



Facet Technologies, LLC

Terms and Conditions of Purchase

1. ACCEPTANCE OF PURCHASE ORDER

These Terms and Conditions apply to purchase orders (“Orders”) between Facet Technologies, LLC, under the control of a common parent (Buyer”) and the supplier whose name appears on the face of this Order (Seller). By acceptance of this Order and/or performance hereunder, Seller agrees to comply fully with the Terms and Conditions set forth herein. Acceptance of this Order is expressly limited to the Terms and Conditions of this Order, and none of the Seller’s Terms and Conditions used in acknowledging this Order, in the acceptance of the Order or otherwise used by Seller shall be of any force or effect unless specifically agreed to in writing by Buyer. Acceptance by Buyer of goods, services or work including but not limited to technical assistance, software or other forms of deliverable technology data (“Products”) delivered under this Order shall not constitute acceptance of Seller’s Terms and Conditions. The Terms and Conditions hereof are intended as final, complete and exclusive statement of agreement between the parties, and no change in, modification of, or revision of this Order shall be valid unless in writing and signed by Buyer.

2. DELIVERY

Time is and shall remain a material element of this Order and no acts of Buyer, including modifications of this Order or acceptance of later deliveries, shall constitute a waiver of this provision. Seller shall immediately notify Buyer, in writing, of any actual or potential delay in the performance of this Order. Such notice shall include a plan for corrective action and recovery schedule and shall not be construed as a waiver of Buyer’s rights and remedies hereunder.

3. SHIPPING INSTRUCTIONS

Seller shall at all times comply with Buyer’s shipping instructions. The Order number must appear on all shipping documents including bills of lading, bills, and invoices.

All products shall be packed by Seller in suitable containers of sufficient protection during shipment and storage. When products are packed to avoid contamination, a notice to this effect must be prominently placed on the bill of lading, packing list and packages. No charges will be allowed for handling, packaging, storage, transportation and insurance in transit unless expressly stated herein.

Unless otherwise specifically agreed to in writing by Buyer, Seller shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet Buyer’s delivery schedule. Buyer reserves the right to refuse or return at Seller’s risk and expense, shipments made in excess of Buyer’s Orders or in advance of required schedules. Shipments of the products hereunder shall be made in accordance with all applicable laws and regulations.

4. CURRENCY

Payment will be in United States dollars unless otherwise stated in the Order.

5. WARRANTIES

Seller expressly warrants that all products furnished hereunder will conform to the specifications, drawing, samples and other descriptions furnished or adopted by Buyer and will be fit and sufficient for the purpose intended, new, clean and in good repair, of first class material and workmanship and free from defects. This warranty extends to Buyer and Buyer’s customer. Seller shall be liable for and deem Buyer harmless from any loss, damage, or expense that Buyer may suffer from breach of any of these warranties. Remedies include repair, replacement or reimbursement of the purchase price of nonconforming products at Buyer’s election.

Seller further warrants that it has and will transfer to Buyer clear and unencumbered title to the products. The shipment of products shall constitute a certification by Seller that it holds available for review by Buyer documentary evidence, in the form of physical reports with respect to related materials and/or processes, indicating conformance to applicable specifications. Seller also warrants that the prices specified in this Order do and will not on the date of delivery of the products exceed Seller’s prices to any other customer for like products and quantities, whether such customers are other commercial customers, or the Government.

All rights and remedies of Buyer set forth in this Order or available at law shall be cumulative and not alternative, and shall not be exhausted by any one or more uses thereof.

6. INSPECTION AND ACCEPTANCE

When specified in purchasing documents, Buyer, Buyer’s Customer and/or any regulatory agencies shall have the right to perform verification of Product (Verification Personnel) on Seller’s or Seller’s supplier’s premises, prior to shipment. Such product verification shall include, but not be limited to, inspection of product, to the extent practicable, at all places

and times including during the manufacturing or fabrication at Seller's facilities or elsewhere. Seller and Seller's suppliers will furnish, without additional charge, all reasonable facilities and assistance for the safety and convenience of the Verification Personnel performing their duties on Seller or Seller's supplier's premises. Verification Personnel may reject and return all products which are found to be defective for repair or replacement at Seller's expense. Failure to inspect products, failure to discover defects in products, or payment for products shall not constitute acceptance, waiver of warranty rights, or limitation of any Buyer's other rights and remedies hereunder or at law.

- (a) Final inspection and acceptance shall occur at Buyer's facility.
- (b) Seller shall provide and maintain an inspection system acceptable to Buyer covering the products and shall tender to Buyer for acceptance only products that have been inspected in accordance with the inspection systems and have been found by Seller to be in conformity with Order requirements.
- (c) Buyer's failure to inspect does not relieve Seller of any responsibility to perform according to these Terms and Conditions.

