

# STANDARD ILC DOVER PURCHASE ORDER TERMS AND CONDITIONS

ILC Dover Purchase Orders are made subject to the following terms and conditions, in addition to those stated or referenced on the Purchase Order, and includes any drawings, specifications, schedules, exhibits or other writings incorporated herein. As used in this Purchase Order "Buyer" means ILC DOVER; "Seller" means the party named on the Purchase Order; and "UCC" means the Uniform Commercial Code as in effect from time to time in any appropriate jurisdiction.

## 1. SELLER'S ACCEPTANCE

- (a) Acceptance of this Purchase Order is expressly limited to the terms and conditions contained herein. Any additional or different terms or conditions proposed by Seller shall constitute a counteroffer.
- (b) Seller accepts this Purchase Order by signing and returning an acknowledgment copy of this Purchase Order, by providing other written notice of acceptance which expressly refers to this Purchase Order and accepts the terms hereof, commencement of performance, or acceptance of payment.
- (c) Acceptance of the Purchase Order must be received by Buyer within the time period specified on the Purchase Order. If no time period is specified, then acceptance must be received within 10 days.

## 2. PURCHASE ORDER CHANGES

- (a) Buyer may at any time by written notice to Seller make changes in any one or more of the following (i) applicable drawings, specifications, delivery schedules, exhibits or other writings forming a part of this Purchase Order; (ii) method of shipment or packing; (iii) place of delivery.
- (b) If any such change causes an increase or decrease in the cost or the time required for performance of this Purchase Order, an equitable adjustment shall be made in the price or delivery schedule, or both, and this Purchase Order shall be modified in writing to reflect such changes.
- (c) Any claim for an adjustment pursuant to subparagraph (b) hereof must be asserted within thirty (30) days from the date notice of the change is given by Buyer.
- (d) Buyer may request from Seller an estimate of the increase or decrease in the cost or the time required for performance of any change prior to ordering the same, whereupon Seller shall promptly submit to Buyer a firm bid in writing stating the amount of any increase or decrease. Seller shall not proceed with the change for which any such estimate has been requested unless and until Buyer gives written notice to Seller to make such change.

## 3. DELIVERY

- (a) Time is of the essence in this Purchase Order. Delivery of goods and/or performance of services shall be made at the F.O.B. point and on the date or dates specified on the Purchase Order.
- (b) Should Seller fail to comply with the delivery or performance terms of this Purchase Order, Buyer may terminate this Purchase Order in whole or part and may buy elsewhere and charge Seller any additional expense incurred thereby. Buyer expressly retains all its rights and remedies provided by law in the case of such default, and no action on the part of the Buyer shall constitute a waiver of any right or remedy. Neither Buyer nor Seller shall be liable by reason of any failure to deliver or delay in delivery due to any cause beyond reasonable control without fault or negligence.

## 4. IDENTIFICATION

Identification of the goods under UCC Section 2-501 shall occur upon Seller's acceptance of this Purchase Order or as soon thereafter as the goods are identifiable.

## 5. RISK OF LOSS

Risk of Loss shall be upon the Seller, who has title to the goods and, thus is responsible for loss or damage up until F.O.B. point stated on the Purchase Order; only at that time shall risk of loss and title pass to the Buyer.

## 6. SELLER'S WARRANTIES

- (a) Seller warrants that the goods and/or services subject to this Purchase Order will conform to all applicable specifications and samples furnished or accepted by Buyer, will consist of only first class workmanship and materials (all of which materials shall be new unless otherwise specifically allowed by notation by Buyer on the Purchase Order), will be free from any defects, latent or patent, in material, design, or workmanship.
- (b) Seller warrants that it has complied, and the goods and/or services covered by this Purchase Order will comply, with all applicable federal, state and local laws, rules, regulations and orders, which directly or indirectly regulate or affect the manufacture and/or sale of such goods or services. Seller will furnish Buyer with guarantees and assurances in accordance

with the applicable provisions of any such law, rule, regulation or order which provide a specific written guarantee or assurance to be given by Seller with respect to such goods or services.

(c) Seller warrants that it has, or will have, at the time of delivery, good title to the goods covered by this Purchase Order, and that it has a right to transfer such goods, free from any security interest, lien or encumbrance. Before final payment, Seller shall, if requested, satisfy Buyer by affidavits or otherwise, that there is no outstanding security interest, lien or encumbrance for labor or material against the goods delivered to Buyer.

#### 7. CHANGES TO PARTS AND/OR MATERIALS

No substitution of, nor alteration or change in any goods, component parts thereof, tooling, equipment, sources of raw materials and/or supplies, processes, or manufacturing sites may be made without the prior written consent of Buyer.

