



Purchase Order General Terms and Conditions

Acceptance of Purchase Order

The attached purchase order (the “PO” or “Order”) and these terms and conditions constitute the entire agreement between Proxy Manufacturing, Inc. (Proxy) and the SELLER of the product(s) (the “Product(s)”) and/or services (the “Services”) described in the PO (the SELLER). Agreement by SELLER to furnish the materials, and products or services, including the products resulting from services hereby ordered, or its commencement of such performance, or acceptance of any payment, shall constitute SELLER’s unqualified acceptance of this Purchase Order subject to these terms and conditions. In the event that this Purchase Order does not state price or delivery, Proxy Manufacturing, Inc. will not be bound to any prices or delivery to which it has not specifically agreed in writing. Any terms or conditions proposed by SELLER inconsistent with or in addition to the terms and conditions herein contained shall be void and of no effect unless specifically agreed to by Proxy Manufacturing in writing. Modifications hereof or additions hereto, to be effective, must be made in writing and be signed by Proxy Manufacturing’s purchasing representative. These terms and conditions, together with any referenced exhibits, attachments or other documents, constitute the entire agreement between the Parties with respect to the subject matter of this Purchase Order; and supersedes any prior offers (quotes/proposals), negotiations, and agreements written or oral agreements concerning the subject matter thereto.

In the event the articles, supplies, material and/or services covered by this Purchase Order are intended to be used directly or indirectly in the performance of a contract with the United States Government, or with a prime or subcontractor of the said Government, this order shall be deemed to include, in addition to all the terms and conditions set forth herein, all applicable provisions of such contracts, laws, executive orders and regulations of the United States required to be incorporated in this type of contract.

As an AS9100 certified supplier of products and services, Proxy Manufacturing, Inc. maintains an additional set of terms and conditions, [AS9100 Provider Terms and Conditions](#), for purchases that are within scope of the production and delivery of such products and services. If adherence to these additional terms and conditions is required, it will be specifically indicated on the Subcontract, Purchase Order, or Consulting Agreement.

- 1. PRICE.** This is a firm price order. Unless otherwise expressly specified, the prices are stated in U.S. dollars. Buyer shall not be bound to any prices or delivery to which it has not specifically agreed to in writing. Except as otherwise specified herein, or as prohibited by law, Seller shall pay all sales, use, excise or ether taxes, federal, state, or local, that may be imposed upon any of the goods or the parties hereto, by reason of the sale, delivery or use of the goods. If any tax or portion thereof which is included or added to the price paid to Seller for the goods is subsequently refunded to Seller, Seller shall then immediately pay VPC the amount of such refund. Seller warrants that the price charged for the goods is no higher than that charged other purchasers for similar quantities of commodities of like grade and quality.



2. **TERMS OF PAYMENT.** Invoices shall be dated no earlier than date of shipment or delivery of service. The discount period begins upon receipt of invoice, required delivery date, or date of any applicable discrepancy is resolved, whichever date is later. Buyer's payment of an invoice shall not constitute acceptance of the Goods and/or Services and shall be subject to appropriate adjustment for Seller's failure to meet the requirements of this Purchase Order.
3. **ATTACHMENTS.** Documents designated by Buyer in the body of the Purchase Order, including supplemental terms and conditions, if any, are incorporated by reference the same as if set out in full therein.
4. **CHANGES.** The buyer reserves the right at any time to issue a written change order or amendment to the Purchase Order concerning any of the following:
 - a) specifications, drawings, and data incorporated in the Purchase Order where the item to be furnished are to be specially manufactured for the Buyer;
 - b) quantity;
 - c) methods of shipment or packaging,
 - d) place of delivery,
 - e) time of delivery; or
 - f) any other matters affecting the Purchase Order.
5. **TERMINATION.** Buyer may terminate the Purchase Order for its convenience, in whole or in part, at any time prior to shipment by (written or electronic) notice to Seller. Upon receipt of such termination notice, Seller shall promptly comply with the directions contained in such notice and shall, as required, (a) take action necessary to terminate the work as provided in the notice, minimizing cost and liabilities for the terminated work, and (b) continue the performance of any part of the work not terminated by Buyer.
6. **ASSIGNMENT.** Seller may not assign, transfer or subcontract this Purchase Order or any right or obligation hereunder without Buyer's written consent.
7. **EXCUSABLE DELAY.** Fires, floods, strikes, accidents, shortages, or other causes beyond the reasonable control of the parties, which prevent Seller from delivering, or Buyer from receiving, any of the goods and services covered by this Purchase Order, shall suspend deliveries until the cause is removed, subject, however, to Buyer's right of termination for convenience under Paragraph 5.
8. **PACKAGING, PACKING LIST, AND BILL OF LADING.** a) Ship only as specified herein, and in strict conformity with governing tariff rules and regulations; b) Pack or otherwise prepare all goods to meet carrier requirements and safeguard against damage from weather and transportation; c) Mark each package to show Purchase Order number and include a packing list in each package; d) The expense of returning all goods for whatever reason returned shall be the responsibility of the Seller.



