

AEROFLEX MICROELECTRONIC SOLUTIONS, INC. (HEREINAFTER REFERRED TO AS "PURCHASER" OFFERS TO PURCHASE FROM SELLER THE ITEMS SET FORTH ON THE FACE HEREOF ONLY UPON THE FOLLOWING TERMS AND CONDITIONS OF PURCHASE.

1. **DEFINITIONS:** The term "Seller" shall mean subcontractors, independent contractors, and all other classes of persons performing any type of work or service or furnishing any goods pursuant to this order. The term "Items" shall mean any and all goods, material, or services provided by Seller pursuant to this order.

2. **PRICE; PAYMENT:** Terms of payment shall commence on the date of receipt of items by Purchaser or receipt of Seller's invoice, whichever occurs later. Return of invoice by Purchaser to Seller for any reason not attributable to the fault of Purchaser will extend any payment terms or discount period so that it commences on the subsequent date of receipt of corrected invoice by Purchaser. The price herein specified includes delivery of all Items FOB destination, freight pre-paid, unless this order specifies otherwise. Seller's invoice shall list all applicable Federal, state, and local taxes as a separate item(s). If Seller recovers a refund of, or credit, for any taxes paid to Seller by Purchaser with respect to the sale of the Items, or any taxes measured by the Price of such Items, Seller agrees to pay Purchaser, immediately on receipt, the amount of such refund or credit.

3. **PRICE ADJUSTMENT AND CHARGES:** All items shall be delivered at the Price indicated on the face hereof (herein called "Price") Seller shall not impose any price increases or extra charges of any kind, including charges for packaging, handling, or transportation, unless specifically agreed to by Purchaser in writing. Any general price decrease announced by Seller, and applicable to goods, materials, or services similar to the items on this order, shall automatically reduce the Price of the Items by a comparable percentage.

4. **TIME OF DELIVERY:** The ship date or date of performance indicated by Purchaser, and agreed to by Seller, for the Items shall be considered of equal importance as the Price and quality, time being of the essence for this order. Failure by Seller to meet such specified dates shall constitute a material breach of this order and Purchaser may, at its option, take one or more of the following actions: (a) extend the shipment or performance dates; (b) cancel this order, either in whole or in part, and receive a refund of any monies paid hereunder; (c) require Seller to ship all or part of the Items by, and Seller shall absorb any additional charges required for, prepaid air freight transportation until schedules are current; or, (d) cancel shipment or performance of the order, procure the Items from another source, and receive recompense from Seller for additional costs and expenses incurred in procurement of Items from such other source. Purchaser shall not be liable to Seller for any cost, expense, or loss whatsoever occasioned by such cancellation. Seller agrees to pay Purchaser any penalty and/or damages imposed upon, or incurred by Purchaser resulting from failure of Seller to deliver the Items on specified delivery dates.

5. **QUANTITIES:** It is Seller's responsibility to furnish the specific quantity called for in this order. Except as specified on the face of this order or by written agreement signed by Purchaser, no variation in the quantities specified herein will be accepted as compliance with this order. Purchaser reserves the right to return excess shipments at Seller's expense and risk.

6. PACKAGING AND SHIPPING INSTRUCTIONS

A. **PACKAGING:** All Items are to be suitably packed or otherwise prepared for shipment so as to insure undamaged delivery, secure the lowest transportation rates, and to meet carrier's requirements. No charge will be allowed for packaging, handling, or transportation, unless stated in this order. Any losses and expenses accruing from deviation from Purchaser's routing instructions will be charged to Seller's account.

B. **MARKING:** Each shipping container and all intermediate containers must be marked to show Purchaser's order number, Purchaser's part number with revision letter, quantity, and other information as may be required by this order. A packing list showing said information must be included in each shipment. The container that has the packing list shall be labeled on the exterior "Packing List Enclosed". Once the quantity per shipping and/or intermediate container has been established, future orders for that Item shall be packaged in that quantity.

C. **CONSOLIDATION:** All materials to be shipped on a given day, via the same mode of transportation from a common shipping point to a common address, are to be consolidated into one shipment. Items sold FOB shipping point must be forwarded freight collect unless otherwise specified.

