

QUALCOMM Innovation Center, Inc. Standard Purchase Order Terms and Conditions

1. AGREEMENT. These Standard Purchase Order Terms and Conditions shall apply to any Purchase Order (a "P.O.") issued to Seller by QUALCOMM Innovation Center, Inc., hereinafter referred to as "Buyer." Unless otherwise provided in a written agreement executed by Seller and Buyer, each P.O. accepted by Seller, together with all documents expressly referenced in such P.O., the Representations and Certifications form executed by Seller (if any) and these Terms and Conditions, shall constitute the entire agreement (the "Agreement") between Buyer and Seller with respect to the purchase, sale and delivery of the products described in such P.O. (the "Products") and the performance of any work described in the P.O. and shall supersede all prior agreements, understandings and representations between Seller and Buyer with respect thereto. Any additional or different terms stated by Seller in any proposal, quotation, confirmation, acknowledgment, invoice, or otherwise shall be of no force and effect, and no course of dealing, usage of trade, or course of performance shall be relevant to explain or supplement any term expressed in the Agreement.

2. DELIVERY. Unless otherwise expressly specified in the P.O., all deliveries of Products shall be made FOB origin for domestic shipments and FCA for international shipments. Seller shall deliver the Products and/or complete the work specified in the P.O. on or before the applicable "Due Date" indicated in the P.O.; provided, however, that Buyer, in its sole discretion, may refuse to accept Products delivered more than two weeks prior to such Due Date. Time is of the essence in the performance of Seller's obligations under the Agreement. Buyer is responsible for insuring shipments and will not be responsible for the cost of any insurance purchased by Seller covering shipments hereunder.

3. TITLE AND RISK OF LOSS. Seller warrants that it has good and clear title, free from any security interest, lien, or other encumbrance, to all Products to be delivered to Buyer. Title and risk of loss or damage to the Products shall pass to Buyer upon delivery to the FOB point, subject to Buyer's right to reject non-conforming Products. Notwithstanding the foregoing, risk of loss of any non-conforming Products or deliveries shall remain with Seller unless and until Buyer finally accepts such Products or deliveries.

4. INSPECTION; ACCEPTANCE. Final inspection of Products delivered shall be made at Buyer's premises unless otherwise specified in a writing signed by both parties. Buyer shall either accept or reject Products or work within the later of (a) sixty (60) days after the Due Date specified in the P.O. or (b) sixty (60) days after receiving such Products or work. Any nonconformity in any Products or work shall be deemed to substantially impair the value of the Agreement to Buyer and shall entitle Buyer to reject such Products or work or to revoke its acceptance thereof.

At Buyer's option, Buyer may return non-conforming Products or work to Seller, freight collect, or Buyer may modify or adapt non-conforming Products or work to render it acceptable. If Buyer elects to return such nonconforming Products or work, Seller shall issue a return authorization number for all non-conforming Products within 24 hours after Buyer's request, and such non-conforming Products or work shall be the property of the Seller. If Buyer elects to modify or adapt non-conforming Products or work, Buyer may offset all costs incurred in performing any such modifications and adaptations against any and all amounts otherwise due to Seller or, at Buyer's option, may bill Seller directly for such costs.

5. PRICE AND PAYMENT TERMS. The prices of Products delivered and work performed shall be as specified in Buyer's P.O. therefor. The P.O. will specify whether items listed therein are taxable, and Seller shall invoice Buyer accordingly. Buyer shall pay for Products and work accepted within the later of (a) thirty (30) days after Buyer's acceptance of such Products or work or (b) forty-five (45) days after receipt of Seller's invoice therefor. Buyer shall have no obligation to pay for any Products or work that is rejected or as to which acceptance is revoked in accordance with Paragraph 4 above.

