

**TERMS AND CONDITIONS** All Purchase Orders (“PO”), unless contracted otherwise in a formal Supply Agreement, shall be governed by the following terms and conditions: **Effective Date** is the date any PO is acknowledged by Seller or 3 days following transmission, whichever occurs first. **Product** means any item, tool, hardware, components, and/or service listed on PO. **Specifications** means the specifications for the Product, including but not limited to unit, size, model number, voltage, appearance, function or performance thereof. **Delivery Terms:** all Product shall be shipped FOB Destination, freight prepaid and added to invoice, at Buyer’s Facility located at 16125 E. Euclid, Spokane Valley, WA 99216, unless otherwise stated in PO. Title and risk of loss shall pass to Buyer at Buyer’s Facility, or other place for Delivery stated in PO. **Packing and Shipment:** unless otherwise specified, all Product shall be packaged and otherwise prepared for shipment in a manner which is (i) in accordance with good commercial practices; (ii) acceptable to common carriers for shipment at the lowest rate for the particular Products involved and (iii) adequate to maximize the potential of insuring safe arrival of the Product. No delivery shall be made hereunder prior to the date or dates shown unless Buyer has given prior written consent. **Overshipments:** buyer agrees to pay only for actual quantities stated on PO. Overshipments will be held for a reasonable period of time at Seller’s risk and expense while Buyer awaits shipping instructions, and returned to Seller, at Seller’s risk and expense, pursuant to Seller’s shipping instructions. **Invoices:** Seller agrees that (i) all charges with respect to PO shall be invoiced in accordance with instructions provided in the PO; and (ii) payment terms shall be net 60 days from date of invoice. Each invoice (i) shall not cover more than one PO; and (ii) shall contain the PO Number under which it is issued; and (iii) shall be rendered to Buyer’s Accounts Payable Dept. **Rescheduling:** Buyer may reschedule any Product on order one time, provided that said new delivery date is within 90 days from the date Seller receives Buyer’s request to reschedule delivery. **Cancellation:** Excluding custom-made Products and Products already Rescheduled, Buyer may cancel any unshipped Product on order without charge, provided Seller receives 30 days written notice prior to the scheduled ship date. Products shall not be deemed “Custom-Made” unless otherwise mutually agreed to by the Parties in a Separate Writing. **Product Returns and Stock Balancing:** Seller agrees that in the event Products are not being purchased by Buyer’s Customers and are remaining in Buyer’s inventory, Buyer may return these non-moving items as long as the items are new, unused, and in original packaging. Upon receipt of Products, Seller will refund to Buyer the prices paid for the items, minus a five percent (5%) restock fee in, at Buyer’s option, either (a) a cash refund paid within 30 days after Seller’s receipt of the returned materials at Seller’s receiving dock, or (b) credit against future purchases paid by credit memo issued within 30 days after receipt of returned materials at Seller’s receiving dock. Buyer will pay return freight. **Time for Delivery:** Seller shall Deliver Products to Buyer’s Facilities within 28 calendar days after acceptance of PO; or in accordance with date for Delivery specified in PO, whichever is sooner. **Delay:** in any case where delivery from Seller to Buyer will be delayed, Seller shall give actual Notice of such delay to Buyer as soon as Seller learns of such Delay. **Liquidated Damages for Delayed Delivery:** Seller understands and agrees that Buyer purchases Product from Seller for the purpose of fulfilling commitments to Buyer’s Customers, and, because Purcell utilizes a lean manufacturing method and, thus, time is of the essence. Accordingly, in any situation where Delivery from Seller to Buyer is delayed more than 2 business days from expected Delivery date, Buyer will have the following rights, to be exercised at Buyer’s sole discretion: (i) Buyer may arrange for Expedited Shipping from Seller’s facilities to Buyer’s facilities or other location designated on PO, as well as from Buyer’s facilities or other location listed on PO to Buyer’s Customer, with Expedited Shipping costs to be paid by Seller. “Expedited Shipping” means any mode of transit that will likely move Product from one point to another in a manner calculated to be quicker than regular ground freight trucking. **Taxes:** all sales, use, value added or any other similar taxes on Product shall be paid by Seller or Buyer in accordance with all applicable Federal, State and Local laws. **Acceptance:** all Product purchased hereunder is subject to Buyer’s inspection and approval. Buyer expressly reserves the right, without liability hereunder or otherwise, to reject or refuse acceptance of Product not in conformity to (i) any instructions contained in PO; (ii) Specifications; or (iii) any of Seller’s warranties. With respect to any rejected nonconforming Product, upon notification to Seller, Buyer may return such Product to Seller at Seller’s expense. Payment for any Product shall not be deemed an acceptance thereof. All Product delivered shall be subject to final inspection by Buyer within a reasonable time after delivery. **Product Warranty and Service Requirements:** Seller warrants that all Product sold under any PO will be free from defects in workmanship and materials and will conform to Specifications. The foregoing warranties shall extend for a period of 5 years commencing from the date the Products are received by Purcell’s Customer. **Seller’s Breach of Warranty:** In the event that Product does not meet the Warranties, Buyer may require Seller