- 9. INSPECTION.** All goods and services furnished hereunder will be subject to inspection and test by Buyer, its customers, higher tier contractors, and (in the case of Goods and/or Services purchased for a U.S. Government contract or subcontract) the U.S. Government at all reasonable times and places, but not limited to the facilities of Seller and the Seller's subcontract and will be subject to Buyer's final inspection and approval within a reasonable time after delivery. Buyer may reject goods and services not in accordance with Buyer's instructions, specifications, drawings, data, or Seller's warranty (expressed or implied), or for untimely delivery. Buyer may return rejected goods to Seller at Seller's expense and Buyer shall have no further obligation for such goods. Payment for any goods or services shall be deemed acceptance and in no event shall Buyer incur any liability for payment for rejected goods for service.
- 10. CORRECTIVE ACTION.** Acceptance of this Purchase Order obligates the Supplier to perform, upon request, a corrective action investigation when discrepant material is received by Buyer, a written report shall be furnished, within a reasonable time period, which is specific and conclusive to prevent a reoccurrence of the discrepancy.
- 11. WARRANTIES.** By accepting this Purchase Order, Seller warrants that the goods and services furnished will be free from defects in materials and workmanship, merchantable and in full conformity with Buyer's specifications, drawings, and data and Seller's descriptions, promises, or samples, and that such goods will be fit for the Buyer's intended use, provided Seller has reason to know of such use, and that Seller will convey good title to the goods, free and clear from all liens, claims, and encumbrances. Upon Buyer's request, Seller shall furnish Buyer with a formal waiver or release of all liens by Buyer and/or Buyer's suppliers. Seller warrants that goods or services covered by this Purchase Order shall not infringe any patent, design, mask work, copyright or trademark, of any third party, either directly or contributory. Seller agrees to indemnify Buyer and hold Buyer harmless from and against all liability, loss, damage and expense, including reasonable counsel fees and cost of litigation, resulting from any claim of infringement and any litigation relating thereto. In the case where goods or a part thereof are held to constitute infringement and the use of the goods or a part thereof is enjoyed, Seller shall, at the expense of Seller, either (a) procure for the Buyer the rights to continue to using the goods, (b) replace the goods so that the goods become non-infringing, or (c) retake the goods and refund the purchase price and transportation and installation cost of the goods to Buyer. Such obligations shall survive acceptance of the goods or services and payment therefore by Buyer. Where applicable, the Seller warrants that the goods covered by this Purchase Order are in compliance with all laws, regulations, rules, and orders relating to the importation of goods into the United States, the exportation of goods out of the country of origin, the transit of goods through intermediate countries and the sale and use of foreign made goods in the United States. Seller further warrants that it has obtained all permits, licenses, and certifications necessary for the goods to be exported out of the country of origin, imported in the United States, delivered to Buyer and used or sold within the United States.
- 12. TITLE; RISK OF LOSS.** Title shall pass to Buyer upon Buyer's receipt of goods at destination. Risk of loss of all goods shall remain in Seller until receipt by Buyer at destination, unless



otherwise specified in this Purchase Order, except for loss occasioned by gross negligence or willful neglect of Buyer or its customer. All goods shall be shipped prepaid, insured for the Buyer's full price and F.O.B to the Buyer's main address or other address provided to the Seller.

