



Endwave Corporation
PURCHASE ORDER TERMS AND CONDITIONS
(Rev. May 2010)

- 1. ENTIRE AGREEMENT.** This PURCHASE ORDER, together with the documents incorporated herein, supersedes all other agreements, oral or written, heretofore made with respect to the subject hereof and the transactions contemplated hereby, and contains the entire agreement of the parties with respect to the subject matter hereof. Neither party shall be bound by or liable to the other party for any representation, promise or inducement made by any agent or person in the other's employ which is not embodied in this PURCHASE ORDER. Capitalized or UPPERCASE terms contained herein refer to the terms set forth on the applicable pages of the PURCHASE ORDER, unless otherwise expressly defined in these terms and conditions.
- 2. SELLER'S ACKNOWLEDGEMENT.** SELLER'S acknowledgement of, or shipment on, this PURCHASE ORDER shall constitute SELLER'S acceptance of all terms hereof and all terms specifically incorporated by reference herein, and SELLER understands and expressly agrees that any different or additional terms which may be contained in SELLER'S acknowledgement or related documents shall be void and of no effect.
- 3. TITLE AND RISK OF LOSS.** Notwithstanding the shipment method specified in this PURCHASE ORDER, risk of loss including loss due to improper packaging shall remain with SELLER until delivery at BUYER'S designated facility regardless of when TITLE shall pass to BUYER in accordance with such shipping method.
- 4. PRICE AND PAYMENT.** Prices set forth in this PURCHASE ORDER shall include all Sales and Use Taxes when applicable and shall include packaging and transportation unless specifically stated otherwise elsewhere in this PURCHASE ORDER. PAYMENT for undisputed amounts shall be made within forty-five (45) days (or as negotiated and stated on the PURCHASE ORDER), from the date of SELLER'S invoice, acceptable in accordance with the terms and conditions of the PURCHASE ORDER, or delivery of conforming GOODS to BUYER, whichever shall come later. Cash discount period, if any, commences upon BUYER'S receipt of invoice, acceptable in accordance with the terms and conditions of the PURCHASE ORDER, or delivery of GOODS to BUYER, whichever shall come later. All other TERMS OF PAYMENT shall appear on the face of the PURCHASE ORDER.
- 5. OVER/UNDER QUANTITIES.** Unless expressly approved in writing prior to delivery, BUYER may elect to return to SELLER at SELLER'S expense, any shipment whose quantity does not match the quantities as listed on this PURCHASE ORDER.
- 6. NON-CONFORMING MATERIAL REMEDIES.** BUYER will promptly notify SELLER of receipt of any GOODS which do not conform to this PURCHASE ORDER and any drawings, specifications and instructions, referenced herein. SELLER shall make arrangements to replace and/or sort and remove all non-conforming GOODS within five (5) days of notice on non-conformance. If SELLER should fail to cure the non-conformance within five (5) days of such notice, BUYER, at its sole option, either shall return the entire shipment at SELLER'S expense, or shall sort the shipment, return or scrap non-conforming GOODS at SELLER'S expense and invoice SELLER for any labor performed at the actual burdened rate for BUYER employee(s) performing the labor.
- 7. FORCE MAJEURE.** No failure, delay or default in performance of any obligation hereunder shall constitute an event of default or a breach of this PURCHASE ORDER, to the extent that such failure to perform, delay or default arises out of a cause, existing or future, that is beyond the reasonable control and without negligence of the party otherwise chargeable with failure, delay or default, including, but not limited to; fire, flood; war; riot; theft; earthquake; natural disaster, act of terrorism, negligence or default of the other party (each of the foregoing shall be referred to herein as a "FORCE MAJEURE CONDITION"). Either party desiring to rely upon any FORCE MAJEURE CONDITION as an excuse for failure, default or delay in performance shall, when such FORCE MAJEURE CONDITION arises, give to the other party prompt, notice in writing of the facts which constitute said FORCE MAJEURE CONDITION; and, when the FORCE MAJEURE CONDITION ceases to exist give prompt notice thereof to the other party. This Article shall in no way limit the right of either party to this PURCHASE ORDER to make any claim against third parties for any damages suffered due to a FORCE MAJEURE CONDITION. Notwithstanding the foregoing, if such FORCE MAJEURE CONDITION persists for more than fifteen (15) days, then BUYER may cancel the affected PURCHASE ORDER upon written notice to SELLER, without any liability to SELLER.
- 8. CANCELLATION FOR DEFAULT.** SELLER understands and agrees that time is of the essence for this PURCHASE ORDER because the goods or services ordered herein are needed for products of BUYER that have a very short, carefully timed market life; failure of SELLER to deliver conforming GOODS on the due date could cause BUYER products to be unmarketable. BUYER, may, by written notice cancel this order in whole or in part if SELLER, has failed to (i) deliver items on time as per the contracted delivery date(s) or (ii) replace or correct defective items in accordance with the terms hereof; or (iii)



