



## GENERAL TERMS AND CONDITIONS OF PURCHASE

**1. PURCHASE OF PRODUCTS OR SERVICES.** If the Purchase Order issued to the supplier named on the front thereof ("Supplier") is for the purchase of goods, Jackson Labs Technologies, Inc. ("Buyer"), agrees to purchase, and Supplier agrees to sell to Buyer, on the terms set forth herein, the products ("Products") detailed on the Purchase Order, and on any attachments, exhibits, specifications, drawings, notes, and other instructions (collectively "Attachments") physically attached to or referenced in the Purchase Order. If the Purchase Order is for the performance and delivery of services ("Services"), Supplier shall perform the Services in accordance with the specifications provided by Buyer as detailed in the Purchase Order and Attachments in a good and workmanlike manner. The Purchase Order delivered to Supplier with respect to Buyer's order of Product and/or Services refers to the within Terms and Conditions by reference to following website link: [http://www.jackson-labs.com/assets/download/po\\_terms.pdf](http://www.jackson-labs.com/assets/download/po_terms.pdf). The Purchase Order, the Attachments, and the herein General Terms and Conditions of Purchase ("Terms and Conditions"), which Attachments and Terms and Conditions are collectively incorporated by reference into the Purchase Order as though an original part thereof and, as so incorporated and supplemented, and together with the Purchase Order, constitute the entire agreement (collectively the "Order") between Buyer and Supplier.

### **2. TERMS OF ACCEPTANCE.**

2.1 The terms of the Order, including, without limitation, the within Terms and Conditions, take precedence over any Supplier terms and conditions. If the Order has been issued by Buyer in response to Supplier's quotation, the Order is to be accepted in writing by Supplier. If, however, for any reason, Supplier should fail to accept the within terms in writing, any conduct by Supplier which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance by Supplier of the Order and all of its terms. Any terms proposed in Supplier's acceptance of Buyer's offer that add to, vary from, or conflict with the terms of the Order, are hereby rejected. Any such proposed terms shall be void and the terms herein shall constitute the complete and exclusive statement of the terms of the contract between the parties and may hereafter be modified only by written instrument executed by Buyer.

2.2 If the Order has been issued by Buyer in response to an offer, and if any of the terms of this Order are additional to or different from any terms of such offer, then the issuance of the Order by Buyer shall constitute an acceptance of such offer subject to the express condition that Supplier assent to such additional and different terms herein, and that Supplier acknowledge that this Order constitutes the entire agreement between Buyer and Supplier with respect to the subject matter hereof, and the subject matter of such offer, and Supplier shall be deemed to have so assented and acknowledged unless Supplier notifies Buyer to the contrary in writing within 10 days of receipt this Order.

2.3 These Terms and Conditions may only be waived or modified in a written agreement signed by an authorized representative of Buyer. Buyer's submission of the Purchase Order is conditioned on Supplier's agreement that any additional or different terms in Supplier's order acknowledgment, invoices, order confirmation, quotations and other communications are material alterations and, irrespective of the timing, shall not form a part of the Order. Buyer's failure to object to conflicting, contrary or additional terms and conditions shall not be deemed an acceptance by Buyer of such terms and conditions or a waiver of the provisions hereof. Supplier's (i) electronic acceptance, (ii) acknowledge of the Purchase Order, or (iii) commencement of performance constitutes Supplier's acceptance of the within Terms and Conditions. Notwithstanding the foregoing, if a Master Agreement covering the specific goods and services that are described in the Purchase Order exists between Buyer and Supplier, the terms of the Master Agreement shall prevail over any inconsistent terms set forth herein (in which event, any reference to the term "Order" herein shall include reference to the terms of such Master Agreement).

### **3. DEFINITIONS.**

3.1 "Affiliate" means any entity controlling, controlled by, or under common control with the party with respect to which such relationship exists.



3.2 "Confidential Information" means any and all technical and non-technical information one party provides the other hereunder that is either indicated to be proprietary or confidential information of the disclosing party or which by its nature the receiving party would reasonably deem such information to be confidential or proprietary, regardless of marking, including trade secret, know-how and proprietary information, designs, schematics, techniques, software code, technical documentation, plans or any other information relating to any research project, work in process, future development, marketing or business plan or financial or personnel matter relating to the disclosing party, its present or future products, sales, suppliers, customers, employees, investors or business, whether in written, oral, graphic or electronic form. Any additional information derived from any of the foregoing and contained in any analyses, compilations, studies, or other documents prepared by the receiving party shall be deemed the disclosing party's Confidential Information.

