



## PURCHASE ORDER TERMS AND CONDITIONS

**1. Acceptance.** This order is Buyer's offer to Seller and does not constitute an acceptance by Buyer of any offer or proposal of Seller to sell. Any reference to such offer to sell, quotation or proposal is solely for the purpose of incorporating the description and specifications of the goods and services contained therein to the extent that such description and specifications do not conflict with the description and specifications on the face of this order. This order consists only of the terms contained herein and on the face of this order and any supplements, specifications or other documents expressly incorporated into this order by reference. By acknowledging receipt of this order (or by shipping the goods or performing the services called for by this order), Seller agrees to the terms and conditions contained in this order. Any additional or conflicting terms or conditions contained in any acknowledgement of this order by Seller shall be deemed objected to by Buyer without need of further notice of objection and shall be of no effect. This order constitutes the entire agreement between Buyer and Seller with respect to the subject matter hereof and the subject matter of such offer and Seller shall be deemed to have so assented and acknowledged unless Seller promptly notifies Buyer to the contrary in writing.

**2. Default and Termination.** Buyer may terminate this order or any part hereof for cause in the event of any default or failure by Seller to comply with any of the terms and conditions of this order, including but not limited to late deliveries, deliveries of products which are defective or which do not conform to this order, and failure to provide Buyer, upon request, with reasonable assurances of future performance. If Seller fails or is unable to proceed with all or any of its obligations hereunder, Buyer at its option may procure the goods or services from other sources, by purchase in the open market, or by negotiated contract. In the event of termination for cause, Buyer shall not be liable to Seller for any amount and Seller shall be liable to Buyer for any and all damages sustained by reason of the default which gave rise to the termination. Buyer also reserves the right to terminate this order or any part hereof for its sole convenience at any time upon notice. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause all of its suppliers or subcontractors to cease such work. If Buyer terminates for convenience, Seller shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination unless the goods to be furnished hereunder are standard, non-custom, off-the-shelf and/or stock items in which case no termination charges shall apply. Seller shall not be paid for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided or for any work done by Seller after its receipt of the notice of termination.

**3. Proprietary Information - Confidentiality - Advertising.** All specifications, documents, and prototype articles delivered by Buyer to Seller are the property of Buyer. They are delivered solely for the purpose of Seller's performance of this order and on the express condition that neither they nor the information contained therein shall be disclosed to others nor used for any purpose other than in connection with this order without the prior express written consent of Buyer. Seller shall not advertise or publish the fact that Buyer has contracted to purchase goods from Seller, nor shall any information relating to the order be disclosed without Buyer's written permission. Such specifications, documents and articles are to be returned to Buyer promptly upon its written request. Such request may be made at any time during or after completion of Seller's performance. The obligations under this clause will survive the cancellation, termination, or completion of this order.

**4. Approval of Drawings and Data.** If this order requires the submission of drawings and/or other data for approval, Seller shall submit same on or before the time specified in the order (or if no time is specified, then as soon as possible to allow Buyer reasonable time for review). Buyer will not reimburse Seller for any extra expense which Seller incurred as a result of having proceeded with performance prior to such approval. Seller may request partial or final approval of Buyer by such dates as will permit it to order and/or release for engineering and production all required materials and/or components in time to meet the specified shipment to delivery schedule, and shall send Buyer special notification in case such schedule should be endangered by delays in receiving such approval.

**5. Buyer's Property.** All tools, equipment, dies, gauges, models, drawings and or other materials furnished by Buyer to Seller or made by Seller for the purpose of this order or paid for by Buyer and all replacements thereof and materials fixed or attached thereto, shall be and remain the property of Buyer. All Buyer's property and, whenever applicable, each individual item thereof, (a) will be plainly marked and otherwise adequately identified by Seller as "Property of [Buyer]", (b) will, at Seller's expense, be safely stored separate and apart from Seller's property wherever practicable, and (c) will be kept free of all liens, claims, encumbrances and interests of third parties. Seller will not substitute any property for any of Buyer's property, will not deliver or make available to any third party any of Buyer's property or any property or goods developed, manufactured or created with the aid of any of Buyer's property and will not use any of Buyer's property or any property or goods manufactured, developed or created with the aid of Buyer's property, except in filling the orders of Buyer. All Buyer's property, while in Seller's custody or control, will be held at Seller's risk and will be kept insured by Seller at Seller's expense in an amount equal to the replacement cost, with loss payable to Buyer. Upon completion by Seller of this order, or upon the written request of Buyer at any time, Seller will prepare all Buyer's property for shipment and deliver such property to Buyer in the same condition as originally received by Seller. Any of Buyer's property or any property or goods manufactured, developed or created with the aid of any Buyer's property which, for any reason, is not to be delivered to or accepted by Buyer will be destroyed by Seller unless otherwise directed by Buyer in writing. Buyer shall have the right, at all reasonable times, upon prior request, to enter Seller's premises to inspect any and all Buyer's property and any property or goods manufactured, developed or created with the aid of Buyer's property.

