



Radiance Technologies (Buyer) Standard Terms and Conditions

Prior to accepting this Purchase Order, Radiance urges Seller to read and understand fully the terms and conditions under which this Purchase Order is issued.

1. Definitions

As used herein, the following terms have the meanings so indicated: a) "Items" means supplies, products, and/or services ordered by Radiance from Seller pursuant to a Purchase Order. b) "Purchase Order" means a transmission by Radiance to Seller electronically through a computer network or otherwise, by mail of hard copy, or by such other means as may be agreed (each a "transmission"), containing a Purchase Order number, an item identification or specification, description, number of items requested, and/or such other information evidencing an offer to Seller by Radiance relating to the purchase of Goods or Services. c) "Purchase Order Revision" means a transmission to revise the information contained in a Purchase Order. d) "Goods" and "Services": the terms "Goods" as used herein means any and all supplies, products, chemicals, parts, machines, tooling, test equipment, computer software, components, assets, and other tangible items or documentary information furnished or required to be furnished by Seller under this Purchase Order other than labor. The term "Services" means any and all technical assistance, consultations, engineering, program management, and other effort furnished or required to be furnished by Seller under this Purchase Order other than labor furnished in connection with the production of Goods.

2. Services

Seller shall perform all work diligently, carefully, and in a good and workmanlike manner. Seller shall furnish all labor, supervision, machinery, equipment, goods, and supplies necessary, as well as obtain and maintain all building and other permits and licenses required by public authorities in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors. Seller shall conduct all operations in its' own name and as an independent contractor and not in the name or as an agent of Radiance.

3. Inspection

Items are subject to Radiance's inspection, testing, and approval. Radiance, at its option, may reject or refuse acceptance of Items which do not meet the requirements of the Purchase Order or any applicable warranty. Items rejected or not accepted by Radiance shall be returned to Seller at Seller's expense, and Seller agrees to refund to Radiance any payments (including but not limited to shipment expense) made by Radiance for such Items. Payment by Radiance for any Items shall not be deemed an acceptance. Acceptance of any item shall not relieve Seller from any of its obligations, representations, or warranties hereunder or pursuant hereto.

4. Acceptance

Seller's acceptance is expressly limited to the written terms of this Purchase Order. No additional or different terms shall be binding. Radiance hereby objects to any additional or different terms contained in Seller's acceptance. Any of the following acts by Seller shall constitute acceptance: a) Signing and returning a copy of this Purchase Order; b) Commencing performance of any effort required to complete this Purchase Order; c) Informing Radiance of the initiation of any effort required to complete this Purchase Order; or d) Shipping of any Goods in performance of this Purchase Order.

5. Modification

No amendments or modifications of any of the terms and conditions of the Purchase Order shall be valid unless reduced to writing and signed by both Parties. The terms and conditions of this Purchase Order shall not be amended or modified by the course of performance or course of dealing between the Parties.

6. Quality and Warranty

a) Seller warrants that all Goods and Services shall (i) conform strictly to the design criteria, specifications (including general specification and quality requirements), descriptions, drawings, samples, and other requirements referred to in this Purchase Order or provided by Seller, (ii) be free from defects in design, material, and workmanship, and (iii) be free of all liens, encumbrances, and other claims against title.
b) All warranties specified in paragraph (a) above shall (i) survive any inspection, delivery, acceptance, or payment by Radiance, and (ii) be in effect for the longer of Seller's normal warranty period or the Purchase Order's specified warranty period following the date of acceptance of the Goods or Services by Radiance.

7. Non-Complying Products

Radiance shall have the right (but not the obligation) to review work progress and test all supplies, special tooling, goods, and workmanship to the extent practicable at all times and places during the period of manufacture. In case any Goods delivered or Services rendered hereunder is defective in material or workmanship or otherwise not in conformity with the requirements of this Purchase Order, Radiance shall have the right to either reject it or to require its correction by and/or at the expense of Seller promptly after notice.