D. **VALUE DECLARATIONS:** (1) FOB Shipping Point On all shipments of glass, quartz, or Items containing precious metals. Seller shall declare the value of such shipments with the carrier at actual value or \$5,000, whichever is less. All other shipments are to be declared at the actual value, except such declarations shall not exceed the highest value allowed by the carrier without charging for additional value declared (maximum free). (2) FOB Destination: Seller must look to Seller's own policy, as shipment is Seller's responsibility until delivery is made to the destination specified on this order.

7. **INSPECTION; ACCEPTANCE:** All Items shall be subject to inspection and testing at destination. Acceptance of Items shall occur when Purchaser determines that the Items have satisfactorily passed inspection or testing. If any items are defective or otherwise fail to meet the requirements of this order, Purchaser, in addition to other remedies set forth herein, shall have the right to reject or to retain and correct such Items, either in whole or in part. In the event Purchaser rejects any Items and Seller is unable to provide conforming Items in a timely manner, Purchaser may exercise the rights outlined in Section 4 hereof. Seller shall pay or reimburse Purchaser promptly for all costs for inspection and rejection of any Item. Payment for any Item shall not be deemed an acceptance thereof or a waiver of any right to test or inspect such Item.

8. **WARRANTIES:** Seller warrants and certifies that (a) the Items will conform strictly to the specifications, drawings, samples, or other descriptions furnished or specified by Purchaser or furnished by Seller and accepted by Purchaser. (b) all Items will be merchantable, of good material and workmanship, and free from defects; (c) unless otherwise specified herein, all Items and the components thereof are new and have not been previously used; (d) the Items are fit for use for their ordinary intended purpose as well as any special purpose specified by Purchaser; (e) any and all Items and the sale thereof do not, and the use of such items for their ordinary intended purpose as well as any special purpose specified by Purchaser will not, constitute infringement or contributory infringement of any patent, infringement of any copyright or trademark, or violation of a trade secret; (f) Seller has good title to the Items free from all encumbrances; (g) the Price herein does not exceed Seller's prices to Seller's best customers or applicable ceiling prices established by law, regulation, or order of any governmental authority; and, (h) the Items herein described, if produced in the United States were or will be produced in compliance with the Fair Labor Standards Act of 1938 as amended or supplemented. These warranties shall survive any inspection, delivery, acceptance, or payment by Purchaser for the Items and are in addition to, and shall not be construed as restricting or limiting, any warranties of Seller, express or implied, which are provided by law or exist by operation of law.

With respect to any defective item or part thereof, or any rejected Item or part thereof, Purchaser, at its option, may (a) return such Item to Seller, at Seller's risk, for credit or, at Purchaser's option, a refund, and Seller shall pay Purchaser for all packing, handling, and transportation expenses; (b) require that Seller promptly pay Purchaser for expenses, including Internal costs, incurred by Purchaser in remedying the defective or nonconforming Items; or, (c) require that Seller will upon notification from Purchaser, expeditiously replace any defective or rejected Item, at Seller's expense. In the event the Purchaser rejects an Item as defective and Seller is unable to provide a conforming Item in a timely manner, Purchaser may exercise the rights outlined in Section 4 hereof. Purchaser may offset against Seller's account expenses incurred to remedy any defective or rejected Item and all handling and transportation expenses incurred with respect to such Item.

9. **INDEMNITY:** Seller will, at Seller's cost and expense, defend, indemnify and hold Purchaser, Purchaser's subsidiary and affiliated companies, and anyone selling or using any of Purchaser's products harmless from and against all present and future expenses, claims, demands, suits, actions, proceedings, or litigation arising out of any alleged liability for, or on account of, any (a) claimed or actual infringement of any patent, copyright, or trademark, or violation of any trade secret by any and all of the Items, the sale thereof, and use of the same for their ordinary intended purposes as well as any special purposes specified by Purchaser; (b) use of Seller's or any third party's information (whether or not proprietary) disclosed to Purchaser under this order, unless Purchaser signs a specific confidentiality agreement with Seller; (c) Injury to, or death of, any person, damage to any property whatsoever, and labor material liens arising out, or on account of, the use of the Items or any work performed by Seller on Purchaser's premises; and, (d) fee, commission, or other compensation claimed by any third party because of alleged services performed or rendered by a third party for Seller in connection with this order. Seller will, on Purchaser's demand, promptly pay or reimburse Purchaser for all losses, costs, damages, obligations, judgments, expenses, and fees suffered or incurred by Purchaser by reason of any such claims, demands, suits, actions, proceedings, or litigation.

