

**SUMITRONICS USA INC.'S**  
**TERMS AND CONDITIONS OF PURCHASE**

**1. OFFER/ACCEPTANCE.**

A. Each purchase order, together with these Terms and Conditions and any documents specifically referenced herein (collectively, "Purchase Order") is an offer by Purchaser or its applicable affiliate or subsidiary ("Purchaser") to the party to whom such Purchase Order is addressed and such party's applicable affiliates and subsidiaries ("Seller") to purchase the goods and/or services (collectively, "Supplies") described therein, and it shall be the complete and exclusive statement of such offer and agreement. A Purchase Order does not constitute an acceptance by Purchaser of any offer or proposal by Seller, whether in Seller's quotation, acknowledgement, invoice or otherwise. In the event that any Seller quotation or proposal is held to be an offer, that offer is expressly rejected and is replaced in its entirety by the offer made up of the Purchase Order.

B. A contract is formed on the date that Seller accepts the offer of Purchaser. Each Purchase Order shall be deemed accepted upon the terms and conditions of such Purchase Order by Seller by shipment of goods, performance of services, commencement of work on goods, written acknowledgement, or any other conduct of Seller that recognizes the existence of a contract pertaining to the subject matter hereof. Additionally, each Purchase Order shall be deemed accepted five business days after Purchaser delivers the Purchase Order to Seller, if Seller fails to object to the Purchase Order. Acceptance is expressly limited to these Terms and Conditions and such terms and conditions as are otherwise expressly referenced on the face of the Purchase Order. No purported acceptance of any Purchase Order on terms and conditions which modify, supersede, supplement or otherwise alter these Terms and Conditions shall be binding upon Purchaser and such terms and conditions shall be deemed rejected and replaced by these Terms and conditions unless Seller's proffered terms or conditions are accepted in a physically signed writing by an authorized representative of Purchaser (a "Signed Writing"), notwithstanding Purchaser's acceptance of or payment for any shipment of goods or similar act of Purchaser. In the event of a conflict between the Purchase Order and any prior or contemporaneous agreement or document exchanged between Purchaser and Seller, the Purchase Order governs.

C. Purchaser may from time to time administer purchasing for its affiliates and subsidiaries and issue Purchase Orders containing the Purchaser logo, but identifying a different Purchaser affiliate or subsidiary. Seller acknowledges and agrees that no such Purchase Order shall constitute or be interpreted to represent a Purchase Order of Purchaser or a guaranty by Purchaser of any obligations or liabilities of the Purchaser affiliate or subsidiary identified on the Order.

**2. ENTIRE AGREEMENT.**

A. The Purchase Order, together with these Terms and Conditions and the attachments, manuals, guidelines, requirements, exhibits and supplements specifically referenced in the Purchase Order or on the Purchaser's web site at <http://www.sumitronics.com>, constitutes the entire agreement between Seller and Purchaser with respect to the matters contained in the Purchase Order and supersede all prior oral or written representations or agreements.

B. Purchaser may modify the Terms and Conditions from time to time by posting notice of such modified Terms and Conditions on the Purchaser web site at <http://www.sumitronics.com> prior to the modified Terms and Conditions becoming effective. Seller periodically shall review the Purchaser web site and the Terms and Conditions. Seller's performance under the Purchase Order will constitute Seller's acceptance of such modified Terms and Conditions. Except as provided in these Terms and Conditions, the Purchase Order may only be modified by a Signed Writing.

C. Seller shall review the Purchaser website at <http://www.sumitronics.com> and review any manuals located therein. Seller's performance under the Purchase Order will constitute Seller's acceptance of terms contained in such manual and any revisions thereto.

### 3. **QUANTITY AND DURATION.**

A. The quantity applicable to each Purchase Order may be specified on the face of the Purchase Order. If the quantity is not specified on the Purchase Order, the quantity is for all or a portion of Purchaser's requirements and may be for up to one hundred percent (100%) of Purchaser's requirements for the Supplies. Seller further acknowledges and agrees that Seller is obligated to provide Supplies to Purchaser in the quantity specified in any release issued by Purchaser ("Release"). A Release will specify a firm quantity of Supplies and/or a firm quantity of raw materials/components that Purchaser will be responsible for in the event of termination. Releases may include Projections (defined below), but Releases are only binding upon Purchaser for, and Purchaser will have no obligation or liability beyond, the firm quantity specified in the Release. Seller acknowledges and agrees to accept the risk associated with the lead times of the various components if they are beyond the firm Release quantities provided by Purchaser.

B. Unless stated otherwise on the face of the Purchase Order, the duration of each Purchase Order shall be the life of the program(s) into which the Supplies ultimately are incorporated, plus applicable service and replacement parts requirements. Purchaser and Seller acknowledge, however, that this Section 3.B. does not affect or otherwise change Purchaser's rights of termination set forth herein.

C. Upon the expiration of any Purchase Order, Seller shall cooperate with Purchaser and provide all reasonably requested support and information required by Purchaser to facilitate Purchaser's sourcing of the Supplies to a replacement supplier.

D. Seller warrants that its overall equipment (shared and specific) and plant capacity are adequate to meet Purchaser's needs. The requirement for capacity is not a volume, program or other commitment by Purchaser.

4. **VOLUME AND DURATION PROJECTIONS.** From time to time and in connection with quotations, requisitions, and Purchase Orders, Purchaser may provide Seller with estimates, forecasts or projections of its future volume or quantity requirements for the Supplies and/or the term of a program ("Projections"). Projections, unlike a Release for a firm quantity, are not binding on Purchaser. Seller acknowledges that Projections, like any other forward-looking estimates, are based on a number of economic and business factors, variables and assumptions, some or all of which may change over time, and may or may not be accurate at the time they were made or at any later time. Purchaser makes no representation, warranty, guaranty or commitment of any kind or

nature, express or implied, regarding any Projections or other estimate, forecast or projection provided to Seller, including as to its accuracy or completeness. Seller accepts that Projections may not be accurate and that actual volume or duration could be less than or greater than the projections. Seller expressly accepts this risk.

5. **WARRANTY.**

A. “Warranty Period” shall mean, for each of the Supplies provided, the time period beginning on the day of first use of the Supplies by Purchaser or acceptance by Purchaser, and continuing until the later of: (i) 18 months; (ii) the period provided under applicable law; or (iii) if the Supplies are utilized for new vehicles, the same period as the new vehicle warranty period offered to retail purchasers in the country in which the vehicle incorporating the Supplies is sold. Seller may contact Purchaser's representative for information regarding those countries in which vehicles incorporating the Supplies will be sold.

B. In the event that Purchaser or its customer voluntarily or pursuant to a government mandate, makes an offer to owners of vehicles (or other finished products) on which the Supplies, or any parts, components or systems incorporating the Supplies, are installed to provide remedial action to address a defect or condition that relates to motor vehicle safety or reliability or the failure of the vehicle to comply with any applicable law, safety standard or guideline, whether in connection with a recall campaign or other customer satisfaction or corrective service action (a “Remedial Action”), the Warranty Period shall continue for such time period as may be dictated by Purchaser's customer or the federal, state, local or foreign government where the Supplies are used or provided and Seller shall fully comply with the requirements of this Purchase Order.

