

STANDARD TERMS AND CONDITIONS

THIS PURCHASE ORDER CONTRACT INCORPORATES THE FOLLOWING TERMS AND CONDITIONS AND ALSO INCLUDES THE INVITATION TO BID, REQUEST FOR QUOTATIONS, SPECIFICATIONS, AND PLANS, AND THE LAWS OF THE STATE OF WASHINGTON, WHICH ARE HEREBY INCORPORATED BY REFERENCE.

(1) **CHANGES.**

No alteration in any of the terms, conditions, delivery, price, quality, quantities, or specifications of this order will be effective without written consent of Custom Interface, Inc. ("Buyer").

(2) **HANDLING.**

No charges will be allowed for handling which includes, but is not limited to, packing, wrapping, bags, and containers or reels, unless otherwise stated herein.

(3) **DELIVERY.**

For any exception to the Delivery Date as specified on this order, Seller shall give prior notification and obtain written approval thereto from Buyer. With respect to delivery under this order, time is of the essence and the order is subject to termination for failure to deliver on time. The acceptance by Buyer of late performance, with or without objection or reservation, shall not waive the right to claim damage for such breach nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Seller.

(4) **PAYMENTS AND ASSIGNMENTS.**

All payments to Seller shall be remitted by mail. Buyer shall not honor drafts, nor accept goods on a sight draft basis. Furthermore, the provisions or monies due under this Contract shall only be assignable with prior written consent of Buyer.

(5) **SHIPPING INSTRUCTIONS.**

Unless otherwise specified, all goods are to be shipped prepaid, FOB Destination. Where specific authorization is granted to ship goods FOB Shipping Point, Seller agrees to prepay all shipping charges, route with the cheapest common carrier, and bill Buyer as a separate item on the invoice for said charges, if routing instructions are not included on Purchase Order. Each invoice for shipping charges shall contain the original or a copy of the bill indicating that the payment for shipping has been made. It is also agreed that Buyer reserves the right to refuse COD Shipments.

(6) **INSPECTION AND REJECTION.**

Buyer's inspection of all materials and equipment upon delivery is for the sole purpose of identification. Such inspection shall not be construed as final acceptance, nor as acceptance of the materials or equipment, if materials or equipment do not strictly conform to contractual requirements. If there are any apparent defects in the materials or equipment at the time of delivery, Buyer will promptly notify Seller thereof. Without limiting any other rights to which it may be entitled, Buyer, at its option, may require Seller to:

- a. Repair or replace, at Seller's expense, any or all of the damaged goods;
- b. Refund the price of any or all of the damaged goods; or
- c. Accept the return of any or all of the damaged goods.

(7) **ACCEPTANCE.**

THIS ORDER EXPRESSLY LIMITS ACCEPTANCE TO THE TERMS AND CONDITIONS STATED HEREIN. ALL ADDITIONAL OR DIFFERENT TERMS PROPOSED BY SELLER ARE OBJECTED TO AND ARE HEREBY REJECTED BY BUYER, UNLESS OTHERWISE PROVIDED IN WRITING BY BUYER.

(8) **IDENTIFICATION.**

All invoices, packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written documents affecting this Contract shall be identified by the

applicable purchase order. Packing lists shall be enclosed with each shipment, indicating the contents therein.

(9) **INFRINGEMENTS.**

Seller will indemnify, defend and hold harmless Buyer and its customer from all claims, suits, actions, awards (including, but not limited to, awards based on intentional infringement of patents known at the time of such infringement, exceeding actual damages and/or including attorneys' fees and/or costs), liabilities, damages, costs and attorneys' fees related to the actual or alleged infringement of any United States or foreign intellectual property right (including, but not limited to, any right in a patent, copyright, industrial design or semiconductor mask work, or based on misappropriation or wrongful use of information or documents) and arising out of the manufacture, sale or use of Goods by either Buyer or its customer. Buyer and/or its customer will duly notify Seller of any such claim, suit, or action. Seller will, at its own expense, fully defend such claim, suit, or action on behalf of the indemnities. Seller will have no obligation under this article with regard to any infringement arising from:

(a) The compliance of Seller's new product design with formal specifications issued by Buyer where infringement could not be avoided in complying with such specifications; or

(b) Use or sale of Goods for other than their intended application in combination with other items when such infringement would not have occurred from the use or sale of those Goods solely for the purpose for which they were designed or sold by Seller. For purposes of this article only, the term Buyer will include Custom Interface, Inc., as well as its officers, agents and employees.

