



Orbital Technologies Corporation

PURCHASE ORDER

GENERAL PURCHASE ORDER PROVISIONS

1. **ACCEPTANCE.** This Contract is Buyer's offer to Seller, and acceptance is strictly limited to its terms. Buyer shall not be bound by and specifically objects to any term or condition whatsoever that is different from or in addition to the provisions of this Contract, whether or not such term or condition will materially alter this Contract. Seller's commencement of performance or acceptance of this Contract in any manner shall conclusively evidence agreement to this Contract as written.
2. **DEFINITIONS.** Whenever used in this Contract, (a) "Customer" means any customer of Buyer, any subsequent owner, operator or user of the Goods and any other individual, partnership, corporation or person or entity that has or acquires any interest in the Goods from, through or under Buyer; (b) "Goods" means all of the goods, services, data, software and other items furnished to the Buyer under this Contract; and (c) "Contract" means this purchase contract including the provisions on its face, these General Provisions, and all of the specifications, technical descriptions, statements of work, drawings, designs, documents, and other requirements and provisions attached to, incorporated into or otherwise made a part of this purchase Contract by Buyer.
3. **SHIPMENT/DELIVERY.** Shipments or deliveries, as specified in this Contract, shall be strictly in accordance with: the specified quantities, without shortage or excess; the specified schedules, either ahead or on schedule but not behind; and the other requirements of this Contract. Seller shall promptly notify Buyer in writing of any anticipated or actual delay, the reasons therefore, and the actions being taken by Seller to overcome or minimize the delay. If requested by Buyer, Seller shall, at Seller's expense, ship via air or other fast transportation to avoid or minimize the delay to the maximum extent possible.
4. **PACKING AND SHIPPING.** Seller shall prepare and pack the Goods to prevent damage and deterioration, and comply with carrier tariffs. Charges for preparation, packing, crating and cartage are included in the price unless separately specified in this contract. Goods sold f.o.b. place of shipment shall be forwarded collect. Seller shall make no declaration concerning value of Goods shipped, except on Goods where tariff rating is dependent upon released or declared value, in which event Seller shall release or declare such value at maximum value within the lowest rating.
5. **INVOICE AND PAYMENT.** Seller shall issue a separate invoice for each delivery and shall not issue any invoice prior to the scheduled or actual delivery date, whichever is later. Payment will be made after receipt and acceptance of Goods and correct invoice. Unless freight or other charges are itemized, any discount may be taken on full amount of invoice. Payment due date, including discount periods, will be computed from date of receipt of Goods or correct invoice, whichever is later, to date Buyer's check is mailed or otherwise tendered. Seller shall promptly repay to Buyer any amounts paid in excess of amounts due Seller.
6. **INSPECTION.** Buyer acceptance of Goods shall be subject to Buyer's final inspection within a reasonable time after receipt at destination, notwithstanding any payment or prior test or inspection. No inspection, test, delay or failure to inspect or test, or delay or failure to discover any defect or other non-compliance, shall relieve Seller of any of its obligations under this Contract or impair any rights or remedies of Buyer or Customers.
7. **REJECTION.** In the regular course of its business, Buyer may reject, refuse acceptance or revoke acceptance ("rejection" herein) of any or all of the Goods or any tender thereof which are not strictly in conformance with all of the requirements of this Contract; and by notice, rejection tag or other communication, notify Seller of such rejection. At Seller's risk and expense, all such Goods will be returned to Seller for immediate Seller repair, replacement and other correction and redelivery to Buyer; provided, however, that with respect to any or all such Goods and at Buyer's election and at Seller's risk and expense, Buyer may: (a) hold, retain or return such Goods, without permitting any repair, replacement or other correction by Seller; (b) hold or retain such Goods for repair by Seller or, at Buyer's election, for repair by Buyer with such assistance from Seller as Buyer may require; (c) hold such Goods until Seller has delivered conforming replacements for such Goods; (d) hold such Goods until conforming replacements are obtained from a third party; or (e) return such Goods with instructions to Seller as to whether the goods shall be repaired or



replaced and as to the manner of redelivery. All costs and expenses and loss of value incurred as a result of or in connection with nonconformance and repair, replacement or other correction may be recovered from Seller by equitable price reduction, set-off or credit against any amounts which may be owed to Seller under this Contract or otherwise.