10. **ASSIGNMENT; SETOFF:** Seller shall not delegate any duties or assign any rights or claims under this order without the written approval of Purchaser. Any such unapproved delegation or assignment, or attempts thereof, shall be void. All claims for monies due or to become due from Purchaser shall be subject to deduction by Purchaser for any setoff or counterclaim arising out of this or any other or Purchaser's transactions with Seller, regardless of when such setoff or counterclaim arose.

11. **LEGAL COMPLIANCE:** Seller at all times will comply with all applicable Federal, state, municipal, and local laws, orders, and regulations including, but not limited to, (a) those affecting or limiting prices, production, purchaser, sale, and use of materials; (b) the provisions of Executive Order No. 11246 of September 24, 1965, as amended or supplemental, and, (c) the rules, regulations and relevant orders of the Secretary of Labor (all of which establish requirements related to equal opportunities in Employment by Government contractors or subcontractors as specified in the affirmative action clauses set forth in 41 CFR Section 60-1.46, Section 60-250.3 and Section 60-741.3.

12. ANTI-KICKBACK PROCEDURES

A. **DEFINITIONS.** As used in Sections 12 and 13 herein, the following definitions shall apply. "Kickback," means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any Prime Contractor, Prime Contractor Employee, Subcontractor, or Subcontractor Employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a Prime Contract or in connection with a Subcontract relating to a Prime Contract. "Person" means a corporation, partnership, business association of any kind, trust joint-stock company, or individual. "Prime Contract" means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment or service of any kind. "Prime Contractor" means any Person that has entered into a Prime Contract "Prime Contractor Employee" means any officer, partner, employee, or agent of a Prime Contractor. "Subcontract" means a contract or contractual action entered into by a Prime Contractor or

Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a Prime Contract. "Subcontractor" means any Person, other than the Prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a Prime Contract or a Subcontract entered into in connection with such Prime Contract, and includes any person who offers to furnish or furnishes general supplies to the Prime Contractor or a higher tier Subcontractor. "Subcontractor Employee" means any officer, partner, employee, or agent of a Subcontractor.

B. The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any Person from (1) providing or attempting to provide or offering to provide any Kickback; (2) soliciting, accepting, or attempting to accept any Kickback; or (3) including, directly or indirectly, the amount of any Kickback in the contract price charged by a Prime Contractor to the United States or in the contract price charged by a Subcontractor to a Prime Contractor or higher tier Subcontractor.

C. (1) Seller shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph 12.(B) above in its own operations and direct business relationships. (2) When Seller has reasonable grounds to believe that a violation described in paragraph 12.(B) may have occurred, Seller shall promptly report in writing the possible violation. Such reports shall be made to Purchaser and to the inspector general of the Government contracting agency responsible for the Prime Contract, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice. (3) Seller shall cooperate fully with any Federal agency investigating a possible violation describe in paragraph 12.(B). (4) Regardless of the subcontract tier at which a Kickback was provided accepted or charged under this purchase order in violation of paragraph 12.(B), Purchaser may (a) offset the amount of the Kickback against any monies owed by the Purchaser under this purchase order; and/or (b) direct that the Seller withhold from sums owed its Subcontractor, the amount of the Kickback. Purchaser may order that monies withheld under this subparagraph be paid over to Purchaser unless Purchaser has already offset those monies under subparagraph (4) (a) above. In the latter case, Seller shall notify Purchaser when the monies are withheld. (5) Seller agrees to incorporate the substance of this clause, including this paragraph (5), in all subcontracts.

