



Terms & Conditions-Standard

TIME IS OF THE ESSENCE WITH RESPECT TO THE PERFORMANCE OF EACH OF THE CONVENANTS AND AGREEMENTS SET FORTH HEREIN.

1. **DEFINITIONS** (As used herein)

- a) "Order": The Purchase Order, Contract, or Subcontract Agreement, and revisions thereto, incorporating by reference these conditions, instructions, and all applicable data incorporated by reference thereto.
- b) "Contract Products": The goods, technical data, drawings, services, or other items constituting the subject matter of this order which are to be finished by the Seller.
- c) "Buyer": Micro Systems, Inc. or its duly authorized representatives on the face of this Order.
- d) "Seller": The person, firm or corporation by whom the contract products described in this order is to be furnished.

2. **ACCEPTANCE**

This Order contains the entire agreement between the Buyer and Seller. It shall be deemed to have been accepted by acceptance via Seller's signed acknowledgement of this Order, Seller's performance, by shipment of Contract Products or by Seller's dispatch of Seller's sales acknowledgement, provided that such sales acknowledgement agrees with this Order with respect to the description of Contract Productions, quantity, price, and delivery schedule. By acceptance using any of the above stated methods, the Seller agrees to all terms and conditions set forth herein. Any additional or different terms proposed by the Seller will not form part of this contract unless the same shall be specifically accepted in writing by Buyer. To the extent of any inconsistency between the terms of this Order and any applicable plans and specifications, the terms of this order shall control. The plans and specifications are intended to be construed together and anything contained in one shall be deemed to be contained in both.

3. **APPLICABLE LAW**

This Order shall be governed by and construed in accordance with the laws of the State of Florida and of the United States of America.

4. **ORDER OF PRECEDENCE**

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: typed or written provisions on the face of this Order or continuation pages thereof; any attachments to these Terms and Conditions; these Standard Terms and Conditions; statements of work, specifications, and drawings.

5. **COMPLIANCE WITH LAWS**

Seller shall comply with all applicable federal, state, and local laws, rules, regulations and orders. Seller agrees to indemnify and hold Buyer harmless against any loss or liability due to Seller's violation or noncompliance with such regulations.

6. **ENTIRE AGREEMENT**

This Order and the Terms and Conditions constitute the entire agreement between Buyer and Seller regarding this procurement and supersede all previous written or oral agreement and commitments. No terms or conditions of sale set forth in Seller's quotation or acknowledgment shall be included as a part hereof, nor shall subsequent additions, deletions or modifications to this agreement shall not be binding upon the parties unless same are mutually agreed upon and incorporated herein in writing.

7. **SUBCONTRACT**

Seller shall not subcontract any portion of the work without the prior written consent of Buyer. Buyer may reserve rights of approval of any subcontract, purchase, or assignment by the Seller. This shall not apply to standard commercial items or raw materials.

8. **ASSIGNMENT**

Neither the rights nor the duties of either Party under this Order may be assigned in whole or in part by either Party without having first obtained the prior written consent of the other Party. Any attempted assignment or delegation without such consent shall be void.

9. **PROPRIETARY INFORMATION**

All information, including but not limited to drawings, prints, publications, specifications, process manufacturing techniques, software products and programs (in object code or any other form), and other intellectual property, provided by the Buyer to the Seller prior to and during the performance of this Order which is identified as proprietary by the Buyer shall be received in confidence by the Seller and shall remain the property of the Buyer. Such information shall not be reproduced, used, or disclosed to any third party by Seller without the prior written consent of the Buyer. Buyer shall own all rights and interest in any intellectual property developed as a result of this Order.

10. DELIVERY

The Buyer's production schedules are based upon the understanding that the Contract Products will be delivered to Buyer by the date specified on the face of the Order. Therefore, time is the essence of this Order. If the Seller's deliveries fail to meet the delivery quoted or the delivery scheduled on the face of this Order, Buyer reserves the right to terminate the Order in whole or in part, acquire the Contract Products elsewhere and to hold the Seller accountable therefore. Representatives of Buyer, the Government, or both shall at all reasonable times have access to the Seller's plant for the purpose of assuring delivery in accordance with the schedule. Such rights shall be in addition to any other remedies provided by Law.

11. SUBSTITUTIONS

Seller shall not substitute materials or accessories without express written consent by Buyer.

12. COUNTERFEIT MATERIAL AVOIDANCE

Seller is not authorized to deliver any item procured from sources other than Original Component Manufacturers (OCMs) or Original Equipment Manufacturers (OEMs) or their Authorized Distributors. If deviation from this requirement is necessary, Seller is required to obtain approval, before the component is procured, from Buyer by following Micro Systems, Inc. document QP4-6E, Protection Against Counterfeit Goods Procedure.