- 13. CONFIDENTIALITY; LIMITED USE.** Unless otherwise agreed by Buyer in writing, Seller shall keep confidential and not disclose to any third party, any confidential and/or proprietary materials provided by Buyer to Seller in connection with Seller's performance of this Purchase Order or prepared by Seller specifically for Buyer pursuant to this Purchase Order, including but not limited to any drawings, masters, software, specifications, raw materials, components, data, business information or plans, customer list or other customer information ("Confidential Information"). Seller shall not make any copies of Confidential information except as specifically authorized by Buyer in writing. At the completion of this Purchase Order, or upon Buyer's request, Seller shall promptly return to Buyer all Confidential Information not consumed in the performance of this Purchase Order, together with any copies in Seller's possession. Seller shall use Confidential Information solely for Seller's performance of this Purchase Order for Buyer, and Seller shall not, without Buyer's written consent, directly or indirectly use Confidential Information or information derived therefrom in performing services or providing goods for any other customer of Seller, or any other person or entity.
- 14. RESOLUTION OF CONFLICTS OR INCONSISTENCIES OCCURRING IN THE ORDER.** It is Seller's responsibility to comply with this Purchase Order and all referenced documents, and to clarify with Buyer any inconsistencies or conflicts in any parts of the Purchase Order or referenced documents. Should Seller fail to contact Buyer to resolve conflicts or inconsistencies, Seller will be solely responsible for errors resulting from said conflicts or inconsistencies. Where documents are referenced, the version in effect at the time of order placement shall apply.
- 15. BUYER'S TERMS AND CONDITIONS APPLY.** Acknowledgment of the Purchase Order, shipment of any goods, or commencement of work pursuant to the Purchase Order shall be deemed an acceptance of these General Terms and Conditions. No modification of or release from this Purchase Order shall be binding unless agreed to in writing by the parties and specifically labeled as a modification or release. Unless specifically agreed to otherwise by Buyer and Seller, these terms and conditions supersede any submitted by Seller in any proposal or acknowledgment.
- 16. EXTRA CHARGES.** No charges for extras or for cartage or boxing or storage will be allowed unless the same has been agreed upon in writing by Buyer. All goods must be forwarded in accordance with Buyer's shipping instructions, otherwise the difference in freight rate will be charged to Seller.
- 17. SUBSTITUTIONS.** No substitutions of materials or accessories may be made without written permission from Buyer.



