

Purchasing Terms and Conditions

1. DEFINITIONS

- a) "Agreement" shall mean the agreed. Work, Agreement Price and Agreement Documents.
- b) "Agreement Object" shall mean all services and/or goods to be delivered by Contractor to Company under a PO.
- c) "Agreement Price" shall mean the compensation to be paid to Contractor for the Work.
- d) "Company" shall mean Ohio Semitronics, Inc. or the Company named as purchaser in the PO.
- e) "Contractor" shall mean the Company nominated in the PO.
- f) "Contractor Group" shall mean Contractor, any affiliate, subcontractor and vendor of Contractor involved in the performance of the Work, and their respective employees, servants and agents.
- g) "Delivery Date" shall mean the date for delivery of the Work stated in the PO in accordance with *International Commercial terms, 2000 edition*.
- h) "Party" shall mean either Contractor or Company, and collectively named the Parties.
- i) "Purchase Order" (PO) shall mean the formal document, including special conditions and technical specifications and drawings attached or references to such documents, issued by Company to Contractor.
- j) "Third Party" shall mean any part other than Company and Contractor Group.
- k) "Work" shall mean all goods to be delivered by Contractor and all services to be performed by Contractor according to the Agreement, including final documentation and certificates.

2. AGREEMENT DOCUMENTS

The Agreement Documents consists of the PO and these Standard Purchasing Terms and Conditions for Ohio Semitronics, Inc., and any relevant appendices related hereto.

3. INTERPRETATION

In the event of any conflict between the provisions of the Agreement Documents, they shall be given priority in the following order:

- a) PO including special conditions and technical specifications and drawings attached or references to such documents.
- b) All appendices referenced to in each PO.
- c) Frame Work Agreements between Company and Contractor or Contractor Group, if any.
- d) These Standard Purchasing Terms and Conditions for Ohio Semitronics, Inc.

4. PURCHASE ORDERS WITH GOVERNMENT CONTRACT NUMBERS AND DPAS RATINGS - SUPPLEMENTAL PROGRAM REQUIREMENTS

- a. This is a rated order for national defense, emergency preparedness, and energy program use. The Seller and vendor/contractor shall follow all requirements of the Defense Priorities and Allocations system Regulation (15 CFR 700).

- b. The Seller shall maintain a system or method of item traceability which ensures tracking of the supply chain back to the manufacturer of all Electrical, Electronic, and Electromechanical assemblies and subassemblies being delivered per this order.
- c. The seller must certify materials furnished with this order do not contain the following:
 - i. Mercury
 - ii. Asbestos
 - iii. Radioactive luminous material
 - iv. Cadmium

No instruments or test equipment which might cause contamination with these items will be used in the manufacture, fabrication, and assembly or testing of delivered product.

5. RIGHTS AND PROPERTY

Title to the Agreement Object shall pass to Company as parts of the Agreement Object are identified, marked or separated for the purpose of this Agreement or upon delivery of the Agreement Object if this occurs earlier. Irrespective of vesting of title, Contractor will bear the risk of loss and damage of the goods until the same are delivered in good condition and accepted by Company in accordance with the Agreement Documents. Contractor does not have the right to withhold the Agreement Object from agreed delivery to secure a claim against Company, even if the Parties have a disagreement regarding payment to Contractor. Contractor agrees all original work, including but not limited to drawings, specifications, maintenance publications and the like, qualify as work for hire to Contractor and as such are assigned to Company.

6. DELIVERY AND DELIVERY TIME

Time is of the essence with respect to the Delivery Date and Company reserves the right to terminate this Agreement if the specified delivery date is not met. The Work shall be properly delivered at the agreed delivery point, and the agreed Delivery Date according to the Agreement Documents. If Contractor anticipates the Work or a part of it will be delayed, Company shall be given a written notice immediately. Contractor shall within ten (10) calendar days after such notice give information in writing what the course of the delay is and what actions Contractor will undertake to reduce or avoid the delay.

