



Additional Terms And Conditions (Collectively the “Terms”) For The Purchase Of Goods And Services

Purcell Systems Inc.

Last revised July 15, 2014

For the purposes hereof, the term "Buyer" shall mean Purcell Systems Inc., and the term "Supplier" shall refer to the party from whom Buyer is purchasing such goods or services as defined on the applicable Purchase Order (the "PO").

1. Property. All jigs, dies, molds, equipment or other items owned by Buyer and used by Supplier hereunder, shall remain the property of Buyer, shall be kept in safe custody, shall not be removed from Supplier's facility without written consent from Buyer and shall not be used for the manufacture of products for anyone other than Buyer. All deliverables created specifically for Buyer hereunder shall be owned by Buyer and shall be considered work made for hire by Supplier for Buyer. If any such deliverable is not considered a work made for hire, Supplier shall assign, or obtain an assignment to, as applicable, all of the rights, title and interest in and to such deliverables to Buyer.

2. Cancellation. Buyer may cancel or terminate any PO, or any portion thereof, at any time, for any reason, including for the convenience of Buyer without being liable for any termination fee or any other penalty or charge. Enumeration of certain rights does not exclude others given by law. In the event that Buyer cancels or terminates any PO, Buyer shall pay to Supplier, as liquidated damages, an amount equal to the actual direct costs incurred by Supplier in performing under such PO up to the date of cancellation or termination less any amounts previously paid by Buyer for conforming goods or services properly performed under such PO; provided, however, that Buyer shall not be obligated to pay Supplier any costs incurred by Supplier to the extent Supplier can use or incorporate the goods, services or products for or into other purchase orders of Buyer, or for purchase orders, or for the benefit, of any other customer of Supplier.

3. Changes. Buyer may change the specifications, description of services, goods, or any aspect thereof or anything relating thereto prior to receiving goods from, or the completion of services to be performed by, Supplier. If such change changes the cost or time required for performance under any PO, Supplier shall promptly notify Buyer of such change and Buyer shall have fifteen (15) business days within which to withdraw its request for change or accept the new terms. If Buyer does not respond to Supplier's notice within twenty (20) business days, the request for changes shall be deemed withdrawn and Supplier shall perform such PO under its original terms. Supplier 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 Buyer's prior written consent.

4. Timing. Time is of the essence in the performance of any PO. If services are not completed or goods are not delivered by the delivery date set forth in a PO, Buyer may terminate a PO by written notice effective upon receipt by Supplier and obtain substitute services or goods elsewhere. Supplier shall promptly reimburse Buyer for any loss or increased costs, including downtime or overtime costs, incurred by Buyer as a result of obtaining such substitute goods or services. In any case where delivery from Supplier to Buyer will be delayed, Supplier shall give actual Notice of such delay to Buyer as soon as Supplier learns of such Delay.

5. Responsibility for Delayed Delivery: Supplier understands and agrees that Buyer purchases Product from Supplier for the purpose of fulfilling commitments to Buyer's Customers, and, because Buyer utilizes a lean manufacturing method and, thus, time is of the essence. Accordingly, in any situation where Delivery from Supplier to Buyer is delayed more than 2 business days from expected Delivery date, Buyer may arrange for Expedited Shipping from Supplier'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 Supplier. "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.

6. Taxes. Supplier is solely responsible for the payment of any sales, use or other tax or duty levied or based on the price of any goods, work or services provided pursuant to any PO. If Buyer pays any such tax or duty, Supplier shall promptly reimburse Buyer therefore.

7. Price; Warranty. If no price is stated in any PO, Supplier shall charge the lowest prices previously quoted or charged Buyer for like goods or services in like quantities under similar conditions. Supplier warrants that the prices stated in any PO are the lowest net prices charged by Supplier to any other customer for like goods or services in like quantities under similar conditions. If such lower price is quoted within thirty (30) days after delivery to Buyer, Supplier shall promptly pay to Buyer a rebate in the amount of the difference of such amounts within ten (10) days of such lower quote.

8. Invoices. Supplier 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. Buyer may dispute invoiced amounts and withhold the disputed amount while the parties try to resolve the dispute. Pending such dispute resolution, the parties shall continue to meet their other obligations under the applicable PO and any other POs from Buyer. Payment of any fees by Buyer shall not waive any rights, claims or remedies.

9. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL BUYER'S CUMULATIVE LIABILITY TO SUPPLIER FOR ALL CLAIMS, LIABILITIES, LOSSES, DAMAGES, COSTS AND EXPENSES RELATING TO A PO, OR THE GOODS OR SERVICES PROVIDED THEREUNDER, EXCEED THE AMOUNT OF THE PURCHASE PRICE FOR ANY SUCH GOODS OR SERVICES IN CONNECTION WITH THE APPLICABLE PO, LESS ANY AMOUNTS ALREADY PAID BY BUYER FOR SUCH GOODS OR SERVICES. BUYER SHALL NOT BE LIABLE TO SUPPLIER FOR ANY LOST PROFIT, LOSS OF BUSINESS, LOSS OF GOODWILL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES.

10. Indemnification. Supplier shall indemnify, defend and hold harmless Buyer, its shareholders, subsidiaries, affiliates, officers, directors, attorneys, employees, agents, successors and assigns from and against any and all losses, obligations, liabilities, claims, suits, judgments, damages (whether incidental, consequential, or otherwise), penalties, fines, costs and expenses (including, without limitation reasonable attorney's fees) arising out of, or in connection with (a) the violation or alleged violation of any law, ordinance, regulation, or rights of third parties by reason of performance or nonperformance by Supplier of any PO; (b) breach of any term, condition, covenant, agreement, representation or warranty by Supplier; (c) any infringement or alleged infringement of any patent, copyright, trademark, or other intellectual property relating to the use or design of any equipment, materials, goods or services furnished by Supplier under any PO or the processes or actions employed by or on behalf of Supplier in connection with any PO; (d) injury or death to persons or any real or personal property damage, arising from or relating to the goods or services provided by Supplier under any PO or acts or omissions of Supplier or its officers, directors, employees, agents, contractors or subcontractors; or (e) claims arising from or relating to injuries to or death of Supplier's employees, including but not limited to claims based upon allegations of negligence of Buyer. The indemnity provided in clause (e) is applicable to claims for which Supplier has or may have immunity under the Pennsylvania Workmen's Compensation Act, or other similar law, and Supplier agrees and acknowledges that by undertaking to indemnify Buyer, Supplier is expressly undertaking indemnification liability by written contract pursuant to Section 303(b) of the Pennsylvania Workmen's Compensation Act, or any other similar law. Supplier's obligations under this section shall not be limited to its insurance coverage.

11. Insurance. Supplier agrees to maintain commercially reasonable levels of insurance coverage, including: (1) Commercial General Liability and Errors and Omissions Insurance with a limit of not less than one million U.S. dollars (\$1,000,000) covering liability for property damage and bodily injury, including death to any person; (2) Automobile liability insurance with bodily injury and property damage limits of not less than one million U.S. dollars (\$1,000,000); and (3) "Umbrella" liability insurance in an amount not less than five million U.S. dollars (\$5,000,000) to cover claims in excess of the coverage limits provided above. If Supplier is performing any services for Buyer, Supplier agrees to also maintain: (1) Commercial Crime covering employee dishonesty in an amount of not less than one million U.S. dollars (\$1,000,000); (2) Workers' compensation insurance for Supplier's employees at the applicable statutory limit and in an amount of not less than five-hundred thousand U.S. dollars (\$500,000) per occurrence; and (3) Property insurance covering "All Risk" of loss or damage to Supplier real and personal property. Buyer shall be named as an additional insured on the Commercial General Liability, Automobile Liability and Umbrella Liability policies, and Supplier shall provide Buyer with Certificates of Insurance. If applicable, all policies of insurance shall be underwritten through insurance companies licensed to do business in the jurisdiction where the services are being provided, and with an A.M. Best rating of A- (X) or higher.

12. Confidentiality. Buyer, or third parties on Buyer's behalf, may disclose to Supplier, certain confidential or proprietary information ("Buyer Confidential Information"). For a period of five (5) years after termination or expiration of this PO, Supplier shall not disclose and shall, to the extent within its control, prevent the disclosure by others of the Buyer Confidential Information to any third party without the prior written consent of Buyer. Supplier agrees not to use, or make copies, of the Buyer Confidential Information except as required for the performance of its obligations under the PO, and agrees to limit access to the Buyer Confidential Information to its own employees, agents and consultants strictly on a "need to know" basis; provided, however, that such agents and consultants have executed an agreement with Supplier with confidentiality provisions at least as restrictive as those contained herein. Upon expiration or termination of this PO and if requested by Buyer, Supplier shall, to the extent possible, promptly return all of the Buyer Confidential Information. Each party acknowledges that the disclosure of confidential or proprietary information of the other may give rise to irreparable injury which may be inadequately compensable in damages. To the extent Supplier breaches, or Buyer could reasonably believe Supplier may breach, its confidentiality obligations stated herein, Supplier consents to Buyer obtaining injunctive relief to prevent, or otherwise limit the damages of, any such breach or threatened breach.

