



TERMS AND CONDITIONS OF PURCHASE

1. ACCEPTANCE

Acceptance of this purchase order by Seller must be without qualification. Sorrento Networks, Inc. (hereinafter referred to as "Purchaser") shall not be bound by any terms and conditions not appearing hereon. Shipment by Seller of the material ordered or commencement of services by Seller shall constitute acceptance of the terms hereof and a waiver by Seller of all terms and conditions contained in any acceptance form of any other communications which are inconsistent with the terms and conditions set forth on this order unless specifically agreed to in writing by Purchaser. This order shall not be considered legally binding on Purchaser unless executed in accordance with Purchaser's Signature Policy set forth below.

2. PRICE

If no price is stated on this order, material or services must not be furnished at a price higher than the price last paid to Seller by Purchaser for comparable material without prior notice and written acceptance by Purchaser of such increased price.

3. CHANGES

No amendments, waivers of, changes in or additions to this order or the terms thereof which increase the liability of Purchaser shall be binding upon Purchaser unless approved by Purchaser in writing in accordance with Purchaser's Signature Policy.

4. PACKING

Seller shall be responsible for safe packing, which must conform to the requirements of carrier's tariffs. Seller shall separately number all cases, packages etc., showing the corresponding numbers on the invoices. All itemized packing slips, bearing the Purchase Order number, must be placed in each container. No extra charge shall be made for packaging materials unless authority is expressly incorporated in this order.

5. INSPECTION

Materials delivered under this order shall be subject to inspection and test by Purchaser. All or any part of the materials delivered under this order may be held for or returned to Seller at Seller's expense for storage, transportation and insurance if found within a reasonable time from the date of its opening to be defective or not in accordance with the order, including specifications provided therein and/or Seller's express or implied warranties or representations. Acceptance of all or part of the goods, use thereof and/or payment therefore or failure to notify Seller promptly shall not waive or affect Purchaser's right to cancel or return all or part of the goods, or to recover damages, or to recover upon Seller's warranties or agreements of indemnity.

6. SHIPPING INSTRUCTIONS

All goods must be shipped in accordance with shipping instructions stated on the face hereof or otherwise specified by Purchaser and, where freight is to be paid by Purchaser, at the most advantageous rate. Freight charges shall be paid by Seller unless Purchaser's order specifies otherwise. Purchaser shall not be responsible for any extra expense sustained by Seller - due to its failure to comply with these instructions.

7. INVOICES

Invoices shall:

- (a) Be rendered for each delivery in duplicate with a bill of lading attached;
- (b) Postmarked on the date appearing on the invoice;
- (c) Cover no more than one order;
- (d) Be rendered with order number indicated thereon (Any discount period will be calculated from the date on which Seller will have complied with all requirements of this order and Purchaser has received an invoice in good order); and
- (e) Be addressed and delivered to Purchaser's Accounts Payable department.

8. DELIVERY

Time is and shall remain of the essence in this order; and no acts of Purchaser, including without limitation, modification of this order or acceptance of late deliveries, shall constitute waiver of this provision. Purchaser reserves the right to refuse or return at Seller's risk and expense shipments made in excess of Purchaser's orders or in advance of required schedules, or to defer payment of advanced deliveries until scheduled delivery dates.

9. INTELLECTUAL PROPERTY

Seller agrees to save harmless those using and/or reselling the materials or services delivered under this order from any expense, judgment or damages from all actions at law and suits in equity arising out of any claim or suit based upon actual or alleged infringement or contributory infringement of any United States or foreign patent or other intellectual property right by reason of manufacture, use, sale, distribution, importation or sale of such material or services, providing Seller receives prompt notice of such claim or suit.

10. ASSIGNMENT OR ADVERTISING

Seller shall not, without first obtaining written consent of the Purchaser, in any manner, assign or subcontract all or any part of this purchase order, or advertise or publish (including denial or confirmation thereof) the fact that Seller has contracted to furnish to Purchaser the materials herein ordered.

11. WARRANTY

Seller warrants that the articles to be shipped in response to the order (i) are free from defects in materials, workmanship and fabrication, (ii) are of the quality, quantity, size and description specified, (iii) conform to the specification provided by Purchaser (or if Purchaser has not published a specification, then to Seller's specifications) and (iv) shall be suitable for the purpose(s) designated. Seller warrants that the services to be provided in response to the order will be provided in a professional workmanlike manner. These warranties shall survive acceptance and payment for a period of fifteen (15) months and shall run to Purchaser, its successors, assigns, customers, and the users of its products.