**6. Warranty.** Seller expressly warrants that all goods or services furnished under this order shall conform to all specifications and appropriate standards, will be new and shall be free of liens and defects in material, workmanship and design. Seller warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for any such goods or services and that such goods will be adequately contained, packaged, marked and labeled. Seller warrants that all goods or services furnished hereunder will be merchantable, will conform in all respects to any samples, and will be safe and fit for the particular purpose for which goods or services of that kind are normally used. Seller warrants that goods or services furnished hereunder will be fit for their intended purpose. Inspection, testing, acceptance or use of the goods or services furnished hereunder shall not affect the Seller's obligation under this warranty, and such warranty shall survive inspection, testing, acceptance and use. Unless otherwise specified, Seller's warranty shall extend for a period of eighteen (18) months after the goods are accepted by Buyer or its designee. Buyer and its designee shall have the benefit of any other warranties that may be applicable. Seller's warranty shall run to Buyer, its successors, assigns and customers, and users of products sold by Buyer. Seller agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly, without expense to Buyer, when notified of such nonconformity by Buyer, provided Buyer elects to provide Seller with the opportunity to do so. In the event that Buyer elects not to provide Seller with the opportunity to correct such nonconformity or in the event of failure of Seller to correct defects in or to replace nonconforming goods or services promptly, Buyer, after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller for Buyer's costs and expenses.

**7. Price Warranty.** Seller warrants the prices for the articles sold and/or services provided to Buyer hereunder are not less favorable than those currently extended to any other customer for the same or similar articles in similar quantities or similar services. In the event Seller reduces its price for any such article or service during the term of this order, Seller agrees to reduce the prices hereof correspondingly. Seller warrants that prices shown on this order shall be complete, and no additional charges of any type shall be added without Buyer's express written consent. Such unacceptable additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, crating.

**8. Quality of Services.** All services furnished hereunder, by Seller are to be performed by suitably qualified, careful and efficient professionals in a professional and workmanlike manner and in accordance with the provisions hereof.

**9. Force Majeure.** Neither Buyer nor Seller shall be liable to the other for any failure to perform in accordance with this order if such failure arises out of any cause or event beyond its reasonable control and without its fault or negligence, including, but not limited to, labor disputes, strikes, fires, acts of God and accidents. In the event Buyer is delayed or restricted in its ability to take delivery and/or make use of the goods as originally contemplated by reason of any event beyond its reasonable control and without its fault or negligence, Buyer may postpone the delivery dates or cancel or modify this order in whole or in part to such extent as is reasonable under the circumstances without any obligations or liability to the Seller.

**10. Patents.** Seller agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against Buyer or its agents, customers, or other vendors for alleged patent infringements, misappropriation of trade secrets or other intellectual property and/or any unfair competition resulting from similarity in design, trademark, intellectual property or appearance of goods or services furnished hereunder, and Seller further agrees to indemnify Buyer, its agents and customers against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from any such suit or proceeding, and the costs of such representation shall be paid by Seller. The rights granted hereunder shall survive termination of this order.

**11. Insurance.** In the event that Seller's obligations hereunder require or contemplate performance of services by Seller's employees, or persons under contract to Seller, to be done on Buyer's property, or property of Buyer's customers. Seller agrees that all such work shall be done as an independent contractor and that the persons doing the work shall not be considered employees of Buyer. Seller shall maintain all necessary insurance coverages including public liability and Workers' Compensation Insurance. Seller shall indemnify and hold harmless and defend Buyer from any and all claims or liabilities arising out of the work covered by this paragraph.

**12. Indemnification.** Seller shall defend, indemnify and hold harmless Buyer against all damages, claims, fines, penalties or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from any defect in the goods or services purchased hereunder, from any act or omission of Seller, its agents, employees or subcontractors or from any gross negligence or willful misconduct of Seller, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of Seller and shall survive the cancellation, termination or completion of this order.