13. SELLER'S REPRESENTATION, WARRANTY AND INDEMNIFICATION OF PURCHASER

A. **SELLER'S REPRESENTATION AND WARRANTY TO PURCHASER:** Seller represents and warrants to Purchaser that neither Seller (including any of its officers, partners, employees or agents) nor any Subcontractor below seller or Subcontractor Employee has (1) provided or attempted to provide or offered to provide any Kickback; (2) solicited, accepted, or attempted to accept any Kickback; or (3) included, directly or indirectly, the amount of any Kickback in the price applicable to this purchaser order or in the subcontract price charged by any Subcontractor to a higher tier Subcontractor.

B. **SELLER'S INDEMNIFICATION OF PURCHASER:** In addition to any other remedies that Purchaser may have, Seller shall indemnify and hold harmless Purchaser from and against any loss or damage, including, without limitation, Purchaser's costs, attorney's fees, or any fines or penalties assessed against Purchaser, resulting from a violation of the Anti-Kickback Act of 1986 by Seller (including any of its officers, partners, employees, or agents), or by any Subcontractor below Seller or Subcontractor Employee

14. NOTICE OF LABOR DISPUTES:

A. Whenever any actual or potential labor dispute delays or threatens to delay the timely performance of this order, Seller shall immediately give written notice thereof to Purchaser, and, if this order relates to a Government contract, Seller will also give notice to the nearest Government representative as specified by Purchaser.

B. Seller agrees to insert the substance of this clause, including this section, in any lower tier subcontract hereunder as to which a labor dispute may delay the timely performance of this order, and each such lower tier subcontract shall provide that the lower tier subcontractor shall immediately notify its next higher tier contractor of all relevant information with respect to such disputes that will delay or potentially delay timely performance. See Federal Acquisition Regulation 52.222-1 for reference.

15. **PRODUCTION MATERIALS:** Notwithstanding the absence of a Government contract or subcontract number on the face of this order, if this order is for the purchase of materials which will be incorporated into, or directly consumed in the manufacturing process of, Purchaser's products ("Production Material"), such Production Materials may be used directly or indirectly in the performance of work for the United States Government ("Government"). If the Production Materials are used in the performance of work for the Government, Purchaser and Seller agree that, in addition to the provisions of this order, Purchaser's Government Contract Terms and Conditions shall be applicable to that portion of the Production Materials used in support of the work for the Government. In the event of a conflict between Purchaser's Government Contract Terms and Conditions and the provisions of this order, Purchaser's Government Contract Terms and Conditions shall govern. The parties agree that for the purposes of Purchaser's Government Contract Terms and Conditions, (unless the agreement of the parties or the context clearly requires otherwise) the term "Contract" shall mean this order and any modifications hereto the term "Contractor" shall mean the Seller, and, the terms "Government" and "Contracting Officer" shall mean Purchaser or its representative.

16. **INSURANCE:** If Seller's performance under this order involves operations by Seller on Purchaser's premises, Seller shall take all necessary precautions to prevent the occurrence of any damage to person or property during the progress of such performance and shall indemnify Purchaser against all loss and expense which may result in any way from any act or omission on the part of Seller, its agents, employees, or subcontractors, except to the extent that any such damage is due solely and directly to the negligence of Purchaser. Seller shall maintain public liability and workers' compensation insurance from reputable carriers in such amounts as are required by law and as Purchaser may reasonably require to protect Purchaser from such risks and from any claims under any applicable Worker's Compensation and Occupational Disease Acts. Upon request of Purchaser, Seller shall furnish to Purchaser certificates of insurance satisfactory to Purchaser prior to the beginning of any performance.

17. **SAFETY AND SECURITY:** All work performed on Purchaser's premises shall be in accordance with Purchaser's safety and security standards and regulations. Purchaser reserves the right to stop any activity which is, in Purchaser's sole opinion, dangerous to persons or property. Failure to comply with Purchaser's safety and security standards and regulations is cause for permissible termination of this order by Purchaser, and, Purchaser shall be entitled to the remedies in Section 4 hereof, as well as all other remedies provided by law or equity. Any advise or warning as to safety measures given by Purchaser shall not be construed to relieve Seller of its liability as an independent contractor.

