



Nortech Systems Inc., Standard Terms and Conditions of Purchase

1. **ACCEPTANCE.** This Order is not binding on Buyer until Seller accepts the Order in writing. Buyer may withdraw the Order at any time before it is accepted by Seller. Acceptance of this Order is limited to the terms and conditions stated herein. Any additions, deletions or differences in the terms proposed by Seller are objected to and hereby rejected unless Buyer agrees otherwise in writing. The purchase order, together with these terms and conditions and any documents incorporated herein by reference, constitute the sole and entire agreement of the parties with respect to the purchase Order (Collectively, 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. These terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller's general terms and conditions of sale or any other document issued by Seller in connection with this Order.
2. **DELIVERY AND RISK OF LOSS.** All Goods identified on the face of this Order ("Goods") shall be delivered to the address specified in this Order (the "Delivery Location") during Buyer's normal business hours or as otherwise instructed by Buyer. Buyer's production schedules and warranties to its customers are dependent upon the agreement that deliveries of the Goods will occur on the date(s) shown on the face hereof ("Delivery Date"). **TIME IS OF THE ESSENCE.** Seller shall be responsible for all damages of any kind incurred or suffered by Buyer which were caused by any delay or failure of Seller in making deliveries. Seller agrees to notify Buyer immediately if, at any time, it appears that Seller may not meet the delivery schedule. Such notifications shall include the reasons for the delay actual or potential, the steps being taken to remedy the delay, and the schedule Seller believes it will be able to meet. Buyer's receipt of notice shall not constitute approval of the delay or the proposed revised delivery schedule or a waiver of the delivery schedule specified in the Order. Any assistance furnished by Buyer to overcome delays shall not be regarded as waiving Buyer's remedies for default, including termination rights, if Seller fails to meet the delivery schedule. Unauthorized advance shipments and shipments other than for the quantity ordered or in excess of any allowable overages are returnable at Buyer's option and at Seller's expense. Identification of the Goods under Section 336.2-501 of the Minnesota Uniform Commercial Code shall occur at the moment Seller accepts this Order. Seller shall not be excused from performing its obligations hereunder if the Goods identified are destroyed. Delivery shall not be deemed complete until the Goods have been actually received and accepted by Buyer at its facility, including the specified quality certifications. Seller bears all risk of loss or damage to the Goods purchased until delivery of the Goods to the Delivery Location. The cost of all return shipments shall be borne by Seller.
3. **PACKING AND SHIPPING.** Seller shall mark, pack, and ship only as specified or as subsequently directed in writing, and in conformity with good commercial practice for protection and shipment. No separate or additional charge is payable for containers, crating, boxing, bundling, dunnage, drying or storage, unless otherwise stated in this Order. Goods must be shipped insured and prepaid at Seller's expense. Each package shall be marked to show the Purchase Order number and include a packing slip and quality certifications in each package. Delivery shall be made DDP Delivery Location, Incoterms® 2017 unless otherwise stated on the face of this Order. Seller shall give written notice of shipment to Buyer when the Goods are delivered to a carrier for transportation. Seller shall provide Buyer all shipping documents, including the commercial invoice, packing list, bill of lading and any other documents necessary to release the Goods to Buyer within two (2) business days after Seller delivers the Goods to the transportation carrier. The Order number must appear on all shipping documents, shipping labels, bills of lading, invoices, correspondence and any other documents pertaining to the Order. Refer to http://www.nortechsys.com/wp-content/uploads/2018/11/MSTR_Routing-Guide.pdf for routing guide instructions and support documentation.
4. **WARRANTIES.** All warranties of Seller, whether created by law or in fact, are incorporated herein by reference and shall include, and are hereby supplemented by, the following express warranties:
 - a. For one (1) year following the date of Buyer's acceptance of the Goods that: (i) when received by Buyer from Seller, the Goods will be free from defects in design, material, workmanship and manufacture; (ii) the Goods will conform to any and all specifications, drawings, samples, or other descriptions furnished by Buyer; (iii) the Goods will be merchantable and suitable for the purposes for which they are intended including without limitation purposes made; and



b. Except in the case of Goods for which Buyer furnishes complete and detailed design and manufacturing drawings, the manufacture and sale by Seller of the Goods, the use, resale, installation and intended use of the Goods by Buyer, and disclosures by Seller to Buyer in any manner hereunder shall not infringe upon or violate the legal or equitable rights of any person, corporation or partnership arising out of any license or franchise, or out of any patent, trademark, or other proprietary right, now or hereafter in effect.