13. Subcontractors. Supplier may, upon written approval by Buyer, subcontract any portion of a PO to another person furnishing labor or materials to Supplier for the performance of any PO (collectively the "Subcontractors"), but Supplier shall nevertheless remain primarily liable and fully responsible for the performance of the obligations under such PO. If Supplier is subcontracting a service, Supplier must first obtain Buyer's written consent to use Subcontractors prior to subcontracting or

otherwise permitting Subcontractors to perform services. No subcontract shall increase the fees or the scope or amount of expenses passed through to Buyer. Supplier shall cause its Subcontractors to, and remains fully responsible if they do not, comply with these Terms.

14. Mechanics Liens. If any PO calls for work or services to be performed upon Buyer's property, Supplier shall not file or cause to be filed, directly or indirectly, and shall keep such property and work free and clear of, any mechanics, construction or other similar liens (the "Liens"), and shall perform such other acts and provide such other assurances, including but not limited to obtaining payment and performance bonds and furnishing mechanics lien waivers, as Buyer may request from time to time or that is otherwise required to prevent or waive such Liens. Supplier shall give any Subcontractors notice of this provision and, prior to subcontracting any work or services to Subcontractors, shall require its Subcontractors to agree to waive any rights to Liens it may otherwise have with respect to Buyer, and to cooperate fully with Buyer to fill out forms, file documents, or otherwise perform any such acts or assist in waiving or preventing Liens prior to allowing any Subcontractor, or representative of Subcontractor, to furnish any labor or materials to Supplier for the performance of any PO or portion thereof.

15. Compliance with Law. Supplier shall comply with all applicable laws, rules, regulations, standards and other governmental requirements in connection with the performance of its obligations under any PO including but not limited to, (a) Act of March 3, 1933, Title III, c.212.47 Stat. 1520 (Buy American Act), (b) Act of June 30, 1936 (c.881.49 Stat. 2036) 41 U.S.C.A., Secs. 35-45 as amended by Act of June 28, 1940, c.440, Title I, 54 Stat. 676, Sec. 1-12, and 54 Stat. 681, Sec. 13 (Walsh-Healey Act), (c) Act of June 25, 1983, c.676k, 52 Stat. 1060, as amended (Fair Labor Standards Act), (d) Sec. 3 Act March 27, 1934 (48 Stat. 505; 34 U.S.C.A. Sec. 494 et seq.) and amendments and supplements thereto (Vinson Act), (e) Act of December 29, 1970, Public Law 91-596, 91st Congress S2193 (Occupational Safety and Health Act), (f) Renegotiation Act of 1951, (g) Civil Rights Act of 1964 and Executive Order 11246, (h) Department of Defense Industrial Security Manual and (i) Toxic Substances Control Act (P.L. 94-469), and all amendments thereto and all rules, regulations and orders issued thereunder. In accordance with FAA regulations and to satisfy 14 Code of Federal Regulations (CFR) Part 21, Supplier hereby acknowledges and agrees that to the extent Supplier is supplying a part to an FAA Assembly, Supplier is subject to an inspection and audit by the FAA, which inspection and audit may occur at any time upon notice by the FAA or its representatives.

If applicable, the requirements of 41 CFR §§ 60-1.4(a) and 29 CFR Part 471, Appendix A to Subpart A, are incorporated herein by reference.

If applicable, vendor shall abide by the requirements of 41 CFR § 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

If applicable, vendor shall abide by the requirements of 41 CFR § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

16. Conflict Minerals. Suppliers are expected to ensure that parts and products supplied to Buyer do not contain "Conflict Minerals" (gold, tin, tantalum and tungsten) or their derivatives that are sourced from Eastern provinces of the Democratic Republic of Congo ("DRC") or adjoining countries. Suppliers are expected to establish policies and perform due diligence consistent with the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*.

17. Toxic Substances. Upon receipt by Buyer of information which would reasonably lead to the conclusion that a chemical substance or any other toxic substance which is the subject of any PO was manufactured, processed, transported or distributed in commerce in violation of the Toxic Substances Control Act, Buyer may suspend or terminate such PO.

