

## TERMS AND CONDITIONS

This purchase order ("Order") is subject to the specifications, terms and conditions stipulated and/or referenced herein and on the reverse side or second page of this Order. Unless otherwise provided herein, any written acknowledgement of this Order, or any other commencement of performance pursuant to this Order, constitutes acceptance hereof by the Seller. Acceptance is limited to the terms and conditions herein set forth, and Buyer hereby objects to any terms or conditions varying the terms hereof in any written acknowledgment or statement of acceptance; such terms shall be of no force and effect. To the extent that any typewritten or rubber stamped provision of this Order is inconsistent with any printed provision, the typewritten or rubber stamped provision shall govern. This Order constitutes the entire agreement between Seller and Buyer, and may be changed or modified only by written instrument signed by Buyer's authorized representative. In the event that these terms and conditions are later revised, any Orders released on or after the revision date shall be subject to these terms and conditions as revised. It is the responsibility of the Seller to review these terms and conditions and the Supplier Assurance Manual (SAM) posted on Buyer's web site at the address stated within the purchase order header, in order to ensure Seller's continued compliance with the terms and conditions contained therein.

**1. Governing Law.** The contract resulting from this Order shall be construed in accordance with the laws of the state in which this Order is originated. The parties agree that any controversy arising under this Order shall be determined exclusively by the federal or state courts of the state in which this Order is originated, and Seller hereby submits to and consents to the exclusive jurisdiction of said courts.

**2. Price.** The price shall not be higher than that appearing on the face of this Order, or if no price appears thereon, then no higher than that last price quoted to Buyer by Seller for similar articles, material, goods, parts, services, work or other deliverables (collectively, "Goods"). Prices of the Goods shall not exceed Seller's lowest prices in effect at the date of shipment for comparable Goods in comparable quantities.

**3. Packing and Shipment.** No charge will be allowed for packing, crating, cartage or storage unless otherwise designated in this Order. Goods shall be suitably packed to secure the lowest transportation costs and conform to the requirements of common carriers and any applicable specification. Shipment shall be made in accordance with Buyer's instructions on the face of this Order. Seller shall place this Order number on the outside of each shipment hereunder and on all documents relating to such shipment. Seller shall be liable to Buyer for any increase in transportation charges resulting from Seller's failure to utilize the specified method of shipment or carrier.

**4. Warranties.** Seller expressly warrants that all Goods shall conform to the specifications, drawings or other descriptions, referred to in this Order; shall be merchantable and free from defects in workmanship, material and design; shall perform as specified herein; and, to the extent that the Seller has reason to know the purpose for which the Goods are intended, shall be fit for such purpose. These warranties extend to Buyer, Buyer's customers and the users of Buyer's Goods, shall be in addition to any other warranties specified herein or implied by law, shall survive inspection, delivery, acceptance and payment, and shall continue for the longer of (a) the warranty period applicable to Buyer's sales to its customers of the Goods or of products which incorporate the Goods, (b) one year after the Goods are accepted by Buyer, or (c) such greater period as may be specified elsewhere in this Order.

**5. Inspection And Acceptance.** Buyer reserves the right to inspect all Goods prior to shipment by Seller. Seller shall permit employees or representatives of Buyer and Buyer's customer to have access to Seller's facilities at all reasonable hours. At the time of inspection, Seller shall make available to such representatives copies of all drawings, specifications and other technical data applicable to the Goods ordered. All Goods shall nevertheless be received subject to final inspection and approval by Buyer after delivery at destination. Final inspection and acceptance shall be within 60 days at the discretion of the Buyer's location of manufacturer for which the Goods are intended. Defective Goods may be returned at Buyer's option for refund, credit or replacement at Seller's expense. At Buyer's option inspection may be performed on a statistical sampling basis. If the number of defects in the selected

sample exceeds the allowable defects, the entire lot of Goods will be rejected. The rejected Goods may at Buyer's option be 100% inspected at Seller's expense. Buyer's inspection, or lack of inspection, shall not affect any express or implied warranties, nor shall Buyer waive any rights to return Goods which contain latent defects discovered in the testing of Buyer's products containing such Goods.