C. Notwithstanding the expiration of the Warranty Period, Seller shall nonetheless be liable for cost and damages associated with any Remedial Action to the extent that such Remedial Action is based upon a reasonable determination (including by use of statistical analysis or other sampling methodology) that the Supplies fail to conform to the warranties set forth in the Purchase Order. Where applicable, Seller shall pay all reasonable expenses associated with determining whether a Remedial Action involving the Supplies is necessary. Purchaser and Seller agree that any Remedial Action involving the Supplies shall be treated separately and distinctly from similar Remedial Actions of other goods of Seller; provided that such separate and distinct treatment is lawful and Seller shall in no event fail to provide at least the same protection to Purchaser on such Supplies as Seller provides to its other customers in connection with such similar Remedial Actions.

D. Notwithstanding the foregoing, Seller agrees to waive the expiration of the Warranty Period in the event there are failures or defects discovered after the Warranty Period of a significant nature or in a significant portion of the Supplies, or a defect is discovered which, in Purchaser's reasonable opinion, constitutes a threat of damage to property or to the health and safety of any person.

E. In addition to Seller's customer warranties, any express warranties set forth in this Purchase Order, any statutory warranties or any warranties implied by law, Seller expressly warrants that all of the Supplies provided under this Purchase Order and all other Purchase Orders: (i) do not, and are not claimed to, violate any patent, trademark or copyright, and shall be properly imported into the United States or any other country; (ii) shall strictly

conform with all specifications, drawings, statements on containers or labels, descriptions and samples furnished to or by Purchaser, and all industry standards, laws and regulations in force in countries where such Supplies or vehicles equipped with such Supplies are to be sold; (iii) shall be free from defects in design, material and workmanship and shall be new and of the highest quality; (iv) shall be free and clear of all liens, claims or other encumbrances, and that Seller is conveying good title to Purchaser; (v) shall be merchantable, of good material and workmanship, free from defects, and safe, fit and sufficient for the particular purposes intended by Purchaser, which purposes Seller acknowledges are known to it; (vi) shall be adequately contained, packaged, marked and labeled; (vii) in the case of services, all services performed on behalf of Purchaser shall be performed in a competent, workmanlike manner; (viii) the Supplies shall be manufactured in accordance with all applicable laws, including all federal, state, and local laws, as well as all regulations, industry standards or other standards, labeling, transporting, licensing approval or certification requirements, in the United States or any other country where the Supplies will be sold or used; and (ix) Seller has complied with reporting requirements in fulfilling this Purchase Order. These warranties shall survive inspection, test, delivery, acceptance, use and payment by Purchaser and shall inure to the benefit of Purchaser, its successors, assigns, customers, and the users of Purchaser's goods and services. These warranties may not be limited or disclaimed.

F. If Purchaser experiences any breaches of the foregoing warranties, Purchaser shall have the right, in addition to exercising all other rights Purchaser may have under the Uniform Commercial Code and any other applicable statutes or law, to take the following actions, at Purchaser's option: (i) retain the defective Supplies in whole or in part with an appropriate adjustment in the price for the goods; (ii) require Seller to repair or replace the defective Supplies in whole or in part at Seller's sole expense, including all shipping, transportation, and installation costs; (iii) correct or replace the defective Supplies with similar items and recover all costs relating thereto from Seller, including the cost of product recalls; and/or (iv) reject the defective Supplies. Seller shall not have the right to replace or repair any Supplies in the event of the breaches of the foregoing warranties except upon receipt of Purchaser's written replacement or repair order.

G. Without limiting the generality of the foregoing, should any Supplies fail to conform to the warranties set forth herein, Purchaser shall notify Seller and Seller shall, if requested by Purchaser, reimburse Purchaser for any special, incidental and consequential

damages caused by nonconforming Supplies, including, but not limited to, costs, attorney fees, expenses and losses incurred by Purchaser (i) in inspecting, sorting, testing, repairing or replacing such nonconforming Supplies; (ii) resulting from production interruptions, (iii) in conducting Remedial Actions, and (iv) in connection with claims for personal injury (including death) or property damage caused by such nonconforming Supplies. If requested by Purchaser, Seller shall, without charge to Purchaser, administer and process warranty charge-backs for nonconforming Supplies in accordance with Purchaser's directions.

H. To the extent that this Purchase Order or any other Purchase Order covers Supplies which are parts, components, items, tooling, or services being supplied to or for the benefit of any customer of Purchaser, Seller acknowledges and agrees that such Supplies must be in compliance with all of the applicable requirements, specifications, standards, pricing requirements, audit standards, and terms and conditions for such Supplies which are set forth in the customer's purchase documents.

**6. QUALITY.**

A. Seller agrees to participate in any Purchaser quality and development program(s) and to comply with all quality requirements and procedures specified by Purchaser, as revised from time to time. Based on Purchaser's assessment of responsibility, Seller may be held responsible for any and all costs associated with quality issue investigation, containment and Remedial Actions on account of Supplies provided by Seller to Purchaser (including third party activities identified and initiated by Purchaser). Seller is obligated to provide all reasonable support requested by Purchaser to address immediately and correct concerns regarding the quality of Supplies provided. Seller shall provide additional resources, as necessary and as identified by Purchaser, to support product development, process development, validation, production launch, or any issue that may jeopardize the success of the manufacture or assembly of any Supplies or of the program.

B. Seller is responsible for all sub-tier providers of goods or services. Seller must maintain adequate development, validation, launch, and ongoing supervision to assure all Supplies provided to Purchaser conform to all specifications, standards, drawings, samples and descriptions, including, without limitation, as to quality, performance, fit, form, function and appearance, under the Purchase Order.

**7. INSPECTION, WORK PROGRESS, AND REJECTIONS.** Purchaser shall have the right (but not the obligation) to inspect, to review work progress, and to test all Supplies, special tooling, materials and workmanship to the extent practicable at all times and places during the period of manufacture. If any Supplies are defective in material or workmanship or otherwise not in conformity with the requirements of any Purchase Order, Purchaser shall have the right, notwithstanding payment, any prior inspection or test, custom or usage of trade, either to reject them or to require their correction by and/or at the expense of Seller promptly after notice.

**8. DELIVERY.**

A. Deliveries shall be made both in quantities and at times specified on the Purchase Order or on Releases furnished by Purchaser. Time and quantity of delivery are of the essence. Seller shall adhere to shipping directions specified on the Purchase Order or Releases. Purchaser shall not be required to make payment for Supplies delivered to

Purchaser that are in excess of firm quantities and delivery schedules specified in Releases. Seller shall not procure, produce or ship any Supplies unless authorized in writing by Purchaser or as necessary to meet specific delivery dates. Shipments in excess of those authorized by Purchaser may be returned to Seller at Seller's expense, and Purchaser may debit Seller for the cost of such returns. Purchaser may change shipping schedules or direct temporary suspension of such scheduled shipments. Purchaser may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which shall entitle Seller to a modification of the price of Supplies covered by any Purchase Order.

B. Premium shipping expenses and/or other related expenses necessary to meet delivery schedules set forth in Releases shall be Seller's sole responsibility.

C. Notwithstanding any agreement concerning payment of freight expenses, delivery shall not have occurred and the risk of loss shall not have shifted to Purchaser until the Supplies have been delivered to Purchaser's facility and have been accepted at that facility.

D. Title to the Supplies shall pass to Purchaser at the time of delivery; provided, however, that if Purchaser is required to make one or more payments to Seller prior to delivery, title to the Supplies shall pass to Purchaser on payment of the first installment by Purchaser.

9. **PRICE.**

A. Prices charged for Supplies listed on the Purchase Order are not subject to increase, including specifically any increase based upon currency fluctuations, changes in raw material or component pricing, labor or overhead, unless specifically agreed to by Purchaser in a Signed Writing.

