



Mainspring

Terms and Conditions

1. **TERMS OF AGREEMENT.** By shipping, delivering, or otherwise providing goods or services (the "Merchandise") or by acknowledging receipt of this order, Seller expresses his assent to and acceptance of the terms and conditions set forth herein. The purchase order, together with these terms and conditions, and any attachments and exhibits, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively the "Purchase Order"), constitutes the entire and exclusive agreement between the Mainspring Inc. ("Company") and the seller or supplier (the "Seller") identified in the Purchase Order. Company's submission of the Purchase Order is conditioned on Seller's agreement that any terms different from or in addition to the terms of the Purchase Order, whether communicated orally or contained in any purchase order confirmation, invoice, acknowledgement, release, acceptance or other written correspondence, irrespective of the timing, shall not form a part of the Purchase Order, even if Seller purports to condition its acceptance of the Purchase Order on Company's agreement to such different or additional terms. Seller's electronic acceptance, acknowledgement of this Purchase Order, or commencement of performance constitutes Seller's acceptance of these terms and conditions. The Purchase Order does not constitute a firm offer within the meaning of Section 2205 of the California Commercial Code and may be revoked at any time prior to acceptance. These terms may be modified only by a written document signed by duly authorized representatives of Company and Seller. Notwithstanding the foregoing, if a master agreement covering procurement of the work described in the Purchase Order exists between Seller and Company the terms of such master agreement shall prevail over any inconsistent terms herein.

2. **ORDER AND DELIVERY.** Seller agrees to sell to Company quantities of "Merchandise" designated on the face hereof at the prices specified herein and to deliver the same on the delivery dates specified hereon. Time shall be of the essence of this Purchase Order and Seller undertakes to strictly respect the delivery dates specified hereon. Shipment must equal the exact amount ordered unless otherwise agreed by Company. Any losses occurring from deviation from Company's routing instructions will be charged to Seller's account. Seller shall forward to Company, with the invoice, the express receipt or bill of lading, signed by the carrier, evidencing the fact that shipment has been made.

3. **WARRANTIES AS TO MERCHANDISE.** Seller represents and warrants that (a) all Merchandise are free of any claim of any nature by any third person and that Seller will convey clear title to Company, (b) all Merchandise are or are performed in a manner acceptable in the industry and in accordance with generally accepted standards, (c) all Merchandise are free from all defects in design, workmanship and materials hidden or apparent,

are fit for the particular purposes for which they are acquired, and are provided in strict accordance with the specifications, samples, drawings, designs or other requirements (including performance specifications) provided by or approved in writing by Company, (d) the prices for the Merchandise sold to Company under this Purchase Order are not less favorable than those currently extended to any other customer for the same or similar goods and/or services in equal or lesser quantities. All warranties here or that are implied in law shall survive, even for apparent defects, any inspection, delivery, acceptance or payment by Company of or for the Merchandise. In the event of a defect, hidden or apparent, in the workmanship or materials in the Merchandise, Seller shall be liable for any and all expenses incurred by Company in undertaking any activities to determine if such defect exists, including expenses for recall campaigns, inquiries to dealers, distributors and users, and testing and analysis. In the event of such a defect, hidden or apparent, in the workmanship or materials in the Merchandise, Seller will, in addition to any other warranty applicable to the Merchandise, have the responsibility to rework or replace, at Seller's expense, all such defective Merchandise at any time sold to the Company, and Seller shall be liable for any and all labor and transportation costs incurred in repairing or replacing such defective Merchandise. If Seller fails to correct defects in or replace nonconforming goods within ten (10) days from the date the Company notifies Seller of the defect or defects, Company may, on ten (10) days prior written notice to Seller, either (i) make such corrections or replace such goods and charge Seller for all costs incurred by Company, or (ii) revoke its acceptance of the goods in which event Seller shall be obligated to refund the purchase price and make all necessary arrangements, at Seller's cost, for the return of the goods to Seller.

4. INDEMNIFICATION OF COMPANY BY SELLER. Seller agrees to indemnify, defend and hold harmless Company, its insurers, agents, officers, directors, employees, successors, and assigns, against and from any and all losses, claims, damages, liabilities, costs and expenses (including costs of defense of every kind whatsoever and the aggregate amount paid in reasonable settlement of any action, suit, proceeding or claim) which Company may incur or for which Company may become liable or on account of any claim, action or proceeding brought against Company claiming money damages or any other form of relief (a) under any applicable law or otherwise, including but not limited to claims, actions or proceedings purporting to be based upon negligence, breach of contract, breach of warranty or strict liability in tort, insofar as such claims, actions, or proceedings arise or are alleged to arise out of any defects or alleged defects in the Merchandise, or the nature of the material contained in the Merchandise, or any actual or alleged commission or omission by, Seller or any of its employees or agents in connections with the Merchandise; (b) based upon or arising out of any actual or alleged invasion, or infringement by the Merchandise or by the Seller, its agents or employees, of any patent, trademark, copyright, right of privacy, or any other tangible or intangible personal or property right; or (c) based upon or arising out of any actual or alleged violation by the Merchandise or Seller, its agents or its employees of any statute, ordinance, administrative order, rule or regulation; and, in case any action, suit or proceeding, which shall at any time be brought against the Company by reason of any such claim, Seller, if Company so requests, shall defend such action, suit or proceeding at the sole expense of Seller by reputable counsel. In addition, for infringement claims, Seller will, at its own expense and at Company's option, either procure for Company the right to continue using the allegedly infringing item, replace it with a non-infringing equivalent, or remove it and refund the purchase price and the transportation and installation costs thereof.

