



**PACIFIC DESIGN TECHNOLOGIES, INC.  
PURCHASE ORDER TERMS AND CONDITIONS**

**TERMS AND CONDITIONS.** No terms and conditions other than the terms and conditions set forth in this Order, including any terms and conditions in any document attached to or incorporated by reference, shall be binding upon Buyer unless accepted by it in writing signed by the Buyer's Purchasing Agent or General Manager. Notwithstanding any other provision of this Order, Buyer reserves expressly the right to revoke this Order at any time prior to receipt of notice of acceptance by Seller. Acceptance is limited to the terms stated herein. All terms and conditions contained in any prior proposal or acknowledgment of this Order which are different from or in addition to the terms and conditions of this Order are hereby rejected and shall not be binding on Buyer, whether or not they would materially alter this Order, and Buyer hereby objects thereto. Seller will be deemed to have assented to all terms and conditions contained herein if any part of the goods and/or service covered by this Order is shipped or an invoice is presented in connection with the said goods and/or services.

**COMPLIANCE WITH LAWS.** Seller warrants that all goods provided hereunder have been produced and all services performed are in compliance with applicable federal, state and local laws, ordinances, codes, rules, regulations or standards, including without limitation, the Fair Labor Standards Act, and those pertaining to the manufacture, labeling, invoicing and sale of such goods or services, environmental protection, immigration, employment and occupational safety and health. (Sellers located within the United States also warrant that they shall at all times comply with applicable provisions relating to government contractors and subcontractors, which provisions, and any contract clauses required thereunder, are incorporated in this Order by reference as if set forth in full, including 41 CFR 60-1, et seq., with the reporting, record keeping and affirmative action program requirements set forth therein; incorporation of the Equal Opportunity Clause of EO 11246 pursuant to 41 CFR 60-1.4; the maintenance of non-segregated facilities as required by 41 CFR 60-1.8; the provisions of 41 CFR 60-250.4 relating to disabled and Vietnam era veterans; and the provisions of 41 CFR 60-741 relating to handicapped workers. Do we need to include this?) Where legally required, Seller shall include these clauses in its purchase orders supporting this Order, and shall at Buyer's request certify to all of the foregoing.

**STATE LAW.** This Order shall be governed in all respects by the laws of the State of California, except for its laws regarding conflicts or choices of laws, and all actions commenced pursuant hereto shall be brought in a court of competent jurisdiction residing in the State of California.

**FAIR LABOR STANDARDS ACT.** In accepting this Order, Seller represents and warrants that the goods and/or services to be furnished hereunder were or will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, the Orders and regulations issued pursuant thereto. Unless otherwise agreed in writing, Seller shall insert a certificate indicating such compliance on all invoices submitted in connection with this Order.

**TRANSPORTATION.** Unless otherwise stipulated on the face of this Order or as modified by routing letter from Buyer's Purchasing Agent, goods covered by this Order shall be shipped "FOB origin". Title to said goods to pass to Buyer only upon delivery to Buyer's specified end destination, regardless of risk of loss. Delivery in advance of the specified Buyer's shipping date, however, will not cause passage of title, transfer of risk of loss and/or establish FOB point. Transportation charges on goods delivered FOB destination must be prepaid. No charges for unauthorized transportation will be allowed. Any unauthorized shipment, which will result in excess transportation charges, must be fully prepaid by the Seller. Unauthorized transportation charges not prepaid will be offset by Buyer.

**CHANGES.** Buyer's authorized procurement representative (which does not include Buyer's engineering and technical personnel) may unilaterally make changes within the general scope of the Order, including changes in whole or part to: (i) shipping, waste reduction or packing instructions, (ii) place of delivery, (iii) any designs, Specifications and drawings, (iv) the statement of work, (v) the method or manner of performance, (vi) Buyer Items, facilities, equipment, or materials, (vii) Prime Contract flowdown requirements and/or (viii) quality requirements ("Change(s)"). Supplier shall perform any Changes ordered by Buyer. Any Order terms that incorporate flexibility for variations or modifications shall not be considered Changes within the meaning of this Section.

