

Revision	ECO	Description of Change	Date Issued/Revised	Originator	Approval
A	995	Initial Release	12/07/2007	C. Welch	C. Varney

1. Agreement

Unless otherwise individually agreed in writing, the legal relationship between the Supplier and Alpha Research & Technologies, Inc. (ART Inc.) with respect to the purchase order or agreement will be based exclusively on the following terms and conditions. Any conflicting terms and conditions which are in any way inconsistent herewith provided by the Supplier shall not apply, even if ART Inc. fails to expressly reject such terms and conditions in any given case, specifically when ordered goods are accepted without objection, unless with ART Inc.'s explicit prior written consent.

2. Delivery Dates

- a) Any agreed delivery dates for goods or services are binding. If any delays are anticipated or in fact occur, the Supplier shall promptly notify ART Inc. thereof. The Supplier shall be responsible for all shipping costs on delayed shipments to expedite the goods to Art Inc.
- b) If, as a result of the Supplier's fault, the delivery date deadline is not met (default), then ART Inc. may demand compensatory damages, without prejudicing its other rights.
- (c) If the Supplier fails to perform its contractual duties within a reasonable time period of grace stipulated by ART Inc., then ART Inc. will have the right, following the expiration of such period, to commission a third party to perform the Agreement and to demand that the Supplier reimburse for necessary expenses and additional costs incurred as a results. Upon expiration of the grace period, the Supplier's right to cure and ART Inc.'s obligation to accept such performance will lapse as ART Inc. procures substitute performance on its own in lieu of specific performance, or if ART Inc. demands compensatory damages in lieu of specific performance.

3. Prices and Invoices

- (a) Unit prices are firm. These prices include all expenses connected with the goods and services to be provided by the Supplier.
- (b) Invoices must include the ART Inc. purchase order number, ART Inc. part number when provided, and shall have a clear description of the goods or service. Invoices that fail to include all of the above information will be returned. They will be deemed not received and thus do not become due and payable, nor will they be used by the Supplier as evidence of failure to pay.
- (c) Seller shall be responsible for the payment of all charges for handling, packaging, wrapping, bags, containers and related matters unless Buyer has assumed an express obligation therefore by notation on the order.

4. Processing and Delivery

- (a) A Certificate of Conformance must accompany all manufactured or electrical items, in the event that an item has any special processes a Certificate of Conformance shall be supplied for those special processes (special processes could include: plating, alodine plating, anodized plating, silk screen, conformal coating, painting, etc.). If no certificate of conformance is received with the shipment, the shipment will be rejected and the rejection applied to the Suppliers performance rating.
- (b) All goods shall be packaged properly to avoid any damage in transit. A packing slip must accompany all shipments and shall include the purchase order number, indicate clearly each item and quantity and reference the ART Inc. part number if provided.
- (c) Copies of Invoices shall be marked as such.
- (d) The Supplier takes full responsibility for any sub-contracted process and will have final approvals or inspection in place to assure all sub-contracted components conform to all specifications dictated by the ART Inc. drawings.

5. Confidentiality

The Supplier shall treat as confidential any and all information and knowledge it receives in connection with the submission of a request for quote or purchase order by ART Inc. and agrees to not disclose such information or knowledge to a third party, unless the Supplier can prove to ART Inc. that at the time such information or knowledge was given it was generally available in the marketplace.

6. Right of Access

ART Inc. may, at reasonable times and by giving reasonable notice to the Supplier, access the premises of the Supplier to inspect any materials or copy documentation, books and records, however stored, in the custody of the Supplier, its employees, agents or subcontractors with regards to the ART Inc. purchase order.

7. Tools, Materials and Drawings

- (a) ART Inc. retains the title and ownership of tools and materials supplied/consigned by ART Inc. to Supplier for the manufacture of products for ART Inc. Such tools and materials shall be used only in filling Art Inc. purchase orders.
- (b) Supplier shall be responsible for the proper maintenance and repair of the tools and materials, at its own costs. The tools and materials shall be at Supplier's risk of loss until returned to ART Inc.
- (c) Art Inc. shall be entitled to take possession of such tools and materials as and when it deems necessary and Supplier shall comply with all requests to return such tools and materials.
- (d) The Supplier shall have established and maintained documented procedures to control, calibrate and maintain any ART Inc. owned tools or materials.
- (e) All drawings, CAD data and specifications shall also remain the sole property of ART Inc. The drawings and updates shall be considered confidential and be retained by Supplier in a confidential manner until returned to ART Inc.

8. Warranty

Unless otherwise agreed, Supplier warrants that all products and services shall conform to the applicable specifications as agreed with ART Inc. and shall be free from defects in material and workmanship. Supplier shall remedy any defects by correcting the defects at its own expense or by furnishing new products or services free of defects. Defective products shall be returned to Supplier and repaired or replaced by Supplier at its own expense and risk.

9. Rejections, Corrective Action Request (CAR)

All goods purchased hereunder are subject to Buyer's inspection and approval. Goods rejected by Buyer for whatever reason shall be held, transported and/or stored at Seller's sole expense. ART Inc. will notify the Supplier of a part's nonconformance with a Corrective Action Request (CAR). A CAR can be issued for a part as a result of receiving inspection rejection, defective parts in stock or found defective during our assembly process or failure by the Supplier to meet ART Inc.'s on time delivery/quality requirements. Seller shall either replace or credit the dollar amount per Buyer's directive and return the completed CAR to Buyer within

10. Notification of Nonconforming Product

Supplier shall notify ART of any nonconforming product as soon as it recognizes it. ART will determine if we can utilize said product or material and either issue approval for the Supplier to continue building the product or reject said material as nonconforming.

