



## **PURCHASE ORDER TERMS AND CONDITIONS**

Key Technology, Inc. ("Buyer") and the seller identified on the front of this Purchase Order ("Seller") agree as follows:

1. **PRICE/TERMS OF PAYMENT.** This Purchase Order (this "Order") is a firm price order. Seller must fill this Order at a price no higher than that last quoted or charged to Buyer. Invoices must be dated no earlier than the shipping date of the Goods. Invoices will only be paid upon proof of delivery. The terms of payment will be those explicitly listed on the face of this Purchase Order. In the absence of specific terms on the PO, standard payment terms will default to Net 90 days from receipt of Goods and a correct invoice. If discountable invoices are applicable, discounts will be allowed on invoices (a) dated between the 1st and 15th days of any month if payment is made by the 25th of that month and (b) dated between the 16th and 31st if payment is made by the 10th of the following month. Seller will not ship Goods C.O.D. without Buyer's prior written consent. Unless itemized in this Order, Seller will pay all sales and excise taxes, duties, tariffs and fees, if any, on the Goods. The term "Goods" includes all tools, tooling, prototypes, machines, equipment, jigs, dies, templates, patterns, molds or means of production that Supplier specially develops, manufactures or otherwise acquires to produce the Goods and/or services described in this Order. Seller agrees that all of Seller's right, title and interest in and to those Goods will be transferred and delivered to Buyer. Seller's obligations under this Order are not severable. Payment for any Goods will not be deemed acceptance and in no event will Buyer incur any liability to pay for rejected Goods.

2. **CHANGES.** Buyer may change the (a) specifications, drawings and data incorporated in this Order where the items to be furnished are to be specifically manufactured for Buyer; (b) quantity; (c) methods of shipment or packaging; (d) place of delivery (e) time of delivery; and (f) any other matters affecting this Order, by giving Seller written notice of those changes. If a change causes an increase or decrease in the cost or delivery schedule for the Goods, Buyer will submit an adjusted price and/or delivery schedule. Those adjustments will be deemed incorporated into this Order unless Buyer receives Seller's written objection within 10 days after the date of the proposed adjustments.

3. **CANCELLATION.** If Buyer cancels all or any part of this Order for its convenience, Seller will immediately stop work on the Goods, and Buyer will be liable to Seller only to the extent the Goods have actually been produced. Buyer's sole liability will be limited to Seller's actual costs (excluding overhead, lost opportunity costs and lost profits) incurred as of the date of cancellation. If Buyer cancels all or any part of this Order for a breach or default by Seller, Buyer will be entitled to all remedies available under law.

4. **ASSIGNMENT.** Seller may not assign, transfer or subcontract this Order or any right or obligation under this Order without Buyer's written consent. Any purported assignment, transfer or subcontract will be void.

5. **DELIVERY/PACKING/INSPECTION.** Unless otherwise provided in this Order, shipment will be F.O.B. destination. Buyer will not pay any packing charges unless those charges are itemized in this Order. Seller must submit a separate invoice for all returnable containers. Buyer may return those containers to Seller, freight collect. Buyer may inspect the Goods within a reasonable time after delivery and (a) return any non-conforming Goods to Seller at Seller's expense, in which case Buyer will have no further liability for those Goods; (b) retain those non-conforming Goods, in which case Seller will pay Buyer's damages; or (c) exercise any of its other remedies. Payment will not constitute acceptance.

6. **TITLE/RISK OF LOSS.** No matter who pays for shipping and delivery costs, title and risk of damage to and the loss or destruction of the Goods will remain with Seller until Buyer has received and accepted the Goods at Buyer's location.

7. **SPECIAL PROPERTY.** All special dies, molds, patterns, jigs, fixtures, and any other property which Buyer furnishes to Seller or pays for, will be and remain Buyer's property, will be subject to removal upon Buyer's instruction, will be for Buyer's exclusive use, will be held at Seller's risk, and will be kept insured by Seller at Seller's expense while in its custody or control in an amount equal to the replacement cost, with loss payable to Buyer. Seller will furnish copies of policies or certificates of insurance on Buyer's demand.

8. **EXCUSABLE DELAY.** Fires, floods, strikes, lockouts, epidemics, accidents, shortages or other causes beyond the reasonable control of the parties, which prevent Seller from delivering, or Buyer from receiving delivery of any of the Goods and services covered by this Order will suspend deliveries until the cause is removed, subject, however, to Buyer's right of cancellation under Paragraph 3.

9. **WARRANTIES.** Seller warrants that the Goods and services furnished under this Order will (a) for a period of no less than five years, (i) be free from defects in materials and workmanship, (ii) be and perform in full conformity with Buyer's specifications, drawings and data and Seller's descriptions, promises or samples, (iii) be merchantable, and (iii) be fit for Buyer's intended use; (b) be free from all liens, charges, encumbrances and claims of every nature; (c) comply with all applicable federal, state and local laws, ordinances and regulations, including the Fair Labor Standards Act of 1938 as amended and all OSHA regulations and national electric codes; (d) not infringe on any patent, copyright or intellectual property right of any third party. These warranties will survive satisfaction of this Order and are in addition to any warranties of greater scope given by Seller to Buyer. No implied warranties by the Seller are excluded. If Seller breaches any of these warranties, Buyer will be entitled to all remedies available at law or equity, and Seller further agrees that in that event, Buyer may offset any amounts owing under this Order against any amounts owing under any other order or agreement with Seller or any of Seller's affiliates.

10. **INDEMNITY.** Seller agrees to defend, indemnify and save the Buyer harmless against all liabilities, claims or demands, including attorney fees prior to and at trial and on any appeal (a) whether in tort or in contract for injuries or damages to any person or property arising out of Seller's act or omissions in the performance of this Order; and (b) based on any breach of warranty, including any claim that any Goods or any component part furnished under this Order infringes upon the rightful claim of any third party, including any U.S. or foreign letters patent or trademark (unless resulting from adherence to specifications furnished by Buyer).

11. **CONFIDENTIALITY.** If Seller obtains or develops any confidential information ("Information") about Buyer, the Goods or any process used to produce the Goods, Seller will hold and will ensure that each of its employees holds the Information in confidence and will not disclose it to any other person or entity. Seller agrees that Buyer owns all Information, including Information invented, discovered, acquired or developed by Seller and will assist Buyer in obtaining the rights to that Information. Seller agrees that it will not use the Information for any purpose other than to fulfill its obligations under this Order and that Seller's right to use the Information as contemplated by this Order expires upon Seller's completion of its obligations under this Order or upon termination of this Order for any reason, including a breach by Buyer. Supplier acknowledges that the Information is inherently intertwined with the design, repair, manufacture or assembly of the Goods and/or services contemplated by this Order and that therefore it will be impractical and extremely difficult to safeguard the proprietary nature of the Information. Consequently, without limiting the preceding, Seller agrees that it will not (i) directly or indirectly use the Information in the design, repair, manufacture or assembly of any product (a "Similar Product") that is similar to or competes with the Goods or (ii) assist any other person in the design, repair, manufacture or assembly of any Similar Product for a period commencing on the date of this Agreement and expiring on the seventeenth anniversary of this Agreement or on the last possible date on which any patents for the Goods expire, whichever is later, without Buyer's prior written consent. Seller agrees that its obligations under this Paragraph 11 will survive the performance of this Order and any breach of this Order by Buyer. The terms of this Order are in addition to and not in place of any confidentiality agreement between Buyer and Seller.

12. **SECURITY AGREEMENT.** To secure performance of all of Seller's obligations to Buyer, Seller grants to Buyer a security interest in all raw materials for the Goods and in the Goods themselves in whatever stage of completion, whether now in existence or coming into existence at any time in the future. A copy of this Order may be filed as a financing statement (without notice to or consent of Seller) in which case Seller is debtor, and Buyer is secured party.

13. **WAIVER/MODIFICATION.** Buyer's failure to insist on Seller's strict performance of the terms and conditions of this Order at any time will not be construed as a waiver by Buyer of performance in the future. No modification of or release from this Order will be binding unless Buyer agrees in writing.



14. **MISCELLANEOUS.** Time is of the essence. Acknowledgment of this Order or shipment of any Goods or rendering of any service under this Order will be deemed an acceptance of these terms and conditions. Except as expressly provided in this Order, these terms supersede any inconsistent terms submitted by Seller in any proposal, acknowledgment, invoice or similar document. This Order will be governed by the substantive laws of Oregon, except for the Convention for the International Sale of Goods. Any action or proceeding relating to this Order may, at Buyer's election, be brought in any state or federal court located in Multnomah County, Oregon. If any action or proceeding is brought elsewhere, Seller agrees to change the venue to the venue designated in the preceding sentence. Seller consents to service of process by certified or registered mail at the address for Seller on the front of this Order. If any dispute arises out of this Order, the prevailing party will be entitled to collect its actual attorney fees and costs from the nonprevailing party, including attorney fees and costs on appeal. Seller agrees that any ambiguity, contradiction or inconsistency will not be construed against Buyer. Use of the words "includes" or "including" is not limiting in any way.

**Internal Note – With any and all changes: Notify Marketing to update documents on Key website!**