If any Change under this Section causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment shall be made in price or delivery schedule or both ("Adjustment Claim"), and Buyer shall modify the Order accordingly. Supplier must submit an Adjustment Claim in writing in the form of a complete change proposal, fully supported by factual information, to Buyer's procurement representative no later than fifteen (15) days after Supplier's receipt of the Change.

If the cost of property or material made obsolete or excess as a result of a Change is included in the Adjustment Claim, Buyer may direct the disposition of such property or material. Notwithstanding any pending Adjustment Claims, Supplier shall diligently proceed with the performance of the Order, as directed by Buyer.

If Supplier considers that Buyer's conduct constitutes a Change, Supplier shall notify Buyer's authorized procurement representative immediately in writing as to the nature of such conduct and its effect upon Supplier's performance. Supplier shall take no action to implement any such Change without written direction from Buyer's authorized procurement representative.

**STOP WORK ORDER** Buyer may, from time to time, require Seller to stop all or any portion of the work called for by the Order for a period of up to sixty (60) days ("Stop Work Period") at each such time. Upon receipt of written notice detailing the length and scope of the Stop Work Period, Supplier shall immediately comply with its terms at no charge. Within the Stop Work Period, Buyer shall either: (i) cancel the stop-work order and Seller shall resume work; or (ii) terminate the work covered by the stop-work order, for default or convenience, as the context requires, in accordance with the provisions of the Order.



**DEFAULT.** Neither Seller or Buyer shall be considered in default in the performance of its obligations herein to the extent that performance of such is delayed or prevented due to causes beyond the control of said party, including, but not limited to, acts of God, war, revolution, civil commotion, blockade or embargo, any law, order, regulation, ordinance, of any government, fires, floods, unavoidable casualties, strikes, labor disputes, and other causes beyond the reasonable control of either party. If Buyer incurs damages as a result of the Seller's delay in delivery, Seller shall be liable for such damages if due to the negligence of Seller. Buyer may by written notice of default to Seller (a) terminate the whole or any part of this Order in any one of the following circumstances: (i) if Seller fails to perform within the time specified herein or any extension thereof; or (ii) if Seller fails to perform any of the other provisions of this Order, or so fails to make progress as to endanger performance of this Order in accordance with its terms; or (iii) if the Seller shall become insolvent or make a general assignment for the benefit of creditors or if a petition under any bankruptcy act or similar statute is filed by or against the Seller, and in any of these circumstances does

not cure such failure within a period of ten (10) days or such longer period as Buyer may authorize in writing; and (b) upon such termination Buyer may procure, upon such terms as it shall deem appropriate, supplies or services similar to those so terminated, in which case Seller shall continue performance of this Order to the extent not terminated and shall be liable to Buyer for any excess costs for such similar supplies or services. As an alternate remedy, and in lieu of termination for default, Buyer, at its sole discretion, may elect (a) to extend the delivery schedule and/or (b) to waive other deficiencies in Seller's performance, in which case an equitable reduction in the Order price shall be granted. Buyer shall have the right at any time to require assurance from Seller. In the event Seller for any reason anticipates difficulty in complying with the required delivery date or performance schedule, or in meeting any of the other requirements of this Order, Seller shall promptly notify Buyer in writing. If Seller does not comply with Buyer's delivery schedule or performance schedule, Buyer may require delivery by fastest means and charges resulting from the premium transportation must be fully prepaid and absorbed by the Seller. The rights and remedies of the Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Order.

**REJECTIONS.** If any of the goods and/or services furnished hereunder are found at any time to be defective in material or workmanship or otherwise not in conformity with the requirements of this Order, Buyer, in addition to any other rights which it may have under all applicable warranties or otherwise, may at its option correct or have corrected the nonconformity at Seller's expense, or reject and return such goods and/or discontinue such services at Seller's expense. Such goods and/or services shall not be replaced or continued without written authorization from Buyer. Buyer may accept, without prejudice, a portion of any shipment, and, at its option, have Seller repair or replace any non-conforming portion of the shipment, at Seller's expense. Items rejected shall be removed promptly by the Seller at its expense and at its risk. Final acceptance shall not be conclusive with respect to latent defects, fraud or such gross mistakes as amount to fraud or with respect to the Buyer's rights under the "Warranty" clause.

