally or contained in any purchase order confirmation, invoice, acknowledgement, release, acceptance or other written correspondence, irrespective of the timing, shall not form a part of the Purchase Order, even if Seller purports to condition its acceptance of the Purchase Order on Buyer's agreement to such different or additional terms. Seller's electronic acceptance, acknowledgement of this Purchase Order, or commencement of performance constitutes Seller's acceptance of these terms and conditions. Notwithstanding the foregoing, if a master agreement covering procurement of the Goods or Work described in the Purchase Order exists between Seller and Buyer, the terms of such master agreement shall prevail over any inconsistent terms herein.

2. DEFINITIONS.

2.1 "Deliverables" means the deliverables specified in the Purchase Order (and any Statement of Work) to be delivered on or before the Delivery Date.

2.2 "Delivery Date" means the date or dates specified in the Purchase Order by which the Supplier is required to deliver the Work.

2.3 "Intellectual Property Rights" means any and all tangible and intangible: (i) copyrights and other rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms, utility models, and other industrial property rights, and all improvements thereto; (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise; and (vi) all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

2.4 "Goods" means any and all materials, parts, products, machines, tooling, test equipment, technical data, computer software, computer software documentation, and other tangible items or documentary information furnished or required to be furnished by Seller under the Purchase Order to be delivered on or before the Deliver Date.

2.5 "Services" means the Services that Seller is to perform for Buyer specified in the Purchase Order.

3. TERMS OF PAYMENT.

3.1 Unless otherwise specified in the Purchase Order, the price for the Work includes all taxes and other charges such as shipping and delivery charges, duties, customs, tariffs, imposts and government-imposed surcharges. Seller will, at Buyer's request, break-out from the price all such taxes and other charges, in its invoices. Seller shall use its best efforts to assist Buyer in all legal efforts to minimize the taxes resulting from the performance of this Purchase Order.

3.2 Buyer will pay Seller the price set forth in the Purchase Order within 30 days following the later of: (i) the Delivery Date; (ii) the date of Buyer's acceptance of all of the Work; or (iii) Buyer's receipt of a properly prepared invoice. A properly prepared invoice must include the Purchase Order number and, if required in the Purchase Order, Seller's certification of conformance of the Work to the requirements. Payment will be in the United States currency, and if the price set forth in the Purchase Order is not in the local currency, then Buyer will determine the local currency equivalent of the price as of date of payment. Buyer may, at any time, set-off any amounts Seller owes Buyer against any amounts Buyer owes to Seller or any of its affiliated companies

4. **CHANGES.** The Buyer reserves the right at any time to issue a written change order or amendment to the Purchase Order concerning any of the following: (a) specifications, drawings, and data incorporated in the Purchase Order where the items to be furnished are to be specially manufactured for the Buyer; (b) quantity; (c) methods of shipment or packaging, (d) place of delivery, (e) time of delivery; or (f) any other matters affecting this Purchase Order.

5. **TERMINATION.** Buyer may terminate the Purchase Order for its convenience, in whole or in part, at any time prior to shipment by (written or electronic) notice to Seller. Upon receipt of such termination notice, Seller shall promptly comply with the directions contained in such notice and shall, as required, (a) take action necessary to terminate the work as provided in the notice, minimizing costs and liabilities for the terminated work, and (b) continue the performance of any part of the work not terminated by Buyer.

6. **ASSIGNMENT.** Seller may not assign, transfer, or subcontract this Purchase Order or any right or obligation hereunder without Buyer's written consent.

7. OWNERSHIP AND LICENSE.

7.1 Buyer is the sole and exclusive owner of all Deliverables. Seller irrevocably assigns and transfers to Buyer all of its worldwide right and title to, and interest in, the deliverables, including all associated Intellectual Property Rights.

7.2 Notwithstanding the foregoing, Seller grants to Buyer a non-exclusive, worldwide, royalty-free, irrevocable, perpetual, transferable, sublicenseable license to any Intellectual Property Rights in the Deliverables which arose outside the scope of the Purchase Order to the extent necessary for Buyer to exercise its rights in the work product as reasonably contemplated by the Purchase Order.

7.3 Seller grants to Buyer a non-exclusive, worldwide, royalty-free, irrevocable, perpetual, transferable, sublicenseable license to any Intellectual Property Rights in Goods or Services which are necessary for Buyer to use, import, copy, execute, reproduce, display, perform, and distribute copies of and modify (including creating improvements and derivative works based on) the Goods or Services.

