

# LASERTEL, INC.

## TERMS AND CONDITIONS OF PURCHASE

1. **ACCEPTANCE:** Acceptance of the offer represented by this order is expressly subject to these terms and conditions. This order contains all the terms and conditions of this transaction, and no order will be binding on Lasertel, Inc. (hereinafter "BUYER") unless specifically accepted in writing by Buyer. References to the bid or proposals of the vendor identified in this order (hereinafter "Seller") if noted on this order shall not affect the terms and conditions hereof. Any of the following acts by Seller shall constitute acceptance of this order and all of these terms and conditions: signing and returning a copy of this order, delivery of any of the items ordered, informing Buyer in any manner of commencement of performance or returning Seller's own form of acknowledgement. Failure by Buyer to insist upon strict performance shall not constitute a waiver of any of the provisions of this order or a waiver of default. This contract shall be governed by, and interpreted in accordance with, the laws of the State of New Hampshire.

2. **PRICE-DELIVERY-PAYMENT TERMS:** Seller shall furnish the items ordered in accordance with the prices and delivery schedule stated on the face of this order. Seller warrants that the prices charged for the items covered by this order will be as low as the lowest prices charged by Seller to any of its customers purchasing similar items in the same quantity and under like circumstances. Except as may be otherwise specifically set forth in this order, prices include all applicable federal, state and local taxes in effect on the date of shipment. Seller agrees to pay any taxes imposed by law upon or on account of the items ordered hereunder. The payment terms shall be calculated from date of acceptance of items conforming to this order or the date of a correct invoice, whichever occurs last.

3. **PACKING AND SHIPPING:** Seller shall comply with Buyer's routing, shipping and delivery instructions as set forth on the face of this order. No charges for packing or crating will be paid by Buyer unless expressly set forth in this order. All items shall be packaged, marked and otherwise prepared in accordance with good commercial practices to obtain lowest transportation rates. Each container or package shall be conspicuously marked with the order number and shall contain an itemized packing list also showing the order number.

4. **DELIVERY: TIME AND RATE OF DELIVERIES ARE OF THE ESSENCE WITH RESPECT TO ALL ITEMS INCLUDED IN THIS ORDER.** Delivery shall not be deemed complete until the items are received and accepted by Buyer, notwithstanding any agreement to pay freight or other transportation charges. Risk of loss or damage in the course of delivery shall be upon Seller unless otherwise specifically provided herein. Whenever any delay (or any threatened delay) in delivery is foreseeable, Seller shall immediately notify Buyer of such delay but no such notice shall affect the rights of Buyer hereunder. Seller shall not make material commitments or production arrangements in anticipation of Buyer's requirements except at Seller's own risk. Buyer reserves the right to refuse shipments made in advance of the schedule of deliveries appearing on the face of this order.

5. **DEFAULT:** If (a) Seller fails to make any delivery or perform any services in accordance with the specified delivery dates or otherwise fails to comply with this order and does not remedy such failure within ten (10) days after receipt of written notice thereof, (b) Seller fails to make progress to such an extent that performance of this order is endangered, (c) any proceeding is filed by or against Seller in bankruptcy or insolvency, or for appointment of a receiver or trustee, or (d) Seller fails to provide Buyer on request of adequate assurances of its ability to perform hereunder, Buyer may terminate all or any part of this order by written notice or facsimile notice to Seller without liability and may purchase substitute items elsewhere, and Seller shall be liable to Buyer for any excess cost and other damages recoverable under applicable law occasioned Buyer thereby. If this order is terminated as provided in this paragraph, Buyer may require Seller to transfer title and deliver to Buyer (i) any completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights as Seller has produced or acquired for the performance of this contract. The rights and remedies of Buyer provided in this order shall not be exclusive and are in addition to any other rights and remedies provided by law. Except with respect to defaults of subcontractors, Seller shall not be liable for any excess costs if the failure to perform this contract arises out of causes beyond the control and without the fault or negligence of Seller. If the failure to perform is caused by the default of a subcontractor at any tier, and if such default arises out of causes beyond the control of both Seller and subcontractor, and without the fault or negligence of either of them, Seller shall not be liable for any excess cost unless the supplies or services to be furnished by the subcontractor could have been obtained from other sources in sufficient time to permit Seller to meet the required delivery schedule.

