

PURCHASE ORDER TERMS AND CONDITIONS

1. Terms and Agreement.

- 1.1 The purchase order, together with these Terms and Conditions, and any attachments and exhibits, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively, the "Purchase Order") constitutes the entire and exclusive agreement between Sorenson Engineering, Inc. and its affiliated companies (collectively, "SEI") and the seller identified in the Purchase Order (the "Seller").
- 1.2 SEI's submission of a Purchase Order is conditioned on Seller's agreement that any terms different from, or in addition to, the terms of this Purchase Order, whether communicated orally, electronically, or contained in any written purchase order confirmation, invoice, acknowledgement, release, acceptance, or other written correspondence, irrespective of the timing, shall not form a part of the Purchase Order, even if Seller purports to condition its acceptance of such Purchase Order on SEI's agreement to such different or additional terms.
- 1.3 Seller's electronic acceptance or, acknowledgement of a Purchase Order or commencement of performance thereunder constitutes Seller's acceptance of these Terms and Conditions.
- 1.4 A Purchase Order does not constitute a firm offer (within the meaning of Section 2205 of the California Commercial Code) and SEI reserves the right to revoke or withdraw it at any time prior to acceptance by Seller.
- 1.5 If a Purchase Order is identified by SEI as a blanket order, such Purchase Order will cover only such portion of SEI's requirements for the goods and/or services as SEI in its sole discretion may elect to purchase, from time to time, from Seller. Unless otherwise expressly provided by such Purchase Order, SEI will be under no obligation to purchase goods or services from Seller until an authorized representative of SEI makes a written request to Seller to provide such goods or services.
- 1.6 Notwithstanding the foregoing, if a master agreement covering procurement of the goods and services described in the Purchase Order exists between SEI and Seller, then the terms of such master agreement shall prevail over any inconsistent provisions terms herein.

2. Price and Payment.

- 2.1 Unless otherwise specified in a Purchase Order, the price for the goods and services subject thereto excludes all taxes and other charges, such as shipping and delivery charges, duties, customs, tariffs, imposts and government-imposed surcharges.

2.2 SEI will pay Seller the price in accordance with the payment terms set forth in the Purchase Order within forty-five (45) days after the later of: (a) the date or dates specified in the Purchase Order by which Seller is required to deliver the goods or services (the "Delivery Date"); (b) the date of SEI's acceptance of all of the goods or services; or (c) the date of SEI's receipt of a properly prepared invoice. A properly prepared invoice must include the Purchase Order number and, if required in the Purchase Order, Seller's certification of conformance of goods or services to the requirements of the same.

2.3 SEI may, at any time, set-off any amounts Seller owes SEI against any amounts SEI owes to Seller or any of its affiliated companies.

3. **Shipment and Delivery.**

3.1 Time is of the essence in Seller's performance of its obligations under a Purchase Order. Seller shall immediately notify SEI if Seller's timely performance under a Purchase Order is delayed or is likely to be delayed. SEI's acceptance of Seller's notice will not constitute SEI's waiver of any Seller's obligations under such Purchase Order.

3.2 If only a portion of goods is available for shipment to meet the Delivery Date Seller shall ship the available goods unless directed by SEI to reschedule shipments. If Seller ships goods by a method other than as specified in a Purchase Order, Seller shall pay any resulting increase in the cost of freight incurred over that which would have been incurred had Seller complied with SEI's shipping instructions.

3.3. If, due to Seller's failure to timely ship goods, the specified method of transportation would not permit Seller to meet the Delivery Date, the goods affected shall be shipped by air transportation or other expedient means acceptable to SEI. Seller shall pay for any resulting increase in the cost of freight incurred over that which would have been incurred by the specified method of transportation.

3.4 If delivery of goods or rendering of services is not completed by the time, at the location and in the quantities required by a Purchase Order, SEI reserves the right, without liability and in addition to SEI's other rights and remedies: (a) to terminate the Purchase Order by written notice effective when received by Seller as to stated goods not yet shipped or services not yet rendered; (b) to expedite shipments, including the utilization of air shipments, at the sole cost and expense of Seller; or (c) to purchase substitute goods or services elsewhere and charge Seller with any difference between the cost of the goods or services as set forth in the Purchase Order and the cost of obtaining such substitute goods or services.