5. INSPECTION AND REJECTION. Final inspection of the Merchandise shall be on Company premises or a location other than Company premises as instructed to or agreed to in writing by Company. Company is deemed to have accepted the Merchandise only after the final inspection took place. Merchandise rejected as not

conforming to the purchase order shall be returned at Seller's expense, including transportation and handling costs. Any inspection, testing or other evaluation by the Company shall in no manner destroy, qualify or affect any of Seller's express or implied warranties hereunder or otherwise.

6. RISK OF LOSS. Seller assumes the following risks, in addition to other risks Seller assumes by law: (a) All risks of loss or damage to the Merchandise until physically delivered to and properly handed over to the Company; (b) In the event the Merchandise is rejected by Company after the final inspection, all risks of loss or damage shall be deemed to have rested with Seller from the beginning. All goods must be packaged in the manner specified by Company and shipped in the manner and by the route and carrier designated by Company. If Company does not specify the manner in which the goods must be packaged, Seller shall package the goods in accordance with industry standards, shipment method and distance, so as to avoid any damage in transit while meeting the delivery schedule set forth in this Purchase Order.

7. TOOLING. Unless otherwise agreed to in writing by the parties hereto, all tools, dies, molds, testing assemblies, documentation (including specifications and test reports) and similar items (hereinafter referred to as "Tooling") required in the manufacture of the Merchandise shall be furnished by and maintained by Seller at Seller's expense. In the event that any Tooling shall be furnished by, or at the expense of Company; such Tooling shall be and remain the property of Company and shall be returned to Company upon its request and at its expense; provided, however, that Seller shall be liable for any loss or damage to, or destruction, of, the Tooling, while in Seller's custody or possession, except where attributable to normal wear and tear; provided, further, that Seller shall at all times indemnify and hold harmless Company, its insurers, agents, officers, directors, employees, successors, and assigns against and from any and all losses, claims, damages, liabilities, costs and expenses and the aggregate amount paid in reasonable settlement of any action, suit, proceeding or claim which Company may incur or for which Company may become liable or in an account of any claim, action or proceeding brought against Company claiming money damages or any other form of relief under any applicable law or otherwise, including but not limited to claims, actions or proceeding purporting to be based upon negligence, breach of contract, breach of warranty or strict liability in tort, insofar as such claims, actions or proceedings arise or are alleged to arise out of the actual or alleged use or handling of the Tooling while the Tooling is in Seller's custody or possession.

8. PRICE AND TAXES. The prices stated hereon shall constitute the entire consideration to Seller for the Merchandise, its boxing, crating and other packaging, and for all warranties and otherwise, unless otherwise specified hereon, and no other charges shall be made therefore. The prices stated hereon shall be deemed to include the applicable taxes in effect on the date of this order from which Seller cannot obtain exemption, and the amount of any such taxes shall be shown separately on Seller's invoice. In the case of new taxes or increased rates or the repeal of taxes or the reduction of rates, the contract price shall be adjusted accordingly. Seller's price shall not be higher than last quoted or charged to Company unless otherwise agreed in writing. Seller warrants that the prices stated hereon are not less favorable than those currently extended to any other customer for the same or similar goods and/or services in equal or lesser quantities. When no price is stated hereon for any article of Merchandise, the order must not be filled at higher prices than last quoted or (if later) last charged to Company, subject to the preceding sentence. Invoices shall not bear a date prior to the date of complete shipment or performance except where agreed to in writing.

9. **ADDITIONAL QUANTITIES.** All the terms and conditions hereon shall apply in all respects to additional quantities or services ordered by Company except to the extent covered by a new contract.

10. **CHANGES.** Company shall have the right to make, from time to time and without notice to any sureties or assignees, changes as to packing, designations, specifications, designs and delivery schedules. Seller shall immediately notify Company of any increase or decreases in costs caused by such changes and adjustment in prices or other terms shall be agreed upon in writing by Company and Seller.

11. **COMPLIANCE WITH LAW.** Seller represents, warrants and agrees that all work performed and Merchandise delivered pursuant to this Purchase Order will be performed, manufactured, produced, sold, invoiced, packaged, labeled, shipped and, if required, registered, in accordance with, and in all respects will conform to, all applicable laws. With respect to each shipment or other delivery of the Merchandise hereafter made by Seller to Company, Seller agrees, as of the date of such shipment or delivery, that such Merchandise is, on such date, not a misbranded hazardous substance or banned hazardous substance as defined in the applicable laws of United States.

12. **BANKRUPTCY.** In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of creditors or of a receiver, the Company shall be entitled to cancel any unfilled part of this purchase order without any liability whatsoever.