3.3 "Deliverables" means the design, samples, prototypes, test report, Products, Services, documentation, all other materials, and any part or copy of the foregoing either specified in the Order or to be delivered by Supplier under the Order.

3.4 "Intellectual Property Rights" means any and all tangible and intangible: (i) rights associated with works of authorship throughout the world, including, but not limited to, copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights, (iv) patents, designs, algorithms and other industrial property rights; (v) intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract license, or otherwise, not otherwise described in the foregoing and (vi) registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

4. **DELIVERY.** Time is of the essence in the performance of this Order by Supplier. Delivery is to be made both in quantities and at times specified herein. In the event Supplier has knowledge of any event or circumstance that will prevent or threatens to prevent its timely performance hereunder, Supplier will immediately notify Buyer in writing thereof; provided, however, such notice shall not relieve Supplier of its performance obligations. If Supplier's delivery fails to meet schedule, Buyer may, without limiting its other rights or remedies, direct expedited routing, and any excess cost incurred thereby shall be debited to Supplier's account. Buyer shall not be liable for Supplier's commitments or production arrangements in excess of the amount, or in advance of the time, necessary to meet Buyer's delivery schedule. Products delivered in advance of schedule may, at Buyer's option, (i) be returned at Supplier's expense for proper delivery, (ii) have payment therefore withheld by Buyer until the date that goods are actually scheduled for delivery, or (iii) be placed in storage for Supplier's account until delivery date specified herein.

5. **INSPECTION AND TEST.** All Products ordered hereunder shall be subject to inspection and testing by Buyer at all times and places, including, without limitation, during the period of manufacture, and with or without notice to Supplier. The Products shall be subject to final inspection and to acceptance by Buyer after delivery to Buyer. If the Products are to be specifically manufactured for Buyer in accordance with specifications furnished by Buyer, Supplier shall: (a) provide and maintain an inspection and quality control system acceptable to Buyer and provide access to Supplier's facilities at all reasonable times for inspection by Buyer's agents or employees; (b) provide all tools, facilities, and assistance reasonably necessary for inspection relating to the performance of this Order; (c) maintain adequate and authenticated inspection and test documents which relate to work performed under this Order for a period of three years after completion of this Order, or as otherwise specified in this Order, and shall make such records available to Buyer upon request; and (d) supply Buyer with inspection and test reports, affidavits, certifications, or any other documents as may reasonably be requested by Buyer.

6. **NON-CONFORMING GOODS.** If the Products fail to meet the specifications, or otherwise do not conform to the requirements of the Order, Buyer has the right to reject all or any portion of the Products. Products that have been delivered and rejected may be returned to Supplier for replacement, correction, reimbursement, or credit as Buyer may direct. If, after notice, Supplier fails to promptly replace or correct such rejected items, same may be replaced or corrected (without thereby exercising wrongful ownership) by Buyer at the expense of Supplier. Any Products rejected by Buyer

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shall be at Supplier's risk and expense, and the rejected Products shall not thereafter be tendered for acceptance unless the former rejection or requirement for correction is disclosed. Packaging and handling expense incidental to the return of rejected Products, and applicable transportation cost, shall be charged to Supplier's account. Upon non-acceptance, repudiation or rejection of any goods, Buyer shall not be liable for any profit Supplier would have made, nor for incidental damages. For non-conformances discovered prior to shipment or delivery, Supplier shall contact Buyer as soon as the non-conformance is known to determine if a Supplier Information Request (SIR) should be completed to facilitate the disposition of identified non-conformances. Unless otherwise expressly granted in writing by Buyer, no relief in the established delivery schedule shall accrue by virtue of Supplier having notified Buyer of the non-conformance.

