

**EMD TECHNOLOGIES INCORPORATED**  
**PURCHASE ORDER TERMS & CONDITIONS**

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**ALL TRANSACTIONS ARE GOVERNED BY EMD TECHNOLOGIES INCORPORATED'S TERMS AND CONDITIONS OF PURCHASE. ANY PROPOSAL OR DOCUMENT FROM SELLER THAT INCLUDES DIFFERENT OR ADDITIONAL TERMS THAT VARY FROM ANY OF THESE TERMS AND CONDITIONS OF PURCHASE ARE OBJECTED TO AND DISALLOWED.**

1. Applicability. The purchase order is an offer by EMD Technologies Incorporated (the "**Buyer**") for the purchase of goods and/or services specified on the purchase order from the party to whom the purchase order is addressed (the "**Seller**") in accordance with and subject to these terms and conditions (these "**Terms**") and together with the terms and conditions on the purchase order (the "**Order**"). The Order, including these Terms, and any documents incorporated in the Order or these Terms 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 Seller's acceptance to these Terms. 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 the Order.

2. Acceptance. These Terms shall be deemed accepted by Seller upon the earlier of (i) acknowledgment and/or (ii) approval of the Order (iii) complete or partial performance by Seller or (iv) by any other expression of acceptance by Seller. Buyer may withdraw the Order at any time before it is accepted by Seller.

3. Time of Performance. Seller shall deliver the goods and/or services in the quantities and on the date(s) specified in the Order or as otherwise agreed in writing by the parties (the "**Delivery Date**"). Timely delivery of the goods and/or services is of the essence. If Seller fails to deliver the goods and/or services in full on the Delivery Date, in addition to all other rights and remedies available to Buyer hereunder, Buyer may at its option either (i) terminate the Order immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the goods and/or services on the Delivery Date

or (ii) entitle Buyer to an equitable reduction in the invoice price. Seller shall insert a clause substantially in the form of this Section 3 (including, specifically, the immediately preceding sentence) in any subcontract hereunder.

4. Transfer of Title and Shipping Terms. All goods shall be delivered to the address specified in the Order (the "**Delivery Location**") as instructed by Buyer. Title passes to Buyer upon delivery of the goods to the Delivery Location. Seller bears all risk of loss or damage to the goods until delivery of the goods has been completed to the Delivery Location, with confirmation of the Buyer. Delivery shall be made in accordance with the terms on the Order. Seller shall use best efforts to give written notice to Buyer when the goods are ready to be delivered to a carrier for transportation. Buyer shall then provide Seller with its selected carrier and method for transportation of the goods. Seller shall provide Buyer all shipping documents, including the commercial invoice, packing list, and any other documents necessary. The Order number must appear on all shipping documents, shipping labels, invoices, correspondence and any other documents pertaining to the Order.

5. Packaging. All goods shall be suitably packed for shipment according to Buyer's instructions or, if there are no instructions, in accordance with good commercial practices in a manner sufficient to ensure that the goods are delivered in undamaged condition. Seller 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 Seller's expense.

6. Quantity. Seller shall not ship any partial orders unless otherwise agreed in the Order or writing by the parties. If Seller ships a partial order without Buyer's agreement, Buyer may reject the partial goods delivered. Any such rejected goods shall be returned to Seller at Seller'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 as applicable.

7. Inspection and Rejection of Nonconforming Goods. Notwithstanding payment, passage of title, or prior inspection or test, all goods are subject to final inspection and acceptance or rejection by Buyer at Buyer's facility and goods shall not be deemed accepted until actually so inspected. The Buyer has the right to inspect the goods for a

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period of sixty (60) days 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, in its sole discretion, effective upon written notice to Seller, to: (a) a refund of the price of (or a credit for) all such nonconforming or defective goods; (b) rescind the Order in its entirety; (c) accept the goods at a reduced price; or (d) reject the goods and require repair or replacement of the rejected goods. Seller shall reimburse Buyer for any losses or damages incurred (including, but not limited to, shipping costs) in connection with such rejection. All rejected materials will be held or returned at Seller's risk and expense. Seller shall also be responsible for all costs relating to such defects or noncompliance, including, but not limited to, costs of removal, disassembly, failure analysis, fault isolation, reinstallation, re-inspection and retrofit. Seller shall not replace goods returned as defective unless so directed by Buyer in writing. If Buyer requires replacement of the goods, Seller shall, at its expense, 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 deliver replacement goods within thirty (30) days from the replacement notice, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate the Order for cause pursuant to Section 15. 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.

