



Terms and Conditions

NOTICE: The purchase of any Products or Services by Buyer is expressly limited to and governed by these Terms and Conditions. These Terms and Conditions are incorporated into and made a material part of any purchase order issued by Buyer. Any acceptance of Buyer's offer is expressly limited to acceptance of these Terms and Conditions. Buyer expressly objects to and rejects any additional or different terms or conditions proposed by Seller. No Seller terms or conditions shall become part of the parties' agreement or shall modify these Terms and Conditions, even if signed by a representative of Seller, nor shall any course of performance, course of dealing, or usage of trade operate as a modification or waiver of these Terms and Conditions. By accepting any purchase order from Buyer, issuing an order acknowledgement or confirmation, or commencing to perform under Buyer's purchase order, Seller accepts and assents to these Terms and Conditions. Seller acknowledges that these Terms and Conditions apply to all purchases by Buyer and any of its affiliates.

1 Definitions.

"Buyer" means Phaser Solutions Inc. and/or any of its affiliates to which Seller is providing Products or Services under the Contract.

"Contract" means the purchase order issued by Buyer (including any ancillary documents provided by Buyer) and these Terms and Conditions. In the event of any conflict, the Terms and Conditions shall take precedence over other documents included in the Contract.

"Products" means the equipment, parts, materials, supplies, and other goods Buyer has requested and Seller has agreed to supply to Buyer under the Contract, including any repaired or replacement Products provided by Seller in accordance with these Terms and Conditions.

"Seller" means the entity or entities providing Products to and/or performing Services for Buyer under the Contract.

"Services" means the services Buyer has requested and Seller has agreed to perform for Buyer under the Contract, including any Services that are reperformed by Seller in accordance with these Terms and Conditions. "Terms and Conditions" means these General Terms and Conditions for the Purchase of Products or Services, together with any modifications or additional provisions specifically stated in Buyer's purchase order or specifically agreed upon by Buyer in writing.

2 Prices.

All pricing on purchase orders is final. Buyer does not acknowledge any written confirmation with pricing changes until a purchase order revision is completed and provided to Seller. Buyer will not be obligated to pay and will not process payment for any invoice that does not match the price set forth on the corresponding purchase order. Seller warrants that the prices and terms on which it supplies Products and Services to Buyer are no less favorable than those offered to other customers purchasing in similar quantities. Seller agrees to immediately reduce the price if it charges any customer purchasing in similar volume a lower price.

3 Purchase Order Changes.

- a) Buyer reserves the right to modify the purchase order with respect to quantities, delivery schedules and/or specifications as desired by Buyer by issuing one or more change orders to Seller. Seller shall not make any changes to purchase orders or affecting the Products or Services without the prior written consent of Buyer, which shall be withheld in its sole discretion.
- b) If Seller's costs are reduced because of changes, Seller shall reduce the purchase order price to reflect all such quantifiable cost savings, whether direct or indirect.
- c) If Seller's costs are increased because of changes, Buyer will consider Seller's request for a reasonable adjustment to the purchase order price; provided, however, that if Seller does not notify Buyer of a cost impact within ten (10) days of the issuance of the revision/release, then Seller shall be deemed to waive any claim for a price increase due to the revision/release; and provided further, that if Seller does provide notice of a cost impact and the parties cannot agree upon a reasonable price adjustment within ten (10) days of such notice, the revision/release will not become effective, Seller shall not be entitled to any additional compensation or price changes, and the Buyer may terminate the order without liability of Buyer to Seller. Written or verbal acceptance of a revision or release and/or the provision of Products or Services to Buyer after receipt of a revision to the purchase order constitutes Seller's assent to such revision.

4 Payment Terms.

For goods, Seller shall invoice Buyer on completed delivery of the Goods. For Services, Seller shall invoice Buyer monthly. Unless otherwise agreed to in writing, the Buyer's payment terms are 30 days following the date Buyer receives an accurate and complete invoice, payable in US Dollars.

5 Shipping Charges; Taxes.

All shipping and handling charges are included in the price. Seller shall pack, mark and ship Products in accordance with sound commercial practices and Seller's specifications in such a manner as to prevent damage during transport and shall be clearly marked as destined for Buyer.

6 Delivery; Title; Risk of Loss.

Time is of the essence with respect to delivery of Products or performance of Services. Buyer may terminate any order where delivery or performance is late or incomplete. Title to, and risk of loss, for all Products sold to the Buyer shall pass to the Buyer only after unloading Products at the delivery location selected by Buyer. Unless otherwise noted on the purchase order, Products shall be shipped by Seller DAP Destination (Incoterms 2020) to destination specified on Buyer purchase order, freight prepaid, and Services shall be performed at the Buyer location identified in the applicable purchase order.