**6. Delivery and Risk of Loss.** Buyer's production schedules and warranties to its customers are dependent upon the agreement that deliveries of the Goods covered by this Order will occur on the required delivery date shown on the face hereof. Therefore, time is of the essence. Seller shall be responsible for all damages of any kind incurred or suffered by the Buyer which were caused by a delay of Seller in meeting delivery schedules. Seller shall also be responsible for all premium logistics cost resulting from Seller's inability to meet delivery schedules. This includes all premium cost incurred in getting product to the Buyer. Seller agrees to notify Buyer immediately in the event it appears that Seller may not meet the delivery schedule and shall set forth the reasons for the delay (actual or potential), the steps being taken to remedy the delay, and the schedule that Seller believes it will be able to meet. Buyer's receipt of notice shall not constitute approval of the delay or the proposed revised delivery schedule or a waiver of the delivery schedule in the Order. Unauthorized advance shipments and shipments other than for the quantity ordered are returnable at Seller's expense. Identification of the Goods shall occur at the moment Seller accepts this Order. Seller shall not be excused from performing his obligations hereunder if the Goods identified are destroyed. Delivery shall not be deemed complete until the Goods have been actually received by Buyer at its facility. The risk of loss and damage in transit, shall be upon Seller and shall not pass to Buyer until received at Buyer's facility in a condition in accordance with the terms of this Order. The cost of all return shipments shall be borne by Seller. Unless otherwise agreed in writing, Seller shall not make any material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet Buyer's delivery schedule, except at Seller's own risk. It is Seller's responsibility to comply with this schedule, but not to anticipate Buyer's requirements.

**7. Taxes.** Except as may be otherwise provided in this Order, the price includes all applicable national, provincial, federal, state and local taxes. When applicable, Buyer will issue a valid sales/use tax exemption or resale certificate to Seller

**8. Changes.** Buyer may at any time, by written direction, make changes in the drawings, specifications, quantities, delivery schedules, method of shipment or packaging. Should any such change increase or reduce the cost of, or the time required for performance of, an Order, an equitable adjustment will be made in the contract price or delivery schedule. Any requests for an increase in the contract price or an extension in delivery schedule must be made within ten (10) working days from the date of such written direction. Failure to agree upon an equitable adjustment shall not relieve the Seller from proceeding without any delay in performance under this Order, as changed. Where any material is made obsolete or excess as a result of any change for which Seller makes a claim, Buyer shall have the right to prescribe the manner of disposition of such property.

**9. PCN Notification:** Seller shall provide to Buyer written notice, in a format and with content acceptable to Buyer in its sole discretion, of any proposed changes to Seller's manufacturing process(es), material(s), or manufacturing location(s), as such may relate, either directly or indirectly, to Seller's provision of Goods under any Order issued to Seller by Buyer, and Seller shall provide such notice to Buyer at least ninety (90) days' prior to Seller's execution of any such proposed change(s). If any such proposed changes are enacted by Seller prior to its receipt of any Order from Buyer, Seller shall immediately notify Buyer upon receipt of the applicable Order. Buyer expressly reserves the right to cancel, without liability or penalty, any Order, if Buyer determines, in Buyer's sole discretion, that any such changes will not comply or otherwise meet Buyer's requirements for the Goods.

**10. SAM compliance.** Supplier shall perform continuous improvement to establish documents and implement effective production, quality, and management systems that are fully compliant with the expectations and guidelines of Buyer's SAM. Buyer reserves the right to amend its SAM from time to time.

**11. Confidentiality.** Seller shall not, without first obtaining written consent of Buyer, advertise, publish or issue any news release or make any public announcement or denial or confirmation concerning the fact that the Seller has furnished or has contracted to furnish to the Buyer the Goods. All drawings, specifications and data

furnished by Buyer to Seller shall remain the property of the Buyer and shall be disclosed to others by Seller only as (and to the extent) required for performance of this Order. Upon completion of the work, Seller shall return any such drawings, specifications or data together with all copies and make no further use either directly or indirectly of any such drawings, specifications, data or information derived therefrom without Buyer's prior consent.

**12. Indemnity Clause.** Seller guarantees that the Buyer's sale or use of the Goods will not infringe any patent, copyright, trademark trade secret, maskwork or other intellectual property right, and Seller shall to the fullest extent permitted by law, indemnify, defend and hold Buyer harmless from and against any and all potential claims, liabilities, demands, penalties, forfeitures, suits, judgments and the associated costs and expenses (including attorney's fees), which Buyer may hereafter incur, become responsible for or pay out as a result of any infringement or alleged infringement of any patent, copyright, trademark trade secret, maskwork or other intellectual property right, whether such infringement or alleged infringement is direct or indirect.