perform any of the other provisions of this PURCHASE ORDER. If SELLER fails to deliver conforming GOODS on the due date, BUYER may, at its option, procure such GOODS from an alternate source, and SELLER shall be liable for any additional costs incurred by BUYER in connection therewith. Nothing in this Article is intended to excuse SELLER from proceeding with any uncanceled portion of this PURCHASE ORDER.

9. PACKAGING AND SHIPMENT. Unless otherwise specified in writing in the PURCHASE ORDER, SELLER will package and pack all goods in a manner which is in accordance with good commercial practice and adequate to insure safe arrival of the goods at BUYER. An itemized packing list specifying the PURCHASE ORDER Number (PO #) must accompany each shipment.

10. WARRANTY BY SELLER. SELLER warrants, represents and covenants that all GOODS delivered pursuant to this PURCHASE ORDER: (i) will be new and free from defects in workmanship, material, and manufacture; (ii) will comply with the requirements of this PURCHASE ORDER, including any drawings or specifications incorporated herein or samples furnished by SELLER; (iii) where design is SELLER's responsibility, will be free from defects in design; (iv) do not infringe any patent, trademark, trade secret, copyright or other intellectual property rights or proprietary rights of any third party; (v) do not violate any laws governing unfair competition, unfair business practices or similar rights of others; (vi) are not misbranded or adulterated and strictly comply in every respect with all requirements of this PURCHASE ORDER and with all applicable acts, laws, requirements, rules, regulations and provisions of competent governmental authority (whether federal, state, local or otherwise) and any amendments thereto; (vii) will be of merchantable quality and will be fit for the purposes intended by BUYER; and, (viii) either do not contain any hazardous substance or, if they do contain a hazardous substance, all hazardous substances therein are specifically and properly identified on a material safety data sheet packed with the product(s); and the goods will not create an environmental hazard when used in accordance with the operating instructions provided to BUYER by SELLER. The foregoing warranties constitute conditions to and essential elements of this PURCHASE ORDER. They are in addition to all other warranties, whether expressed or implied, and will survive any delivery inspection, acceptance or payment by BUYER. All warranties run to the benefit of BUYER and its customers. BUYER's approval of SELLER's materials or design will not relieve SELLER of any warranties.

11. WAIVER. The failure of BUYER to enforce at any time any of the provisions of this PURCHASE ORDER, to exercise any election or option provided herein, or to require at any time the performance by SELLER of any of the provisions herein will not in any way be construed to be a waiver of such provisions.

12. NOTICE OF DELAYS. Whenever any event delays or threatens to delay the timely performance of this PURCHASE ORDER, SELLER will immediately notify BUYER in writing of such event and furnish all relevant details. Receipt by BUYER of such notice will not constitute a waiver of the due dates hereunder.

13. ASSIGNMENTS. No right or obligation under this PURCHASE ORDER (including the right to receive monies due) may be assigned by SELLER without the prior written consent of BUYER, and any purported assignment without such consent will be void. BUYER may assign this PURCHASE ORDER at any time.

14. ADVERTISING. SELLER shall not use the BUYER name, or any trademark or servicemark of BUYER, or refer to BUYER directly or indirectly in any advertisement, sales presentation, news release or releases to any professional or trade publication without BUYER's prior written approval.

15. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW: (I) BUYER SHALL NOT BE LIABLE TO THE SELLER FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE, INCLUDING BUT NOT LIMITED TO, LOST PROFITS, EVEN IF BUYER HAS THE KNOWLEDGE OF SUCH DAMAGES; AND, (II) BUYER'S CUMULATIVE LIABILITY TO SELLER UNDER THIS PURCHASE ORDER, FOR ANY CAUSE OF ACTION, SHALL NOT EXCEED THE AMOUNT OF THIS PURCHASE ORDER.

