



## Supplier Terms and Conditions

**1. ACCEPTANCE OF PURCHASE ORDER.** Seller is the supplier named on the face of this purchase order. Buyer is Seek Thermal, Inc. These terms and conditions, the order they accompany, and all documents named in that order (collectively, the Purchase Order), comprise the parties' complete contract for the sale of the items identified in the order (the Goods). The contract is effective on the earlier of: Buyer's receipt of Seller's notice of acceptance or acknowledgment, or Seller's commencement of performance. If any terms on the face of Buyer's order differ from or add to these printed terms, the order face terms shall take precedence over these printed terms and conditions. Seller may only accept this order by accepting the terms and conditions in the Purchase Order. Additional or different terms proposed by Seller, including preprinted terms in Seller's quotation, acknowledgement or invoice, shall not apply to the parties' contract, and Buyer OBJECTS to such terms. If this Purchase Order has been issued by Buyer in response to an offer, and if any of the terms herein are additional to or different from any terms of such offer, then Buyer's acceptance of such offer, is expressly conditioned on (a) Seller's assent to such additional and different terms herein and (b) Seller's acknowledgment that this Purchase Order states the parties' entire agreement.

**2. CONFLICTING OBLIGATIONS.** If Seller believes any requirements of this Purchase Order conflict with one another, Seller shall notify Buyer in writing. If Seller proceeds without conferring with Buyer, Seller shall be bound by Buyer's decision regarding the controlling requirement, and Seller shall pay all resultant costs.

**3. INSPECTION, EXPEDITING, AND DOCUMENTATION.** Seller is fully responsible for the design, fabrication, and construction of the Goods and for compliance with all terms, conditions, specifications, drawings and codes. Buyer shall have the right to inspect the Goods and Seller's manufacturing processes and facilities used in production of Seek unique Goods at all reasonable times. Subject to Seller's reasonable restrictions regarding safety and security. Seller shall comply with Buyer's reasonable requests to expedite the Goods. Seller shall provide Buyer with data, drawings, specifications, test results, quality documentation, schedules and other information according to the requirements of this Purchase Order. Buyer shall have a reasonable time, not less than thirty days, after receipt to inspect Goods. Buyer, at its election, may either reject nonconforming Goods, or keep nonconforming Goods, and, in addition to other available remedies, deduct a reasonable amount from the price. Buyer's inspection, waiver of inspection, and acceptance of Goods shall not relieve Seller of its obligations.

**4. TIME OF PERFORMANCE.** Delivery according to the schedule stated in the Purchase Order is of critical importance to Buyer's avoiding substantial loss on sales to its customers. IN THE EVENT OF DELAY, OR ANTICIPATED DELAY, from any cause, including force majeure, Seller shall immediately notify Buyer in writing of the delay or anticipated delay, and will shorten or make up the delay by all commercially reasonable means. If Seller fails to meet Buyer's delivery requirements without Buyer's written approval, and fails to adequately assure future performance, Buyer, within ten days of Buyer's notice of intent to cancel, Buyer may cancel all or any part of this Purchase Order, subject to the terms provided in Article 13 herein, Default.

**5. FORCE MAJEURE.** Neither Buyer nor Seller will be liable for any delay or failure to perform its obligations hereunder (except for payment of money) if, and to the extent that such delay or failure to perform is caused by an event or occurrence which is unforeseeable on execution of the order, unavoidable, and beyond the reasonable control of the party and without its fault or negligence, including, but not limited to, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, riots, explosions, natural disasters, wars, sabotage, labor problems such as lockouts, strikes and slowdowns, inability to obtain power, material, labor, equipment or transportation, or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by the affected party to the other party within ten (10) calendar days from the occurrence of this event. Either party may terminate this order without liability upon written notice to the other party if a force majeure event affecting such other party lasts more than thirty (30) calendar days.

