

**1. AGREEMENT**

1.1 **Parties.** The terms and conditions set forth below, together with those appearing in this purchase order and any attachments hereto, including a Statement of Work (collectively, "Order"), constitute an agreement between AGILENT TECHNOLOGIES, INC., or any other AGILENT entity identified on the face of this purchase order, including any and all applicable subsidiaries ("AGILENT"), and the party identified in the "Issued To" box on the face of this purchase order ("Seller").

1.2 **Precedence.** In the event of a conflict between this Order and any other written agreement between the parties and specifically covering the same goods or services, the terms and conditions of such agreement shall prevail to the extent of such conflict. A conflict between the terms set forth herein and those set forth in an SOW will be resolved in favor of the SOW. Notwithstanding the above, this Order shall prevail over any differing or additional terms and conditions proposed by Seller, including, without limitation, those contained in any invoice.

1.3 **No Modification.** No modification of this Order shall be binding unless in writing and signed by an authorized representative of each party.

**2. PRICES AND PAYMENT**

2.1 **Price.** Seller shall sell to AGILENT the goods ("Goods") or services ("Services") shown in this Order at the prices specified. Any forecasts provided by AGILENT were provided as an accommodation to Seller, and shall not constitute a commitment of any type by AGILENT. Except as otherwise provided in this Order, prices are exclusive of applicable freight charges and duties.

2.2 **Taxes.** AGILENT shall be responsible for any applicable sales taxes, provided Seller has submitted appropriate information or documentation to allow AGILENT to recover such taxes as appropriate. AGILENT shall include such taxes with the payment or provide Seller with the appropriate information or documentation to support exemption from such taxes. AGILENT shall have no other or further liability to Seller with respect to any tax, duty, levy or like imposition for which Seller may be liable as a result of the supply of the Goods or Services.

2.3 **Payment.** Unless indicated otherwise on the face of this purchase order, payment shall be due forty-five (45) days after the latter of AGILENT's receipt of either an appropriate invoice from Seller or the relevant Goods or Services. AGILENT may deduct from such payment any monies owed by Seller to AGILENT.

2.4 **Not Acceptance.** Payment by AGILENT shall neither constitute acceptance of the Goods or Services, nor impair AGILENT's right to inspect such Goods or Services or invoke any available remedies.

**3. SHIPMENT AND DELIVERY**

3.1 **Shipment Terms.** Seller shall ship Goods in the method identified by AGILENT to permit Seller to meet the delivery date(s) identified by AGILENT on the face of this purchase order ("Delivery Date"). If Seller ships by any other method, Seller shall pay any resulting increase in the cost of freight. Except as specified below, shipments of Goods shall be FCA (as that term is defined in the Incoterms 2010 handbook) Seller's place of shipment/export, and title and risk of loss or damage shall pass from Seller to AGILENT upon Seller's delivery of the Goods to the designated carrier at the place of shipment/export. If AGILENT agrees to pay for applicable freight charges and duties as part of the purchase price, shipment shall be DDP, and title and risk of loss or damage shall pass from Seller to AGILENT upon Seller's delivery of the Goods to the "Ship To" address identified by

AGILENT on the face of this purchase order.

3.2 **Costs.** Except as otherwise provided in this Order, AGILENT shall bear all shipping and transport expenses. Seller shall bear all expenses related to handling, packing, packaging, loading and delivery of Goods to the designated carrier, and loading of Goods onto carrier's conveyance.

3.3 **Packaging.** Seller shall handle, pack and package the Goods so as to protect the Goods from loss or damage, in conformance with good commercial practice, AGILENT specifications, government regulations (including those applicable to chemicals and hazardous materials) and other applicable requirements. Without limiting the generality of the foregoing sentence, Seller shall use packaging materials, including pallets, that are free of pests and comply with all applicable regulations regarding Solid Wood Packing Materials; Seller shall use recycled or reusable packaging materials and minimize the number of different types of packaging materials whenever possible; and Seller shall comply with all applicable requirements regarding packaging recycling, re-use and return, and furnish to AGILENT, upon request, information or documentation of Seller's compliance. Seller shall be responsible for any loss or damage due to its failure to handle, pack and package the Goods in a proper and lawful manner; AGILENT shall not be required to assert any claims for such loss or damage against the carrier involved. In each shipment, Seller shall include a packing list that contains the following: (a) this Order number; (b) the AGILENT part number; (c) the quantity shipped; and (d) the requested delivery date. The information on the packing list must agree with the information on Seller's invoice.