7. PAYMENT AND REVISION

Company is to pay for the Agreement Object in accordance with the Agreement Price and other financial conditions and delivery conditions agreed in the Agreement Documents. (The Invoice is to be given without Ohio sales tax this will be an extra charge where there is liability to sales tax in the State of Ohio in accordance with tax laws of the state of Ohio and Federal Tax laws the United States of America. Invoicing is to be done in accordance with the Agreement Documents. All Payments shall be in the currency agreed in the PO. Company is entitled to audit at Contractor's and his subcontractor's premises all payments for reimbursable work to Contractor and his subcontractors. Company's right to audit does not apply to a subcontractor where the subcontractor entails minor purchases and limited use of hired labor. Company is entitled to audit during the period of Agreement and for up to two (2) years after the end of the year of the Delivery Date. Payment shall not affect Company's audit rights. If

charges are proven incorrect, then a new account shall be prepared, whether or not this is in the favor of Contractor.

8. TRANSFER OF RIGHTS AND SUBCONTRACTORS

Contractor shall not assign or subcontract any part of its rights and obligations under the Agreement without prior written approval from Company. Company, however, may assign its rights and obligations under the Agreement to any of its subsidiaries or affiliates without Contractor's consent. The Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto.

9. QUALITY ASSURANCE AND SUPERVISION

The Contractor Group shall establish a Quality System for the Work, and give information about it to Company. The same obligation to give information applies for revisions of the Quality System. Contractor shall supervise the Work, and notify Company without undue delay if the Work is not in accordance with the Agreement Documents.

10. VARIATION ORDERS

Company has the right to order variations to any part of the Work, including but not limited to, variations to the quantity of Agreement Objects to be purchased, technical specifications and delivery conditions. Contractor shall within ten (10) calendar days confirm in writing to Company as to the impact such variation has on the price and Delivery Date of the Work. Variation orders shall be in writing based on agreed terms, and executed in accordance with the Agreement Documents.

11. CANCELLATION OF ORDERS

Company reserves the right to terminate a PO before substantial Contractor performance commences without any cost to Company. After substantial performance commences, Company may make changes, terminate or cancel existing POs, provided in such event Company shall reimburse to Contractor all reasonable, documented, direct costs incurred by Contractor as a result of such changes, termination or cancellation.

12. GUARANTEES

Contractor warrants the Work and or parts provided will:

- a. strictly conform to the specifications and other requirements stipulated in the purchase order or the attached specification sheets;
- b. be of merchantable quality and fit for the purpose(s) intended;
- c. conform with all applicable laws, ordinances, codes and regulations, and, unless Contractor's standard warranty provides for a longer period,
- d. be free from all defects for a period of twelve (12) months after being placed into service by Company or twenty-four (24) months from date of acceptance by Company, whichever period expires earlier. If within the warranty period, Company or subsequent purchaser discovers any defect, error, nonconformity, omission, deficiency, or breach of any warranty as to the Work, Contractor will promptly repair, re-perform, or replace the goods in question at Contractor's sole cost. Any repaired, re-performed, or replaced

good shall be warranted for a period of twelve (12) months from its acceptance by Company or subsequent purchaser. If Contractor cannot rectify a defect within a reasonable time after being notified of it, then Company shall be entitled to rectify the defect itself or to engage a Third Party to do so. In such case Contractor shall pay the necessary costs of rectification. In addition Company may claim damages for defects according to law.

- e. Conform to part number exactly as requested on Purchase Order. Any substitution or deviation must be approved and acknowledged as acceptable in writing prior to being shipped or invoiced by supplier. Substituted parts will be rejected and returned without approval if not qualified by the Company in writing.
- f. All parts must be supplied by an OEM or another authorized franchised distributor and be new, unused and in good condition unless stated otherwise on this Purchase Order.
- g. Supplier agrees it has a component inspection system in place which will be used in filling this Purchase Order to prevent the shipment of counterfeit parts to Ohio Semitronics, Inc. (OSI).
- h. Supplier should have in place an ESD program which meets or is working towards ANSI/ESD S20.20 requirements regarding the handling, storage and packaging of ESD parts shipped to OSI.

