

APS TECHNOLOGY, INC.

PURCHASE ORDER TERMS AND CONDITIONS

1. **DEFINITIONS:** As used in these terms and conditions, “**Buyer**” shall mean APS Technology, Inc.; “**Order**” shall mean Buyer’s purchase order including these terms and conditions which are incorporated into and made an integral part of the Order; “**Goods**” shall mean all of the goods identified in the Order, “**Services**” shall mean all of the services identified in the Order and “**Seller**” shall mean the party supplying Goods and/or Services to Buyer pursuant to the Order.
2. **ORDER ACCEPTANCE; PRECEDENCE OF TERMS:** Seller’s acknowledgment, provision of any Goods or Services, or commencement of any work shall constitute Seller’s acceptance of the Order. These terms and conditions and those on the face of the Order shall take precedence over any conflicting terms in any other document issued by Seller in connection with this transaction. Without limiting the preceding sentence, the terms of any offer, quotation or proposal by Seller for the sale of the Goods or Services are made a part of the Order, but only to the extent of specifying the nature and description of the Goods and Services ordered, and then only to the extent that those terms are consistent with the Order. No conflicting or additional terms or conditions proposed by Seller shall be binding or of any force or effect whatsoever unless and until they are expressly accepted by Buyer in writing.
3. **PRICE AND DELIVERY:** Seller shall furnish the Goods and Services in accordance with the prices and delivery dates stated in the Order. The stated prices include all applicable taxes, except to the extent those sales taxes, if any, are separately itemized. If prices are not expressly stated in the Order the prices that Seller charges shall be no higher than the lowest net prices charged by Seller to any other customer for like Goods or Services and like quantities and Seller shall refund to Buyer any amounts paid by Buyer in excess of such prices. Both time and quantity of delivery are of the essence.
4. **PACKING:** Unless otherwise specified, all Goods shall be packed, packaged, marked, and prepared for shipment to prevent damage in transit, assure lowest transportation costs, and meet the carrier’s tariff requirements. Seller shall mark containers or packages with necessary lifting, loading, and shipping information as well as the Order number, date of shipment, and names and addresses of consignor and consignee. An itemized packing sheet must accompany each shipment. The unit price for each good sold to Buyer includes all packing, packaging and handling charges and Seller shall not impose or attempt to impose any additional charges for those items.
5. **INVOICING AND PAYMENT:** Seller shall issue a single invoice to Buyer following delivery of all of the Goods and Services, unless multiple or per delivery invoices are specifically permitted by the Order. The invoice shall itemize separately (1) any applicable taxes and (2) any freight and similar charges, but only to the extent the Order permits the imposition of those charges. Payment of an invoice shall not constitute acceptance by Buyer of any item of Goods or Services and all payments shall be subject to adjustment for errors, shortages, defects or other failure of Seller to meet any requirements of the Order. Prior to remitting payment, Buyer at its option may require Seller to procure and Seller shall procure and furnish to Buyer full and complete waivers of liens from all persons furnishing any labor and materials in connection with the fulfillment of the Order. Buyer may at any time set off any amount owed by Buyer or any of its subsidiaries or affiliates to Seller against any amount owed by Seller to Buyer or any of its subsidiaries or affiliates.
6. **RISK OF LOSS:** Regardless of which party is responsible for payment of shipping expenses, Seller shall retain title and bear the risk of loss for all Goods until they are delivered to the destination as and when specified in the Order and accepted by Buyer.
7. **CHANGES:** At any time by written notice to Seller, Buyer may make changes to any one or more of the following aspects of the Order: (a) drawings, designs or specifications; (b) method of shipment or packing; (c) quantities of items ordered; (d) delivery schedules; (e) time and/or place of delivery; or (f) instructions with respect to the performance of Services. Within fifteen (15) days following receipt of Buyer’s change notice, Seller shall notify Buyer in writing if the implementation of the change(s) would increase or decrease prices or the time required for the performance of the Order. Seller shall not implement any change unless and until Buyer has agreed in writing to accept the pricing and/or schedule modifications proposed by Seller or Buyer and Seller mutually agree in writing to alternative modifications.
8. **DEFERRAL AND CANCELLATION:** (A) Buyer reserves the right and shall be entitled to defer any specified delivery date for Goods and/or Services for a period of up to ninety (90) days without additional charges or penalties whatsoever, provided that Buyer shall notify Seller in writing at least fifteen (15) days in advance of the delivery date that is being deferred. (B) Buyer, at its option, may immediately cancel all or any part of the Order at any time and for any reason by giving written notice to Seller. Upon receipt of notice of cancellation, Seller, unless otherwise directed in writing by Buyer, shall (i) terminate all work immediately; (ii) transfer title and deliver to Buyer the finished Goods and Services, all work-in-process, and all parts and materials which Seller produced or acquired in accordance with the Order and which Seller cannot use in producing goods for itself or for others; (iii) settle all claims by subcontractors for reasonable actual costs that are rendered unrecoverable by such cancellation, subject to Seller’s obligation to mitigate such costs; and (iv) take actions reasonably necessary to protect property in Seller’s possession in which Buyer has an interest. (C) Upon cancellation, Buyer shall pay to Seller the following amounts without duplication: (i) the prices stated in the Order for all finished Goods and completed Services which conform to the requirements of the Order; (ii) Seller’s reasonable actual cost of the work-in-process and parts and materials transferred to Buyer in accordance with subsection (B)(ii) above; and (iii) Seller’s reasonable actual cost of settling the claims of the obligation Seller would have had to the subcontractors in the absence of termination; provided that Buyer shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller’s subcontractors, for any other alleged losses or costs, whether denominated as loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, general and administrative burden charges resulting from cancellation of the Order or otherwise. Regardless of anything to the contrary, the aggregate amount of Buyer’s obligations to Seller upon cancellation shall not exceed the amount Buyer would have had to pay Seller with respect the Order in the absence of cancellation.