3.4 **Prospective Failure.** Failure to meet the Delivery Date specified on the face of this Order shall constitute a breach of this Order. Seller shall give AGILENT notice of any prospective failure to ship Goods or provide Services in time to meet the Delivery Date. If only a portion of Goods is available for shipment to meet the Delivery Date, Seller shall ship the available Goods unless directed by AGILENT to reschedule shipment. If only a portion of the Services can be performed on the Delivery Date, Seller shall perform such Services unless directed by AGILENT to reschedule performance. Partial deliveries shall be deemed late shipments and be considered complete only when all Goods and Services have been shipped. Notwithstanding the above, upon Seller's notice of any prospective failure to ship Goods or provide Services in time to meet the Delivery Date, AGILENT reserves the right to terminate the Order and any subsequent Orders without any charge or liability.

3.5 **Late Shipment.** If, due to Seller's failure to ship Goods in a timely manner, the identified method of transportation would not permit Seller to meet the Delivery Date, Seller shall ship the Goods by air transportation or other means acceptable to AGILENT, and shall pay for any resulting increase in the cost of freight.

3.6 **Early Shipment.** If AGILENT receives any shipment more than three working days prior to the Delivery Date, AGILENT may either return the Goods or delay processing the corresponding invoice until the Delivery Date.

3.7 **Non-Complying Goods.** Seller shall be responsible for all risk and expenses, including transportation charges, associated with (a) the return of all Non-Complying Goods (as defined in section 6.1 below), over shipments, and early shipments returned by AGILENT to Seller; and (b) the shipment to AGILENT by Seller of all repaired, replacement and reworked Goods.

**4. CHANGES**

4.1 **Change or Cancellation.** AGILENT may, without any charge or liability, change or cancel any portion of this Order, provided AGILENT gives Seller notice (a) for customized Goods or Services (i.e., supplied exclusively in accordance with AGILENT's designs or specifications), at least thirty (30)

calendar days prior to the Delivery Date; and (b) for all other Goods or Services at any time prior to shipment.

4.2 **Actual Costs.** If AGILENT changes or cancels any portion of this Order after the time periods set forth above, AGILENT shall be responsible for any resulting costs incurred by Seller that cannot be avoided by commercially reasonable mitigation efforts.

4.3 **Design or Specification Changes.** AGILENT may, without any charge or liability, change, effective upon notice to Seller, AGILENT's designs or specifications at any time prior to shipment of corresponding Goods or receipt of corresponding Services. If any such change directly affects the prices or delivery schedules of Goods or Services, an equitable adjustment may be made, provided that Seller makes a written claim for an adjustment within 30 days of AGILENT's notice and prior to shipment of the Goods or provision of the Services, and provided that such equitable adjustment is documented in writing signed by authorized representatives of both parties. If, after reasonable and good-faith efforts, the parties are unable to agree upon the amount of the adjustment, AGILENT may terminate, without any charge or liability, this Order as to all Goods and Services affected.

4.4 **No Process or Design Changes.** Seller shall not, without the prior written consent of AGILENT, make any process or design changes affecting the Goods.

**5. QUALITY AND WARRANTY**

5.1 **Quality Control.** Seller shall maintain an objective quality program for all Goods and Services in accordance with (a) the latest revision of AGILENT's Supplier Quality Systems Requirements DWG A-5951-1665-1; and (b) any general specification set forth in this Order or otherwise supplied by AGILENT. Seller shall furnish to AGILENT, upon request, a copy of Seller's quality program and supporting test documentation.

