



# Mer-Mar Electronics, Inc.

## SUPPLIER, PURCHASE ORDER TERMS and CONDITIONS

Mer-Mar, Electronics, Inc. is hereinafter designated as "Buyer"

1. **ACCEPTANCE** – Buyer shall not be required to accept goods until Seller executes and returns the order acknowledgement. Seller shall be bound by the terms and conditions of this order when it executes and returns the order acknowledgement or commences performance of the work.
2. **DELIVERY** – Time and rate of deliveries are of the essence. Buyer reserves the right to cancel this order and to reject goods upon Seller's default of time, rate, or manner of delivery. Buyer reserves the right to refuse shipments made in whole or in part in advance of delivery schedule in this order. Unauthorized advance deliveries may be returned at Seller's cost.
3. **INVOICES** – Seller must provide Buyer, a packing slip and a separate invoice for each order bearing Buyer's Purchase Order Number shown on this order.
4. **PACKING** – Seller shall be responsible for safe packing, which must also conform to the requirements of carriers' tariffs. Seller shall separately number all cases and packages showing the corresponding numbers on the invoices. An itemized packing slip bearing Buyer's Purchase Order Number shown on this order must be placed in each container. No extra charge shall be made for packing materials unless authority is expressly incorporated in this order.
5. **SHIPPING INSTRUCTIONS** – When FOB point is Seller's plant, Seller agrees to comply with Buyer's standard routine and shipping instructions.
6. **INSPECTION** – All articles are subject to inspection and test at both the place of manufacture and at the destination by Buyer representatives and by Government representatives. Buyer reserves the right to reject and receive full credit for any goods which are defective in material, workmanship, quality, or otherwise, and which article is not in strict conformity with specifications, drawings, or samples approved in writing by Buyer. Without cost to Buyer, Seller will immediately replace all rejected material upon receipt of written instructions by Buyer.
7. **WARRANTY** – By accepting this order, Seller warrants that the goods are free from all defects in materials, workmanship, design and fabrication, and that all goods are of the specified quality, quantity, size description and dimensions, and are strictly in accordance with Buyer specifications, drawings, and any approved samples, and are suitable for the purposes intended by Buyer. The Seller further warrants that, when specified, goods have originated from the manufacturer(s) indicated by the Buyer. All warranties are nonexclusive and shall survive acceptance and payment and shall run to Buyer, its successors, assigns, customers and users of all goods
8. **COUNTERFEIT PREVENTION** -The Seller shall have a counterfeit prevention program in place to ensure that counterfeit materials or goods do not enter the supply chain. The Seller shall be able to demonstrate that reasonable precautions have been taken and warrants that material or goods are not counterfeit.
9. **CHANGES** – Buyer may at any time, by written notice and without notice of sureties or assignees make changes within the general scopes of this order in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipping, or packing; (iii) place of inspection, acceptance of point delivery; (iv) delivery schedule. Should any such change increase or decrease the cost of or the time required for performance of this order an equitable adjustment may be requested in the price or delivery schedule. No claim for such adjustment will be valid unless submitted to Buyer within thirty (30) calendar days from date of such change and such reasonable detail as Buyer may require. Nothing contained in this clause shall relieve Seller from proceeding without delay in the performance of this order.