B. Seller represents that the price charged to Purchaser for Supplies is at least as low as the price charged by Seller to Purchasers of a class similar to Purchaser under conditions similar to those specified in the Purchase Order and that all prices comply with all applicable governmental laws and regulations in effect at the time of quotation, sale and delivery. Seller agrees that any price reduction implemented by Seller for any Supplies or related charges will apply to all shipments of such Supplies under the Purchase Order or any Purchase Order amendment from and after Seller's implementation of the price reduction. If Seller offers a lower price for the same or similar goods or services to any other customer during the term of a Purchase Order, then to the extent permitted by law, Seller will immediately offer Purchaser the same price for the Supplies on the same terms and conditions as was offered to the other customer. Seller shall ensure that the price charged to Purchaser for Supplies remains competitive with the price for similar goods or services available to Purchaser from other sellers.

C. Seller agrees to participate in Purchaser's cost savings and productivity programs and initiatives and to implement Seller's own cost savings and productivity programs and initiatives to reduce Seller's costs. Purchaser shall also receive the full benefit of all discounts, premiums and other favorable terms of payment customarily offered by Seller to its customers. In the event Seller reduces its price for similar goods and services during the term of this Purchase Order, Seller agrees to reduce the prices of the Supplies to Purchaser

correspondingly. Seller warrants that the prices in this Purchase Order shall be complete, and no additional charges of any type shall be added without Purchaser's express written consent.

D. Seller shall sell to Purchaser all Supplies necessary for Purchaser to fulfill Purchaser's and its customer's service and replacement parts requirements at the production price listed on the Purchase Order.

E. If, (i) there shall be imposed any import, export or other restrictions on interstate or international trade or commerce or there shall be enacted or otherwise issued any law, regulation or order regulating or purporting to regulate any import, export or other restriction on interstate or international trade or commerce in any way, including, without limitation, any creation or increase (whether retaliatory or otherwise) of tariffs, import surcharges, antidumping or countervailing duties, fees or any other form of charges whatsoever, or the imposition of any import or export quota or embargo, and (ii) Purchaser's ability to perform the Purchase Order is adversely affected thereby, or its underlying economic assumptions with respect to the Purchase Order become inaccurate in any respect, Purchaser shall have the option either (a) to terminate the Purchase Order in whole or in part by written notice to Seller, without incurring any liability to Seller thereby, or (b) to require Seller to renegotiate, in good faith, for the purpose of adjusting equitably any of the terms and conditions hereof, in which event Seller shall promptly commence such renegotiations with Purchaser.

10. **TAXES.** Unless prohibited by law, Seller shall pay all federal, state or local tax, transportation tax, or other tax, including but not limited to customs duties and tariffs, which is required to be imposed upon the Supplies ordered, or by reason of their sale or delivery. All Purchase Order prices shall be deemed to have included all such taxes.

11. **INVOICES.** All invoices for Supplies provided pursuant to each Purchase Order must reference the Purchase Order number, Purchase Order amendment or Release number, Purchaser's part number, Seller's part number where applicable, quantity of pieces in shipment, number of cartons or containers, Seller's name and number, and bill of lading number, before any payment will be made for Supplies by Purchaser. In addition, no invoice may reference any term separate from or different than these Terms and Conditions or the terms that appear on the face of the Purchase Order. Purchaser reserves the right to return all invoices or related documents submitted incorrectly. Payment terms will commence upon the receipt and input of a correct invoice. Any payment by Purchaser of a nonconforming invoice is not an acceptance of any non-conforming or additional terms on such invoice.

12. **PAYMENT TERMS.**

A. Payment terms will be set for Seller on Purchaser's payables system if Seller is included in Purchaser's payables system. If Seller is not included in Purchaser's payables system, payment terms are net 60. If a payment date falls on a non-business day, payment will occur on the following business day.

B. Notwithstanding the particular payment terms applicable to a Purchase Order, (i) in no event will Seller have a right to payment for tooling before Purchaser is paid by its customer for such tooling, (ii) in no event will a Seller who is a directed supplier have a

right to receive payment from Purchaser until Purchaser is fully paid by Purchaser's customer for the related Supplies or, as applicable, the goods into which such Supplies are incorporated, (iii) Purchaser may withhold payment pending receipt of evidence, in such form and detail as Purchaser may direct, of the absence of any liens, encumbrance and claims on the Supplies under the Purchase Order, and (iv) Purchaser may, at its option and upon notice to Seller, revise its payment terms for production Supplies to take into account any change in the payment terms of Purchaser's customer applicable to the Supplies under any Purchase Order.

13. **SETOFF AND RECOUPMENT.**

A. In addition to any right of setoff or recoupment allowed by law, all amounts due Seller, or any of its subsidiaries or affiliates shall be considered net of indebtedness or obligations of Seller, or any of its subsidiaries or affiliates to Purchaser or any of its subsidiaries or affiliates, and Purchaser may setoff against or recoup from any amounts due or to become due from Seller, or any of its subsidiaries or affiliates to Purchaser or any of its subsidiaries or affiliates however and whenever arising, including the Purchaser's attorneys' fees and costs of enforcement. In the event that Purchaser or any of its subsidiaries or affiliates reasonably feels at risk, Purchaser may withhold and recoup a corresponding amount due Seller or any of its subsidiaries or affiliates to protect against such risk.

B. If an obligation of Seller or any of its subsidiaries or affiliates to Purchaser or any of its subsidiaries or affiliates is disputed, contingent or unliquidated, Purchaser or any of its subsidiaries or affiliates may defer payment of all or any portion of the amount due until such obligation is resolved. Without limiting the generality of the foregoing and by way of example only, in the event of a bankruptcy of Seller, if all of the Purchase Orders between Purchaser and Seller have not been assumed, then Purchaser may defer payment to Seller, by an administrative hold or otherwise, for Supplies until claims for rejection and other damages are resolved.

C. In the event of a Seller Insolvency (defined below), Purchaser also may setoff, recoup, and/or withhold from amounts due Seller or any of its subsidiaries or affiliates any amounts that Seller is obligated to indemnify Purchaser pursuant to this Purchase Order, regardless of whether such amounts become due before or after the filing of a petition for bankruptcy protection by Seller.

14. **DOCUMENTATION.** Packing slips and other shipping documents and memos, such as bills of lading, shall show the Purchase Order number, vendor, and item and reference numbers. Value of the Supplies shall not be declared on shipments F.O.B. point of origin. For each international shipment, Seller shall include a customs valuation invoice (using the value set forth in the Purchase Order), with a master packing slip and shall furnish all other required export/import documents. Export and trade credits shall belong to Purchaser. Seller shall furnish (i) all documents required to obtain export credits and customs drawbacks; (ii) certificates of origin of the materials and Supplies provided and the value added in each country; (iii) all NAFTA, AALA and any other related or required documents; (iv) all required export licenses or authorizations; and (v) any other documents requested by Purchaser or any of its customers. Seller warrants that the contents of such documents shall be true and accurate. Seller shall indemnify Purchaser for any damages, including but not limited to duties, interest and penalties, arising from a false or inaccurate statement.



15. **TRANSPORTATION.** The Supplies provided by Seller shall be properly packed, marked, loaded and shipped as required by this Purchase Order and by the transporting carrier. Unless Purchaser instructs otherwise, the Supplies shall be shipped FOB Purchaser's location and shall be shipped in a manner that permits the lowest transportation rates to apply and adequately protects the quality of the Supplies. Seller shall reimburse Purchaser for all expenses, including damage to the Supplies, incurred due to improper packing, marking, loading or routing. The risk of loss or damage in transit shall be upon Seller, except where shipment is by Purchaser's vehicle, in which case the risk of loss or damage shall pass to Purchaser upon completion of loading.

