

**MASSACHUSETTS INSTITUTE OF TECHNOLOGY (M.I.T./INSTITUTE)**  
**GENERAL TERMS AND CONDITIONS (Revision Date 10/05)**

**1. OFFER AND CONTRACT**

The following terms, together with such terms as are set forth on the face of this purchase order and the attached product sales agreement, with such plans, specifications or other documents as are attached or incorporated by reference on the face of this order, constitute the offer of M.I.T. to Seller and shall, when accepted, constitute the entire contract between M.I.T. and Seller, to the extent not varying or different from the terms and conditions set forth in the Product Sale Agreement. This order is valid only as written. If price, terms, shipping date or any other expressed condition of this order are not acceptable, M.I.T. must be notified and must accept in writing any variation prior to shipment or delivery. This order shall be deemed to have been accepted (i) in the absence of written notification on non-acceptance by the Seller within a reasonable period of time, or (ii) upon timely delivery of the products identified herein to the shipping address specified on the face of the order. This agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

**2. TIME OF DELIVERY**

Time is of the essence of this order. If delivery dates cannot be met, Seller must inform M.I.T. immediately. Such notification shall not, however, constitute a change to the delivery terms of this order, except as the order may be modified in writing by M.I.T. Seller shall not be liable for damages arising out of either its failure to deliver or any delay in delivery occasioned by, by way of example only and not limitation, strikes, lockouts, fires, war, or acts of God.

**3. IMPROPER DELIVERY**

In addition to other remedies provided by law, M.I.T. reserves the right to refuse any goods and to cancel all or any part of this order if Seller fails to deliver all or any part of the goods in accordance with the terms and conditions of the order. Acceptance of any part of this order shall not bind M.I.T. to accept any future shipments nor deprive it of the right to return goods already accepted.

**4. RISK OF LOSS**

Risk of loss shall not pass to M.I.T. until goods called for in this order have been actually delivered to M.I.T. at the destination specified herein. Seller assumes full responsibility for packing, crating, marking, transportation and liability for loss or damage in transit, notwithstanding any agreement by M.I.T. to pay freight, express, or other transportation charges.

**5. WARRANTY**

Seller expressly warrants all goods delivered under this order to be free from defects in material and workmanship and to be of the quality, size and dimensions ordered. This express warranty shall not be waived by reason of the acceptance of the goods or payment therefore by M.I.T.

**6. ASSIGNMENT**

The Seller shall have no right to assign this order or any benefits arising from this order without prior written consent of M.I.T., such consent not to be unreasonably withheld and provided further that Seller may assign to a corporate parent, affiliate or subsidiary without such consent being required.

**7. CHANGES**

M.I.T. may at any time, by a written order to the Seller, make changes within the general scope of this purchase order in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipment or packing; and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this purchase order, an equitable adjustment shall be made in the purchase order price or delivery schedule, or both, and the purchase order shall be modified in writing accordingly. Any claim by the Seller for adjustment under this clause must be asserted within 30 days from the date of receipt by the Seller of the notification of change; provided, however, that M.I.T., if it decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this purchase order. Where the cost of property made obsolete or excess as a result of a change is included in the Seller's claim for adjustment, M.I.T. shall have the right to prescribe the manner of disposition of such property. However, nothing in this clause shall excuse the Seller from proceeding with the purchase order as changed.

**8. INSPECTIONS**

M.I.T. shall have the right to inspect the work and activities of the Seller under this purchase order in such manner and at all reasonable times as are deemed appropriate. Final inspection shall be at M.I.T.'s premises unless otherwise agreed in writing. Items rejected as not conforming to this order shall be returned at Seller's expense, including transportation and handling charges, if any.

**9. INDEMNIFICATION**

The Seller agrees to indemnify M.I.T. and to hold M.I.T. harmless from and against all claims, liability, loss, damage, and expenses including legal fees, arising from or due to any actual or claimed trademark, patent, or copyright infringement and any litigation based thereon, with respect to any part of the goods and work covered by this purchase order. The Seller shall defend any such litigation brought against M.I.T. provided that M.I.T. notifies the Seller promptly of any such suit, and provided further that such goods have not been designed by or under instruction from M.I.T., and/or are not used in combination with other processes or goods. The Seller's obligations hereunder shall survive acceptance of the goods and payment therefor by M.I.T. for a period of one (1) year, or the applicable statute of limitations, whichever is shorter.