to repair or replace at no cost to Buyer any defective or nonconforming Products. If Buyer deems it necessary to return defective Product, such Product will be returned to Seller with risk of loss borne by, and freight paid by Seller. Seller shall promptly issue a material return authorization (MRA) for such Product. (i) Nothing herein shall impair Buyer’s rights under law to cover in the event that Seller is unable to repair or replace product(s) and re-Deliver to Buyer within 5 business days from date Seller receives Product. **Intellectual Property Infringement:** Seller shall defend, indemnify and hold Buyer, Buyer’s customers and dealers harmless from any actual, out-of-pocket cost, expense and liability, including reasonable attorney’s fees, arising out of any claim or action based on actual or alleged infringement by Product sold to Buyer from Seller of any third-party patent, copyright, trade secret or other proprietary interest. **Product Changes:** Seller agrees that all Product to be delivered under any PO shall meet Specifications, and Seller will not make any change in a Product which would affect such Product’s appearance, function or performance or other Specification delineated in PO without first Buyer’s prior written consent. **Proprietary and Confidential Information:** Buyer and Seller may be subject to the terms of a Mutual Non-Disclosure Agreement. The Parties hereby ratify and affirm that Non-Disclosure Agreement; the terms thereof shall continue to be in effect, and the terms of any PO shall be kept confidential. **Problem Alert:** Seller is responsible to alert Buyer as early as possible of any problem that may adversely affect Product. **Traceability Information:** Seller warrants that traceability information (date/lot code package markings, etc.) will be provided to facilitate tracing. **Compliance with Applicable Law and Conditions:** upon Acceptance of PO, Seller warrants it will comply with all relevant and applicable provisions and National, State and local laws and regulations including, but not limited to, all laws and regulations regarding Hazardous materials during performance. Buyer shall not cause or knowingly allow Seller’s Products to be used in any illegal manner. **Insurance:** Seller hereby represents and warrants that it is carrying and will carry adequate insurance to cover liabilities. **Force Majeure:** Neither Buyer nor Seller shall be liable to the other for any delay or non-performance of obligations hereunder in the event and to the extent that such delay or non-performance is due to an event of Force Majeure, provided (i) the Party shall inform the other in writing without delay of its occurrence, probable duration and cessation, and (ii) The Party shall immediately take any necessary measures in order minimize the effect of such an event on the performance of its obligations under any PO. If the event that caused the delay/non-performance continues for a period over 2 months, then either Party shall have the right to terminate any PO without incurring any liability hereunder. **Governing Law, Arbitration and Injunctive Relief:** Any PO shall be governed by the laws of Washington State, without regard to its conflict of laws principles, as if wholly performed therein. Any disputes that may arise between the Parties under or in connection with any PO, except for claims for injunctive relief, shall be submitted (together with any counterclaims and disputes under or in connection with any other agreements between the Parties) to final and binding arbitration heard by a single arbitrator in accordance with the then-current Industry Arbitration Rules of the American Arbitration Association. Venue shall be exclusively in Spokane County, Washington. **Indemnification and Hold Harmless:** Without limiting other indemnifications herein, Seller shall defend, indemnify and hold Buyer, its directors, officers, employees and customers (collectively the “Indemnified Parties”), harmless from and against all obligations, liabilities, fines, damages, and other expenses, including, without limit, any judgments, arbitration awards, amounts paid in settlement, court costs, fees and expenses of attorneys, accountants, and other experts, and other expenses of litigation (collectively “Damages”) incurred as a result of any claims, demands, actions, suits, arbitrations, assessments, adjustments or other proceedings (collectively “Claims”) brought by any third party (including, without limit, Seller’s employees and the Indemnified Parties) arising out of or relating to: (i) any breach of Seller’s Warranties; (ii) any breach/non-fulfillment of any obligation of Seller under any PO, and (iii) any negligent act or intentional misconduct by Seller. Without limiting the generality of the foregoing, Seller shall indemnify, defend, protect and hold harmless the Indemnified Parties from and against any Claim and related Damages for personal injury (including death), bodily injury or property damage, arising out of or relating to the manufacture, testing, function, design or defects of the Products. **Waiver.** Any failure or delay by either Party in exercising any right or remedy in one or many instances will not prohibit a Party from exercising it at a later time or from exercising any other right or remedy. No part of any PO may be waived or modified in any way (including course of dealing or of performance or usage of trade) except by a written instrument signed by Parties’ duly authorized officers. Any notice to Buyer shall be addressed to Purcell Systems, Inc., 16125 E. Euclid, Spokane Valley, WA 99216; 509-755-0341, fax 509-755-0345. **No Oral Statements:** Neither Party has relied on any oral representations, warranty, or provisions; and, no oral statement has been made by either Party that alters the Terms or Conditions of any PO.