9. **INSPECTION AND TESTING:** Seller shall provide and maintain quality control and inspection systems acceptable to Buyer. Unless otherwise specified in the Order, each shipment of Goods that are manufactured or produced specifically for Buyer and in accordance with Buyer's specifications and requirements ("Custom Goods") shall include, as applicable, mill inspection certificates, dimensional inspection certificates, heat treatment certificates, electrical and calibration certificates and such other certificates as may be reasonable or customary to demonstrate that the Custom Goods conform to Buyer's specifications and requirements. All Goods and Services shall be subject to inspection and test by Buyer and its customers, at their final destination and/or at Seller's production facility. Seller shall provide without additional charge all reasonable facilities and assistance for the safety and convenience of the foregoing parties in their performance of those inspections and tests. Any Goods or Services required to be corrected or replaced pursuant to Section 10 shall also be subject to re-inspection. If rejected Goods or Services are resubmitted, Buyer shall be notified in writing. Notwithstanding Buyer's rights of production facility inspection, final inspection and acceptance shall be made by Buyer or its customers at destination. No inspection, test approval or acceptance by Buyer or its customers shall relieve Seller from its warranty obligations under Section 11 or from its responsibility for any defects or other failure to meet the requirements of the Order. (The term "customers" shall include, without limitation, Buyer's end user customers, resellers, higher tier contractors and any federal, state or local government branch or agency.

10. **REJECTION:** In the event Buyer determines prior to acceptance that Goods or Services are defective in material or workmanship or otherwise not in conformity with the Order, Buyer shall, in addition to any other rights, have the right to (1) reject the Goods and/or Services and rescind the Order in whole or in part; or (2) reject the Goods or Services, in whole or part, and require their correction or replacement by Seller. If Buyer elects, Seller shall, without expense to Buyer and in accordance with Buyer's instruction, promptly provide replacement or corrected Goods or Services that are acceptable to Buyer. If Seller fails promptly to replace or correct such Goods or Services in accordance with Buyer instructions, Buyer may (a) replace or correct such Goods and Services and charge Seller the cost to Buyer thereof or (b) terminate the Order for default in accordance with Section 12. The right and remedies set forth in this Section are cumulative and in addition to any other rights or remedies to which Buyer may be entitled under the Order or in law or equity.

11. **WARRANTIES:** (A) Seller represents and warrants that: (1) it has good and marketable title to the Goods and Services, and has received all consents and authorizations from all third parties as may be necessary to sell the Goods and Services to Buyer; (2) all Goods and Services shall be free and clear of any and all liens, security interests or other encumbrances; and (3) Seller is under no restraints arising from contractual or confidential relationships with any third party that would preclude or restrict the full and complete performance of its obligations under the Order. (B) Seller represents and warrants that all Goods and Services (1) are of merchantable quality, (2) are free from all defects in design (except to the extent that Custom Goods comply solely with the detailed designs provided by Buyer) and workmanship and materials, (3) conform to all published specifications and/or the specifications, samples, drawings, design or other requirements (including performance specifications) submitted, approved or adopted by Buyer, as the case may be and (4) are fit for the particular purposes for which they are purchased. (C) Seller represents and warrants that all Services shall be performed by qualified personnel and in a manner that conforms to the practices and standards of Seller's profession or industry. (D) Any attempt by Seller to limit, disclaim or restrict the preceding representations and warranties or any associated remedies of Buyer by acknowledgment or otherwise shall be null, void and ineffective without Buyer's written consent.