5.2. **Conformance Defects and Liens.** Seller warrants that all Goods and Services shall (a) conform strictly to the specifications, design criteria, descriptions, drawings, samples and other requirements described or referenced in this Order or provided by Seller; (b) be free from defects in design, materials and workmanship; and (c) be free of all liens, encumbrances and other claims against title.

5.3. **Non-Infringement Warranty.** Seller warrants that all Goods and Services do not and shall not infringe any patent, trademark, copyright, trade secret or other intellectual property right of a third party.

5.4 **General Warranties.** Seller warrants that (a) Goods are new and do not contain any used or reconditioned parts or materials, unless otherwise specified or approved by AGILENT; (b) Goods are manufactured by or for the original manufacturer and do not contain any counterfeit materials. (c) Goods and results of the Services do not use or incorporate any freeware, shareware or open source software, unless otherwise specified or approved by AGILENT; and (d) all Services shall be performed in a professional manner.

5.5 **Duration of Warranties.** Seller's warranties of conformance, defects and liens shall be in effect for the longer of either (i) Seller's normal warranty period, or (ii) one year following the date of acceptance of the Goods or Services by AGILENT. All other warranties provided by Seller under this Order shall be in effect perpetually.

**6. NONCOMPLYING GOODS AND SERVICES**

6.1 **AGILENT's Options.** In addition to the remedies specified in Section 10 below, if any Goods or Service is defective or otherwise not in conformity with the requirements of this Order ("Non-Complying Goods" and "Non-Complying

Services", respectively), AGILENT may either (a) return the Non-Complying Goods for repair, replacement or reworking at Seller's expense; (b) repair the Non-Complying Goods itself and recover its reasonable expenses of repair from Seller; or (c) require Seller to re-perform the Services at Seller's expense.

6.2 Time for Compliance. If AGILENT returns the Non-Complying Goods, Seller shall return the repaired, replacement or reworked Non-Complying Goods no later than five working days after receipt of the Non-Complying Goods from AGILENT. If AGILENT requires Seller to re-perform the Non-Complying Services, Seller shall re-perform the Services within five working days after notice from AGILENT that Services are defective or not in conformity with the requirements of this Order. The cure period specified in Section 10.1 below shall apply only once to any breach of this section 6.

6.3 Failure to Provide Complying Goods. If Seller fails to return repaired, replacement or reworked Goods to AGILENT within five working days of receipt of Non-Complying Goods, AGILENT may reject the Non-Complying Goods, and Seller shall reimburse AGILENT all associated costs paid by AGILENT. If AGILENT rejects the Non-Complying Goods, AGILENT may terminate this Order and procure, upon such terms and in such manner as AGILENT deems appropriate, replacement goods. Seller shall reimburse AGILENT upon demand for all additional costs incurred by AGILENT in purchasing any such replacement goods.

6.4 Failure to Re-Perform Services. If Seller fails to satisfactorily re-perform the Services within five working days after notice from AGILENT, AGILENT may terminate this Order and procure, upon such terms and in such manner as AGILENT deems appropriate, replacement services. Seller shall reimburse AGILENT upon demand for all associated costs paid by AGILENT for the Services, as is equitable under the circumstances, and for all additional costs incurred by AGILENT in purchasing any such replacement services.

6.5 End-of-Life Returns. Where lawfully required, Seller shall accept from AGILENT, without any charge or liability to AGILENT, any material included in the Goods or their packaging by return freight prepaid by AGILENT.

## 7. LICENSE

7.1 License Grant. If Goods include software, Seller grants to AGILENT a non-exclusive, royalty-free, worldwide license to use, import, reproduce, and distribute the software in object code form for internal use directly or as integrated into AGILENT products. Seller also grants to AGILENT a non-exclusive, royalty-free, worldwide license to use, import, distribute and offer for sale any copies of the software purchased that remain in the original shrink-wrapped packaging. If Goods include documentation, Seller grants to AGILENT a non-exclusive, royalty-free, worldwide license to use, reproduce, distribute and prepare derivative works in AGILENT's name all documentation furnished by Seller. AGILENT may reproduce such documentation without Seller's logo or other identification of source, subject to affixing copyright notices to all copies of documentation, and Seller hereby waives and shall cause to be waived all applicable moral rights with respect to such documentation. These rights with respect to software and documentation shall extend to (a) third parties to use and reproduce the Goods for AGILENT's internal use; and (b) third-party channels of distribution.

