Supplier Terms & Conditions

Purchase Order Terms and Conditions

1. **Definitions**. The term "Buyer" shall refer to MAST Technologies. The term "Seller" shall refer to the supplier designated on the face hereof or on Purchase Order and shall also include its subcontractors, independent contractors and all other classes of persons performing any type of work under this Order. The terms "good(s)" and "services" shall refer to the materials, supplies, items, equipment, work and/or services covered by this Order. **"**Non-conforming Goods**"** means Goods that do not comply with the warranties and other provisions contained in this Order**. "**Order" means the purchase order to which these Terms are appended or into which they are incorporated, together with all drawings, specifications and other documents appended to or referenced in such purchase order. "Terms**"** means these MAST Technologies' Standard Terms of Purchase.

2. **Acceptance**. This Order must be accepted in writing by Seller. If for any reason Seller should fail to accept in writing, any conduct by Seller which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute an acceptance by Seller of this Order and all of its terms and conditions. Any terms proposed in Seller's acceptance of Buyer's Order which add to, vary from, or conflict, with the terms herein unless expressly agreed to in writing by Buyer's authorized representatives, are hereby rejected. To the extent that terms appearing on the face of this Order are inconsistent with those set forth herein, the terms on the face shall govern. Any reference on the face of this Order to Seller's proposal shall be exclusive of any terms and conditions attached to such proposal or referred to therein.

3. **Entire Agreement**. This Order, together with any specifications, schedules, exhibits or amendments which may be referred to herein or attached hereto by Buyer, sets forth the complete and final agreement between the parties, and supersedes any and all prior or contemporaneous oral or written communications relating to its subject matter. Any reference to any proposal, quotation or other communication by Seller shall, unless indicated to the contrary herein, be deemed to be limited to the description of the goods or services and to be limited by the terms set forth or incorporated by reference herein. No change, modification, or revision of this Order shall be effective unless in writing and signed by authorized representatives of Buyer and Seller.

4. **Prices**. Seller agrees that the price(s) set forth on the face of this Order is (are) firm, and is (are) not subject to increase. No increase in the price shown on the face of this Order will be accepted by Buyer unless agreed to in a writing signed by Buyer. No charges for extras will be allowed unless authorized by Buyer in writing. Prices will be inclusive of all charges necessary to deliver the Goods to Buyer (such as transportation, insurance and duties). The acceptance of this Order constitutes a warranty that the price(s) to be charged for goods or services ordered herein are not in excess of prices charged to other customers for the same or like goods and services in equal or less quantities.

5. **Taxes**. Buyer shall be liable for the payment only of those local, state or federal sales taxes, which Seller is required by law to collect from Buyer. Seller will pay any customs, import, export, excise, sales, use, value added or other tax or duty (however designated) imposed or assessed upon the manufacture, sale, import, export, delivery or use of the Goods. All such taxes shall be stated separately on Seller's invoice.

6. **Invoices and Payment**. Invoices shall be submitted and shall contain the following information: Purchase Order number, item number, description of goods and services, sizes, quantities, unit prices, and extended totals in addition to any other information specified elsewhere herein. Payment of an invoice shall not constitute acceptance of goods or services and shall be subject to adjustment for errors, shortages, defects in the goods or services, or other failure of Seller to meet the requirements of the Order. Payment due dates, including discount periods, will be computed from the date of receipt of all goods and services or date of receipt of correct invoice, whichever is later. Buyer may deduct from any amounts due or to become due to Seller under this Order any sums owed by Seller to Buyer, whether under this Order or any other purchase order or contract between them, and any sums reasonably necessary to protect Buyer against amounts and third-party claims for which Seller is liable, whether under this Order or any other order or contract between them.

7. **Packing**. All goods shall be prepared and packed in a commercially reasonable manner suitable for the goods shipped and so as to secure the lowest transportation rates. Seller shall mark all containers with necessary lifting, handling, hazardous information, shipping information, purchase order numbers, Buyer part number, date of shipment and any applicable shelf life expiration. An itemized packaging sheet and Certificate of Conformance must accompany each shipment.