6. WARRANTIES. Seller warrants that all Products delivered and work performed under the Agreement shall be free from defects in workmanship and material and fit for the purposes for which such Products or work is intended. Further, all Products delivered and work performed shall contain all new materials, shall strictly conform to the requirements stated in the P.O. and all other specifications furnished by Buyer therefor, and shall conform to Seller's specifications to the extent such specifications are consistent with those provided by Buyer. The foregoing warranties shall remain in effect for a period of one (1) year after Buyer's acceptance of Products delivered or work performed, except that in the case of any latent defect or any defect caused or concealed by fraud or gross negligence, the warranty period shall be extended until the expiration of one (1) year after Buyer's actual discovery of such defect. As a remedy for breach of any of the foregoing warranties, Buyer may elect, at Buyer's option, (a) the repair or replacement of non-conforming Products or work, which shall be accomplished by Seller at no charge to Buyer in accordance with Paragraph 4 above; (b) modification or adaptation of the non-conforming Products or work at Seller's expense in accordance with Paragraph 4 above; or (c) return of the non-conforming Products or

work to Seller and a full refund to Buyer of the aggregate purchase price paid therefore.

7. INFRINGEMENT. In addition to the warranties set forth in Paragraph 6 above, Seller warrants that all Products delivered and work performed shall be delivered free of any claim that such Products or work infringes any patent, copyright, trade secret, or other intellectual property right of any third party, except insofar as such claims are based solely on Seller's literal compliance with Buyer's written specifications for such Products or work. Seller shall indemnify, defend and hold Buyer and its customers harmless against any losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees), arising out of or resulting from any claim alleging facts that, if true, would constitute a breach of the warranty stated in this Paragraph 7. Buyer will notify Seller of any such claim and permit Seller, at Seller's sole expense, to defend or settle such claim.

In the event that any Product or work is determined to infringe any intellectual property right of any third party, Seller shall, at Buyer's option, either: (i) obtain from such third party, at Seller's sole expense, the right for Buyer and Buyer's customers to continue using the infringing Products and/or work, (ii) modify the Products and/or work at Seller's sole expense so as to render them non-infringing, while maintaining substantially identical fit, form and function, or (iii) refund to Buyer the aggregate purchase prices paid for all infringing Products and work.

8. BUYER PROPERTY. All property used by Seller in connection with its performance under the Agreement which is owned, furnished, or consigned by Buyer, or is charged to or paid for by Buyer, including but not limited to materials, tools, dies, jigs, molds, patterns, fixtures, equipment, drawings, specifications and other technical documentation (the "Property") shall be and remain the property of Buyer. Unless already so marked by Buyer, Seller shall identify and conspicuously mark all Property as belonging to Buyer and, upon request, shall furnish Buyer a list of all Property being held by Seller.

All Property shall be used only for Seller's performance under the Agreement and held at Seller's risk and insured at Seller's sole expense in an amount equal to its replacement cost, with loss payable to Buyer. Buyer may inspect and/or remove any Property at any time at no charge to Buyer, and Buyer shall have reasonable access to Seller's premises for such purpose. Seller shall return such Property to Buyer upon Buyer's demand at Seller's sole expense.

9. PATENT AND DATA RIGHTS. Seller agrees to promptly disclose to Buyer and upon request to assign to Buyer, each invention conceived or first actually reduced to practice during the performance of the Agreement. Further, Seller hereby grants to Buyer a royalty-free, non-exclusive, unrestricted, irrevocable, world-wide license to use, duplicate, or disclose for any purpose whatsoever and to authorize others to do so, all data and information (including but not limited to writings, recordings, pictorial reproductions, drawings, computer programs, other graphic representations and works of any similar nature) required to be furnished and/or actually furnished to Buyer under the Agreement.

10. CONFIDENTIALITY; PUBLICITY. Except as necessary for its performance under the Agreement, Seller shall not disclose to any person (including but not limited to any company affiliated with Seller and any consultant or independent contractor of Seller), reproduce, or use any information furnished by Buyer under the Agreement (whether or not marked as confidential or proprietary), and, at Buyer's request, Seller shall return all such information to Buyer. Further, Seller shall not issue any news release, advertisement, publicity, or promotional material regarding the Agreement or Seller's relationship with Buyer without Buyer's prior written consent. The provisions of this Paragraph 10 shall survive the termination or cancellation of any or all P.O.'s under the Agreement.

