

# Tektronix Component Solutions Purchase Order Terms and Conditions

## 1. SCOPE

The terms and conditions set forth below together with those appearing on the face of this purchase order and any exhibits attached hereto (collectively, the "Order") constitute the complete and exclusive agreement between Maxtek Components Corporation, dba Tektronix Component Solutions (hereafter "Buyer") and the supplier identified on the face of this Order ("Supplier") with respect to the goods or services to be provided hereunder and supersede any prior or contemporaneous written or oral agreements pertaining thereto. Any terms or conditions proposed by Supplier inconsistent with or in addition to the terms and conditions herein contained shall be void and of no effect unless specifically agreed to by Buyer in writing. Agreement by Supplier to furnish the goods or services requested in the Order, or Supplier's commencement of performance, or acceptance of any payment shall constitute Supplier's unqualified acceptance of this Order and shall be expressly limited to these terms and conditions. Except as provided in Section 7 below, no modification to this order shall be binding on either party unless in writing and signed by an authorized representative of each party.

## 2. PRICES

Supplier shall sell to Buyer the goods ("Goods") or services ("Services") shown on the face of this Order at the prices specified. Such prices are firm for the delivery period shown and are exclusive of taxes, shipping and insurance. If charges for taxes, shipping and insurance are applicable, they shall be separately stated on the Supplier's invoice. Supplier warrants that each price for Goods or Services is no less favorable than that extended during the term of this Order to any other customer for the same or like items in equal or lesser quantities on similar terms and conditions.

## 3. PACKAGING

Unless specified on the face of this Order, no charge shall be made by Supplier for packaging, marking or storage. All Goods shall be packaged, marked, and otherwise prepared in accordance with good commercial practices, Buyer's specifications, or applicable government regulations. Supplier shall be responsible for any loss or damage due to its failure to properly preserve, package, handle, or pack the Goods; Buyer shall not be required to assert any claims for such loss or damage against the common carrier involved.

## 4. SHIPPING AND DELIVERY

Suppliers shall ship the Goods in accordance with the shipping instructions provided by the Buyer Traffic Department (or as otherwise designated by Buyer). If no instructions are provided, Supplier shall ship the Goods freight collect. If Supplier ships Goods by a method other than as specified, Supplier shall pay any resulting increase in the cost of freight incurred over that which would have been incurred had Supplier complied with Buyer's shipping specifications.

Supplier will ship the Goods so that they are delivered at the Buyer dock on the due-at-Buyer-doc date specified on the face of this Order ("Delivery Date"). Deliveries at the Buyer dock will be considered on-time if they are made no more than three (3) business days earlier than the Delivery Date. Buyer may refuse to accept deliveries at the Buyer dock earlier than this time or later than the Delivery Date.

Each shipment of Goods to Buyer shall include a packing list which contains at least (i) the number of this Order, (ii) the Buyer part number, (iii) the quantity, and (iv) the date of shipment. If Supplier ships more Goods than ordered Buyer may return the amount of the over shipment to the Supplier.

Supplier shall notify Buyer immediately when Supplier has knowledge of any potential delay in delivery. If only a portion of the Goods is available for shipment to meet the Delivery Date, Supplier shall ship the available Goods unless directed by Buyer to reschedule shipment.

If Supplier is unable to deliver the Goods on-time without premium routing, Supplier will ship the Goods affected by air transportation or other expedited means acceptable to Buyer and Supplier shall pay the difference between the cost of such expedited routing and the routing originally requested by Buyer. Goods comprising or containing chemicals shall be shipped in conformance with Government or freight regulations applicable to such chemicals. Buyer shall not be liable for any loss or damage caused by a release of chemicals or other hazardous materials to the environment prior to Buyer's actual receipt of the corresponding Goods.

## 5. TITLE AND RISK OF LOSS

Unless otherwise specified on the face of this order, shipping terms shall be FOB point of shipment. Title and risk of loss will pass to Buyer upon delivery of the Goods by Supplier to the Carrier. If the face of this Order specifies the FOB point as Buyer's location, Supplier shall bear the risk of loss or damage to the Goods and title shall not pass to Buyer until delivery of the Goods to the Buyer location.

## 6. INVOICES AND PAYMENTS

Supplier shall issue invoices only at time of shipment of Goods or completion of Services. Unless otherwise specified on the face of this order, Buyer shall issue payment within thirty (30) calendar days of the date of a correct invoice provided Supplier has delivered conforming Goods or satisfactorily completed Services. Buyer may take advantage of any applicable prompt payment discount. Payment does not constitute acceptance of the Goods or Services. Adjustments for payments made for rejected Goods or Services or for any overpayments shall be deducted from subsequent payments due or, at Buyer's option, promptly refunded by Supplier upon request.

