



Radiance Technologies (Buyer) Standard Terms and Conditions

Prior to accepting this Purchase Order, Radiance urges the Seller to read and understand fully the terms and conditions under which this Purchase Order is issued.

1. Definitions

As used herein, the following terms have the meanings so indicated: a) "Items" means supplies, products and/or services ordered by Radiance from The Supplier pursuant to a Purchase Order. b) "Purchase Order" means a transmission by Radiance to the Seller, electronically through a computer network or otherwise, by mail of hard copy, or by such other means as may be agreed (each a "transmission"), containing a Purchase Order number, an item, identification or specification description, number or items requested, and/or such other information evidencing an offer to the Seller by Radiance relating to the purchase of goods or services. c) "Purchase Order Revision" means a transmission revising the information contained in a Purchase Order. d) "Goods" and "Services", the terms "goods" as used herein means any and all supplies, products, chemicals, parts, machines, tooling, test equipment, computer software, components, assets and other tangible items or documentary information furnished or required to be furnished by the Seller under this Purchase Order other than labor. The term "services" means any and all technical assistance, consultations, engineering, program management, and other effort furnished or required to be furnished by the Seller under this Purchase Order other than labor furnished in connection with the production of goods.

2. Services

Seller shall perform all work diligently, carefully and in a good and workmanlike manner. Seller shall furnish all labor, supervision, machinery, equipment, goods and supplies necessary therefore; shall obtain and maintain all building and other permits and licenses required by public authorities in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors. Seller shall conduct all operations in its own name and as an independent contractor, and not in the name or as an agent of Radiance.

3. Inspection

Items are subject to Radiance's inspection, testing and approval. Radiance, at its option, may reject or refuse acceptance of Items, which do not meet the requirements of the Purchase Order or any applicable warranty. Items rejected or not accepted by Radiance will be returned to the Seller at the Seller's expense, and the Seller agrees to refund to Radiance any payments (including but not limited to shipment, expense) made by Radiance for such Items. Payment by Radiance for any Items shall not be deemed an acceptance thereof. Acceptance of any Item shall not relieve the Seller from any of its obligations, representations or warranties hereunder or pursuant hereto.

4. Acceptance

The Seller's acceptance is expressly limited to the written terms of this Purchase Order. No additional or different terms shall be binding. Radiance hereby objects to any additional or different terms contained in the Seller's acceptance. Any of the following acts by the Seller shall constitute acceptance: a) Signing and returning a copy of this Purchase Order, b) Commencing performance of any effort required to complete this Purchase Order, c) Informing Radiance of the initiation of any effort required to complete this Purchase Order; or d) Shipping of any Goods in performance of this Purchase Order.

5. Modification

No amendments or modifications of any of the terms and conditions of the purchase order shall be valid unless reduced to writing and signed by both parties. The terms and conditions of this purchase order shall not be amended or modified by the course of performance or course of dealing between the parties.

6. Quality and Warranty

a) the Seller warrants that all goods and services shall (i) conform strictly to the design criteria, specifications (including general specification and quality requirements), descriptions, drawings, samples, and other requirements referred to in this purchase order or provided by the Seller, (ii) be free from defects in design, material, and workmanship, and (iii) be free of all liens, encumbrances, and other claims against title. b) All warranties specified in section A above shall (i) survive any inspection, delivery, acceptance, or payment by Radiance, and (ii) be in effect for the longer of the Seller's normal warranty period or the Purchase Order's specified warranty period following the date of acceptance of the goods or services by Radiance.

7. Non-Complying Products

Radiance shall have the right (but not the obligation) to review work progress and test all supplies, special tooling, goods and workmanship to the extent practicable at all times and places during the period of manufacture. In case any goods delivered or services rendered hereunder is defective in material or workmanship or otherwise not in conformity with the requirements of this Purchase Order, Radiance shall have the right notwithstanding payment or any prior inspection or test or custom or usage of trade, either to reject it or to require its correction by and/or at the expense of the Seller promptly after notice.

8. Changes

The Seller shall notify Radiance in writing prior to any change to be made by the Seller in the material or services furnished. Such notification shall be forwarded to Radiance at least (30) days prior to the proposed effective date of such change except for those cases where an extremely unsatisfactory condition requires immediate action, in which case the Seller shall promptly so advise Radiance. If, in the event, such change, in Radiance opinion, would alter the characteristics of the material or services in a manner unacceptable to Radiance, then Radiance shall services affected by such change without cost or liability to Radiance whatsoever.

9. Quantity

No substitution of products, hours or labor category may be made without written permission from Radiance. Unless otherwise agreed to, no deviation from the quantities specified will be accepted.

10. Assignment

This Purchase Order and the money due there from may not be assigned without the prior written consent of Radiance.

