

# Convergent Technologies LLC

## Terms and Conditions of Purchase

### 1. Controlling Provisions.

- (a) **Generally.** The terms and conditions of this document, including the provisions on the face of any purchase order in which it is referenced or to which it is attached (the "Contract"), govern the parties' duties, obligations and relationship with respect to the sale by the vendor described on the face of the purchase order ("Seller") and the purchase, acceptance and use by Convergent Technologies LLC, ("Buyer"), of the goods and/or services described herein (the "Products"). This Contract constitutes an offer by Buyer to buy the Products from Seller in accordance with the terms contained herein. If this document is deemed an acceptance of a prior offer by Seller, such acceptance is limited to the express terms and conditions contained herein. Seller's acceptance of this offer is limited to the terms, covenants and conditions herein. Buyer hereby objects to and rejects any additional, different or varying terms proposed by Seller, except additional warranties by Seller, regardless of whether such terms would materially alter these terms and conditions. Seller's proposal of additional or different terms shall not operate as a rejection of Buyer's terms unless such variances are in the description, quantity, price, or place or date of delivery of the Products, and Buyer's terms shall be deemed accepted without said additional or different terms. THIS CONTRACT CONSTITUTES THE FINAL WRITTEN EXPRESSION OF THE TERMS BETWEEN BUYER AND SELLER REGARDING THE PRODUCTS AND IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THOSE TERMS. ANY TERMS, CONDITIONS, NEGOTIATIONS OR UNDERSTANDINGS BETWEEN THE PARTIES WHICH ARE NOT CONTAINED IN THIS CONTRACT SHALL HAVE NO FORCE OR EFFECT UNLESS IN WRITING AND SIGNED BY BUYER, EXPRESSLY STATING BUYER'S INTENT TO MODIFY THESE TERMS AND CONDITIONS.
- (b) **Priority of Written Agreement Covering the Parties.** Notwithstanding the foregoing, this Contract shall be superseded by a fully executed, binding written agreement between the parties that is active and in force on the date of the purchase order covering the Products listed on the purchase order; in such cases the terms and conditions of such written agreement shall take precedence and this Contract shall not apply.
- (c) **Acceptance.** Seller shall be deemed to have made an unqualified acceptance of this Contract on the earliest of the following to occur: (a) Buyer's receipt of a copy of this Contract (or any document in which this is referenced or to which it is attached) signed by Seller, (b) Seller's acknowledgment of these terms and conditions or any purchase order submitted by Buyer from time to time, (c) Seller's commencement of manufacture or delivery of the Products, (d) Seller's acceptance of any payment from Buyer, (e) Seller's failure to object to these terms and conditions within ten days of receipt of this Contract (or any document in which this is referenced or to which it is attached) or (f) any other event constituting acceptance under applicable law.

### 2. Termination, Suspension or Modifications of Purchase Order.

- (a) **Termination and Suspension.** Buyer may suspend or terminate this Contract, at any time, for its convenience and in whole or in part, by any reasonable manner. If Buyer terminates this Contract for its convenience, Seller's sole claim shall be for the costs it reasonably incurred in the performance of this Contract prior to such termination, with due allowance for the salvage value of all Products after Buyer has had full opportunity to recommend disposition and audit Seller's costs. If Buyer suspends this Contract, Seller shall promptly suspend further performance of the Contract to the extent specified and during the period of such suspension shall properly care for and protect all work in progress and materials Seller has on hand for performance of the Contract. Buyer may at any time withdraw the suspension of performance to Seller and Seller shall resume diligent performance of the work. If Seller believes that any such suspension or withdrawal of suspension justifies modification of the Contract price, Seller shall promptly submit to Buyer a written claim for such modification. Seller's claim shall substantiate Seller's increased costs with invoices and other documents satisfactory to Buyer. Upon Buyer's verification and approval of such additional costs, Buyer and Seller shall agree upon an adjustment in the Contract price based upon such costs as full settlement to Seller for the suspension and withdrawal of suspension. IN NO EVENT SHALL SELLER BE ENTITLED TO ANY PROSPECTIVE PROFITS OR ANY DAMAGES DUE TO TERMINATION, SUSPENSION OR WITHDRAWALS OF SUSPENSION.
- (b) **Termination for Cause.** If Seller is adjudged bankrupt, is insolvent or makes a general assignment for the benefit of its creditors, or if Seller does not correct any other failure of Seller to comply with this Contract within ten days after Buyer notifies Seller in writing of such failure, Buyer may terminate this Contract by written notice to Seller. In the event of such termination, Buyer may complete the performance of this Contract by such means as Buyer selects, and Seller shall be responsible for any additional costs incurred by Buyer in so doing. Any amounts due Seller for Products delivered by Seller in full compliance with the terms of this Contract prior to such termination shall be subject to setoff by Buyer for Buyer's additional costs of completing the Contract and other damages incurred by Buyer as the result of Seller's default.
- (c) **Modification.** Notwithstanding section 1 above, Buyer may by written supplement to this Contract change the drawings, designs or specifications for Products or otherwise change the scope of work covered by any order. If such change would affect the price or delivery date for such Products, Buyer and Seller shall agree in writing upon an equitable adjustment to reflect the effect of such change. Seller shall not suspend performance of this Contract while Buyer and Seller are in