**10. TAXES**

Except as may be otherwise provided in this purchase order, the price includes all applicable Federal, State and local taxes and duties.

**11. HOLD HARMLESS**

During the effective term of this Agreement, the Seller agrees to indemnify and hold harmless M.I.T. from any and all claims, from the employees, agents or representatives of Seller or M.I.T. that may be asserted, for personal injury or property damage or otherwise ("Claims") to the extent arising from the negligent act or omission of Seller with respect to the goods or services provided by the Seller pursuant to this Agreement. Seller shall carry and maintain insurance coverages satisfactory to cover the above, and, upon request, shall furnish to M.I.T. appropriate evidence of such insurance. Seller's obligation to indemnify and hold M.I.T. harmless shall in no event apply to any Claims to the extent such Claims arise or are alleged to arise as a result of the sole, concurrent or contributory negligence of M.I.T., including its employees, agents and representatives. This obligation to indemnify and hold M.I.T. harmless shall be subject to the limitations of liability set forth herein and in the Product Sale Agreement.

**12. OCCUPATIONAL SAFETY AND HEALTH ACT**

By accepting this order, Seller certifies that all products supplied conform as of the date of shipment to current OSHA specifications.

**13. USE OF THE NAME OF THE INSTITUTE**

The Seller agrees not to use the name of the Institute or any member of its staff in sales promotion work or advertising, or in any form of publicity, without the written permission of the Institute (Director of the MIT News Office), such consent not to be unreasonably withheld.

**14. EQUAL EMPLOYMENT OPPORTUNITY**

This purchase order is subject to the requirements of Executive Orders 11246 and 11375 and the rules and regulations or the Secretary of Labor (41 CFR Chapter 60) in promoting Equal Employment Opportunities.

**15. AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA**

This purchase order is subject to the requirements of Public Laws 92-540 and 93-508, Executive Order 11701, and the regulations of the Secretary of Labor (41 CFR Part 60-250) in promoting employment opportunities for disabled and Vietnam veterans. This order is also subject to the reporting requirements of 38 U.S.C. 4212.

**16. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS**

This purchase order is subject to the requirements of Section 503 of the Rehabilitation Act of 1973, Public Laws 93-112 and 93-516, Executive Order 11758 and the regulations of the Secretary of Labor (41 CFR Part 60-471) in promoting affirmative action in Employment of the Handicapped.

**17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION**

This purchase order to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 USC 327-333), is subject to the provisions of the Act, including overtime requirements and penalties for violation thereof.

**18. ANTI-KICKBACK ENFORCEMENT ACT OF 1986**

This purchase order is subject to the provisions of the Anti-Kickback Enforcement Act of 1986, Public Law 99-634 (41 U.S.C. 51-58). By accepting this order, Seller (1) certifies that it has not paid kickbacks directly or indirectly to any M.I.T. employee for the purpose of obtaining this or any other M.I.T. purchase order, and (2) agrees to cooperate fully with any Federal agency investigating a possible violation of the Act.

**19. CLEAN AIR ACT and FEDERAL WATER POLLUTION CONTROL ACT (Where applicable)**

This purchase order is subject to the requirements of the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.)

**20. ANTI-LOBBYING (Where applicable)**

This purchase order is subject to the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

**21. RESTRICTIONS ON CERTAIN FOREIGN PURCHASES**

This purchase order is subject to the restrictions in FAR 52.225-13 as applicable.

**22. CONTRACTORS DEBARRED, SUSPENDED OR PROPOSED FOR DEBARMENT**

This purchase order is subject to the requirements of FAR 52.209-6 as applicable.

**23. TERMINATION FOR CONVENIENCE**

M.I.T. may, at its sole convenience, terminate this contract by written notice to the other party. In the event of such termination, the Contractor shall immediately stop work to the extent required, and after delivery to M.I.T. of all work completed and/or in process, the Contractor shall be entitled to payment for all services satisfactorily performed prior to the effective termination date as stated in the notice.

**24. AUDIT (applicable to orders greater than \$100k awarded with Government funds)**

The Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to this specific program for the purpose of making audits, examinations, excerpts and transcriptions.

**25. RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (applicable to orders greater than \$100k awarded with Government funds)**

This purchase order is subject to the requirements of FAR 52.203-6 as applicable.

**Note:** Copies of the regulations for clauses 14, 15, 16, 17, 18, 19, 20, 21, 22 and 25 above may be obtained from the Buyer.