13. **TITLE TO DRAWINGS AND SPECIFICATIONS.** Company shall at all times have and retain title to all drawings and specifications and other information furnished by Company to Seller in connection with this purchase order. Such drawings, specifications and information are confidential and contain proprietary information. Seller shall use such drawings and specifications and information only in connection with this purchase order and shall not disclose such drawings and specifications to any person, firm or corporation other than Company's or Seller's employees, subcontractors bound by appropriate confidentiality obligations, or government inspectors. Seller shall, upon Company's request, promptly return all drawings, specifications and information to Company.

14. **QUALITY CONTROL.** Seller shall maintain an adequate and consistent quality control program so as to assure that the Merchandise shall meet specifications as to appearance, performance and reliability. Seller shall furnish to the Company results of quality control samplings.

15. **SET OFF.** Company may set off an amount payable at any time with respect to the Merchandise against all present and future indebtedness of Seller to Company arising from this or any other transaction (whether or not related hereto).

16. **CANCELLATION WITH CAUSE.** Company reserves the right to cancel, without any liability, any or all contracts or orders covering the Merchandise if Seller fails to ship the Merchandise in the manner or within the time specified herein or therein, or if it shall be alleged by third parties that the Merchandise manufactured, produced, sold, invoiced, packaged, labeled or shipped was in violation of any statute, ordinance, administrative order, rule or regulation, or violates any of Seller's warranties, whether express or implied, or if Seller is in

violation of any material provision of this instrument. Any such cancellation shall be without prejudice to any other right or remedy which Company may have by reason of such default.

17. CANCELLATION FOR ANY REASON. In the event of cancellation by the Company of the contract or orders covering the Merchandise for any reasons other than as specified in Paragraphs 12 and 16 hereof. Company's liability, if any, shall be limited to, to the extent unpaid, (a) the price specified herein for the Merchandise which has been accepted upon the date of cancellation by Company and conforms to this instrument, and (b) actual costs (exclusive of profit) reasonably incurred by Seller in producing Merchandise not covered by sub-paragraph (a) above, but in no event shall Company's liability under this paragraph 17 exceed the aggregate price specified in this instrument for the Merchandise.

18. COMPLETE AGREEMENT. The Purchase Order constitutes the entire and exclusive agreement between Company and Seller. The Purchase Order upon acceptance supersedes all previous agreements, if any, between the parties, and constitutes the sole and entire contract between them with respect to the Merchandise, and no change, amendment or modification of the terms and conditions set forth herein shall be effective unless made in writing and signed by both parties. Notwithstanding the foregoing, if a master agreement covering procurement of the Work described in the Purchase Order exists between Seller and Company the terms of such master agreement shall prevail over any inconsistent terms herein.

19. SEVERABILITY. If any provision of this instrument and any agreement resulting herefrom is unenforceable or invalid, the instrument or agreement shall be ineffective only to the extent of such provision and the unenforceability or invalidity of the remaining provisions shall not be affected thereby.

20. ASSIGNMENT. This instrument and any agreement resulting herefrom may not be assigned by Seller, in whole or in part, except, by operations of law or otherwise, with the written consent of the Company.

21. GENERAL. Paragraph headings are for convenience only and shall not be considered in construing or interpreting this instrument. Seller shall not delegate any duties nor assign any rights or claims under this purchase order, or breach thereof, without written prior consent of the Company, and any such attempted delegation or assignment shall be void.

22. APPLICABLE LAW AND DISPUTE RESOLUTION. This Purchase Order and any agreement resulting herefrom shall be interpreted, and the rights and liabilities of the parties heredetermined in accordance with the laws of the State of California. Any dispute arising from the execution of, or in connection with, this contract shall be settled through friendly consultation between the parties hereto. Any controversy or claim arising out of or relating to this Purchase Order, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules including the Optional Rules for Emergency Measures of Protection. The arbitration hearing shall take place in Menlo Park, California, before a single arbitrator. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

23. ACKNOWLEDGMENT. Where this Purchase Order acknowledges an order from Company for the Merchandise specified herein, this acknowledgment contains the final, complete and exclusive agreement between Company and Seller. Company's acceptance of the Seller's offer is expressly conditional on assent to

all of the terms and conditions set forth herein this Purchase Order by Seller's authorized representative in writing.

24. **MATERIAL SAFETY DATA SHEETS**. Must be furnished by the Seller where appropriate and as required by law.

25. **SAMENESS REQUIREMENT**. Parts, components and materials supplied to Company shall be uniform. That is, there shall be no change in design which would affect the form, fit, finish, functionality or serviceable parts of the item being supplied. A design change is any change in materials or material characteristics, as well as any dimensional changes. The Seller shall notify Company in writing of all such changes at least 30 working days prior to implementation, unless otherwise specified by Company.

26. **LANGUAGE**. If this Purchase Order with a Seller's located in a jurisdiction where English is not the official language, this English language version of the Purchase Order shall prevail in all respects and shall govern any translation of this document into any other language, though the translation of this document may be provided as a reference for better understanding.