8. **WARRANTIES.** Seller warrants to Buyer and Customers that the Goods shall: (a) conform in all respects to all of the requirements of this Contract; (b) be free from all defects in materials and workmanship; and (c) to the extent not manufactured pursuant to detailed designs furnished by Buyer, be free from all defects in design and fit for their intended purposes.
9. **CHANGES.** Buyer's Material Representative may from time to time in writing direct changes within the general scope of this Contract in any one or more of the following: (a) technical requirements and descriptions, specifications, statement of work, drawings or designs; (b) shipment or packing methods; (c) place of delivery, inspection or acceptance; (d) reasonable adjustments in quantities or delivery schedules or both; and (e) amount of Buyer-furnished property. Seller shall comply immediately with such direction, and avoid unnecessary costs related thereto. If any such change causes an increase or decrease in the cost of or the time required for performance of this Contract, equitable adjustment in the prices and schedules of this Contract shall be made to reflect such increase or decrease and this Contract shall be modified in writing accordingly. Unless otherwise agreed in writing, any Seller claim for adjustment must be delivered to Buyer in writing within 30 days after Seller's receipt of such direction. Failure of Buyer and Seller to agree upon any adjustment shall not excuse Seller from performing in accordance with such direction. If Seller considers that Buyer's conduct has constituted a change hereunder, Seller shall notify Buyer immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Pending direction from Buyer's Material Representative, Seller shall take no action to implement any such change.
10. **TERMINATION-CONVENIENCE.** Buyer may terminate this Contract in whole or from time to time in part, effective as of the date specified by Buyer.
11. **CANCELLATION-DEFAULT.** Buyer may cancel this Contract in whole or from time to time in part, effective on the date specified by Buyer in the event of Seller's default, or in the event of Seller's suspension of business, insolvency, reorganization or arrangement or liquidation proceedings, assignment for the benefit of creditors, or actual or constructive rejection by bankruptcy trustee, or appointment of a receiver for Seller's property. If Buyer and Seller fail to agree on the amount to be paid for manufacturing materials delivered and accepted and for the protection and preservation of the property, the amount shall be the reasonable value thereof but not to exceed that portion of the price of this Contract that is reasonably allocable to such materials.
12. **RESPONSIBILITY FOR PERFORMANCE.** Buyer's issuance of this Contract is based in part on Buyer's reliance upon Seller's ability, expertise and awareness of the intended use of the Goods, and Seller's continuing compliance with all applicable laws and regulations during performance of this Contract. Further, Seller shall not, by contract, operation of law, or otherwise, assign any of its rights or interest in this Contract, including but not limited to any right to monies due or to become due, or delegate any of its duties or obligations under this Contract, or subcontract all or substantially all of its performance of this Contract to one or more third parties, without Buyer's prior written consent. No assignment, delegation or subcontracting by Seller, with or without Buyer's consent, shall relieve Seller of any of its obligations under this Contract.
13. **PUBLICITY.** Seller shall not, and shall require that its subcontractors and suppliers of any tier shall not, cause or permit to be released any publicity, advertisement, news release, public announcement, or denial or confirmation of same, in whatever form, regarding any aspect of this Contract or the Goods or program to which they pertain without Buyer's prior written approval.
14. **RESPONSIBILITY FOR PROPERTY.** Unless otherwise specified, upon delivery to Seller or manufacturer or acquisition by Seller of any materials, parts, tooling, data or other property, title to which is in Buyer, Seller assumes the risk of and shall be responsible for any loss thereof or damage thereto. In accordance with the provisions of this Contract, but in any event upon completion thereof, Seller shall return such property to Buyer in the condition in which it was received except for reasonable wear and tear and except for such property as has been reasonably consumed in the performance of this Contract.
15. **CONFIDENTIAL OR PROPRIETARY INFORMATION AND PROPERTY.** Seller shall keep confidential and otherwise protect from disclosure all information and property obtained from Buyer in



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connection with this Contract and identified as confidential or proprietary. Unless otherwise expressly authorized herein or by Buyer, Seller shall use such information and property, and the features thereof, only in the performance and for the purpose of this Contract. upon Buyer's request, and in any event upon the completion, termination or cancellation of this Contract, Seller shall return all such information and property to Buyer or make such other disposition thereof as is directed by Buyer. Seller shall not sell or dispose of as scrap or otherwise any completed or partially completed or defective property before receiving written authorization from Buyer and before rendering such property unsuitable for use. In all subcontracts and purchase orders issued by Seller for performance of work related to this Contract, Seller shall provide to Buyer the same rights and protection as contained in this clause.

16. **NON-WAIVER AND PARTIAL INVALIDITY.** Any and all failures, delays or forbearances of Buyer in insisting upon or enforcing at any time or times any of the provisions of this Contract, or to exercise any rights or remedies under this Contract, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies in those or any other instances; rather, the same shall be and remain in full force and effect. Further, if any provision of this Contract is or becomes void or unenforceable by law, the remainder shall be valid and enforceable.
17. **GOVERNMENT REQUIREMENTS.** Within Seller's invoice or other form satisfactory to Buyer, Seller shall certify that goods covered by this Contract were produced in compliance with sections 6, 7 and 12, of the Fair Labor Standards Act, as amended, and the regulations and orders of the U.S. Department of Labor issued thereunder.
18. **GOVERNING LAW.** This Contract and the performance thereof shall be governed by the laws of the State of Wisconsin, U.S.A.
19. **ENTIRE AGREEMENT.** This Contract sets forth the entire agreement, and supersedes any and all other agreements, understandings and communications, between buyer and Seller and related to the subject matter of this Contract. No amendment or modification of this Contract shall be binding upon Buyer unless set forth in a written instrument signed by Buyer's Material Representative. The rights and remedies afforded to Buyer or Customers pursuant to any provision of this Contract are in addition to any other rights and remedies afforded by any other provisions of this Contract, by law, or otherwise.
20. **VENUE.** Any dispute arising hereunder shall be venued in the Circuit Court for Dane County, Madison, Wisconsin.