#### 8. PRICE

(a) The price of the goods and/or services covered by this Purchase Order shall be the lesser of (i) the amount specified on the Purchase Order or (ii) the lowest price in effect on the date of shipment for comparable goods and/or services in comparable quantities, and Seller shall promptly notify Buyer in writing of any reduction in price required hereunder.

(b) No charge not appearing on this Purchase Order shall be payable by Buyer.

#### 9. INVOICES AND PAYMENT

(a) An invoice for goods and/or services, with evidence of shipment properly signed by carrier's representative, if applicable, shall be submitted to Buyer for each shipment or performance of services. Error or omissions on invoices or delay in the receipt of invoices shall entitle Buyer to withhold payment without penalty or loss of any discount. Payment shall be made per the payment terms on the Purchase Order.

(b) Except as otherwise provided herein, payment for goods and/or services covered by this Purchase Order shall be made only (i) after arrival of goods at destination or after completion of services, (ii) after Buyer's inspection and acceptance of goods and workmanship, (iii) after receipt of the appropriate and corrective invoices, and (iv) insofar as final payment is concerned, after Seller has complied with all of its obligations to Buyer. Buyer shall have the right to set off against this Purchase Order any amounts which may become payable under this Purchase Order and any amounts which Seller may owe to Buyer.

(c) Neither inspection nor payment shall be deemed to waive any rights of the Buyer.

#### 10. PACKING SLIP

An itemized packing slip shall be enclosed with each shipment. Buyer's count shall be accepted as conclusive as to any shipment not accompanied by a packing slip. Acceptance by Buyer of goods accompanied by a packing slip shall not waive Buyer's right to object to shipment.

#### 11. QUALITY CONTROL SYSTEM

(a) Seller shall provide and maintain a quality control system to an industry recognized Quality Standard and in compliance with any other specific quality requirements identified in this Purchase Order.

(b) Records of all quality control inspection work by Seller shall be kept complete and available to ILC Dover LP and its customers. Buyer shall have the right to inspect the goods and/or services at the time and place of delivery or performance before paying for or accepting them.

#### 12. BUYER'S PROPERTY

(a) Any property furnished by Buyer to Seller in connection with this Purchase Order shall be and remain Buyer's property and Seller shall be deemed to be an insurer thereof.

(b) Seller shall segregate, clearly mark and maintain complete inventory of all such property and will notify Buyer of any loss or destruction of or damage to such property.

(c) Upon termination or completion of this Purchase Order Seller shall deliver any such property to Buyer, in good condition subject to ordinary wear and tear and normal manufacturing losses, in accordance with Buyer's instructions, or shall otherwise dispose of such property as directed by Buyer.

(d) Seller shall maintain fire with extended coverage and theft insurance for any such property and provide evidence of such coverage upon request.

#### 13. CONFIDENTIAL INFORMATION

Seller acknowledges that any data, designs or other information disclosed by Buyer to Seller in connection with this Purchase Order is confidential and proprietary to Buyer and that use of or disclosure of this information other than as may be required in the course of Seller's performance of this Purchase Order will be detrimental to Buyer. Seller shall not in any manner

advertise, publish or release any information concerning this Purchase Order without the prior written consent of Buyer, except as may be required by law.

#### 14. ASSIGNMENT AND TRANSFER

Seller shall not assign or transfer any of its rights or obligations under this Purchase Order without the express prior written consent of Buyer.

#### 15. REMEDIES

Buyer and Seller shall have all of the remedies afforded by the UCC, as well as any other remedies which may be provided by law.

#### 16. WAIVER

Failure of Buyer to insist upon strict adherence to any term of this Purchase Order on any occasion shall not be considered a waiver or deprive Buyer of the right thereafter to insist upon strict adherence to that term or any other term of this Purchase Order. Any waiver must be in writing and signed by an authorized representative of Buyer.

#### 17. GOVERNING LAW

(a) This Purchase Order and its performance shall be governed by the UCC and the laws of the State of Delaware. Seller, in performance of this Purchase Order, agrees to comply with all applicable local, state, and federal laws, orders, rules, regulations, and ordinances. Seller shall procure all licenses/permits, pay all fees and other required charges.

(b) Seller represents that each chemical substance constituting or contained in work sold or otherwise transferred to ILC Dover hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 USC Sec. 2601 et seq) as amended.

(c) Seller shall provide to ILC Dover with each delivery any Material Safety Data Sheet applicable to the work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its State approved counterpart.

#### 18. ANTI-KICKBACK PROCEDURES

Federal Acquisition Regulation (FAR) Clause 52.203-7 "ANTI-KICKBACK PROCEDURES" is incorporated herein by reference.