3.5 Seller will preserve, pack, package, and handle the goods so as to protect the same from loss or damage and in accordance with best commercial practices, SEI's specifications, governmental regulations, and other applicable requirements. Seller

shall be responsible for any loss or damage due to its failure to properly preserve, package, handle, or pack the goods. SEI shall not be required to assert any claims for such loss or damage against common carrier involved. Without limiting the foregoing, Seller shall observe the requirements of any local laws and regulations relating to hazardous work, including without limitation, with respect to its accompanying information, packing, labeling, reporting, carriage, and disposal.

- 3.6 All goods shall be shipped in conformance with government or freight regulations applicable to chemicals. SEI shall not be liable for any loss or damage caused by a release of chemicals or other hazardous materials to the environment prior to SEI's receipt of the corresponding goods.
- 3.7 Seller will include with each delivery of goods a packing list identifying the Purchase Order number, the SEI part number for each of the goods (if applicable), a description and the quantity of each of the goods, and the date of shipment.
- 3.8 Unless SEI expressly instructs otherwise, Seller will deliver all goods and render all services to SEI at the address set forth in the Purchase Order.
- 3.9 The title and risk in the goods shall remain with Seller until the goods are delivered to the location specified in the Purchase Order and a delivery receipt is signed by an authorized representative of SEI, at which time title and risk in the goods shall transfer to SEI, subject to later rejection.
- 3.10 [Supplier performance is evaluated for On Time Delivery and Quality. Suppliers not meeting expectations are contacted for improvement or maybe removed from the Approved Supplier List.](#)

4. **Inspection and Rejection.**

- 4.1 SEI reserves the right at any time to inspect and/or test goods and/or services. Such inspection and/or testing shall not imply any acceptance of the goods or services nor in any way relieve Seller of any obligation or duty under a Purchase Order or otherwise impose any obligations on SEI. Notwithstanding: (a) payment; (b) transfer of title; or (c) prior inspection or test, all goods and services delivered under a Purchase Order are subject to final inspection and acceptance or rejection by SEI.
- 4.2 Seller shall test the goods to ensure that the goods meet with the applicable specification and acceptance criteria and Seller shall not ship any goods that do not conform thereto. Each shipment must be accompanied by Seller's completed Quality Control Inspection Report, Certificate of Analysis or similar documents requested by SEI. Seller shall provide and maintain a test and inspection system acceptable to SEI and in conformity with industry standards. Records of all testing work by Seller shall be kept complete and available to SEI and its customers during

the performance hereof and for fifteen (15) years after final payment by SEI or for such longer period as may be specified by SEI.

4.3 Seller shall remain liable for the conformance to all Seller warranties of any goods or services even after the same have been assembled, incorporated into, become part of the output of SEI or its customers. On tracing the cause of failure of the assembly or other finished goods, if SEI finds that the failure comes from Seller's breach of warranty, SEI may without limiting any other remedies: (a) reject and return the goods supplied at Seller's expense including transportation charges; (b) claim from Seller the extra cost incurred in reclaiming the other useable goods for further processing; or (c) if reclaiming the other goods is not technically feasible, or not economically justified, claim from Seller the whole cost incurred for scrapping the finished assembly or other finished goods.

4.4 To the extent SEI rejects goods as non-conforming, the quantities under a Purchase Order will automatically be reduced unless SEI otherwise notifies Seller in writing. Seller will not replace quantities so reduced without a new agreement or schedule from SEI. Non-conforming goods will be held by SEI for disposition in accordance with Seller's instructions and at Seller's risk. Seller's failure to provide written instructions within ten (10) days, or such shorter period as may be commercially reasonable under the circumstances, after notice of nonconformity shall entitle SEI, at SEI's option, to: (a) charge Seller for storage and handling; or (b) dispose of the goods, without liability to Seller. Payment for non-conforming goods shall not constitute an acceptance thereof, limit or impair SEI's rights to assert any legal or equitable remedy, or relieve Seller's responsibility for latent defects.