16. **TECHNOLOGY.**

A. All Supplies, including, but not limited to, any idea, invention, concept, design, prototype, product configuration, process, technique, procedure, system, plan, model, program, software or code, data, specification, drawings, diagram, flow chart, documentation, or the like that are created in the course of performing any Purchase Order and any associated intellectual property rights therein are the sole and exclusive property of Purchaser. Seller agrees that all works of authorship created by Seller in connection with each Purchase Order are "works made for hire" on behalf of Purchaser as that term is used in connection with the U.S. Copyright Act. The term "intellectual property" as used herein means all patents, patent applications, patentable subject matter, copyrights, copyrightable subject matter, work of authorship, derivative works, trademark, trade name, trade dress, trade secrets, know-how, and any other subject matter, material, or information that is considered by Purchaser to be proprietary or confidential and/or that otherwise qualifies for protection under any law providing or creating intellectual property rights, including the Uniform Trade Secrets Act.

B. Seller hereby assigns to Purchaser ownership of all right, title, and interest in the Supplies and any associated intellectual property, and further agrees to cooperate with Purchaser and to assist in the preparation and execution of all documents relating to any effort by or on behalf of Purchaser to apply for, obtain, maintain, transfer, or enforce any intellectual property right related to the Supplies at the request and expense of Purchaser. Seller expressly warrants that the Supplies shall not incorporate any intellectual property (including copyright, patent, trade secret, mask work, or trademark rights) of any third party, and further agrees that Seller shall not disclose to Purchaser any confidential information, including any trade secrets, of any third party. Seller grants to Purchaser an irrevocable, non-exclusive, royalty-free, worldwide license with the right to grant sublicenses to affiliates to use any technical information, know how, copyrights, and patents, or other intellectual property owned or controlled by Seller or its affiliates to make, have made, use, sell, and import any Supplies provided by Seller under a Purchase Order. Such license shall be effective from the first delivery under a Purchase Order.

C. Seller expressly warrants that all Supplies will not and do not infringe any patent, trademark, copyright or other intellectual property of any third party. Seller (i) agrees to defend, hold harmless and indemnify Purchaser and its customers against all claims, demands, losses, suits, damages, liability and expenses (including actual fees for attorneys,

experts and consultants, settlement costs and judgments) arising out of any suit, claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright or other proprietary right by reason of the manufacture, use or sale of the Supplies, including infringement arising out of compliance with specifications furnished by Purchaser or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from Seller's actions; and (ii) waives any claim against Purchaser and its customers, including any hold-harmless or similar claim, whether known or unknown, contingent or latent, in any way related to a claim asserted against Seller or Purchaser for infringement of any patent, trademark, copyright or other proprietary right, including claims arising out of compliance with specifications furnished by Purchaser.

D. Seller shall ensure that any subcontractors to Seller have contracts with Seller in writing consistent with the terms of this paragraph to ensure that the protections required by Purchaser from Seller are also received from subcontractors for the benefit of Purchaser and Seller.

17. **CONFIDENTIALITY.**

A. Seller acknowledges and agrees that it will be obligated to maintain the secrecy and confidentiality of all information disclosed by Purchaser to Seller during the course of work under any Purchase Order ("Confidential Information"), including, but not limited to, any information regarding Purchaser or its business or its customers, the existence and terms of any Request for Quotation or Purchase Order, and any drawings, specifications, or other documents prepared by either party in connection with any Request for Quotation or Purchase Order. Seller agrees that it will not disclose Confidential Information to or use Confidential Information with or for the benefit of itself or any third party without prior written authorization from Purchaser. Seller also agrees to adopt measures to protect the secrecy and confidentiality of Confidential Information that are reasonable under the circumstances. Confidential Information shall not include any information that (a) was in the possession of Seller before receipt from Purchaser; (b) is or becomes available to the public through no fault of Seller; or (c) is received by Seller in good faith from a third party having no duty of confidentiality to Purchaser.

B. The obligations of Seller with respect to Confidential Information shall remain in effect during the time that any Confidential Information is considered by Purchaser to be secret or confidential or otherwise qualify for protection under the Uniform Trade Secrets Act. At the request of Purchaser, Seller will return to Purchaser all materials (in any form) that include, incorporate, or otherwise Confidential Information of Purchaser.

C. Unless otherwise agreed to in a Signed writing, all information provided by Seller to Purchaser in connection with each Purchase Order shall be disclosed on a non-confidential basis, and Purchaser shall have no duty to maintain the secrecy or confidentiality of such information.

D. Seller shall not sell or dispose of, as scrap or otherwise, any completed or partially completed or defective Supplies manufactured hereunder without defacing or rendering them unsuitable for use.

18. **CHANGES.**

A. Purchaser reserves the right at any time to direct changes, or cause Seller to make changes, to the Supplies under any Purchase Order including, but not limited to, changes in the design (including drawings and specifications), processing, methods of packaging and shipping and the date or place of delivery of the Supplies covered by the Purchase Order or to otherwise change the scope of the work covered by the Purchase Order including work with respect to such matters as inspection, testing or quality control, and Seller agrees to promptly make such changes. Any such changes shall be deemed not to affect the time for performance or cost under the Purchase Order unless (i) Seller provides Purchaser with written notice of a claim for adjustment to time for performance or cost within ten (10) days after Purchaser's notice to Seller of the change and (ii) after auditing such claim, Purchaser determines that an adjustment (up or down) is appropriate. Any such claim by Seller for adjustment to time for performance or cost under a Purchase Order must be solely and directly the result of the change directed by Purchaser and any notice of such claim shall be effective only if accompanied by all relevant information sufficient for Purchaser to verify such claim. In addition, Purchaser shall have the right to audit all relevant records, facilities, work or materials of Seller to verify any claim Seller shall consider and advise Purchaser of the impact of a design change on the system in which the Supplies covered by the Purchase Order are used. Nothing in this paragraph shall excuse Seller from proceeding with the Purchase Order as changed.

B. Without the prior approval of Purchaser on the face of a Purchase Order amendment, Seller shall not make any changes to any Purchase Order or the Supplies covered by the Purchase Order, including, without limitation, changing (i) any third party supplier to Seller of services, raw materials or goods used by Seller in connection with its performance under the Purchase Order, (ii) the facility from which Seller or such supplier operates, (iii) the price of any of the Supplies covered by the Purchase Order, (iv) the nature, type or quality of any services, raw materials or goods used by Seller or its suppliers in connection with the Purchase Order; (v) the fit, form, function, appearance, performance of any Supplies covered by the Purchase Order; or (vi) the production method, or any process or software used in the production or provision of any Supplies under the Purchase Order. Any changes by Seller to any Purchase Order or the Supplies covered by the Purchase Order without the prior approval by Purchaser on the face of a Purchase Order amendment or in a Signed Writing shall constitute a breach of the Purchase Order.

