



## ULTIMATE MANUFACTURED SYSTEMS PURCHASE ORDER TERMS AND CONDITIONS

### 1 –FORMATION OF CONTRACT

In this document, “Buyer” means ULTIMATE MANUFACTURED SYSTEMS and “Seller” means the vendor or subcontractor identified on the face of Purchase Order.

The Purchase Order is Buyer’s offer to purchase goods, services and/or other deliverables from Seller (collectively, the “PO deliverables”). The offer includes the Purchase Order, the documents incorporated into the Purchase Order by reference (excluding any terms and conditions specified in documents provided by Seller) and these Purchase Order Terms and Conditions.

Acceptance is strictly limited to the terms and conditions of Buyer’s offer. They are the only basis upon which Buyer is willing to contract with Seller and supersede all prior negotiations or communications.

The Purchase Order may incorporate by reference Buyer’s contract with its customer. Seller shall be bound by such contract insofar as applicable to Seller’s work, so that Seller shall have the obligations and duties to Buyer with regard to Seller’s work as Buyer has to its customer. To the extent that this order covers goods which are parts, components, items, tooling or services being supplied to or for the benefit of any customer of Buyer, Seller acknowledges and agrees that such goods and services must be delivered to Buyer in compliance with all the applicable requirements, standards, specification, pricing requirements and other terms and conditions which are set forth in the Purchase documents of Buyer’s customer. Seller shall not communicate or contract directly with Buyer’s customer regarding the subject matter of the Purchase Order without Buyer’s consent.

Unless specifically agreed to in a writing signed by Buyer’s Purchasing Department representative, Buyer rejects and shall not be bound by any term or condition that differs from Buyer’s offer. Seller’s written acceptance of the Purchase Order, shipment of any product, commencement of any work, or performance of any labor or services thereunder constitutes Seller’s acceptance of Buyer’s offer as defined above. In the event of any inconsistency between any parts of the Purchase Order and documents incorporated therein, the inconsistency shall be resolved by giving precedence to the part imposing the greater obligation on Seller. Buyer shall not be responsible for expenses incurred by Seller without written authorization by Buyer’s Purchasing Department representative. If Seller has not received any documents referenced herein, it is Seller’s obligation to request such documents before proceeding.

## 2 –CHANGES

Buyer shall have the right, by written order executed by Buyer's authorized Purchasing Department representative, to make changes to the Purchase Order, including changes to specifications, drawings, quantity, or place or time of delivery. If seller claims that such changes or any other circumstances justifies a change in price or time for delivery, Seller shall notify Buyer in writing within 7 days of the occurrence of the event giving rise to the claim or prior to commencing the changed work (whichever occurs first). Seller's notice shall include sufficient documentation in support of the claim to enable Buyer to evaluate its merits and amounts. All of Seller's charges for changed or extra work, are subject to approval by Buyer. Failure by Seller to provide such notice shall be Seller's acknowledgement that no equitable adjustment to price or time is justified.

Changes in quantity, price, requirements, terms and conditions or delivery shall be made only with written authorization executed by Buyer's authorized Purchasing Department representative. To the extent that the claim is based on changes or other circumstances caused by Buyer's customer, Buyer may pass through Seller's claim to Buyer's customer and in such case Seller shall only be entitled to such extra compensation or time that Buyer obtains from its customer.

## 3 –PERFORMANCE AND DELIVERY.

- a. **Time.** Time is of the essence in connection with Seller's performance under the Purchase Order. Performance and deliveries are to be made both in the quantities and on the dates specified by Buyer. If delivery of PO Deliverables is not completed on time, Buyer may require expedited performance and/or shipment and Seller shall be responsible for any extra costs. Buyer will not pay for PO Deliverables delivered to Buyer which are in excess of quantities specified in this order. Early deliveries, more than one week, will be rejected unless Seller has written approval from Buyer to do so.
- b. **Suspension.** By written notice to Seller, Buyer may suspend delivery of any PO Deliverables or other performance required under the Purchase Order. Seller shall hold the PO Deliverables or other performance in accordance with Buyer's written instructions and shall deliver them or resume performance when notified by Buyer. In such event Buyer shall pay as sole and complete compensation Seller's actual additional direct expenses in holding the PO Deliverables or other performance.
- c. **Release Authorization.** When deliveries are specified to be in accordance with Buyer's written releases, Seller shall not fabricate or assemble any goods, nor procure required materials, nor ship any supplies, except to the extent authorized by such written release of this order.
- d. **Excusable Delays.** At buyer's reasonable discretion, allowances shall be made for unforeseeable delays caused by fire, flood, earthquake, strikes and other

