

## Maxwell Purchase Order Terms and Conditions

- 1. ACCEPTANCE** These Purchase Order Terms and Conditions ("Terms") incorporate any attached contemporaneous Purchase Order ("Order"), prior specifications, samples, or description of the goods, and all express and implied warranties, and becomes the entire and exclusive agreement between Maxwell Technologies, Inc. ("Purchaser") and Seller when acknowledged by Seller in writing or, if earlier, when Seller commences performance. By accepting the Order or by shipping goods in response to it, Seller agrees that Purchaser is not bound by any term or condition of Seller in any written acknowledgment, invoice, or otherwise which is different, inconsistent with, or in addition to the Terms herein and that any such inconsistent or additional terms are expressly rejected by Purchaser.
- 2. INVOICING** A separate original invoice is required for each shipment under these Terms, and no invoice will cover material on more than one Order. Discount period and net payment period will be calculated from date of receipt of acceptable materials or services or acceptable invoices, whichever is received later. Payment of invoice does not constitute inspection and acceptance of material covered by the Order. Purchaser's purchase Order number will be shown on all packing lists, containers, invoices, and correspondence relating to the Order.
- 3. INSPECTION AND ACCEPTANCE OR REJECTION** All articles, equipment and material (hereinafter referred to as "material") to be delivered by Seller will be subject to inspection by Purchaser at all reasonable times during manufacture, in addition to post delivery inspection. Inspection and acceptance by Purchaser shall not relieve Seller of any of the obligations under Clause 6 below. Seller shall provide, without cost, all reasonable facilities and assistance required for any inspections or tests to be conducted by Purchaser at Seller's facilities. This right of inspection, whether exercised or not, shall not affect Purchaser's right to revoke acceptance or pursue other remedies if defects or nonconformities are discovered at a later date notwithstanding that any defect of nonconformity could have been discovered upon inspection.
- 4. SUBSTITUTION; EXTRA CHARGES** Substitution of material or extra charges will not be permitted unless authorized in writing by Purchaser. Material delivered in error or in excess of quantity ordered may be returned by Purchaser at Seller's expense.
- 5. CHANGES** Purchaser may, at any time, by written order, and without notice to sureties (if any) make changes in the Order. If any such change will cause an increase or decrease in the cost of, or the time required for, Seller's performance of the Order, and equitable adjustment in the Order price or delivery schedule, or both, it shall be agreed to by both parties, and the Order shall be modified in writing accordingly. Unless otherwise directed or agreed to in writing by Purchaser, the parties shall reach agreement on such modifications at the time the change is made and prior to any further work being done on that portion of the Order which is affected by the change. No changes shall be initiated by Seller including changes in design, material, schedule or costs, without Purchaser's written approval on an approved order form.
- 6. WARRANTY** Unless otherwise provided on the face of the Order. Seller warrants that all materials supplied under the Order are of merchantable quality and are free from defects in design, materials, workmanship, and title, are fit for purposes in which goods of that type are ordinarily used as well as for any purposes Seller has specified or advertised, and that the materials conform in every respect to the specifications of the Order and any applicable sample or description given to Purchaser. Seller further warrants that all workmanship shall be first class, and the materials purchased will be (a) supplied in strict accordance with specifications and drawings, (b) new and of the most suitable grade of their respective kinds of the purpose, and (c) installed to the satisfaction and with the approval of Purchaser. In addition, Seller incorporates by reference and passes on to Purchaser the benefits of all warranties given to Seller by persons from whom Seller purchased any of the materials. Seller shall, within a reasonable time after receipt of written notice thereof, make good at its own expense and without cost to Purchaser, any defects in materials or workmanship which may appear within one year after date of delivery unless a different period of guarantee is provided in the Order. The warranty with respect to corrected or replaced material or a component thereof shall be the same as that given to the original. Seller's implied warranties of Merchantability and Fitness for a Particular Purpose shall continue without limitation.
- 7. PURCHASER APPROVALS** Approval provided by Purchaser of Seller's designs, drawings, samples, test results, procedures, processes, schedules, or of other items as may be called for under the Order is intended only for the purpose of assuring Purchaser that Seller is proceeding in a manner which appears will result in a product meeting the requirements of the Order. No such approval shall in any way limit or diminish Seller's warranties hereunder, or relieve Seller of responsibility for designing and producing the products to be supplied hereunder, or be construed to imply that Purchaser acknowledges or warrants to Seller in any manner whatsoever that Seller's work will result in a finished product which will satisfy the requirements hereunder.