8. EXCUSABLE DELAY. Fires, floods, strikes, accidents, shortages, or other causes beyond the reasonable control of the parties, which prevent Seller from delivering, or Buyer from receiving, any of the Goods and Services covered by this Purchase Order, shall suspend deliveries until the cause is removed, subject, however, to Buyer's right of termination for convenience under Paragraph 5.

9. PACKAGING, PACKING LIST, AND BILL OF LADING. Seller shall be responsible for proper packaging, loading, and tie-down to prevent damage during transportation. Buyer's weight and/or count will be accepted as final and conclusive on all shipments not accompanied by a packing list.

10. INSPECTION. All Goods and Services furnished hereunder will be subject to inspection and test by Buyer at all times and places and will be subject to Buyer's final inspection and approval within a reasonable time after delivery. Buyer may reject Goods and Services not in accordance with Buyer's instructions, specifications, drawings, data, or Seller's warranty (expressed or implied), or for untimely delivery. Buyer may return rejected Goods to Seller at Seller's expense and Buyer shall have no further obligation for such Goods. Payment for any Goods or Services shall not be deemed acceptance and in no event shall Buyer incur any liability for payment for rejected Goods or Services.

11. REPRESENTATIONS AND WARRANTIES.

11.1 By accepting this Purchase Order, Seller represents and warrants that it has the full power to enter into the Purchase Order and to perform its obligations under the Purchase Order. Seller further warrants that the Goods and Services furnished will be free from defects in materials and workmanship, merchantable and in full conformity with Buyer's specifications, drawings, and data, and Seller's descriptions, promises, or samples, and that such Goods will be fit for the Buyer's intended use, provided Seller has reason to know of such use, and that Seller will convey good title to the Goods, free and clear from all liens, claims, and encumbrances. Upon Buyer's request, Seller shall furnish Buyer with a formal waiver or release of all liens by Buyer and/or Buyer's suppliers.

11.2 Seller warrants that Goods or Services covered by this Purchase Order shall not infringe any patent, design, mask work, copyright or trademark, of any third party, either directly or contributorily. Seller agrees to indemnify Buyer and hold Buyer harmless from and against all liability, loss, damage and expense, including reasonable counsel fees and costs of litigation, resulting from any claim of infringement and any litigation relating thereto. In the case where Goods or a part thereof are held to constitute infringement and the use of the Goods or a part thereof is enjoined, Seller shall, at the expense of Seller, either (a) procure for the Buyer the rights to continue to using the Goods, (b) replace the Goods so that the Goods become non-infringing, or (c) retake the Goods and refund the purchase price and transportation and installation cost of the Goods to Buyer. Such obligations shall survive acceptance of the Goods or Services and payment therefore by Buyer.

11.3 Where applicable, the Seller warrants that the Goods covered by this Purchase Order are in compliance with all laws, regulations, rules, and orders relating to the importation of Goods into the United States, the exportation of Goods out of the country of origin, the transit of Goods through intermediate countries and the sale and use of foreign made Goods in the United States. Seller further warrants that it has obtained all permits, licenses, and certifications necessary for the Goods to be exported out of the country of origin, imported in the United States, delivered to Buyer and used or sold within the United States.

11.4 Buyer warrants and represents to Seller that it has the full power to enter into the Purchase Order and to perform its obligations under the Purchase Order.

12. TITLE; RISK OF LOSS. Title shall pass to Buyer upon Buyer's receipt of Goods at destination. Risk of loss of all Goods shall remain in Seller until receipt by Buyer at destination, unless otherwise specified in this Purchase Order, except for loss occasioned by gross negligence or willful neglect of Buyer or its customer, if any.

13. CONFIDENTIALITY; LIMITED USE. Unless otherwise agreed by Buyer in writing, Seller shall keep confidential and not disclose to any third party, any confidential and/or proprietary materials provided by Buyer to Seller in connection with Seller's performance of this Purchase Order or prepared by Seller specifically for Buyer pursuant to this Purchase Order, including but not limited to any drawings, masters, software, specifications, raw materials, components, data, business information or plans, customer lists or other customer information ("Confidential Information"). Seller shall not make any copies of Confidential Information except

as specifically authorized by Buyer in writing. At the completion of this Purchase Order, or upon Buyer's request, Seller shall promptly return to Buyer all Confidential Information not consumed in the performance of this Purchase Order, together with any copies in Seller's possession. Seller shall use Confidential Information solely for Seller's performance of this Purchase Order for Buyer, and Seller shall not, without Buyer's written consent, directly or indirectly use Confidential Information or information derived therefrom in performing Services or providing Goods for any other customer of Seller, or any other person or entity.

