



Wi2Wi, Inc.
Middleton, Wisconsin 53562
Purchase Order Terms & Conditions



1. **ACCEPTANCE.** This Purchase Order may be accepted only by Supplier's prompt shipment of the goods herein specified.
2. **INCONSISTENT PROVISIONS.** Acceptance of this Purchase Order must be limited to the terms hereof, expressed or implied, and any additional or different terms or conditions in any written acceptance are proposals which do not become a part hereof unless Wi2Wi, Inc. ("Buyer") consents thereto in writing. Any different or additional terms contained in Supplier's acceptance of this Purchase Order are hereby objected to.
3. **PURCHASE PRICE.** The purchase price(s) specified in this Purchase Order ("Purchase Price") shall not be subject to change without the prior written approval of Buyer. If no purchase price is specified herein, it is agreed that the Purchase Price will be the lowest purchase price for like goods of like quality charged by Supplier from the date hereof until the date of delivery and in no event will the Purchase Price be higher than last previously quoted or charged to Buyer.
4. **INVOICING AND PAYMENT.** Invoices shall be sent after each shipment to: Wi2Wi, Inc., Accounting Department, at the address shown on the face of the Purchase Order. Delays in receiving invoices, errors or omissions on invoices or lack of supporting documentation will be cause for Buyer withholding payment without losing discount privileges. Payment for the items delivered under this Purchase Order will be made in accordance with the Purchase Order Terms, following receipt of a valid invoice, or acceptance of such delivered items, whichever is later.
5. **QUANTITY.** This Purchase Order states item quantities required by Buyer. Buyer reserves the right to totally or partially reject any shipment from Supplier that does not contain the exact quantity of items ordered for that shipment.
6. **TAXES.** Unless otherwise stated in this Purchase Order, the Purchase Price shall be net of any and all domestic or foreign taxes, charges or other assessments of any kind of any government authority (including, without limitation, withholding taxes, sales tax, use taxes, export duties and import duties, any interest, fines or penalties therein) (collectively, the "Taxes") levied, directly or indirectly, regardless of whether such Taxes are levied against Supplier, Buyer or any other person.
7. **REPRESENTATIONS, WARRANTIES AND COVENANTS.**
 - a. **Representations and Warranties** - In addition to all express warranties set forth in this Purchase Order and all warranties implied in fact or law, Supplier expressly represents and warrants that all goods, products and services covered, sold, transferred or otherwise provided by Supplier to Buyer pursuant to this Purchase Order (collectively, the "Products") shall: (1) be of good quality and workmanship and free from all defects; (2) conform to and perform in accordance with all requirements of this Purchase Order, including, without limitation, all specifications, drawings and descriptions in this Purchase Order (collectively, the "Specifications") and all samples approved by Buyer (collectively, the "Samples"); (3) be merchantable and fit for the specific purpose for which Buyer has informed Supplier the Products are to be used; and (4) comply with all applicable law applicable to the Products when and where delivered. Acceptance of or payment for the Products shall not constitute a waiver of warranties. Buyer's approval of Samples furnished for inspection is to assist Supplier and does not relieve Supplier from responsibility to deliver goods conforming to all Specifications and all Samples.
 - b. **Covenants** - Supplier hereby agrees to: (1) maintain an organization with adequately trained personnel reasonably necessary to ensure that all Products comply to and perform in accordance with all requirements of this Purchase Order, including, without limitation, all Specifications; (2) maintain a suitable quality management system to ensure that all Products comply to and perform in accordance with all requirements of this Purchase Order, including, without limitation, all Specifications; (3) acquire, maintain and utilize within its organization the latest applicable industry-recognized standards as specified in this Purchase Order; and (4) ensure compliance with all Product acceptance and Product test sample requirements specified in this Purchase Order.
8. **INDEMNIFICATION.** Supplier agrees to promptly indemnify, defend and hold harmless Buyer and its affiliates and their respective directors, officers, employees, shareholders, agents, successors and assigns (collectively, "Indemnitees") from and against any and all claims, losses, costs, judgments, deficiencies, obligations, liabilities, payments, charges, fines, penalties, damages and expenses, including, without limitation, injury to or death of any person or any property damage, and further including, without limitation, reasonable attorneys' fees and disbursements, of any kind, including, without limitation, any special, incidental, consequential, punitive or other indirect damages, including, without limitation, loss of profits, loss of revenues, loss of use, interest or carrying charges on investment, expenses arising from cost of capital, under-utilization of labor, equipment or facilities or other indirect commercial loss or damage, (collectively, the "Claims") arising out of, relating to or resulting from: (a) any breach of or default in the observance or performance of any agreement made by Supplier in this Purchase