19. **PROPERTY OF PURCHASER.**

A. The right, title and interest to all supplies, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment, designs, drawings, specifications, spare parts, trial parts, ancillary products, items owned by Purchaser and other items furnished by Purchaser or its customers to Seller for use in manufacturing Supplies, or for which Seller is reimbursed by Purchaser or its customers ("Purchaser's Property"), shall be and remain the property of Purchaser and/or its customers. Seller shall bear the risk of loss of and damage to such Purchaser's Property. Seller will (i) properly house and maintain the Purchaser's Property on Seller's premises; (ii) not use the Purchaser's Property for any purpose other than for performance under the Purchase Order; (iii) prominently mark the Purchaser's Property as property of Purchaser; (iv) refrain from commingling the Purchaser's Property with the

property of Seller or with that of a third party; (v) adequately insure the Purchaser's Property against loss or damage, including but not limited to maintaining full fire and extended coverage insurance for replacement value and naming Purchaser as an additional insured; (vi) take reasonable steps to ensure that the Purchaser's Property does not become subject to any liens or other claims; and (vii) not move the Purchaser's Property to another location whether owned by Seller or a third party, without the prior written consent of Purchaser. Purchaser will have the right to enter Seller's premises at reasonable times to inspect the Purchaser's Property and Seller's records pertaining thereto.

B. Seller expressly waives and releases, and agrees not to file or otherwise assert or prosecute or suffer to permit any statutory, equitable or other liens, including but not limited to equitable or other liens, including but not limited to any molder liens, tool liens, builder liens and the like, that Seller has or might have on or in connection with the Purchaser's Property for all work, including but not limited to, designing, manufacturing, improving, maintaining, servicing, using, assembling, fabricating or developing the Purchaser's Property.

C. Seller hereby agrees to indemnify, defend and hold harmless Purchaser from and against any loss, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings, including without limitation all attorney's fees and all other cost of litigation that are in any way related to releasing, terminating or otherwise removing all such liens placed on the Purchaser's Property. Seller will assign to Purchaser any claims Seller has against third parties with respect to Purchaser's Property. Seller shall assume all risk of death or injury to persons or damage to property arising from use of the Purchaser's Property.

D. Unless otherwise agreed to in writing by Purchaser, Seller at its own expense shall keep the Purchaser's Property in good condition and repair, including repair necessitated by wear and tear and other usage by Seller. In the event that it becomes necessary, as determined by either Purchaser or Seller, to replace the Purchaser's Property due to normal use by the Seller, or otherwise, said replacement of Purchaser's Property shall be at the sole expense of the Seller and said replacement Purchaser's Property shall remain the property of the Purchaser. Seller will pay personal property taxes for all Purchaser's Property in Seller's possession or under Seller's control.

E. Purchaser does not guarantee the accuracy of any Purchaser's Property or the availability or suitability of any supplies or material furnished by it. Seller assumes sole responsibility for inspecting, testing and approving all Purchaser's Property or other materials supplied by Purchaser prior to any use by Seller. Seller agrees that it will comply with obligations hereunder to release Purchaser's Property notwithstanding any offsetting claim that it may have against Purchaser.

F. Seller acknowledges and agrees that (i) Purchaser may not be the manufacturer of the Purchaser's Property nor the manufacturer's agent nor a dealer therein; (ii) Purchaser is bailing the Purchaser's Property to Seller for Seller's benefit; and (iii) Seller has inspected the Purchaser's Property and is satisfied that the Purchaser's Property is suitable and fit for its purposes, and (iv) Purchaser HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OF

IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF THE PURCHASER'S PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. Purchaser shall not be liable to Seller for any loss, damage, injury or expense of any kind or nature caused, directly or indirectly, by the Purchaser's Property, including, without limitation, its use or maintenance, or its repair, service or adjustment, or by any interruption of service or for any loss of business whatsoever or howsoever caused, including, without limitation any anticipatory damages, loss of profits or any other indirect, special or consequential damages.

G. Seller authorizes Purchaser to file a UCC-1 financing statement or similar document with the appropriate filing authority to give notice of Purchaser's ownership interest in the Purchaser's Property. Failure to file a financing statement will not alter or amend Purchaser's ownership rights to the Purchaser's Property. Seller shall provide Purchaser, upon Purchaser's request, with a written inventory of all Purchaser's Property.

## 20. COMPLIANCE WITH LAWS.

A. Seller shall comply with all applicable laws, rules, regulations, orders, conventions, or standards that regulate the sale, manufacture, labeling, transportation, licensing, approval or certification of the Supplies, including but not limited to, those relating to environmental matters, data protection and privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety, and each Purchase Order shall be deemed to incorporate by reference all the clauses required by the provisions of said laws, orders, rules, regulations and ordinances. At Purchaser's request, Seller shall certify in writing its compliance with the foregoing.

B. Upon Purchaser's request at any time, Seller shall provide Purchaser with a certificate of information with respect to the Supplies, the shipment thereof and other matters related to the transaction, in the form satisfactory to Purchaser. Seller further represents and warrants to Purchaser that the Supplies purchased under the Purchase Order do not originate (i) from a country subject to a U.S. trade sanction, according to the list published by the U.S. Office of Foreign Assets Control ("OFAC"), Department of the Treasury, at Internet address: [www.treas.gov/ofac](http://www.treas.gov/ofac) or (ii) from any person or entity located in, or a national of, such country. Neither Seller nor any of its subcontractors nor, to Seller's knowledge, any intermediary consignee or vessel appointed by Seller (nor any owners or officers of such parties) (each a "Transaction Related Party") is identified on such list. In the event that Seller learns any fact that is contrary to the foregoing representations and/or warranties or that otherwise puts Purchaser in violation of a U. S. trade sanction (the "Fact"), Seller shall immediately notify Purchaser. Purchaser shall, within three (3) business days of receipt of such notice, or within a reasonable time after Purchaser learns the Fact through another means, notify Seller whether Purchaser elects to terminate all or part of the Purchase Order for cause with respect to the shipment at issue or instead to apply to OFAC for an appropriate license. In the event that Purchaser applies for a license but OFAC fails for any reason to issue a license within a reasonable time following receipt of Purchaser's application, Purchaser may elect to terminate all or any of the Purchase Order, which shall be deemed a termination for cause. Seller shall reimburse Purchaser for any loss resulting from market price movements calculated as the difference between the market price for the Supplies on the original delivery date under the Purchase Order and that on the date of cancellation or

date of delayed delivery (in the event that an OFAC license is obtained by Seller), as well as any other related costs or charges incurred by Purchaser due to the cancellation or delay in performance.

C. Seller shall disclose any “conflict minerals” (as such term is defined below) used in the production of any Supplies subject to the Purchase Order, and, in the event such materials are used, shall submit, as applicable, either (i) its report filed with the Security and Exchange Commission under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection act (the “Act”), or (ii) a description reasonably acceptable of measures taken to assure the appropriate sourcing and chain of custody of such materials. As used above, the term “conflict minerals” shall have the meaning ascribed to it under Dodd-Frank and shall include, without limitation, columbite-tantalite (coltan), cassiterite, gold, wolframite or their derivatives, or any other mineral or its derivatives determined by the US Secretary of State to be financing conflict in the Democratic Republic of the Congo or an adjoining country as defined in the Act; provided, however, that Seller shall not use in its Supplies Tin, Tantalum, Gold or Tungsten extracted from mineral ores mined in the Democratic Republic of Congo or the surrounding countries of Sudan, Angola, Tanzania, Zambia, Central Africa Republic, Congo Republic, Uganda, Burundi or Rwanda.

D. The Supplies have been acquired and will be delivered to Purchaser in compliance with all requirements of the U.S. export control laws and regulations, as applicable, including (but not limited to) the U.S. Export Administration Regulations (“EAR”) and the U.S. International Traffic in Arms Regulations (“ITAR”).