8. Price. The price of the goods and/or services 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, including, but not limited to, all sales, use or excise taxes. Seller shall be liable for any taxes, duties or other assessments in connection with the sale, delivery, transfer, export, import or transportation of the goods ordered or services performed, except as otherwise expressly provided on the Order. 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.

9. Payment Terms. Invoices shall contain the following information: purchase order number, part number (as applicable), description of goods and/or services, payment terms, quantities, unit of measure, and unit prices. Seller shall issue an invoice to Buyer on or after the date of shipment and only in accordance with these Terms. Buyer shall pay all properly invoiced amounts due to Seller within the periods indicated in the Order, except for any amounts disputed by Buyer in good faith. Buyer may make any adjustment in Seller's invoices due to shortages, late delivery, rejections or other failure to comply with the requirements of these Terms before payment. In the event of a payment dispute, Buyer shall deliver a written statement to Seller no later than seven (7) days prior to the date payment is due on the disputed invoice listing all disputed items and providing a description of each disputed item. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items, within the period set forth in this Section. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Order notwithstanding any such dispute. Notwithstanding anything contained herein, Buyer may extend the payment date by the same number of days that the goods or services were delivered later than called for under the Order.

10. Setoff. 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.

11. Warranties. In addition to any standard warranty and/or service guaranty and/or legal warranty, Seller represents and warrants to Buyer and Buyer's direct and indirect customers that Seller has good and merchantable title to all goods and 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 of good and merchantable quality; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. Unless otherwise agreed upon, Seller further warrants that none of the goods furnished under these Terms are surplus, used, remanufactured or reconditioned; and that none of such goods are of such age or so deteriorated as to impair the usefulness or safety of such goods. All services performed under these Terms shall be: (i) free from defects in workmanship, (ii) will

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meet all applicable requirements and specifications indicated by Buyer, (iii) will be performed to the highest standards in the industry in conformity with all applicable federal, provincial or other laws, and administrative regulations and orders. These warranties survive any delivery, inspection, acceptance or payment of or for the goods and/or services by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the goods or services with the foregoing warranties. If Buyer gives Seller notice of noncompliance with this Section, Seller 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 Seller and the delivery of repaired or replacement goods to Buyer. The warranty period shall be suspended and tolled upon notice to Seller that nonconforming goods or services have been furnished until they have been repaired, corrected or replaced and redelivered to Buyer or, in the case of nonconforming services until they have been corrected. Buyer's release or approval of any data or drawings shall not release or diminish any warranty hereunder.

12. Indemnification. Seller shall defend, indemnify and hold harmless Buyer, its parent, 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 or relating to any actual or alleged: (i) claim of negligence, (ii) breach of representation and/or warranty, (iii) strict liability in tort, (iv) defect or fault in goods or services, or (v) other claim in connection with the performance of these Terms. Seller shall not enter into any settlement without Buyer's or Indemnitee's prior written consent.

13. Compliance with Law. Seller is in compliance with, and shall comply with, all applicable laws, executive orders, rules and regulations, and ordinances. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and

permits that it needs to carry out its obligations under the Order. Seller agrees to comply with all United States, Quebec and Canada applicable laws and regulations, including but not limited to export and re-export controls laws and regulations. Seller further agrees to comply with any and all export laws and regulations regarding the export and transfer of information. Seller warrants and represents that, in the course of executing and performing its obligations hereunder, Seller, and to the best of its knowledge, its officers, directors, employees and any person duly acting on its behalf, has not and will not engage in any act or omission that are in violation of the Foreign Corrupt Practices Act (1977), the Corruption of foreign public officials Act or any other anti-bribery and corruption laws applicable to the Seller.

14. Changes; Stop Work Orders. Buyer may at any time, by a written change order, without notice to any sureties, make changes in any one or more of the following: (i) drawings, designs, specifications, where the articles to be furnished are to be specially manufactured for the Buyer in accordance therewith, (ii) method of shipment or packing, (iii) place or time of inspection, delivery, or acceptance, and (iv) the amount and types of Buyer's Property (defined below). Buyer may at any time send a stop work order to the Seller, which requires the Seller to stop all or any part of its work under these Terms after delivery of such stop work order. Immediately upon receipt of such stop work order, Seller shall comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work stoppage. At any time during such period, Buyer may, in whole or in part, either cancel such stop work order or terminate the work in accordance with Section 15 of these Terms. To the extent the stop work order is canceled, Seller shall resume work.