Order; (b) Supplier's failure to fulfill any other obligation which Supplier is required to perform or observe pursuant to this Purchase Order; (c) any inaccuracy in any, breach of any, or false or fraudulent, representation or warranty made by Supplier in this Purchase Order; or (d) the investigation or defense of any Claims for indemnification which are made or brought by Buyer against Supplier.

9. **INTELLECTUAL PROPERTY INFRINGEMENT.** Supplier agrees to promptly indemnify, defend and hold harmless all Indemnitees from and against any and all Claims arising out of the use of any of the Products, relating to or resulting from infringement of any: (a) patents, either in the United States of America or any foreign countries; (b) trademarks or any other proprietary rights in the United States of America or any foreign countries; or (c) similar rights.
10. **ACCEPTANCE AND REJECTION.** Buyer will have the right to accept delivered items or give Supplier notice of rejection or revocation of acceptance, regardless of any prior payment, test, inspection, or passage of title. No inspection, test, delay, or failure to inspect, test or discover any defect or other nonconformance will relieve Supplier of any obligations under this Purchase Order or impair any rights or remedies of Buyer. If specific Buyer, Buyer's customer or government agency tests, inspection and/or witness points are included in this Purchase Order, the Products shall not be shipped without an inspector's release or a written waiver of test/inspection/witness with respect to each such point; however, Buyer shall not be permitted to unreasonably delay shipment; and Supplier shall notify Buyer in writing at least Twenty (20) days prior to each of Supplier's scheduled final and, if applicable, intermediate test/ inspection/witness points. Buyer's failure to inspect, accept, reject or detect defects by inspection shall neither relieve Supplier from responsibility for such Products as are not in accordance with the requirements of this Purchase Order nor impose any liabilities on Buyer. Buyer's final inspection and acceptance of any Product(s) does not preclude subsequent rejection or the waiver of any rights by Buyer due to a rejection of such Product(s) by Buyer's customer and/or any government entity or agency. If Supplier delivers non-conforming items, Buyer may, at its option and at Supplier's expense: (i) return the items for credit or refund; (ii) require Supplier to promptly correct or replace the items; (iii) correct the items; or (iv) obtain replacement items from another source. Supplier will not redeliver corrected or rejected items without disclosing the former rejection or requirement for correction. Supplier will disclose any corrective action taken. Repair, replacement and other correction and redelivery will be completed within the original delivery schedule or such later time as Buyer's authorized purchasing department representative may reasonably direct. All costs, expenses and loss of value incurred as a result of or in connection with the nonconformance and repair, replacement or other correction may be recovered from Supplier by equitable price reduction or credit against any amounts that may be owed to Supplier under this Purchase Order or otherwise.