13. QUANTITY

Shipments must equal exact amounts ordered unless otherwise agreed upon in writing by Buyer. Overshipments may be returned to Seller at Seller's expense, including arrangements for return, handling, and shipping costs. Invoices shall be honored and paid with respect to only those quantities indicated on the Order or otherwise authorized in writing by Buyer.

14. WARRANTY

- a) Seller represents and warrants (1) that all goods delivered pursuant hereto will be new, unless otherwise specified, and free from defects in material and workmanship; (2) that all goods will conform to applicable specifications, drawings, and standards of quality and performance, and that all items will be free from defects in design and suitable for their intended purpose; and (3) that all services performed pursuant hereto will be performed in accordance with the specifications and instruction of Buyer, provided nevertheless that Seller retain discretion and control with respect to the manner and means of performing such services and shall at all times remain an independent contractor.
- b) All warranties shall run to Buyer, its successors, assignees, customer and the users of the Contract Products. All warranties shall be construed as conditions as well as warranties and shall not be deemed to be exclusive. Seller agrees to replace or to correct promptly without expense to Buyer, including transportation and handling costs, any Contract Products not conforming to the foregoing requirements when notified by Buyer during a period of twelve (12) months after delivery or until twelve months after final acceptance by Buyer's customer under the Prime Contract, whichever is later. If Seller, upon notice of any defect, fails to promptly correct or replace Contract Products as required herein, Buyer may, without further notice, correct or replace such Contract Products and Seller agrees to reimburse Buyer for all costs incurred thereby. Contract Products which have been rejected shall not thereafter be tendered for acceptance unless the former rejection and correction is identified, and such repaired or replacement Contract Products shall be subject to the provisions of the article to the same extent as the Contract Product. All warranties shall then run from the latter delivery date.

15. HARDWARE, SOFTWARE, & FIRMWARE

Any hardware, software and firmware Goods delivered under this Contract shall not contain any viruses, malicious code, trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (a) damage, destroy or alter any software or hardware; (b) reveal, damage, destroy, or alter any data; (c) disable any computer program automatically; or (d) permit unauthorized access to any software or hardware.

16. PACKING AND SHIPPING

All Contract Products shall be forwarded and classified in accordance with sound commercial practice to obtain the most economical transportation rate unless otherwise specified in this Order or agreed to by Buyer. Any extra transportation cost or other losses accruing from deviations from Buyer's routine instructions will be charged to Seller's account. A complete packing list shall be enclosed with all shipments including but not limited to, the order number, order item number, description of Contract Products, sizes and quantity. Bills of Lading shall include the number of pieces and weight of shipment.

Seller shall mark containers or packages with necessary lifting, loading, shipping and handling information, as applicable, including Buyer's Order number, date of shipment and names and addresses of Consignor and Consignee. In case of a shipment to a facility other than the Buyer's, Seller shall forward a copy of all documents such as packing lists and test reports, to the Buyer on the same day shipment is made.

17. TITLE AND RISK OF LOSS

The F.O.B. point shall be the delivery destination indicated in this Order, and title to the supplies and risk of loss or damage shall pass to the Buyer upon Buyer's acceptance of the supplies regardless of where Buyer takes physical possession.

18. INSPECTION AND ACCEPTANCE

Seller shall perform all examinations, inspections and tests, or assume responsibility for others so to do, necessary to insure that the Contract Products furnished are in complete conformity with all requirements of this Order.

All Contract Products may be inspected and tested at all times and places, either before, during, or after manufacture, by representatives of Buyer and/or Buyer's customer. If inspection and/or test is made on the premises of Seller or its supplier, Seller shall furnish without additional charge all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and tests shall be performed in such a manner as not to unduly delay the work. Final inspection shall be on Buyer's premises unless Buyer directs otherwise in writing.

In case any Contract Products are found to be defective in material or workmanship, or otherwise not in conformity with the requirements of this Order, Buyer shall have the right to reject the same or require that such Contract Products be corrected or replaced promptly. Contract Products rejected as not conforming to this Order shall be returned at Seller's expense including packaging, transportation and handling costs. If Buyer so rejects the Contract Products or if Seller, when requested by Buyer, fails to proceed promptly with the replacement or correction thereof, Buyer either may terminate their Order or default or may replace or correct such Contract Products and in either event may charge Seller the cost incurred by Buyer thereby. Acceptance of the Contract Products by Buyer shall not relieve Seller of its liability for Products which do not conform to the requirements of this Order, including delivery schedule. Seller's liability shall include any reduction in contract price imposed on Buyer by its customer related to the use of non-conforming Contract Products, the parties will negotiate in good faith for a downward equitable adjustment and payment will be withheld during the pendency of such negotiations.