## 8. INDEMNIFICATION, INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION

8.1 Intellectual Property in Results of Services

8.1.1 "Intellectual Property" or "IP" shall mean all inventions, patents (including without limitation applications, divisions, reissues, reexaminations, terms extensions, continuations, and any foreign counterparts), works of

authorship, copyrights (including without limitation registrations, applications and derivatives), trademarks (including without limitation service marks, trade dress, and other marks identifying a party or its products), designs, processes, mask works, trade secrets, domain names, proprietary technical information and other similar proprietary information tangible and intangible, whether or not registered or registrable.

8.1.2 "Pre-existing IP" means IP conceived or developed prior to or independent of performance of this Order. Seller will retain full right, title and interest in and to any Pre-existing IP. Seller will not use any Pre-existing IP in connection with this Order without first obtaining from the owner any rights necessary to enable Seller to fully comply with the terms of this Order.

8.1.3 Seller hereby agrees to and does irrevocably assign and transfer to Agilent all of its worldwide IP in and to all results of the Services. At Agilent's sole expense, Seller shall execute any documents and take all additional steps as reasonably requested by Agilent to perfect, record, and register such assignment.

8.1.4 Seller hereby grants to Agilent a non-exclusive, worldwide, royalty-free, irrevocable, perpetual, transferable license with right to sublicense any Pre-existing IP to the extent necessary for Agilent's full enjoyment and commercial exploitation of the results of the Services as reasonably contemplated by the Order.

8.1.5 Indemnification. Seller agrees to defend, indemnify and hold harmless AGILENT and its affiliates, subsidiaries, assigns, subcontractors and customers from and against all claims, losses, demands, fees, damages, liabilities, costs, expenses (including attorneys' fees), obligations, causes of action, suits or injuries of any kind or nature arising from, in connection with or related in any way to any breach or alleged breach of any of the warranties made by Seller or any act or omission of Seller in the performance of this Order..

8.2 Infringing Goods And Services. Without limiting the above remedy, if AGILENT's use of any Goods or receipt of any Service is enjoined because of any actual or claimed infringement of patent, trademark, copyright, trade secret or other intellectual property right of a third party (collectively, "Infringing Product"), Seller shall at its expense use its best efforts to procure the right for AGILENT to continue using or receiving the Infringing Product. If Seller is unable to do so, Seller shall at its expense (a) replace the Infringing Product with non-infringing goods or service (as applicable) without loss of functionality; (b) modify the Infringing Product to be non-infringing; or (c) if unable to replace or modify the Infringing Product, refund in full all costs paid by AGILENT for the Infringing Product and reimburse AGILENT upon demand for all additional costs incurred by AGILENT in purchasing any replacement goods or services.

8.3 Removal of AGILENT's Trademarks. Unless otherwise specified or approved by AGILENT, Seller shall remove AGILENT's name and any of AGILENT's trademarks, trade names, insignia, part numbers, symbols or decorative designs from all Goods rejected or returned by AGILENT or not sold or shipped to AGILENT.

8.4 Confidential Information. Except as required to supply Goods or Services pursuant to this Order or as otherwise instructed by AGILENT, Seller shall not use or disclose any confidential information of AGILENT. Confidential information includes, without limitation, all information designated by AGILENT as confidential; all information or data concerning AGILENT's Goods (including the discovery, invention, research, improvement, development, manufacture or sale thereof) or general business operations (including costs, forecasts, profits, pricing methods and processes); information obtained through access to any AGILENT information assets systems ("IA/S"), including but not limited to,

computers, networks and voice mail; and any other information that is of such a nature that a reasonable person would believe it to be confidential.