4.5 At all reasonable times during the period of Seller's performance, including the period of manufacture, SEI, its customers and regulatory authorities may enter any manufacturing plant, warehouse, or other premises under Seller's control to inspect and/or test the goods to be furnished hereunder and to inspect processes, tools, and materials used by Seller to perform hereunder. Such right of access to SEI, its customers, and regulatory authorities shall apply: (a) at any level of the supply chain involved in a Purchase Order; and (b) to all applicable records relating to such Purchase Order.

5. Changes.

5.1 SEI may, without charge, change or cancel any portion of a Purchase Order if SEI gives Seller at least thirty (30) calendar days notice prior to the Delivery Date.

5.2 If SEI changes or cancels any portion of a Purchase Order within thirty (30) days of the Delivery Date, SEI shall be responsible for actual costs incurred by Seller as direct result of such change or cancellation, which are not recoverable by shipping the goods or provision of services to other parties within a reasonable time or by Seller, in a commercially reasonable manner, adopting other mitigating measures.

6. **Quality and Warranty.**

6.1 Seller shall maintain an objective quality program for all goods and services supplied or furnished hereunder in accordance with recognized industry standards. Seller shall, upon SEI's request, provide copies of Seller's program and supporting test documentation.

6.2 Seller warrants that all goods and services supplied or furnished hereunder shall: (a) conform strictly to the design criteria, specifications, descriptions, drawings, samples and other requirements referred to in the Purchase Order or provided by the Seller; (b) be free from defects in design, material and workmanship; and (c) be free of all liens, encumbrances, and other claims against title.

6.3 All warranties specified in Section 6.2 above shall: (a) survive any inspection, delivery, acceptance, or payment by SEI; and (b) be in effect for the longer of Seller's normal warranty period or one (1) year from the date of acceptance of the goods or services by SEI.

6.4 NOTIFICATION OF CHANGES -Seller will notify SEI of any changes in product and/or process, changes of suppliers, changes of manufacturing facility location, and where required, obtain SEI's written approval to flow down to the supply chain the applicable requirements including customer requirements.

6.5 RECORD RETENTION - Seller will retain records pertaining to SEI and its goods and services sold to SEI for a minimum of fifteen (15) years and will seek SEI's prior written approval for any disposition of the same.

6.6 PREVENTION OF COUNTERFEIT PARTS – For the 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. Seller agrees and shall ensure that Counterfeit Work is not delivered to SEI. Seller shall only purchase products to be delivered to SEI directly from the original Component Manufacturer (OCM) / Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor supply chain. Work shall not be acquired from independent distributors or brokers unless approved in advance in writing by SEI. Seller shall immediately notify SEI with the pertinent facts if Seller becomes aware or suspects that it has furnished Counterfeit Work. When requested by SEI, Seller shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM. 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. 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. Seller to maintain a process for prevention of counterfeit part.

6.7 CALIBRATION SYSTEM/ SERVICES Seller shall maintain a calibration system that complies with the applicable requirements and latest revision of ISO 10012, ISO 17205 or ANSI/NCSL Z540 or equivalent. If ANSI/NCSL Z540 is applicable, the Handbook shall be used as the interpretive guide. Seller of calibration services shall provide certification that such services were accomplished utilizing standards traceable to National Institute of Standards and Technology.

6.8 Seller to ensure that personnel are aware of:

- Their contribution of to product or service conformity
- Their contribution to product safety
- The importance of ethical behaviour

6.9 Seller understands that the application of acceptance authority media (AAM) is a personal warranty of compliance and conformity and will establish appropriate controls for AAM (e.g., stamps, electronic signatures, passwords).

7. Non-Conforming Goods or Services.

7.1 If any good or service is defective or otherwise not in conformity with the requirements of a Purchase Order, SEI may: (a) return the same for replacement or reworking at Seller's premises; or (b) repair the same and recover SEI's reasonable expenses of repair.

7.2 Seller will notify SEI of any non-conforming product and obtain SEI's written approval for disposition of any non-conforming product.