the process of making such changes and related adjustments. No substitutions shall be made in this Contract without Buyer's prior written authorization. Any claim by Seller for an adjustment pursuant to this section shall be deemed to have been waived unless made in writing within 30 days from the date Buyer notifies Seller of the suspension, withdrawal of suspension or modification.

3. **Delivery.** Unless otherwise specified on the face of this Contract, Seller shall deliver the Products F.O.B. the facility named by Buyer. Seller shall pack, mark and ship Products in accordance with Buyer's specifications from time to time, including, without limitation, any temperature specifications. Seller shall package Products so as to prevent damage or deterioration and shall comply with all applicable packaging laws. Seller shall include with each shipment such documents as Buyer may require from time to time, including, without limitation, a packing slip showing Buyer's purchase order number, item numbers and sufficient other particulars to identify the Products, certificates of analysis and a Bill of Lading showing quantities delivered by lot number (collectively, the "Delivery Documents"). Buyer's count shall be accepted as final on all shipments not accompanied by packing lists. Buyer will not pay any charges for any containers, packaging, boxing, crating, marking, delivery, transportation, storage or other charges unless otherwise specified herein, and Seller will pay all premium freight costs over normal freight costs if Seller needs to use an expedited shipping method to meet delivery dates due to its own acts or omissions. Buyer shall have the right at any time to specify the carrier and/or the method of transportation to be employed in conveying the Products, upon proper adjustment being made to cover any difference in transportation cost agreed upon herein. Deliveries are to be made only in quantities and at times specified in schedules furnished by Buyer. Buyer may from time to time change delivery schedules. Time is of the essence with respect to delivery of Products. Seller shall immediately notify Buyer of any actual or potential delivery delays. Title to and risk of loss of Products shall remain with Seller until delivery to the F.O.B point.
4. **Prices; Payment**
  - (a) **Prices.** If a price is not stated on the face of this Contract, the Products shall be billed at the price last quoted or the prevailing market price, whichever is lower. This order must not be filled at a higher price than last quoted or charged without Buyer's prior written authorization. Prices shall not increase without Buyer's prior written consent, which Buyer may withhold in its sole discretion.
  - (b) **Payment.** Unless otherwise agreed in writing by Buyer, payment of undisputed invoices shall be net 30 days from receipt of Seller's invoice. Buyer reserves the right of setoff of any amounts due Seller on this Contract against any amount due Buyer from Seller on any transaction. Buyer's acceptance of or payment for the Products or any other action or inaction shall neither (a) relieve Seller from any of its obligations and warranties hereunder nor (b) constitute a waiver of Buyer's rights and claims hereunder.
