



Rose Electronics
2030 Ringwood Ave.
San Jose, CA 95131
www.rosebatteries.com

Rose Electronics Distributing Company, LLC
Purchase Order Terms and Conditions

These Purchase Order Terms and Conditions shall apply to any Purchase Order (defined below) from Rose Electronics Distributing Company, LLC and its affiliates. Rose Electronics Distributing Company, LLC shall be referred to herein as, "Rose".

1. ACCEPTANCE. By shipping the goods specified in the Purchase Order, Supplier accepts the Purchase Order and agrees to be bound by the terms and conditions provided herein.
2. INCONSISTENT PROVISIONS. Acceptance of the Purchase Order to which these Purchase Order Terms and Conditions are attached or referenced (the "Purchase Order") is 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 Rose Electronics Distributing Company, LLC ("Buyer") consents thereto in writing. Any different or additional terms contained in Supplier's acceptance of the Purchase Order are hereby objected to and are superseded in their entirety by these Purchase Order Terms and Conditions.
3. PURCHASE PRICE. The purchase price(s) specified in the 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 immediately after each shipment to: Rose Electronics Distributing Company, LLC, Accounting Department, RoseAPmailbox@rosebatteries.com. 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 the Purchase Order will be made in accordance with the terms contained within the Purchase Order, following receipt of a valid invoice, or acceptance of such delivered items, whichever is later.
5. QUANTITY. The 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 the 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, value added taxes, 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 the 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 the 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 the Purchase Order, including, without limitation, all specifications, drawings and descriptions in the Purchase Order (collectively, the "Specifications") and all samples approved by Buyer (collectively, the "Samples"); (3) be merchantable and fit for the particular purpose for which Buyer has informed Supplier the Products are to be used; (4) comply with all applicable laws applicable to the Products when and where delivered ; and (5) not infringe any patent, copyright, trademark, or other proprietary right of any third party or misappropriate any trade secret of any third party. 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 the 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 the Purchase Order, including, without limitation, all Specifications; (3) acquire, maintain and utilize within its organization the latest applicable industry-recognized standards as specified in the Purchase Order; and (4) ensure compliance with all Product acceptance and Product test sample requirements specified in the 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 the Purchase Order; (b) Supplier's failure to fulfill any other obligation which Supplier is required to perform or observe pursuant to the Purchase Order; (c) any inaccuracy in any, breach of any, or false or



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fraudulent, representation or warranty made by Supplier in the Purchase Order; or (d) the investigation or defense of any Claims for indemnification which are made or brought by Indemnitees 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 the Purchase Order or impair any rights or remedies of Buyer. If specific Buyer, Buyer's customer or government agency tests, acceptance tests, inspection and/or witness points are included in the 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 the Purchase Order or these Purchase Order Terms and Conditions, 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 or items subsequent to delivery through no fault of Buyer become non-conforming, 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 the 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 the Purchase Order for Buyer's convenience, in which event Supplier agrees to stop work



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immediately as to the terminated portion of the 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 the 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 the 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 the 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 Buyer'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 the Purchase Order exceed the total Purchase Order value shown on the face of the Purchase Order.

(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 the Purchase Order for default in the following circumstances:

(i) Supplier fails to deliver the items or perform the services required by the Purchase Order and these Purchase Order Terms and Conditions within the time specified in the Purchase Order, or any extension granted by Buyer in writing; or

(ii) Supplier fails to perform under any of the other provisions of the Purchase Order and these Purchase Order Terms and Conditions or fails to make progress so as to endanger performance of the 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, Buyer deems that Supplier is insolvent or in the event a trustee or receiver is appointed for Supplier's property or business.

(b) If the 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 the Purchase Order; provided, however, that Supplier will continue the performance of the 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 the 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 the 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 the 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."

13. SEPARATE LOTS. If the 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.



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Supplier hereby agrees: (a) not to ship to Buyer any Product not conforming to the requirements of the 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.

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 the 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.