## 7. CANCELLATION FOR CONVENIENCE

Buyer may for its own convenience and without charge, cancel any portion or all of this Order if Buyer gives Supplier notice (i) for Goods or Services (i.e., supplied exclusively in accordance with Buyer's design or specifications), at least sixty (60) calendar days, unless otherwise agreed by Supplier and Buyer, prior to the Delivery Date, and (ii) for standard Goods or services (i.e., all Goods or Services other than custom), at least thirty (30) calendar days prior to the Delivery Date.

If Buyer cancels any portion or all of this Order (other than as a result of a default by Supplier) and fails to provide the applicable notice thereof specified above, Buyer shall be responsible for the actual costs incurred by Supplier as a direct result of such cancellation which are not recoverable by either (i) the sale of the goods or provision of the Services affected to other parties within a reasonable time, or (ii) the exercise by Supplier, in a commercially reasonable manner, of other mitigation measures. Any claim by Supplier for such actual costs shall be deemed waived by Supplier unless submitted in writing to Buyer within thirty (30) calendar days after Buyer notifies Supplier of the cancellation.

## 8. CANCELLATION FOR DEFAULT

Buyer may cancel this Order, or any part thereof, without liability in the event (1) Supplier fails to deliver the Goods or perform the Services within the time specified in this Order, (2) Supplier fails to perform any other obligation provided for this Order, or Supplier so fails to make progress as to endanger performance of this Order in accordance with its terms, and in either of these two circumstances Supplier does not cure such failure within a period of ten (10) calendar days (or such longer period as Buyer may authorize in writing) after receipt of notice of such failure from Buyer, (3) a petition in bankruptcy is filed by or against Supplier, or (4) a receiver is appointed for Supplier or Supplier makes an assignment for the benefit of creditors. In the event Buyer cancels this Order, in whole or in part, as provide in this paragraph 8, Supplier shall be liable to Buyer for any and all damages sustained by Buyer in connection with the default which gave rise to the cancellation. The rights and remedies of Buyer contained herein are an addition to any other rights or remedies provided by law.

## 9. INSPECTION AND ACCEPTANCE

Supplier shall inspect all Goods prior to shipment to Buyer. Buyer and its designated representative may perform reasonable inspection of the Goods at Supplier's source site. Buyer may test or otherwise inspect Goods for acceptance within a reasonable time after receipt at the specified Buyer location. Goods which fail to pass Buyer's incoming acceptance test or other inspection, if any, may be rejected by Buyer and returned to Supplier at Supplier's expense. Buyer's rights under this paragraph 9 are in addition to Buyer's rights under paragraph 10.

## 10. WARRANTY

Supplier warrants that all Goods will conform to and perform in accordance with the drawings, specifications, samples or other descriptions applicable thereto, including any specifications supplied by Buyer. Supplier further warrants that all Goods furnished pursuant to this Order will be (i) free from all defects in material and workmanship, (ii) free from defects in design except to the extent that such Goods comply with the detailed designs provided by Buyer, (iii) suitable for the purposes, if any, which are stated on the face of this Order, and (iv) in conformity with all other requirements of this Order. Supplier warrants good title to the Goods furnished pursuant to this Order. In addition to any other rights which Buyer may have, if Goods are found not to be as warranted within one (1) year period after receipt at the specified Buyer location (or such longer period as is provided in Supplier's standard warranty). Buyer may return

such Goods to supplier, at Supplier's expense, for correction, replacement, credit or refund, as Buyer may direct. Supplier warrants that all Services to be provided hereunder will be performed in a safe and workmanlike manner and that Supplier possesses the requisite expertise, facilities and equipment necessary and appropriate to perform the Services. Supplier further warrants that the Goods furnished under this order are new. These warranties, and all other warranties, expressed or implied, shall survive inspection, acceptance, non-inspection and payment. SUPPLIER DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE.

#### **11. MATERIAL AND TOOLS**

If Buyer furnishes Supplier material and equipment (such as special dies, molds, jigs, tools, test equipment or masks) or pays for such material or equipment, title thereto shall remain or vest in Buyer, and Supplier shall identify, maintain and preserve such material and equipment as Buyer property and shall only dispose of such material and equipment (including scrap) in accordance with Buyer's direction. Unless otherwise authorized in writing by Buyer, supplier shall use such material or equipment only in the performance of orders for Buyer. Supplier shall bear all risk of loss or damage to such material or equipment until it is returned to Buyer. Upon request of Buyer, Supplier shall deliver all such material or equipment to Buyer in good condition, normal wear and tear excepted, without cost to Buyer. Supplier waives any legal or equitable right to withhold or retain such material or equipment. Supplier shall execute a Uniform Commercial Code Financing Statement covering the material or equipment upon Buyer's request.