circumstances beyond the reasonable control of Seller. If, at any time, Seller has reason to believe that performance or deliveries will not be made as scheduled, written notice setting forth the cause and the anticipated new delivery date(s) shall be sent to Buyer immediately. Buyer shall not be responsible for Seller's extra cost resulting from an excusable delay.

#### **4 –QUALITY ASSURANCE, INSPECTION AND ACCEPTANCE**

Seller shall provide and maintain a Supplier Quality Assurance System approved by Buyer and which meets Buyer's specification, as they may be amended from time to time. Seller shall perform inspections as specified by Buyer and Seller shall make inspection systems, procedures and records available to Buyer upon request. Seller shall provide Buyer and its customer, upon request, with access to Seller's completed work, work in progress, and all tooling and materials used in Seller's manufacturing process, wherever located.

Seller shall provide Dimensional Inspection Reports (Laser Tracker, CMM, etc.), Heat Treat Certificates (for all details that require hardening, with actual results), and Material Certificates when requested by Buyer on the Purchase Order. Seller shall inform Buyer of any deviation from documentation, and Seller must request approval from Buyer's Engineering and/or Quality representative before proceeds with reparation process.

Machined details must comply with the following requirements and any other provisions on the face of the drawings: all sharp edges will be broken unless otherwise specified on the drawing; chamfer all holes (tapped, clearance, dowels); all blind holes must be free of chips; if the detail number is removed during machining, it must be re-stamped; all machined surfaces shall be protected with rust inhibitor. Seller is responsible for supplying the PO Deliverables to the latest revision on the drawing provided. Detail identification is mandatory and subject to rejection for non-compliance.

Upon delivery, all PO deliverables or any part thereof shall be subject to inspection by Buyer for a reasonable period (which shall in no event be less than 30 days after receipt by Buyer) provided that Buyer may also reject the PO Deliverables and hold Seller in default if, at any time after the Buyer has inspected the PO Deliverables, buyer discovers a defect not normally discoverable by visual inspection or if the defect becomes apparent after the PO Deliverables are used or integrated into a system. Payment shall not constitute a waiver of Buyer's rights to inspect or reject any PO Deliverables. All PO Deliverables rejected by Buyer shall be returned to Seller at its expenses and shall not be replaced except upon written instructions from Buyer. In no event shall Seller have the right to substitute a conforming tender without the prior written approval of Buyer.

Suppliers of component parts and sub-systems may be required to confirm in writing that the application of their components or sub-systems meets the design intent for

which they have been developed. Confirmation shall be of the application in the Buyer's tooling system and its operation in its final environment, during both the design and try-out phases.

## **5 –PACKAGING, MARKING, SHIPPING AND DOCUMENTATION**

Packaging shall be either retail trade or as specified in the Purchase Order or other Buyer Instruction. Small items shall be boxed or palletized. All large items, e.g. long lengths of steel, shall be banded securely together. No charge will be allowed for packing, boxing, palletizing, etc. unless expressly stated in the Purchase Order. Seller shall follow Buyer's instructions and applicable law concerning product marking, labeling and identifying paperwork. Buyer may charge seller, and Seller shall be responsible, for damage to or deterioration of any PO Deliverables resulting from improper packing or packaging. Seller is responsible for all risks to the goods until delivery and acceptance at the designed location.

Seller must deliver the PO Deliverables with documents specifying: Purchase Order number; Line item number; Description and quantity of goods shipped; Part number or size; Appropriate evidence of inspection; date of shipment or completion. Shippers must list all loose (not joined or fastened) details. Units must ship complete –partial will not be accepted without Buyer's written authorization. Any cancelled details or material must be tagged and sent to Seller with Purchase Order number; detail number and detail PO line number. When shipping to a location other than Seller, please e –mail a copy of the signed shipper to the Seller's follow –up coordinator for receipt. Payment cannot be processed until the shipper has been received in the Seller's system.