15. Termination. Buyer may terminate the Order, in whole or in part, at any time with or without cause for undelivered goods and/or services. In addition to any remedies that may be provided under these Terms, Buyer may terminate the Order with immediate effect upon written notice to the Seller, either before or after the acceptance of the goods and/or services, if Seller has not performed or complied with any of these Terms, in whole or in part. If the Seller 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 the Order upon written notice to Seller. Termination of the Order for default shall be without prejudice to any other

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rights and remedies of the Buyer under these Terms, statute, common law, or otherwise.

16. Drawings, Plans, Tools, Data, Work for Hire. Any technical information, drawings, ideas, plans, works of authorship, inventions, proprietary information, discoveries, patents, specifications, tools and other materials: (i) supplied to Seller by or on behalf of Buyer, (ii) designed by Seller at Buyer's expense, or (iii) designed specifically to meet Buyer-furnished technical requirements, is referred to herein as "Buyer's Property". Seller agrees that it will not sell any of Buyer's Property or goods and/or services incorporating any of Buyer's Property or similar or interchangeable or substitute goods and/or services or parts thereof to anyone other than Buyer. All of Buyer's Property shall remain the property of Buyer and shall be returned upon demand or, as the case may be, properly destroyed. Buyer makes no representation or warranty with respect to any of Buyer's Property. Seller shall keep all Buyer's Property that is tangible safe and in good condition and shall bear the risk of loss with respect to such Buyer's Property. Seller shall not use Buyer's Property except in connection with sales to Buyer. Any information disclosed by Seller respecting the Buyer's Property or the design, manufacture, sale or use of the goods and/or services ordered shall be deemed to have been disclosed as part of the consideration for these Terms. The entire right, title and interest in and to any discoveries, inventions, ideas, knowledge or patents arising out of or in connection with the work performed by Seller in connection herewith shall vest in Buyer. Seller irrevocably assigns to the Buyer the copyright in such work and all related rights, titles, interests and goodwill worldwide. Where such Buyer's Property is furnished to Seller's suppliers for use in performance of Buyer's orders, including, but not limited to these Terms, Seller shall insert the substance of this provision in all their orders with such suppliers.

17. Confidential Information. 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. This Section shall not apply to information that is: (a) in the public domain; (b) rightfully known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party, each as demonstrated by reasonable documentary evidence. In addition to the foregoing, the Seller undertakes to take all necessary measures to protect the personal information that the Buyer may transmit to it from time to time, all in compliance with applicable laws and regulations with regards to personal information protection, including the *Act respecting the protection of personal information in the private sector* applicable in the province of Quebec. Consequently, the Seller undertakes to defend, indemnify and hold harmless the Buyer in the event of any incident, non-compliance or other situation relating to the protection of personal information that may cause prejudice to the Buyer.

18. Independent Contractor. It is mutually understood and agreed by Seller and Buyer that Seller is at all times acting and performing as an independent contractor for the Buyer. Nothing in these Terms 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.

19. Notices. All notices, receipts or demands of any kind hereunder will be effective (i) when actually delivered (or attempted to be delivered if rejected) by certified mail or overnight courier to the parties' addresses set forth on the applicable purchase order or any document or agreement delivered in connection with or in furtherance of these Terms, or (ii) upon receipt thereof if sent by electronic mail transmission to the parties' email addresses if specified.

20. 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.

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

22. Assignment. Seller 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 shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder.

23. No Third-Party Beneficiaries. The 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.

24. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of Quebec and federal laws of Canada applicable therein..

25. Submission to Jurisdiction. The courts of the District of Terrebonne, Province of Quebec, Canada shall have exclusive jurisdiction to settle any or all disputes or controversies related to or arising directly or indirectly out of the Terms and the parties waive any right to challenge the position or jurisdiction of such courts, including any challenge based on the court's impropriety.

26. Cumulative Remedies. The rights and remedies under the 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.

27. Severability. If any term or provision of the Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

28. Survival. Provisions of the Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of the Order.