E. Notwithstanding anything in the Purchase Order or any other document or agreement relating to any transactions involving the Supplies (each a “Transaction Document”), no Transaction Document shall be interpreted or applied so as to require Seller, a Transaction Related Party or Purchaser to take any action or refrain from taking any action that would constitute a violation of, or result in a loss of economic benefit under, the U.S. anti-boycott and other export laws and regulations, if any.

F. Seller represents that neither it nor, to its knowledge, any Transaction Related Party has offered, paid, promised to pay, authorized the payment of, or transferred, money or anything of value to an Official (as defined below) to secure any improper advantage or benefit in relation to the Supplies or any transaction with Purchaser, either directly or indirectly through a third party. For purposes of this certificate, “Official” includes (i) any officer or employee of any government or any department, agency or instrumentality (i.e.: legal entity controlled by the government) thereof, or any person acting in an official capacity on behalf of any such government, department, agency or instrumentality; (ii) any political party; (iii) any official of a political party; (iv) any candidate for political office; or (v) any officer or employee of a public international organization (e.g. United Nations, IMF, World Bank).

G. Seller shall indemnify and hold Purchaser harmless from and against any liability claims, demands or expenses (including, without limitation, attorneys' or other professional fees) arising out of or in connection with Seller's non-compliance with the provisions of this paragraph.

21. **INSURANCE.** Seller shall maintain insurance in amounts acceptable to Purchaser,

naming Purchaser as an additional insured, and covering general liability, public liability, product liability, product recall, completed operations, contractor's liability, automobile liability insurance, Worker's Compensation, and employer's liability insurance as will adequately protect Purchaser against such damages, liabilities, claims, losses and expenses (including attorney's fees). Seller agrees to submit certificates of insurance evidencing its insurance coverage, when requested by Purchaser.

**22. INDEMNIFICATION.**

A. Seller shall indemnify and hold harmless Purchaser and its affiliated companies, their directors, officers, employees, invitees, agents and customers ("Indemnitees") from and against all liability, demands, claims, losses, costs, actions, judgments, fines, penalties, damages and expenses, including expert and attorney's fees (collectively, "Liabilities") incurred by the Indemnitees by reason of or on account of any breach of this Purchase Order, warranty claims, product recall claims, product liability claims, injuries to persons, including death, or damage to property caused by Seller, its employees, agents, subcontractors, or in any way attributable to the performance of Seller, its employees, agents, or invitees; provided, however, that Seller's obligation to indemnify Purchaser shall not apply to any liabilities solely arising from Purchaser's negligence. Seller waives the application of the doctrine of comparative negligence and other doctrines that may otherwise allocate the liability covered by Seller's indemnity. This indemnification obligation shall be in addition to Seller's warranty and other obligations.

B. When provided notice of any actual or potential Liabilities, Seller, at Purchaser's option and at Seller's expense, will undertake defense of such actual or potential Liabilities through counsel approved by Purchaser. Provided, however, that Seller shall first obtain authorization from Purchaser before settlement is made of the actual or potential Liabilities if the terms of such settlement could materially adversely affect Purchaser, including any terms which admits the existence of a defect in Supplies or a failure of Purchaser to fully and faithfully perform its obligations. In the alternative, Purchaser may elect to undertake defense of such Liabilities to the extent it is asserted against Purchaser, and Seller shall reimburse Purchaser on monthly basis for all expenses, attorney fees, and other costs incurred by Purchaser.

**23. SELLER FINANCIAL AND OPERATIONAL CONDITION.**

A. Seller represents and warrants to Purchaser as of the date of each Purchase Order (which representations and warranties shall be deemed repeated as of the date of Seller's acceptance of each Release under the Purchase Order and at the time of each delivery under the Purchase Order) that: (i) it is not insolvent and is paying all debts as they become due; that it is in compliance with all loan covenants and other obligations; (ii) all financial information provided by Seller to Purchaser concerning Seller is true and accurate; (iii) such financial information fairly represents Seller's financial condition; and (iv) all financial statements of Seller have been prepared in accordance with generally accepted accounting principles, uniformly and consistently applied.

B. Upon Purchaser's request, Seller shall provide copies of its quarterly and/or annual financial statements, Seller shall permit Purchaser and its representatives to review Seller's books and records concerning compliance with each Purchase Order and Seller's overall

financial condition, and Seller also shall provide Purchaser with full and complete access to all such books and records for such purpose. Seller agrees that, if Seller experiences any delivery or operational problems, Purchaser may, but is not required to, designate a representative to be present in Seller's applicable facility to observe Seller's operations. Seller agrees that, if Purchaser provides to Seller any accommodations (financial or other, including providing designated representatives as set forth above) that are necessary for Seller to fulfill its obligations under any Purchase Order, Seller shall reimburse Purchaser for all costs, including attorneys' and other professionals' fees, incurred by Purchaser in connection with such accommodation and shall grant a right of access to Purchaser to use Seller's premises, machinery, equipment and other property necessary for the production of Supplies covered by such Purchase Order (and a lien to secure the access right) under an access and security agreement. Additionally, Seller agrees to provide prompt written notice to Purchaser of any impending or threatened insolvency of the Seller.

24. **SELLER INSOLVENCY.** Purchaser may immediately terminate each Purchase Order without any liability of Purchaser to Seller upon the occurrence of any of the following or any other similar or comparable event (each, a "Seller Insolvency"): (i) insolvency of Seller; (ii) Seller's inability to promptly provide Purchaser with adequate and reasonable assurance of Seller's financial capability to perform timely any of Seller's obligations under any Purchase Order; (iii) filing of a voluntary petition in bankruptcy by Seller; (iv) filing of an involuntary petition in bankruptcy against Seller; (v) appointment of a receiver or trustee for Seller; or (vi) execution of an assignment for the benefit of creditors of Seller. Seller shall reimburse Purchaser for all costs incurred by Purchaser in connection with a Seller Insolvency, including but not limited to, all attorneys' fees and other professional fees.

25. **RIGHTS OF ENTRY, RECLAMATION, AND INSPECTION.** Purchaser shall have the right to enter Seller's facility during normal business hours or, in the event of a Seller shutdown, at reasonable times, to inspect the facility, Supplies, materials and any property of Purchaser covered by each Purchase Order and, without the necessity of a court order, may enter upon Seller's property and remove property belonging to Purchaser or any customer of Purchaser, including, without limitation, Purchaser's Property and other goods, inventory or Seller's Property that has been or is agreed to be sold to Purchaser under the Purchase Order. Purchaser's inspection of the Supplies, whether during manufacture, prior to delivery or within a reasonable time after delivery, shall not constitute acceptance of any work in process or finished Supplies.

26. **AUDIT RIGHTS.** Purchaser and its customers shall have the right at any reasonable time to examine all relevant documents, records, materials, equipment, tooling and Supplies in the possession or under the control of Seller relating to any of Seller's obligations under this Purchase Order or any other Purchase Order. Seller agrees to reasonably cooperate in any such audit request by the Purchaser.