- 8. CANCELLATION FOR DEFAULT; EXCUSABLE DELAY** Time is of the essence, Purchaser may, subject to the provisions of Paragraph (c) below, cancel the Order in whole or in part in the event that Seller fails or refuses to deliver any of the materials purchased within or by the time provided, or if it becomes evident that Seller is not conducting the work in accordance with specifications, or with such diligence as to permit delivery on or before the delivery date. In such event Purchaser shall have all of the rights and remedies prescribed by law for Seller's breach, in addition to those specifically provided for herein. Acceptance by Purchaser of all or any part of the material shall not constitute a waiver of any claims which Purchaser may have for delays in delivery. In the event Purchaser cancels the Order in whole or in part as provided in Paragraph (a) above. Purchaser may procure, upon such terms and in such a manner as Purchaser deems appropriate, materials or services similar to those so canceled, and Seller shall be liable to Purchaser for any excess cost for such similar materials or services. When termination hereunder is only partial. Seller shall continue the performance of the Order to the extent not terminated. Seller has the obligation to notify the Purchaser promptly if delays are anticipated. Seller agrees however, that it is not excused by commercial impracticability of any degree. If Seller can fulfill its delivery obligation only by shipping by premium routing, the premium charges shall be at Seller's expense and, if shipment is f.o.b. point of shipment. Seller shall reimburse Purchaser for the premium paid. Goods delivered in advance of schedule are subject to return and are at the risk of the Seller.
- 8a. LATE DELIVERY PENALTY** Maxwell may, at its sole discretion, add a late delivery penalty clause for any critical Capital Equipment and/or Tooling that has been deemed crucial to Maxwell's production where the agreed upon delivery date has been missed. A Late Fee of 1% of the Order Value (less taxes and shipping fees) per week may apply if the machinery or equipment is delivered later than the agreed upon and noted on the Purchase Order date.
- 9. NOTICE OF LABOR DISPUTES** Whenever the Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Order, the Seller shall immediately give notice thereof, including all relevant information with respect thereto, to the Purchaser.
- 10. INDEMNITY** Seller agrees to defend, indemnify and hold harmless Purchaser, its officers, agents, employees, successors and assigns, against any claims, loss, damage, or expense, including, without limitation, payment of direct, special, incidental and consequential damage, and expenses of defending claims, including attorneys' fees at trial or on appeal. This duty to defend, indemnify and hold harmless extends to any suit, claim, judgment or demand who may arise out of or in connection with Seller's performance or nonperformance of the Order, out of Seller's breach of warranty, out of any defect in the supplies or materials, out of any patent infringement or misappropriation of trade secrets, or failure of Seller to pay royalties, or any other breach of Seller's obligations hereunder, whether such claim or suit is based upon contract, warranty, strict liability in tort, negligence, or other legal theory, and also extends not only to "third party claims" but also to any direct loss suffered by Purchaser. Purchaser shall inform Seller of any claim, demand or suit asserted or instituted against it and to the extent of Purchaser's ability to do so, permit Seller to defend the same or make settlement in respect thereof. This clause shall not apply to any material which has been especially manufactured for Purchaser in accordance with detailed drawings, designs or specifications supplied by Purchaser to the extent the suit, claim, judgment or demand arises as a result of such drawings, designs or specifications, or to material which is modified by Purchaser after delivery to the extent the suit, claim, judgment or demand arises as a result of such modification, or to material which is combined by Purchaser with products not furnished hereunder to the extent such combination gives rise to the suit, claim, judgment or demand.
- 11. CONFIDENTIALITY** Disclosure by Seller to others of information concerning the Order or the work to be performed hereunder may result in the disclosure of information which Purchaser considers to be proprietary or confidential. Seller shall not, without the advance written consent of Purchaser, publish or otherwise disclose to others (including Purchaser's Customers, unless and to the extent otherwise directed in writing by Purchaser), any information concerning the Order, including the fact of its existence, the Terms thereof, prices, quantities, specifications, time of delivery or any other matter whatsoever. Seller also shall not, without the advance consent of Purchaser, publish or otherwise disclose to others any information concerning Purchaser's premises including processes, equipment, personal, dimensions, production capacity or commitments, workload or any other matter whatsoever, which may be disclosed to or observed by Seller as a result of access to Purchaser's or its Customer's premises.
