

## ESAM, Inc Standard Terms of Purchase

1. **DEFINITIONS:** "Buyer" means ESAM, Inc "Seller" means the party identified on the face of an order. Products" means all articles, materials, products, work or services to be furnished pursuant to an order. Seller will not make any modification to the Products, raw materials used to make Products, or the specifications without prior written consent from Buyer.

2. **ACCEPTANCE:** An "order" is an offer to purchase and when accepted by Seller becomes the exclusive agreement between the parties relating to Products. Any of the following shall constitute Seller's unqualified acceptance of an order: (i) written acknowledgement; (ii) furnishing of any Products pursuant to an order; (iii) acceptance of any payment for Products; or (iv) commencement of performance pursuant to an order. Seller shall issue written acknowledgments within 5 business days of order receipt. Notwithstanding the foregoing, an order shall not operate as a rejection of any offer by Seller (but merely of the terms and conditions contained within such offer) unless such offer contains variances in the description, quantity, price or delivery schedule of the Products. No terms stated by Seller in accepting or acknowledging an order shall be binding upon Buyer if inconsistent with or in addition to the terms stated herein unless accepted in writing by Buyer.

3. **PRICE:** If no price is stated herein, the price charged Buyer for the Products shall be the lowest of (i) the price last quoted by Seller or last paid by Buyer to Seller, or (ii)

Seller's lowest price charged any customer for the Products, regardless of any special terms or conditions.

4. **INSPECTION:** All Products shall be received subject to Buyer's right of inspection & rejection. Defective Products or Products not in strict conformance with an order or Buyer's or Seller's description or specifications, will be held for receipt of instructions, at Seller's risk, and if Seller so directs, will be returned, at Seller's expense. If Buyer does not receive such written instructions within 45 days of Buyer's request therefore, Buyer may, without liability to Seller, dispose of the goods, as it deems appropriate, at its sole discretion. Buyer may, by written notice to Seller, and in addition to other remedies provided by law, require replacement or correction of rejected Products. Payment for goods on an order prior to inspection shall not constitute acceptance thereof or a waiver of a breach of warranty and is without prejudice to any claim(s) of Buyer. Seller shall inspect all Products prior to shipment to ensure conformance with all requirements of an order.

5. **PACKING AND SHIPPING:** All items shall be packaged, marked and otherwise prepared in accordance with good commercial practices & Buyer's instructions, if any. Each package must be numbered & labeled with Buyer's order number, stock number (if applicable), contents, & weight. An itemized packing list shall be included in each shipment & the package containing the packing list must be clearly marked as such. Each packing

list shall bear the Buyer's order number & an accurate description of the Products and quantities in the shipment. Products shipped in excess of Buyer's order may be returned at Seller's expense. Buyer will not be responsible for any Products furnished without a written order.

6. **DELIVERY:** Delivery of goods shall be F.O.B. Buyer's location and shall not be complete until goods have actually been received and accepted by Buyer. Notwithstanding any agreement to pay freight, the risk of loss or damage in transit shall be upon the Seller.

7. **TAXES:** Seller shall pay any federal, state, local or foreign taxes or other governmental charges upon the production, transportation or sale of the goods supplied hereunder. Unless otherwise stated, the prices do not include sales or use taxes applicable to the goods. All such taxes and charges shall be shown separately on Seller's invoice.

8. **WARRANTY:** Seller warrants that all Products, for the later of a period of 15 months from the date Buyer receives the Product or 12 months from the date the Product becomes usable by the end user, shall: (i) be of good quality & workmanship and free from defects, latent or patent, in material or workmanship, (ii) conform in all respects to the Specifications, performance standards, drawings, samples or descriptions of Seller and Buyer, (iii) be free of any claim of any third party; and (iv) be manufactured in accordance with generally accepted good manufacturing (including, but not limited to cGMP, if applicable) and quality practices. These warranties are in addition to all other

express warranties and legal rights. No remedy available to Buyer for the breach of any warranties shall be limited except to the extent and in the manner expressly agreed upon by Buyer in an executed document. Buyer's approval of any sample or acceptance of any Products shall not relieve Seller from responsibility to deliver Products and to perform services conforming, in all respects, to the sample. These warranties shall not be deemed waived either by reason of Buyer's acceptance of Products or by payment for them and shall survive delivery. In the event of a breach of warranty, Buyer may return such Products, at Seller's expense, for correction, replacement or credit as Buyer may direct. This warranty shall apply to replacement Products & parts. Seller shall effectuate corrections or replacements within 10 days of receipt of Products.