11. **TERMINATION FOR CONVENIENCE.**

- a. Buyer may, at any time by written notice to Supplier, terminate all or any part of this Purchase Order for Buyer's convenience, in which event Supplier agrees to stop work immediately as to the terminated portion of this Purchase Order and to notify subcontractor(s) to stop work, and protect and preserve property in its possession in which Buyer has an interest. If this Purchase Order is terminated, in whole or in part, for Buyer's convenience, Supplier shall be paid an amount, to be mutually agreed upon, which shall be adequate to cover the reasonable cost of Supplier's actual performance of work under this Purchase Order to the effective date of termination, plus a reasonable profit thereon provided that no amount shall be paid to Supplier for (i) any anticipatory profits related to work under this Purchase Order not yet performed, or (ii) costs incurred due to Supplier's failure to terminate work as ordered on the effective date of termination. Buyer shall have no obligation to make any of the aforementioned payments to Supplier, either for completed items or in connection with terminated work in process, unless Supplier shall establish to Supplier's satisfaction that such completed items, or the work in process, including materials, are unusable in connection with Supplier's other business. In no event shall the termination charges and all previous payments made under this Purchase Order exceed the total Purchase Order value shown on the face of this Purchase Order. With all purchase orders, the buyer will be able to cancel within 20% of the stated lead time with no expense unless otherwise specified upon confirmation of PO.
- b. Supplier shall submit to Buyer all claims resulting from such termination within sixty (60) days after Supplier's receipt of Buyer's notice of termination. Buyer shall have, upon reasonable advanced notice, the right to inspect Supplier's records, facilities, work, and materials relating to performance of the Purchase Order for purposes of evaluating Supplier's claim.

12. **TERMINATION FOR DEFAULT.**

- a. Buyer may, by written notice, terminate this entire Purchase Order or any part of this Purchase Order for default in the following circumstances:
- i. Supplier fails to deliver the items or perform the services required by this Purchase Order within the time specified in this Purchase Order, or any extension granted by Buyer in writing; or
 - ii. Supplier fails to perform any of the other provisions of this Purchase Order or fails to make progress so as to endanger performance of this Purchase Order in accordance with its terms and Supplier does not cure, or submit to Buyer a plan to cure, such failure to Buyer's reasonable satisfaction within a period of ten (10) days after receipt of notice from Buyer specifying the failure; or