12. **DEFAULT:** (A) Seller shall be in default (1) if Seller fails to make any delivery in accordance with the agreed delivery date or schedule set forth in the Order; (2) if Seller otherwise fails to observe or comply with any of the other instructions, terms, conditions or warranties applicable to the Order or fails to make progress in the work so as to endanger performance of the Order or (3) if Seller becomes insolvent or makes a general assignment for the benefit of creditors or if any proceedings are commenced by or against Seller under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law or statute, or if a trustee, receiver, liquidator or conservator for the Seller is applied for or appointed. (B) If Seller is in default, Buyer may terminate the Order or any part thereof by written notice and shall be entitled to all rights and remedies provided by law or under the Order, including but not limited to the procurement of similar Goods and Services from other suppliers on such terms and conditions as Buyer determines to be appropriate and to charge Seller for any excess costs incurred in addition to any other damage suffered by Buyer as a result of the default. The rights and remedies set forth in this Section are cumulative and in addition to any other rights or remedies in the Order or in law or equity. (C) Seller shall not have any right to terminate its performance hereunder on the ground of any alleged breach or default by Buyer, unless such breach is material and Buyer has failed to cure the breach within thirty (30) days after receipt of written notice from Seller.

13. **INFRINGEMENT:** Seller covenants and warrants that the Goods and Services shall not infringe any patents, trademarks or copyrights or other intellectual property rights of any third party, except to the extent that any items are specifically manufactured or created by Seller pursuant to designs originated or otherwise furnished by Buyer.

14. **BUYER'S MATERIALS AND TOOLS:** (A) All supplies, materials, molds, machinery, equipment, patterns, tools, dies, jigs, fixtures, blueprints, designs, specifications, drawings, photographic negatives and positives, art work, copy layout, consigned material for production or repair and other Items furnished by Buyer, either directly or indirectly, to Seller or for which Seller has been reimbursed by Buyer (collectively, "Buyer's Materials and Tools"), shall be and remain the property of Buyer and be held by Seller on a bailment basis. Seller shall bear the risk of loss of damage to the Buyer's Materials and Tools and Seller at its own expense shall keep Buyer's Materials and Tools insured for the benefit of Buyer. Buyer's Materials and Tools shall at all times be properly housed and maintained by Seller; shall not be used by Seller for any purpose other than the performance of the Order or subsequent Orders by Buyer for similar Goods; shall be deemed to be personalty; shall be conspicuously marked by the Seller to identify it as Buyer's property and indicate the Buyer's name; shall not be commingled with the property of Seller or with that of a third person and shall not be moved from Seller's premises without Buyer's prior written approval. Seller, at its expense, shall maintain, repair and refurbish Buyer's Materials and Tools in first class condition. All replacement parts, additions, improvements and accessories for Buyer's Materials and Tools are and shall continue to be Buyer's property. (B) Seller agrees that Buyer shall be entitled, at any time, with or without reason and without payment of any kind to retake possession of or request return of any or all Buyer's Materials and Tools. Upon Buyer's request, shall immediately release the Buyer's Materials and Tools to Buyer or deliver them to Buyer or to any location designated by Buyer F.O.B. transport equipment at Seller's plant, properly packaged and marked in accordance with the requirements of the carrier selected by Buyer. Buyer shall have the right to enter onto Seller's premises at all reasonable times to inspect the Buyer's Materials and Tools and Seller's pertinent records. Seller waives any lien or other rights that Seller might otherwise have on any of the Buyer's Materials and Tools for work performed on such property or otherwise.

15. **CONFIDENTIALITY:** Seller shall maintain in confidence and not further disclose any information that it or its representatives receive from Buyer, or obtain or discover in connection with the Order, including with out limitation all specifications, samples, drawings, design or other requirements (including performance specifications) submitted, approved or adopted by Buyer in connection with Custom Goods. Seller acknowledges that such information is the property of the Buyer and agrees that such information shall not be reproduced or used by Seller or transmitted or disclosed to any person or organization by Seller. Seller shall not in any manner advertise or publicize or release for publication any statement relating to the fact that the Order has been placed

with it or any details hereof without Buyer's prior written consent. The foregoing obligations of Seller shall not apply to any of Buyer's information that is in the public domain without any fault or omission of Seller.

16. **CUSTOM GOODS:** Seller shall not supply Custom Goods or any goods that are in any way derived from or otherwise based upon Custom Goods to any party other than Buyer.