#### 19. EXPORT CONTROL

(a) Seller agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 USC 2751-2794, including the International Traffic in Arms Regulations (ITAR), 22 CFR 120 et seq; and the Export Administration Act, 50 USC app.2401-2420, including the Export Administration Regulations (EAR), 15 CFR 730-774; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Seller agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception.

(b) Seller agrees to notify ILC Dover if any deliverable under this Purchase Order is restricted by export control laws or regulations.

(c) Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorney's fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

#### 20. ELECTRONIC CONTRACTING

The parties agree that if this Purchase Order is transmitted electronically neither party shall contest the validity of this Purchase Order, or any acknowledgement thereof, on the basis that this Purchase Order or acknowledgement contains an electronic signature.

#### 21. INTELLECTUAL PROPERTY

Paragraph (a) is NOT applicable to commercial off-the-shelf work unless such work is modified or redesigned pursuant to this Purchase Order.

(a) Seller agrees that ILC Dover shall be the owner of all inventions, technology, designs, works of authorship, mask works, technical information, and other information conceived, developed, or otherwise generated in the performance of this Purchase Order by or on behalf of Seller. Seller hereby assigns and agrees to assign all right, title, and interest in the

foregoing to ILC Dover, including without limitation all copyrights, patent rights, and other intellectual property rights therein and further agrees to execute, at ILC Dover's request and expense, all documentation necessary to perfect title therein in ILC Dover.

(b) In the event that any Seller pre-existing inventions, technology, designs, works or authorship, mask works, technical information, and other information or materials are used, included, or contained in the work or deliverable items, Seller grants to ILC Dover an irrevocable, nonexclusive, royalty free license to such items.

(b) Seller warrants that work performed or delivered under this Purchase Order will not infringe or otherwise violate the intellectual property rights of any third party.

## 22. TERMINATION

### (a) TERMINATION FOR CONVENIENCE

Buyer reserves the right to terminate this contract, or any part hereof, for Buyer's sole convenience. In the event of such termination, Seller shall immediately cease all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. In case of termination for convenience by Buyer of all or any part of this subcontract, Seller may submit a claim to Buyer within sixty days after the effective date of termination for work completed up to and including the date of Buyer's notification of termination. In no event shall Buyer be obligated to pay Seller any amount in excess of the contract price. The provisions of this article shall not limit or affect Buyer's right to cancel this contract for default.

### (b) TERMINATION FOR DEFAULT

Buyer, may, by written notice to Seller, cancel all or part of this subcontract, if (1) Seller fails to deliver the goods and/or services within the time specified by this subcontract or any written extension; (2) if Seller fails to perform any other provision of this subcontract, or fails to make progress, so as to endanger performance of this subcontract, and, in either of these two circumstances, does not cure the failure within ten days after receipt of notice from Buyer specifying the failure; or (3) 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. In the event of a termination for default, Buyer may acquire, in the manner Buyer considers appropriate, goods and/or services similar to those terminated for default. Seller shall be liable for, and pay to Buyer any costs, including the cost for additional managerial and administrative services, in excess of the subcontract price for the goods and/or services.

## 23. COUNTERFEIT WORK

(a) For purposes of this clause, Work consists of those parts delivered under this Contract that are the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies). "Counterfeit Work" means Work that is or contains items misrepresented as having been designed and/or produced under an approved system or other acceptable method. The term also includes approved Work that has reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable.

(b) Seller agrees and shall ensure that Counterfeit Work is not delivered to Buyer.

(c) Seller shall only purchase products to be delivered or incorporated as Work to Buyer directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. Work shall not be acquired from independent distributors or brokers unless approved in advance in writing by Buyer.

(d) Seller shall immediately notify Buyer with the pertinent facts if Seller becomes aware or suspects that it has furnished Counterfeit Work. When requested by Buyer, Seller shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM.

(e) This clause applies in addition to any quality provision, specification, statement of work or other provision included in this Contract addressing the authenticity of Work. To the extent such provisions conflict with this clause, this clause prevails.

(f) In the event that Work delivered under this Contract constitutes or includes Counterfeit Work, Seller shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Contract. Notwithstanding any other provision in this Contract, Seller shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including without limitation Buyer's costs of removing Counterfeit Work, of reinserting replacement Work and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been exchanged. The remedies contained in this paragraph are in addition to any remedies Buyer may have at law, equity or under other provisions of this Contract.

(g) Seller shall include paragraphs (a) through (e) and this paragraph (g) of this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Work to Buyer.

24. ENTIRE AGREEMENT

This Purchase Order contains the complete agreement of the parties as to its subject matter, supersedes all prior agreements with respect to its subject matter, and may not be amended or discharged except in writing signed by the duly authorized representatives of both parties.