13. LIABILITY AND INDEMNITIES

Contractor shall protect, indemnify and hold harmless the Company and its subsidiaries and affiliates from any loss, cost, damage, or expense arising from

- a. all claims by reason of injury or death to person, or damage to property, caused by, or alleged to have been caused by Contractor Group or goods sold by Contractor hereunder,
- b. all claims by reason of injury or death to person, or damage to property of the Contractor Group,
- c. any claims or actions, incident to any infringement or claimed infringement of any patent in the manufacture and/or sale of Work,
- d. any claims arising out of Contractor Group's failure to comply with any applicable laws, treaties, ordinances, codes, and regulations, and
- e. any claims or liens attaching to the property or equipment of Company.

Company shall protect, indemnify and hold harmless the Contractor and its subsidiaries and affiliates from any loss, cost, damage, or expense arising from any and all claims by reason of injury or death to person, or damage to property of Company. Notwithstanding the aforesaid, in the event Contractor causes any damage to the Work, any free issued items or any other item thereon, Contractor shall be solely liable and shall indemnify Company for all losses, expenses and claims resulting there from. Neither Party shall be liable to the other for any lost profit, lost revenue, lost business opportunity, or any indirect or consequential damages.

14. BREACH OF AGREEMENT

In the event the Contractor becomes insolvent or suspends its payments or breaches of its obligations hereunder and thereafter fails to remedy said breach within the period of time stated by Company, Company may:

- a. cease all payments until obligations are fulfilled, and/or;

- b. terminate the PO with immediate effect, and/or;
- c. claim compensation for losses to Company which are related to the breach. In addition to all of the remedies provided herein, Company hereby reserves all additional rights and remedies provided by law or equity. None of these terms and conditions shall be considered to be waived by Company unless a waiver is specific and is given in writing. No failure on the part of Company to enforce any of these terms and conditions shall constitute a waiver of such terms.

15. FORCE MAJEURE

Force Majeure means an occurrence beyond the control of the Party affected, provided such Party could not reasonably have foreseen such occurrence at the time of entering into the Agreement and could not reasonably have avoided or overcome it or its consequences. Neither Party has failed to meet their obligations in accordance with the Agreement if the carrying out of these obligations is delayed or prevented by Force Majeure. The Party invoking Force Majeure shall, as soon as possible, notify the other Party of the Force Majeure situation. If a force Majeure situation lasts for thirty (30) days or more, Company shall have the right to cancel the Agreement by notice to Contractor.

16. INSURANCE

Contractor agrees to carry at its sole expense the following insurance with first class companies acceptable to Company and on a form satisfactory to Company:

Comprehensive General/Public Liability Insurance including Contractual, Products and Completed Operations Insurance, covering all operations and work hereunder in the amounts of not less than US\$1,000,000 for bodily injury and property damage such insurance shall specifically refer to this Agreement and shall specifically cover on a primary basis the liability assumed by Contractor hereunder.

Contractor also agrees to carry, at its sole expense,

- a. **Workers' Compensation/Employers Liability** covering Contractor's employees. Statutory WC, plus US\$1,000,000 in Employers Liability and in Compliance with the laws of the country in which Contractor is performing work hereunder.
- b. **Umbrella/Excess Liability** no less than US\$1,000,000 in excess of the above listed insurance. All policies shall name Company and all affiliates as Additional Insured on all policies except Workers' Compensation and Employers Liability and provide a Waiver of Subrogation on all policies as respects to work performed or services and products provided under this agreement. Contractor shall immediately furnish Company with a certificate of insurance pursuant to above requirements. Certificate holder will be listed as Company and all affiliated companies. Contractor must provide thirty (30) days notice of cancellation on all policies listed on Certificate of Insurance to Company. Contractor must also insure any free issued items sent by Company to Contractor to be part of the Agreement Object. The above requirements are minimum requirements and shall not limit Contractor's liability to Company and its affiliated companies in any manner.