12. INDEPENDENT CONTRACTORS

The Seller shall perform hereunder as an independent contractor and not as an employee or agent of the Purchaser.

13. INDEMNIFICATION

To the extent that Seller's agents, employees or sub-contractors enter upon premises occupied by or under the control of Purchaser or any of its customers or suppliers, in the course of the performance of this order, the Seller shall indemnify and save the Purchaser harmless from and against any and all damages for injury caused to persons including both Purchaser's and Seller's employees, or property by reason of the Seller's operations hereunder other than for such damages caused by the negligence of Purchaser, its agents, servants or employees. Further, the Seller shall indemnify and save the Purchaser harmless from and against any and all liens upon such land and premises including, without limitations, labor performed and materials furnished attaching as a result of any act of omission by the Seller, its agent, servants or employees. The Seller also shall procure at its expense the prompt discharge, release or satisfaction of any and all notices of intention or other evidence of such liens or claims thereto.

14. CHANGES-SPECIFICATIONS

Purchaser shall have the right by written order, without notice, to make changes from time to time in the work to be performed on the materials to be furnished by Seller hereunder. Purchaser will not incur any charge for changes if notice thereof is provided to Seller not less than twenty (20) days prior to the requested shipment date or if the change represents less than twenty (20) percent of the total order value. Otherwise, if such changes cause an increase or decrease in the amount due under this order or in the time required for its performance, an equitable adjustment shall be made and the order shall be modified accordingly. Any claim for adjustment must be asserted in writing within thirty (30) days from the date the change is ordered. Nothing contained in this clause shall relieve Seller from proceeding without delay in the performance of the order as changed.

15. CONTINGENCIES

Neither party hereto shall be liable to the other for default or delay in delivering or accepting goods hereunder if, such default or delay is caused by fire, strike, riot, act of God, delay of carriers, governmental order or regulation or other similar events beyond the reasonable control of the respective parties. If delay in performance by Seller due to such events extends beyond thirty (30) days, Purchaser shall have the right to terminate this order.

16. DEFAULT-BANKRUPTCY-CANCELLATION

Purchaser may cancel this order in whole or in part at any time by written or fax notice if Seller shall default in performance or shall so fail to make progress in the work as to endanger the full and timely performance, except that the Purchase Order shall not be terminated for such default where the default is due to cause beyond the cause of Seller and without its default or negligence, in the event of any proceedings, voluntary or involuntary, in bankruptcy or solvency, by or against Seller, or in the event of the appointment with or without the Seller's consent of an assignee for the benefit of creditors or of a receiver, then Purchaser may, at its option, cancel this order for default and hold Seller accountable for any additional damages incurred by Purchaser.

17. TECHNOLOGY, TOOLS AND MATERIALS

In consideration of Purchaser entering into this order, title to all technology, intellectual property, designs, sketches, drawings, programs, blueprints, patterns, dies, models, molds, tools, materials and all improvements thereto, furnished to Seller by Purchaser and/or created or developed by Seller for

Purchaser in connection with or as a result of this order, shall - belong to Purchaser. They shall be recorded and identified as property of Purchaser and retained by Seller on consignment, subject to commission by Purchaser. They shall be at Seller's risk, shall be replaced by Seller if lost, damaged or destroyed and shall be used only for Purchaser's benefit. Upon demand, they shall be returned to Purchaser, including any unused materials furnished by Purchaser and all spoiled or defective materials or products which contain any secret or patented device unless Purchaser shall otherwise direct.

18. TAXES

Seller agrees to be responsible for any Federal, State or Local excise or gross receipts taxes, value added taxes, personal property taxes, customs duties or levies and any foreign taxes which may be imposed on articles, supplies or services ordered hereunder by reason of their sale, delivery to or subsequent payment by the Purchaser. Seller represents that any Federal, State or Local (jurisdiction) sales/use taxes which are charged on the items ordered herein will be promptly remitted to the designated jurisdiction and that Seller is authorized and properly registered with the jurisdiction taxing authorities to collect and remit said taxes. In the event that Seller has an obligation to collect said sales/use taxes, fails to do so and is subsequently assessed by a taxing authority or agency, Seller waives all rights to seek contribution for any interest or penalty charged. Further, Seller shall not have the right to seek contribution for any sales/use taxes assessed on items sold to Purchaser to the extent that Purchaser has either previously self-assessed and paid said taxes itself or Purchaser's Statute of Limitations with respect to the jurisdiction has expired.