**6 TITLE; RISK OF LOSS.** Title to the Goods, and in the event that the Goods are made to order, then title to all materials, inventory, work in progress, design data, other documentation, and all related contractual rights, shall vest in Buyer upon delivery. If Buyer makes progress payments, title shall pass in proportion to payments made. Seller shall take affirmative steps to segregate Goods and clearly label them as property of the Buyer. Seller warrants full and clear title to the Goods, free and clear of any and all liens, restrictions, reservations, security interests and encumbrances. In the event that Buyer rejects Goods as nonconforming, title shall revert to Seller. Irrespective of vesting of title, Seller shall bear the risk of loss and shall insure or self-insure for the benefit of Seller and Buyer the Goods in its care, custody and control until Goods are delivered in accordance with this Purchase Order.

**7. CONFORMING GOODS.** The Goods shall conform strictly to the description, plans, specifications, and sample. If there are no specific descriptions, plans,



## Supplier Terms and Conditions

specifications, or samples, and to the extent that they are not explicit, the Goods shall be new, of the latest design or model conforming to the Buyer's requirements, and of the best quality. Seller may not substitute Goods or parts of Goods, or shipment more or less than the quantity specified in this Purchase Order. If Buyer receives Goods that do not conform to these requirements, Buyer may reject such shipment in whole or in part by notifying Seller. Seller shall remove such rejected goods at Seller's expense within ten (10) days after the date of Buyer's notice.

**8. WARRANTY.** Seller warrants that the Goods will be free from defects in material, workmanship, and design for a period of 12 months from the date of initial operation of the Goods, or 18 months from the date of shipment, whichever shall first occur. In the case of goods that have shelf life, Seller warrants that the Goods will be free from defects for a period equal to the shelf life prior to use, and per the above period upon use. In the case of spare or replacement parts manufactured by Seller, the warranty period shall be for a period of six months from shipment. Repairs shall be warranted for 12 months or, if the repair is performed under this warranty, for the remainder of the original warranty period, whichever is greater. Buyer shall report any claimed defect in writing to Seller upon discovery and in any event, within the warranty period. Seller shall repair or replace the Goods within ten (10) working days, at the original delivery point of shipment. If Buyer repairs or replaces Goods without Seller's prior written approval, Seller is relieved of obligation to Buyer under this section with respect to such Goods, unless the repair, replacement, or adjustment occurred after Seller failed to satisfy its obligations under this section. Goods shall not be deemed defective either by reason of normal wear and tear or, Buyer's failure to properly store, install, and maintain the Goods.

**9. WARRANTY REMEDIES.** If Buyer discovers any breach of warranty, then Seller, at its option, shall promptly repair or replace, the Goods in question at Seller's cost. Buyer's rights and remedies in this paragraph are in addition to any other rights or remedies legally available.

**10. COMPLIANCE WITH APPLICABLE LAWS; INDEMNITY OBLIGATIONS.** Seller shall comply with any and all applicable governmental laws, executive orders, regulations and directives, including without limitation those relating to U.S. export controls. Seller agrees to indemnify Buyer against any claim, loss, cost, liability, or damage by reason of Seller's violation of any applicable governmental law, order, claim, regulation, or directive.

**11. PATENTS, COPYRIGHTS, TRADEMARKS AND TRADE SECRETS.** Seller warrants, represents and covenants that the Goods and the sale and use thereof do

not infringe directly or indirectly any valid patent, copyright, property right or trademark. Seller agrees, at its cost and expense, to indemnify and hold Buyer free and harmless from and against any and all costs, expense, liabilities or damages, including attorneys' fees, arising out of alleged or actual patent, copyright, property right, trademark or trade secret infringement.

**12. ASSIGNMENT.** Seller may not assign this Purchase Order without Buyer's prior written consent.

**13. CANCELLATION.** Upon written notice to Seller, Buyer may cancel all or any separable part of this Purchase Order. Seller immediately shall stop all work on the Goods, place no additional orders, and cancel its existing orders on the best possible terms. Pending Buyer's instructions, Seller shall preserve and protect Goods on hand, work in progress, supplier data, and completed Goods, both in its own and in its supplier's facilities. Buyer shall have the immediate right to remove from Seller's premises the Goods and all drawings, records, and parts paid for by Buyer. Buyer's only cancellation payment, if any, shall be that amount that reflects the part of the Purchase Order satisfactorily performed before cancellation, less money already paid to Seller. Seller is not entitled to recover for lost profits or other consequential or incidental damages.