- iii. Supplier becomes insolvent or makes a general assignment for the benefit of creditors, or files or has filed against it a petition of bankruptcy or reorganization, or pursues any other remedy under any other law relating to relief for debtors, or in the event a trustee or receiver is appointed for Supplier's property or business.
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- b. If this Purchase Order is entirely or partially terminated by Buyer under this provision. Buyer may procure, upon such terms and in such manner, as Buyer may deem appropriate, items or services similar to those terminated. Supplier will be liable to Buyer for any and all procurement costs for similar items or services, including any price for similar items or services that is higher than the price applicable to this Purchase Order; provided, however, that Supplier will continue the performance of this Purchase Order to the extent not terminated. Supplier will not be liable for any additional costs if Supplier notifies Buyer in writing within ten (10) days of the existence of the cause that Supplier's failure to perform this Purchase Order:
 - i. arises out of causes beyond the control and without the fault or negligence of Supplier. These causes may include, but are not restricted to, acts of God or of the public enemy, acts of a government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; or
 - ii. is caused by the default of a vendor or subcontractor to Supplier, so long as the default arises out of causes beyond the control of both the Supplier and the vendor or subcontractor, and the subcontracted items or services were not obtainable from other sources in sufficient time to permit Supplier to meet the required delivery schedule.
 - c. If this Purchase Order is entirely or partially terminated under this section, Buyer, in addition to any other rights, may require Supplier to:
 - i. Transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer, any completed items and any partially completed items and materials, parts, components, tools, dies, jigs, fixtures, plans, drawings, information, software, and contract rights (hereinafter called "contract materials") as the Supplier has specifically produced or acquired for the performance of the part of this Purchase Order that has been terminated; and/or
 - ii. Protect and preserve property in the possession of Supplier in which Buyer has an interest.
 - d. Payment for completed items delivered to and accepted by Buyer, and for the protection and preservation of property, will be in an amount agreed upon by Supplier and Buyer. Buyer may withhold from amounts otherwise due Supplier for such completed items or contract materials such sums as Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims; and/or
 - e. If, after notice of termination under this section, it is determined that Supplier was not in default, or that the default was excusable, the rights and obligations of the parties will be the same as if the notice of termination had been issued pursuant to the section entitled "Termination for Convenience."
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13. SEPARATE LOTS. If this Purchase Order requires or authorizes the delivery of Products in separate lots to be separately accepted and if any Products do not conform hereto, Buyer may reject any or all Products affected or the entire installment and any undelivered installments. Supplier hereby agrees: (a) not to ship to Buyer any Product not conforming to the requirements of this Purchase Order, including, without limitation, all Specifications, without Buyer's prior written consent (in Buyer's sole discretion); and (b) to inform Buyer in writing of any such non-conforming Product already delivered to Buyer that becomes known to Supplier after shipment to be non-conforming.
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14. TIME OF DELIVERY. Delivery dates specified herein are of the essence. If Supplier suspects or determines that deliveries will not be made on time, Supplier will advise Buyer of the possible delay, the cause and the proposed recovery schedule as soon as possible. Delivery delays may be cause for termination for default or equitable adjustment of the terms or conditions of this Purchase Order, as determined by Buyer. In addition to all other remedies available to Buyer, Supplier shall reimburse Buyer for all costs incurred by Buyer as a result of late deliveries on the part of Supplier, including, without limitation, the amount of any delivery penalties assessed by Buyer's customers based on Supplier's unexcused delay.
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15. PACKING AND SHIPMENT. Deliveries shall be made as specified without additional charge for boxing, crating or storage. Unless otherwise specified by Buyer, an article shall be suitably packed to secure the lowest transportation cost in accordance with the requirements of common carriers. Material shall be described in bills of lading in accordance with current national mode of freight or uniform freight classification, whichever is applicable. Buyer's order numbers and symbols, and identification numbers must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each box or package shipment showing Buyer's order number and symbol item number and description materials. Buyer's count or weight shall be conclusive on shipments not accompanied by packing lists. Shipping receipts or bills of lading shall be sent to Buyer on the date material is shipped. Articles shall be packed to assure against damage from weather or transportation and comply with ANSI/ESD S541 for ESD sensitive items. If packaging is not compliant with ANSI/ESD S541, the items may be disposed of at seller's expense.
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16. COMPLIANCE WITH LAW. Supplier represents and warrants that in its performance hereunder it will comply with all applicable federal, state, local and foreign laws, rules, regulations, administrative and executive orders, and

pertinent governmental procurement regulations. Supplier further warrants that it will comply with applicable provisions of Executive Order No. 11246, as amended, pertaining to equal employment opportunity and the Fair Labor Standards Act of 1938, as amended ("Fair Labor Standards Act"). Each invoice must certify that the goods invoiced were produced in accordance with the Fair Labor Standards Act. Supplier represents and warrants that the Products will be produced in compliance with the Occupational Safety and Health Act of 1970 and with the then applicable standards, rules, regulations, and orders thereunder.