11. Payments

The Seller shall issue a separate invoice for each delivery. Radiance will pay the Seller in accordance with the terms specified in the Purchase Order. Invoices shall include, but not be limited to, (i) invoice number and date, (ii) payment due date, (iii) discount terms, if any, (iv) purchase order number, and a "Release No", if applicable, and (v) quantity invoiced, unit price, and extended price for each line item invoiced.

12. Bankruptcy

If the Seller ceases to conduct its operations in the normal course of business, including inability to meet its obligations as they mature, or if any preceding under the bankruptcy or insolvency laws is brought by or against the Seller, or a receiver for the Seller is appointed or applied for, or an assignment for the benefit of creditors is made by the Seller, Radiance may terminate this Purchase Order without liability.

13. Drawings

Unless otherwise agreed to in writing, any drawings, plans, specifications, tools and other goods supplied by Radiance in connection with the production of the goods Purchase Ordered shall remain the property of Radiance and shall be returned upon demand. The Seller shall keep such property safe and in good condition, and shall not use it except in connection with sales to Radiance.

14. Disclosure

The Seller, on behalf of itself and its employees, agrees that any ideas, know-how, concepts, information, or processes received from Radiance or created by the Seller in connection with the performance of this Purchase Order shall be the property of Radiance and shall be preserved in strictest confidence by the Seller and shall not be used or disclosed by the Seller to third persons except to the extent that such use or disclosure is necessary for the proper performance of this Purchase Order. If disclosure to a third party is necessary, the Seller shall insure that such third party holds such information in strictest confidence.

15. Stop- Work Order

(a) Radiance may, at any time, by written order to the Seller, require to stop all, or any part, of the work called for by this purchase order. The seller shall immediately comply with the terms and conditions of the Stop-Work Order and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 30 days, Radiance shall either (1) cancel the stop work order; or (2) terminate the work covered by the order as provided in the default, or the termination for convenience clause. If a stop work order is issued by Radiance for the convenience of Radiance, then Radiance shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement.

16. Remedies

If, in Radiance's judgment, the goods or services supplied by the Seller are defective or nonconforming, or the Seller fails to comply in any material



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respect with any of the terms, and conditions or warranties of this Purchase Order, then Radiance may, at its option (a) terminate this Purchase Order or any part hereof; (b) reject goods or services in whole or in part; (c) return goods to the Seller and charge the Seller with all costs, expenses and damages associated with such return; (d) purchase substitute goods or services elsewhere and charge the Seller for any loss and damages incurred; or (e) require the Seller promptly to replace, repair or otherwise correct without expense to Radiance any nonconforming goods or services. Any such replacements, repairs or corrections shall be subject to the warranties stated herein. Any other rights and remedies stated herein shall be in addition to any rights and remedies provided by law or equity, and shall survive inspection, test acceptance and payment.

17. **Disputes**

Any claim, controversy, or dispute that may arise under or in connection with this Purchase Order with respect to the rights, duties, or obligations of the Parties shall be reduced to writing and submitted for resolution to ascending levels of management of the respective Parties up to the Chief Executive Officer. If such parties cannot resolve such differences through this means, the parties agree to submit to binding arbitration. The parties agree to select one (1) arbitrator from the America Arbitration Association who will hear and decide on the controversy. All arbitration proceedings will occur in Madison County, Alabama. The arbitrator's decision, including the payment of arbitration fees, shall be considered final and binding upon the parties. In the event the parties cannot agree on a single arbitrator, both parties shall nominate one arbitrator each, and these two selected arbitrators shall mutually select one arbitrator for the arbitration who alone will hear and decide on the dispute. The prevailing party shall be entitled to enforce the final decision by the arbitrator in any Court of competent jurisdiction.

18. **Termination For Convenience**

Radiance may terminate this purchase order in whole or in part, by providing notice of such termination to the Seller, specifying the extent and effective date of such termination. On the specified termination date the Seller shall: (i) Stop performing its obligations under this purchase order, or any specified part thereof, as appropriate. (ii) Promptly take all commercially reasonable actions to limit amounts for which Radiance is responsible under paragraph (b) of this clause. (iii) Promptly deliver to Radiance all completed or partially completed goods to which the termination applies. (b) In the event of any termination pursuant to this clause, Radiance total liability shall be payment to the Seller for: (i) the purchase price of completed goods and services and a pro rata portion, based upon the degree of completion for partially completed goods or services if such completed or partially completed goods or services if such completed or partially completed goods or services have been delivered to Radiance and the Seller has not previously been compensated therefore, (ii) the Seller's direct costs and associated indirect costs for labor and products, plus a reasonable profit for work performed specifically for Radiance and not allocable to completed or partially completed goods or services to be delivered to Radiance pursuant to paragraph a of this clause. (iii) Amounts determined by Radiance to be reasonably paid by the Seller for any termination pursuant to this clause shall not exceed the purchase price of the goods and services to which such termination applies. The Seller shall have no claim against Radiance for work not performed, goods or services not delivered, loss of anticipated profits or consequential damages suffered by reason of any such termination. The Seller shall submit any claims for compensation under this clause within thirty (30) days after the effective date of termination. The Seller hereby waives, releases, and renounces any claim for compensation not made within this period.