8. **Delivery**. TIME IS OF THE ESSENCE OF THIS ORDER and deliveries must be received on the dates and at the destination(s) set forth on the face hereof. If delivery is not completed within the time(s) specified, Buyer reserves the right, without liability, in addition to its other rights and remedies, to cancel the entire Order or that part of the Order not delivered, or to extend the time of delivery or payment. If timely delivery is endangered by Seller, Buyer shall have the right to direct Seller to make shipment by the most expeditious means and the total cost of such expedited shipment and handling shall be borne by Seller. Seller will be liable for damages resulting from a late or non-conforming delivery, including any liquidated damages on the face of this Order. If Buyer rejects a late delivery of Goods, or rejects or revokes acceptance of Non-conforming Goods, then Buyer may obtain equivalent or substitute products from another source, and if the price of such products exceed the price of the Goods under this Order, then Seller will reimburse Buyer for such excess. No partial or complete delivery shall be made hereunder prior to the date or dates shown unless Buyer has given prior written consent. Buyer will pay only for maximum quantities ordered. Overshipments will be held at Seller's risk and expense for a reasonable time while Buyer awaits return shipping instructions from Seller.

9. **Freight; Title and Risk of Loss**. (a) Unless otherwise specifically provided on the face of this Order, the goods shall be delivered on a Delivered Duty Paid (DDP) basis, as defined in the International Chamber of Commerce's Incoterms 2000, to Buyer's destination specified on the face of this Order. Any freight charges invoiced to Buyer, either by Seller or the carrier, will be charged back to and paid by Seller. If the face of this Order designates an ExWorks or FCA Incoterm, Buyer will be responsible for freight charges to the destination designated on the face hereof. Any costs incurred by Buyer as a result of Seller's failure to comply with Buyer's routing instructions shall be borne by Seller. (b) Notwithstanding any prior inspections, and irrespective of the Incoterm point named herein, Seller shall bear all risks of loss, damage and destruction to the goods until final acceptance by Buyer at the destination specified on the face of this Order. Further, Seller shall bear the same risks with respect to any goods rejected by Buyer or as to which Buyer has revoked its acceptance, from the time of such rejection or revocation. Title to and risk of loss of the goods shall pass to Buyer upon final acceptance.

10. **Inspection**. (a) Notwithstanding any prior inspections or payments hereunder, all goods and services shall be subject to final inspection and acceptance at Buyer's plant within a reasonable time (but not less than 90 days) after receipt at destination. (b) If any goods or services delivered do not meet the requirements of this Order, Buyer shall have the right to reject such goods or services. Buyer may elect to reject the entire goods and services tendered even if only a portion thereof is nonconforming. If Buyer elects to accept nonconforming goods or services, Buyer, in addition to its other remedies, shall be entitled to an appropriate reduction in price. Any Buyer's signature on any shipping/receiving document shall not constitute acceptance of Goods or any different terms or conditions, or acknowledge condition of Goods but shall merely acknowledge receipt of a shipment. Payment of any good or service shall not be deemed an acceptance thereof.

11. **Warranty**. (a) Seller warrants that all goods and services furnished hereunder shall: i) be free from defects in workmanship, material, manufacture, and design (where design is Seller's responsibility); ii) comply with the requirements of this Order, including all drawings and specifications incorporated herein and samples furnished by Seller; iii) perform as specified herein or otherwise represented by Seller (even if such representations do not appear on the face hereof, notwithstanding the provisions of Paragraph 3 hereof; iv) be merchantable and fit and sufficient for the use intended by Buyer; and v) be free and clear of any lien or other adverse claim against title. The foregoing warranties are in addition to all other warranties, expressed or implied, and shall survive any delivery, inspection, acceptance, and payment by Buyer. Buyer's approval of Seller's material or design shall not relieve Seller of the warranties set forth herein. (b) Seller's warranty shall be effective for a period of time as set forth on the face of this Order. If no such period is stated, the warranty shall be effective for a period of one (1) year from the date of Buyer's acceptance. This warranty shall run to Buyer's customers and users of its products. (c) If any goods or services furnished hereunder do not meet the warranties specified herein, Buyer may, at its option: i) require Seller to correct, at no cost to Buyer, any defective or nonconforming goods or services by repair or replacement; or ii) return such defective or nonconforming goods at Seller's expense to Seller and recover from Seller the Order price thereof; or iii) correct the defective or nonconforming goods or services itself and charge Seller with the cost of such correction. The foregoing remedies are in addition to all other remedies at law or in equity or under this Order and shall not be deemed to be exclusive.