8.5 Limited IA/S Access. Seller's access to AGILENT's IA/S is limited to those specific IA/S, time periods and personnel authorized by AGILENT, and is subject to AGILENT information protection policies. Any other access is expressly prohibited. Seller warrants that it shall comply with these obligations and that access granted hereunder shall not impair the integrity and availability of AGILENT's IA/S. AGILENT may audit Seller to verify compliance. Seller warrants that each employee, agent or subcontractor who performs work pursuant to this Order has been informed of the obligations contained herein and has agreed to be bound by them.

## 9. LEGAL COMPLIANCE

9.1 General Compliance. Seller shall comply with all applicable laws, rules, and regulations. Without limiting the generality of the foregoing sentence, Seller warrants the following:

9.1.1. Environmental Compliance. All Goods and their packaging shall comply with all applicable environmental, health and safety (EHS) laws, rules and regulations, including The General Specification for the Environment (GSE) DWG A-5951-1745-1.

9.1.2. Chemical Substances. All required Material Safety Data Sheets, Chemical Safety Data Sheet and other product-content information shall be provided to AGILENT prior to or with the shipment of the Goods and shall be complete and accurate. Seller shall provide product material chemical composition data upon request to verify compliance with applicable product chemical content restrictions.

9.1.3. Procurement Regulations. If the Goods and Services are to be sold by Agilent under a contract or subcontract with the U.S. government, all applicable procurement regulations required by U.S. law or regulation to be inserted in contracts or subcontracts apply to this Order.

9.1.6 C-TPAT. In connection with providing Goods and Services to AGILENT, Seller shall comply with Customs-Trade Partnership Against Terrorism (C-TPAT) or equivalent supply chain security measures. When requested by AGILENT, Seller shall demonstrate compliance by providing certification thereof to AGILENT.

9.1.7 ESR. Supplier shall comply with AGILENT's Supplier Environmental and Social Responsibility (ESR) Code of Conduct (available at [http://www.agilent.com/environment/Supplier\\_ESR\\_Code\\_of\\_Conduct.pdf](http://www.agilent.com/environment/Supplier_ESR_Code_of_Conduct.pdf)).

9.2 Other Requirements. AGILENT will have the right, upon reasonable request, to review Seller's processes, books, records, and accounting practices, and compliance AGILENT's Supplier Environmental and Social Responsibility (ESR) Code of Conduct for any transactions related to this Order until five (5) years after delivery of the Goods and/or Services. Seller will maintain complete records including but not limited to the costs of all materials and services purchased, work subcontracted to other parties and all payroll costs. All records will be maintained in accordance with GAAP or like accounting rules in other jurisdictions and in such manner as may be readily audited. A failure to provide such records upon AGILENT's request shall be deemed a material breach of this Order.

## 10. BREACH

10.1 Breach by Seller. If Seller breaches any provision of this Order, AGILENT may terminate the whole or any part of this Order, unless Seller cures the breach within ten (10) working days after receipt of AGILENT's notice of breach.

10.2 Definition of Breach. For purposes of section 10.1 above, the term "breach" shall, without limitation, include (a) any proceeding, whether voluntary or involuntary, in bankruptcy or insolvency by or against Seller; (b) the appointment, with or without Seller's consent, of a receiver or an assignee for the benefit of creditors; (c) Seller's failure to provide AGILENT, upon request, with reasonable assurances of performance; or (d) any other failure by Seller to comply with this Order.

10.3 Termination. In the event that AGILENT terminates this Order in whole or in part as provided above, AGILENT may procure, upon such terms and in such manner as AGILENT deems appropriate, replacement goods or services, and Seller shall reimburse AGILENT upon demand for all additional costs incurred by AGILENT in purchasing such replacement goods or services.

10.4 Rights and Remedies. The rights and remedies granted to AGILENT pursuant to this Order are in addition to, and shall not limit or affect, any other rights or remedies available at law or in equity.