#### **9. CONFIDENTIAL**

**INFORMATION:** Seller agrees to keep secret & confidential all confidential, proprietary or non-public information of Buyer and the existence, terms and conditions of an order ("confidential information"). In addition, the Seller agrees to (i) disclose the confidential information only to its employees who need to know for purposes of fulfilling an order, and (ii) use the confidential information only for the purpose of fulfilling an order. It is understood that no license (expressed or implied) is hereby granted by the Buyer under any confidential information.

#### **10. NOTIFICATION**

**REQUIREMENT: TIME IS OF THE ESSENCE.** If, for any reason, at any time, Seller shall refuse or be unable, or should reasonably anticipate being unable to deliver any part or all of the Products in

accordance with the terms hereof, Seller shall notify Buyer of such refusal or inability at the earliest possible time and by the most practical means under the circumstances. Such notification shall not be deemed to operate as a release of Seller from its obligations under an order. Buyer shall have the right to replace, modify and/or cancel any delayed open orders without any liability to Seller. In the event of such a replacement or modification, Seller shall pay to Buyer (or at Buyer's option, it may offset such amount from any amount owed to Seller) promptly upon demand, an amount equal to the cost of such replacement or modification, less the amount which would have been payable to Seller for an equal quantity and quality of Products, plus any amount incurred by Buyer to effectuate such replacement or modification. Such amount is agreed to be damages for Seller's non-performance and shall not, in any event, be construed to be a penalty. Price increases or extensions of time for delivery shall not be binding upon Seller unless evidenced by a change order issued by its authorized representative.

#### **11. INTELLECTUAL PROPERTY:**

Seller hereby grants a perpetual, paid-up license relating to any Software or other embodiment of intellectual property embedded in the Products, as necessary for Buyer's purchase, use, maintenance and/or sale of Products. Seller expressly warrants that all copyrightable works of original authorship (including but not limited to computer programs, technical specifications, documentation and manuals), ideas, inventions

(whether patentable, patented or not), know-how, processes, compilations of information, trademarks and other intellectual property (collectively, "Deliverables") shall be original to Seller and shall not incorporate any intellectual property (including copyright, patent, trade secret, mask work, or trademark rights) of any third party. All Deliverables that are created in the course of performing any order (separately or as part of any Products), and all intellectual property rights in Deliverables, are owned by Buyer and not by Seller. Seller agrees that all works of original authorship created by Seller in connection with each order are "works made for hire" as that term is used in connection with the U.S. Copyright Act. To the extent that, by operation of law, Seller owns any intellectual property rights in the Deliverables, Seller hereby assigns to Purchaser all rights, title and interest, including copyrights and patent rights, in such Deliverables.

#### **12. INDEMNIFICATION AND**

**INSURANCE:** Seller shall defend, indemnify, and hold harmless Buyer, its officers, employees, agents, representatives, customers or affiliates ("Buyer's Affiliates") from any claim, suit, loss, cost, damage, expense (including, without limitation, the costs and expense incurred in defending suits or actions alleging liability) to any person of whatsoever nature of any kind arising out of, as a result of, or in connection with (i) Seller's performance of an order; (ii) omissions or negligence of Seller or its officers, employees, agents, representatives, affiliates or subcontractors; (iii) the Products; or (iv) a claim for infringement of rights in, to or

under patents, trade marks, copyrights or other IP rights by the manufacture, design, use, maintenance, support or sale of any Products. Without in any way limiting the foregoing, Seller and any person or entity performing work for or on behalf of Seller under an order shall maintain public liability and property damage insurance covering Seller's obligations hereunder and the Products and shall maintain, in accordance with applicable law, workers' compensation insurance covering all employees performing work with respect to an order. This provision shall survive expiration or termination of an order.