12. **Nonconforming Product & Changes.** Seller must notify Buyer of all nonconforming product and receive nonconforming product disposition approvals from the Buyer. Buyer may at any time, by written order, suspend performance hereunder, increase or decrease the ordered quantities, or make changes within the general scope of this Order in any one or more of the following: i) drawings, designs, or specifications; ii) method of shipment or packing, and/or iii) time and/ or place of delivery. If any such change causes an increase or decrease in the cost of or the time required for performance of this Order, an equitable adjustment shall be made in the price or delivery schedule, or both, and this Order shall be modified in writing accordingly. No claim by Seller for adjustment shall be valid unless asserted within twenty (20) days from the date of receipt by Seller of the notification of change; provided, however, that such period may be extended upon the written approval of Buyer. Changes shall not be binding on Buyer unless evidenced by a writing signed by an authorized representative of Buyer. Nothing in this clause shall excuse Seller from proceeding with this Order as changed. Seller shall notify Buyer of any changes to product, processes, suppliers, and facilities, where applicable.

13. **Termination for Convenience.** (a) Buyer may terminate this Order, for convenience, in whole or in part, at any time by written or electronic notice. Upon any such termination Seller shall, to the extent specified by Buyer, stop all work on this Order, and cause its suppliers or subcontractors to stop work. Charges for any such termination of this Order shall be limited to actual non-recoverable costs incurred by Seller which Seller can demonstrate were properly incurred prior to the date of termination. In no event will Buyer reimburse Seller for goods, inventory or services in excess of those required to meet Buyer's delivery schedule for binding forecasts. (b) Within (30) thirty days from such termination Seller may submit to Buyer its written claim for termination charges, in the form and with the certifications prescribed by Buyer. Failure to submit such claim within such time shall constitute a waiver of all claims and a release of all of Buyer's liability arising out of such termination. (c) Buyer shall pay Seller the amount due for goods and services delivered prior to termination and, in addition thereto, but without duplication, shall pay the following amounts: i) the contract price for all goods and services completed in accordance with this Order and not previously paid for; ii) the cost of unique work in process no more than necessary to meet delivery schedules hereunder; and iii) the costs of paying claims to Seller's suppliers for work directly allocable to the goods or services terminated. There shall be no charges for terminating this Order with respect to standard goods for which there are alternate customers. Buyer shall not be responsible for any commitments made by Seller in advance of those necessary to comply with the schedules set forth in this Order. Payments made under this subparagraph shall not exceed the aggregate price specified in this Order, less payments otherwise made or to be made. Upon payment of Seller's claim, Buyer shall be entitled to all goods, materials and work in process. (d) IN NO EVENT SHALL SELLER BE ENTITLED TO NOR SHALL BUYER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, COSTS OF PREPARING CLAIMS, COSTS OF TOOLING OR EQUIPMENT, OR ANY OTHER EXPENSES OR DAMAGES ARISING OUT OF THIS ORDER OR WITH RESPECT TO THE TERMINATED GOODS OR SERVICES.

14. **Termination for Default** (a) Buyer may, by written or electronic notice, terminate this Order, in whole or in part, if Seller: i) fails to make delivery of the goods or perform the services within the time specified herein; or ii) fails to replace or correct defective goods or services in accordance with the provisions of those Paragraphs hereof entitled "Warranty" and "Inspection;" or iii) fails to perform any of the other provisions of this Order or fails to make progress so as to endanger performance in accordance with its terms; or iv) becomes insolvent, files or has filed against it a petition in bankruptcy, or makes an assignment for the benefit of creditors or v) Seller competes with Buyer or any of its affiliates in any line of business. (b) In the event of such termination, Seller shall transfer title and deliver to Buyer, to the extent directed by Buyer: i) any completed goods and services, and ii) such partially completed items and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as Seller has produced or acquired for the performance of the Order. Prices for partially completed goods and manufacturing material shall be negotiated; however, such prices shall not exceed the Order price per type of goods and services.

15. **Seller's Indemnification.** (a) Notwithstanding any other provision of this Order, Seller shall defend, indemnify and hold harmless Buyer from and against any and all claims, damages, losses and reasonable expenses, whether direct, indirect or consequential, including, but not limited to, liabilities, obligations, costs, expenses (including, without limitation, interest, penalties and attorneys' fees), fines, taxes, levies, assessments, demands, damages and judgments of any kind or nature, to the extent arising directly or indirectly out of or resulting from: i) goods or services supplied or the performance of work by Seller hereunder; ii) Seller's negligence or willful misconduct; iii) the breach by Seller of any provisions hereunder; iv) a claim that the goods or services supplied by Seller infringe any patent, copyright, trademark, trade secret or other intellectual property interest of another; or v) a claim of mechanic's lien or other encumbrance made by a third party. (b) Seller shall carry and maintain insurance coverage satisfactory to Buyer to cover its obligations set forth in subparagraph (a) above, and upon Buyer's request, shall furnish Buyer with evidence of such insurance in a form satisfactory to Buyer.