17. **SUBCONTRACTORS.** Any agreement or relationship entered into by Supplier with any subcontractor or other person or entity with respect to the provision of any Product or any component thereof shall: (a) be in writing; and (b) include all related duties, obligations and requirements of Supplier in this Purchase Order.
18. **PARTS.** If any of the Products furnished under this Purchase Order are composed of more than one part, Supplier shall furnish Buyer such quantity of component parts as Buyer may order at prices in proportion to the prices specified for the complete unit, notwithstanding such parts are ordered after this Purchase Order has been otherwise performed. With all components, there can be no tin in a concentration of no more than 96.5%. If tin is found in a concentration greater than 96.5%, the vendor may be charged reasonable costs for materials, rework, shipping, and any other related expenses.
19. **INSURANCE.**
 - a. Whenever Supplier shall, by virtue hereof, have in its possession property of Buyer, Supplier shall be deemed as insurer thereof and shall be responsible for its safe return to Buyer.
 - b. If Supplier is to perform any services for Buyer on any premises owned or controlled by Buyer or elsewhere, Supplier agrees to: (1) keep the premises and work free and clear of all mechanic's liens, and furnish to Buyer proper affidavits and/or waivers certifying thereto; (2) perform such services at Supplier's sole risk prior to its written acceptance by Buyer and replace at Supplier's sole expense all property damaged or destroyed by any cause whatsoever; (3) carry workmen's compensation insurance covering all employees to be used by Supplier in connection with such services and public liability insurance covering Supplier's liability hereunder; and (4) prior to commencing the performance of any services hereunder, furnish to Buyer certificates of its insurance carrier showing that such workmen's compensation and liability and property damage insurance is in force.
 - c. All shipments shall be insured for full value of goods therein. This insurance shall include value of any materials furnished by Buyer whether or not these materials have been altered by Supplier. Supplier accepts full responsibility for financial reimbursement to Buyer for all materials, lost or damaged and not insured.
20. **ARBITRATION.** Any dispute or claim arising out of or pursuant to this Purchase Order shall be submitted to final and binding arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") by one arbitrator appointed in accordance with the Rules. The site of such arbitration proceedings shall be in Madison, Wisconsin, judgment upon any award rendered in such arbitration may be entered in any court of competent jurisdiction. This provision shall not limit either Supplier's or Buyer's right to obtain any provisional or equitable remedy, including, without limitation, injunctive relief from any court of competent jurisdiction, as may be necessary in the sole judgment of Supplier or Buyer, as the case may be, to protect its rights hereunder.
21. **ENTIRE AGREEMENT.** This Purchase Order constitutes the entire agreement by and between the parties regarding the subject matter contained herein and supersedes all prior and contemporaneous undertakings and agreements by and between Supplier and Buyer, whether written or oral, with respect to such subject matter.
22. **NOTICES.** All notices required or permitted hereunder shall be in writing and shall be: (a) sent by e-mail or facsimile transmission (effective when receipt is acknowledged unless sent on a non-business day or after 5:00 p.m. on any business day, in which event notice shall be deemed received on the next business day); (b) personally delivered (effective upon personal delivery); (c) sent by certified mail, return receipt requested, postage prepaid (effective upon receipt by addressee); or (d) sent by a nationally recognized, commercial overnight delivery service with provisions for a receipt, delivery charges prepaid (effective upon receipt by addressee), and shall be addressed to the party, to the addresses, email address and facsimile numbers set forth in or on the face of this Purchase Order. Notwithstanding anything to the contrary contained in this Section 22, notice of change of address shall be given in accordance with the terms of this Section 22 and shall be effective only upon receipt.
23. **AMENDMENT.** This Purchase Order may not be amended, modified or otherwise supplemented unless such amendment, modification or supplement is in writing and signed by both Supplier and Buyer. Furthermore, Supplier and Buyer expressly agree that the terms and conditions of this Purchase Order cannot be altered or amended by parole evidence of course of performance, course of dealing or usage of trade.
24. **DISCLOSURE OF SUPPLIER'S CONFIDENTIAL INFORMATION.** Any unpatented knowledge, information or documents concerning Supplier's products, methods or manufacturing processes, including, without limitation, specifications or samples, which Supplier may disclose to Buyer shall, unless otherwise specifically agreed in writing signed by Supplier and Buyer, be deemed to have been disclosed as a part of the Purchase Price and Supplier shall not assert any claim against Buyer as the result of Buyer's use thereof.
25. **BUYER'S CONFIDENTIAL INFORMATION.** All Specifications or Samples furnished by Buyer to Supplier for rendering or production or any other purposes, shall be considered proprietary and confidential information of Buyer. Supplier shall not publish or disclose in any way any of Buyer's confidential information to any third party, or use

any of Buyer's confidential information for any purpose other than for the purpose as contemplated by this Purchase Order. All of Buyer's confidential information and all copies thereof (including, without limitation, all materials containing or embodying any of Buyer's confidential information) are and shall remain the sole property of Buyer and shall be returned promptly to Buyer upon completion or termination of the activity for which Supplier has obtained such confidential information.