14. RESOLUTION OF CONFLICTS OR INCONSISTENCIES OCCURRING IN THE ORDER. It is Seller's responsibility to comply with this Purchase Order and all referenced documents, and to clarify with Buyer any inconsistencies or conflicts in any parts of the Purchase order or referenced documents. Should Seller fail to contact Buyer to resolve conflicts or inconsistencies, Seller will be solely responsible for errors resulting from said conflicts or inconsistencies. Where documents are referenced, the version in effect at the time of order placement shall apply.

15. EXTRA CHARGES. No charges for extras or for cartage or boxing or storage will be allowed unless the same has been agreed upon in writing by Buyer. All Goods must be forwarded in accordance with Buyer's shipping instructions, otherwise the difference in freight rate will be charged to Seller.

16. SUBSTITUTIONS. Seller may not make any substitution of materials or accessories without written permission from Buyer.

17. WORK PERFORMED ON BUYER'S OR BUYER'S CUSTOMER'S PREMISES. If Seller's work under the Purchase Order involves operations by Seller on the premises of Buyer or one of Buyer's customers, Seller shall take all necessary precautions and such additional precautions as Buyer or Buyer's customer may prescribe to prevent the occurrence of any injury to persons or property during the progress of such work and, except to the extent that any such injury is due solely and directly to Buyer's or Buyer's customer's negligence, shall indemnify Buyer against all claims, liability, damage, or loss (including expenses and attorneys' fees) which may result in any way from any act or omission of the Seller, or Seller's agents, employees, or contractors; and shall maintain such public liability, property damage, and employer's liability and compensation insurance as will protect Buyer and Buyer's customer from said risks and from any claims under any applicable worker compensation and occupational disease acts.

18. INDEMNIFICATION. Seller agrees to indemnify, defend, and hold Buyer harmless from and against all losses, damages, liability, actions, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees and other expenses of litigation), suffered, incurred, or asserted by or against Buyer (a) by reason of Seller's breach of a warranty, (b) by reason of Seller's breach of any term of this Purchase Order, or (c) by reason of personal injury, including death, or property damage sustained by a third party, resulting from or arising out of an act or omission of Seller, or Seller's agents, employees, or contractors in fulfillment of this Purchase Order.

19. LIABILITY

19.1 NOTWITHSTANDING ANYTHING ELSE IN THE PURCHASE ORDER OR OTHERWISE, BUYER WILL NOT BE LIABLE TO SELLER WITH RESPECT TO THE SUBJECT MATTER OF THE PURCHASE ORDER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY AMOUNTS IN EXCESS IN THE AMOUNT BUYER PAID TO SELLER IN THE SIX MONTHS PRECEDING THE EVENT OR CIRCUMSTANCE GIVING RISE TO SUCH LIABILITY.

19.2 IN NO EVENT WILL BUYER BE LIABLE TO SELLER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS ARISING OUT OF, OR IN CONNECTION WITH, THE PURCHASE ORDER, WHETHER OR NOT BUYER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

19.3 THE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. NOTHING IN THE PURCHASE ORDER LIMITS EITHER PARTY'S LIABILITY FOR BODILY INJURY OF A PERSON, DEATH, OR PHYSICAL DAMAGE TO PROPERTY OR ANY LIABILITY WHICH CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

20. CUMULATIVE REMEDIES; WAIVERS; SURVIVAL OF WARRANTIES. The remedies herein reserved to Buyer shall be cumulative, and additional to any other or further remedies provided in law or equity. No waiver by Buyer of any term or condition of this Purchase Order shall be construed as a permanent waiver of such term or condition or of any other term or condition. Seller's warranties shall survive the completion or cancellation of this Purchase Order.

21. GOVERNING LAW. This Purchase Order shall be governed by the laws of the State of Utah, U.S.A, except for its provisions regarding principles of conflicts of laws, and except to the extent that federal communications law shall apply. Any court action arising under this order shall be venued in Salt Lake City, Utah, U.S.A., in either federal or state court, as is appropriate.

22. ENTIRE AGREEMENT. Unless superseded by a specific signed agreement between Buyer and Seller, the Purchase Order, including these Terms and Conditions shall constitute the entire agreement of the parties with regard to the subject matter contained herein. Except as otherwise specifically provided herein, all other prior or contemporaneous representations, warranties, covenants, or agreements between Seller and Buyer, or their representatives, with respect to the subject matter are hereby superseded.