8. Legal Compliance.

Acceptance of a Purchase Order shall be deemed to include Seller's representation and warranty to SEI that Seller shall, in providing the goods or services subject to the same, comply with any and all applicable laws, executive orders, regulations, ordinances, proclamations, and demands of the federal government or any bureau, agency or department thereof or of any State or local governmental authority which may now or hereafter be applicable to Seller's performance of a Purchase Order.

9. Default.

9.1 If Seller breaches any provision of a Purchase Order, SEI may, except as otherwise prohibited by United States bankruptcy laws, terminate the whole or any part of

such Purchase Order, unless Seller cures the breach within ten (10) work days of SEI's written notice of breach.

9.2 For purposes of Section 9.1 above, the term "breach" shall include, without limitation any: (a) proceeding, whether voluntary or involuntary, in bankruptcy or insolvency by or against Seller; (b) appointment, with or without Seller's consent, of a receiver or any assignee for the benefit of creditors; (c) failure to provide SEI, upon request, with reasonable assurances of performance; or (d) other failure to comply with a Purchase Order.

9.3 In the event that SEI terminates a Purchase Order in whole or in part as provided in Section 9.2 above, SEI may procure, upon such terms and in such manner as SEI reasonably deems appropriate, goods or services similar to the goods or services subject to such terminated Purchase Order. Seller shall reimburse SEI upon demand for all additional costs incurred by SEI in purchasing such similar goods or services.

9.4 The rights and remedies granted to SEI pursuant to a Purchase Order are in addition to, and shall not limit or affect, any other rights or remedies at law or in equity.

10. **Product Stewardship.**

Seller shall, upon request, provide available environmentally related information regarding all materials included in the goods and packaging that Seller ships to SEI.

11. **Taxes.**

Except as otherwise provided in a Purchase Order, the price of the face hereof includes all applicable Federal, State and local taxes in effect on the date of shipment. If any applicable tax shall be repealed, the price stated in a Purchase Order shall be adjusted accordingly.

12. **Miscellaneous.**

12.1 All notices, demands, and other communications which may or are required to be given to or made by either party to the other in connection with a Purchase Order shall be in writing (including fax or other similar writing) and shall be deemed to have been duly given or made: (a) if sent by certified mail, return receipt requested, five days after the posting thereof with first class postage attached; (b) if sent by hand or overnight delivery, upon the delivery thereof; and (c) if sent by fax, upon confirmation of receipt of such fax, in each case addressed to each party as either party hereto may specify from time to time by notice to the other party.

12.2 Neither a Purchase Order nor any of the rights, interests or obligations thereunder shall be transferred, assigned, subcontracted, or otherwise delegated (by operation of law or otherwise) by Seller without the prior written consent of SEI. Any

attempted transfer, assignment, subcontracting, or other delegation of a Purchase Order or any of the rights, interests, duties, or obligations thereunder by Seller in violation of the terms hereof shall be void and of no force or effect. Nothing herein, expressed or implied, is intended or shall be construed to confer upon or give to any person, firm, corporation or legal entity, other than Seller and SEI and their permitted assigns, any rights, remedies or other benefits under or by reason of a Purchase Order.

- 12.3 Except as expressly provided herein, the Purchase Order constitutes the complete agreement of SEI and Seller with respect to the purchase and sale of Seller goods and services and supersedes all prior written or oral agreements or understandings, prior performance, courses of dealing, and industry practices. Except as otherwise provided in Section 5 above, a Purchase Order may not be changed, amended, terminated, augmented, rescinded, or discharged (other than by performance), in whole or in part, except by a writing executed by SEI and Seller which expressly references such Purchase Order.
- 12.4 Any term or provision of a Purchase Order that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions thereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction or arbitrator declares that any term or provision of a Purchase Order is invalid or unenforceable, the court or arbitrator making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration, or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision invalid or unenforceable term or provision, and such Purchase Order shall be enforceable as so modified after the expiration of the time within which the judgment may be appealed.
- 12.5 The relationship between SEI and Seller under a Purchase Order is that of buyer and seller, and Seller shall have no right and shall not attempt to enter into contracts or commitments in the name of, or on behalf of SEI or to bind SEI in any respect whatsoever. Nothing herein shall be construed to make SEI the joint venturer, partner, agent, servant, franchisee or employee of Seller, and Seller shall not have the power to bind or obligate SEI.
- 12.6 Each Purchase Order shall be construed according to the laws of the State of California without regard to its conflict of laws provisions, and each party hereto submits to the exclusive jurisdiction of any state or federal court sitting in the County of San Bernardino, State of California, in any action or proceeding permitted under a Purchase Order relating to or arising out of goods or services subject thereto. The parties specifically waive application of the UN Convention on Contracts for the International Sale of Goods.