**13. Changes.** Buyer shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation and Seller shall promptly and fully comply with all such changes. If any such changes cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment shall be made and this order shall be modified in writing accordingly. Unless Seller presents to Buyer an itemized statement of claim against Buyer within twenty (20) days after the receipt of notice of such change, Seller shall be conclusively deemed to have waived all claims against Buyer with respect hereto. Seller shall not make any changes as to quantities, qualities, descriptions or extent of goods or services unless authorized in writing by the Buyer.

**14. Inspection.** Payment for the goods delivered hereunder shall not constitute Buyer's acceptance thereof. Buyer shall have the right to inspect such goods and to reject any or all of said goods that are in Buyer's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for herein may be returned to Seller at its expense and, in addition to Buyer's other rights, Buyer may charge Seller all expenses of unpacking, examining, repacking and reshipping such goods. Nothing contained in this order shall in any way relieve Seller from its obligations under this order, including all obligations of testing, inspection and quality control or impose on Buyer any such obligations regardless of

whether any defect or nonconformity would have been apparent to Buyer on inspection.

**15. Assignments and Subcontracting.** No part of this order may be assigned or subcontracted by Seller without the prior written approval of Buyer.

**16. Packaging.** Seller shall include shipping marks, as specified by Buyer on all packaging unless otherwise specified; Seller shall pack the goods in such a manner as to be safe from damage or deterioration while in transit or storage under foreseeable conditions.

**17. Shipment.** If in order to comply with Buyer's delivery date it becomes necessary for Seller to ship a more expensive way than specified in this order, any increased transportation costs resulting therefrom shall be paid for by Seller unless the necessity for such rerouting or expedited handling has been caused by Buyer. Seller shall comply with Buyer's shipping and packing instructions as may be given either verbally or in writing without deviation. Seller shall provide notice to Buyer at time of shipment and include a copy of the packing list and any other applicable shipping documents. Title and risk of loss of the goods shall transfer from Seller to Buyer only when the goods and/or services have been delivered to the delivery point as specified in this order.

**18. Delivery.** Time is of the essence in the performance of this order, and if delivery of items or rendering of services is not completed by the time promised, Buyer reserves the right without liability in addition to its other rights and remedies to terminate this order by notice effective when received by Seller as to items not yet shipped or services not yet rendered and to purchase substitute items or services elsewhere and charge Seller with any damage and loss incurred. Seller shall deliver the goods or services F.O.B. (Incoterms 2010) delivery point unless otherwise specified in this order.

**19. Limitation on Buyer's Liability and Statute of Limitations.** In no event shall Buyer be liable for anticipated profits or for special, incidental or consequential damages. Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this order or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services or unit thereof which gives rise to the claim. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer as to the goods or services delivered hereunder must be commenced within one year after the goods or services have been delivered.

**20. Compliance with Laws.** Seller warrants that all goods or services supplied hereunder shall have been produced or performed in compliance with and Seller agrees to be bound by all applicable federal, state and local laws, orders, rules and regulations and the applicable law of any other country that applies to Seller or the goods or services to be provided under this purchase order. The Equal Employment Opportunity clauses in Section 202 of Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and Section 4212 of the Vietnam Era Veterans Readjustment Act of 1974, and the implementing rules and regulations of the Office of Federal Contract Compliance Programs (41 CFR, Chapter 60), as such clauses may be amended from time to time, are incorporated herein by reference.

**21. Applicable Law and Venue.** The order shall be governed by and construed in accordance with the laws of the State of New York, without regard to that body of law controlling conflict of laws. Any controversy or claim arising out of or relating to this order shall be settled in the courts of New York State.

**22. Waiver.** Any failure by either party to enforce this order as to any breach hereof by the other party shall not be deemed to be a waiver of the rights of such party as to such breach or any subsequent breach.

**23. Severability.** If any of the provisions of this order shall be held invalid or unenforceable by law or a court of competent jurisdiction, such invalidity or unenforceability shall not invalidate or render unenforceable this entire order, but rather this entire order shall be construed as if not containing the particular invalid or unenforceable provision(s) and the rights and obligations of the parties shall be construed and enforced accordingly.

# Transit ))) Wireless

## Revision History

9/23/2014: Initial Issue of Terms

2/24/2015: Clause 2 ("Default and Termination") amended