**7. PRODUCT WARRANTIES.** Supplier expressly warrants that all Products delivered hereunder shall be manufactured with good materials and workmanship, and shall conform to or exceed applicable specifications, drawings, samples, and performance specifications delivered to Supplier (in the case of specially manufactured products) or in Supplier's sales literature (in the case of standard Supplier products). Supplier further warrants that, on the date of delivery and for a period of one (1) year thereafter, be free from defects in design, material and workmanship. In the event of a conflict between the terms of this Order and any Supplier sales literature, the terms of this Order shall prevail. The within warranties shall not limit any implied warranties or any warranties of additional scope given to Buyer by Supplier, or limit Buyer's rights or Supplier's obligations under any other provision of this Order, at law, or in equity. No warranties are waived by Buyer by reason of Buyer supplying plans, specifications, or data, or inspecting or accepting the goods, and Buyer specifically does not waive any implied warranties. When Buyer furnishes specifications to Supplier, Supplier shall immediately notify Buyer of any infringement claim of which Supplier is aware, and Buyer may defend or negotiate the disposition of any such claim. Items repaired or replaced pursuant to this clause by Supplier shall, unless otherwise provided herein, be subjected to the same qualification or acceptance test as applicable to the item(s) at the time of the original delivery to Buyer. The foregoing warranties shall survive inspection and acceptance of and payment for the items delivered hereunder and shall run to Buyer, its successors, assigns, and customers.

**8. NON-INFRINGEMENT; LICENSE.** Supplier warrants that the sale, use, or incorporation into Deliverables of all machines, devices, material, software, firmware, and Intellectual Property Rights which are not of Buyer's design, composition or manufacture shall be free and clear of infringement of any valid United States patent, copyright, trade mark, mask works, or other proprietary rights. If the use of Deliverables by Buyer or any of its customers is prevented based upon any alleged violation, infringement, or misappropriation, then Supplier will promptly, and using commercially reasonable efforts, either (a) obtain the rights for Buyer to continue the use of Deliverables without additional costs to Buyer modify, or (b) replace the Deliverables so that they are no longer infringing without affecting their form, fit, or function. Supplier shall indemnify, defend, and hold Buyer and Buyer's customers harmless from any and all expenses, liabilities, and losses of any kind, including, but not limited to, attorney's fees, costs, expenses, and fees growing out of claims, suits, or actions alleging such infringements, which claims, suits, or actions Supplier agrees to defend. Supplier, as part consideration for the Order, and without further cost to Buyer, hereby grants and agrees to grant to Buyer an irrevocable, non-exclusive, royalty-free right and license to use, sell, manufacture and cause to be manufactured products embodying any and all inventions and discoveries made, conceived of, or actually reduced to practice in connection with Supplier's performance of the Order.

**9. INDEMNIFICATION.** Supplier shall indemnify, defend, and hold Buyer harmless from and against any and all liabilities, claims, obligations, losses, costs, expenses, damages, judgments, awards, causes of action, actions, liens and deficiencies which are imposed on, incurred by, or asserted against Buyer based upon, resulting from, or arising out of: (a) any untruth or inaccuracy of any representation, warranty or statement by Supplier in this Order or in any Supplier sales literature; (b) any breach of or default in the performance of any agreement, covenant, warranty, or obligation of Supplier under this Order; (c) claims by third parties arising from Supplier's manufacture of the Products; (d) the handling, mishandling, compromising, or destruction of or damage to any work-in-process Products delivered to Supplier for assembly and/or testing; (e) any personal injury or property damage arising out of acts or omissions of Supplier or its agents, employees, or subcontractors in connection with performance under or fulfillment of this Order, except to the extent that any such injury or damage is due directly and solely to Buyer's negligence; (f) and compromising or destruction or, or damage to the Products at any time during the manufacturing process and prior to delivery to Buyer, and (g) any



cost or expense (including, without limitation, settlement costs and attorneys', accountants' and experts' fees and court costs) incurred by Buyer in connection with any of the foregoing.

**10. BUYER'S PROPERTY.** Title to all property furnished by Buyer to Supplier shall remain with Buyer or Buyer's customer, as applicable. Supplier shall not alter or use such property for any purpose or for any other party, other than as specified by Buyer, without the prior written consent of Buyer. Supplier shall keep adequate records, which shall be made available to Buyer upon request, and shall store, protect, preserve, repair, and maintain such property in accordance with sound industrial practice, all at Supplier's expense. In the event that Buyer's property becomes lost or damaged to any extent for any cause while in Supplier's possession, Supplier agrees to replace or repair such property, at Supplier's expense, in accordance with Buyer's request. At the completion or any termination of the work for the goods or services for which Buyer's property was required, Supplier shall request disposition instructions for all such property, or the remainder thereof, whether in its original form or in semi-processed form. Supplier shall make such property available to Buyer per Buyer's request, including preparation, packaging, and shipping as directed. Expense for preparation for shipment shall be for Supplier's account and shipment shall be made FOB Supplier's plant. Buyer may, at its sole discretion and by written notice, divest itself of title in favor of Supplier.