7 Delay/Force Majeure.

Buyer will not be liable or held responsible for any delays or losses related to Buyer's failure to accept Products or Services that arise directly or indirectly from Acts of God, severe weather conditions, labor disputes, governmental actions, war, riots, or other circumstances or causes beyond the reasonable control of Buyer. If Seller suffers a delay due to a force majeure event, Buyer may terminate any order where such delay exceeds or is reasonably likely to exceed twenty days.

8 Returned or Rejected Products.

Buyer shall have the right to inspect all Products and Services on or after the date of receipt and may reject all or any part of such Products or Services if it determines the Products or Services are nonconforming or defective. Buyer will use commercially reasonable efforts to provide Seller written notice of any defect or non-conformity within a reasonable time after inspection. Failure to give notice of any defect or non-conformity shall not affect any warranty or operate as acceptance of any Product or Service with a latent defect.

9 Warranty/Limitation of Liability.

- a) In addition to all warranties provided under the Uniform Commercial Code and/or other applicable laws, Seller warrants that all Products and Services furnished shall conform to all applicable specifications, be new, merchantable and of good workmanship and quality, free of all defects, liens and encumbrances and fit for the ordinary purposes for which the Products or Services are used. Seller also warrants that the Products and Services shall comply with all applicable laws, codes, regulations and standards, shall not infringe the intellectual property rights of any third party and with respect to Services, will be conducted with due skill and care. Seller further warrants that all Products furnished by Seller shall comply with all provisions of the REACH (Registration, Authorization and Restriction of Chemicals), RoHS (Restriction of Hazardous Substances), and any laws, directives and/or regulations relating to conflict minerals, in each case as amended and in effect as of the time of delivery of the Products to Buyer, and shall take all such required actions, including precautionary measures, to ensure such compliance.
- b) In addition to all rights and remedies available under the Uniform Commercial Code and/or other applicable laws, if Seller breaches any warranty, Buyer may, at its election and in addition to any rights or remedies it may have:
 - i. Return such items to Seller at Seller's risk and expense
 - ii. Require Seller, at its expense to promptly replace or correct such items
 - iii. Pending redelivery, require repayment of any amounts paid for returned items
 - iv. Effect cover by purchase or manufacture of similar items or repair such items at Seller's expense; and/or
 - v. Accept or retain non-conforming items and equitably reduce their price.

Seller shall reimburse Buyer for any and all direct and indirect costs, expenses and penalties arising out of or related to Seller's breach, including reasonable attorneys' fees and costs and expenses related to the enforcement of such indemnification. Such remedies are not exclusive, and Buyer hereby reserves all of its rights and remedies under applicable law.

10 Inspections; Audits.

Notwithstanding payment, passage of title or prior inspection, all Products and Services are subject to final acceptance or rejection by Buyer at the delivery destination. Seller agrees that Buyer and its customers shall have the right to enter Seller's facility at reasonable times to inspect the facility, goods, materials and any property of Buyer covered by the purchase order. Such inspection, whether during manufacture prior to delivery or within a reasonable time after delivery, shall not constitute acceptance of any work-in-progress or finished Products, whether or not a breach of warranty or other defect had become evident at the time. Buyer shall have the right to audit and inspect all books and records of Seller related to Seller's performance of its obligations under these Terms and Conditions.

11 Indemnification; Insurance.

- a) Seller shall release, defend, indemnify and hold Buyer, its shareholders, officers, directors, employees, agents and representatives harmless from and against any claims, demands, causes of action, judgements, proceedings, awards, damages, losses, fines, penalties, costs, expenses and liabilities, including reasonable attorneys' fees and costs and expenses related to enforcement thereof (collectively, "Losses") caused by, arising out of or relating to the Products, Services, or any act or omission of Seller, its shareholders, officers, directors, employees, agents or representatives, including, without limitation, Losses arising from or related to personal injury, death, property damage, economic loss, or intellectual property infringement.
- b) Buyer shall have no duty to indemnify Seller for any reason not expressly undertaken in these Terms and Conditions, and in no event will Buyer indemnify Seller for Seller's acts, omissions, or negligence.
- c) Seller shall maintain commercial general liability insurance, including products liability and completed operations coverage, in amounts not less than the equivalent of U.S. \$1 million per occurrence and the equivalent of U.S. \$3 million aggregate. These insurance requirements do not in any way limit Seller's indemnification obligations.

12 Severability.

Any provision contained herein determined to be unenforceable, illegal or invalid shall be automatically voided and shall not affect the enforceability, legality or validity of the remaining provisions herein.