7. PRICES AND TAXES

The purchase price is fixed as stated in the Order and shall constitute the entire consideration paid to Seller for the products and includes product boxing, crating, packaging and other services normally supplied in the trade. All present or future import duties, taxes and inspections etc. shall be paid by the Supplier. The Supplier is responsible for obtaining import licenses and all other permits required for the deliveries to the country of destination. Invoices shall not bear a date prior to the date of complete shipment of performance. The Supplier is responsible to notify Facet Technologies in writing for any surcharges fixed or variable and must be approved by Facet Technologies prior to implementation.

8. EXPORT CONTROL AND APPLICABLE LAW

- (a) Seller shall be responsible for the control, disclosure of and access to technical data, information and other items received under this order in accordance with U.S. export control laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR) and the export laws of the country of the Buyer if the Buyer is not U.S. based. Seller shall comply with all such laws and regulations; and shall indemnify Buyer for all liabilities, penalties, losses, damages, costs or expenses that may be imposed on or incurred by Buyer in connection with any violations of such laws and regulations by Seller.
- (b) Both parties agree that, irrespective of the place of performance of this Order, it will be construed and interpreted according to the laws of the State of Georgia exclusive of its conflict of laws provision. During pendency of any dispute arising under the Order, both parties shall proceed diligently with performance hereunder.

9. COMPLIANCE WITH LAW

- (a) Seller warrants that the products to be furnished and the services to be rendered under this Order shall be manufactured and sold in compliance with all relevant federal, state, local laws and regulations and applicable international prohibitions on child labor.
- (b) The seller warrants that in the performance of this Order, it will comply with all applicable U.S. Department of Transportation regulations on hazardous materials and any other pertinent Federal, state or local statutes, laws, rules, or regulations; and Seller further agrees to save Buyer harmless from any loss, damage, fine, penalty, or expense whatsoever that Buyer may suffer as a result of Seller's failure to comply with this certification.

10. PATENT INDEMNITY

Notwithstanding the specifications, drawings, samples and other descriptions furnished by Buyer, Seller warrants that products and the sale or use thereof by Buyer or any transferee will not infringe any U.S. or foreign Letters of Patent, copyrights, trade secrets or other intellectual property rights. Seller at its own expense shall defend, protect and hold harmless Buyer, its successors and assigns, customers and users of the products, against all claims, demands, actions, or suits at law of in equity alleging or arising from, actual or alleged infringement. Seller shall indemnify the aforesaid named persons and entities against all damages, costs, and expenses, including all legal expenses arising therefrom. Further, seller shall replace or modify infringing products with comparable products acceptable to Buyer of substantially same form, fit, and function so as to remove the source of infringement, and shall extend this provision thereto. If the use or sale of any of the above products is enjoined as a result of such claim, suit or action, Seller at no expense to Buyer, shall obtain for Buyer and its customers the right to use and sell said product.

11. PASSAGE OF TITLE AND RISK OF LOSS

Title and risk of loss of damage to the products shall remain with Seller until the products are received at Buyer's facility.

12. WAIVER

The waiver by Buyer of any breach of any term or condition of this order shall not be deemed a waiver of any subsequent breach of the same or any other term or condition.

13. INSURANCE

In the event that Seller, its employees, agents or subcontractors enter Buyer's or its' Customer's premises for any reason in connection with this order, Seller, its subcontractors and lower-tier subcontractors, shall produce and maintain worker's compensation, comprehensive general liability, bodily injury and property damage insurance as defined by Facet Technologies, and such other insurance as Buyer may require and shall comply with all site requirements. Seller shall indemnify and hold harmless Buyer, its officers, employees and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees all expenses of litigation and/or settlement, and account costs by reason of property damage or personal injury to any person caused in whole or in part by the action or omissions of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier. If requested, Seller shall send "Certificate of Insurance" showing Seller's compliance with these requirements.

14. CONFIDENTIALITY

All information furnished by Buyer or any other person acting on behalf of Buyer and all information learned or observed about Buyer or its operations through performing this Order is confidential; and Seller shall not disclose any such information to any other person, or use such information for any purpose other than performing this Order without Buyer's express written consent. All information in tangible form, including drawings, samples, models, specifications, or other documents provided by Buyer or prepared by Seller for Buyer shall be returned to Buyer promptly upon request. Seller shall not publicize the fact that Buyer has contracted to purchase goods or services from Seller, nor shall any information relating to this Order be disclosed without Buyer's written consent. Unless otherwise agreed in writing, no information disclosed by Seller to Buyer shall be deemed confidential and Seller shall right against Buyer with respect Buyer's use thereof.