8. Changes

Seller shall notify Radiance in writing prior to any change to be made by Seller in the material or services furnished. Such notification shall be forwarded to Radiance at least (30) days prior to the proposed effective date of such change except for those cases where an extremely unsatisfactory condition requires immediate action, in which case Seller shall promptly so advise Radiance. If, in the event, such change, in Radiance opinion, would alter the characteristics of the material or services in a manner unacceptable to Radiance, then Radiance may cancel the purchase of such material or services affected by such change without cost or liability to Radiance whatsoever.

9. Suspect/Counterfeit Parts

Seller represents and warrants that it has policies and procedures in place (or similar measures in the absence of such policies and procedures) to ensure that none of the supplies or materials furnished under this Purchase Order are "suspect/counterfeit parts" and certifies, to the best of its knowledge and belief, that no such parts have been or are being furnished to Radiance by Seller. "Suspect/counterfeit parts" are parts that may be of new manufacture but are misleadingly labeled to provide the impression they are of a different class or quality or from a different source than is actually the case. They also include refurbished parts, complete with false labeling, that are represented as new parts or any parts that are designated as suspect by the U.S. Government, such as parts listed in alerts published by the Defense Contract Management Agency under the Government-Industry Data Exchange Program (GIDEP). If Radiance reasonably determines that Seller has supplied suspect/counterfeit parts, Radiance shall promptly notify Seller and Seller shall immediately replace the suspect/counterfeit parts with parts acceptable to Radiance. Notwithstanding any other provision contained herein, Seller shall be liable for all costs incurred by Radiance to remove and replace the suspect/counterfeit parts (including without limitation, Radiance's external and internal costs of removing such counterfeit parts), of reinserting replacement parts and of any testing necessitated by the reinstallation of Seller's goods after counterfeit parts have been exchanged. Seller's warranty against suspect/counterfeit parts shall survive any termination or expiration of this Purchase Order.

10. Warranty of Authenticity

Seller warrants that all products delivered under this Agreement are new and in their original packaging. No substitutions are to be supplied without Radiance's prior written consent. Seller certifies that the products are genuine products authorized by the manufacturer and are entitled to the full manufacturer's warranty and service, including any related software.

11. Quantity

No substitution of products, hours, or labor category may be made without written permission from Radiance. Unless otherwise agreed to, no deviation from the quantities specified shall be accepted.

12. Assignment

This Purchase Order and the money due there from may not be assigned without the prior written consent of Radiance.

13. Payments

Seller shall issue a separate invoice for each delivery. Radiance shall pay Seller in accordance with the terms specified in the Purchase Order. Invoices shall include, but not be limited to, (i) invoice number and date, (ii) payment due date, (iii) discount terms, if any, (iv) Purchase Order number and "Release Number", if applicable, and (v) quantity invoiced, unit price, and extended price for each line item invoiced.

14. Bankruptcy

If Seller ceases to conduct its operations in the normal course of business, including inability to meet its obligations as they mature, or if any preceding under the bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed or applied for, or an assignment for the benefit of creditors is made by Seller, Radiance may terminate this Purchase Order without liability.

15. Drawings

Unless otherwise agreed to in writing, any drawings, plans, specifications, tools, and other goods supplied by Radiance in connection with the production of the Goods being purchased shall remain the property of Radiance and shall be returned upon demand or completion of this Purchase Order. Seller shall keep such property safe and in good condition and shall not use it except in connection with sales to Radiance.

16. Disclosure

Seller, on behalf of itself and its employees, agrees that any ideas, know-how, concepts, information, or processes received from Radiance or created by Seller in connection with the performance of this Purchase Order shall be the property of Radiance and shall be preserved in strictest confidence by Seller and shall not be used or disclosed by Seller to third persons except to the extent that such use or disclosure is necessary for the proper performance of this Purchase Order. If disclosure to a third party is necessary, Seller shall insure that such third party holds such information in strictest confidence.



