

## **PROSPECT FOUNDRY LLC, TERMS AND CONDITION OF PURCHASE**

These terms and conditions ("Terms and Conditions") apply to each purchase order ("Order") submitted by Prospect Foundry LLC ("Purchaser") to the supplier ("Supplier") in addition to any and all descriptions, specifications, prices, and other items set forth in the Order itself.

**OFFER AND ACCEPTANCE.** The Order is valid only for the goods listed on the Order (the "Goods") and implies no additional purchase commitments on the part of Purchaser. This Order is Purchaser's offer to Supplier and does not constitute an acceptance by Purchaser of any offer to sell, quotation, or proposal. Purchaser expressly objects to any and all contradictory or additional terms and conditions contained in any acknowledgment, sales confirmation, confirming quotation form, or other correspondence submitted by Supplier in response to the Order. Shipment or other performance on the part of Supplier will constitute acceptance of the Order expressly subject to these Terms and Conditions.

**PRICE.** The purchase price of the Goods is as set forth on the Order. The price set forth on the Order shall be complete, and no additional charges of any kind shall be added without Purchaser's express written consent, except for sales or excise taxes, if any, imposed on the sale of Goods set forth on the Order.

**PAYMENT TERMS.** Unless an alternative method of payment is specified in the Order, Supplier shall invoice Purchaser no earlier than when the Goods are tendered for shipment. Payment shall be due within thirty (30) days following invoice. All claims for money due or to become due from Purchaser shall be subject to deduction or setoff by Purchaser by reason of any claim arising out of this transaction with Supplier.

**DELIVERY** Supplier shall tender the Goods for delivery to Purchaser on or before the delivery date specified in the Order (the "Delivery Date"). The Delivery Date is of the essence of the agreement between the parties. Supplier shall notify Purchaser promptly of any delay or threatened delay. Purchaser reserves the right to cancel the Order in whole or in part if Supplier is unable to tender the Goods for delivery on or before the designated Delivery Date.

Unless otherwise specified in the Order, Shipment shall be F.O.B. Supplier's facility. No additional charges will be allowed for freight, transportation, shipping, storage, handling or other similar charges without Purchaser's express written consent. Supplier will follow any reasonable instructions from Purchaser as to carrier and transportation. If delivery by truck is specified in the Order, then the Goods are not to be shipped via any other carrier without Purchaser's express written consent; if such consent is not obtained and the Goods are shipped via common carrier, Purchaser will charge back any charges of the common carrier. No acceptance of any Goods after the Delivery Date by Purchaser will act as a waiver of Purchaser's rights with respect to such late delivery, nor shall such acceptance be deemed a waiver of future compliance with these Terms and Conditions.

A packing list shall be placed in each shipment. All Goods shall be suitably packed and marked in accordance with any and all requirements and regulations that apply to such Goods. Purchaser's Order number, part or item number and the item description shall be included on all packing lists, shipping cartons, invoices and any correspondence pertaining to the Order. Purchaser will not pay for packing or boxing of any Goods unless expressly stated in the Order.

**TITLE AND RISK OF LOSS.** Title and risk of loss to all Goods shall remain vested in Supplier until such Goods are tendered for delivery to Purchaser. Supplier shall bear the risk of loss or damage to any Goods rejected by Purchaser and placed on transport for return to Supplier, except for loss, destruction of, or damage to such rejected Goods resulting from the negligent actions of Purchaser, its officers, agents or employees. Purchaser shall notify Supplier prior to shipping any Goods back to Supplier so as to ensure proper receipt and handling.

**INSPECTION AND ACCEPTANCE.** All Goods furnished in connection with the Order will be subject to Purchaser's inspection and approval. Payment for any Goods shall not itself constitute acceptance of the

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Goods nor shall it constitute a waiver of any of Purchaser's rights, remedies or claims under these Terms and Conditions. Purchaser reserves the right, without limitation, to reject any Goods delivered in excess of the quantity ordered (except for customary quantity variations, which shall in no event exceed 5%), any defective Goods, or any Goods that do not conform to the specifications set forth in the Order. Rejected goods will be held for disposition or returned to Supplier at Supplier's expense, and, without limiting Purchaser's other remedies, Purchaser may charge Supplier all reasonable expenses of unpacking, examining, repacking and reshipping such Goods. Supplier's failure to deliver Goods of the quality, in the quantity, and within the time specified shall, at Purchaser's option, relieve Purchaser of any obligation to accept delivery of and pay for such Goods.

**REPRESENTATIONS AND WARRANTIES.** In addition to all implied and express warranties available under the Uniform Commercial Code, Supplier represents and warrants that: All Goods shall be manufactured, produced, transported, stored, and shipped by Supplier in full compliance with all applicable federal, state and local laws, rules and regulations, and Supplier will maintain any and all federal, state and local licenses, permits and registrations necessary to perform its obligations hereunder. The Goods shall conform to the description and any specifications set forth in the Order. If applicable, the Goods shall also conform to any sample upon which the Order is based.