11. CHANGES. Buyer may at any time instruct Seller to make changes within the general scope of the Agreement in any of the following: (i) Buyer's drawings, designs, or specifications furnished to Seller; (ii) Seller's method of shipment or packing; (iii) the quantities of Products ordered; (iv) the place of delivery; and/or (v) the delivery schedule. If any such change causes an increase or decrease in the cost of, or time required for, performance under the

QUALCOMM Innovation Center Incorporated Standard Purchase Order Terms and Conditions

Agreement, Seller shall have thirty (30) days to request adjustments in the price and/or delivery schedule for Products directly affected by Buyer's changes. To the extent that Buyer agrees to such adjustments, Buyer will revise the P.O. accordingly. Any requests by Seller for adjustments under this Paragraph 11 shall be deemed waived if not asserted within such 30-day period, and failure to agree to an adjustment shall not excuse Seller from performing in accordance with the revised P.O. in the event that Seller makes changes in its design, manufacturing process, or specifications that affect Products to be delivered or work to be performed under the Agreement, even if such changes do not materially alter the form, fit or function of such Products or work. Seller shall inform Buyer of such changes not less than thirty (30) days before the Due Date in the P.O. specified for such Products or work.

12. REPRESENTATIONS. By acceptance of Buyer's P.O., Seller is certifying that Seller is in full compliance with the Fair Labor Standards Act of 1938, as amended, and regulations issued thereunder. Upon request, Seller shall furnish Buyer with satisfactory evidence of its compliance with the representation in this Paragraph 12.

13. EXPORT. Seller agrees to provide to Buyer (i) the Export Control Classification Number and Schedule B number for all Products, pursuant to the Export Administration Regulations issued by the Bureau of Export Control under the Department of Commerce, certificates of origin and NAFTA certificates of origin, if applicable, for all Products and all similar data required by any U.S. government agency in order to export the Products from the U.S., and (ii) all information requested by Buyer in order for Buyer to comply with all applicable laws, regulations and related legal reporting obligations in the country(ies) of destination, including, without limitation, all documentation and/or electronic transaction records to allow Buyer to meet Customs-related obligations, any local content/origin requirements, and to obtain all tariff and trade program duty avoidance and/or refund benefits, where applicable. Seller agrees that all information provided to Buyer shall be accurate, and agrees to indemnify Buyer against any and all financial responsibility arising from Seller's failure to supply accurate information. Such indemnity shall include, without limitation, any fines, penalties, forfeitures, or counsel fees incurred or imposed as a result of actions taken by the importing country's government.

14. YEAR 2000 WARRANTY. Seller warrants that the Products provided under this Agreement will automatically and accurately process calendar date data (including leap year date data) and date data calculations (including, but not limited to, calculating, comparing, and forward or reverse sequencing) for dates prior to, including and beyond January 1, 2000, and that such processing shall not require user to invoke special procedures. The Products will be interoperable with software and/or hardware which may deliver records to, receive records from or interact with the Products in the course of processing data, provided that such other software and/or hardware uses a four-digit year format or such other industry-standard format as Seller and Buyer may mutually agree (collectively referred to as "Year 2000 Compliant"). Buyer shall not be required to pay additional fees associated with any modification of the Products to become Year 2000 Compliant.

This warranty shall be deemed to be a warranty for future performance and shall survive any termination or expiration of this Agreement. In the event that the Products are not Year 2000 Compliant, any limitations on the liability of Seller for breach set out elsewhere in this Agreement or in any other agreement do not apply to the liability of Seller for breach of the warranty set out in this section and Supplier expressly waives such limitations with respect to a Product that is not Year 2000 Compliant as set forth herein.

15. OZONE-DEPLETING CHEMICALS USAGE CERTIFICATION.

Seller whether a manufacturer, importer, wholesaler, distributor, or retailer, is required to reliably and accurately label consistent with the requirements of 40 CFR part 82, (i) all containers in which a class I or class II substance is stored or transported, (ii) all products containing a class I substance and (iii) all products directly manufactured with a process that uses a class I substance, unless the product was manufactured prior to May 15, 1993.