11. Insurance

Supplier shall maintain all relevant insurance, including liability insurance, underwritten by a reputable insurance company in an amount sufficient to cover any claim or damage arising from or in connection with orders placed and products and services procured by ART Inc.

12. Force Majeure

No party shall be liable for any failure to perform its obligation under this Agreement if such failure results from circumstances beyond its reasonable control and occurs without its fault or negligence including but not limited to floods, earthquakes and other natural disasters, war, insurrection, acts of terrorist, acts of governments or governmental bodies, riot, civil disturbances, fire, explosions, strikes, lockouts and industrial actions; provided that such incapacitated party promptly gives written notice to the other party specifying the matter constituting Force Majeure together with such evidence as it can be reasonably give specifying the period for which it is estimated that such prevention will continue.

If the incapacitated party is excused from the performance of any obligation for a continuous period of thirty days due to Force Majeure, then the parties shall consult each other with a view of termination of this Agreement forthwith.

13. Assignment, Delegation, Subcontracts

No right or interest in this agreement shall be assigned without the prior written consent of ART, Inc. Seller shall not subcontract any portion of the work under this agreement without the prior written consent of Buyer. Seller may assign claims for monies due under this agreement only with prior written consent of Buyer, however, all claims for monies due or to become due from Buyer shall be subject to setoff or counterclaim arising out of this or any other Buyer's agreement with Seller whether before or after the date of this agreement. Any attempted assignment, delegation or subcontract shall be void and totally ineffective for all purposes unless made in accordance with this paragraph.

14. Severability

If one or more individual provisions of these Terms and Conditions should be ineffective, the effectiveness of the other provisions shall not be affected.

15. Written Requirement

All purchase orders, together with any modifications or supplements must be in writing and be forwarded to the Supplier by authorized ART Inc. purchasing department personnel.

16. Supplier Records Retention

The Supplier shall retain all ART Inc. records (drawings, specifications, electronic IGES files, etc.) in a secured fashion for a period of 2 years, unless ART Inc. requests that the Supplier return or destroy the records earlier. At the end of the 2 year period the Supplier is to return or destroy the records at the directive of ART Inc. It is the responsibility of the Supplier to control the records to ensure that it is working with the latest, most current revision of the ART Inc. drawing.

17. Supplier Rating and Evaluation

ART, Inc. performs evaluation and rating of its Suppliers for delivery and quality statistics on a quarterly basis. In the event the Supplier fall below an acceptable level a Supplier Corrective Action Request will be issued to the Supplier and must be completed and returned to ART specifying the root cause of the problem and the corrective action to be taken by the Supplier.

18. Title and Risk of Loss

Regardless of F.O.B. Point, Seller agrees to bear all risk of loss, injury, or destruction of goods and materials ordered which occur prior to delivery and acceptance by ART, Inc. Upon such delivery and acceptance, title shall pass from Seller and Seller's responsibility for loss or damage shall cease, except for loss or damage resulting from Seller's negligence or failure to comply with the purchase order.

19. Equal Employment Opportunity

Unless exempted by Presidential Executive Order 11246 and applicable regulations thereunder, Seller certifies that it does not discriminate on the basis of race, color, religion, national origin, age or sex, and will not maintain segregated facilities, nor permit its employees to work at locations where facilities are segregated on the basis of race, color, religion, national origin, age or sex.

20. Government Contracts

If this is an agreement under a Government prime contract or subcontract, applicable additional clauses set forth in the Federal Acquisition Regulation (FAR) in effect on the date of this agreement are incorporated by reference herein. Buyer shall make a copy of such applicable FAR clauses available to Seller upon Seller's request therefore in writing.

21. Disputes

Any disputes arising out of the purchase order which is not settled by agreement of the parties shall be settled by arbitration under the law of California including the law of arbitration with venue of Sacramento County, California. Pending decision or settlement of any dispute, Seller shall proceed diligently with the performance of the purchase order. Failure of Seller to so proceed shall be cause for default termination. If this is an order under a Government prime contract or sub-contract, and if a decision on any question of fact arising under the prime contract is made by the contracting officer thereunder, and such a question of fact is also related to this sub-contract, said decision, if binding on Buyer under the prime contract, shall be binding upon Buyer and Seller insofar as it relates to this contract. If in the result of such decision Buyer cannot obtain reimbursement from the Government or is required to refund or credit to the Government, any amount for which Buyer has reimbursed Seller, Seller shall, on demand, promptly repay such amount to Buyer.

22. Applicable Law

This agreement and all its rights and obligations of the parties shall be governed by and interpreted in accordance with the laws of the state of California including the UCC as enacted and in force in the state of California.

THIS PURCHASE ORDER IS INTENDED BY THE BUYER AND SELLER AS A FINAL EXPRESSION OF THEIR AGREEMENT AND IS INTENDED ALSO AS A COMPLETE AND EXCLUSIVE STATEMENT OF THE TERMS OF THEIR AGREEMENT, NO COURSE OF PRIOR DEALINGS BETWEEN THE BUYER AND SELLER AND NO USAGE OF THE TRADE SHALL BE RELEVANT TO SUPPLEMENT OR EXPLAIN ANY TERMS USED IN THIS PURCHASE ORDER ACCEPTANCE OR ACQUIESCENCE IN A COURSE OF PERFORMANCE RENDERED UNDER THE PURCHASE ORDER SHALL NOT BE RELEVANT TO DETERMINE THE MEANING OF THIS PURCHASE ORDER EVEN THOUGH THE ACCEPTING OR ACQUIESCING PARTY HAS KNOWLEDGE OF THE NATURE OF THE PERFORMANCE AND OPPORTUNITY FOR OBJECTION.

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