13. **TERMINATION:** Buyer shall have the right, without any liability or costs to Seller, to cancel any unshipped portion of an order (i) a portion of which is not in strict conformance with an order or Buyer's or Seller's description or specifications, (ii) in the event Seller has breached an order, any warranty or its obligations to Buyer, (iii) in the event that Buyer's business is interrupted because of strikes, labor disturbances, riot, fire or Acts of God or any other cause beyond the control of Buyer or (iv) if the Seller makes an assignment for the benefit of creditors, a receiver or trustee is appointed with respect to the Seller's business, the Seller is adjudicated insolvent or if the Seller files or there is filed against Seller a petition for bankruptcy or other relief under the Bankruptcy Code or any successor statute. Buyer shall have the right to cancel any unshipped portion of an order, in whole or in part, at any time, for a reason other than that set forth above, in which event Buyer shall be liable to Seller for the actual amount of Seller's costs reasonably

incurred in contemplation of performance of the canceled portion, less any amount saved by Seller as a result of such cancellation and less any amounts which could have reasonably been mitigated by Seller. Seller is cautioned not to ship, fabricate or build inventories of raw or finished stock at a rate faster than is required to meet delivery requirements of an order.

14. **COMPLIANCE WITH LAW:** Seller warrants that the Products, including all packaging thereof, shipped pursuant to an order shall have been produced in compliance with and meet the minimum standards of all applicable federal, state and local laws, regulations, rules, guides, ordinances and/or standards ("Laws"). Upon request by Buyer, Seller shall furnish Buyer with a certificate of compliance with any Laws. Seller acknowledges that Products provided under this Agreement may be subject to U.S. and applicable foreign export laws and regulations and will perform its obligations under this Agreement in a manner consistent with the requirements of all applicable U.S. and foreign laws and regulations, the Foreign Corrupt Practices Act and Anti-boycott laws. Specifically, Seller agrees that the shipment or provision of Products, and any related technical data or information, will not violate U.S. export laws or regulations or the import laws and regulations of applicable foreign states. Seller will be responsible for obtaining, recording, filing and maintaining all export and import documentation including all licenses and permits, as well as for the payment of associated fees. Seller shall appropriately label containers of all Products which are known to constitute a health, poison, fire, environmental, safety or explosion hazard and shall provide Buyer any and all material required for

Buyer to comply with all laws, regulations, rules, guides, ordinances and/or standards, including, without limitation, Material Safety Data Sheets.

15. **EQUAL OPPORTUNITY:** The Equal Opportunity clause in Section 202 of Executive Order (E.O.) 11246, as amended, Section 503 of the Rehabilitation Act of 1973 (Handicap) and the Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 U.S.C. 2012), and the implementing rules and regulations in Title 41, GFR, Part 60 are incorporated herein by reference unless an order is exempted by rules, regulations, or orders of the U.S. Secretary of Labor issued pursuant to Section 204 of E.O. 11246 or provisions of any superseding E.O. As used in said clause, "Contractor" means Seller. Seller agrees to provide Buyer with an executed EEO Certificate indicating Seller's compliance or exempt status, annually upon request of Buyer.

16. **ASSIGNMENT:** Seller agrees that Seller will neither assign its rights nor delegate its obligations under an order without the prior written consent of Buyer. Any attempted assignment violates this paragraph shall be VOID AB INITIO.

17. **GOVERNING LAW:** Irrespective of the place of performance of an order, an order shall be interpreted in accordance with the laws of the State of Oregon, without reference to choice of law provisions. Each party hereby irrevocably consents to the exclusive jurisdiction of the state & federal courts located in the county & state of Buyer's location, in any action arising out of or relating to this Agreement and waives any other venue to which it may be entitled by domicile or otherwise.

18. **AMENDMENT, MODIFICATION, WAIVER AND**

**REMEDIES:** Performance of an order must be strictly in accordance with its stated terms & conditions & no change, modification, revision or waiver shall be binding unless executed by Buyer. No waiver of or failure to perform any or all of these terms/conditions shall constitute a waiver of or an excuse for nonperformance as to any other part of this or any other order. No remedy herein provided shall be deemed exclusive of any other

remedy allowed by law or in equity. **Under no circumstances shall Buyer be obligated for consequential damages, loss of revenue or profit, or any amount in excess of the total amount stated on the face of any order.** Seller shall bear all expenses, including reasonable attorneys' fees, Buyer incurs to enforce its rights under an order.  
19. **BUYER'S PROPERTY:** All tooling, dies, parts, schedules, and Specifications and all reproductions thereof, any other

property furnished to Seller by Buyer or paid for by Buyer, shall be (i) the property of Buyer, (ii) clearly identified as Buyer's property by Seller, (iii) subject to removal at any time upon Buyer's demand, and (iv) used only in filling orders from Buyer or its nominee. Seller assumes all liability for loss of, and damage to, such property and Seller shall, unless otherwise directed in writing by Buyer, insure at Seller's expense such property in an amount equal to the replacement cost thereof with loss payable to Buyer.