- 12. SPECIAL TOOLING** Purchaser may at any time reimburse Seller for the cost of the whole or any part of special dies, tools, patterns and replacements used in the manufacture of the articles herein ordered, and shall thereby become the owner and entitled to possession of same. If the price stated on the face hereof includes separately the cost of any dies, tools, and/or patterns by Seller for the purpose of filing the Order, such dies, tools, and/or patterns shall become the property of Purchaser, and Seller shall, to the extent feasible, indemnify said property as Purchaser directs. When the Order has been completed, such dies, tools, and/or patterns shall be disposed of only as Purchaser directs. Seller assures complete liability for any Purchaser-owned or Purchaser-furnished tooling articles and materials unless furnished by Seller on a charge basis in connection with the Order and Seller agrees to pay for all such tooling articles and materials spoiled by it or not otherwise satisfactory accounted for. Title to the aforesaid Purchaser-owned or Purchaser-furnished tooling articles or materials shall at all times remain with Purchaser. Seller is and shall be a basis for the benefit of Purchaser of all such tooling, articles and materials.
- 13. STATUTORY COMPLIANCE** All applicable provisions of the contract between Purchaser and the Government, Contractor or Subcontractor and all statutes, regulations, orders or similar provisions which by law or regulation are required to be made a part of this agreement are by this reference specifically incorporated as provisions of this agreement and Seller assumes the same obligations toward Purchaser that Purchaser has assumed toward the Government, Contractor or Subcontractor. Seller shall comply with all applicable federal, state, and local laws and ordinances and all orders, rules, and regulations thereunder, and the products and services furnished by Seller under the Order shall comply with such laws and regulations.
- 14. WAIVER AND REMEDIES AND SEVERABILITY** No waiver of any breach of the Order or the Terms thereof shall be held to be a waiver of any other or subsequent breach. All rights and remedies afforded Purchaser in the Order shall be taken and construed as cumulative; that is, in addition to every other right and remedy provided under the order or by law. Invalidity of any part of the Order will not affect the validity of any other part.
- 15. ASSIGNMENT; SUBCONTRACTING** Seller shall not assign any rights or obligations arising under the Order or any interest therein or claims hereunder, and shall not subcontract any portion of the work to be performed without the prior written consent of Purchaser or Purchaser's assignee. Seller shall insert in any subcontract under which all or part of the work hereunder will be performed provisions, making the terms, conditions and requirements of Clauses 6, 11, 12 and 16 applicable to such subcontractor.
- 16. GOVERNING LAW** The Order and all rights and obligations hereunder shall in all respects to be governed by and construed in accordance with the laws of the state of California.
- 17. MODIFICATION** The only changes to the Order by which Purchaser will be bound are express, written changes, signed by an authorized representative of Purchaser. In no event shall Purchaser's silence be construed as an acceptance of proposed changes in or additions to the Order. Any prior, contemporaneous, or subsequent Non-Disclosure Agreement (NDA) will be incorporated herein by reference and any conflicting, different, or additional terms of such NDA will take precedence over Terms herein to the extent needed to interpret the Terms. Any conflicting, different, or additional terms of the Order will take precedence over Terms herein to the extent needed to interpret the Terms.
- 18. TAXES** Unless otherwise agreed in writing, the contract price includes all applicable federal, state and local taxes, tariffs, import duties, commissions or other charges.
- 20. RISK OF LOSS** Title and of loss for all products purchased under the Order and which conform to the Order shall pass to Purchaser upon receipt and acceptance at our premises. Title and risk of loss for nonconforming products provided under the Order shall remain with the Seller.
- 21. TERMS OF PAYMENT; FOB** Unless otherwise agreed in writing, payment and FOB terms, shall be according to the attached contemporaneous Order.
- 22. ATTORNEYS' FEES** In any proceeding brought to enforce the Order the prevailing party will be entitled to recover reasonable expenses of litigation, including attorneys' fees, at trial and on any appeal or petition for review.