**TERMS.** The Order price shall not be increased nor the terms hereof changed without the Buyer's written consent. The Seller warrants that the prices of the items covered by this Order are not in excess of the Seller's lowest lawful prices in effect on the date of this Order for comparable quantities of similar items. If cash discounts for early payment are offered by Seller, the period of time agreed upon as constituting "early payment" shall begin with the later of the invoice date or receipt of merchandise.

**PAYMENT.** Upon submission of proper invoices, Buyer shall pay the Order price set forth herein for material and supplies delivered and accepted or services rendered and accepted; however, payment may be withheld or portions thereof deducted or set-offs made against Seller if Seller is not performing work in accordance with the provisions of this Order. There will be no minimum charges honored unless specifically agreed to prior to shipment.

**HASCOM REPORTING.** If any of the items ordered herein constitute or contain "hazardous or toxic chemicals" as defined by any applicable Federal, State or local law, rule or regulation, Seller shall provide at the time of delivery all required notices and information, including without limitation all Material Safety Data Sheets ("MSDS") in approved form. Seller agrees to maintain such information current and shall provide Buyer with any amended, altered or revised information on a timely basis. When this Order or the specifications referred to herein, requires documentation or certification, this requirement is a material requirement of this Order; Seller's failure to provide such information prior to or at the time of delivery may result in withholding of payment until such is provided.

**DELIVERY SCHEDULE.** Time is of the essence in the fulfillment of this Order. This Order is subject to cancellation if not shipped at the specified time. The Buyer reserves the right to refuse deliveries made in advance of the delivery schedule (the acceptable window for delivery is 10 business days early/0 days late). Merchandise shipped after the time specified may be returned at the Seller's expense for full credit. Retention of all or any part of such merchandise shall not be considered acceptance of same. Acceptance of such merchandise shall not be deemed a waiver of the Buyer's right to hold the Seller liable for any loss or damage resulting therefrom, nor shall it act as a modification of the Seller's obligation to make future deliveries in accordance with the delivery schedule. Buyer shall be reimbursed in full for all merchandise returned. In addition thereto, Buyer shall have the privilege, if shipment is not made on time, to purchase similar merchandise in the open market in such quantities as they may find necessary not exceeding the amount called for in this Order and hold Seller responsible for the difference, if any, between the price so paid and the Order price.

**SHIPMENT.** All material shall be properly packed for shipment. The Seller shall comply with the Buyer's standard routing and shipping instructions issued by the Buyer. If such instructions are not attached hereto or have not been previously received, instructions must be requested from the Buyer immediately. No additional charge will be allowed for packing, crating, freight, express or cartage unless specified on the face of the Order. Any loss or damage, whenever occurring, which results from Seller's improper packaging or crating shall be borne by Seller. All items shall be properly identified with Buyer's Order number releasing shipments against this Order and the Order item number or other identification number shown.

**CERTIFICATES OF ORIGIN AND CUSTOMS DOCUMENTATION.** Seller accepts all responsibility for the information on the Certificate of Origin, letter or affidavits. By accepting this Purchase Order, seller accepts full responsibility for the completeness and accuracy of the corresponding Certificate of Origin and all other customs documentation provided to Buyer. Seller accepts any liabilities resulting from inaccurate data on these documents or failure to comply with Certificate of Origin requirements.



**PATENT AND COPYRIGHT INDEMNITY.** Seller represents and warrants that neither the merchandise nor the sale thereof covered by this Order will infringe upon or violate any trademarks, patents, copyright or other legal rights of third parties. Seller agrees to indemnify and save Buyer harmless from and against any and all claims, liability, loss, costs, attorneys' fees, expenses and damages due to or arising from any such alleged infringement or violation.

**INDEMNIFICATION.** To the fullest extent permitted by law, Seller agrees to indemnify, save harmless, and defend Buyer and its affiliated companies, their customers, directors, officers, employees and agents, from and against any loss, liability, cost, expenses, suits, actions, claims and all other obligations and proceedings whatsoever, including without limitation, all judgments rendered against, and all fines and penalties imposed upon Buyer and any reasonable attorney's fees and any other cost of litigation (hereinafter collectively referred to as

"liabilities") arising out of injuries to persons, including death, or damage to property, caused by Seller, its employees, agents, subcontractors, or in any way attributable to the performance and prosecution of the work herein contracted for, including without limitation breach of warranty or product liability except that Seller's obligation herein to indemnify Buyer shall not apply to any liabilities arising from Buyer's sole negligence. Seller agrees to expressly waive its immunity, if any, under the applicable workers' compensation law if such immunity may affect this indemnification obligation.