6. **CHANGES-ADDITIONS-DELETIONS:** Buyer shall have the right, by written notice, to make changes to this order as to packing, packaging, testing, specifications, quantities, designs, delivery schedules or any other phase of the work to be performed or the items to be delivered under this order. If such changes cause an increase or decrease in the amount due under this order, or in the time required for its performance, an equitable adjustment may be made, provided, however, that any claim by Seller therefor must be asserted in writing within ten (10) days from the date of Buyer's notice of the change, and said claim is approved and authorized by Buyer in writing. Seller shall not substitute other materials or revise specifications for those specified in this order without express prior written consent of Buyer. Changes made by Seller without an authorized change notice shall be made at the sole risk of Seller, there being no financial recourse against Buyer.

7. **TERMINATION FOR CONVENIENCE:** Buyer may terminate for its convenience, all or any part of this order at any time by written notice to Seller. In such event, buyer may be liable for reasonable cancellation charges based on direct damages suffered by Seller thereby with respect to work in process at the time of notification. Seller shall notify buyer in writing of the amount and basis of such damages within ten (10) days after Buyer's notice and offer Buyer a reasonable opportunity to verify such calculations. No cancellation charges or other damages will be payable for items terminated hereunder which are past due delivery, unless Buyer has agreed in writing to accept late delivery, or for work in process which exceeds quantities necessary to effect delivery within normal lead times for such goods. Seller shall take all reasonable steps to mitigate its damages. In no event shall Buyer be liable for special, indirect or consequential damages on account of such termination, nor for damages in excess of the contract price for the items so terminated. Seller agrees that the foregoing shall be its exclusive remedy for such termination.

#### 8. INSPECTION:

(a) All items ordered are subject to "in-process" inspection by Buyer or its designees at any place where work there-on is being performed. Seller agrees to provide, and to require its vendors to provide, all reasonable facilities and assistance for such inspection. Notwithstanding any such preliminary or "in-process" inspection or any F.O.B. point specified, all items are subject to final inspection at the "deliver to" point specified in this order and shall not be deemed accepted by Buyer until so inspected, whether or not payment has been made. Acceptance shall be made at time of final inspection and shall be conclusive except as regards latent defects, breach of any warranties, fraud or such gross mistakes as amount to fraud. Buyer may, at its sole discretion, deal with items not fully complying with applicable drawings, specifications, samples or other requirements of this order as follows: return to Seller, at Seller's expense; hold at Seller's expense, subject to Seller's disposition instructions; or accept such items at an equitable reduction in price. Seller shall refund any payments made for items not accepted under this paragraph immediately upon

receipt of notice thereof. If items not fully complying with this order are rejected by Buyer, and Seller does not replace them with complying items within the delivery schedule, Buyer may terminate this order for default and Seller shall provide return authorization numbers to enable Buyer to return rejected items.

(b) A certificate of conformance must be included with every lot of goods manufactured to Lasertel specification. In cases where secondary processes are subcontracted to a third party, the third party must also provide a certificate of conformance.

#### 9. WARRANTY:

(a) In addition to any other express or implied warranties, Seller warrants that only new materials will be used in items to be delivered under this order, and that such items will be (i) free from defects in workmanship and materials, (ii) free from defects in design, except to the extent that such items comply with detailed designs furnished by Buyer, (iii) suitable for Buyer's intended purpose, and (iv) in conformity with all applicable drawings, specifications, samples or other descriptions. All rights under this warranty shall survive acceptance and shall inure to the benefit of and be enforceable by Buyer and its assignees and customers.

(b) Seller's obligations under this warranty shall be limited to defects of which Seller is notified within twelve (12) months from date of acceptance by Buyer, and may include at the option of buyer, (i) refunding the purchase price of the defective item, material, work or services (in which case Buyer shall, wherever feasible, request and follow any reasonable instructions from Seller for disposition of same at Seller's expense) plus any transportation and insurance charges incurred by Buyer as a result of the breach, (ii) replacing or repairing such defective items, or correcting any defective work or services and paying any transportation and insurance charges or other incidental damages incurred by Buyer as a result of the breach, and (iii) any other legal and/or equitable remedies available to Buyer.

(c) Failure by Seller to replace a defective item within a reasonable time after request by Buyer shall be considered a default and Buyer shall be entitled to purchase substitute items with Seller liable for any excess costs and other damages occasioned Buyer thereby.