Seller shall provide and maintain an inspection system in accordance with sound business practice and as otherwise specified in this Order. Records of all inspection work by Seller shall be kept complete and available to Buyer during the performance of this Order and for three (3) years after final payment or in such manner as may be specified elsewhere in this Order.

19. INVOICE AND PAYMENT

Seller shall forward a separate invoice for each shipment unless otherwise specified in this Order. Seller's right to payment is contingent upon Buyer's approval and acceptance of Contract Products. The cash discount period to Buyer, if any, will date from the later of (A) the receipt invoice (not from date of invoice), (B) the actual date of acceptance of Contract Products, or (C) the delivery date specified in this Order. Invoices shall be issued in accordance with payment terms specified in the body of this order.

Invoices which do not agree with prices or other terms and conditions of this Order will be returned to the Seller for corrections. Payment schedule shall commence upon receipt of the corrected invoice by Buyer.

If technical data/software or any part thereof as required by this Order is not delivered within the time specified or is deficient upon delivery, the Buyer may until such data is accepted, withhold payment to the Seller. Payments shall not be withheld nor any other action taken pursuant to this clause when the Seller's failure to make timely deliveries arises out of strikes, war or national emergencies, acts of God or similar causes beyond the control of the Seller.

Seller agrees that the prices specified in the Order include all applicable federal, state, and local taxes and all such taxes will be paid by Seller when due.

20. PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY

Seller shall at its expense indemnify and defend Buyer and Buyer's successor in interest to the goods (collectively called "Buyer") against any claim, suit or proceeding (collectively called "suit") brought against Buyer which is based upon a claim, whether rightful or otherwise, that the goods or services, or any part thereof, furnished under this order, or Buyer's use (including resale) thereof, constitutes an infringement of any patent, trademark, or copyright in the United States, if Seller is given reasonable notice of such suit; and Seller shall pay all damages and costs awarded against and reasonable expenses incurred by Buyer in connection with such suit. In case the goods or services or use thereof is in such suit held to constitute infringement and the use thereof is enjoined, Seller shall at its expense and at its option either procure for Buyer the right to continue the use of such goods or services; or in a manner acceptable to Buyer make replacement or modification to avoid infringement. The foregoing indemnity shall not apply, and Buyer shall indemnify and defend Seller, if given notice and in the same manner and extend as provided above where such goods or services are allegedly infringing as a result of Seller's compliance with specified written instructions by Buyer directing use by Seller of a feature not customarily used by Seller.

21. CHANGES

Buyer, through the action of his Purchasing Department, shall have the right to make, from time to time, and without notice to any sureties or assignees, changes to this Order and Seller shall proceed immediately with the Order as changed. Seller shall notify Buyer within ten (10) calendar days of any increase or decrease in cost caused by such changes and an equitable adjustment in prices or other terms shall be agreed upon in a written revision to this Order. Nothing contained in this paragraph shall excuse Seller from proceeding with the Contract as changed.

22. STOP WORK ORDER

Buyer reserves the right to direct Seller to stop work in accordance with the provisions of this Order. This may be exercised at the sole discretion of the Buyer. Rights of the Seller shall be as specified in this Order.

23. TERMINATION

- a) **FOR CONVENIENCE:** Buyer reserves the right to terminate, upon written notice, this Order, in whole or in part. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause any suppliers or subcontractors to cease such work.
- b) **FOR DEFAULT:** Buyer may, without liability, and in addition to any other rights or remedies provided herein or by law, terminate this Order in whole or in part by written notice of default if Seller: (a) fails to deliver the supplies or perform the services within the time specified; (b) fails to make sufficient progress with the work, thereby endangering completion of performance within the time specified; or (c) fails to comply with any of the other instructions, term, or conditions. Buyer's right to terminate for default may be exercised if Seller does not cure the failure within ten (10) days after receiving Buyer's notice of such failure. If Buyer terminates this order in whole or in part, Buyer may purchase similar supplies or services from others and Seller shall be liable for any additional costs above the original price for the terminated supplies/services. In the event of a partial termination, Seller shall continue the work not terminated. Seller shall not be liable for any additional costs if failure to perform arises from causes beyond Seller's or Seller's contractor's control and without fault or negligence of either of them; provided, however, that the supplies/services to be furnished by Seller's subcontractor (at any tier) were not obtainable from others in time for the Seller to meet the order delivery requirements. Buyer shall pay Seller the order price for any completed supplies/services delivered and accepted.

