

**San Diego Composites, Inc. – Purchase Order Standard Terms & Conditions**  
**SDC-TC-17-001 (Effective October 31, 2017)**

**1. Acceptance.** Acceptance of the offer represented by this Purchase Order (“Order”) is expressly limited to the terms of this Order. Signing and returning the acknowledgment copy of this Order (if services shall constitute acceptance of this Order. This Order is the entire contract and no changes are binding on Buyer unless they are in writing and signed by and authorized representative of Buyer’s Purchasing Department. Any references to or attachment of Seller’s terms and conditions or any overstepping on the acknowledgement or invoicing of this order shall not alter the terms and conditions of this order and shall be disregarded by the Buyer.

**2. Warranty (for hardware Orders only).** Seller warrants that all articles furnished hereunder will be merchantable, free from defects in material and workmanship, and will conform to applicable specifications, drawings, or descriptions. If seller is responsible for design of the articles according to performance specifications established by the Buyer, Seller warrants that the articles will be fit and sufficient for the purposes intended by Buyer and will meet Buyer’s performance specifications. Buyer’s approval of designs furnished by Seller shall not relieve Seller of its obligations under this warranty. Such warranties shall survive inspection, test and acceptance. The warranties of Seller, together with its service guarantees, shall run to Buyer and/or its customers. Seller will promptly reimburse Buyer for any loss incurred by Buyer due to any defects in such items and will hold Buyer harmless from any claims of third parties due to any defects in such items.

**3. Payment and Invoicing.** The Seller shall invoice electronically via email to: [AP@sdcomposites.com](mailto:AP@sdcomposites.com) no more than every 30 days. The time for payment of Seller’s invoices shall commence with date of actual receipt of invoices or the date of actual receipt of the items ordered, in complete accordance with the requirements of this Order, whichever is later. Unless otherwise stated, payment terms are 45 days. Payments will be made by check to the address shown on the invoice. The final invoice must be received by the Buyer within 120 days of the expiration of the order or the final delivery of the order, whichever is later, to be considered for payment. Invoices received after the 120 days of will not be considered for payment.

**4. Packing and Shipment (for hardware Orders only).**

- (a) Unless otherwise specified in this Order, all items to be delivered shall be boxed, crated, or stored without charge and shall be packed in suitable containers for protection in shipment and storage. An itemized packing slip bearing the Buyer’s purchase order number must accompany each delivery, and each container must be marked to show the purchase order number and purchase order item number. Buyer’s count will be accepted as conclusive on shipments not accompanied by a packing slip.
- (b) Material must be routed in accordance with Buyer’s instructions as to method. All shipments are to be sent via a carrier selected by buyer.

**5. Delivery.**

- (a) Time is expressly made of the essence herein. Delivery shall be made as specified and strictly in accordance with the delivery schedule of this Order. If Seller’s deliveries fail to meet such schedule with the result that Buyer elects to call upon Seller for expedited shipments, Seller will pay the difference between the method of shipping specified in this Order and premium transportation rates unless the delay in delivery arises out of causes beyond the control and without the fault or negligence of Seller.
- (b) Buyer reserves the right, without loss of discount privileges, to pay invoices covering items shipped in advance of the schedule on the normal maturity after the date specified for delivery. Material delivered under this Order in excess of the amount ordered herein, taking into account contractually authorized tolerances, if any shall be retained by Buyer. If at any time during the performance of this Order Seller expects that it will not be able to deliver the item(s) being procured hereunder, in accordance with the delivery schedule as set forth herein Seller will promptly notify Buyer regarding the anticipated delay in delivery, regardless of the reason for the anticipated delay in delivery.

**6. Intellectual Property Indemnity.**

- (a) To the extent that the items ordered have not originated with Buyer, Seller guarantees that the sale and/or use of such items

delivered hereunder and their manufacture by Seller shall not infringe any U.S. or foreign patents, trademarks, copyrights, or trade secrets. Seller shall, at its own expense, indemnify and hold harmless Buyer and/or its successors, assigns, or customers (in this clause collectively “Buyer”), against any action, suit, or claim (“Suit”) brought against Buyer which is based upon a claim, whether rightful or otherwise, that the goods or services, or any part thereof, furnished under this Order, for Buyer’s use (including resale) thereof, constitutes an infringement of any patent, trademark, copyright, or trade secret. Provided Buyer duly notifies Seller as to such Suit against Buyer seller shall defend and pay all damages, royalties, and costs awarded against, and reasonable expenses incurred by Buyer the right to continue the use of such goods or services in such Suit are held to constitute infringement and the use thereof is enjoined. Seller shall, at its own expense and at its option, either procure for the Buyer the right to continue the use of such goods and/or services or, in a manner acceptable to Buyer, make a replacement or modification to avoid infringement. Buyer agrees, to the extent of its ability to do so, to supply any pertinent evidence needed to defend any Suit but only at the expense of the Seller.