Invoices shall include the above information, and also: Confirmation of delivery/ Receipt signed by authorized Buyer's representative; "Ship –to" address and Invoice –to address. Buyer shall not be responsible for delays in the payment of invoices if these requirements are not met.

If the Purchase Order includes design services, as built drawings must be provided upon completion of each order. The original "red –lined" drawings must accompany each completed item with an additional copy upon shipment. All designs are to be checked by Seller's Engineering department and approved prior to commencing build (please allow two weeks for review and approval). Design approval does not relieve Seller of the responsibility of ensuring that all contract requirements are met, including quality, fit and any other project and cycle time requirements.

## **6 –WARRANTY**

Seller warrants that all the PO Deliverables furnished hereunder shall conform to the Purchase Order, to any warranty required by Buyer's customer, and any description or

samples which may have been furnished by Buyer. Seller further warrants that all equipment, goods or material shall be: new and free from defects in design, material and workmanship; free from any lien or security interest; merchantable and of the highest quality and fit for the purpose intended. Seller further warrants that all labor or services shall be performed with reasonable care by persons who are experienced and skilled in their profession, in accordance with the requirements of the Purchase Order, and in accordance with industry standards.

It is understood that Buyer may extend this warranty to the end –user, and the Seller's warranty shall remain in effect as long as Buyer's warranty to its end –user remain in effect. The end –user shall be entitled to all rights and remedies of Buyer under the Purchase Order as if a party to it. In the event of Seller's breach of any of the foregoing warranties, Buyer may, at its election and in addition to any other rights or remedies it may have in law or equity or under the Purchase Order, recover from Seller all of its costs, losses or damages resulting from such breach (including labor costs associated with the diagnosis and correction of any defect or unfitness) and: (a) return the PO Deliverables at Seller's expense and recover from Seller the price paid and, if elected by Buyer, repair the defective PO Deliverables and/or replace them with similar Deliverables , and recover from Seller the costs and expenses thereof; (b) accept or retain the defective PO Deliverables and equitably reduce their price; or (c) require Seller, at its expense, to promptly replace or correct the PO Deliverables and, pending redelivery, to repay to Buyer any amount previously paid for such PO Deliverables. If Seller fails to promptly replace or correct such PO Deliverables as directed by Buyer within 15 days, Buyer may do so at Seller's expense or purchase or manufacture similar Deliverables and recover from Seller the costs and expenses thereof. Any service furnished and/ or any item replaced or repaired under this warranty are themselves guaranteed for 12 months, under the above mentioned conditions. Only the items/ services with a normal lifecycle less than consecutive 12 months are excluded from the scope of this operational warranty.

## **7 –HAZARDOUS MATERIALS**

The Seller certifies and warrant to Buyer, that any supplies, products or services that introduce any hazardous material as defined by applicable Governmental Laws into any facility of Buyer, or Buyer's customers, are properly disclosed, labeled, shipped in proper containers and are accompanied by MSDS (material safety data sheets). Materials that are prohibited by Governmental Laws, including, without limitation, asbestos, asbestos containing materials and polychlorinated biphenyls shall not be introduced into the supplies or any of Seller's or Seller's customers facility.

## **8 –BUYER INFORMATION AND CONFIDENTIALITY**

All information transmitted to Seller by Buyer in connection with the Purchase Order is the property of Buyer and/or Buyer's customers and may be covered by one or more patents, patent application, or copyrights. Seller shall hold all the information furnished by Buyer in confidence and shall protect such information against inadvertent disclosure. Seller shall not disclose any such information to any other person except for Seller's employees and authorized subcontractors on a need to know basis only, provided that such employees and subcontractors have written confidentiality obligations to the Seller that provide equivalent protection to this paragraph. Seller shall not use such information for any purpose other than performing the Purchase Order without prior written consent from Buyer. Upon request from Buyer, Seller shall, at the election of Buyer, either destroy or return to Buyer all information and materials furnished by Buyer under the Purchase Order. The obligations contained in this paragraph shall apply to drawings, specifications, technical know-how, software object code protocol, strategic business plans, financial information, product information, marketing information, method of operation, customer information, supplier information, and all other documents and information communicated to Seller or learned by Seller in connection with the Purchase Order and to drawings, specifications and other documents prepared by Seller for Buyer in connection with the Purchase Order. This obligation of confidentiality shall continue after termination or completion of a Purchase Order.