17. LIQUIDATED DAMAGES

A delay is deemed to exist when the Agreement Object has not been delivered by the Delivery Date. In the event of a delay, Company at its sole option, may immediately terminate the PO or charge Contractor liquidated damages at a rate of 0.15% of the Agreement Price for each day of delay until the Agreement Object is delivered in accordance with the PO. Contractor's cumulative liability for liquidated damages under the Agreement is limited to 10% of the Agreement Price. In the event the PO is terminated for Contractor's delay, Contractor shall be liable to Company for all damages and expenses resulting there from.

18. CONFIDENTIALITY

All Company information is proprietary and confidential to Company and will be used solely by Contractor for the purposes of this Agreement. Any and all such Company information shall be treated and protected by Contractor as strictly confidential and shall not be disclosed to any Third Party without the prior written consent of Company.

19. LAW, DISPUTES AND VENUE

This Agreement shall be construed under and in accordance with the laws of the State of Ohio and the United States of America without regard to conflicts of law principles which would require application of any other law. Disputes arising in connection with or as a result of the Agreement, and which are not resolved by mutual agreement, shall be referred to mediation at Ohio State District Court. Should an agreement not be reached through mediation the dispute shall be settled by the Ohio District Court.

20. ETHICS AND CONFLICTS OF INTEREST

Contractor warrants it has neither given nor received any commissions, payments, gifts, kickbacks, lavish or extensive entertainment, or other things of value to or from any employee or agent of Company or any third party in connection with this Agreement and acknowledges the giving or receiving of same would be a violation of the law or Company's corporate policy and may result in the cancellation of this and all future orders.

21. COUNTERFEIT PROGRAM REQUIREMENTS

- a. The Seller represents and warrants only new and authentic components, subcomponents, parts, material and supplies are procured, used, incorporated into, and/or delivered in performance of this order.
- b. The intentional or unintentional use, incorporation, or delivery of counterfeit parts or counterfeit work is strictly PROHIBITED.
- c. The Seller shall only purchase authentic parts/components/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.
- d. The Seller must make available to OSI, at OSI's request, OCM/EOM documentation which authenticates traceability of the components to the applicable OCM/OEM.

22. FRAUD or FALSIFICATION PROGRAM REQUIREMENTS

On all manufacturing, inspection or test records supplied to OSI the following statement is required "The recording of false, fictitious or fraudulent statement or entries on this document may be punishable as a felony under Federal Statute".

23. QUALITY PROGRAM REQUIREMENTS

The Seller shall maintain a quality management system in accordance with the requirements of ISO 9001 (current version) or equivalent. The Seller's quality program is subject to review at all times by OSI Procurement/Quality Assurance.

For items procured for use in explosive environments, the body responsible for the verification of the OSI Ex Quality System also may verify aspects of any supplier's operation that affects the type of protection.

24. CALIBRATION SYSTEM REQUIREMENTS

Seller shall provide and maintain a calibration system in full compliance with all requirements of ISO 10012-1 and ANZI/NCSL Z540-1 or comparable standards. MIL-STD 45662 is an obsolete standard. Seller's calibration system is subject to review at all times by OSI's Procurement/Quality Assurance.

25. MERCURY-FREE MATERIALS

Mercury found in any compound form is prohibited. Usage of equipment which might cause mercury contamination in the manufacturing, fabrication, assembly, or test of this material, is prohibited. This requirement must be passed on to all subcontractors. With each shipment, Seller shall furnish OSI, with certification stating materials supplied are free of mercury contamination. In the event of any accident involving mercury contamination of the material being furnished on this purchase order or suspicion of such contamination, OSI shall be notified immediately.