

EPIC Technologies LLC Terms and Conditions

1. **OFFER AND ACCEPTANCE** – This order is subject to the immediate acceptance; it becomes a contract when formal written acknowledgment showing shipping date is received by Buyer from Seller. Buyer hereby objects to additional or different terms offered by Seller in its sales order acknowledgment or any other document of Seller. Such additional or different terms shall not become a part of this order without the express written consent of the Buyer. Seller's issuance of sales order acknowledgment, shipment of goods or commencement of work hereunder shall constitute a definite and reasonable expression of acceptance of this order. The Seller shall not assign this order or any other interest therein without the prior written consent of the Buyer.

2. **WARRANTY** – Seller warrants that all goods and services will be furnished in strict accordance with the provisions of this order, the specifications, drawings and other descriptions furnished by Buyer or Seller; will be free of defects in design, workmanship and material; will be merchantable and fit for the purposes for which such goods and services are intended; and will comply with all federal, state and local laws, rules, regulations and standards relating to such goods or services. Seller further warrants title to the goods and that the goods will be delivered free and clear of liens, claims or encumbrances. Without Buyer's written assent no materials may be substituted in lieu of those specified. Buyer's approval of Seller's drawings shall not relieve Seller of any of its warranties. The warranties of Seller shall survive inspection, test and acceptance and shall run to the Buyer and its customers. Seller's rights and remedies for any breach of the foregoing warranties shall be as set forth under the clause "Inspection," in addition to those rights and remedies provided elsewhere in this order or by law.

3. **DRAWINGS AND SPECIFICATIONS** – Seller is to work within and with respect to tolerances and limitations specified on drawings, specifications and statements of work as applicable to this contract and supplied to Seller by Buyer, or supplied by a third party and referenced by Buyer and shall make such tests as specified in the drawings or specifications unless deviation therefrom is authorized in writing by the authorized agent for the Buyer. Verbal changes for tolerance revisions are not grounds for non-compliance with drawings or specifications regardless of their source. All specifications, drawings, note, instructions, engineering notices, technical data, and/ or equipment referred to in this Purchase Order are incorporated by reference. Such information will not be used, or disclosed to others by Seller without Buyer's prior written consent, and shall be returned to Buyer upon demand or upon completion of Seller's obligations hereunder.

4. **CHANGES** – The authorized agent for the Buyer shall have the sole right by written order to make changes from time to time in the work to be performed by Seller hereunder. If such changes materially affect delivery or the amount to be paid by Buyer, Seller shall notify Buyer immediately and such change shall be made only if authorized in writing by Buyer. No additional charge will be allowed without the written consent of Buyer.

5. **INSPECTION** – All material and workmanship entering into the performance of this order may be inspected and tested at all times and places, either before, during or after manufacture, by inspectors employed by the Buyer, or in the case of articles to be used directly or indirectly in the performance of a contract with the U.S. Government by the Government at the Buyer's discretion. The exercise of the right of inspection and test shall in no way relieve Seller of its obligation to furnish all articles or materials in strict accordance with the terms of the order. If any of such articles, or materials are found to be defective in material or workmanship, or otherwise not in conformity with the requirements of this order, the Buyer, in addition to any other remedy shall have the right to reject the same or require that such articles or materials be corrected or replaced promptly with satisfactory materials or workmanship at Seller's expense. Such replacement shall not be made without written authorization from Buyer.

6. **PACKAGING AND CARTAGE** – Seller shall suitably pack, mark, classify and ship all materials in accordance with the requirements of common carriers so as to secure lowest transportation costs, and no additional charges shall be made to Buyer therefore unless otherwise stated herein. No charges shall be made for packing, boxing, drayage or storage unless authorized by Buyer in writing. Seller shall properly mark each package with Buyer's order number, address and, where multiple packages comprise a single shipment, shall consecutively number each package. Purchase order number and package numbers shall be shown on packing slips and invoices; itemized packing list must accompany each shipment. If Seller's acts or omissions result in Seller's failure to meet Buyer's delivery requirements and Buyer requires a more

expeditious method of transportation or the goods that the transportation method originally specified by Buyer, Seller shall, at Buyer's option, (i) promptly reimburse buyer the difference in cost between the more expeditious method and the original method, (ii) allow Buyer to reduce its payment to Seller's invoices by such difference, or (iii) ship the goods as expeditiously as possible at Seller's expense and invoice Buyer for the amount which Buyer would have paid for normal shipment.

7. **DELIVERY** – Time is of the essence. If delivery of the goods is not completed at the time of times stated in this order, Buyer reserves the right, without liability and in addition to its other rights and remedies, to a) terminate this order by notice, effective immediately upon receipt by the Seller, and arrange for completion of performance, b) the purchase of substitute goods elsewhere and charge Seller with all loss and damage incurred. No provision of this order for the delivery of goods in installments shall be construed as making the Seller's obligation severable. Shipments sent C.O.D. without Buyer's written consent will not be accepted and will be at Seller's risk. Neither party shall be liable for damages for any delay arising out of causes beyond its reasonable control and without its fault or negligence, including but not limited to, acts of God, acts of the other party, acts of civil or military authority labor disputes, fire, or shortage of power. Seller shall notify Buyer immediately upon learning of any event which may result in any delay.

8. **INVOICES** – Separate invoices must be rendered for each shipment indicating purchase order, part number and all other required data to positively identify buyers requirements and compliance to Buyer's Order. Invoice on final shipment must be marked "complete". Buyer shall have the right at all times to set-off any amount owing at any time from Seller to Buyer or any of its affiliated companies against any amount.

9. **PROPRIETARY RIGHTS** – Seller understands and agrees that the benefits of Buyer's designs and manufacturing information shall not extend beyond the scope and subject matter of this order, it being agreed that such designs and information are confidential.