5. **Acceptance.** All Products are subject to Buyer's inspection during manufacture and/or after delivery. Buyer shall have the right to reject Products within 30 days from the date of delivery if any of such Products based on shipping damage, inconsistency with this Contract, failure to comply with law, or failure to meet the quality standards furnished or adopted by Buyer. If Buyer rejects any Products, Seller shall, within 20 days from the date of rejection, at Buyer's option, replace such Products or provide Buyer with full credit therefor. Alternatively, Buyer may replace the Products and invoice Seller for the additional costs Buyer incurs. Any Products rejected by Buyer shall be held at Seller's risk and subject to Seller's instructions or, at Buyer's option, returned at Seller's expense. Seller shall bear all shipping costs, the risk of in-transit loss and damage for replacement Products.
6. **Seller's Warranties.** Seller expressly warrants to Buyer, Buyer's customer and to the ultimate user that (a) the Products (including Products sold to Buyer but manufactured by others) and all material, packaging and work covered by this Contract will (i) conform to the drawings, specifications, samples or other descriptions furnished or adopted by Buyer, (ii) conform to all representations of and specifications provided by Seller, (iii) meet or exceed the quality standards furnished or adopted by Buyer, (iv) be merchantable, of good material and workmanship and fit and sufficient for the purposes intended (v) be free from "malicious code," "disabling code," "computer viruses" or "time bombs" as those terms are commonly understood in the information process industry and (vi) be new, free from defects in material and workmanship; (b) the use and/or sale, alone or in combination, of the Products will not infringe or violate any United States or foreign letters patent, or any right in or to any patented invention or idea, or a trademark, copyright or other intellectual property right; (c) the Products and their production, storage, pricing, delivery and sale hereunder are in compliance with applicable foreign, federal, state and local laws, including, without limitation, all packaging and labeling laws; (d) Seller is conveying good title to the Products, free and clear of any liens or encumbrances; and (e) Seller shall perform any services (i) using personnel of required skill, experience, and qualifications, (ii) in a professional and workmanlike fashion, and (iii) in accordance with industry standards in Seller's field. Seller acknowledges that it has knowledge of Buyer's intended use and warrants that all Products that have been manufactured by Seller based on Buyer's use and will be fit and sufficient for the particular purposes intended by Buyer. Any Products not in accordance with the foregoing warranties or any special warranty shall be deemed to be defective and may be rejected by Buyer. Buyer's approval of Seller's specifications shall not relieve Seller of any of its warranty obligations. Seller will maintain a quality assurance system which is adequate in Buyer's judgment to detect and prevent shipment of nonconforming Products. In the event of any recall affecting the Products, Seller shall indemnify Buyer and the Buyer Parties (as defined below) in accordance with section 10. If Seller voluntarily recalls a Product for any reason ("Voluntary Recall"), Seller shall (a) immediately notify Buyer; (b) within a reasonable time of the Voluntary Recall, provide a written proposal of the corrective action to be taken by Seller as a result of the Voluntary Recall, which corrective action is subject to Buyer's review and approval; and (c) perform the corrective action approved by Buyer. Additionally, Seller shall notify Buyer within 72 hours if Seller receives correspondence or notification from any governmental authority regarding a recall of the Products.
7. **Breach of Warranty.** If Seller breaches any of its warranties, Seller shall be liable for all and indemnify Buyer and the Buyer