**11. RELATIONSHIP OF THE PARTIES.** The relationship of Supplier to Buyer shall be that of an independent contractor, and nothing herein contained shall be construed as creating any employer/employee, partnership, joint venture, agency, or other relationship of any kind. Supplier's employees, agents and representatives (hereinafter collectively "Employees") performing services under this Order shall at all times be under Supplier's direction and control. Supplier shall pay all wages, salaries, and other amounts due its Employees in connection with performance under this Order, and shall be responsible for all reports and obligations for its Employees, including, but not limited to, social security and income tax withholdings, unemployment compensation, worker's compensation, and equal employment opportunity reporting.

**12. SERVICE RATES AND INVOICING.** The rates for straight time and overtime work, for which Supplier will bill Buyer with respect to Services furnished under this Order, shall be those set forth in this Order. Buyer shall make no payment for work performed during holiday or other overtime periods unless such work is expressly authorized in advance by Buyer. Supplier represents that the rates set forth in this Order include all profit, wages, salaries, overhead, taxes, and other costs and expenses. Unless otherwise specified, Supplier shall submit an invoice in duplicate to Buyer's procurement representative at the location identified on the face of this Order and shall include: Order number, Order type, item number, part number (if applicable), and a brief description of the Service or Product. Supplier shall also provide such evidence as Buyer may reasonably require in support of the invoice. No invoice shall be issued prior to completion of Services or shipment of Products.

**13. PRICE WARRANTY.** Buyer shall not be billed at prices higher than those stated in the Purchase Order.

**14. PAYMENT.** Payment due dates, including discount periods, will be calculated from the later of (a) receipt of correct invoice date, or (b) acceptance of Service or Product. Payment terms are as set forth on the front of the Order or, if not so set forth, net 30 days from the later of (a) and (b). Payment of invoice shall not constitute approval or acceptance of Services or Products rendered. At any time prior to final payment under this Order, Buyer may have invoices audited as to validity. Payment of Supplier's invoices shall be subject to adjustment for any amounts found upon audit or otherwise to have been improperly invoiced.

**15. SHIPMENT; RISK OF LOSS.** Shipping and freight is FOB at Supplier's plant, unless otherwise indicated, plus charges for any special packaging or handling required by Buyer. Supplier assumes all risk of loss with respect to the work-in-process Product while in the possession or control of Supplier. Risk of loss passes to Buyer upon delivery to the carrier at the FOB point. No extra charge for packaging or insurance shall be allowed unless specifically noted herein. Products shall (i) be packaged to ensure safe arrival at destination, (ii) be described to conform to carrier's classification rules so as to obtain lowest transportation cost, and (iii) not be insured nor show declared value for shipment beyond FOB point. Supplier shall notify Buyer in advance of shipment so that Buyer may acquire appropriate insurance from the FOB



point to the point of delivery.

**16. SET-OFF.** Buyer is entitled at all times to set off any amount owing at any time from Supplier, or any of its Affiliated companies to Buyer, against any amount payable at any time by Buyer or any of its Affiliated companies to Supplier.

**17. REMEDIES.** Each of the rights and remedies reserved by Buyer in this Order shall be cumulative and in addition to any other or further remedies provided in law or equity or in this Order.

**18. ASSIGNMENT AND SUBCONTRACTING.** The Order may not be assigned, and no rights or obligations hereunder may be delegated, by Supplier without the prior written consent of Buyer, which consent shall not be unreasonably withheld, and any such assignment or delegating in the absence of such prior written consent will be void and of no force and effect whatsoever. Without limiting the generality of the foregoing, the Order will be binding upon and will inure to the benefit of the parties' respective successors and assigns. Supplier may not subcontract any of its rights or obligations under the Order without Buyer's prior written consent. If Buyer consents to the use of subcontractors by Supplier, Supplier shall guarantee and remain liable for the performance of all of the subcontracted obligations and make all payments to its subcontractors. Supplier will indemnify, defend and hold Buyer harmless for all damages and costs of any kind incurred by Buyer and caused by Supplier's failure to pay its subcontractors.