#### **12. INFRINGEMENT**

Supplier, at its expense, will defend Buyer and its customers against any claim based on an allegation that the use or resale of any of the Goods infringes a patent, copyright or trademark of another, or violates any trade secret or other proprietary interest of another and Supplier will pay any resulting costs, damages, and attorney's fees finally awarded against Buyer or its customers that are attributable to such claim and will pay the part of any settlement that is attributable to such claim; provided that 1) Buyer notifies Supplier promptly in writing of the claim, 2) Supplier is permitted to control the defense or settlement of the claim, and 3) Buyer and its customers cooperate reasonably in such defense or settlement at Supplier's expense. In its defense or settlement of any such claim, Supplier may: 1) Procure for Buyer the right to continue using and reselling the Goods and for Buyer's customers the right to continue using the Goods; 2) Modify the Goods so that the resale of the Goods become non-infringing; or 3) Replace the Goods with equivalent Goods not subject to such claim. Supplier will not be liable to Buyer for claims of infringement or violation based upon the sale or use of Goods manufactured according to designs furnished by Buyer.

The foregoing states the entire obligation and liability of Supplier with respect to infringement or violation of any propriety interest of another and claims thereof.

#### **13. IMPORT REQUIREMENTS**

Upon Buyer's request, Supplier shall provide Buyer with an appropriate certification stating the country of origin for Goods, sufficient to satisfy the requirements of (i) the U.S. customs authorities, and (ii) any applicable export licensing regulations, including those of the United States. Supplier shall mark every Good (or the Good's container if there is no room on the Good itself) with the country of origin, Supplier shall, in marking the Goods, comply with the requirements of the U.S. Customs authorities. If any Goods are imported, Supplier shall, when possible, allow Buyer to be the importer of record. If Buyer is not the importer of record and Supplier obtains duty drawback rights to the Goods, Supplier shall, upon Buyer's request, provide Buyer with documents required by the customs authorities of the country of receipt to provide importation and to transfer duty drawback rights to Buyer.

#### **14. EXPORT REGULATIONS**

Buyer shall neither export nor re-export, directly or indirectly, any Goods it receives under this Order, or the direct product thereof, to any country to which such export or re-export is restricted by United States Government law or regulation without the prior authorization, if required, of the Office of Export Administration, Department of Commerce, Washington, D.C.

#### **15. NONDISCLOSURE OF INFORMATION**

Supplier shall not, without the prior written consent of Buyer, make any release of information concerning this Order (other than to Supplier's employees which is required for the performance of their duties) nor use the name of Buyer in any advertising or publicity.

#### **16. CONFIDENTIAL INFORMATION**

All information obtained by Supplier from Buyer which is identified as confidential or proprietary by Buyer or is acquired by Supplier under circumstances reasonably considered to impose an obligation of confidentiality shall be received in confidence, shall remain the property of Buyer, shall not be disclosed to a third party, and shall be used by Supplier only to the extent necessary for the performance of this Order.

#### **17. ASSIGNMENT**

Supplier may not assign this Order or any rights under this Order without the prior written consent of Buyer. Any attempted assignment without Buyer's prior written consent shall be void.

#### **18. COMPLIANCE WITH LAWS**

Supplier shall comply with all applicable federal, state and local laws and regulations including, but not limited to, the Fair Labor Standards Act of 1938, as amended, the Occupational Safety and Health Act of 1970, as amended, and the Toxic Substance Control Act, as amended. Supplier certifies that all Goods and Services supplied under this Order will be produced and provided in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended. Supplier warrants that it has complied with the Anti-Kickback Act of 1986 and has not offered or given and will not offer or give to any employee, agent, or representative of Buyer any gratuity or any kickback within the meaning of the Anti-Kickback Act of 1986. If at any time Supplier becomes aware of information or circumstances that suggest any of the representations, warranties, and covenants referenced in this Section 18 may not be accurate, it shall notify Buyer immediately in writing, but not more than seven (7) days after becoming aware of such circumstances.

#### **19. WAIVER**

The failure of either party to enforce at any time any provision of these terms and conditions shall not be construed to be a waiver of such provision or the right thereafter to enforce each and every provision. No waiver by either party, either expressed or implied, of any breach of these terms and conditions shall be construed as a waiver of any other breach of such term or condition.

#### **20. GOVERNING LAW**

The rights of the parties hereunder shall be governed by the laws of the State of Oregon.

#### **21. U.S. GOVERNMENT PROVISIONS**

When materials, Goods or Services, including the products resulting from Services hereby ordered are for use in connection with a United States Government prime contract or higher-tier subcontract, the FAR and Agency FAR Supplements clauses and provisions referenced in the Instructions section of the Purchase Order shall apply, as required by the terms of the prime contract or by operation of law or regulation. In the event of a conflict between the FAR provisions and these general terms and conditions, the FAR provisions shall control.