16. TERMINATION; CANCELLATION. Unless otherwise provided in a written agreement executed by Seller and Buyer, Buyer may terminate any P.O. or any portion thereof upon giving notice to Seller of such termination not less than two (2) business days prior to the earliest applicable Due Date set forth in the original P.O., and Buyer will revise or revoke the P.O. accordingly. Within ten (10) business days after receiving notice of such termination, Seller shall advise Buyer in writing of any cancellation charges it desires to impose as a direct result of such termination. To the extent such charges are deemed reasonable in Buyer's sole discretion, Buyer will pay such cancellation charges within forty-five (45) days after the date of the Seller's written request therefor. Any request by Seller for cancellation charges shall be deemed waived if not asserted within ten (10) business days after Buyer's termination notice.

Notwithstanding the foregoing, Buyer may cancel any P.O. or portion thereof without charge at any time upon notice to Seller if: (a) Seller fails to timely perform any of its obligations under the Agreement and such failure is not cured within ten (10) days after written notice of such failure is delivered to Seller, and/or (b) there is or comes to be any material misstatement or omission in the Representations and Certifications submitted to Buyer by Seller (if any) or in any of Seller's representations in Paragraph 12 above.

17. ASSIGNMENT. Seller shall not assign any of its rights or delegate any of its obligations under the Agreement without the prior written consent of Buyer, and any assignment in violation of this provision shall be null and void. Notwithstanding the foregoing, Seller may assign claims for monies due or to become due under the Agreement without Buyer's consent provided that Seller promptly furnishes Buyer with two signed copies of all documentation evidencing such assignment and further provided that payment to any assignee shall be subject to setoff or recoupment of any present or future claim(s) that Buyer may have against Seller. Regardless of any such assignment, Buyer shall continue to deal directly with Seller with respect to all matters other than payment of monies due under the Agreement.

18. INSURANCE. Whenever Seller has in its possession property of Buyer, Seller shall be deemed an insurer thereof and shall be responsible for its safe return to Buyer. Seller shall also maintain at all times during performance of its work related to this Order adequate Workers' Compensation insurance to cover all of its general and special employees engaged in such work, including Employer's Liability coverage; insurance to insure against claims for injury to or death of persons or destruction or damage to property (including Buyer's employees and property) which may arise from Seller's actions or omissions in the performance of its work or in the design or manufacture of its Products, such Commercial General Liability insurance shall specifically include contractual liability coverage; and Business Automobile Liability coverage including coverage for bodily injury and property damage for all owned, hired or non-owned vehicles. Seller shall have all insurance policies endorsed to waive the insurer's rights of subrogation in favor of Buyer.

19. APPLICABLE LAW. The Agreement shall be governed by the laws of the State of California. All disputes arising in connection therewith shall be heard only by a court of competent jurisdiction in San Diego County, California, and the prevailing party in any legal proceeding shall be entitled to recover its reasonable attorneys' fees incurred in connection therewith. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to the purchase of Products or services by Buyer.

20. EQUAL OPPORTUNITY. The Agreement is subject to Executive Order 11246 and Labor Department Order No. 4, including revision of December 4, 1971, OFCCP Order No. 14, January 14, 1972, section 503 of the Rehabilitation Act of 1973, section 402 of the Vietnam Era Veterans Readjustment and Assistance Act of 1974, the Americans with Disabilities Act of 1990, and all rules and regulations promulgated pursuant thereto, as any of such laws or regulations may be amended at any time, all of which are incorporated herein by this reference.

21. MISCELLANEOUS PROVISIONS. No addition or modification of the Agreement shall be effective unless made in writing and signed by the respective representatives of Seller and Buyer. Any delay or failure to enforce at any time any provision of the Agreement shall not constitute a waiver of the right thereafter to enforce each and every provision thereof. If any of the provisions of the Agreement is determined to be invalid, illegal, or otherwise unenforceable, the remaining provisions shall remain in full force and effect. The rights and remedies expressly provided to Buyer herein are not exclusive, but are cumulative and in addition to any other rights and remedies available at law or in equity.

22. CORRESPONDENCE. Seller shall place Buyer's applicable P.O. number and Project number on all notices, correspondence, invoices, packing slips and packages pertaining thereto. All written correspondence other than invoices shall be sent to the attention of the person identified as the "buyer" on the P.O., addressed to: 5775 Morehouse Drive, San Diego, CA 92121. All invoices shall be sent to the attention of the Accounts Payable Department at P.O. Box 919042, San Diego, CA 92191-9042.