The Goods shall be merchantable, of good material and workmanship, and fit for the purpose intended.

The Goods shall be free from defects, including any hidden defects that appear in storage or use but were not evident during normal inspection, for a period of one (1) year.

Supplier has and shall convey good and marketable title to the Goods.

The Goods shall not violate any patent, copyright, trade secret or other intellectual property or other right of any third party.

The provisions of this Section shall survive acceptance of the Goods by Purchaser and shall not be deemed waived by reason of Purchaser's inspection, acceptance or payment.

**REMEDIES.** If the Goods fail to conform to any of the warranties, Purchaser may reject such Goods and (a) obtain substitutes and offset, and require Supplier to reimburse Purchaser for all additional costs associated with the substitutes; or (b) require Supplier, at Purchaser's option, to either replace or repair the Goods without charge.

No remedy herein conferred upon Purchaser is intended to be exclusive of any other remedy, and each and every remedy given under these Terms and Conditions shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity.

**TERMINATION.** The Order may be terminated without prejudice to any other rights or remedies in accordance with the following provisions:

Either party may terminate the Order immediately at any time upon written notice if the other party breaches any of its material duties and obligations under the Order or the Terms and Conditions and fails to cure such breach to the reasonable satisfaction of the non-breaching party within ten (10) days after written notice of the breach is given. The non-breaching party shall retain all of its rights and remedies under law.

Either party may terminate the Order immediately at any time upon written notice to the other party if the other party (i) commences or has commenced against it a proceeding under any bankruptcy, insolvency, debtor's relief law or similar law; (ii) has a receiver appointed for it or for any of its property; (iii) becomes insolvent or unable to pay its debts as they mature in the ordinary course of business; or (iv) makes a general assignment for the benefit of its creditors.

Purchaser reserves the right without any charge to postpone, decrease or cancel the Order, in whole or in part, by notice to Supplier at least thirty (30) days prior to the Delivery Date. If Purchaser postpones,

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decreases, or cancels the Order after such period, Supplier will be entitled to be reimbursed by Purchaser for actual costs incurred by Supplier as a direct result of such postponement, decrease or cancellation that are not recoverable by shipment of the relevant goods to other purchasers.

**INDEMNIFICATION.** Supplier shall indemnify, defend and hold Purchaser and its affiliates and their members, managers, directors, officers, shareholders, employees, agents, successors and assigns harmless from and against any and all damages, liabilities, losses, obligations, judgments, costs and expenses (including, without limitation, reasonable attorney's fees and court costs) arising out of or caused by (a) any negligent actions or omissions of or by Supplier, its employees, subcontractors or agents under or related to the Order, and (b) any failure of Supplier or any of its employees, subcontractors or agents to observe or comply with any of Supplier's duties or obligations under the Order or the Terms and Conditions.

Supplier shall bear the entire cost and expense resulting from the sale, shipment or transport of any goods which are not in accordance with the specifications set forth in the Order, or which do not conform with applicable health and safety laws, including without limitation all costs and expenses incurred in recalling Goods and in furnishing an adequate amount of substitute Goods on a timely basis, by air shipment if necessary.

The provisions of this Section shall survive termination of the Order.

**INTELLECTUAL PROPERTY INDEMNITY** Supplier shall indemnify, defend and hold Purchaser and its affiliates and their members, managers, directors, officers, shareholders, employees, agents, successors and assigns harmless from and against any and all damages, liabilities, losses, obligations, judgments, costs and expenses (including, without limitation, reasonable attorney's fees and court costs) arising out of or in connection with any claims, suits or proceedings brought against Purchaser alleging that the Goods constitute a misappropriation or infringement of any patent, copyright, trademark, trade secret, or other proprietary right of any third party.

**RECORDS.** For a period of at least three (3) years from the date of shipment, Supplier shall retain complete records relating to the manufacture, production, storage, shipment, transportation, and sale of Goods related to any Order, and upon request will make these records available to Purchaser or its agent.

**INDEPENDENT CONTRACTOR.** Supplier's relationship to Purchaser in connection with the manufacture and sale of the Goods is that of an independent contractor, and not of an employee or agent of Purchaser. Supplier acknowledges that Purchaser has no responsibility to Supplier for federal or state withholding taxes, social security taxes, worker's compensation, unemployment taxes or any other similar coverages or taxes regarding Supplier or its employees. The performance of Supplier's obligations hereunder does not make or appoint Supplier as an agent of Purchaser, nor does it create a partnership or joint venture between the parties. Supplier shall not act or represent itself as an agent of Purchaser, and shall not purport to bind or obligate Purchaser in any manner.