**19. SUBCONTRACTORS; SUPPLIERS.** In the event that Supplier subcontracts all or any portion of the manufacture of the Products identified in this Order, or Supplier delegates any portion of Supplier's performance under this Order, Supplier shall cause all such subcontractors to agree in writing to terms stated in this Order obligating such subcontractor to the same obligations of Supplier hereunder, and Buyer shall be a third-party beneficiary of all such agreements. Supplier shall cause all of Supplier's suppliers providing parts or materials that are to be incorporated into the Product to agree in writing be subject to the same obligations of performance to Supplier as Supplier is to Buyer under these Terms and Conditions, and Buyer shall be a third-party beneficiary of all such agreements.

**20. CHOICE OF LAW.** Supplier and Buyer expressly agree that the validity, interpretation, and performance of the Order will be controlled by and construed solely under the laws of the State of California, excluding the application of its conflicts of law rules; provided, however, the Order shall be given a fair and reasonable interpretation without regard to or aid of provisions of California law which interpret ambiguities against the drafter. Without limiting the generality of the foregoing, it is specifically agreed that the validity, interpretation, and performance of the Order will not be governed by the United Nations Conventions on Contracts for the International Sale of Goods, the application of which is expressly excluded.

## **21. COMPLIANCE WITH LAWS**

21.1 Supplier will comply with all applicable national, state and local laws and regulations applicable to performance of its obligations hereunder, including, but not limited to, the Fair Labor Standards Act of 1938, as amended, the Williams-Steiger Occupational Safety and Health Act of 1970, as amended, and the Equal Employment Opportunity clause prescribed by Executive Orders 11246, 11375, 11625, 11701, and 11758 regarding nondiscrimination because of race, creed, color, sex, age, national origin, physical or mental handicap, or veteran status. If the Products ordered herein are purchased for incorporation into products sold under United States Government contract or subcontract, the terms required to be inserted by that contractor or subcontractor shall be deemed to apply to this order.

21.2 Supplier further agrees to comply with all Customs-Trade Partnership Against Terrorism ("C-TPAT") security guidelines and procedures, unless agreed otherwise by Buyer in writing, and further agrees that it is Supplier's responsibility to ensure that any freight carrier that it uses shall comply with C-TPAT security guidelines and procedures in the transportation or movement of the product to Buyer.



## 22. CONFIDENTIAL INFORMATION; PUBLICITY

22.1 If Buyer and Supplier have entered into a Non-Disclosure Agreement (or Confidentiality Agreement) ("NDA") which covers the disclosure of information under the Order, and if the term of the NDA expires before the expiration or termination of the Order, then the term of the NDA shall be automatically extended to match the term of the Order. The parties shall comply with the provisions of any NDA and shall treat the terms, conditions and existence of the Purchase Order and accompanying Attachments, if any, as "Confidential Information" as defined in the NDA or, in the absence of an NDA, as defined herein.

22.2 In the event the parties have not entered into an NDA, then Supplier shall treat all information, including all intellectual property information provided by or on behalf of Buyer, including, without limitation, the terms, conditions, and existence of the Purchase Order and any Attachments, in whatever form or medium, as Confidential Information and shall not use or disclose the same to any other party at any time during the life of the Order at any time after the termination or expiration of the Order, except where necessary to disclose the same to its employees for the sole purpose of carrying out its obligations under the Order for the benefit of Buyer.

22.3 Supplier will not identify, either expressly or by implication, Buyer or any of Buyer's Affiliates, or use any of their respective trademarks, trade names, service marks, other proprietary marks, or reference the Order in any advertising, press release, publicity matters, or other promotional materials, without Buyer's prior written consent, which consent may be granted or withheld in Buyer's sole discretion.

23. **JURISDICTION; VENUE; FEES; PERFORMANCE.** Suit to enforce the Order may be brought only in the federal and state courts located in the County of Santa Clara, California, and such courts have exclusive *in personam* jurisdiction and venue with respect to each party. In any action to enforce or interpret the Order, the prevailing party is entitled to recover, as an element of the costs of suit, and not as damages, reasonable attorneys' fees to be fixed by the court (including, without limitation, costs, expenses and fees on any appeal). Pending any decision, appeal, or judgment, or the settlement of any dispute arising under, out of, or in connection with the Order (except with respect to any cancellation or termination of Order work), Supplier shall proceed diligently with the performance of the Order.