**14. CHANGES.** Buyer may make changes in the character or quantity of the Goods, or in the manner or time of performance of this Purchase Order. Buyer's changes must be communicated to Seller in writing signed by a duly authorized representative of the Buyer. An equitable adjustment in the price and time for performance will be made by the parties in writing if such changes result in a decrease or increase in the Seller's cost or time of performance. Seller shall make no change or revision without Buyer's prior written consent, and any change requested by Buyer shall be subject to review by Seller for impact on Seller's warranty. No claim by Seller for an adjustment in the price or in the time of performance shall be considered unless presented to Buyer in writing within ten (10) days after Seller learns of the claim.

**15. INDEMNIFICATION.** Seller shall indemnify, defend and hold harmless Buyer and its officers, directors, employees, contractors, successors in interest, and permitted assigns, (the "Buyer Indemnified Party") against all claims, suits, actions, awards, liabilities, damages, costs, reasonable attorney's fees and other reasonable professional fees (collectively, "Claims") brought by a third party against a Buyer Indemnified Party that is based on the gross negligence of Seller or its officers, directors, employees, contractors, representatives, or agents under this Order. Seller shall indemnify, defend and hold harmless the Buyer Indemnified Party against any Claims brought by a third party against the Buyer Indemnified



## Supplier Terms and Conditions

Party arising out of the actual or alleged infringement of any third party Intellectual Property Rights (including, but not limited to, patent, trademark, copyright, industrial design, regardless of whether such Intellectual Property Rights are registered) by the Products. Buyer's obligations under this Paragraph will not apply if the Claim arises from or as a result of: (i) Buyer's breach of this Agreement, gross negligence, willful misconduct or fraud; or (ii) modifications to the Products by anyone other than Seller. (iii) any intellectual property provided to Seller by Buyer to assist in the execution of this order. The Buyer Indemnified Party will duly notify Seller of any Claim and shall provide reasonable assistance to Seller, at Seller's expense, to enable Seller to defend the Claim. Seller will have the sole right to conduct the defense of any Claim, provided that Buyer shall have the right to reject any settlement that would negatively impact Buyer as determined solely by Buyer. Unless otherwise provided herein, Buyer may, at its sole expense, actively participate in any suit or proceeding, through its own counsel.

**16. TAXES.** Unless otherwise provided herein, Seller's prices include all sales, use, excise and other taxes, and all duties, fees or other assessments of whatever nature imposed on Seller by governmental authorities, applicable in connection with this Purchase Order.

**17. CONFIDENTIALITY; PROPRIETARY INFORMATION.** All data, tooling, designs, drawings and other documents and proprietary information supplied to Seller by Buyer (Data) are confidential and shall not be used by Seller, or disclosed to anyone other than Seller without confidentiality protection equal to this provision, except as needed for Seller to perform and fulfill its obligations under this Purchase Order. Nothing in these terms and Conditions shall be construed to prohibit Seller from using any Data which is owned by the U.S. Government (and is not owned by Buyer to perform future contracts with the U.S. Government. However, Seller's right to use Data owned by the U.S. Government and not owned by Buyer shall comply with all laws and regulations and shall not exceed the U.S. Government's rights in such Data. Seller shall notify Buyer in advance and in writing of any such use. The parties' nondisclosure agreement is incorporated by this reference. No implied license of Buyer's intellectual property is created by this Purchase Order. Any exceptions to this provision must be agreed to in writing before any disclosure occurs.