All obligations of Seller in this "Warranties" clause shall survive acceptance of and final payment for the Goods.

5. INSPECTION.

a. Buyer reserves the right to inspect all Goods prior to shipment by Seller, and in furtherance thereof, Seller shall permit employees or representatives of Buyer or Buyer's customer to have access to Seller's facility at all reasonable working hours if the face of this Order stipulates that the Goods shall be subject to inspection at Seller's facility. Seller shall provide reasonable space and assistance for the safety and convenience of representatives of Buyer and its customer. At the time of the inspection. Seller shall make available to such representative copies of all drawings, specifications and other technical data applicable to the Goods ordered.

b. In addition, 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. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, 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, Seller shall, at its expense, immediately 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 Seller fails to timely deliver replacement Goods, Buyer may replace them with Goods from a third party and charge Seller the cost thereof and terminate this Order. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Order, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

6. AUTHENTIC MATERIALS. Only new and authentic materials are to be used in products delivered to Nortech Systems Inc. in accordance with the Nortech Systems, Inc. Counterfeit Materials Policy Statement (<http://www.nortechsys.com/about-nortech/quality-regulatory-compliance/counterfeit-materials-policy/>). No counterfeit or suspect counterfeit parts are to be contained within the delivered product. Parts shall be purchased directly from the Original Component Manufacturer (OCM) or Original Equipment Manufacturer (OEM), or through the OCM/OEM Franchised (Authorized) Distributor. Documentation must be available and delivered to Buyer upon request that authenticates traceability to the applicable OCM/OEM. This documentation shall include the manufacturer's name, address, part number, date codes, lot codes, serializations, and/or any other batch identifications. Independent Distributors (brokers) shall not be used without written consent from Nortech Systems, Inc. If suspect/counterfeit parts are furnished under this Order and found in any of the Goods delivered hereunder, such items will be impounded by Buyer. The Seller shall promptly replace such suspect/counterfeit parts with parts acceptable to the Buyer and Seller shall be liable for all costs relating to the removal and replacement of said parts. Buyer reserves all contractual rights and remedies to address grievances and detrimental impacts caused by suspect/counterfeit parts.

Definitions:

Counterfeit: A part that is an illegal or unauthorized copy or substitute of an OEM item; an item that does not contain the proper external or internal materials or components required by the OEM or that is not constructed in accordance with OEM specification; an item or component thereof that is used, refurbished or reclaimed but the Seller represents as being a new item; an item that has not successfully passed all OEM required testing, verification, screening and quality control but that Seller represents as having met or passed such requirements; or an item with a label or other marking intended, or reasonably likely, to mislead a reasonable person into believing a non-OEM item is a genuine OEM item when it is not. Parts that have been modified pursuant to a specific Nortech Systems, Inc. purchase order requirement, such as refinished, up-screened, or up-rated parts that are properly identified as such are not considered suspect or counterfeit.



- a. Suspect Counterfeit: A part in which there is an indication by visual inspection, testing, or other information that it may have been misrepresented by the supplier or manufacturer and may meet the definition of a counterfeit part.
- b. Franchised (Authorized) Distributor: A distributor with whom the OCM has a contractual agreement to buy, stock, re- package, sell and distribute its product lines. Franchised distributors normally offer the product for sale with full manufacturer's warranty. Franchising contracts may include clauses that provide for the OCM's marketing and technical support, failure analysis and corrective action, and exclusivity of inventory.
- c. Independent Distributor (Broker): A distributor that purchases parts with the intention to resell them. Independent distributors may be franchised for selected, but not all, product lines. For purposes of counterfeit risk mitigation, a distributor is considered independent when not franchised for the item to be procured.

7. CHANGE.

- a. No modification of, addition to, or waiver of any provision requirement of this Order shall be binding on Buyer unless made by written order by Buyer's Purchasing Department authorizing such change.
- b. Buyer may, at any time, by written direction, and without notice to any sureties or assignees make changes in the drawings, specifications, quantities, delivery schedules, methods of packaging or shipping. Should any such change increase or reduce the cost of, or the time required for performance of an Order, an equitable adjustment will be made in the contract price or delivery schedule. Provided, however, any request for an increase in the contract price or any extension in delivery schedule must be made within fifteen (15) business days from the date of such written direction. Failure to agree upon an equitable adjustment shall not relieve the Seller from proceeding without any delay in performance under this Order as changed.
- c. Where the cost of any property is made obsolete or excess as a result of any change for which Seller makes a claim, Buyer shall have the right to prescribe the manner of disposition of such property.