10. **DEFAULTS – FINANCIAL CONDITION – CANCELLATION** – Buyer may cancel or suspend performance of this order in whole or in part (1) if Seller fails to pay its debts as they generally become due or makes a general assignment for the benefit of creditors or (2) if, at any time Seller defaults in performance or fails to make progress in the work as to endanger performances and provided Seller does not remedy such default within ten (10) days after written notice by Buyer. If the completion cost exceeds the contracted price, Seller shall be liable for such excess. Seller shall not be liable for any excess costs for failure to perform arises out of causes beyond Seller's and Seller's Subcontractor's control. Seller shall not be liable for any excess costs for failure to perform, unless the goods could have been obtained from other sources in sufficient time to comply with the order. The term causes beyond the control may include but is not restricted to, Acts of God or of the public enemy, fire, floods, epidemics, quarantine, restrictions, strikes, freight embargoes or unusually severe weather.
11. **CONTINGENCIES – SUSPENSIONS – CANCELLATIONS** – Buyer reserves the option, either to suspend shipments of goods or to cancel this order, in whole or in part, at any time where such suspensions or cancellations are caused by Government order or other requirements, embargoes, acts of civil or military authorities, acts of the public enemy, inability to secure transportation facilities, strikes, differences with workman, accidents at Buyer's plant or any other law or order of regulation or other contingencies beyond control of Buyer.
12. **TERMINATION FOR CONVIENENCE** – Buyer may, at any time, terminate the order for its convenience in whole or in part, if termination is due to Seller's breach of any condition hereof or Seller's delay, except due to factors beyond the Sellers control and without Seller's fault or negligence, Seller shall not be entitled to any claim of costs or to any profit and Buyer shall have all remedies provided at law or in equity.
13. **TOOLS, MATERIALS AND INFORMATION** – Title to all designs, sketches, drawings, blueprints, patterns, dies, molds, models, tools, gauges, engineering data, technical or propriety information, equipment or special appliances which are the subject of this order shall automatically pass to and become Buyer's exclusive property immediately upon manufacture, procurement or preparation, unless otherwise stated in this order. Any such items or data furnished by Buyer for the performance of this order shall remain the Buyer's property. Upon their manufacture, procurement or preparation, Seller shall immediately identify and segregate any such item or date on consignment at Seller's risk and Seller agrees that such item or data shall be used exclusively in the production of the products required by this order. The items or data shall be subject to disposition by the Buyer at any time and upon demand shall be delivered or returned (as the case may be) to the Buyer. Seller agrees to maintain said items and data in first class condition.
14. **AUDIT – INSPECTION OF RECORDS** – Seller shall maintain adequate records of all direct labor and material costs and all indirect costs relating to the performance of this order. Such records shall be subject to the Buyer's review and audit in the event of cancellation or termination of this order.
15. **NOTICE OF LABOR DISPUTES** – Whenever an actual or potential labor dispute is delaying or threatening to delay performance of this order, Seller shall immediately give notice thereof to Buyer's review and audit in the event of cancellation or termination of this order.