**18. LIMITATION OF LIABILITY.** Buyer's obligation to pay Seller for Goods is expressly conditioned upon receipt of completed, conforming Goods. **NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF INCOME, PROFITS, REVENUE OR BUSINESS**

**INTERRUPTION, OR THE COST OF COVER OR SUBSTITUTE PRODUCTS OR OTHER ECONOMIC LOSS, ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT OR THE PRODUCTS, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. IN NO EVENT WILL SELLER'S TOTAL LIABILITY TO BUYER IN CONNECTION WITH THIS CONTRACT OR THE PRODUCTS EXCEED THE TOTAL AMOUNTS ACTUALLY PAID BY BUYER TO SELLER FOR THE PRODUCTS PURCHASED HEREUNDER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY ON WHICH THE CLAIM OR LIABILITY IS BASED, AND WHETHER OR NOT COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.**

**19. SUBCONTRACTORS, SUBSUPPLIERS.** If a portion of the work involved in the performance of this Purchase Order is subcontracted to another party, and before using such subcontractors or suppliers in the performance of this Purchase Order, Seller shall obtain Buyer's written consent and incorporate these Terms and Conditions into the subject subcontracts, including key characteristics where required. Seller shall include in each lower-tier subcontract the appropriate flowdown clauses as required by the FAR and its agency supplements.

**20. SETOFF.** All claims for money due or to become due from Buyer shall be subject to deduction or setoff by Buyer by reason of any counter claim arising out of this or any other transaction with Seller.

**21. DOCUMENTATION AND RIGHT OF AUDIT.** Where Seller's invoice includes unit pricing or costs resulting from Buyer's changes, Seller shall submit Seller's determination of units of Work performed, determined in accordance with the provisions of this Purchase Order and substantiated by documents satisfactory in form and content to Buyer. If Seller's invoice includes compensation for Work performed on cost-plus basis, all costs, expenses and other amounts so invoiced shall be substantiated and supported by documents satisfactory to, and verified by, Buyer. Seller shall maintain for a period of three (3) years after final payment under this Purchase Order, all records and accounts pertaining to the Goods. Buyer shall have the right to audit, copy and inspect or cause to have audited, copied and inspected those records and accounts at all reasonable times during the course of Seller's performance of the Purchase Order and for the above three (3) year period.

**22. DEFAULT.** If Seller fails to comply with any material provision of this Purchase Order and, after written demand



## Supplier Terms and Conditions

by Buyer, fails to diligently commence to cure such default within 10 days of such demand, or if Seller becomes insolvent, enters voluntary or involuntary bankruptcy or receivership proceedings, or makes an assignment for benefit or creditors, Buyer shall have the right, in addition to any other rights or remedies it may have under this Purchase Order and applicable law, to terminate this Purchase Order for default. Upon giving Seller written notice of default, Buyer may immediately take possession of all or any portion of the items identified to this Purchase Order, subject only to an obligation to equitably compensate Seller for same. Upon default termination, Seller shall be liable to Buyer for all costs in excess of the Purchase Order price incurred by Buyer in effecting completion of performance of this Purchase Order.

**23. GOVERNING LAW.** This contract shall be governed by the laws of the State of California, excluding its conflict of law rules. If this is an international transaction, the parties agree that the United Nations Convention on the International Sale of Goods shall have no force and effect.

**24. BUYER'S PROPERTY.** All tooling, equipment, and material furnished to Seller by Buyer, including all Data described in paragraph 17 herein, or specifically paid for by Buyer, shall remain the property of Buyer. Such property, while in Seller's custody or control, shall be held at Seller's risk and insured by Seller at Seller's expense for the replacement cost with loss payable to Buyer. Such Property shall be returned to Buyer immediately upon Buyer's request in good condition FOB Buyer's facilities.

**25. COUNTERTRADE (OFFSET).** Buyer may use all or any part of the value of its Purchase Order for countertrade (offset) purposes, including but not limited to: (a) fulfilling Buyer's countertrade or industrial benefit obligations; (b) transferring to third parties the countertrade credits granted to Buyer against the Purchase Order; and, (c) retaining credits for application to Buyer's future countertrade obligations.

**26. ATTORNEYS FEES.** In the event that the parties litigate any dispute arising under or relating to this Purchase Order, the prevailing party shall recover from the other all reasonable attorneys' fees and costs incurred at trial and on appeal, including those incurred in any bankruptcy proceedings.