Radiance Technologies (Buyer) Standard Terms and Conditions

17. Stop-Work Order

Radiance may, at any time, by written order to Seller, require Seller to stop all, or any part, of the work called for by this Purchase Order. Seller shall immediately comply with the terms and conditions of the Stop-Work Order and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of thirty (30) days, Radiance shall either (1) cancel the Stop-Work Order or (2) terminate the work covered by the order as provided in the default or Termination for Convenience clause. If a Stop-Work order is issued by Radiance for the convenience of Radiance, then Radiance shall allow reasonable costs resulting from the Stop-Work order in arriving at the termination settlement.

18. Remedies

If, in Radiance's judgment, the Goods or Services supplied by Seller are defective or nonconforming, or Seller fails to comply in any material respect with any of the terms and conditions or warranties of this Purchase Order, then Radiance may, at its option, (a) terminate this Purchase Order or any part hereof; (b) reject Goods or Services in whole or in part; (c) return Goods to Seller and charge Seller with all costs, expenses, and damages associated with such return; (d) purchase substitute Goods or Services elsewhere and charge Seller for any loss and damages incurred; or (e) require Seller promptly to replace, repair, or otherwise correct without expense to Radiance any nonconforming Goods or Services. Any such replacements, repairs, or corrections shall be subject to the warranties stated herein. Any other rights and remedies stated herein shall be in addition to any rights and remedies provided by law or equity and shall survive inspection, test acceptance, and payment.

19. Disputes

Any claim, controversy, or dispute that may arise under or in connection with this Purchase Order with respect to the rights, duties, or obligations of the Parties shall be required in writing and submitted for resolution to ascending levels of management of the respective Parties up to the Chief Executive Officer/President. If resolution cannot be achieved through this process, then either party may seek other legal remedies.

20. Termination for Convenience

(a) Radiance may terminate this Purchase Order in whole or in part, by providing notice of such termination to Seller, specifying the extent and effective date of such termination. On the specified termination date Seller shall: (i) Stop performing its obligations under this Purchase Order, or any specified part thereof, as appropriate. (ii) Promptly take all commercially reasonable actions to limit amounts for which Radiance is responsible under paragraph (b) of this clause. (iii) Promptly deliver to Radiance all completed or partially completed Goods to which the termination applies.

(b) In the event of any termination pursuant to this clause, Radiance total liability shall be payment to Seller for: (i) the purchase price of completed Goods and Services and a pro rata portion, based upon the degree of completion for partially completed Goods or Services if such completed or partially completed Goods or Services have been delivered to Radiance and Seller has not previously been compensated therefore, (ii) Seller's direct costs and associated indirect costs for labor and products, plus a reasonable profit for work performed specifically for Radiance and not allocable to completed or partially completed Goods or Services to be delivered to Radiance pursuant to paragraph (a) of this clause. (iii) Amounts determined by Radiance to be reasonably paid by Seller for any termination pursuant to this clause shall not exceed the purchase price of the Goods and Services to which such termination applies. Seller shall have no claim against Radiance for work not performed, Goods or Services not delivered, loss of anticipated profits, or consequential damages suffered by reason of any such termination. Seller shall submit any claims for compensation under this clause within thirty (30) days after the effective date of termination. Seller hereby waives, releases, and renounces any claim for compensation not made within this period.

21. Termination for Default

a) Radiance may cancel this Purchase Order, in whole or in part, to the extent Seller fails to perform or timely perform any of its material obligations under this order. b) In the event and to the extent of any cancellation under this clause, all obligations of Radiance and all rights and licenses of Seller under the Purchase Order shall thereupon be canceled, and all rights and licenses of Radiance and all accrued obligations of Seller under the Purchase Order shall survive, but only with respect to the Goods and Services covered by the cancellation notice. Seller shall continue to perform those obligations under this Purchase Order to the extent not canceled. c) Radiance may return, and Seller shall have no claim against Radiance for, Goods or Services not accepted by Radiance or for rejected Goods and Services. Seller shall submit any claims for compensation under this clause within thirty (30) days after the effective date of Termination for Default. Seller hereby waives, releases, and renounces any claim for compensation not made within this period. d) If, after issuance of a default notice under this clause, it is determined for any reason that Seller was not in default or that the default was excusable under the provisions of this order, then there shall be no cancellation and the Purchase Order shall be terminated for convenience in accordance with the provisions of the clause entitled "Termination for Convenience," as of the date the cancellation would have taken effect under this clause.