24. **ENTIRE AGREEMENT.** The terms and conditions of the Order (and a Master Agreement of sale, if any) between Supplier and Buyer constitute the entire agreement between the parties relating to the subject matter hereof and thereof, and supersede all prior or contemporaneous proposals, oral or written, understandings, representations, warranties, covenants, and all communications between the parties relating to the subject matter hereof and thereof. The Order may not be explained or supplemented by any prior course of dealings between Supplier and Buyer, or by trade custom or usage. Except with respect to the terms and conditions of a Master Agreement of sale between Supplier and Buyer, if any, Buyer will not be bound by any additional or different terms and conditions that may be set forth in any Supplier's order acknowledgment, order acceptance, invoice, or other document from Supplier. Such additional or different terms and conditions are deemed to be material alterations to the Order, and Buyer hereby gives continuing notice of its objection thereto.

25. **FORCE MAJEURE.** Neither of the parties will be liable to the other for any delay or failure in performance hereunder due to fires, strikes, threatened strikes, stoppage of work, embargoes, requirements imposed by governmental regulations or civil or military authorities, acts of God or public enemy, or other causes that are beyond the reasonable control of the party unable to perform (a "force majeure event"). If a force majeure event occurs, the party delayed or unable to perform will give immediate written notice to the other party. In the event Supplier is the party delayed or unable to perform, Buyer may elect to (a) terminate the Order relating to the Deliverables not already delivered, without further liability to Supplier; or (b) suspend performance under the Order for the duration of the force majeure event, during which time Buyer may purchase substitute Products and, at the sole option of Buyer, allow Supplier to resume performance once the force majeure event ceases. Buyer's exercise of its rights under subparagraph (b) herein will not prevent Buyer from subsequently terminating the Order. Unless a written notice from Buyer terminating the Order is given, the option under subparagraph (b) herein will be deemed to have been elected by Buyer.



26. **HAZARDOUS AND OZONE DEPLETING SUBSTANCES.** Prior to the first delivery of Deliverables, Supplier will identify to Buyer in writing (a) any toxic or hazardous substances incorporated in or associated with any Products, and in that writing advise Buyer of all precautions to be taken for their use and disposal; and (b) any chlorofluorocarbon or other ozone depleting chemicals manufactured with, contained within, or packaged with any Products. Supplier and all contractors engaged by it will not use any Class I Substances, as defined by the Clean Air Act (as amended) in the manufacture of any Products, and are and will be in full compliance with all stratospheric ozone protection requirements set forth in the Clean Air Act (as amended).

27. **INVOICES.** Supplier will render an invoice (a) for each shipment of Products or (b) after acceptance of Services by Buyer. Each invoice will, at a minimum, contain an Invoice Number, Invoice Date, Supplier's Remittance Address, Buyer's Purchase Order Number, Item Number, Part Number, Description of Products/Services, Quantity, Unit Price, and Total Price. Invoices will be sent to Buyer at the address specified on the face side of the Order.

28. **NOTICES.** A written notice to any of the parties required or permitted under the Order will be deemed to have been duly given (a) on the day of service if served personally on the party to whom notice is to be given; (b) on the day following the day on which notice is deposited with an overnight courier service having package tracking capability; or (c) on the fifth (5th) day after mailing if mailed to the party to whom notice is to be given by prepaid certified mail and addressed to the addressee at the address stated on the face side of the Order.

29. **LICENSE OF RIGHTS**

29.1 Supplier grants to Buyer a non-exclusive, worldwide, royalty-free, irrevocable, perpetual, transferable, and sub-licensable license to any Intellectual Property Rights in the Deliverables which arose outside the scope of the Order to the extent necessary for Buyer to exercise its rights in the Deliverables.

29.2 Supplier grants to Buyer a non-exclusive, worldwide, royalty-free, irrevocable, perpetual, transferable, and sub-licensable license to any Intellectual Property Rights in Products or Services which are necessary for Buyer to use, import, copy, execute, reproduce, display, perform and distribute copies and modify (including improvements and derivative works based on) the Products or Services.

29.3 Buyer hereby grants to Supplier a non-exclusive, royalty free, non-transferable, internal license to use the Buyer Intellectual Property embodied therein for the sole purpose of performing Supplier's obligations under the Order. No Buyer property or Confidential Information may be provided to any third party without the prior written approval by Buyer. All Buyer property or information shall be returned immediately upon Buyer's request. This Section shall survive any completion or termination of the Order.

30. **SEVERABILITY.** If for any reason a court of competent jurisdiction finds any provisions of the Order or portion thereof to be unenforceable, that provision of the Order or portion thereof will be enforced to the maximum extent permissible so as to effect the intent of the parties and the remainder of the Order will continue in full force and effect.