27. **TERMINATION FOR DEFAULT.** Purchaser reserves the right to terminate immediately all or any part of each Purchase Order, without any liability of Purchaser to Seller, in the event of any default by Seller. The following are causes, among others, allowing Purchaser to terminate the Purchase Order: (i) if Seller repudiates, breaches or threatens to breach any of the terms of the Purchase Order including, without limitation, Seller's warranties; (ii) if Seller fails to perform or deliver Supplies as specified by Purchaser; (iii) if Seller fails to provide Purchaser with adequate and reasonable assurance of Seller's ability to perform timely any of Seller's obligations under any



Purchase Order, including, without limitation, delivery of Supplies; (iv) if Purchaser terminates for breach any other Purchase Order issued by Purchaser to Seller in accordance with the terms of such Purchase Order (whether or not such other Purchase Order is related to the Purchase Order); or (v) if Seller fails to remain comparative with respect to price, quality, delivery, technology, payment terms, or customer support. In the event that an act of termination by Purchaser is determined to be improper for any reason, the damages available to Seller shall be limited to the damages that Seller would have been entitled to receive if Purchaser had terminated for convenience pursuant to paragraph 29.

**28. TERMINATION FOR CHANGE OF CONTROL.** In addition to its other remedies, Purchaser may, at its option, terminate this Purchase Order without any liability to Seller for a change of control of Seller. A change of control of Seller includes: (a) the sale, lease or exchange of a substantial portion of Seller's assets used for the production of Supplies, or the entrance into an agreement by Seller regarding the same; (b) the sale or exchange of more than 20% of Seller's stock or other ownership interest (or of such other amount as would result in a change of control of Seller), or the entrance into an agreement regarding the same; (c) the execution of a voting or other agreement providing a person or entity with control of Seller or control of more than 20% of Seller's stock or other ownership interest (or of such other amount as would result in a change of control of Seller). Seller shall notify Purchaser promptly in writing in the event of the earlier of (i) the entrance into an agreement, or (ii) the occurrence of an event, described above in this paragraph. In the event of a termination pursuant to this paragraph, Purchaser shall give Seller written notice of the termination at least thirty (30) days prior to the effective termination date.

**29. TERMINATION FOR CONVENIENCE.** In addition to any other right of Purchaser to terminate each Purchase Order, Purchaser may at its option, immediately terminate all or any part of the Purchase Order at any time and for any reason by giving written notice to Seller.

**30. TERMINATION CLAIMS.**

A. Upon receipt of notice of termination pursuant to paragraphs 27, 28, or 29, Seller, unless otherwise directed in writing by Purchaser, shall (i) terminate immediately all work under the Purchase Order; (ii) transfer title and deliver to Purchaser the usable and merchantable finished Supplies, work in process, and raw materials/components that Seller produced or acquired in accordance with firm Release amounts under the Purchase Order and which Seller cannot use in producing Supplies for itself or for others; (iii) take actions reasonably necessary to protect property in Seller's possession in which Purchaser has an interest and (iv) upon Purchaser's request, cooperate with Purchaser in effecting the resourcing of the Supplies covered by the Purchase Order to an alternative supplier designated by Purchaser.

B. Upon termination of any Purchase Order by Purchaser under paragraphs 28 or 29, Purchaser shall pay to Seller the following amounts without duplication: (i) the Purchase Order price for all finished and completed Supplies that conform to the requirements of the Purchase Order and not previously paid for; and (ii) Seller's reasonable actual cost of the usable and merchantable work in process and raw materials/components transferred to Purchaser in accordance with subsection A hereof.

C. Upon termination pursuant to paragraph 27, Seller shall not be entitled to any further payments by Purchaser.

D. Except as expressly set forth in this paragraph 30, Purchaser shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontracts, for any other alleged losses or costs, whether denominated as loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, ancillary exit charges (including, but not limited to, costs of riggers, warehousing, premium manufacturing costs, loading of trucks or other standard business procedures related to transitioning production to an alternative supplier), capital costs or expenditures, internal labor costs or charges, or general and administrative burden charges resulting from termination of the Purchase Order or otherwise. Notwithstanding anything to the contrary, Purchaser's obligation to Seller upon termination shall not exceed the obligation Purchaser would have had to Seller in the absence of termination.

E. Within thirty (30) days after the effective date of termination under paragraphs 28 or 29, Seller shall furnish to Purchaser its termination claim, together with all supporting data which shall consist exclusively of the items. All other claims are waived. Purchaser may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim.

**31. LIMITATIONS ON PURCHASER'S LIABILITY.** In no event shall Purchaser be liable to Seller for any lost profits or for any incidental, consequential, special, exemplary or punitive damages. Nor shall Purchaser under any circumstances be liable to Seller for any fees, including attorney or consulting fees, or any statutory damages. The aforementioned damages and liability is expressly waived by Seller. Without limiting the foregoing, the parties further agree that:

A. With respect to a claim arising out of or in connection the termination of this agreement or any purchase order, Seller's damages, if any, shall be limited to the damages set forth in paragraph 30 (Termination Claims); and

B. With respect to all other claims, Seller's damages shall be limited to the value of products purchased by Purchaser from Seller in the three months immediately preceding the alleged breach.

**32. TRANSITION OF SUPPLY.** Upon the expiration or earlier termination of any Purchase Order for whatever reason, Seller agrees to take all actions necessary in order to ensure that there is no interruption in the supply of Supplies to Purchaser. Among other things, Seller agrees to take such actions as may be reasonably required by Purchaser to accomplish the transition from Seller to an alternative seller, including without limitation the following: (a) Seller shall provide all notices necessary or desirable for Purchaser to resource the Purchase Order to an alternative seller; (b) Seller shall provide a sufficient bank of goods covered by the Purchase Order to ensure the orderly transition to any alternative seller chosen by Purchaser; and (c) Seller shall provide to Purchaser all tooling and any other property furnished by or belonging to Purchaser or any of Purchaser's customers in as good a condition as when received by Seller, reasonable wear and tear excepted; (d) Purchaser and the alternative seller reserve the right to access and actively participate during the disconnect or disassemble process for the Purchaser's Property, and the location, time and date of the exit shall be mutually agreeable between the Purchaser and Seller; and (e) Seller shall, at Purchaser's option: (i) assign to Purchaser any or all supply contracts or Purchase Orders for raw material or components relating to the Purchase Order; (ii) sell to Purchaser, at Seller's cost any or

all perishable tooling and Supplies inventory relating to the Purchase Order; and/or (iii) sell to Purchaser any of Seller's property relating to the Purchase Order, at a price equal to the unamortized portion of the cost of such items less any amounts Purchaser previously has paid to Seller for the cost of such items. Seller shall provide documentation supporting the original cost of any unamortized items. The term "alternative seller" expressly includes, but is not limited to, a Purchaser-owned facility.

33. **NO TERMINATION RIGHT BY SELLER.** Because Purchaser's commitments to its customers are made in reliance on Seller's commitments under each Purchase Order, Seller has no right to terminate any Purchase Order.

34. **FORCE MAJEURE.**

A. Any delay or failure of either party to perform its obligations shall be excused if it is caused by an extraordinary and unforeseeable event beyond the control of the nonperforming party and without the nonperforming party's fault or negligence, such as acts of God, fires, floods, windstorms, explosions, riots, natural disasters, wars and sabotage. Written notice of such delay, including the anticipated duration of the delay, must be given by the nonperforming party within two (2) days of the event. During the period of any delay or failure to perform by Seller, Purchaser, at its option, may purchase Supplies from other sources and reduce its schedules to Seller by such quantities, without liability to Purchaser, or cause Seller to provide the Supplies from other sources in quantities and at times requested by Purchaser and at the price set forth in this Purchase Order. If requested by Purchaser, Seller shall, within five (5) days of such request, provide adequate assurance that the delay will not exceed such period of time as Purchaser deems appropriate. If the delay lasts more than the time period specified by Purchaser, or Seller does not provide adequate assurance that the delay will cease within such time period, Purchaser may, among its other remedies, immediately cancel the Purchase Order, and all outstanding Releases issued pursuant thereto, without liability. Additionally, Seller shall reimburse Purchaser for any increase in price that Purchaser is required to pay to a substitute supplier in order to obtain the Supplies.