22. Force Majeure

Neither Party shall be liable for failure or delay in performance under this Purchase Order due in whole or in part to an act of God, strike, lockout or other labor dispute, civil commotion, sabotage, fire, flood, explosion, act of any government, unforeseen shortages or unavailability of fuel, power, transportation, raw goods or supplies, inability to obtain or delay in obtaining government approval, permits, licenses or allocations and any other causes which are not within such Party's reasonable control, whether or not of the kind specifically enumerated above.

23. Indemnity

Seller shall defend, indemnify, and hold harmless Radiance, its' subsidiaries, and their respective directors, officers, employees, and agents (hereinafter referred to as "Indemnities") from and against all actions, causes of action, liabilities, claims, suits, judgments, liens, awards, and damages of any kind and nature whatsoever for property damage, personal injury, or death and expenses, costs of litigation and counsel fees related thereto or incidental to establishing the right to indemnification, arising out of or in any way related to the order, the performance thereof by Seller.

Seller shall defend, indemnify, and hold harmless, Buyer or its' customers for any claim that any item(s) furnished under this order or the normal use or sale thereof infringes on any U.S. patents or copyrights and shall pay costs, including legal fees, and damages finally awarded in any such suit, provided that Seller is notified in writing of the suit and given authority, information, and assistance at Seller's expense for the defense of same. If the use or sale of said item is enjoined as a result of such suit, Seller, at no expense to Buyer, shall obtain for Buyer and its' customers the right to use and sell said item or shall substitute an equivalent item acceptable to Buyer and extend this patent indemnity thereto.

24. Shipping

Unless the Purchase Order specified a different point, all deliveries shall be F.O.B Destination. Title and risk of loss of all Goods shall pass to Radiance upon final acceptance.

25. Taxes

All taxes are deemed to be included in the price of the Goods. If state or local sales or use tax, value-added tax, or custom duty tax are applicable to any of the Goods, it shall be so noted on the Purchase Order, and Seller shall bill the tax separately on its invoice.

26. Compliance with Laws

Seller warrants that it shall comply with all applicable Federal, State, and local laws, rulings, and regulations in effect on the date of this Purchase Order.

27. Severability

If any Court or administrative body of competent jurisdiction shall find any provision of this Purchase Order to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

28. Governing Law

This Purchase Order is to be construed according to the laws of the State of Alabama, excluding its' choice of law provisions. Any legal action must be adjudicated in Madison County, Alabama.

29. Mandatory Government Clauses (Federal Acquisition Regulations)

The following Federal Acquisition Regulation (FAR) clauses are required in all Radiance Terms and Conditions. At the Subcontractor's written request, Radiance shall make available the full text. These clauses, incorporated herein by reference, are made part of this Purchase Order with the same force and effect as if set forth in full text.

In the application of these clauses to Seller, the term "Contracting Officer" shall be interpreted to mean the "Radiance Procurement Representative" and/or the "Radiance Contracting Official" signing the Order. The term "Contract" shall be interpreted to mean "Purchase Order". The term "Contractor" shall be interpreted to mean "Seller".

52.203-13, "Contractor Code of Business Ethics and Conduct" (April 2010)

52.203-15, "Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009" (June 2010)

52.219-8, "Utilization of Small Business Concerns" (December 2010)

52.222-26, "Equal Opportunity" (March 2007)

52.222-35, "Equal Opportunity for Veterans" (September 2010)

52.222-36, "Affirmative Action for Works with Disabilities" (October 2010)

52.222-40, "Notification of Employee Rights Under the National Labor Relations Act" (December 2010)

52.222-50, "Combating Trafficking in Persons" (February 2009)

52.247-64, "Preference for Privately Owned U.S.-Flag Commercial Vessels" (February 2006)