

PURCHASE ORDER and SERVICE ORDER TERMS AND CONDITIONS

1. **Applicability.** (a) Any purchase order issued by Thomas Instrument, Inc. ("Buyer") is an offer for the purchase of the goods specified on the face of this purchase order ("Goods") from the party to whom the purchase order is addressed ("Vendor") in accordance with and subject to these terms and conditions ("Terms"; together with the terms and conditions on the face of the purchase order, "Order"). This Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits Vendor's acceptance to the Terms of the Order. These Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Vendor's general terms and conditions of sale or any other document issued by Vendor in connection with this Order. (b) These Terms apply to any repaired or replacement Goods provided by Vendor hereunder.

2. **Acceptance; Change Orders.** Except as provided below, this Order is not binding on Buyer until Vendor accepts the Order in writing. Vendor shall be deemed to have accepted the Order subject to the Terms if Vendor starts to perform in accordance with the Order, even if Vendor has not accepted the Order in writing. Notwithstanding the foregoing, if Vendor does not accept the Order in writing or provide written notice that it has commenced performance within five days of Vendor's receipt of the Order, this Order will lapse at the option of Buyer. Buyer may withdraw the Order any time before it is accepted by Vendor. For future deliveries Buyer may, at any time, by written change order, make changes in the specifications for the Goods previously provided by Buyer, and Vendor shall comply with the changes without delay. Thereafter, Vendor may transmit to Buyer a statement of the effect, if any, of such change orders on Vendor's cost and ability to make deliveries. Upon the basis of this and any other available information, Buyer and Vendor shall agree upon an equitable adjustment of the purchase price and any other relevant provisions, and such agreement shall be incorporated in a supplement to this Order.

3. **Delivery Date.** Vendor shall deliver the Goods in the quantities and on the date(s) specified on the face of the Order or as otherwise agreed in writing by the parties (the "Delivery Date"). Timely delivery of the Goods is of the essence. Vendor shall notify Buyer immediately of any circumstance which is delaying or which threatens to delay the timely performance of this Order, but such notice shall not excuse performance by Vendor nor affect Vendor's liability. If Vendor fails to deliver the Goods in full on the Delivery Date, Buyer may terminate the Order immediately by providing written notice to Vendor and Vendor shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Vendor's failure to deliver the Goods on the Delivery Date.

4. **Quantity.** If Vendor delivers more or less than the quantity of Goods ordered, Buyer may reject all or any excess Goods. Any such rejected Goods shall be returned to Vendor at Vendor's risk and expense. If Buyer does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis. Buyer may upon ten days' notice to Vendor, if prior to the date of shipment, request a change in the quantity of Goods to be delivered under the Order, and Vendor shall comply with such changes.

5. **Delivery Location.** All Goods shall be delivered to the address specified on the face of the Order (the "Delivery Location") between 8:00 a.m. and 5:00 p.m. Monday through Thursday and 8:00 a.m. to 3:00

p.m. Friday (and not at any time on Saturdays, Sundays or holidays), or as otherwise instructed by Buyer. Should seller ship order to the wrong location, seller shall be liable for any costs associated with Thomas Instrument shipping order to correct location.

6. Shipping Terms. Delivery shall be made DDP (Delivery Duty Paid) Buyer's dock at the Delivery Location unless otherwise specified on the face of the Order. Vendor shall give written notice of shipment to Buyer when the Goods are delivered to a carrier for transportation. Vendor shall provide Buyer all shipping documents, including the commercial invoice, packing list, air waybill/bill of lading and any other documents necessary to release the Goods to Buyer within five business days after Vendor delivers the Goods to the transportation carrier. The Order number must appear on all shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence and any other documents pertaining to the Order. All Goods shall be suitably classified to assure lowest transportation rates consistent with full protection against loss and damage in transit and to meet the carrier's requirements.

7. Title, Risk of Loss and Insurance. Title passes to Buyer upon delivery of the Goods to the Delivery Location. Vendor bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location. Vendor shall insure all shipments for the full value of the Goods for the benefit of Buyer.

8. Packaging. All Goods shall be packed for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Vendor must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Vendor's expense.

9. Inspection and Rejection of Nonconforming Goods. The Buyer has the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. Payment with respect to the Goods shall not constitute acceptance. If Buyer rejects any portion of the Goods, Buyer has the right to: (a) rescind the Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Vendor shall, at its expense, promptly replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Goods and the delivery of replacement Goods. If Vendor fails to timely deliver replacement Goods, Buyer may replace them with Goods from a third party and charge Vendor the cost thereof and terminate this Order for cause pursuant to Section 17. Any inspection or other action by Buyer under this Section 9 shall not reduce or otherwise affect Vendor's obligations under the Order, and Buyer shall have the right to conduct further inspections after Vendor has carried out its remedial actions.

10. Price. The price of the Goods is the price stated in the Order (the "Price"). The Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties, fees and applicable taxes, including, but not limited to, all sales, use or excise taxes; and Vendor shall be solely responsible for paying all such amounts. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer.

11. Payment Terms. Vendor shall issue an invoice to Buyer on or any time after the completion of delivery and only in accordance with the Terms. Unless otherwise provided on the face of this Order,

Buyer shall pay all properly invoiced and undisputed amounts due to Vendor within 30 days after Buyer's receipt of such invoice.

12. **Set-off.** Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Vendor against any amount payable by Buyer to Vendor.