13 Assignment.

Seller shall not assign, delegate, or subcontract its performance under any purchase order of Buyer or these Terms and Conditions without the prior written consent of Buyer, which Buyer may withhold in its sole discretion.

14 Remedies; Survival.

Buyer may withhold out of amounts otherwise due Seller under the purchase order or any other agreement with Seller such sums sufficient to compensate itself for any amount at any time that may be owed from Seller to Buyer in connection with the purchase order or such other agreement. In addition, the rights and remedies in these Terms and Conditions are cumulative and in addition to and not in substitution for any other rights and remedies available to Buyer at law or in equity, and Buyer hereby reserves all such additional rights and remedies. Provisions of these Terms and Conditions which by their nature should apply beyond their terms will remain in force after any termination or expiration of these Terms and Conditions including, without limitation, the following provisions: Indemnification; Insurance, Compliance with Law, Warranty/Limitation of Liability, Choice of Law, Remedies; Survival and Notices.

15 Relationship between the Parties.

The relationship between Buyer and Seller is solely that of independent contracting parties, and nothing in these Terms and Conditions or any purchase order of Buyer shall be construed to create an employment, joint venture, partnership, or agency relationship between Buyer and Seller.

16 Cancellation.

- a) Buyer may immediately cancel the purchase order, without liability of Buyer to Seller, in the event of any of the following or any other similar occurrences:
 - a. Insolvency of the Seller
 - b. Filing of a voluntary petition in bankruptcy by Seller
 - c. Filing of any involuntary petition in bankruptcy against the Seller
 - d. Appointment of a receiver or trustee for Seller
 - e. Seller making an assignment for the benefit of creditors
- b) Buyer reserves the right to cancel all or any part of the purchase order, without liability of Buyer to Seller, if Seller:
 - a. Repudiates or breaches any of the terms of the purchase order or these Terms and Conditions
 - b. Fails to perform Services or deliver Products as specified by Buyer
 - c. Fails to make progress so as to endanger timely and proper completion of Services or delivery of Products, and Seller does not correct such failure within three (3) days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of notice from Buyer specifying such failure or breach. (c)
- c) Buyer may also terminate all or any part of the purchase order for its own convenience, in which case Seller shall be entitled to, but only to, an equitable amount not in excess of its verified direct costs reasonably and necessarily expended or committed to third parties in accordance with lead times for materials and labor as appropriate for corresponding delivery dates prior to the notice of termination (less salvage value and any other amounts recoverable by Seller). The payment required by the foregoing sentence shall constitute Buyer's sole and exclusive liability and obligation with respect to cancellation of any order.

17 Compliance with Law.

Seller shall comply, and ensure that its permitted subcontractors comply, with

- a) All applicable statutes, regulations, rules, and ordinances governing the manufacture, sale, supply, or transfer of Products and Services, including all import/export laws and all requirements under the OSHA Hazard Communication Standard and other federal, state, and local laws relating to hazardous chemicals and
- b) The Phaser Solutions Supplier Code of Conduct available at <https://sites.google.com/phasersolutions.com/code-of-conduct/home>, as the same may be updated, amended or modified from time to time.

18 Governing Law.

All matters arising out of or relating to these Terms and Conditions are governed by and construed in accordance with the laws of the state of California, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction.

19 Submission to Jurisdiction.

Any legal suit, action or proceeding arising out of or relating to this Contract shall be commenced in the federal courts of the United States of America or the courts of the state of California, in each case located in Contra Costa County. If Buyer's pertinent place of business is outside the U.S. and Canada, the dispute shall be submitted to and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce ("ICC"). The number of arbitrators shall be one, selected in accordance with the ICC rules, unless the amount in dispute exceeds the equivalent of U.S. \$5,000,000, in which event it shall be three arbitrators. When three arbitrators are involved, each party shall appoint one arbitrator, and those two shall appoint the third within thirty (30) days, who shall be the Chairman. The arbitration shall be conducted in English. In reaching their decision, the arbitrators shall give full force and effect to the intent of the parties as expressed in the Contract, and if a solution is not found in the Contract, shall apply the governing law of the Contract. The decision of the arbitrator(s) shall be final and binding upon both parties, and neither party shall seek recourse to a law court or other authority to appeal for revisions of the decision. Each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding arising out of these Terms and Conditions.



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20 Notices.

All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a “Notice”) shall be in writing and addressed to the parties at the addresses set forth on the face of the Contract or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), electronic transmission (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Contract, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Article.

21 Language.

The parties have expressly requested that this Contract and all related documents be drafted in the English language.