19. **Termination for Default**

a) Radiance may cancel this Purchase Order, in whole or in part, to the extent the Seller fails to perform or timely perform any of its material obligations under this order. b) In the event and to the extent of any cancellation under this clause, all obligations of Radiance and all rights and licenses of the Seller under the Purchase Order shall thereupon be canceled, and all rights and licenses of Radiance and all accrued obligations of the Seller under the Purchase Order shall survive, but only with respect to the goods and services covered by the cancellation notice. The Seller shall continue to perform those obligations under this Purchase Order to the extent not canceled. c) Radiance may return, and the Seller shall have no claim against Radiance for, Goods or Services not accepted by Radiance or for rejected Goods and Services. The Seller shall submit any claims for compensation under this clause within thirty (30) days after the effective date of Termination for Default. The Seller hereby waives, releases, and renounces any claim for compensation not made within this period. d) If, after issuance of a default notice under this clause, it is determined for any reason that the

Seller was not in default, or that the default was excusable under the provisions of this order, then there will be no cancellation and the Purchase Order will be terminated or convenience in accordance with the provision of the clause entitled "Termination for Convenience," as of the date the cancellation would have taken effect under this clause,

20. **Force Majeure**

Neither party shall be liable for failure or delay in performance under this Purchase Order due in whole or in part to an act of God, strike, lockout or other labor dispute, civil commotion, sabotage, fire, flood, explosion, act of any government, unforeseen shortages or unavailability of fuel, power, transportation, raw goods or supplies, inability to obtain or delay in obtaining government approval, permits, licenses or allocations and any other causes which are not within such party's reasonable control, whether or not of the kind specifically enumerated above.

21. **Indemnity**

The Seller shall defend, indemnify, and hold harmless Radiance, its subsidiaries, and their respective directors, officers, employees and agents (hereinafter referred to as "Indemnitees") from and against all actions, causes of action, liabilities claims, suits, judgments, liens, award, and damages, of any kind and nature whatsoever for property damage, personal injury, or death and expenses, costs of litigation and counsel fees related thereto, or incidental to establishing the right to indemnification, arising out of or in any way related to the order, the performance thereof by the Seller.

The Seller shall defend, indemnify, and hold harmless, the Buyer or its customers for any claim that any item(s) furnished under this order or the normal use or sale thereof infringes on any U.S. patents or copyrights, and shall pay costs, including legal fees, and damages finally awarded in any such suit, provided that Seller is notified in writing of the suit and given authority, information and assistance at Seller's expense for the defense of same. If the use or sale of said item is enjoined as a result of such suit, Seller, at no expense to Buyer, shall obtain for Buyer and its customers the right to use and sell said item or shall substitute an equivalent item acceptable to Buyer and extend this patent indemnity thereto.

22. **Shipping**

Unless the Purchase Order specified a different point, all deliveries shall be F.O.B Destination. Title and risk of loss of all goods shall pass to Radiance upon final acceptance.

23. **Taxes**

All taxes are deemed to be included in the price of the Goods. If state or local sales or use tax, value-added tax or custom duty tax are applicable to any of the Goods, it will be so noted on the Purchase Order, and the Seller shall bill the tax separately on its invoice.

24. **Compliance with Laws**

The Seller warrants that it shall comply with all applicable Federal, State and local laws, rulings and regulations in effect on the date of this Purchase Order.

25. **Severability**

If any court or administrative body of competent jurisdiction shall find any provision of this Purchase Order to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

26. **Governing Law**

This Purchase Order is to be construed according to the laws of the State of Alabama.

27. **Mandatory Government Clauses (Federal Acquisition Regulations)**

The following Federal Acquisition Regulation (FAR) clauses are required in all Radiance Terms & Conditions. At the Subcontractor's written request, Radiance will make available the full text. These clauses, incorporated herein by reference, are made part of this Purchase Order with the same force and effect as if set forth in full text.

In the application of these clauses to the Supplier, the term "Contracting Officer" shall be interpreted to mean the "Radiance Procurement Representative" and/or the "Radiance Contracting Official" signing the Order. The term "contract" shall be interpreted to mean "Purchase Order". The term "contractor" shall be interpreted to mean "Supplier".

(i) 52.219-8, Utilization of Small Business Concerns (MAY 2004)

(ii) 52.222-26, Equal Opportunity (APR 2002)



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(iii) 52.222-35, Equal Opportunity for Disabled Veterans and Veterans of the Vietnam Era (APR 1998)

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998)

(v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)

(vi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).