8. PRICE; TAXES.

- a. The price of the Goods is the price stated in the Order (the "**Price**"). Unless otherwise specified in the Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and fees and applicable taxes described below. 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.
- b. Except as otherwise specified herein, or as prohibited by law, Seller shall pay all sales, user, excise or other taxes, federal, state and local, that may be levied upon any of the Goods to the parties hereto by reason of the sale, delivery or use of the Goods. All taxes of any nature, which are billed to Buyer, shall be specifically identified and separately stated. If any tax or proportion thereof which is included or added to the price paid to Seller is subsequently refunded to Seller, Seller shall promptly pay to Buyer the amount of such refund.

9. **PAYMENTS.** Payments shall be made in accordance with this Order after the submission of proper duplicate invoices to Buyer's Accounts Payable Department for Goods delivered and accepted. With respect to any discount offered, time shall be computed from the date of delivery, date of acceptance, or from the date a proper invoice is received by Buyer, whichever is later. Payment is deemed to be made for the purpose of earning of a discount; on the date Buyer's check is mailed. 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 Seller against any amount payable by Buyer to Seller.

10. **TECHNICAL DATA.** If required as part of its performance hereunder, Seller shall on or before delivery of any Goods, supply any and all printed materials, such as catalogs, drawings, certified prints, parts lists, service and technical manuals, and diagrams relating to such Goods. The failure of Seller to deliver the foregoing printed material shall constitute a basis for non-payment of the Goods until such delivery is made. All printed materials supplied by or specifically prepared at the request of Buyer shall be and remain the property of Buyer and shall be held in confidence by Seller. Provided however, Seller may use such drawings, data, designs, and other technical



information to produce items for direct sale to the U.S. government where the U.S. government has the right to use the technical information required to produce such items.

11. **BAILMENT.** Unless otherwise provided herein, all supplies, materials, drawings, manuals, facilities, tools, jigs, dyes, fixtures, patterns or equipment furnished or paid for by Buyer shall remain the property of Buyer. Seller shall bear the risk of all loss and damage thereto, reasonable wear and tear excepted, while such property is in Seller's actual or constructive possession. Such property shall be properly housed and maintained by Seller, shall not be commingled with the property of Seller or others, shall not be moved from Seller's premises without prior written authority from Buyer, and shall upon request by Buyer, be immediately returned to Buyer. Further, such property shall be identified and marked by Seller for any and all losses while in Seller's possession and shall be returned to Buyer in the same condition as when received, reasonable wear and tear accepted.

12. **INDEMNIFICATION.** Seller shall defend, indemnify and hold harmless Buyer and Buyer's its subsidiaries, affiliates, successors or assigns and its respective directors, officers, shareholders and employees and Buyer's customers (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 (i) the Goods purchased from Seller, (ii) Seller's negligence, willful misconduct, (iii) breach of the terms and conditions of this Order or (iv) breach of any Seller warranty.

13. **ASSIGNMENT.**

a. Neither this Order nor any interest herein may be assigned, in whole or in part, by Seller without the prior written consent of Buyer, except that without obtaining such consent. Seller may assign this Order to any successor by way of merger or consolidation or the acquisition of substantially all the assets and business of Seller. This right shall be retained provided that such successor shall expressly assume all the obligations and liabilities of Seller under this Order and Seller shall also remain liable to Buyer.

b. Notwithstanding subparagraph (a) any amounts due, or to become due may be assigned by Seller, provided that such assignment shall not be binding upon the Buyer, until the written assignment document is received by Buyer. Any such assignment shall be subject to Buyer's rights of set-off and recoupment without prior notice to the assignee.

c. This Order may not be subcontracted by Seller, in whole or in part, without the prior written consent of Buyer.

14. **REMEDIES AND WAIVER.** The remedies herein reserved or created shall be cumulative and additional to any other or further remedies provided at law or in equity. The failure of either party to insist on performances of any provision of this Order shall not be construed as a waiver of that provision in any later instance.

15. **HEADINGS.** The headings used herein are for reference purposes only and they shall not affect the meaning or interpretation of this Order.

16. **SEVERABILITY.** Any provisions of this Order prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof.

17. **COMPLIANCE WITH LAWS.** Seller shall comply with all laws, legal directives and regulations in its performance under this Order. In the event that the Goods do not conform to any legal requirement and Buyer is penalized for such nonconformance, Seller shall indemnify Buyer for all penalties, costs and expenses, including interest, levied against Buyer.