16. **Non-Disclosure of Confidential Matter.** Goods or services purchased hereunder with Buyer's specifications or drawings shall not be quoted for sale to others without Buyer's written authorization. All

Confidential – Company Proprietary Information

specifications, drawings, samples, and other data furnished by Buyer shall be treated as confidential information by Seller, shall remain Buyer's property, shall only be disseminated to those within Seller's organization on a "need to know" basis only, shall not be disclosed to any third party, and shall be returned to Buyer immediately on request.

17. **Buyer Property.** Unless otherwise agreed in writing, all tooling, equipment, material, dies, molds, jigs, fixtures, patterns, machinery, special test equipment, special tapes and gauges which have been furnished, paid for, or charged against Buyer, or which have had their cost amortized shall be deemed Buyer's property. Such property, while in Seller's custody or control, shall be held at Seller's sole risk, Seller will keep an inventory record, conduct annual physical inventories and shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with loss payable to Buyer. Such property shall be delivered in good condition, normal wear and tear accepted, to Buyer, F.O.B. Buyer's plant, immediately upon request by Buyer. Seller warrants that said items would not be used for any work or for the production of any materials or parts other than for Buyer without Buyer's written permission.

18. **Patent License.** Seller, as part consideration for this Order and without further cost to Buyer, hereby grants Buyer an irrevocable, non-exclusive, royalty-free right and license to use, sell, manufacture, and cause to be manufactured and sold products embodying any and all inventions and discoveries made, conceived, or actually reduced to practice in connection with the performance of this Order.

19. **Right of Entry.** Buyer, Buyer's Customer or Regulatory Authorities shall have the right to conduct health, safety and environmental ("HSE") and Goods specific Quality Audits and inspections at Seller's manufacturing sites and review Buyer's applicable records and documentation. Buyer shall assess an HSE and Quality rating in accordance with Buyer's standard procedures. If, in the opinion of Buyer, such rating is unsatisfactory, Seller agrees to address any deficiencies identified by Buyer, to Buyer's satisfaction, within three (3) months from Buyer's submission of the rating to Seller. If Seller fails to correct all such deficiencies to Buyer's satisfaction within such three (3) month period, Buyer shall have the right to terminate the Agreement by giving Seller one (1) month written notice of its intent to so terminate. Buyer has the right to request test specimens, objective evidence and test reports from the Seller for any Goods or Special Process being purchased from the Seller as a means to support the quality of the Goods. Seller must notify Buyer prior to shipment of any nonconforming Goods and receive written authorization from Buyer to ship any nonconforming Goods.

20. **Limitation on Buyer's Liability; Statute of Limitations.** In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages. Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this Order or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services or unit thereof, which gives rise to the claim. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer as to the goods or services delivered hereunder must be commenced within one year after the cause of action has accrued.

21. **Waiver.** The failure of Buyer to enforce at any time any of the provisions of this Order, to exercise any election or option provided herein, or to require at any time performance by Seller of any of the provisions herewith shall in no way be construed to be a waiver of any such provisions, or the right of Buyer thereafter to enforce each and every such provision.

22. **Rights and Remedies.** The rights and remedies of Buyer set forth herein shall not be exclusive and are in addition to any other rights and remedies provided at law or in equity.

23. **Compliance with Laws.** Seller shall comply with all federal, state, local and governmental agency laws, ordinances, rules and regulations in the manufacture and sale of the goods and in the performance of services covered in this Order. In addition, Seller shall comply with the Export Control Laws and regulations of the United States and any amendments thereof.

24. **Gratuities.** Seller warrants that it has not offered or given and will not offer or give to any employee, agent, or representative of Buyer any gratuity with a view toward securing any business from Buyer or influencing such person with respect to the terms, conditions or performance of this Order.

25. **Assignment and Subcontracting.** No right or obligation under this Order (including the right to receive monies due hereunder) shall be assigned by Seller without the prior written consent of Buyer, and any purported assignment without such consent shall be void. Seller may not subcontract for completed articles or major components without Buyer's prior written consent. Buyer may assign this Order at any time if such assignment is considered necessary by Buyer in connection with a sale of Buyer's assets or a transfer of its obligations, including, but not limited to a merger, acquisition or outsourcing to a third party.