12.7 No waiver of any provision of a Purchase Order will be effective for any purpose unless such waiver is specifically set forth in writing signed by an authorized representative of the party to be charged with such waiver. No waiver of any right or remedy in respect to any occurrence or event on one occasion will be deemed a waiver of such right or remedy in respect of such occurrence or event on any other occasion.

12.8. Seller represents and warrants to SEI that Seller has not offered or given, and will not offer or give, any employee, agent, or representative of SEI or any governmental authority any gratuity or improper payment with the intent of securing any business from SEI or influencing such person with respect to the terms and conditions, or performance, of a Purchase Order. Any breach of this warranty shall be a material breach of the terms and conditions of each and every Purchase Order between SEI and Seller.

13. **Nondisclosure of Information.**

13.1 Seller shall hold in strict confidence and not use for itself or any other person all information, specifications, data, processes, reports, or technical or business information submitted by or on behalf of SEI to Seller pursuant to, or in connection with a Purchase Order (collectively, the "SEI Information"). SEI shall retain title to all such SEI Information and Seller shall, at SEI's request or upon completion of a Purchase Order, return or deliver to SEI all such SEI Information. Seller shall not sell, or dispose of as scrap or otherwise, any completed or partially completed or defective goods embodying or comprising any SEI's Information without SEI's prior written consent. SEI shall have the right to audit all of Seller's pertinent books and records in order to verify compliance with a Purchase Order.

13.2 Seller waives all claims regarding SEI's use of all information, specifications, processes, reports, technical data or business information disclosed to SEI in connection with the goods or services covered by a Purchase Order unless, prior to disclosure by Seller to SEI, such items are the subject of a written confidentiality agreement signed by SEI. Seller hereby assigns to SEI all right, title and interest in and to all intellectual property rights (whether or not patentable), and including inventions, trade secrets, trademarks, copyrights and mask work rights in any goods created by Seller for SEI under a Purchase Order. Seller agrees to carry out all formalities to legally vest exclusive ownership to such intellectual property rights in SEI at SEI's expense and request.

13.3 Seller shall not disclose to third parties any information regarding SEI or its business or its customers, including the existence and terms of any Purchase Order, or use such information itself for any purpose other than performing a Purchase Order, without SEI's written prior approval. Seller shall not use SEI's name or any SEI trademark in any advertising or publicity without SEI's prior written approval.

14. **Demand for Reasonable Assurance.**

In the event that SEI has reasonable grounds for insecurity with respect to Seller's performance, SEI may in writing demand assurance of due performance, and, until such assurance is received, SEI may suspend its obligations hereunder. If Seller fails to provide such assurance with fifteen (15) days following receipt of such written demand, such failure shall constitute an anticipatory repudiation of a Purchase Order.

15. Domestic Speciality Metals and **all other materials**.
Seller warrants that any furnished item containing specialty metals is in compliance with DFAR 252.225-7009, section 225.003(10) (was DFAR 252.225-7014 – Alternate I). Seller shall provide evidence of compliance, including flow down to all sub-tiers, when requested by SEI.

All other materials are to be from DFARS approved countries only.

When indicated on applicable Purchase Orders, compliance to regulatory statutes such as FARS/DFARS, REACH, RoHS and Conflict-Free Sourcing is required. Evidentiary documentation may be necessary and made available upon SEI request.