15. DISPUTES

- (a) Any dispute or disagreement arising out of or relating to this Order which is not settled to the satisfaction of Buyer and Seller within thirty (30) days of the date either party informs the other in writing that such dispute exists, shall be referred to Binding arbitration before a single arbitrator in Atlanta, Georgia, USA, in accordance with the Commercial Arbitration Rules of the American Arbitration Rules of the American Arbitration Association in effect on the date that such notice is given.

16. CHANGES

Buyer shall have the right by written Order to suspend work, or to make changes from time to time to any Order for services to be rendered or the products to be furnished by Seller hereunder, including with regard to quantities, drawings, designs, specifications, place of delivery, delivery schedules and methods of shipment and packaging. If such suspension or change causes an increase or decrease in the cost of performance of this Order or in the time required for its performance, an equitable adjustment shall be negotiated promptly and the order shall be modified in writing accordingly. IF Seller has a claim for any adjustment under this paragraph, it must be asserted in writing to Buyer within seven (7) days of receipt of notice of change and must include the amount claimed with support cost figures. Any such claim must be agreed to in writing by Buyer to be effective.

17. TERMINATION FOR DEFAULT

- (a) Buyer may, by written notice to Seller, terminate this Order in whole or in part at any time, for breach of any one or more of the following circumstances: (1) If Seller fails to make delivery of the products or to perform the services within the time specified herein: or (2) If Seller fails to perform any of the other provisions of this Order or so fails to make progress as to endanger performance of this Order in accordance with its terms.
- (b) In the event Buyer terminates this Order in whole or in part as provided in paragraph (a) of this clause, Buyer may procure, upon such terms in such manner as Buyer may deem appropriate, products of services similar to those so terminated and Seller shall be liable to Buyer for any excess costs of such similar products or services.
- (c) Seller's obligations under the Warranty and Confidentiality provisions of this Order shall survive any such termination of this Order.

18. TERMINATION FOR CONVENIENCE

Buyer shall have the right to terminate this Order at any time and from time to time in whole or in part for the convenience of Buyer. Such termination can be effected at any time effective immediately upon written notice from Buyer to Seller. In the event of any such termination, Buyer shall equitably determine the amount owed to Seller for work done prior to such termination.

19. STOP WORK ORDER

Buyer may at any time, by written notice to Seller, require Seller to stop all or any part of the work called for by this Order for a period of up to ninety (90) days after the notice is delivered to Seller ("Stop Work Order"). Upon receipt of the Stop Work Order, Seller shall comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within (90) days after a Stop Work Order is delivered to Seller, or within any extension of that period which the parties have agreed, Buyer shall either cancel the Stop Work Order, or terminate the work covered by this order as provided in the "Termination for Convenience" sections of this Order, whichever may be appropriate. Seller shall resume work upon cancellation or expiration of any Stop Work Order. If the Stop Work Order results in an increase in the time required for the performance of this Order or in Seller's costs properly allocable thereto, an equitable adjustment shall be made in the delivery schedule or prices hereunder, or both and this Order shall be modified in writing accordingly.

20. BUYER FURNISHED PROPERTY

All information, drawings, plus all tools, jugs, dies, fixtures, materials and other items furnished or paid for by Buyer shall be, and remain the property of Buyer, and shall be 1) subject to removal at any time without additional cost upon demand by Buyer, and 2) used only in filling orders from Buyer. Seller shall have the obligation to maintain any and all property furnished by Buyer to Seller and Seller shall be responsible for all loss or damage to said property except for normal wear and tear.

21. ORDER OF PRECEDENCE

The Order and all documents incorporated by reference constitute the entire agreement of the parties as to the subject matter hereof. In the event of any inconsistency among the foregoing, the inconsistency shall be resolved by giving precedence in the following Order: 1) provisions set forth in this Order, 2) the specifications, 3) the drawings, 4) these Terms and Conditions, and 5) the other documents incorporated by reference.

22. QUALITY INSPECTION SYSTEM

- (a) Seller shall provide and maintain a well defined quality system acceptable to Buyer covering the products.
- (b) Seller and/or Seller's Supplier shall allow Buyer, Buyer's Customer and any regulatory agencies the right to enter its premises to determine and verify the quality of contracted work, records and material related to the order.

23. FORCE MAJEUR

Neither party shall be liable in damages for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions, wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected. The party invoking Force Majeure shall provide the other party confirmation of the existence of the circumstance constituting the Force Majeure.