B. If a force majeure event continues for longer than five (5) calendar days, then Purchaser, at its sole option, may terminate any Purchase Order affected thereby in whole or in part without any obligation or liability except that Purchaser is still responsible for payment for Supplies that have been delivered to and accepted by Purchaser prior to Force Majeure notice receipt. Seller acknowledges and agrees that the following will not excuse performance by Seller under theories of force majeure, commercial impracticability or otherwise and Seller expressly assumes these risks: (i) change in cost or availability of materials, components or services based on market conditions, supplier actions or contract disputes; (ii) failure of Seller's internal business systems related to the proper processing of date information that results in any defect or failure in products or services, deliveries, or any other aspect of performance by Seller or its subcontractors.

C. Purchaser may cancel any Purchase Order at any time prior to delivery or performance if its business is interrupted for reasons beyond Purchaser's reasonable control. Purchaser shall give prompt notice of such cancellation to Seller.

35. **LABOR DISPUTES.** Seller shall notify Purchaser in writing of any actual or potential

labor dispute delaying or threatening to delay timely performance of this Purchase Order. Seller shall notify Purchaser in writing 6 months in advance of the expiration of any current labor contracts. Seller shall deliver a supply of finished Supplies at least 30 days prior to the expiration of any such labor contract, in quantities and for storage at sites designated by Purchaser.

36. **REMEDIES FOR BREACH BY SELLER.**

A. The rights and remedies reserved to Purchaser in each Purchase Order shall be cumulative with, and additional to, all other or further remedies provided in law or equity.

B. Seller acknowledges and agrees that money damages would not be a sufficient remedy for any actual, anticipatory or threatened breach of any Purchase Order by Seller with respect to its delivery of Supplies to Purchaser and that, in addition to all other rights and remedies which Purchaser may have, Purchaser shall be entitled. Seller consents to specific performance and temporary, preliminary and permanent injunctive or other equitable relief as a remedy for any such breach, without proof of actual damages and without bond or other security being required

C. Seller also acknowledges and agrees that any interference with the production of goods by Purchaser or its customers creates issues for which money damages are not a sufficient remedy. While the cost of a plant shutdown or an interruption of supply to a Seller's customer may easily generate substantial costs, the damages to Purchaser's relationship with Purchaser's customer through potential loss of business, and other damages which are equally difficult to calculate, are far worse. Because of these risks, in the event of a breach or threatened breach by Seller of any of the representations, warranties or covenants of Seller, Purchaser may, without notice to Seller, resource the production of Supplies from Seller to another supplier or dual source any of the Supplies covered hereby (i.e., have another supplier produce or be prepared to produce Supplies being produced by Seller), to protect Purchaser and its customers. This process of moving business may take a considerable amount of time and Seller understands that, given the risks posed by the possible shutdown of Purchaser's customer, Purchaser is justified in initiating and transferring business without prior notice to Seller. Moreover, such reasons also serve as a basis for the remedies to which Seller consents in this paragraph.

D. Notwithstanding anything to the contrary, Purchaser does not release any claim against Seller that is based in whole or in part on any fraud or duress in connection with the Purchase Order or any breach or anticipatory breach of the Purchase Order or any other Purchase Order or modification thereto between Purchaser and Seller. Moreover, Purchaser is entitled to recover from Seller all Liabilities, as earlier defined herein, including but not limited to damages, including incidental, consequential and special damages, losses, expenses, costs, expert and attorney's fees, and any liabilities of Purchaser to third-parties, including but not limited to Purchaser's customer's charges or setoffs such as for recall or warranty claims, incurred by reason of or on account of any action to enforce these this Purchase Order, any breach of this Purchase Order, or any other action or inaction of Seller. No liabilities for which Seller is responsible to Purchaser shall in any way be limited.

37. **NO WAIVER.** A waiver by Purchaser of any right or remedy shall not affect any rights or remedies subsequently arising under the same or similar clauses. The failure of the Purchaser to insist upon the performance of any term or condition of this Purchase Order, or to exercise any right

hereunder shall not be construed as a waiver of the future performance of any such term or condition or the exercise in the future of any such right.

38. **RELATIONSHIP OF PARTIES.** Seller and Purchaser are independent contracting parties and nothing in this Purchase Order shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other party.

39. **ASSIGNMENT.** This Purchase Order is issued to the Seller in reliance upon Seller's personal performance of the duties imposed. Seller agrees not to, in whole or in part, assign this Purchase Order or delegate the performance of its duties without the written consent of Purchaser. Any such assignment or delegation without the previous written consent of Purchaser, at the option of Purchaser, shall effect a cancellation of this Purchase Order. Any consent by Purchaser to an assignment shall not be deemed to waive Purchaser's right to recoupment from Seller and/or its assigns for any claim arising out of this Purchase Order. Assignment shall not relieve Seller from its obligations of confidentiality under paragraph 17 hereof. Purchaser shall have the right to assign any benefit or obligation under this Purchase Order to any third party upon notice to Seller.

40. **SERVICES/CONSULTING.** To the extent this is a Purchase Order that includes services or consulting services, Seller hereby assigns to Purchaser all rights, title and interest in and to any and all ideas, inventions, improvements, materials, copyrightable material, drawings, documents or the like, conceived or made by Seller as a result of or relating to work done or services performed for Purchaser pursuant to this Purchase Order. Such assignment includes all proprietary rights appurtenant thereto, and Seller will execute any documents necessary to confirm such assignment.

41. **SEVERABILITY.** If any term(s) of the Purchase Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term(s) shall be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of the Purchase Order shall remain in full force and effect.

42. **NOTICES.** All notices, claims and other communications to Purchaser required or permitted under the Purchase Order shall be made in writing and sent by certified or registered mail, return receipt requested and proper postage prepaid to the following address and shall be effective only upon receipt by Purchaser in the form set forth in this paragraph:

Sumitronics USA Inc.  
9335 Airway Road, Suite 212  
San Diego, CA 92154  
Attn: General Manager

Seller's failure to provide any notice, claim or other communication to Purchaser in the manner and within the time periods specified in the Purchase Order shall constitute a waiver by Seller of any and all rights and remedies that otherwise would have been available to Seller upon making such notice, claim or other communication.

43. **CLAIM FROM SELLER.** In addition to any other restrictions contained in the Purchase Order, any action by Seller under any Purchase Order must be commenced within one year after

the breach or other event giving rise to Seller's claim occurs, regardless of Seller's lack of knowledge of the breach or other event giving rise to such claim.

44. **ELECTRONIC COMMUNICATIONS AND ELECTRONIC SIGNATURES.** Seller shall comply with any method of electronic communication specified by Purchaser, including requirements for electronic funds transfer, Purchase Order transmission, production Releases, electronic signature, and communication.

45. **CHOICE OF LAW/JURISDICTION.** The construction, interpretation and performance of this Purchase Order and all transactions thereunder shall be governed by the law of the State of California, without regard to principles of conflicts of law. The United Nations Convention on the International Sale of Goods is expressly excluded. Seller consents to the exclusive jurisdiction of the appropriate state or federal court in California for any legal or equitable action or proceeding arising out of, or in connection with, each Purchase Order. Seller specifically waives any and all objections to venue in such courts.

Ver. 032021