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. Deliveries destined for San Diego location should be considered international shipments and should include all necessary considerations including paperwork, heat treated pallets (if LTL/FTL), and any other steps necessary for compliance with international shipping requirements.

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



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component thereof shall: (a) be in writing; and (b) include all related duties, obligations and requirements of Supplier in the Purchase Order.

18. PARTS. If any of the Products furnished under the 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 the Purchase Order has been otherwise performed.

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.

20. ARBITRATION. Any dispute or claim arising out of or pursuant to the 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 San Jose, CA. 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. The Purchase Order along with these Purchase Order Terms and Conditions 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



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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 the 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. The 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 the 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 the 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 the Purchase Order and these Purchase Order Terms and Conditions are accepted by Supplier. Any difference in Purchase Price shall be subject to the written agreement of Supplier and Buyer.

b. 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; and (2) obtain Buyer's prior written approval, in Buyer's sole discretion, prior to implementing any such proposed change.



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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 unless explicitly agreed by both parties separately. 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 the 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 the 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 the Purchase Order or any specific program requirements to which the 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 the Purchase Order.

32. ETHICAL COMPLIANCE; GRATUITIES.



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a. Rose's suppliers are a key component of our business and it is of critical importance to Rose that all of its suppliers share our commitment to performing in accordance with the highest standards of professional business conduct.

b. 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 the purchase order or securing favorable treatment under the 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 the 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. GOVERNING LAW. THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THE PURCHASE ORDER SHALL NOT BE GOVERNED BY THE PROVISIONS OF THE 1980 UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, BUT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, UNITED STATES OF AMERICA, WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS, INCLUDING, WITHOUT LIMITATION, THE UNIFORM COMMERCIAL CODE AS ENACTED IN THE STATE OF NEW YORK.

36. 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) the certifications identified on Appendix A is incorporated by reference as set forth herein; (iii) any appendices to the Purchase Order that may include additional certifications and/or FAR and/or DFARS clauses shall also be incorporated by reference as if set forth at length herein; and, (iv) references to the terms "Government" and "Contractor" contained in the FAR and DFARS clauses shall be deemed revised to include Buyer and Supplier, respectively.

37. DPAS RATING. If the Purchase Order (including the face thereof or any clauses applicable hereto pursuant to Section 36 above) indicates that it is a rated order certified for national defense use, then Supplier is required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR Part 700) in obtaining controlled materials and other



products, services and materials needed to fill the Purchase Order. If this is a DX rated order, Supplier must promptly provide Buyer with written acceptance or rejection of the Purchase Order within ten (10) working days after receipt. If this is a DO rated order, Supplier must promptly provide Buyer with written acceptance or rejection of this order within fifteen (15) working days after receipt. Supplier must include in any written rejection of a rated order the reasons for the rejection. Supplier's written acknowledgement of a rated order shall constitute written acceptance of the DPAS rating.

38. COUNTERFEIT WORK.

- a. For purposes of this Section 38, "Work" consists of those parts delivered under the Purchase Order that are the lowest level of separately identifiable items (e.g., articles, raw materials, components, goods, and assemblies). "Counterfeit Work" means Work that is or contains unlawful or unauthorized reproductions, substitutions, or alterations that have been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used Work represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics. "Suspect Counterfeit Work" means Work for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the Work is authentic.
- b. Supplier shall not deliver Counterfeit Work or Suspect Counterfeit Work to Buyer under the 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. Supplier may use another source only if: (i) the foregoing sources are unavailable, (ii) Supplier's inspection and other counterfeit risk mitigation processes will be employed to ensure the authenticity of the Work, and (iii) Supplier obtains the advance written approval of Buyer.
- d. Supplier shall maintain counterfeit risk mitigation processes in accordance with industry recognized standards and with any other specific requirements identified in the Purchase Order.
- e. Supplier shall immediately notify Buyer with the pertinent facts if Supplier becomes aware or suspects that it has delivered Counterfeit Work or Suspect Counterfeit Work. When requested by Buyer, Supplier shall provide documentation that authenticates traceability and enables tracking of the affected items through the supply chain back to the applicable OCM/OEM.