(10) **NON-WAIVER BY ACCEPTANCE OF VARIATION.**

No provision of this order, or the right to receive reasonable performance of any act called for by the terms, shall be deemed waived by a previous waiver issued by Buyer regarding a prior breach thereof.

(11) **WARRANTIES.**

Seller warrants that goods and/or services supplied under this order conform to specifications herein and are fit for the purpose for which such goods are ordinarily employed, except if a particular purpose is identified in a special condition, specification or otherwise then, in those cases the goods must then conform to and be fit for the stated particular purpose(s).

(12) **TERMINATION FOR CONVENIENCE.**

a. Buyer may terminate performance of work under this Contract in whole or, from time to time, in part if the Buyer determines that a termination is in the Buyer's interest. The Buyer shall terminate by delivering to the Seller a Notice of Termination specifying the extent of termination and the effective date.

b. After receipt of a Notice of Termination, and except as directed by the Buyer, the Seller shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(i) Stop work as specified in the notice.

(ii) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the Contract.

(iii) Terminate all subcontracts to the extent they relate to the work terminated.

(iv) Assign to the Buyer, as directed by the Buyer, all right, title, and interest of the Seller under the subcontracts terminated, in which case the Buyer shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(v) With approval or ratification to the extent required by the Buyer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(vi) As directed by the Buyer, transfer title and deliver to the Buyer the following items:

(A) The fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and

(B) The completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to the Buyer.

(vii) Complete performance of the work not terminated.

(viii) Take any action that may be necessary, or that the Buyer may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Seller and in which the Buyer has or may acquire an interest.

(ix) Use its best efforts to sell, as directed or authorized by the Buyer, any property of the types referred to in subparagraph (vi) of this clause; provided, however, that the Seller:

(A) Is not required to extend credit to any purchaser; and

(B) May acquire the property under the conditions prescribed by, and at prices approved by, the Buyer.

The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Buyer under this Contract, credited to the price or cost of the work, or paid in any other manner directed by the Buyer.

c. The Seller shall submit complete termination inventory schedules no later than 30 days from the effective date of termination, unless extended in writing by the Buyer upon written request of the Seller within this 30-day period.

d. After termination, the Seller shall submit a final termination settlement proposal to the Buyer in the form and with the certification prescribed by the Buyer. The Seller shall submit the proposal promptly, but no later than 6 months from the effective date of termination, unless extended in writing by the Buyer upon written request of the Seller within this 6 month period. However, if the Buyer determines that the facts justify it, a termination settlement proposal may be received and acted on after 6 months or any extension. If the Seller fails to submit the proposal within the time allowed, the Buyer may determine, on the basis of information available, the amount, if any, due the Seller because of the termination and shall pay the amount determined.

e. Subject to paragraph (d) of this clause, the Seller and the Buyer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount may not exceed the total Contract price as reduced by:

(i) The amount of payments previously made; and

(ii) The Contract price of work not terminated.

f. The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this clause.

g. In arriving at the amount due the Seller under this clause, there shall be deducted:

(i) All unliquidated advance or other payments to the Seller under the terminated portion of this Contract;

(ii) Any claim which the Buyer has against the Seller under this Contract; and

(iii) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Seller or sold under the provisions of this clause and not recovered by or credited to the Buyer.

h. If the termination is partial, the Seller may file a proposal with the Buyer for an equitable adjustment of the price(s) of the continued portion of the Contract. The Buyer shall make any equitable adjustment agreed upon. Any proposal by the Seller for an equitable adjustment under this clause shall be requested within 30 days from the effective date of termination unless extended in writing by the Buyer.

i. The Buyer may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Seller for the terminated portion of the Contract, if the Buyer believes the total of these payments will not exceed the amount to which the Seller will be entitled.

j. Unless otherwise provided in this Contract or by statute, the Seller shall maintain all records and documents relating to the terminated portion of this Contract for 3 years after final settlement. This includes all books and other evidence bearing on the Seller's costs and expenses under this Contract.