## Mer-Mar Electronics, Inc.

### SUPPLIER, PURCHASE ORDER TERMS and CONDITIONS

16. **INDUSTRIAL LAWS AND TAXES** – Seller agrees that neither Seller nor any of the persons furnishing material or performing work or services which are required by this order are employees of Buyer within the meaning of any Federal or State Unemployment Insurance Law or Old Age Benefit Law or other Social Security Law or any Workman’s Compensation, Industrial or Labor Law. Seller hereby agrees at its own expense to comply with such laws and to assume all liabilities or obligations imposed by any one or more of such laws with respect to this agreement.
17. **TAXES – SALE – USE – DELIVERY** – Federal, State, and local taxes of any nature billed to Buyer shall be stated separately in Seller’s invoices. Seller will accept all tax exemption certificates. Except as otherwise provided herein, Seller agrees to pay all Federal, State, or local sales tax, use tax or other similar excise which may be imposed upon the goods ordered hereunder by reason of their sale or delivery. If taxes are not separately stated by seller at the time of invoice the prices listed in this order shall be deemed to include all applicable taxes related to this transaction.
18. **COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS** – Seller agrees to comply with all applicable Federal, State, and local laws and all orders, rules and regulations issued pursuant thereto, including but not by way of limitation, the Fair Labor Standards Act of 1938 and the Occupational Health and Safety Act of 1970, both as amended. Seller agrees to disclose the source of conflict materials (gold, tin, tantalum and tungsten) as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Section 1502). Additionally, when stipulated by the Buyer, the Seller agrees to comply with the requirements of the Arms Export Control Act (AECA) and the International Traffic in Arms Regulation (ITAR Part 22). Seller agrees to indemnify and hold harmless Buyer against any loss cost, damage, or liability by reason of Seller’s violation of these provisions.
19. **INTELLECTUAL PROPERTY – INDEMNITY BY SELLER** – Seller agrees to defend and hold harmless Buyer, its employees and customers, and those for whom Buyer may act as agent, from all cost, loss and damage by reason of any and all actions or proceedings charging infringement of any patent, trademark or copyright by reason or sale of use of any merchandise furnished hereunder except merchandise for which Buyer furnishes complete specifications.
20. **BUYERS RIGHT TO USE INFORMATION DISCLOSED BY SELLER** - if incidental to performance of this order, Seller discloses to Buyer any unpatented information concerning Seller’s products, manufacturing methods or processes, Buyer shall have the right to use such information for any purpose unless otherwise expressly agreed in writing
21. **CONFIDENTIAL RELATIONSHIP** – Seller agrees to treat as secret and confidential all specifications, drawings, blueprints, samples, and other information supplied by Buyer. Unless Buyer’s written consent is obtained, Seller shall not in any manner advertise or publish or release for publication any statement mentioning Buyer or the fact that Seller has furnished, or quoted articles required by this order.
22. **PRICES** – Seller warrants that the price charged for items covered by this order will not exceed the price charged by Seller to any of its customers for similar items sold in similar quantities. Seller hereby agrees to reimburse Buyer upon Buyer’s request for any and all excess costs charged above Seller’s lowest prices.
23. **ASSIGNMENTS AND SUBCONTRACTS** – Neither the performance or any payments due to Seller under the order shall be assigned or transferred without Buyer’s prior written consent. Seller will not subcontract the furnishings of any of the completed or substantially complete articles required by this order without Buyer’s prior written approval.
24. **INDEMNIFICATION** – In the event Seller, its officers, employees, agents, subcontractors, and/or lower tier subcontractors enter premises occupied by or under the control of Buyer, the government or third parties in the performance of this order, Seller shall indemnify and hold harmless Buyer, its officers, employees and agents from any loss, cost, damage, expense or liability by reason of property damage or personal injury of whatsoever nature or kind arising out of a result of or in connection with such performance occasioned in whole or in part by the actions or omissions of Seller, its officers, employees, agents, subcontractors, and/or lower tier subcontractors. Without in any way limiting the foregoing undertaking, Seller and its subcontractors shall maintain public liability and property damage insurance in reasonable limits covering the obligation set forth above and shall maintain proper Workman’s Compensation insurance covering all employees performing this order.
25. **MODIFICATION OF AGREEMENT** – This order merges all prior agreements and contains all agreements and conditions of these transactions, and no course of dealings or usage of trade shall be applicable unless expressly referred to in this order. None of the terms and conditions contained in this order may be added to, modified, superseded or otherwise altered except by written instrument signed by an authorized representative of Buyer and delivered by Buyer to Seller and each shipment received by Buyer from Seller shall be deemed to be only upon the terms and conditions contained in this order.
26. **GOVERNMENT CONTRACTS** – If this order is issued to fulfill requirements of the United States Government the following applies, the Seller will comply with all applicable requirements of the Federal Acquisition Regulatory System (FAR) as addressed in Title 48 of the United States Code of Federal Regulations.
27. **PATENT RIGHTS** – If this order is for experimental, developmental, or research work, then unless otherwise specified in this order. Seller shall comply with the obligations of the Contractor, as contained in lieu thereof, either FAR 52.227-11, ‘Patent Rights – Retention by the Contractor’ (Short Form) or FAR 52.227-12, ‘Patent Rights – Retention by the Contractor’ (Long Form), as applicable, which are incorporated herein by reference.
28. **RIGHTS - IN - DATA** – Seller shall comply with the obligations of the ‘Contractor’ as contained in lieu thereof ‘Defense FAR Supplement 252.227-7013, ‘Rights in Technical Data and Computer Software,’ which is incorporated herein by reference.
29. **GOVERNING LAW** – This order shall be interpreted in accordance with the laws of the State of California.
30. **CONTRIBUTION TO SUCCESS** – Seller shall ensure that Seller’s personnel and those of sub-tier suppliers, are aware of their contribution to success through product or service conformity, product safety and ethical behavior.