16. INDEMNITY. SELLER shall, at BUYER's option, defend BUYER (and its agents, servants, employees, officers and directors) against each and every demand, claim, asserting of liability or other legal action arising or alleged to arise, directly or indirectly out of: (i) the possession, use, sale handling or consumption of any GOODS sold or delivered by SELLER pursuant to this PURCHASE ORDER; (ii) any act, omission or failure to perform the obligations or requirements hereunder of SELLER or imposed by law; or (iii) with respect to the GOODS provided by SELLER hereunder, one or more of the following situations arising from or related thereto: (a) any damages, sickness, injury or death to persons; (b) damages or injury to property, whether of BUYER or otherwise; (c) inaccurate, incomplete or false labeling or description; (d) defects in quantity or quality; or (e) breach of any warranty, express or implied, whether included herein or otherwise, and, with respect to (i), (ii) and (iii) above, SELLER shall assume legal responsibility for, indemnify and hold free and harmless BUYER (and its agency, servants, employees, officers and directors) against any and all loss, damage, fines, liabilities, costs and expenses (including, but not limited to attorney fees, court costs, and reasonable investigative and discovery costs) and other sums which BUYER (or its agents, servants, employees, officers or directors) may reasonably pay or may become obligated to pay on account of each and every such



demand, claim, assertion of liability or action. BUYER agrees to notify SELLER promptly in writing in the event any such claim, demand, assertion of liability or action, is brought to BUYER's attention.

17. CONFIDENTIAL INFORMATION. BUYER confidential information shall be identified as, but not limited to, the terms of this PURCHASE ORDER, and product development plans, marketing plans, vendor lists, trade secrets, drawings, schematics, technical specifications, manufacturing techniques, financial information, and customer lists of BUYER. The SELLER hereby agrees to maintain such information in trust and confidence, and not to disclose such information to third parties unless authorized in writing by BUYER, or to use such information for any purpose other than performing SELLER's obligations under this PURCHASE ORDER. The SELLER represents that its employees are contractually obligated not to disclose BUYER's confidential information obtained by them in the course of their employment and agree that only those employees having a need to know for the purpose of this PURCHASE ORDER shall have access to BUYER confidential information. BUYER shall at all times be the sole and exclusive owner of its confidential information.

18. APPLICABLE LAW. This order shall be governed by and construed under the laws of the State of California, USA, without reference to its conflict of laws rules or any other rules that would result in the application of a different body of law.

19. DISPUTE RESOLUTION. If there is a dispute between the parties arising out of or otherwise relating to this PURCHASE ORDER, a party requesting resolution thereof shall send a written resolution request (a "REQUEST") to the other party, whereby the parties shall work in good faith to try to resolve such dispute. Except for action to seek injunctive or other equitable relief as set forth below, any and all such disputes that cannot be resolved by the parties within fifteen (15) days following the date of such REQUEST, shall be settled solely, finally, and exclusively by arbitration in Santa Clara County, California, USA. The arbitration shall be administered by JAMS pursuant to its then-current Comprehensive Arbitration Rules and Procedures, subject to any modifications thereto as expressly set forth in this Article. The merits of the dispute shall be resolved in accordance with the laws of the State of California, USA. The arbitration shall be conducted and administered by one (1) arbitrator who shall be knowledgeable in the subject matter hereof. The parties shall agree upon the arbitrator, but if they cannot agree within five (5) days following the demand for arbitration, then JAMS shall select the arbitrator. The arbitrator shall, within fifteen (15) calendar days after the conclusion of the arbitration hearing, issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. Each party shall bear its own attorney's fees, costs, and disbursements arising out of the

arbitration, and shall pay an equal share of the fees and costs of the administration of the arbitration and the arbitration panel; provided, however, the arbitrator shall be authorized to determine whether a party is the prevailing party, and if so, to award to that prevailing party reimbursement for its reasonable attorneys' fees, costs and disbursements (including, for example, expert witness fees and expenses, photocopy charges, travel expenses, etc.), and/or the fees and costs of the administration of the arbitration and the arbitrator. Absent the filing of an application to correct or vacate the arbitration award under California Code of Civil Procedure sections 1285 through 1288.8, each party shall fully perform and satisfy the arbitration award within fifteen (15) days of the service of the award. Any decision rendered by the arbitrator shall be binding, final and conclusive upon the parties, and a judgment thereon may be entered in, and enforced by, any court having jurisdiction over the party against which an award is entered or the location of such party's assets, and the parties hereby irrevocably waive any objection to the jurisdiction of such courts based on any ground, including without limitation, improper venue or forum non-conveniens. Except where clearly prevented by the subject matter of the dispute, both parties shall continue performing their respective obligations under this PURCHASE ORDER while this dispute is being resolved. By agreeing to this binding arbitration provision, the parties understand that they are waiving certain rights and protections which may otherwise be available if a dispute between the parties were determined by litigation in court, including, without limitation, the right to seek or obtain certain types of damages precluded by this arbitration provision, the right to a jury trial, certain rights of appeal, and a right to invoke formal rules of procedure and evidence. Notwithstanding anything to the contrary herein, each party shall be entitled, at any time, to seek injunctive or other equitable relief from any court of competent jurisdiction, wherever such party deems appropriate, in order to preserve or enforce such party's rights hereunder. The parties and the arbitrator shall be bound to maintain the confidentiality of this Agreement, the dispute and any award, except to the extent necessary to enforce any such award.