17. **LIMITATION OF LIABILITY: EXCEPT FOR LIABILITY FOR PERSONAL INJURY OR DAMAGE TO PROPERTY, BUYER SHALL NOT BE LIABLE TO SELLER, WHETHER IN AN ACTION UNDER CONTRACT, NEGLIGENCE, OR ANY OTHER THEORY, FOR ANY AMOUNT IN EXCESS OF THE TOTAL AMOUNT OF COMPENSATION PAID OR PAYABLE BY BUYER TO SELLER UNDER THE ORDER. IN NO EVENT, HOWEVER, SHALL BUYER BE LIABLE TO SELLER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR FOR LOSS OF REVENUE OR PROFITS, EVEN IF THE POSSIBILITY OF DAMAGES OR LOSS HAD BEEN DISCLOSED OR REASONABLY COULD HAVE BEEN FORESEEN. THESE LIMITATIONS SHALL APPLY REGARDLESS OF ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.**

18. **INDEMNIFICATION:** Seller shall defend, indemnify and hold the Buyer harmless from all claims, liabilities, losses, damages, costs and legal fees arising out of or relating in any way to any actions, errors, or omissions of Seller, its agents, employees, subcontractors or any other persons directly or indirectly employed by them, in connection with the Order.

19. **INSURANCE:** Seller shall maintain Comprehensive General Liability – Bodily Injury/Property Damage (including coverage for contractual liability insuring the liabilities assumed in the Order, for products liability, contractors protective liability, where applicable, collapse or structural injury and/or damage to underground utilities, where applicable, and coverage for damage to property in the Seller's custody, care and controls, as well as naming Buyer as an additional insured) in the amount of \$3,000,000 combined single limit per occurrence, Comprehensive Automobile Liability – Bodily Injury/Property Damage covering all owned, hired and non-owned automotive equipment in the amount of \$1,000,000 combined single limit each occurrence, Employers Liability in the amount of \$1,000,000 each occurrence, Property Insurance covering the full value of all goods and services owned, rented or leased by Seller in connection with the Order, as well as appropriate Workers Compensation Insurance protecting Seller from all claims under any applicable Worker's Compensation and Occupational Disease Act. Coverage similar to Workers Compensation and Employers' Liability shall be obtained for each local employee outside the United States where work in connection with the Order is performed. Upon request, Seller shall furnish Buyer a Certificate of Insurance completed by its insurance carrier(s) certifying that insurance coverages are in effect and will not be canceled or materially changed except ten days after Buyer's written approval. Seller hereby waives subrogation. All insurance specified in this section shall contain a waiver of subrogation in favor of Buyer, its subsidiaries, affiliates and their respective employees for all losses and damages covered by the insurances required in this section, including coverage for damage to Buyer's Materials and Tools and all other of Buyer's property in the Seller's care, custody or control.

20. **COMPLIANCE:** Seller shall comply with all applicable federal, state and local laws, regulations, rules and orders, including without limitation, the provisions of and regulations promulgated under the Fair Labor Standards Act of 1938, the Occupational Health and Safety Act of 1970, and Title VI and Title VII of the Civil Rights Act of 1964 and Executive Orders, all as amended. Upon request, Seller shall furnish Buyer written certification of Seller's compliance with the foregoing as well as any other applicable laws, rules or regulations.

21. **ASSIGNMENT, SUBCONTRACTING:** Seller shall not assign or subcontract any rights or obligations under the Order without the prior written consent of Buyer and any purported assignment or subcontracting without Buyer's prior written consent shall be void.

22. **WAIVER:** The waiver by Buyer of a breach by Seller of any provision of the Order shall not be deemed a waiver of future compliance and that provision, as well as all other provisions of the Order, shall remain in full force and effect.

23. **SEVERABILITY:** If any clause, sentence, or provision of the Order is adjudged by any court of competent jurisdiction to be invalid that judgment shall not serve to affect, impair, or invalidate the remainder of the Order and shall be confined in its operation to the clause, sentence, provision, or part directly involved in the controversy in which the judgment shall have been rendered.

24. **GOVERNING LAW:** The Order will be governed by and construed in accordance with the laws of the State of Connecticut. Any dispute in connection with the Order that cannot be resolved amicably shall be adjudicated in a federal or state court situated in the State of Connecticut and each party shall submit itself to the jurisdiction of that court. Each party agrees, that any dispute arising under the Order shall be submitted to non-binding mediation under the auspices of a recognized, professional mediator acceptable to both parties, prior to the filing of any lawsuit relating to that dispute.