18. **DISCLOSURE:** Any knowledge or information which Seller may disclose to Purchaser shall not be deemed to be confidential or proprietary information and shall be acquired by Purchaser free from any restriction as part of the consideration for this order, unless Purchaser signs a specific confidentiality agreement with Seller. Any knowledge or information which Purchaser shall disclose to Seller shall be deemed to be confidential, proprietary information of Purchaser, and, Seller, without the prior written consent of Purchaser, shall not disclose (including denial or confirmation of its existences, export as such term is defined by the law and regulation), or use such information except for the purposes for which it was provided.

19. **PROOF OF PAYMENT:** Seller shall furnish (a) affidavits and instruments certifying that payment has been made for all labor, materials, and services furnished in the performance or filling of this order; (b) releases and indemnities as required at the time for payment, and, (c) written guarantees with respect to all labor, materials, and services furnished in the performance of filling of this order. Seller shall also furnish documentation to substantiate any expenses for which Seller seeks reimbursement. Such documentation shall substantiate, to Purchaser's satisfaction, that the expenses were necessary to the performance of this order, did not result from fault of Seller, and were actually incurred. All documents required hereunder shall be in such form and substance as may be required by Purchaser.

20. **ACCEPTANCE OF THE ORDER:** By acceptance of this order and/or by partial or complete performance hereunder. Seller agrees to comply fully with the terms and conditions hereof. Acceptance of the order is expressly limited to the terms and conditions of the order and none of Seller's terms and conditions contained in any quotation, acknowledgment, invoice, or acceptance of the order shall apply. Acceptance by Purchaser of the items shall not constitute acceptance of Seller's terms and conditions. Seller may not ship under reservation. Shipment of any part of this order constitutes acceptance by Seller of all conditions hereof.

21. **MODIFICATIONS; CHANGES:** This order, together with any Pricing Agreement and/or Purchase Release Order signed by Purchaser, contains the complete and exclusive agreement between Purchaser and Seller. No modification or revision of this agreement shall be binding without the written agreement of Purchaser. No attempt at modification shall operate as a waiver. Usage of trade, course of dealing or performance, or consistent additional terms shall not supplement or modify this order except by written agreement signed by Purchaser. Purchaser reserves the right to make, and Seller agrees to accept changes to this order, including, but not limited to, changes to quantities, packing, testing, destination, specification, designs, and delivery schedules. Such changes shall be authorized only by written Purchase Order Revision. If such changes affect delivery or Price, Seller shall notify Purchaser immediately and an equitable adjustment in Price or other terms hereof shall be agreed upon in a written amendment to this order.

22. **TERMINATION:** Purchaser may cancel or terminate this order, either in whole or in part, at any time by giving oral notice of cancellation or termination to Seller, with written or telegraphic confirmation provided if requested by Seller. Such notice shall state the extent and effective date of such cancellation or termination. Upon such cancellation or termination, Purchaser shall pay Seller the Price for conforming Items accepted by Purchaser and reimburse Seller for all reasonable costs incurred in producing work in progress. Seller shall deliver work in progress to Purchaser in accordance with Purchaser's instruction. The compensation outlined in this Section 22 constitutes Seller's exclusive remedy for cancellation or termination of this order pursuant to this Section 22. Cancellation or termination by Purchaser shall not constitute a waiver or release of any and all other rights and remedies of Purchaser in contract or as provided by law.

23. **APPLICABLE LAW; VENUE:** This contract, and the performance of the parties hereunder, shall be construed in accordance with, and governed by, the laws of the State of Colorado.

24. **REMEDIES:** Purchaser's remedies reserved in this order shall be cumulative and additional to any other or further remedies provided in law or equity. In no event shall Purchaser be liable to Seller for incidental, special or consequential damages. All of the terms of this order are material terms and no waiver of, or exception to, any of the terms, conditions, or provisions contained in this order shall be valid unless specifically agreed to in writing by Purchaser.