31. **SHIPPING.** All Products will, at no additional charge, be packed and marked by Supplier in containers that are suitable for prevention of damage under normal handling during loading/unloading, shipping, and storage and in accordance with the requirements of the carrier and the specifications of Buyer. Shipments will be made in the quantities and at the times specified by Buyer on the face side of the Order. The number of the Order will be identified on all packages, shipping papers, and other subordinate documents.

32. **CHANGES.** (a) Buyer may at any time, by a written order, make changes within the general scope of this Order for compliance by Supplier, in any one or more of the following: (i) drawings, designs, or specifications, where the supplies or services to be furnished are to be specifically manufactured or produced for Buyer in accordance therewith; (ii) method of shipment or packing; (iii) place of delivery; and (iv) delivery schedule and period of performance of work. If any such change causes an increase or decrease in the cost of or the time required for the performance of any part of the work



under this Order (whether or not changed by such written order), an equitable adjustment shall be made in the Order price or delivery schedule and period of performance, or both, and the Order shall be modified in writing accordingly. Any claim by Supplier for equitable adjustment under this clause shall be asserted within 10 days from the date of receipt by Supplier of the notification of change. In the event that Supplier fails to timely advise Buyer that an adjustment is necessary, such failure shall constitute Supplier's agreement to perform such change in accordance with the price and delivery requirements specified in the original Order and/or any subsequent revisions thereto. (b) Supplier shall immediately notify Buyer of any changes in Product components, materials, specifications, processes, suppliers, and/or location of the manufacturing facility, and Supplier shall obtain Buyer's prior written approval to any such changes or modifications, which approval may be granted or withheld in Buyer's sole discretion.

**33. SURVIVAL OF OBLIGATIONS.** Those terms and conditions of the Order that are intended by their meaning to survive a termination thereof will survive such termination.

**34. TAXES.** The price for Products and Services is exclusive of all applicable sales, use, excise, value added, and similar taxes, duties, surcharges and other charges levied by any governmental authority (collectively "Taxes"). Buyer will pay all Taxes associated with its acquisition of Products; provided, however, the Buyer will have no liability for taxes based upon the income of Supplier or Supplier's employment related taxes. If Buyer claims an exemption from any or all of the Taxes, it will provide Supplier with a validly issued exemption certificate from the appropriate governmental taxing authority.

**35. TERMINATION FOR CONVENIENCE.** Buyer may at any time terminate this Order in whole or in part for its convenience upon written notice to Seller. In the event of termination by Buyer prior to completion of this Order, Seller shall be entitled to reasonable termination charges consisting of a percentage of the Order price reflecting the percentage of the work performed prior to termination, plus any reasonably incurred settlement expenses.

**36. TERMINATION FOR DEFAULT.** Buyer may terminate this Order in whole or in part for default in the event of the occurrence of any of the following: (a)(i) Insolvency of the Seller (Seller shall be deemed to be insolvent if it has ceased to pay its debts in the ordinary course of business); (ii) the filing of a voluntary petition to have Seller declared bankrupt; (iii) the appointment of a receiver or trustee for Seller, or (iv) the execution by Seller of an assignment for the benefit of creditors; or (b) Failure of Seller to (i) deliver the Products or perform the Services within the time specified in this Order or any authorized extension, (ii) make progress so as to endanger the performance of this Order, or (iii) perform to any other substantive provisions of this Order. The Seller shall diligently proceed with performance of any portion of the Order not terminated.

**37. EFFECT OF TERMINATION.** Any termination by Buyer, whether for default or otherwise, shall be without prejudice to any claims for damages or other rights of Buyer against Supplier. Buyer shall have the right to audit all elements of any termination claim, and Supplier shall make available to Buyer on request all books, records, and papers relating thereto.

**38. LIMITATION OF BUYER'S LIABILITY; STATUTE OF LIMITATIONS.** In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages of Supplier. Buyer's liability on any claim of any kind for any loss or damage arising out of or connected with or resulting from this Order, or from the performance or breach thereof, shall, in no case, exceed the price allocable to the Products 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.

**39. WAIVER.** The failure of either party at any time to require performance by the other party of any provision hereof will not affect in any way the full right to require such performance at any time thereafter. The waiver by either party of a breach of any provision herein will not be taken or held by the other party to be a waiver of the provision itself unless such a waiver is in writing.