18. Non-Discrimination. Supplier warrants that it shall not, in performing its obligations under any PO, discriminate against any employee or applicant for employment on the basis of race, creed, color, age, sex, or national origin or on the basis of the employee or applicant being disabled, a disabled veteran or other protected veteran, in regard to a position for which the employee or applicant is qualified.

19. Assignment. Supplier shall not assign any of its rights or obligations under any PO without the prior written consent of Buyer. Any merger, consolidation, reorganization, recapitalization, sale of a substantial portion of Supplier's business or assets or any other transaction by which there is a change in control of Supplier's, or any of Supplier's owners' or parents', business shall be deemed an assignment by Supplier.

20. Jurisdiction; Venue. Any suit, action or other proceeding seeking to enforce, or in any way relating to, any provision of a PO shall be brought only in the Court of Common Pleas of Berks County, Pennsylvania or the United States District Court for the Eastern District of Pennsylvania. Supplier irrevocably consents and submits to the jurisdiction and venue of such courts and irrevocably waives any objection which it may have to the laying of the venue of any suit, action or proceeding brought in such courts and any claim that such suit, action or proceeding brought in such courts has been brought in an inconvenient forum or that such courts lack jurisdiction.

- 21. Severability.** If any provision of any PO or these Terms, or any portion thereof, is held invalid or unenforceable by any court of competent jurisdiction, the other remaining provisions will remain in full force and effect. Any provision of any PO held invalid or unenforceable only in part will remain in full force and effect to the extent not held invalid or unenforceable.
- 22. Waiver.** Neither the failure nor any delay by Buyer in exercising any right, power or privilege under these Terms or any PO, will operate as a waiver of any such right, power or privilege, and no partial exercise of any such right, power or privilege will preclude further exercise of such right, power or privilege or the exercise of any other right, power or privilege.
- 23. Governing Law.** All POs and transactions contemplated thereby shall be governed by, and construed in accordance with, the domestic internal laws of the Commonwealth of Pennsylvania without regard to its principles pertaining to the conflict of laws.
- 24. Delivery; Marking.** Unless otherwise indicated, goods described in this PO shall be delivered F.O.B. Buyer's ship to address as set forth on the PO. All packaging and labels must include Buyer's PO Number, Buyer's Part Number and Revision Designator, Quantity, Lot Number and Date of Shipment. Buyer may reject and return to Supplier at Supplier's sole cost and expense, any shipment which does not include the foregoing information.
- 25. 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.
- 26. Acceptance of Goods.** Buyer's payment of the purchase price, or any part thereof, does not constitute acceptance of the goods or services. Goods and services are subject to inspection and rejection by Buyer within a reasonable time following receipt by Buyer. Risk of loss does not pass to Buyer until acceptance of the goods or services. To the extent practicable, defective or nonconforming goods will be returned to Supplier at Supplier's sole cost and expense, and the risk of loss with respect to such defective or nonconforming goods shall never pass to Buyer and shall remain with Supplier.
- 27. Product Returns and Stock Balancing.** Supplier 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, Supplier 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 Supplier's receipt of the returned materials at Supplier's receiving dock, or (b) credit against future purchases paid by credit memo issued within 30 days after receipt of returned materials at Suppliers receiving dock. Buyer will pay return freight.
- 28. Warranties.** Supplier warrants that all goods, work or services furnished pursuant to this PO shall, as appropriate: (a) be new and free from defects; (b) conform to all designs, plans, specifications, responses to RFPs, marketing brochures and letters, oral and written claims made by Supplier, samples and statements on containers, labels and advertisements; (c) be performed in a good, professional and workmanlike manner; (d) be merchantable, safe, fit and appropriate for Buyer's particular purpose and use; and (e) be delivered free and clear of any claims, liens or encumbrances whatsoever. The foregoing warranties shall extend for a period of 5 years commencing from the date the goods are received by Buyer's Customer.
- 29. Traceability Information:** Supplier warrants that traceability information (date/lot code package markings, etc.) will be provided to facilitate tracing.
- 30. Force Majeure.** Neither Buyer nor Supplier 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.
- 31. No Oral Statements.** Neither Party has relied upon 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.
- 32. Overshipments.** Buyer agrees to pay only for actual quantities stated on PO. Over shipments will be held for a reasonable period of time at Supplier's risk and expense while Buyer awaits shipping instructions, and returned to Supplier, at Supplier's risk and expense, pursuant to Supplier's shipping instructions.