26. CHANGES.

- a. Specifications - Buyer reserves the right to make such changes in Specifications as may be necessary or desirable, in Buyer's sole discretion, after this Purchase Order is accepted by Supplier. Any difference in Purchase Price shall be subject to the written agreement of Supplier and Buyer. Any/all revisions to components, materials and/or products must be pre-approved by Wi2Wi, Inc. prior to implementation of said changes.
- b. Raw Materials/Manufacturing Processes - Raw Materials/Manufacturing Processes - Supplier shall be required to: (1) notify Buyer in writing of any proposed material change to any Product raw material or manufacturing process including changes to process, equipment, design, material, or source of material; and (2) obtain Buyer's prior written approval, in Buyer's sole discretion, prior to implementing any such proposed change. The supplier will be required to complete any product change notification documents as requested by the buyer.
- c. Location change - Change is supplier's manufacturing location - In the event the seller intends to change the manufacturing location of any item, the supplier will shall, at a minimum, give Buyer: 1. six (6) months notice of the intent to change the manufacturing location and: 2. adequate assurance, including a comprehensive plan, detailing how the supplier intends to meet its performance obligations and delivery of conforming product. In the event the supplier fails to provide such written information, the buyer may terminate this Order, in whole or in part, without obligation or liability of any kind to supplier and may recover any reasonable costs and damages as a result of any underperformed obligations.
- d. Item Obsolescence - Seller shall advise in writing as soon as practicable after seller identifies any items or components of items as potentially being obsolete. Twelve (12) months prior to ending its production of an obsolete item, seller will provide a replacement item with design parameters and specification documentation fully consistent with the obsolete item's then-current design parameters and requirements documents.

27. DIES, TOOLS, JIGS AND PATTERNS. Dies, tools, jigs and patterns used in the manufacture of the Products to be furnished hereunder shall be supplied by and at the expense of Supplier and shall be kept in good condition and shall be replaced when necessary by Supplier without expense to Buyer. Buyer has the option at any time to reimburse Supplier for the costs of the whole or any part of said dies, tools, jigs and patterns and become the sole owner and shall be entitled to the immediate possession of same. Supplier shall be responsible for the proper maintenance and safe delivery to Buyer of all die, tools, jigs and patterns paid for or supplied by Buyer and the same shall be subject to removal from Supplier's plant and delivery to Buyer on Buyer's written notice.
28. RIGHT OF ACCESS. All goods and materials related in any way to the Products (including, without limitation, raw materials, components, intermediate assemblies, work in process, tools and end products) and all related books and records shall be subject to inspection and test (upon reasonable notice) by Buyer, its customers and any government agencies having jurisdiction, upon execution of reasonably requested confidentiality agreements, at all times and places, including sites where the Products are created or performed, whether they be at premises of Supplier, Supplier's suppliers or elsewhere, to assess: 1) work quality; 2) conformance with all requirements of this Purchase Order, including, without limitation, all Specifications; and 3) conformance with Supplier's representations, warranties and covenants. If any inspection or test is made on Supplier's or its supplier's premises. Supplier, without additional charge, shall provide all reasonable access and assistance for the safety and convenience of the inspectors. Supplier shall provide and maintain an inspection and process control system acceptable to Buyer and its customer covering the Products and shall keep complete records available to Buyer, its customers and all government agencies having jurisdiction for seven (7) years after completion of this Purchase Order or such longer period as may be provided for by the specific Purchase Order (which shall include, without limitation, any longer period provided for pursuant to any quality clauses included in this purchase order or any specific program requirements to which this purchase order may relate).
29. DEMAND FOR ASSURANCES. Whenever Buyer has the right to demand of Supplier adequate assurance of due performance, Buyer shall be the sole judge of the adequacy of assurance given by Supplier.
30. ASSIGNABILITY. Supplier shall not assign any right or delegate any duty arising hereunder and any such attempted assignment or delegation shall be null and void.
31. PRIOR DEALINGS/USAGE OF TRADE. No course of prior dealings between Buyer and Supplier and no usage of the trade shall be relevant to supplement or explain this Purchase Order.
32. GRATUITIES. Supplier warrants that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to Buyer's employees, agents or representatives for purposes of securing this purchase order or securing favorable treatment under this purchase order. If it is found that gratuities (in the form of entertainment, gifts or otherwise) are offered by Supplier, or any agent or representative of Supplier, to any employee of Buyer or its agents or representatives with a view toward securing favorable treatment with