**13. Compliance with Laws.** Seller and all persons furnished by Seller shall comply at their own expense with all applicable laws, ordinances, regulations and codes, including the identification and procurement of required permits, certificates, licenses, insurance, approvals and inspections (collectively "Laws") in performance under this Order. Seller agrees to provide Buyer with a certificate affirming compliance with applicable Laws that the Buyer shall request, and the Seller further agrees to indemnify Buyer against and to hold harmless from any loss or expense arising from Seller's noncompliance with any applicable Law.

**Environmental Matters.** Seller represents, warrants, certifies, and covenants that none of the Goods supplied under this Order contain minerals or chemicals, the use of which is restricted in any jurisdiction to which Seller knows, or reasonably should know, the Goods are to be shipped, unless in amounts permitted by the applicable jurisdiction. Seller shall: (a) if and as requested by Buyer, include with shipments of Goods the material composition data related to all homogenous material contained within such Goods; and (b) assist Buyer, as necessary in Buyer's reasonable opinion, in Buyer's attempts to comply with its obligations, if any, under applicable Laws.

**15. Tin Whisker Mitigation and Qualification Test.** Goods identified as or otherwise required to be lead-free or RoHS-6 compliant and manufactured with leads or electrodes (excluding BGA's) possessing high tin (i.e., greater than 95 percent) surfaces shall be subjected to industry best practices for tin whisker mitigation (i.e., JEDEC – IPC JP002/iNEMI recommendations for lead-free components version 3 or equivalent) and are further required to have the lead/electrode surface finish qualified through industry standard tin whisker testing protocols (i.e., JEDEC JESD 22A121 + JEDEC JESD 201 class II or equivalent).

**16. WEEE.** For any Goods subject to the WEEE Directive, as amended, and/or other similar Laws, Seller: (a) represents, warrants, and certifies that such Goods are correctly labeled in accordance with the WEEE Directive and/or other similar Laws; (b) agrees to assist Buyer, as necessary in Buyer's reasonable opinion, in Buyer's attempts to comply with its obligations, if any under the WEEE Directive and applicable implementing legislation and/or other similar Laws; and (c) if requested by Buyer, agrees to assume responsibility for taking back those Goods in the future upon the request of Buyer or its customer and treating or otherwise managing them in accordance with the requirements of the WEEE Directive and applicable national implementing legislation and/or other similar Laws. No additional charges will be sought by Seller, and no additional payments will be due from Buyer, for Seller's agreement to undertake these responsibilities.

**17. Force Majeure.** Neither party shall be held responsible for any delay or failure in performance of any part of this Order to the extent such delay or failure is caused by flood, strike, civil, governmental or military authority, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or nonperforming party or its subcontractors provided that (i) such party gives the other party prompt notice of the reason for delay or failure of performance and (ii) takes reasonable steps to mitigate the duration of the delay or failure of performance. In the event a party's delay or nonperformance continues for a period of at least fifteen (15) days, the other party may terminate this Order without liability. Seller's liability for loss or damage to Buyer's material in Seller's possession or control shall not be modified by this clause.

**18. Termination for Convenience.** In addition to all other rights and remedies, Buyer shall have the right to terminate this Order, in whole or in part, without cause, upon notice in writing to the Seller.

- (a) Buyer shall have no liability for termination of this Order provided that Buyer gives written or including electronic notice to Seller (i) at least two business days prior to the scheduled shipment date of Standard Goods or (ii) at least sixty days prior to the scheduled shipment date of Custom Goods. For the purpose of this Section, Standard Goods shall include all Goods which Seller regularly maintains in inventory, and Custom Goods shall include all other Goods.
- (b) In the event Buyer fails to give notice within the time period provided in Section (a), Seller shall immediately cease work, terminate any subcontracts, and deliver to the Buyer all completed and partially completed Goods or raw material and work-in-process, or otherwise dispose of such Goods, work in process and raw material in accordance with the Buyer's instructions. Buyer's liability to Seller shall be limited to:
  - (i) The price provided in the order for all Goods which have been completed prior to termination and which are accepted by Buyer, if produced in no greater amounts than to satisfy the delivery schedule on the face of this Order; plus
  - (ii) To the extent commercially reasonable and accepted by Buyer, actual expenditures on the uncompleted portion of this Order including cancellation charges paid by the Seller on account of commitments made under this Order; provided that Seller has (immediately upon notice of termination) taken all reasonable steps to mitigate cost resulting from termination.
  - (iii) Notwithstanding the foregoing, Seller's liability shall not exceed the total price provided for herein for finished Goods delivered under this Order.
- (c) Seller shall submit to Buyer within ten (10) days of notification of the termination any and all costs resulting from Buyer's termination. No cost submitted beyond that date shall be compensable to Seller.