(13) **CURE & DEFAULT.**

a. Buyer may, by written notice to Seller, cancel all or part of this Contract: (i) if Seller fails to deliver the Goods within the time specified by this Contract or any written extension; (ii) if 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, within ten (10) days after receipt of notice from Buyer specifying the failure, does not cure the failure or provide Buyer with a written detailed plan adequate to cure the failure if such failure reasonably cannot be cured within such ten (10) days and such plan is acceptable to Buyer's Authorized Procurement Representative; or (iii) in the event of Seller's bankruptcy, suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of its creditors.

b. Seller shall continue work not canceled. If Buyer cancels all or part of this Contract, Seller shall be liable for Buyer's excess re-procurement costs, in addition to any other remedies Buyer may possess.

c. Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (i) completed Goods, (ii) any partially completed Goods and materials, parts, and contract rights, and (iii) tools, dies, jigs, fixtures, plans, drawings, or information that Buyer has designed, produced or acquired for the canceled portion of this Contract. Upon direction from Buyer, Seller shall also protect and preserve property in its possession in which Buyer or its Customer has an interest.

d. Buyer shall pay the Contract price for Goods accepted. In addition, any 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 this Contract, except that Seller shall not be entitled to profit. Buyer may withhold from any amount due under this Contract any sum Buyer determines to be necessary to protect Buyer or Buyer's Customer against loss because of outstanding liens or claims of former lien holders.

e. If, after cancellation, it is determined that Seller was not in default, the rights and remedies of the Parties shall be as if the Contract had been terminated according to the "Termination for Convenience" article of this Contract.

(14) **PAYMENT.**

Invoices will not be processed for payment until a properly completed invoice has been received, all invoiced items are received, and satisfactory performance by Seller has been attained. If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized. Payment will not be considered late if a check is mailed within the time specified. If no terms are specified, net 30 days will automatically apply. Payment(s) made in accordance with the terms of this Contract shall fully compensate Seller for all risk, loss, damages, or expense of whatever nature, and acceptance of payment shall constitute a waiver of all claims submitted by Seller.

(15) **TAXES.**

Unless otherwise indicated, Buyer agrees to pay all State of Washington sales or use tax.

(16) **LIENS, CLAIMS, AND ENCUMBRANCES.**

Seller warrants and represents that all the goods and materials ordered herein are free and clear of all liens, claims, or encumbrances of any kind.