respect to the awarding or performing of any purchase order issued by Buyer to Supplier, Buyer may, by written notice to Supplier, terminate this purchase order in accordance with Section 12, Termination for Default, in addition to the exercise of any other rights or remedies provided to Buyer by law or in equity.

33. OMISSION. No delay or omission by Buyer in exercising any right or remedy hereunder shall operate as a waiver thereof or of any other right or remedy.
34. CUMULATIVE REMEDIES. All rights and remedies of Buyer hereunder are cumulative.
35. GOVERNMENT CONTRACTS. For purchase orders placed by Buyer in support of and/or relating to a U.S. Government Contract: (i) the Federal Acquisition Regulation (FAR) and, as applicable, the Defense Federal Acquisition Regulation Supplement (DFARS) clauses identified on Appendix A are incorporated by reference as set forth at length herein; (ii) any appendices to the purchase order that may include additional FAR and/or DFARS clauses shall also be incorporated by reference as if set forth at length herein; and, (iii) references to the terms "Government" and "Contractor" contained in the FAR and DFARS clauses shall be deemed revised to include Buyer and Seller, respectively.
36. COUNTERFEIT WORK.
- a. For purposes of this clause, Work consists of those parts delivered under this Purchase Order that are the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies). "Counterfeit Work" means Work that is or contains an item that is an unauthorized copy or substitute that has been identified, marked, and/or altered by a source other than the item's legally authorized source and has been misrepresented to be an authorized item of the legally authorized source. The term also includes Work that is or contains an item that is used, has reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable and/or new.
 - b. Supplier shall not deliver Counterfeit Work to Buyer under this Purchase Order.
 - c. Supplier shall only purchase products to be delivered or incorporated as Work to Buyer directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. Work shall not be acquired from independent distributors or brokers unless approved in advance in writing by Buyer.
 - d. Supplier shall immediately notify Buyer with the pertinent facts if Supplier becomes aware or suspects that it has furnished Counterfeit Work. When requested by Buyer, Supplier shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM.
 - e. This clause applies in addition to any quality provision, specification, statement of work or other provision included in this Purchase Order addressing the authenticity of Work. To the extent such provisions conflict with this clause, this clause prevails.
 - f. In the event that Work delivered under this Purchase Order constitutes or includes Counterfeit Work, Supplier shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Purchase Order. Notwithstanding any other provision in this Purchase Order, Supplier shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including without limitation Buyer's costs of removing Counterfeit Work, of installing replacement Work and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been exchanged. The remedies contained in this paragraph are in addition to any remedies Buyer may have at law, equity or under other provisions of this Purchase Order.
 - g. At the request of Buyer, Supplier shall provide a certification that the Work provided to Buyer does not contain any Counterfeit Work. Certification may also include or require the submission of an original certificate of conformance, original test reports, or other data traceable to approved labs or other entities to ensure an item is as claimed.
 - h. Supplier shall include paragraphs (a) through (e) and this paragraph (h) of this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Work to Buyer.
37. ORDER OF PRECEDENCE. The various documents constituting this Purchase Order shall, insofar as is possible, be interpreted so as to be consistent with one another. In the event that a conflict or ambiguity arises in the interpretation of this Purchase Order, such conflict or ambiguity shall be resolved in accordance with the following order of precedence, with the first listed item having a higher precedence than later listed items: (a) provisions required by statute, regulation or Government contract; (b) provisions set forth on the face page of this Purchase Order form, including, without limitation, any Quality Clauses applicable hereto; (c) this Terms and Conditions document; (d) the Statement of Work attached hereto, if any; (e) Specifications specifically approved in writing by Buyer; and (f) Drawing(s) specifically approved in writing by Buyer.