20. SURVIVAL. The rights and obligations of the parties which by their nature survive termination or completion of this PURCHASE ORDER, including but not limited to those set forth herein in the Articles of these Terms and Conditions titled ADVERTISING; INDEMNITY; WARRANTY; CONFIDENTIAL INFORMATION; APPLICABLE LAW, DISPUTE RESOLUTION, and LIMITATION OF LIABILITY shall remain in full force and effect.

21. NOTICES. Any notice required or permitted by this PURCHASE ORDER shall be in writing and shall be delivered as follows, with notice deemed given as indicated: (i) by Federal Express or other overnight courier, upon written verification of receipt as evidenced by the courier's delivery record; (ii) by telecopy or facsimile transmission,



upon acknowledgment of receipt of electronic transmission; or (iii) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set in this PURCHASE ORDER or to such other address as either party may specify in writing.

22. SEVERABILITY. If one or more provisions in this PURCHASE ORDER are ruled entirely or partly invalid or unenforceable by any court or governmental authority of competent jurisdiction, then: (i) the validity and enforceability of all provisions not ruled to be invalid or unenforceable shall remain unaffected; (ii) the effect of such ruling shall be limited to the body making the ruling; (iii) the provision(s) held wholly or partly invalid or unenforceable shall be deemed amended, and the Parties shall reform the provision(s) to the minimum extent necessary to render them valid and enforceable in conformity with the Parties' intent as manifested herein; and (iv) if the ruling, or the controlling principle of law or equity leading to the ruling, is subsequently overruled, modified, or amended, then the provision(s) in question, as originally set forth in this Agreement, shall be deemed valid and enforceable to the maximum extent permitted by the new controlling principle of law or equity.

23. EQUAL OPPORTUNITY CONTRACT CLAUSE. SELLER agrees to abide by the provisions outlined in the Equal Opportunity Clauses of Executive order 1126, (60-1.4), section 503 of the Rehabilitation Act of 1973, (60-741.5) and, section 402 of the Vietnam Era Veterans Readjustment Act of 1974, (60-250.5), as well as any other regulations pertaining to these orders.

24. EXPORT COMPLIANCE CLAUSE. To the extent that BUYER identifies and furnishes SELLER with Technical Data or Software that is regulated by the United States Munitions List (USML), the SELLER acknowledges that any export, transfer, or disclosure of the Technical Data or Software to a foreign person, whether a full or part-time employee or agent of SELLER, is strictly prohibited without SELLER first obtaining a license from the United States Department of State, Directorate of Defense Trade Controls.

25. COUNTERFEIT PARTS. Notwithstanding any other provisions of this agreement, the Supplier/Subcontractor/Seller warrants that all items provided to the BUYER shall be genuine, new, and unused unless otherwise specified in writing by the BUYER. SELLER further warrants that all components used by the SELLER during the performance of work are from verifiable sources, and are not counterfeit goods. The SELLER shall indemnify the BUYER, its agents, and third parties for any financial loss, injury, or property damage resulting directly or indirectly from material, components, or parts that are not genuine, original, unused, or not otherwise suitable for their intended purpose. This includes, but is not limited to, materials that are defective, objectively suspect, or counterfeit; materials that have been provided

under false pretenses or misrepresented as to source of goods; and materials or items that are materially altered, damaged, deteriorated, diluted, degraded, or result in product failure because of such condition. Because falsification of product or product documentation may constitute criminal conduct, the BUYER may reject and retain such products and documentation, and report such information or activities to cognizant officials.

26. ATTACHMENTS. The following named documents of the most recent revision indicated are attached to this PURCHASE ORDER, and are specifically incorporated as if fully set forth in this PURCHASE ORDER:

- a. _____
- b. _____
- c. _____
- d. _____

Note: listed attachments denoted with an asterisk (*) contain technical data that is regulated under the USML. Export, transfer, or disclosure of such technical data by SELLER to a foreign person is prohibited without a license.

(No further Terms and Conditions)