- 18. WORK PERFORMED ON BUYER’S OR BUYER’S CUSTOMER’S PREMISES.** If Seller’s work under the Purchase Order involves operations buy Seller on the premises of Buyer of one of Buyer’s customers, Seller shall take all necessary precautions and such additional precautions as Buyer or Buyer’s customer may prescribe to prevent the occurrence of any injury to persons or property during the progress of such work and, except to the extent that any such injury is due solely and directly to Buyer’s or Buyer’s customer’s negligence, shall indemnify Buyer against all claims, liability, damage, or loss (including expenses and attorneys’ fees) which may result in any way from any act or omission of the Seller, or Seller’s agents, employees, or contractors; and shall maintain such public liability, property damage, and employer’s liability and compensation insurance as will protect Buyer and Buyer’s customer from said risk and from any claims under any applicable worker compensation and occupational disease acts.
- 19. IDEMNIFICATION.** Seller agrees to indemnify, defend, and hold Buyer harmless from and against all losses, damages, liability, actions, judgments, cost, and expenses (including, but not limited to, reasonable attorneys’ fees and other expenses of litigation), suffered incurred, or asserted by or against Buyer (a) by reason of Seller’s breach of a warranty, (b) by reason of Seller’s breach of any term of the Purchase Order, or (c) by reason of personal injury, including death, or property damage sustained by a third party, resulting from or arising out of an act or omission of Seller, or Seller’s agents employees, or contractors in fulfillment of this Purchase Order.
- 20. CUMULATIVE REMEDIES; WAIVERS; SURVIVAL OF WARRANTIES.** The remedies herein reserved to Buyer shall be cumulative, and additional to any other or further remedies provided in law or equity. No waiver by Buyer of any term or condition of this Purchase Order shall be construed as permanent waiver of such term or condition or of any other term or condition. Seller’s warranties shall survive the completion or cancellation of this Purchase Order.
- 21. GOVERNING LAW.** This Purchase Order shall be governed by the laws of the State of Massachusetts, U.S.A., except for its provisions regarding principles of conflicts of laws, and except to the extent that federal communications law shall apply. Any court action arising under this order shall be venued in Essex County, MA, U.S.A., in either federal or state court, as is appropriate.
- 22. “GOODS” AND “SERVICES”.** The term “goods” as used herein means any and all materials, parts, products, machines, tooling, test equipment, technical data, computer software, computer software documentation, and other tangible items or documentary information furnished or required to be furnished by Seller under this order. The term “services” means any and all technical assistance, support, maintenance, consultation, construction work, and other effort furnished or required to be furnished by Seller under this order other than labor furnished in connection with the production of goods.



- 23. COUNTERFEIT PARTS.** Only new and authentic materials are to be used in products delivered to Proxy Manufacturing, Inc. (Buyer). No counterfeit or suspected counterfeit parts are to be contained within the delivered product. Parts shall be purchased directly from the Original Component Manufacturer (OCM) or Original Equipment Manufacturer (OEM), or through the OCMS/OEMS franchised distributor. Documentation must be available that authenticates traceability to the applicable OCM/OEM. If suspect/counterfeit parts are furnished under Buyer's purchase order or any other written agreement between the Buyer and Seller, and found in any of the goods delivered hereunder, such items will be impounded by Buyer. The Seller shall promptly replace such suspect/counterfeit parts with parts acceptable to the Buyer and Seller shall be liable for all costs relating to the removal and replacement of said parts. Buyer reserves all contractual rights and remedies to address grievances and detrimental impacts caused by suspect/counterfeit parts.
- 24. CONFLICT MINERALS.** In accordance with Section 1502 of the Dodd-Frank Wall Street Reform Act, Seller agrees to provide "conflict free" minerals and disclose whether products they manufacture or contract to manufacture contain "conflict minerals" that are "necessary to the functionality or production" of those products. "Conflict minerals" refer to gold, as well as tin, tantalum, and tungsten, the derivatives of cassiterite, columbite-tantalite, and wolframite, regardless of where they are sourced, processed or sold. Suppliers must provide certification on CFS smelter compliance and a completed EICCGeSIDD (EICC is now Responsible Business Alliance) survey.
- 25. RECORD RETENTION.** The Seller is required to retain all records related to this Order, including objective evidence of the quality of any items supplied (manufacturing, assembly, inspection, physical/chemical test reports, test and special process records and material certification records) for a period of seven (7) years after the final payment. Records shall be made available to Buyer upon request and at no additional charge.
- 26. ENTIRE AGREEMENT.** Unless superseded by a specific signed agreement between Buyer and Seller, this agreement shall include the Purchase Order, these General Terms and Conditions, and all attachments referred to in the Purchase Order or in the General Terms and Conditions, and it shall constitute the entire agreement of the parties regarding the subject matter contained herein. All other prior or contemporaneous representations, warranties, covenants, or agreements between Seller and Buyer, or their representative, with respect to the subject matter are hereby superseded. This agreement may not be modified except by mutual written agreement of the parties.

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