## 11. IMPORT/EXPORT REQUIREMENTS

11.1 General Compliance. Seller shall comply with all applicable import and export requirements, and shall furnish to AGILENT, upon request, information or documentation of Seller's compliance, as well as any other information or documentation required to enable AGILENT to comply with such requirements applicable to its receipt of any Goods. Without limiting the generality of the foregoing sentence, Seller warrants the following:

11.1.1 Certification. Upon AGILENT's request, Seller shall provide AGILENT with an appropriate certification stating the country of origin for Goods, sufficient to satisfy the requirements of (a) the customs authorities of the country of receipt; and (b) any applicable export licensing regulations, including those of the United States.

11.1.2 Required Marking. All Goods shall be marked (or the container shall be marked if there is no room on the Goods themselves or unless exempted from marking) with the country of origin.

11.1.3 Commercial Invoice. Seller shall issue a commercial invoice containing, without limitation, the following information: invoice number, invoice date, name and address of the shipper, name and address of the seller (if different from the shipper), name and address of the consignee, name and address of the buyer (if different from the consignee), a detailed description of the Goods, model number, AGILENT part-numbers, serial number of Goods (if goods are serialized), AGILENT-assigned Harmonized Tariff Schedule (HTS) number for the destination country, order number, box number, total number of boxes, total box weight (in kilograms), country of origin, quantities in the weight and measure of the country to which the Goods are shipped, unit price of each Good, value of any customs assists, total invoice value, currency of the invoice, invoice type, Incoterms 2010 term of sale, carrier name and bill of lading number. The invoice must be issued in the language required by the country to which the Goods are shipped.

11.2 Importer of Record. If any Goods are imported, Seller shall when possible allow AGILENT to be the importer of record, unless otherwise specified or approved by AGILENT. If AGILENT is not the importer of record and Seller obtains duty drawback rights to the Goods, Seller shall furnish to AGILENT, upon request, information and documentation required by the customs authorities of the country of receipt to prove importation and to transfer duty drawback rights to AGILENT.

## 12. MISCELLANEOUS

12.1 No Assignment. Seller shall not assign its rights or obligations without

AGILENT's prior written consent. Any attempted delegation or assignment shall be void.

12.2 Waiver. The waiver of any term or condition of this Order must be in writing. No such waiver shall be construed as a waiver of any other term or condition, nor as a waiver of any subsequent breach of the same term or condition.

12.3 Choice of Law. Without reference to any conflict of laws provisions, this Order shall be interpreted and governed by the laws of the state or locality of the "Ship To" address identified by AGILENT on the face of this purchase order. Seller hereby consents to the jurisdiction and venue of the courts of such state or locality.

12.4 LIMITATION OF LIABILITY. TO THE FULLEST EXTENT PERMITTED BY LAW, UNLESS EXPRESSLY PROVIDED OTHERWISE, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES BASED ON CONTRACT, TORT OR OTHER LEGAL THEORY. NOTWITHSTANDING THE FOREGOING, SELLER SHALL BE RESPONSIBLE FOR ANY DAMAGES OF ANY KIND UNDER SECTIONS 8 AND 9 ABOVE AND FOR CLAIMS OF BODILY INJURY OR DEATH.

12.5 Non-Restrictive Relationship. Nothing in this Order shall be construed to preclude AGILENT from producing, distributing or marketing the same or similar goods or services as the Goods or Services provided under this Order or purchasing such same or similar goods or services from other third parties.

12.6 Severability. If a body of competent jurisdiction holds any term or provision of this Order to be invalid or unenforceable, such term or provision will be construed, limited or, if necessary, severed to the extent necessary to eliminate such invalidity or unenforceability, and the other provisions of this Order will remain in full force and effect.

12.7 Insurance. When providing Services to Agilent, Seller will secure and maintain insurance providing coverage for liabilities to third parties for bodily injury (personal injury) and damage to property in amounts sufficient to protect AGILENT in the event of such injury or damage, and will be in compliance with any and all laws, regulations or orders. Seller further will maintain such additional types and limits of insurance as is customary for a company of similar size and similar operations to Seller in the jurisdiction or jurisdictions in which Seller's operations take place.