13. **Warranties.** In addition to Vendor's standard manufacturer or product warranties, Vendor warrants to Buyer that all Goods will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) comply with all applicable laws, codes and regulations as published by any national or statewide association or group; (f) be free and clear of all liens, security interests or other encumbrances; and (g) not infringe or misappropriate any third party's patent or other intellectual property rights. In addition to satisfying any and all specifications attached to the Order or set forth on the face of the Order, including, but not limited to any specifications, samples, or formula provided to Vendor, Vendor expressly warrants that the Goods provided satisfy or exceed all applicable legal requirements established by federal or state law, and/or applicable engineering, environmental or material standards, including, but not limited to, any recognized standards with respect to quality and fitness. Vendor shall provide Goods that conform to or exceed any formula, specifications, samples and data which are part of this Agreement or which were provided to Vendor by Buyer. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. If Buyer gives Vendor notice of noncompliance with this Section 13, Vendor shall, at its own cost and expense, promptly replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming Goods to Vendor and the delivery of repaired or replacement Goods to Buyer. Vendor transfers to Buyer, only to the extent transferable, the warranty, if any, given by the manufacturer of any Goods supplied under this Agreement that were not manufactured by Vendor. Such manufacturer's warranty period shall be longer or equal to Vendor's manufactured warranty.

14. **General Indemnification.** Vendor shall defend, indemnify and hold harmless Buyer, its affiliates, successors or assigns and their respective directors, officers, shareholders and employees (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with (a) the Goods purchased from Vendor, (b) acts, omissions or failures to act by Vendor, its subcontractors, agents or employees, in connection with the performance or non-performance of this Agreement, or (c) Vendor's negligence, willful misconduct or breach of the Terms, except due to gross negligence of the Buyer. Vendor shall not enter into any settlement without Buyer's or Indemnitee's prior written consent.

15. **Intellectual Property Indemnification.** Vendor shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Vendor enter into any settlement without Buyer's or Indemnitee's prior written consent.

16. **Compliance with Law.** Vendor is in compliance with and shall comply with all applicable laws, regulations and ordinances, including those FAR clauses that apply and are listed on the Purchase Order.

17. **Termination.** Buyer may terminate, cancel, or suspend this Order, in whole or in part, at any time with or without cause for undelivered Goods upon written notice to Vendor. In addition to any remedies that may be provided under these Terms, Buyer may terminate, cancel or suspend this Order with immediate effect upon written notice to the Vendor, either before or after the acceptance of the Goods, if Vendor has not performed or complied with any of these Terms, in whole or in part. If the Vendor becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then the Buyer may terminate this Order upon written notice to Vendor. If Buyer terminates the Order for any reason, Vendor's sole and exclusive remedy is payment for the Goods received and accepted by Buyer prior to the termination.

18. **Waiver.** No waiver by any party of any of the provisions of the Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Order, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Order shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

19. **Confidential Information.** Vendor shall abide by the Letter Agreement it has signed with Buyer pertaining to proprietary data.

20. **Limitation of Buyer's Liability.** BUYER'S ENTIRE LIABILITY TO VENDOR OR ANY THIRD PARTY, IF ANY, FOR ANY CLAIMS, DEMANDS, CAUSES OF ACTION, ARISING IN TORT, CONTRACT, OR OTHERWISE, INCLUDING WITH RESPECT TO ANY STATUTORY CLAIM, IS LIMITED SOLELY TO THE PRICE ACTUALLY PAID BY BUYER UNDER THESE TERMS. NOTWITHSTANDING THE FOREGOING LIMITATION, BUYER SHALL NOT BE LIABLE TO VENDOR FOR SPECIAL, INDIRECT, ECONOMIC, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING UNDER THESE TERMS, OR OTHERWISE, WITH RESPECT TO THE SALE, PURCHASE, OR USE OF THE GOODS, INCLUDING ANY LOST REVENUE OR PROFITS, BUSINESS INTERRUPTION OR DAMAGE TO BUSINESS REPUTATION, REGARDLESS OF THE THEORY UPON WHICH ANY CLAIM MAY BE BASED, INCLUDING, WITHOUT LIMITATION, TORT, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, PRODUCT LIABILITY OR ANY STATUTORY CAUSE OF ACTION.

21. **Attorneys' Fees.** In the event it becomes necessary for Buyer to enforce these Terms, or to defend or prosecute any litigation arising out of or as a result of these Terms, or in connection with the sale of the Goods to Buyer by Vendor, Buyer shall be entitled to recover from Vendor, in addition to any other relief granted, reasonable attorneys' fees, expert fees, costs and expenses of litigation to the extent Buyer is the substantially prevailing party.

22. **Assignment.** Vendor shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section 22 shall be null and void. No assignment or delegation shall relieve the Vendor of any of its obligations hereunder. Buyer may at any time assign, transfer or subcontract any or all of its rights or obligations under the Order without Vendor's prior written consent.

23. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in the Order shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from this Order.

24. **No Third-Party Beneficiaries.** This Order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

25. **Governing Law.** All matters arising out of or relating to this Order shall be governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Texas.

26. **Submission to Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to this Order shall be instituted in the federal courts of the United States of America or the courts of the State of Illinois in each case located in the City of Houston and County of Harris, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

27. **Cumulative Remedies.** The rights and remedies under this Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

28. **Notices.** All notices, request, 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 this Order 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), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Order, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section 28.

29. **Amendment and Modification.** No change to this Order is binding upon Buyer unless it is in writing, specifically states that it amends this Order and is signed by an authorized representative of Buyer.

30. **Severability.** If any term or provision of this Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.

31. **Survival.** Provisions of this Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including, but not limited to, the following provisions: Set-off, Warranties, General Indemnification, Intellectual Property, Indemnification, Insurance, Compliance with Laws, Confidentiality, Governing Law, Submission to Jurisdiction, and Survival.

Thomas Instrument (Buyer)

Date

Vendor (Seller)

Date