19. CONFIDENTIAL RELATIONSHIP

Seller agrees to treat as confidential all specifications, programs, drawings, blueprints, nomenclature, samples, models and other information supplied to Seller by Purchaser.

20. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

Seller also guarantees full compliance with all applicable provisions of any other Federal and all State and Local laws and agrees to hold Purchaser harmless from all liability resulting from failure of such compliance. Seller further guarantees that no article shipped pursuant to this order is or shall be produced in violation of any provisions of the United States Fair Labor Standards Act.

21. CANCELLATION

Purchaser shall have the right upon notice to Seller to cancel this order or any unfilled portion thereto without any liability other than to make payment for that portion of the order which has been delivered and finally accepted.

23. EQUAL OPPORTUNITY

(This clause is applicable except to the extent that the Purchase Order is exempt from any of the requirements set out below pursuant to the rules and regulations published at 41 C.F.R. Sec.60-1.5, 41 C.F.R. Sec. 60-250.3, and Sec. 60-741-4, 41 C.F.R. Sec. 1.1.710-3 or 41 C.F.R. Sec. 1-1.1310-2) - The purpose of this clause is to obtain a commitment from Seller that it will perform fully its obligation

- (a) to assist in achieving equal opportunity for all qualified persons employed by or seeking employment with Government contractors and subcontractors without regard to race, color, religion, sex, or national origin,
- (b) to take affirmative action to employ and advance in employment qualified disabled veterans, Vietnam-era veterans, and other covered veterans,

- (c) to take affirmative action to employ and advance in employment qualified disabled individuals,
- (d) to establish and conduct a small business contracting program which will enable small business concerns to be considered fairly as subcontractors and suppliers under this Purchase Order, and
- (e) to establish and conduct a program which will enable minority business enterprises to be considered fairly as subcontractors and suppliers under this Purchase Order.

Written Affirmative Action Compliance Program, Standard Form 100 and Non-Segregated Facilities - The purpose is to notify Seller of equal employment opportunity/affirmative action obligations that may arise as a result of the Purchase Order. These obligations arise, respectively, from Executive Order 11246 (as amended) of September 24, 1965, the Vietnam Era Veterans Readjustment Assistance Act of 1974, the Rehabilitation Act of 1973, the Small Business Act of 1958 (as amended) and Executive Order 11625 of October 13, 1971. Accordingly, the clauses set forth at 41 C.F.R. Sec. 60-1, et seq.; 41 C.F.R. Sec. 60-250.4 and Sec. 60-250.5; 41 C.F.R. Sec. 60-741.5 and 60-741.40; 41 C.F.R. Sec. 1-1.710-3; and 41 C.F.R. Sec. 1-1.1310-2 are all incorporated herein by reference as if they were set out in full. Where used therein the terms "contractor" and "contract" shall mean "Seller" and "Purchase Order" respectively. Seller shall include the Equal Opportunity Clause in every subcontract or Purchase Order unless exempted by the rules and regulations set forth in the first sentence of this clause.

24. MISCELLANEOUS

The contract resulting from the acceptance of this order shall be interpreted according to the laws of the State of Colorado excluding its conflicts of laws provisions. In the event of any dispute or claim, the prevailing party shall be entitled to recover its reasonable costs, including attorney's fees. The Order and these Terms and Conditions set forth the entire understanding of the parties with respect to the Order. All amounts are stated in U.S. Dollars unless otherwise indicated.

25. WAIVER

No waiver of any of the provisions contained in this order shall be valid unless made in writing and executed by both parties (and, in the case of Purchaser, in accordance with Purchaser's Signature Policy). No charges beyond the contract price herein specified will be allowed except with Purchaser's written consent. Failure of Purchaser to insist upon strict performance shall not constitute a waiver of any of the provisions of this order or waiver of any other default.

26. EXCEPTIONS

These Terms and Conditions may be superseded only in the event of the existence of a written master purchase agreement, separate from this document, between Purchaser and the Seller which takes precedence over some or all of these Terms and Conditions.