**27. EXPORT OF EQUIPMENT AND TECHNICAL DATA.** Seller shall not disclose or otherwise transfer any technical data or equipment furnished to it by Buyer or developed by Seller directly from such data to any third party, including foreign nationals employed by the Seller within the United States, except in compliance with the applicable licensing, approval, and all other requirements of the US export control laws, regulations and directives, including but not limited to the Arms Export Control Act (22USC 2778),

International Traffic in Arms Regulations (22 CFR Part 120-130), Export Administration Act (50 USC 2401-2410 as amended), Export Administration Regulations (15 CFR Part 730-799) and DoD Directive 5230.25, Withholding of Unclassified Technical Data from Public Disclosure. Seller shall obtain Buyer's written consent before submitting any request for authority to export any of Buyer's proprietary or export controlled technical data. Seller shall indemnify and hold Buyer harmless from all claims, demands, damages, costs, fines, penalties, attorney's fees and all other expenses arising from failure of Seller to comply with this Article 28. US manufacturers of export controlled defense articles are required to register with the US Department of State (USDOS). If Seller needs further information on this requirement, please consult the USDOS webpage at [www.pmdtdc.state.gov](http://www.pmdtdc.state.gov).

### **28. GENERAL ASSISTANCE WITH EU LAW**

**COMPLIANCE.** Seller hereby acknowledges that the Goods it supplies to Buyer, whether considered substances, preparations or articles under EU law, may be used in, contained in, or otherwise form part of articles manufactured by Buyer and supplied to Buyer customers based in the European Union (EU). In order to facilitate Buyer compliance with EU law, upon Buyer's request, Seller shall make best efforts to assist Buyer in achieving compliance, and providing documentary evidence of compliance, with all applicable EU laws and standards, including but not limited to: (i) EU chemical law, such as Regulation 1907/2006 (REACH), Regulation 1272/2008 (CLP Regulation), Directive 2002/96/EC (WEEE Directive) and Directive 2002/95/EC (RoHS Directive); (ii) EU product safety law, such as Directive 2001/95/EC (GPSD) and Directive 85/374/EEC (PLD); (iii) EU end-product specific law, such as Directive 89/336/EEC regarding electromagnetic compatibility and Directive 99/5/EC regarding radio and telecommunications terminal equipment; and (iv) all applicable EU Member State law whether transposing EU law or otherwise.

**29. SUPPLIER REACH COMPLIANCE.** To provide greater specificity of the requirements of clause 1 above as to REACH and not by way of limiting the scope of clause 1, although Seller is located outside of the EU, Seller shall comply with all legal requirements incumbent on it under REACH on the assumption that Buyer will incorporate the Goods into articles to be sold in the EU. In particular Seller shall for each Product: (i) provide Buyer with a safety data sheet (as detailed in Articles 31-32 of REACH) or equivalent information if REACH does not require a safety data sheet for the Product (e.g., a material safety data sheet under 29 C.F.R. 1910.1200(g) may meet most of the REACH safety data sheet requirements); (ii) communicate information to Buyer on substances of very high concern contained in the Goods as detailed in Article



## Supplier Terms and Conditions

33 of REACH (as of September 2009, a list of substances of very high concern and proposed additions to the list can be accessed at

[http://echa.europa.eu/consultations/authorisation/svhc\\_en.asp](http://echa.europa.eu/consultations/authorisation/svhc_en.asp)); and (iii) assemble and keep available all information regarding REACH compliance as required under Article 36 of REACH. Seller shall also, on Buyer's request, make best efforts to provide Buyer with information regarding the manufacture, guidance on safe use, study summaries, robust study summaries and chemical safety assessments and/or reports concerning any of the Goods.

**30. REPRESENTATIONS AND CERTIFICATIONS.** All representations and certifications provided by Seller to Buyer, including, without limitation, any representations and certifications made by Seller to Buyer in connection with this Purchase Order are incorporated herein by reference. Seller acknowledges that Buyer has relied on such representations and certifications in awarding this Purchase Order. In addition to any other remedies available to Buyer, Seller shall hold Buyer harmless from any loss, damage, liability, penalty, or fine arising out of or relating to Seller's failure to provide representation and certifications that are truthful, current, accurate, and complete.