24. BUYER'S PROPERTY AND INFORMATION

- a) Any property furnished to Seller for performance of the work shall remain the property of the Buyer, shall be considered private and confidential Buyer information, and shall not be given to others not having a need-to-know or used by Seller for its own purposes. Upon order completion, all Buyer-furnished property shall be returned to the Buyer in the same condition as received, allowing for reasonable wear and tear, except to the extent that the property has been incorporated into supplies delivered or consumed in the performance of the work.
- b) If, in the performance of this Order, Buyer furnishes Seller with components or other items to be incorporated by Seller in the Contract Products to be delivered to Buyer, the Buyer does not waive its right to require the level of quality specified for the Contract Products to be delivered by Seller. Seller agrees to replace any components or other items furnished by Buyer that are damaged by Seller or Seller's agent, or to reimburse Buyer for the same. If the Buyer arranges for a drop shipment, the Seller agrees to inspect the material upon receipt and notify the Buyer of any discrepancies or damage: failure to do so may result in the Seller being held liable for damage or discrepancies. In addition, the Seller agrees to forward the original of all documents, such as packing lists and test reports, furnished by the Third Party. Buyer may request return of scrap, or its value, and any unused material.

25. SPECIAL TOOLING

If Buyer's Order includes special tooling, payment of Seller's invoice for stated special tooling is contingent upon acceptance by Buyer after inspection of the initial production parts produced by the special tooling.

26. BANKRUPTCY

In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller including any proceedings under the Bankruptcy Act or in the event of the appointment with or without the Seller's consent of any assignee for the Benefit of creditors or of a receiver, then Buyer may, at its option, cancel any uncompleted item of this Order without any liability whatsoever.

27. LEINS

Seller shall immediately discharge or cause to be discharged any liens or the right in rem of any kind other than in favor of the Buyer, which at any time exists or arises in connection with Contract Products furnished under this Order. If any such lien or right in rem is not immediately discharged, the Buyer may discharge or cause to be discharged such lien or right at the expense of Seller. Seller agrees to insert this clause in any subcontract issued hereunder.

28. RELEASE OF INFORMATION

Seller shall not advertise or make public in any manner whatsoever any data on the performance or the nature of the work related to this Order, unless written permission has been obtained from Buyer. Seller is prohibited from displaying images or data of any Micro Systems, Inc. products on any websites, catalogues, brochures, etc. without written permission from Micro Systems, Inc.

29. INSURANCE

Seller shall carry or obtain insurance as required by Buyer. Seller shall provide a certificate of insurance upon request.

30. GOVERNMENT CONTRACT

If this Order is placed under a U.S. Government contract, additional Terms and Conditions from the Federal Acquisition Regulations or agency supplements will be attached: (a) Federal Acquisition Regulations (FAR); (b) Defense Federal Acquisition Regulation Supplement (DFARS), (c) FAR Commercial Item Terms and Conditions, and (d) Other, as applicable.

31. LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE RESPONSIBLE OR HELD LIABLE TO THE OTHER PART FOR CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, WHICH SHALL INCLUDE WITHOUT LIMITATION, LOSS OF PROFITS, PRODUCT OR SERVICE, ARISING OUT OF OR RELATING TO THIS ORDER, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY NOTWITHSTANDING THE FAULT, NEGLIGENCE OR OTHER THEORY OF LIABILITY WHICH MAY BE ASSERTED AGAINST THE PARTY WHOSE LIABILITY HAS BEEN LIMITED.

32. WAIVER OF RIGHTS

The failure of the Buyer to enforce at any time any of the provisions of this Order or to exercise any option herein provided shall in no way be construed to be a waiver of such provisions, not in any way to affect the validity of this agreement or any part thereof, or the rights of the Buyer thereafter to enforce each and every such provision. The invalidity in whole or in part of any provision shall not affect the validity of any other provision.

33. EXPORT REQUIREMENTS

The receiving Party shall not export any information furnished by the disclosing party without first complying with all requirements of the International Traffic in Arms Regulations (ITAR) and the Export Control Administration Act including the requirement for obtaining any export license, if applicable. The receiving Party shall defend, indemnify and hold the disclosing Party harmless from all claims, demands, damages, costs, fines, penalties, attorney's fees and all other expenses and costs arising from failure to comply with this paragraph or the ITAR or Export Administration Act.

34. DISPUTES

Any disputes arising under this Order which are not settled by agreement of the parties may be settled by appropriate legal proceedings in the State of Florida. Pending any decision, appeal or judgment in such proceedings or the settlement of any dispute arising under this order, Seller shall proceed diligently with the performance of this order in accordance with the decision of the Buyer.

35. INDEPENDENT CONTRACTOR

In its performance of the services to be provided to Buyer hereunder, Seller shall act as, and have the status of, an independent contractor, and shall determine its own means and method of operation, subject to compliance with the requirements of the statement of work and the Terms and Conditions herein. Neither party hereto is a legal representative or agent of the other party hereto; and the employees of each party hereto are not, and shall not be deemed for any purpose to be, the employees of the other party hereto.

36. SERVERABILITY

If any provision of this Order is found to be illegal or unenforceable under law, that provision shall be deleted; however, all other provisions of this Order shall not be affected thereby, and shall remain in full force and effect.

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