10. **TOOLING** – Unless otherwise stated, Seller shall furnish and keep in good condition and replace when necessary, all dies, tools, gauges, fixtures and patterns necessary for the production of any goods or materials ordered. All such property shall become and remain the property of Buyer upon payment therefore. Buyer shall have the right to enter onto Seller's premises at any time to inspect such property and Seller's records thereto. While in Seller's possession or control, Seller warrants that it will keep such tooling in good condition, fully covered by insurance, free of liens and encumbrances at all times.

11. **TAXES** – Seller agrees that all excise, sales, use, occupational and other taxes applicable to the sale or purchase of materials or articles or to Seller's work or Seller's receipts for the performance of the work covered by the order shall be paid by Seller, and Seller shall indemnify and save Buyer harmless from and against all liability for such taxes. Buyer holds direct pay permits from.....respecting liability for the use taxes imposed.

12. **TERMINATION** – Buyer reserves the right to cancel this order partially or entirely, in event performance, materials or work specified fail to conform to Seller's warranty (See 2 above), in event Seller fails to make deliveries as specified in this order, or in event Seller breaches any other terms or conditions of this order. In the event of causes beyond the control of Buyer, Buyer shall have the option to cancel this Purchase Order or delay the delivery of any goods hereunder without liability. Also, Buyer may forthwith cancel this order if Seller ceases to conduct its operations in the normal course of business (including inability to meet its obligations as they mature) or if any proceedings under the bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed or applied for or an assignment is made by Seller for the benefit of creditors, without liability except for deliveries previously made or for goods covered by the order then completed and subsequently delivered in accordance with the items of this order, and, if any installment of an installment contract may be rejected under the provisions of this contract, or under any applicable law. Buyer may, at its option, cancel the remaining installments without any obligation whatsoever to the Seller, and claim damages. Buyer's obligation to seller are limited to 'firm released' quantities unless Buyer has accepted, by separate writing, obligation for forecasted quantities.

13. **COMPLIANCE WITH LAWS** – In performance of the work hereunder Seller shall at all times comply with and give all situations, certificates and representations required by all applicable Executive Orders, federal, state, municipal and local laws and rules, orders, requirements and regulations thereunder.

14. **INDEMNIFICATION** – The Seller hereby assumes entire responsibility for any and all damage, loss or injury of any kind of nature whatever to persons or property caused by or resulting from, or in connection with, the furnishing of services, including delivery of purchased materials, and/or breach of Seller's Warranty provided in section 2 of these Terms and Conditions, by Seller, his contractors, officers, agents, or employees, and the Seller will indemnify and hold harmless the Buyer from any and all claims, loss, damage, charge or expense, whether direct or indirect and whether to persons or property, resulting from or in connection with the furnishing of such services. In case any suit or other proceeding shall be brought against the Buyer, or the Buyer's officers, agents or employees at any time on account, or by reason of any act, action, neglect, omission or default in connection with the furnishing of such services, and/or breach of Seller's Warranty provided in section 2 of these Terms and Conditions, the Seller hereby agrees to assume the defense thereof and to defend the same at the Seller's own expense and to pay any and all costs, charges, attorney's fees and other expenses and any and all judgments that may be incurred by or obtained against the Buyer, its officers, agents, or employees in such suits or other proceedings, and in case any judgment or other lien can be placed upon or obtained against the property of the Buyer or as a result of such suits or proceedings, the Seller will at once cause the same to be dissolved and discharged by giving bond or otherwise. The Seller, his contractors, officers, agents and employees shall take all safety precautions necessary for the prevention of accidents and shall comply with all laws and regulations with regard to this matter. The Buyer shall not be responsible or held liable for any injury to persons or damage to property resulting from the use, misuse or failure, due to any cause, of any apparatus furnished to Seller by Buyer whether on or off the premises of the Seller. The acceptance and/or use of any such apparatus by the Seller or his contractors, officers, agents and employees shall be construed to mean that the Seller accepts all responsibility for any and all claims for such injury and/or damage whatsoever resulting from the use, misuse or failure, due to any cause of such apparatus whether such injury and/or damages be to his own employees or property, or the employees of property of other Sellers, contractors, the Buyer or otherwise. Seller shall carry Workmen's Compensation, Employer Liability, Public Liability and Property Damage Insurance including contractual and product liability coverages, which shall fully protect the Buyer pursuant to the above assumption of liability and indemnification undertaking. Copies of policies or certificates of such insurance shall be furnished by Seller to Buyer on request.

15. **PATENT INDEMNITY** – Seller hereby indemnifies Buyer, its successors, assigns, agents, customers and users of the articles against loss, damage or liability including costs and expenses, which may be incurred on account of any suit, claim, judgment or demand involving infringement or alleged infringement of any patent rights in the manufacture, use or disposition of any articles supplied hereunder, provided Buyer shall notify Seller of any suite instituted against it and, to the full extent of its ability to do so, shall permit Seller to defend the same. Buyer does not grant indemnity to Seller for infringement or any patent, trademark, copyright or data rights.

16. **CONFIDENTIALITY** - Except as otherwise specifically agreed, all information disclosed by the Buyer to the Seller shall be Buyer's property and shall be held in confidence by Seller. Seller shall take all reasonable precautions (a) to disclose such information within Seller's organization only to those employees who have a need to know in order to fulfill Seller's obligations hereunder and who have agreed to keep the information confidential, and (b) to prevent any such information from being divulged to third persons not employed by Seller, including having recipients acknowledge the confidential status of such information and agreeing to similar restrictions. This obligation of confidence shall survive termination of this Agreement and will continue for three (3) years thereafter, or for as long as the information remains a trade secret, whichever is longer.