**CONFIDENTIAL INFORMATION.** All information and material that may be disclosed by one party to the other in the course of the performance of the obligations hereunder is considered confidential and proprietary and will not be used by the receiving party other than as necessary in the performance of the obligations hereunder. The receiving party will protect such information from disclosure to third parties and hold it as confidential using the same degree of care as the receiving party uses to protect its own confidential or proprietary material of like importance, but in no event less than a reasonable degree of care. Each party agrees that it shall be responsible for providing that each person who accesses the disclosing party's confidential information on the receiving party's behalf complies with the confidentiality obligations contained herein. The obligations under this Section will not cover any information that is disclosed to a third party by the disclosing party without restrictions on disclosure, any information that has been or is developed independently by the receiving party without violations of obligations of confidentiality, any information that falls into the public domain without fault of the receiving party from a third party without restriction, or any information that is rightly in the possession of the receiving party at the time of disclosure by the disclosing party. Notwithstanding the foregoing restrictions, the receiving

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party may disclose any information to the extent required by an order of any court or governmental authority, but only after the disclosing party has been so notified and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

**INSURANCE.** At all times during the performance of the obligations hereunder, Supplier shall maintain standard insurance policies as follows:

Comprehensive Commercial General Liability Insurance with the following minimum coverage limits: aggregate limit of Two Million US Dollars (\$2,000,000) and a limit of One Million US Dollars (\$1,000,000) per occurrence, including One Million US Dollars (\$1,000,000) personal injury; and

Umbrella Coverage with an aggregate limit of at least Five Million US Dollars (\$5,000,000) and a limit of One Million US Dollars (\$1,000,000) per occurrence.

Supplier shall name Purchaser as an additional insured under such policies and shall provide Purchaser with a certificate evidencing the above insurance coverage upon request. Supplier shall provide Purchaser with a minimum of thirty (30) days written notice of any proposed cancellation, termination, non-renewal or other material change to such insurance coverage. The terms of this Section shall not be deemed to limit in any way the liability of Supplier hereunder or to limit any rights Purchaser may have including, without limitation, rights of indemnity or contribution.

**NOTICES.** Each notice, request, demand, or other communication ("Notice") by either party to the other pursuant to the Order shall be in writing, and, except for routine documentation and correspondence, shall be (a) personally delivered, (b) sent by an overnight commercial courier, charges prepaid, or (c) sent by facsimile or email (but such electronic communication must be either (i) acknowledged by the recipient or (ii) confirmed by sending a copy thereof to the other party by overnight commercial courier no later than the following business day), addressed to the principal office of the receiving party (attention: President) set forth on the Order or to such other address as such party shall have communicated to the other party in accordance with this Section. Any Notice shall be deemed to have been given when personally delivered, on the first business day after sending when sent by facsimile or email (or when acknowledged by the recipient if sooner), or on the first business day following the date of sending by overnight commercial courier.

**ENTIRE AGREEMENT.** The Order and the Terms and Conditions together constitute the entire agreement between the parties concerning the subject matter of the Order and shall supersede all prior and contemporaneous agreements between the parties concerning the subject matter of the Order. In the event of a conflict between these Terms and Conditions and the Order, these Terms and Conditions shall prevail.

**ASSIGNMENT.** Supplier may not assign any of its rights or subcontract or otherwise delegate any of its duties under the Order to any third party without the prior written consent of Purchaser. Notwithstanding the foregoing, the Order shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. Any attempted assignment in violation of this Section shall be void and of no effect.

**GOVERNING LAW.** The Order and the Terms and Conditions shall be governed by and construed in accordance with the internal laws of the State of Minnesota. Each of the parties hereto (a) submits to the jurisdiction of any state court of the State of Minnesota or federal court sitting in the State of Minnesota with respect to any legal action or proceeding arising out of or relating to the Order; (b) agrees that any claims with respect to such action or proceeding shall be heard or determined only in any such court; (c) agrees not to bring any action or proceeding arising out of or relating to the Order in any other court unless or until such court has finally refused to exercise jurisdiction; and (d) waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought.

**SEVERABILITY** If any provision of these Terms and Conditions shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. The obligations herein are severable and should be construed independently of each other.

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**SUPPLIER WAIVER OF DAMAGES.** PURCHASER WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO SUPPLIER FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS) IN ANY WAY RELATED TO THE GOODS, AN ORDER OR ITS TERMINATION, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY ON WHICH THE DAMAGES ARE SOUGHT.

**WAIVER.** The failure or delay of either party to insist upon the other party's strict performance of the provisions in the Order or these Terms and Conditions or to exercise in any respect any right, power, or remedy provided for under the Order or these Terms and Conditions shall not operate as a waiver or relinquishment thereof, nor shall any single or partial exercise of any right, power, or remedy preclude other or further exercise thereof, or the exercise of any other right, power, or remedy. No waiver, modification or amendment to the Order or these Terms and Conditions shall be valid unless agreed to by both parties.

**SURVIVAL.** All obligations prior to the termination of the Order between the parties and all provisions of these Terms and Conditions allocating responsibility or liability between Purchaser and Supplier shall survive termination of the Order.