## **9 –TAXES AND DUTIES, PRICES, AND PAYMENTS**

The goods purchased hereunder are for resale or for an exempt purpose and may be exempt from local sales or use taxes in the foreign jurisdiction. Unless otherwise provided on the face of the Purchase Order, the prices contained herein include all applicable federal, state (province) and local taxes, customs and duties.

Seller warrant that each price for equipment, goods, material, labor or services furnished hereunder is no less favorable than that extended during the term of the Purchase Order to any other customer for the same or like items or services in equal or less quantities or similar terms and conditions.

Buyer shall make all payments to Seller within 120 days from the date of Seller's invoice, unless expressly stated otherwise on the front of the Purchase Order.

## **10 –TERMINATION FOR CONVENIENCE**

Buyer may at any time terminate all or any part of the Purchase Order for its sole convenience, and Seller shall immediately stop all terminated work, cause any of its suppliers or subcontractors to cease such work, and all other necessary steps to

minimize costs in carrying out the termination. Seller will comply with Buyer's written instruction, including: termination of subcontracts and/or assignment to Buyer of Seller's rights under subcontracts; disposition of completed work, work in process, project data and documents and other PO Deliverables ( including delivery and title transfer to Buyer); and completion of work not terminated. Within 30 days after receipt of a termination notice, Seller shall submit all claims resulting from such termination. Buyer will have the right to verify such claims by auditing the relevant records, facilities, work or material of Seller and/ or its subcontractors. Buyer shall be obligated to pay Seller only for finished work accepted by Buyer and for the documented cost to Seller of work in process and raw material allocable to the terminated work which is not in excess of any prior Buyer authorization. Payment made under this paragraph will not apply to any cancellation by Buyer for default by Seller or for any other deficiency recognized by law or specified by this order.

## **11 – CANCELLATION FOR DEFAULT**

Buyer may, by written notice to Seller, cancel all or part of this contract if: Seller fails to deliver the PO Deliverables within the time specified by this PO or any written extension; Seller fails to perform any other provision of this contract or fails to make progress, so as to endanger performance of this contract, and in either of these two circumstances, does not cure the failure within 10 days after receipt of notice from Buyer specifying the failure; or in the event of Seller's suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any other assignment, reorganization or arrangement by Seller for the benefit of its creditors.

Seller shall continue work not canceled. If Buyer cancel all or part of this PO, Seller shall be liable for Buyer's excess re-procurement costs.

Buyer may require Seller to transfer title (to the extent Buyer does not already have title) and deliver to Buyer any completed items, any partially completed items, materials, parts, tools, fixture plans, drawings, information, contract rights and other materials (collectively "Manufacturing Materials") that seller has specifically produced or acquired for the canceled portion of this PO. Upon direction from Buyer, Seller shall also protect and preserve property in its possession in which buyer or any of its customer has an interest.

Buyer shall pay the contract price for the PO Deliverables accepted. Payment for Manufacturing Materials accepted by Buyer and for the protection and preservation of property shall be at a price determined in accordance with the "Termination for Convenience" article of these Terms and Conditions, except that Seller shall not be entitled to profit.

All intellectual property. Including but not limited to, drawings, software, and models, required to finish the project shall be delivered to Buyer.

## **12 –INDEMNITY**

Seller hereby agrees to indemnify Buyer and hold Buyer harmless against all proceedings, claims, losses, costs (including reasonable professional fees), damages and expenses that may be incurred or suffered by Buyer as a result of any claims of third parties arising from Seller's acts or omissions, or any breach or alleged breach by Seller of any of the provisions stated in this contract, or any failure to perform the services contemplated by this contract, except to the extent said breach or failure is directly caused by Buyer.