Parties from and against all Damages (as defined below) incurred by them, including, without limitation, the purchase price of the Products, delivery costs, replacement and cover costs, lost profits, consequential and incidental damages. Seller acknowledges that, if Seller's breach causes Buyer to deliver products to its customers either late or below Buyer's standards, Buyer will incur lost profits and other damages for which Seller is liable. Without limiting the foregoing, Seller shall promptly and at its sole cost replace any Products failing to conform with the warranties set forth in this Contract. Replacement products shall be subject to the same warranty as provided above. If a Product is held to constitute an infringement of a third party right, Seller shall, at its expense, either procure for Buyer the right to use said Product or replace same with a substantially equal but not infringing Product, or modify it so that it becomes substantially equal but not infringing.

#### **8. Buyer's Information, Property and Intellectual Property.**

- (a) **Buyer's Information.** If any Products supplied under this Contract are made according to Buyer's manufacturing information, such information shall be used only to manufacture Products to Buyer's orders. Seller agrees that Buyer shall at all times retain title to such manufacturing information and Seller agrees to maintain it in confidence. Upon Buyer's request, Seller shall return to Buyer all such manufacturing information without retaining any copies or embodiments thereof.
- (b) **Buyer Property.** Unless otherwise agreed in writing, Seller at its cost shall supply all materials, equipment, tools and facilities required to perform under this Contract. Any materials, equipment, tools, dies or other properties furnished by Buyer or paid for by Buyer, and any design drawings relating to or used in the manufacture of such properties, shall remain Buyer's property. Any Buyer property shall be used only for performance under this Contract and, on demand, must be returned to Buyer in accordance with Buyer's instructions without charge. Seller agrees, as a condition of this Contract, that it will: (i) properly mark/label, identify and segregate any and all Buyer property in such fashion as to clearly identify such items as being the property of Buyer, (ii) prevent the commingling of said Buyer property with other material in Seller's possession except in accordance with applicable Buyer specifications or Buyer's written approval and (iii) assume responsibility for all taxes and risk of loss or damage with respect to said Buyer property at all times until such property is returned to Buyer.
- (c) **Intellectual Property.** Whenever requested by Buyer to do so, Seller will place on the Products, in the manner specified by Buyer, such trademarks or other identifying marks as Buyer may specify. Seller warrants and agrees that Buyer's identifying marks shall be used only on Products supplied to Buyer and in the manner and subject to the restrictions imposed by Buyer. All of Buyer's Intellectual Property Rights (as defined below) are and shall remain Buyer's sole property, and Seller agrees not to take or permit any action contradicting Buyer's rights thereto. "Intellectual Property Rights" include, without limitation, any copyright, patent, registered or unregistered design, logo, trademark, trade dress, trade name or other designation, translation of trade name into another language, and any similar rights or applications for rights in any of the foregoing in any part of the world owned or used by Buyer or any of its affiliates, and any goodwill relating thereto. Buyer's rights shall be enforceable by injunctive relief and/or a decree of specific performance. Seller does not acquire any rights, title or interest in any of the trademarks or trade names of Buyer by virtue of this Contract, and Seller shall not use or in any way refer to Buyer's trademarks or trade names without Buyer's prior written permission. Nothing herein shall limit the statutory or common law of torts or trade secrets where it provides Buyer with broader rights.

- 9. **Compliance with Laws.** Each party agrees to comply with all applicable laws in the performance of its obligations and exercise of its rights under this Contract.

#### **10. Indemnification and Insurance.**

- (a) **Indemnification.** Seller hereby releases and agrees to promptly defend, indemnify and hold Buyer and its shareholders, directors, officers, agents, employees, affiliates, customers, successors and assigns (collectively "Buyer Parties") harmless from and against all liabilities, losses, claims, court costs, incidental and consequential damages, attorneys' fees and other expenses arising from any loss, damage or injury (including death) to any person or property ("Damages") in any way relating to the Products or: (a) any alleged defects in the Products; (b) any inadequate disclosures, labels, packaging, warnings or instructions; (c) the alleged violation of any statute, ordinance or other law, order, rule or regulation; (d) any alleged unfair competition resulting from similarity of design, trademark, use or appearance of the Products; (e) bodily injuries, deaths or property damage (including loss or destruction of data) caused by negligent or wrongful act or omission of Seller, or any employee or agent of Seller; (f) any breach of warranty set forth herein or any special warranty; and (g) any recalls involving Products. The provisions of this section 10 shall be effective whether or not such loss, damage or injury was proximately caused by the sole or partial negligent acts or omissions of Buyer or any Buyer Parties. Buyer and the Buyer Parties, at their option, may be represented by and actively participate through their own counsel in any such suit or proceeding, and Seller shall pay the costs of such representation and participation. No limitation set forth in any document from Seller will operate to limit the amounts recoverable by Buyer under this Contract. IN NO EVENT SHALL BUYER BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES ARISING IN RELATION TO THESE TERMS AND CONDITIONS OR THE PARTIES' RELATIONSHIP, AND SELLER AGREES TO INDEMNIFY AND HOLD BUYER HARMLESS THEREFROM.
- (b) **Insurance.** Seller shall, at its own expense, maintain in effect insurance with respect to its performance hereunder and the Products with such coverages and in such amounts as Buyer may require in writing from time to time and, at a minimum, as may be commercially reasonable. All insurance policies shall be issued by insurance companies reasonably acceptable to Buyer. Seller shall cause the issuer of each insurance policy to issue a certificate of insurance naming Buyer as an additional named insured, and Seller shall, at Buyer's request, deliver each such certificate to Buyer. Seller

shall not terminate or modify such insurance without at least 30 days' prior written notice to Buyer. Seller's compliance with these insurance requirements shall not relieve Seller from liability under these indemnification provisions. Seller shall indemnify Buyer and the Buyer Parties for any loss suffered due to Seller's failure to obtain or maintain the insurance required hereunder.