**WAIVER.** The Buyer's failure to insist upon strict compliance shall not be deemed to be a waiver of any right granted Buyer herein. Buyer shall not be deemed to waive any such right unless such waiver is in writing signed by the Buyer's General Manager; such waiver shall not constitute a waiver of any other default under this Order.

**TAXES.** Unless prohibited by law, the Seller shall pay all federal, state or local tax, transportation tax, or other tax which is required to be imposed upon the items ordered hereunder, or by reason of their sale or delivery; the Order price shall be deemed to include such taxes.

**WARRANTY.** Seller warrants that it has clear title to all items furnished subject hereto and that they are being delivered free and clear of any encumbrances. The Seller further warrants that all such items shall conform to the Seller's specifications, the requirements of this Order and approved sample or samples, if any, and further, that such shall be merchantable and fit for the Buyer's or its customer's intended use and that such items shall be free from defects in design, material and workmanship (collectively, the "Seller's Warranty"). Seller's Warranty shall remain in effect for a one (1) year period after acceptance of the items by the Buyer's customers, or for such longer period of time as the item is normally warranted. Neither approval by the Buyer of the Seller's design nor acceptance of the goods shall release or discharge Seller from liability for damages resulting from a breach of Seller's Warranty.

If any defect, failure or other non-conformity appears, Buyer shall have the right to take the following actions: (1) retain such defective items and an equitable adjustment will be made in the Order price for such defective items; (2) require Seller to repair or replace such defective items, at the Seller's sole expense, including all shipping, transportation, and installation costs; or (3) correct or replace such defective items with similar items and recover the total cost thereof from the Seller. The aforesaid warranties shall survive acceptance and payment and shall run to Buyer, its customers and their successors in title and shall not be deemed to be exclusive, but shall be in addition to Buyer's other rights under the terms of this Order or at law or equity.

**TERMINATION BY BUYER.** Buyer shall have the right for and at its convenience to terminate this Order in whole or in part at any time, and from time to time, by written or telegraphic notice effective upon receipt by Seller, even though Seller is not in breach of any obligation hereunder. Upon receipt of notice of termination, Seller shall immediately discontinue performance and shall comply with Buyer's instructions concerning disposition of completed and partially completed items, work in progress and materials acquired pursuant to this Order. In the event of such termination, Seller shall be paid an amount in settlement to be mutually agreed upon by the parties which shall cover Seller's reasonable costs of performance incurred prior to termination in connection with the items for which this Order is terminated plus a reasonable profit based upon such costs. However, said payment shall not exceed the price specified herein for such items. In no event shall the Seller be entitled to recover incidental or consequential damages. Seller shall advise the Buyer, in writing, of Seller's claim, if any, for termination costs within ten (10) days after receipt of the notice of termination.

**ORDER OF PRECEDENCE.** If there are any inconsistencies or conflicts in the provisions applicable to the Order, precedence shall be given in the following descending order: (i) the face sheets of the Order including the price, price adjustment terms, specifications, shipping, quality requirements, drawings, work statements, and modifications to the Agreement and/or these Terms and Conditions that specifically reference the Section being modified; (ii) regarding product support obligations, the terms of any product support agreement entered into by the Parties; (iii) terms of any Agreement under which the Order is issued; and (iv) these Terms and Conditions.

**ENTIRE AGREEMENT.** This Order constitutes the entire agreement between the parties and contains all the agreements and conditions of sale; no course of dealing or usage of the trade shall be applicable unless expressly incorporated in this Order. The terms and conditions contained in the Order may not be added to, modified, superseded or otherwise altered except by a written modification signed by the Buyer's Purchasing Agent or General Manager. Each delivery shall be deemed to be only upon the terms and conditions contained in this Order, which shall supersede all inconsistent provisions included in Seller's proposal and in any subsequent acknowledgment by Seller, notwithstanding the Buyer's act of accepting or paying for any delivery or similar act of the Buyer.