- f. This clause applies in addition to and is not altered, changed, or superseded by any quality provision, specification, statement of work or other provision included in the Purchase Order addressing the authenticity of Work. To the extent such provisions conflict with this clause, this clause prevails.
- g. In the event that Work delivered under the 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 the Purchase Order. Notwithstanding any other provision in the 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. In the event that Work delivered under the Purchase Order constitutes or includes Suspect Counterfeit Work, Supplier shall, at its expense, promptly prove that such Suspect Counterfeit Work is authentic. If Supplier is unable to prove such authenticity to Buyer's sole satisfaction, the provisions of this paragraph regarding Counterfeit Work shall apply. The remedies contained in this paragraph are in addition to any remedies Buyer may have at law, equity or under other provisions of the Purchase Order.
- h. At the request of Buyer, Supplier shall provide a certification that the Work provided to Buyer does not contain any Counterfeit Work or Suspect 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. Buyer may request clear identification of the name and location of supply chain intermediaries from the OCM/OEM to the direct source of the Work for Supplier; and where available, the batch identification of the OCM/OEM for the Work, such as date codes, lot codes, or serial numbers.
- i. Supplier shall include paragraphs (a) through (f) and this paragraph (i) 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.

39. CONFLICT MINERALS. Supplier acknowledges that Buyer is required to meet its customers' compliance requirements related to Section 1502 of the United States Dodd-Frank Wall Street Reform and Consumer Protection Act ("the Dodd-Frank Act") related to the use of tin, tantalum, tungsten and gold (each, a "Conflict Mineral" and collectively, "Conflict Minerals"). Supplier represents and warrants that it will source, and track the chain of custody of, all Conflict Minerals contained in any products or materials provided by Supplier to Buyer in accordance with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (or such other internationally recognized due diligence standard as Buyer and Supplier may jointly agree upon). At Buyer's request (which may be as frequently as quarterly at Buyer's discretion), Supplier must execute and deliver to Buyer



declarations in the form of the EICC-GeSI Conflict Minerals Reporting Template as adopted by EICC-GeSI from time-to-time.

40. **RESTRICTED MATERIALS.** Supplier represents and warrants that none of the goods sold or transferred to Buyer contain: (i) any chemical or hazardous material otherwise restricted pursuant to European Union's Restriction of Hazardous Substances in Electrical and Electronic Equipment (as most recently recast in accordance with RoHS Directive 2011/65/EU) (the "ROHS Directive"); (ii) any substance listed on the REACH Candidate List, subject to authorization and listed on Annex XIV of European Regulation EC 1907/2006 on the Registration, Evaluation, Authorization, and restriction of Chemicals ("REACH") or restricted under Annex XVII of REACH; or (iii) any other chemical or hazardous material the use of which is restricted in any other jurisdictions to or through which Buyer informs Supplier the goods are likely to be shipped or to or through which Supplier otherwise has knowledge that shipment will likely occur, unless with regard to all of the foregoing, Buyer expressly agrees in writing and Supplier identifies an applicable exception from any relevant legal restriction on the inclusion of such chemicals or hazardous materials in the goods sold or transferred to Buyer. Upon request from Buyer, Supplier shall promptly provide Buyer with access to all necessary information and records evidencing the goods' RoHS and REACH compliance. Additionally, Supplier shall promptly provide material declarations upon request with respect to the goods provided to Buyer hereunder and subject to reasonable confidentiality provisions which enable Buyer to meet its compliance obligations, Supplier will provide Buyer with the chemical composition, including proportions, of any substance, preparation, mixture, alloy or goods supplied under the Purchase Order and any other relevant information or data regarding the goods, including without limitation test data and hazard information.

41. **PRODUCT CONFORMITY AND SAFETY.** Supplier shall ensure that persons performing work under this Purchase Order are aware of their contribution to product or service conformity and their contribution to product safety.

42. **ORDER OF PRECEDENCE.** The various documents constituting the 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 the 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 the 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.