18. **CONFLICT MINERALS.** The Seller must commit to complying with Section 1502 of the Dodd-Frank Consumer Protection Act and its implementing regulations. Seller must commit to having in place a supply chain policy and process to determine if conflict materials (Tin, Tantalum, Tungsten, and Gold) from the Democratic Republic of the Congo and adjoining countries were sourced for this material.



19. TERMINATION.

a. Buyer shall have the right, at any time and for any reason, to terminate this Order in its entirety or in part for its convenience, and not as a breach, in accordance with the provisions of FAR 52.249-2, Federal Acquisition Regulations, entitled "Termination for Convenience." As used in that clause, "Contracting Officer" means "Buyer's Purchasing Representative" and "Government" means "Buyer". If the government is unwilling or unable in a timely manner to conduct any audit of Seller's books and records, an audit may be conducted by an independent certified public accounting firm selected by Buyer.

b. In addition to the rights conferred in subparagraph (a) Buyer may terminate this Order for Seller's breach if Seller fails (i) to make any delivery in accordance with the schedule set forth in this Order or as otherwise mutually agreed, (ii) to comply with any of the other requirements of this Order, or (iii) for failure to make progress under this Order so as to endanger performance of this Order and does not cure such failure within a period often (10) days after notice from Buyer. In the event of termination for Seller's Breach, Buyer may procure the Goods elsewhere and on such terms as Buyer may deem appropriate and Seller shall be liable for Buyer's costs and expenses in excess of what the Buyer would have paid the Seller pursuant to this Order. Further, Seller shall be liable to Buyer for any other damages of Buyer caused by Seller's breach.

20. **FORCE MAJEURE.** Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("**Force Majeure Event**"). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government in its sovereign or contractual capacity, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, or embargoes. Seller's economic hardship or changes in market conditions are not considered Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under the Order. No cause shall constitute a basis for excusable delay unless Seller has notified Buyer in writing of the existence of such cause within ten (10) days from the beginning thereof. If such delay continues for a period of sixty (60) days, Buyer may cancel this Order, in whole or in part without any liability to Seller.

21. **Confidential Information; Public Releases.** All non-public, confidential or proprietary information of the Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. Except as required by law or regulation, no news release, public announcement or advertising material concerned with this Order shall be issued by Seller without the prior written consent of Buyer, which consent will not be unreasonably withheld.

22. **INSURANCE.** During the term of the Order and for a period of three (3) years thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, Commercial general liability with limits no less than \$2,000,000 for each occurrence and \$4,000,000 in the aggregate, including bodily injury and property damage and products and completed operations and advertising liability, which policy will include contractual liability coverage insuring the activities of Seller under this Order with financially sound and reputable insurers. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in this Order. The certificate of insurance shall name Buyer as an additional insured. Seller shall provide Buyer with thirty (30) days' advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer or the Indemnitees.

23. **DISPUTES.** Either party may litigate any dispute arising under or relating to this Order before any court of



competent jurisdiction. Pending resolution of any such dispute by settlement or by final judgment, the parties shall proceed diligently with performance. Seller's performance shall be in accordance with Buyer's written instructions.

24. CHOICE OF LAW. Irrespective of the place of performance, this Order will be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies and boards of contract appeals. To the extent that the federal common law of government contracts is not dispositive, 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 Minnesota without giving effect to any choice or conflict of law provision or rule (whether of the State of Minnesota or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Minnesota.

25. GRATUITIES. This Order may be terminated for Seller's breach if Seller, or any of its employees or representatives, offered or gave a gratuity to any employee of Buyer and intended, by that gratuity, to obtain an order or favorable treatment from Buyer.

26. 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.

27. ADDITIONAL CLAUSES WHERE FEDERAL GOVERNMENT IS INTERESTED PARTY. Where the face of this Order bears a government contract number, applicable clauses from the Federal Acquisition Regulation (FAR) (<https://www.acquisition.gov/browsefar>) and/or the Defense Federal Acquisition Regulation Supplement (DFARS) (<http://www.acq.osd.mil/dpap/dars/dfarspgi/current/>) and any successor clauses are specifically incorporated by reference. The text of the clauses is subject to the following definitions and modifications: "Contractor" means "Seller". "Subcontractor" means "Seller's Subcontractor(s)". "Contracts" means this "Order". "Government" means "Buyers" and "Contracting Officer" means "Buyer's Purchasing Representative".