**19. Termination for Default.** In addition to the rights conferred in paragraph 13, Buyer may terminate this Order for default, without any liability to Seller, if Seller fails to make any delivery in accordance with the schedule set forth herein or for failure to comply with any of the other requirements or terms and conditions of this Order or for failure to make progress under this Order so as to endanger performance of this Order. In the event of termination for Seller's default, Buyer may procure elsewhere Goods which are similar to those terminated, and on such terms as Buyer may deem appropriate, and Seller shall be liable for excess re-procurement costs. Further, Seller shall be liable to Buyer for any other remedies prescribed by law or equity.

**20. Assignment.** None of the work to be performed under this Order shall be assigned nor shall Seller subcontract for completed or substantially completed Goods called for by this Order without Buyer's prior written consent.

**21. Waiver.** Failure of Buyer to insist upon performance of any terms of this Order or to exercise any right hereunder shall not be construed as a waiver or relinquishment of the future performance of any such term or condition or the future exercise of such right.

**22. Setoff.** Seller agrees that Buyer shall have the right to set-off against amount which may become payable by Buyer to Seller under this Order or otherwise, any amounts which Seller may owe Buyer.

**23. Hold Harmless.** Seller shall to the fullest extent permitted by law, indemnify, defend and hold Buyer harmless from and against any and all potential claims, liabilities, demands, penalties, forfeitures, suits, judgments and the associated costs and expenses (including attorney's fees), which Buyer may hereafter incur, become responsible for or pay out as a result of death or personal injury (including bodily injury) to any person, destruction or damage to any property, contamination of or adverse effects on the environment and any clean up costs in connection therewith, or any violation of governmental law, regulation, or orders, caused, in whole or in part, by (a) Seller's breach of any term or provision of this Order, (b) any negligent or willful acts, errors or omissions by Seller, its employees, officers, agents, representatives or subcontractors in the performance of this Order, or (c) Seller's Goods. Notwithstanding Seller's immunities under applicable state worker's compensation and industrial insurance acts, Seller specifically undertakes to indemnify, defend and hold Buyer harmless from potential claims or liabilities asserted against Buyer by Seller's employees. Seller shall maintain worker's compensation insurance in the minimum amount of \$500,000.00 per occurrence covering all such personnel while on Buyer's premises.

**24. Buyer's Property.** Except as otherwise specified by Buyer in writing, all tools, dies, gauges, fixtures and other items required to execute this Order shall be supplied by Seller. Any such items paid for by Buyer or furnished to Seller without cost to Seller, (i) shall be the property of Buyer, subject to removal by Buyer at any item without cost upon demand, (ii) shall be used only in filling orders from Buyer, (iii) shall be kept separate from all of Seller's other materials or tools and (iv) shall be clearly identified as property of Buyer. Seller assumes all liability for loss of damage to Buyer's property save wear and tear. Seller shall maintain full insurance coverage against loss or damage of such Buyer property shall (upon Buyer's request) supply Buyer with a detailed statement of such property, and shall not remove, dispose or pledge as security any of Buyer's property without Buyer's prior written consent.

**25. Payment.** Invoices shall be paid on delivered and accepted Goods in accordance with the terms in this Order; due dates for payment shall be computed from the later of the date on which (i) Buyer receives a correct invoice or (ii) Buyer receives the Goods described in such invoice. Payment shall be deemed made (for the purpose of earning any discount offered by Seller or otherwise) on the date Buyer's check is mailed to Seller. Payment of the invoice shall not constitute acceptance of the product and shall be subject to an appropriate adjustment for failure of Seller to meet the requirements of this Order.

**26. Duty Drawback.** This order is subject to Duty Drawback at the request of Buyer. Upon request, Seller shall supply to Buyer all information to support U.S. Customs requirements for Duty Drawback. The Seller shall comply in an expeditious manner.

**27. Gratuities.** Seller warrants that neither it nor any of its employees, agents or representatives has offered or given any gratuity to Buyer's employees, agents or representatives with a view towards securing favorable treatment with respect thereto.