11. **Confidentiality.** The parties each recognize that in the course of performance of this Contract, a party ("Disclosing Party") may find it necessary to disclose to the other party ("Receiving Party") its Confidential Information. "Confidential Information" means information or data that would reasonably be considered to be confidential or proprietary, including non-public financial information, trade secrets, customer information, patient information, personally-identifiable employee information (such as social security numbers or dates of birth), vendor or supplier information, pricing, fees, and other business information. Confidential Information shall not include any information that (a) is in the public domain at the time of disclosure to the receiving Party; (b) or enters the public domain after disclosure to Receiving Party without breach of this Contract; (c) is already in the possession of Receiving Party prior to the disclosure; (d) becomes available to Receiving Party in good faith on a non-confidential basis from a third party not bound by confidentiality; (e) is independently developed by Receiving Party without using Disclosing Party's Confidential Information; (f) is required to be disclosed by law or legal process, so long as Receiving Party, to the extent not contrary to law or any provision of any regulatory authority, timely notifies Disclosing Party, and, at the expense of Disclosing Party, uses reasonable efforts to cooperate with lawful efforts by Disclosing Party to limit disclosure. Receiving Party shall not disclose Confidential Information to any third party without the express written consent of Disclosing Party, except to its employees, agents, officers, directors, subcontractors, auditors, or legal representatives who reasonably require the Confidential Information for purposes of assisting in the Receiving Party's performance of its obligations under this Contract, and who agree to comply with the terms of this paragraph. All Confidential Information shall remain the sole property of Disclosing Party and Receiving Party shall have no rights to or in the Confidential Information. Receiving Party shall hold Confidential information in strict confidence and will exercise the same degree of care as it employs in the protection of its own Confidential Information, but in no event less than a reasonable degree of care. Receiving Party shall use Confidential Information solely for performing its obligations under this Contract. Receiving Party shall return or destroy all Confidential Information of Disclosing Party, including copies of Confidential Information or other materials containing Confidential Information (including compilations, analyses, or other materials prepared in whole or in part based on Confidential Information) upon the written request of Disclosing Party or the termination of this Contract.
12. **Governing Law.** This Contract shall be governed by and construed under the laws of the State of Michigan, and the federal and state courts within the State of Michigan, not applying its conflict of law provisions. This Contract and purchases hereunder shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods. Any cause of action, claim, suit or demand allegedly arising from or related to the terms of this Contract or the relationship of the parties shall be exclusively brought in the appropriate State of Michigan court located in the County of Kent, or in the United States District Court for the Western District of Michigan. The parties waive any objection based on inconvenient forum.
13. **Force Majeure.** Neither party shall be liable to the other party for any delay or failure to perform its obligations under this Contract if such delay or failure arises from any cause beyond the reasonable control of that party, including acts of God (including hurricanes, earthquakes, tornados, floods, or other natural disasters), fire, floods, explosion, civil or military authority, riots, civil disturbances, terrorism or threats of terrorism, or war, and without the fault or negligence of the delayed or non-performing party. The affected party will: (a) promptly provide notice to the other party, explaining the specifics of and the expected duration of the such delay and (b) use its reasonable efforts to remedy the interruption or delay if it is reasonably capable of being remedied.
14. **Assignment.** Neither party shall assign or transfer this Contract or any interest or duty of performance herein without the prior written consent of the other party; provided, however, that Buyer may assign, without Seller's consent, this Contract and its interest herein to any affiliate or to any entity succeeding to Buyer's business. Subject to the foregoing, these terms and conditions shall be binding on and inure to the benefit of the parties and their successors and assigns.
15. **Waiver.** No term or provision of this Contract shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. The waiver of a breach or violation of any provision will not be a waiver of any subsequent breach of the same or any other provision. All waivers shall be strictly construed. No delay in enforcing any right or remedy as a result of a breach of this Contract shall constitute a waiver thereof.
16. **Survival of Terms.** The provisions of sections 1, 6, 7, 8, 9, 10, 16 and 17 and any other provision the performance or effectiveness of which naturally survives, shall survive expiration or termination of this Contract for any reason.
17. **Buyer's Remedies Cumulative.** Buyer's remedies specified herein are cumulative and not exclusive of any other remedies available to Buyer.
18. **Severability.** In the event any one or more provisions of this Contract shall be declared by a court or other decision making authority of competent jurisdiction to be invalid, illegal or unenforceable in any respect, then the remainder of this Contract will be enforced so as to effect the intention of the parties, and the validity and enforceability of all other terms and conditions will not be affected, invalidated, or impaired.
19. **Independent Contractors.** Supplier and Buyer are independent contractors, and nothing in this Contract creates any agency, joint venture, partnership, or other form of joint enterprise, employment, or fiduciary relationship between Supplier and Buyer. Each party shall have exclusive control over its own employees, agents, and subcontractors, its labor and employee relations, and its policies relating to wages, hours, working conditions, or other conditions.