10. **PATENTS:** Seller warrants that the items or any part thereof furnished under this order do not infringe any United States or foreign patent, and Seller agrees to indemnify and defend Buyer (with counsel reasonably acceptable to Buyer) at its own expense against any demand, claim or suit against Buyer, and to pay all awards, settlements or damages arising out of such demands, suits or claims respecting infringements of any United States or Foreign patents covering all or part of the items furnished under this order, their manufacture, maintenance, sale or use (alone or in conjunction with other items or equipment), provided Buyer notifies Seller of any demand, claim or suit for such infringement and grants Seller sole control of the defense of such claims. Buyer shall have the right to be represented in such action by its own counsel at its own expense. The foregoing does not apply to any infringement resulting from Seller's compliance with detailed designs provided by Buyer. If any item or part thereof is held to constitute an infringement and the use thereof enjoined, Seller shall, at its own expense, either procure for Buyer the right to continue using the item or any part thereof, modify the item so that it becomes non-infringing, or grant Buyer a credit for the item and accept its return. The foregoing is in addition to any remedies Buyer has for damages caused by infringement of the items.

11. **PROPRIETARY RIGHTS:** All information obtained by Seller from Buyer in connection with this order which is identified as proprietary is received in confidence and shall remain the property of Buyer or its licensors, and shall be used and disclosed in confidence by Seller only to the extent necessary for the performance of this order. Such information (an all copies thereof and notes) shall be returned to Buyer promptly when no longer required for supplying the items to be purchased by Buyer. Seller agrees (and shall require any employee or third party of Seller receiving confidential information of Buyer) to sign nondisclosure agreements acceptable to Buyer.

12. **LIABILITY FOR INJURY:** Seller shall indemnify and defend Buyer (with counsel reasonable acceptable to Buyer) against all loss, claims and liability for personal injury and property damage caused by items furnished or services performed by Seller pursuant to this order, whether occurring on the premises of Seller, Buyer, Buyer's customer or elsewhere. Seller shall carry and maintain insurance coverage satisfactory to Buyer to cover the above and upon request shall furnish appropriate evidence of such insurance.

13. **WORLDWIDE PROCUREMENT CLAUSE:** Seller shall offer the unit prices and appropriate terms of this order to any other segment of Buyer, including subsidiaries and affiliates, regardless of location, seeking to buy from Seller the same or equivalent items as purchased hereunder, provided that such purchase does not violate applicable laws.

14. **TOOLING:** Seller assumes all responsibility for any tooling, drawings, articles or materials furnished by Buyer to Seller in connection with this order, and Seller agrees to pay Buyer for all such tooling, drawings, articles or materials lost or damaged by it or not otherwise accounted for to Buyer's satisfaction. The furnishing to Seller of any tooling, drawings, articles or materials in connection with this order shall not, unless otherwise expressly provided, be construed to vest title or grant any rights thereto in Seller.

15. **ADVERTISING:** Without the prior written consent of Buyer, Seller shall neither disclose to any person outside of its employ nor use for purposes other than performance of this order any information pertaining to Buyer or Buyer's affairs (including all drawings, blueprints, descriptions, specifications and the contents of this order), and upon termination of this order shall return to Buyer all such items which embody any such information. Without the prior written consent of buyer, Seller shall not in any manner disclose, advertise or publish the fact that Seller has furnished or contracted to furnish Buyer the items ordered hereunder, or except as may be required to perform hereunder, disclose this order or the terms hereof to any third party.

16. **SUBCONTRACTING:** Seller agrees to obtain Buyer's approval before subcontracting this order or any substantial portion hereof, provided, however, this requirement shall not apply to the purchase of standard commercial supplies or raw materials.

17. **DRAFTS:** Drafts shall not be honored by Buyer.

18. **COMPLIANCE WITH LAWS:** Seller warrants that in performance of all its obligations under this order, Seller shall comply with all applicable federal, state and local laws and ordinances, and all orders, rules and regulations thereunder for violation of which Buyer may be liable. Seller shall indemnify and defend Buyer (with counsel reasonably acceptable to Buyer) against all loss, claims and liability occasioned by Seller's breach or nonfulfillment of this paragraph.

19. **ASSIGNMENT:** Seller shall not assign this order or any part thereof, without the prior written consent of Buyer. Any such attempted assignment shall be void.

20. **SURVIVAL:** The representations, warranties and indemnities of Seller shall survive consummation of this order.