APPENDIX A

For purchase orders placed by Buyer in support of and/or relating to a U.S. Government Contract, the following clauses set forth in the Federal Acquisition Regulation (FAR) in effect as of the date of said prime contract are incorporated herein by reference:

- 52.203-7 ANTI-KICKBACK PROCEDURES (Applies if this Purchase Order exceeds \$100,000, but excepting subparagraph (c)(1)).
- 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (Applies if this Purchase Order exceeds \$100,000).
- 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (Applies if this Purchase Order exceeds \$100,000).
- 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (Applies if this Purchase Order exceeds \$5,000,000 and the period of performance is more than 120 days. Disclosures made under this clause shall be made directly to the Government entities identified in the clause.)
- 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (Applies to first-tier Purchase Orders of \$25,000 or more, except Purchase Orders with Suppliers which are exempt under paragraph (d)(2). "Contractor" shall mean the Buyer in paragraph (c). Supplier shall report to Buyer the information required by paragraph (c) (1) and the executive compensation information required by paragraph (c)(3), unless Supplier is exempt thereunder.)
- 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (Applies if this Purchase Order exceeds \$30,000 except does not apply if this Purchase Order is for commercial off the shelf (COTS) items.)
- 52.209-9 CERTIFICATION REGARDING RESPONSIBILITY MATTERS
- 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS
- 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT OVERTIME COMPENSATION
- 52.222-21 PROHIBITION OF SEGREGATED FACILITIES
- 52.222-25 AFFIRMATIVE ACTION COMPLIANCE
- 52.222-26 EQUAL OPPORTUNITY
- 52.222-35 EQUAL OPPORTUNITY FOR VETERANS
- 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES
- 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (Applies to Purchase Orders that exceed \$10,000 and are issued under prime contracts resulting from solicitations issued after December 12, 2010.)
- 52.222-50 COMBATING TRAFFICKING IN PERSONS
- 52.225-1 BUY AMERICAN ACT - SUPPLIES
- 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (Applies to Purchase Orders (i) for construction or commercial or noncommercial services (except commercial services that are part of a purchase of a COTS item, or an item that would be a COTS item, but for minor modifications, performed by the COTS provider, and that are normally provided for that COTS item); (ii) has a value more than \$3,000; and (iii) includes work performed in the United States.)
- 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS
- 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS

The following Defense Federal Acquisition Regulation Supplement (DFARS) clauses are applicable only to Purchase Orders issued under Department of Defense contracts and are incorporated herein by reference:

- 252.204-7008 REQUIREMENTS FOR CONTRACTS INVOLVING EXPORT-CONTROLLED ITEMS
- 252.215-7004 EXCESSIVE PASS-THROUGH CHARGES (MAY 2008) (Applies to orders awarded on the basis of certified cost or pricing data).
- 252.225-7008 RESTRICTION ON ACQUISITION OF SPECIALTY METALS (Applicable to Purchase Orders for the delivery of specialty metals as end items.)
- 252.225-7009 RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (excluding Paragraph (d) which is deleted from this clause).
- 252.225-7010 COMMERCIAL DERIVATIVE MILITARY ARTICLE - SPECIALTY METALS COMPLIANCE CERTIFICATE
- 252.225-7014 & Alt I PREFERENCE FOR DOMESTIC SPECIALTY METALS & ALTERNATE 1
- 252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS
- 252.246-7003 NOTIFICATION OF POTENTIAL SAFETY ISSUES
- 252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA
- 252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA