

## **TERMS AND CONDITIONS OF PURCHASE**

### **STERLING TECHNOLOGIES, INC. ("Buyer")**

#### **1. FORMATION OF CONTRACT**

(a) A contract between Sterling Technologies, Inc., Buyer, and Seller incorporating these terms and conditions, will come into existence and effect at Erie, Pennsylvania, upon receipt by Buyer of any acknowledgement of or delivery made under this order, which acknowledgment or delivery shall be deemed an acceptance by Seller of all the terms, conditions, agreements and instructions herein contained.

(b) There are no understandings or agreements relative to this contract that are not fully expressed herein, and the making, performance and discharge of this contract shall be governed by Pennsylvania law and any litigation hereunder shall be in the state or federal courts located in Erie County Pennsylvania.

#### **2. PRICES**

(a) Prices, if not shown on Buyer's order, must be quoted by Seller upon acknowledgment. No price for goods under this order may be higher than prices last quoted or charged, unless expressly agreed to by Buyer, or may be higher than maximums set by governmental regulations, and the amount payable shall be the lower of Seller's than current price or the agreed price, or said legal maximum. If payment has been made, Seller will be liable to repay any amounts overpaid by Buyer.

(b) It is understood that any price concessions do not involve any compromise on individual commissions, code prices, or other illegal concessions and that such concessions are, and are represented by Seller to be the result of Free competition of Seller's ability to lower costs correspondingly for the quantity ordered.

(c) Prices quoted shall be the total and only cost to Buyer, and payment thereof, upon performance by Seller in strict accordance with this contract shall be Buyer's sole liability hereunder. No additional charges for boxing, crating, cartage, handling, transportation, or service may be made, and prices quoted shall be deemed to have included therein any and all fees, duties, assessments, and taxes. Seller hereby accepting and assuming exclusive liability for timely payment of such fees, duties, assessments and taxes, including all taxes upon the sale, handling, transportation, use, consumption, possession or ownership of or otherwise in respect to the goods, and shall indemnify and save harmless the Buyer from such taxes, and Seller hereby undertakes to

reimburse Buyer on demand for all sums Buyer may pay under any law in event of Seller's failure to comply therewith.

### **3. PAYMENT**

(a) In no event will payment be due prior to actual delivery and inspection by Buyer.

(b) The period within which discount may be taken shall start from the date of receipt of the invoice, or of receipt of the goods, whichever is later, by Buyer, and Buyer shall be entitled at all times to set off any amount owing from Seller to Buyer against any amount due or owing to Seller with respect to this order.

### **4. SHIPMENT**

(a) Seller grants Buyer the right to at any time specify the carrier and/or method of transportation to be employed in conveying any part or all of the goods covered herein.

(b) Promptness of deliveries is of the essence. If Seller delays in deliveries, Seller will ship express prepaid at Buyer's request, without additional expense to Buyer. If deliveries are delayed, Buyer may substitute other materials in place of those ordered from Seller. Where such substitutions results in higher cost, or use of materials not according to Buyer's specifications, then, Seller agrees to pay whatever additional costs, expenses, losses, or damages Buyer sustains, and, in addition, Seller agrees to pay all damages caused by such delay, or substitutions. Seller agrees to accept return of all materials for which substitution has been made, at Seller's expense, if Buyer so elects.

(c) Goods shipped to Buyer in advance of Buyer's delivery schedule or in excess of amounts ordered may be returned to Seller at Seller's risk and expenses.

### **5. QUALITY OF GOODS AND LIABILITIES**

(a) Seller warrants that goods furnished hereunder are of the highest grade and of the highest quality equal to the highest standard of their kind, and if goods furnished do not in whole or any part meet these standards, and/or do not accord with descriptions, specifications, samples, or warranties expressed or implied, in fact or in law, Buyer may at any time reject such goods and may, at its option, demand replacement at Seller's expenses, or may substitute other materials. If such replacement or such substitution results in any additional costs, expenses, losses or damages whatever to Buyer, Seller agrees to pay any and all such additional costs, expenses, losses or damages on demand. Any goods rejected under this provision may be returned to Seller without Seller's authorization at Seller's risk and expense and rejected goods may be replaced only on Buyer's demand, and on new invoices. The acceptance of goods by Buyer shall not waive or adversely affect any claim or cause of action arising out of defects in

material, materials being not up to standard or not in accord with description, specifications or samples and/or warranties expressed or implied existing in fact or in law.

(b) Seller agrees to indemnify and hold the Buyer harmless against any and all liabilities whatsoever incurred by Buyer for damages and/or injuries arising out of defective material or workmanship in the goods supplied hereunder and Seller's failure to deliver said goods.

(c) If Seller's work under this order involved operations by Seller on the premises of Buyer or Buyer's customer, Seller shall indemnify Buyer against all loss which may result in any way from any act of omission of Seller, its agents, employees, or subcontractors and Seller shall maintain such Public Liability, Property Damage and Employees Liability and Compensation insurance as will protect Buyer from said risks. Further, if Buyer has to resort to the Courts and commence litigation to recover any money or property due to Buyer under this agreement, Seller agrees to pay all of the Buyer's costs and expenses related to the litigation including, but not limited to, reasonable attorney fees and expert witness fees.

## **6 WAIVER**

(a) Waiver of any breach shall not constitute waiver of any other breach of the same or any other provision. Acceptance of any item or payment therefore shall not waive any breach. Buyer's remedies shall be cumulative and any remedies herein specified do not exclude any remedies allowed by law.

(b) All warranties, expressed or implied, in fact or in law and all remedies therefore shall continue to operate in favor of Buyer, unless expressly waived in writing, and a waiver in one instance or in part shall not extend to other instances or parts.

## **7. COMPLIANCE**

The Seller, by accepting this order, agrees that goods furnished on this order were manufactured in accordance with all acts, orders, and regulations of the Federal, State, and Municipal Government.

## **8. SUBSTITUTION AND MODIFICATION**

(a) No change or modifications in or to specifications, drawings, equipment, materials to be used or furnished, or the contract provisions shall be effective against Buyer, except upon approval thereof in writing to Buyer's executive officer or other duly authorized party at Buyer's plant, and until such changes or modifications are approved as herein provided by the terms thereof.

(b) This order is subject to modification by Buyer in the event of, and Buyer shall in no way be liable for any delay or damages arising out of, fire, accidents, strikes, governmental acts, floods, riot, or other conditions beyond Buyer's control, and Buyer shall have the right to suspend deliveries or payments therefore during the period of such conditions or delay, without liability whatsoever for any damages or additional costs arising therefor.

## **9. ASSIGNMENT AND CANCELLATION**

(a) Buyer herein is relying upon Seller's personal performance, and Seller agrees not to assign this order or delegate the performance of its duties without Buyer's consent in writing.

(b) Buyer shall have an unrestricted right to cancel and terminate this contract forthwith, without any liability therefrom whatever, upon the happening of any one or more of the following events:

- (1) Seller's insolvency or commission of an act of bankruptcy;
- (2) filing of a petition in bankruptcy by or against Seller;
- (3) institution of legal proceedings against Seller by creditors or stockholder;
- (4) appointment of a receiver for Seller;
- (5) if, in the sole judgment of Buyer, Seller's condition shall be such as to endanger performance hereunder.
- (6) delay in shipment beyond time specified for shipment; or
- (7) inferior quality in, or breach of, any warranty as to goods shipped in any one of a series of shipment.

Acceptance of goods after such attempted assignment or delegation, or after occurrence of any events above enumerated shall not prevent cancellation as to the unfilled balance of the order.

## **10. BUYER'S PROPERTY**

(a) Unless otherwise agreed in writing, all special jigs, tools, or dies, purchased for the manufacture of merchandise, hereby ordered, shall be furnished by and at the expense of Seller, with an option of Buyer to reimburse Seller for Seller's cost therefore,

and upon reimbursement to become the owner and entitled to possession of the same.

(b) All plans, drawings, designs, specifications, tools, equipment or material of every description furnished by Buyer to Seller, or specifically paid for by Buyer, and any replacement thereof, or any materials affixed or attached thereto, shall be the property of Buyer, shall be plainly marked by Seller as property of the Buyer, and safely stored by Seller when not in use. Such property may not be used by Seller except in filling Buyer's orders, and while held by Seller shall be at Seller's risk and shall be subject to removal by Buyer on request, in which event Seller shall prepare such property for shipment and redeliver it to Buyer in same condition as when originally received by Seller, ordinary wear and tear excepted.

(c) Seller shall be liable for any damage to property to Buyer from any cause whatever.

## **11. PATENTS AND TRADEMARKS**

(a) Seller warrants that the sale or use of the goods covered by this order either alone or in combination with others will not infringe or contribute to the infringement of any patents, trademarks or copyrights, either in the U.S.A. or in foreign countries, and Seller agrees to defend every suit brought against Buyer or any party selling or using any of Buyer's products for alleged infringement of any patent by reason of the sale or use of said goods alone or in combination with other goods, and to pay all expenses, costs, damages recovered profits, and counsel fees incident thereto.

(b) Whenever Buyer so requests, by blueprint notation or written instruction, Seller will place on goods covered by this order, in the manner specified by Buyer, such Trademark and/or identifying Mark as Buyer may specify without cost to Buyer. If the material specified in this order is peculiar to Buyer's design, either as an assembly or component part of an assembly, or bears the Buyer's Trademark and/or identifying Mark it shall not bear the trademark or other designation of the make or Seller and similar material shall not be sold or otherwise disposed of to anyone other than Buyer.

(c) Any unpatented knowledge or information concerning Seller's products, methods, or manufacturing processes which Seller discloses to Buyer incident to the manufacture of the goods covered by this order shall be deemed to have been disclosed as a part of the consideration for this order, and Seller agrees not to assert any claim against Buyer by reason of Buyer's use or alleged use thereof.

## **12. GOVERNMENT CONTRACTS**

As to any of the material contained in this order, which is for delivery under government contracts where the Buyer's customer terminates, Seller likewise agrees to accept termination upon notice from Buyer, and settlement shall be by agreement. Upon failure to agree within a reasonable time, settlement shall be made pursuant to the

standard U.S. Government Termination provisions then in force.

In addition, all terms and conditions contained in Buyer's Form entitled "Additional Terms and Conditions Applicable to Government Contract" shall apply to this agreement as if contained herein whether attached to this order or not. If not attached, copies of Form 13P-AOO will be furnished to Seller upon request.

### **13. EQUAL OPPORTUNITY CLAUSE**

Executive Order 11246 of September 24, 1965, "The terms and conditions of Subpart B, Section 202, Paragraphs (1) through (7) of Executive order 11245 as amended are incorporated as a part of the terms and conditions of this purchase order."