**40. ADDITIONAL WARRANTIES.**

40.1 Supplier warrants that (a) the Deliverables shall be free and clear of any liens and encumbrances or other claims by any person; (b) upon delivery, Buyer shall have good and valid title to the Deliverables; (c) Supplier it has full power and authority to carry out its obligations hereunder and to grant the rights and licenses granted to Buyer herein; (d) Supplier is not subject to any outstanding agreement or obligation that is in conflict with any provision of the Order or that would preclude Supplier from complying with the provisions hereof; and (e) no other rights, license(s) or payment(s) is required by Supplier or any third party from Buyer to exercise or to carry out the rights or licenses granted to Buyer herein. Each of the foregoing warranties will survive inspection, acceptance, and payment by Buyer. Any Deliverables not meeting one or more of the foregoing warranties will promptly be repaired, replaced or reworked by Supplier at no charge to Buyer. Any inbound and outbound shipping costs of defective Products returned to Supplier for repair or replacement will be borne by Supplier.

40.2 Buyer warrants and represents to Supplier that it has the full power to enter into the Order and to perform its obligations under the Order.

**41. RECORDS RETENTION.** Supplier shall retain all records relating the manufacture of the Products (or the delivery of Services) hereunder, and Supplier's performance under the Order and these terms and conditions for a period of seven years from and after the completion of performance under the Order.

**42. GUARANTEE OF PRODUCT SOURCES.** The Supplier shall ensure that only new and authentic materials are used in products delivered to Buyer. The Supplier may only purchase parts directly from Original Component Manufacturers (OCMs), OCM franchised distributors, or authorized aftermarket manufacturers. Use of product that was not provided by these sources is not authorized unless first approved in writing by Buyer. The Supplier must present compelling support for its request (e.g., OCM documentation that authenticates traceability of the parts to the OCM), and include in its request all action to ensure the parts thus procured are authentic/conforming parts.

**43. SUPPLY CHAIN TRACEABILITY.** The Supplier shall maintain a method of traceability that ensures tracking of the supply chain back to the manufacturer of all Electrical, Electronic, and Electromechanical (EEE) parts included in assemblies and subassemblies being delivered per this order. The traceability method shall clearly identify the name and location of all the supply chain intermediaries from the manufacturer to the direct source of the product for the Supplier and shall include the manufacturer's batch identification for the item(s) such as date codes, lot codes, serializations, or other batch identifications.

**44. CERTIFICATE OF CONFORMANCE AND TRACEABILITY (GOVERNMENT CONTRACTS).** This clause is applicable to all contracts for QPL or QML integrated circuits or hybrid semiconductor devices procured in accordance with MIL-PRF-38534 or MIL-PRF-38535 and semiconductor devices procured in accordance with MIL-PRF-19500. This clause applies regardless of the point of inspection designated in the contract award. This clause applies both to contracts awarded directly to a manufacturer listed on the applicable QPL/QML and to suppliers (e.g., distributors) not listed as approved manufacturers on the applicable QPL/QML.

The parts supplied must be in strict conformance to the requirements set forth and/or referenced in the item description, including applicable revisions and slash sheets. To ensure this conformance, the contractor must provide a Certificate of Conformance and Traceability (CoC/T) with the information and documentation required by the applicable military specification. This documentation must reference the contract number and include a certification signed by the approved QPL/QML manufacturer. In addition, if the material is not procured directly from the approved manufacturer, all additional documentation required by the specification must be provided to establish traceability from the QPL/QML manufacturer through delivery to the Government. The CoC/T is required to determine acceptability of the supplies. If the CoC/T is not provided, is incomplete or otherwise unacceptable, the supplies will be determined not to meet contract requirements and will be rejected.

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If the contract requires inspection and acceptance at origin, the contractor shall furnish the original and two copies of the CoC/T to the Government Quality Assurance Representative (QAR) with the items offered for acceptance. The CoC/T must clearly reference the applicable contract number. Upon acceptance, the QAR shall sign all copies indicating approval of the certification and acceptance of the supplies. The contractor shall submit one signed copy to DSCC-FMTA. The second copy shall be retained by the QAR. The original shall be maintained by the contractor.

If the contract requires inspection and acceptance at destination, the contractor shall mail one copy of the CoC/T to DSCC-FMTA upon shipment/delivery. The CoC/T must clearly reference the applicable contract number.