- (17) **RISK OF LOSS.**
Regardless of FOB point, Seller agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein which occur prior to delivery and acceptance by Buyer as outlined in paragraph (6); and such loss, injury, or destruction shall not release Seller from any obligation hereunder.
- (18) **INDEMNIFICATION AND HOLD HARMLESS.**
Seller shall indemnify, defend, and hold harmless Buyer, its officers, directors, employees, and agents from and against any damage, cost, or liability for any injuries to persons or property arising out of or resulting from Seller's performance or non-performance of this Contract, including any goods and services, or products advertised, manufactured, sold, handled, distributed, or disposed of by or on behalf of Seller, to the extent caused in whole or in part by the acts or omissions of Seller, its agents, employees, representatives, or any subcontractor or its employees.
- (19) **INSURANCE.**
Seller shall maintain in full force and effect a business insurance program, including, but not limited to, commercial general liability (CGL) insurance, auto liability insurance, and, if necessary, professional liability (E&O) insurance, insuring Seller's obligations as set forth herein. Upon request from Buyer, Seller shall submit a Certificate of Insurance evidencing such insurance.
- (20) **PRICES.**
If price is not stated on this order, it is agreed that the goods shall be billed at the price last quoted or paid, or the prevailing market price, whichever is lower.
- (21) **DEFAULT.**
Seller covenants and agrees that in the event suit is instituted by Buyer for any default on the part of Seller, and Seller is adjudged by a court of competent jurisdiction to be in default, that Seller shall pay to Buyer all costs and expenses expended or incurred by Buyer in connection therewith, as well as reasonable attorney fees, including on appeal.
- (22) **SUBSTITUTION.**
Substitution of components or brands by Seller, unless specified by the Buyer's Bill of Material or design specifications, shall only be performed with prior written consent from the Buyer.
- (23) **FORCE MAJEURE.**
Buyer may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such goods at the direction of Buyer and shall deliver them when the cause affecting the delay has been removed. Buyer shall be responsible only for Seller's direct additional costs in holding the goods or delaying performance of this Contract at Buyer's request. Causes beyond Buyer's control shall include government action or failure of the government to act where such action is required, strike or other labor trouble, fire, or unusually severe weather.
- (24) **SETOFF.**
All claims for money due or to become due from Buyer shall be subject to deduction or setoff by Buyer by reason of any counterclaim arising out of this or any other transaction with Seller.
- (25) **ENTIRE AGREEMENT.**
This Purchase Order and any documents referred to on the face hereof, constitute the entire agreement between the parties.
- (26) **BANKRUPTCY.**
In the event of any proceeding, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, including any proceeding under United States bankruptcy laws, or in the event of the appointment, with or without Seller's consent, of a receiver of an assignee for the benefit of creditors, Buyer shall be entitled to cancel any unfilled part of this order without any liability whatsoever.

(27) **ANTITRUST ASSIGNMENT CLAUSE.**

Seller and Buyer acknowledge that overcharges by manufacturers are in fact borne by Buyer, and not Seller. Seller, therefore, agrees to assign to Buyer any and all claims which it may have for overcharges as to goods and materials purchased in connection with any contract between Buyer and Seller arising out of antitrust or similar actions, except as to overcharges which commence after the price is established under any contract between Buyer and Seller, and which are not passed on to the Buyer under an escalation clause.

(28) **PROPRIETARY INFORMATION.**

Seller shall consider all information furnished by Buyer to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing this Contract, unless Seller obtains prior written permission from Buyer to do so. This paragraph shall apply to drawings, specifications, or other documents prepared by Seller for Buyer in connection with this order. Seller shall not advertise or publish the fact that Buyer has contracted to purchase goods from Seller, nor shall any information relating to the order be disclosed without Buyer's written permission. Unless otherwise agreed in writing, no commercial, financial, or technical information disclosed in any manner or at any time by Seller to Buyer shall be deemed secret or confidential and Seller shall have no rights against Buyer with respect thereto, except such rights as may exist under patent laws.

(29) **ASSIGNMENTS AND SUBCONTRACTING.**

No part of this order may be assigned or subcontracted without prior written approval of Buyer.

(30) **LIMITATION ON BUYER'S LIABILITY AND STATUTE OF LIMITATIONS.**

In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages claimed by Seller or its agents. Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this Contract or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services or unit thereof, which gives rise to the claim. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer as to the goods or services delivered hereunder must be commenced within one year after the cause of action has accrued.

(31) **SEVERABILITY.**

If any provision hereof shall be found to be inoperable or in violation of any law or regulation, only that provision shall be stricken from this order and the remainder of the order shall not be affected.

(32) **GOVERNING LAW.**

The laws of the State of Washington shall govern this order and the right and the obligations of the parties hereunder, and the venue of any action brought hereunder shall be exclusively in the Superior Court, County of Klickitat, State of Washington.

(33) **OVERSHIPMENTS.**

Over shipments against any purchase order may be returned "freight collect" to Seller and billed back at that purchase order's contract selling price(s).