26. **Notice of Delays.** Whenever Seller has knowledge of an actual or potential labor dispute or any event which delays or threatens to delay the timely performance of this Order, Seller shall immediately notify Buyer of such event and furnish all relevant details. Such notice is for informational purposes only and shall not relieve Seller of its obligations to comply with the requirements of this Order.

27. **Applicable Law.** This Order shall be governed by, subject to, and construed in accordance with and enforced according to the laws of the State of California, U.S.A. without regard to laws concerning conflicts of laws. Each of the parties hereto submits itself to the exclusive jurisdiction and venue of the State or Federal courts in California, U.S.A. for the purpose of any action in connection with this Agreement. The Parties do not intend that any agency or partnership relationship be created between them by this Order. Each provision of this Order shall be interpreted in such a manner as to be effective and valid under applicable law. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Order.

28. **Force Majeure** – Each party shall be absolved from liability from any act, omission or circumstance occasioned by any cause not with its control, without the negligence of the party affected, and which could not, by reasonable diligence, have been foreseen or avoided. Such acts, omissions or circumstances, however, shall not relieve a party of liability in the event of it's failure to use reasonable diligence to remedy the situation and remove the cause with all reasonable dispatch and to give notice (including all details of the situation) in writing to the other party as soon as possible after the occurrence thereof. If by reason of any such Force Majeure event, the quantity of Products available to Seller shall be less that its total needs for its own use and sale, Seller shall allocate on a fair and equitable basis. Quantities so affected, may at the option of buyer, be eliminated from the Agreement without liability and Buyer may at its option terminate the Agreement.

29. **Quality Commitment** - Seller acknowledges and commits itself to continuous quality improvement and the implementation of a quality management system. In particular, Seller specifically acknowledges its commitment to attempt to attain 100% conformance with all of its obligations pursuant to this Agreement, including the goals of 100% on-time delivery and 100% conformance with warranty obligations. Seller is subject to control and monitoring of on-time delivery and conformance applied by Buyer. Seller shall have a system in place to prevent the use of counterfeit parts. Buyer may note in writing to Seller any non-conformance by Seller to the contract requirements and Seller shall comply with the requirements of Buyer's Non-Conformance Management System. In the event that the composition, packaging or sourcing of raw materials used in the production of Goods is altered, or the manufacturing process, quality test, or quality test methods used in the manufacture of the Goods is altered, Seller agrees to promptly notify Buyer of the alteration. Upon its request, Buyer or its customer may inspect and verify Goods at Seller's facilities. Seller agrees to promptly notify Buyer of loss of any third party certification (such as ISO9000 Series, QS9000) that occurs during the term of this Agreement or any extension thereof.

30. **Special Process** - Seller warranties that any Special Process is Certified to industry standards or will meet the requirements expressly defined by the Buyer on face of this Order.

31. **Flow Down -** Seller shall flow down to all sub-tier suppliers all applicable requirements in the purchase order including any key characteristics, specifications, drawings, and other information, unless Seller is notified to withhold information, in writing, by the Buyer. The following FAR clauses shall apply, as required by the terms of the prime contract or by operation of law or regulation. The effective version of each FAR provision shall be the same version as that which appears in the Prime Contractor's Prime Contract: FAR CLAUSES

32. **Record Retention - S**eller shall retain related records for seven (7) years and flow down record retention requirements to all sub-tier suppliers. Obsolete or expired records shall be deleted, erased, incinerated, or otherwise destroyed. In the event of a sale of business or transfer or records to a new location, MAST shall be notified and record disposition shall be determined at that time.

33. **Other Requirements** - Seller shall ensure that personnel performing work under their organization are aware of their contribution to produce or service conformity, their contribution to product safety, and the importance of ethical behavior.

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Revision History

Revision	Date	Prepared By	Approved By	Description of Changes
001	03/10/10	Mike Vanderby	Andrew Sundsmo	New Issue
002	01/23/13	Mike Vanderby	Andrew Sundsmo	Added right of entry for MAST and customers and information on record retention
003	02/20/13	Steve Burningham	Andrew Sundsmo	Added Section 32. Record Retention
004	1/26/18	Steve Burningham	Andrew Sundsmo	Updated Section 29 to include notification of control and monitoring OTD and conformance, as well as notification of the need to prevent the use of counterfeit parts. Updated Section 32 to provide disposition information for records. Added Section 33.