- (b) The foregoing indemnity shall not apply where such goods or services are allegedly infringing as a result of Seller’s compliance with specific written instructions from Buyer directing use by Seller of a feature not customarily used by Seller. Seller waives any rights to be held harmless by Buyer against any claims for infringement.

**7. Special Clause for Small Business Innovative Research (SBIR) Funded Orders.**

The Buyer acknowledges that if the work conducted during execution of the Order is funded by SBIR, then the data generated is governed by the SBIR Policy Directive Section 8 - which defines the Rights in Data Developed under SBIR Funding. The Directive provides for "retention by a small business of the rights to data generated by the concern in the performance of an SBIR award." SBIR technical data rights apply to all SBIR awards, including subcontracts to such awards, that fall within the statutory definition of Phase I, II, or III of the SBIR Program.

**8. Taxes.** Federal State or local taxes of any nature which are billed to Buyer shall be stated separately in Seller’s invoices. Seller shall not bill taxes subject to Buyer’s tax exemption certificate.

**9. Termination.**

- (a) Either party may terminate all or part of the contract for convenience upon written notice to the other party. The Seller shall notify subcontractors to stop work, and protect property in Seller’s possession in which Buyer has or may acquire an interest. Conditions for such termination include: i) elimination of the Buyer’s Prime customer’s requirement in its entirety; ii) an extended period of force majeure (90 consecutive days or 180 days within any 12-month period), or if it is determined by the parties that it is neither feasible nor economical to complete the contract due to forces or events beyond the control of the parties; or, iii) by mutual agreement of the parties. In the case of termination for convenience, Seller shall be paid in full for those items actually delivered, as well as be reimbursed for the cost of work related to undelivered items up to the date of termination plus a reasonable profit, and related termination costs as mutually agreed by the parties.
- (b) Either party may terminate all or portion of the contract for cause, a substantial breach of a material obligation by the other party. In the event of termination for cause, the terminating party shall give the other party fifteen (15) days prior written notice to cure or to commence actions to cure the alleged breach. In addition, either party may terminate the contract if the other party becomes insolvent, makes an assignment for the benefit of creditors, is adjudged bankrupt, or if a receiver is appointed for all or any part of its assets. In the case of termination for cause, the Seller shall be paid in full for those items actually delivered, as well as be reimbursed for the cost of work related to undelivered items up to the date of termination plus a reasonable profit, and related termination costs as mutually agreed by the parties.

**10. Change Orders.**

- (a) Buyer shall have the right at any time before completion of the Order by a written instrument signed by Buyer to make changes in quantities, in drawings and specifications, in delivery schedules, and in methods

of shipment and packaging. If such changes cause an increase in cost or in the time required for performance, an equitable adjustment shall be made. Seller shall notify Buyer prior to expected implementation of the change and adjustments shall be made before the Seller is obligated to proceed with a change.

(b) Buyer shall be notified immediately of any changes in the product, manufacturing process, change of suppliers, change of manufacturing location, and seller must receive approval for changes from the Buyer prior to implementation.

11. **Assignment.** Seller shall not assign or subcontract this Order, or any part thereof, without the prior consent of Buyer, and not unless the assignee or subcontractor agrees to be bound by all the terms and conditions of the Order. If subcontracted, all quality clauses must be flowed down to the subcontractor. Any such assignment or sub-contract made in derogation of this provision is expressly void.

No assignment of monies due or become due hereunder shall be binding upon Buyer until its written consent thereto is obtained and provided further that payment to an assignee of any claim under this Order shall be subject to setoff or recoupment to any present or future claim or claims which Buyer may have against Seller.

12. **Proprietary Disclosures.** Seller agrees that devices, drawings, data, design reports, and other technical information or any information contained therein, supplied by Buyer and relating to this Order is the proprietary property of Buyer and such information shall be handled in accordance with any applicable Non-Disclosure Agreements. If no such Agreement is in place, then the proprietary property shall be held in confidence by Seller. Such information shall only be used for the purposes of this Order and shall not be reproduced, used, or disclosed to others without Buyer's prior written consent except as necessary for the performance of this Order. Except with Buyer's prior written agreement, information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the placement and performance of this Order shall be deemed non-confidential and non-proprietary, and Seller agrees not to assert any claims (except for claims for patent infringement) by reason of the use, duplication or disclosure thereof by Buyer and/or its successors assigns or customers. Upon completion of this Order, Seller shall, at Buyer's order, return all such devices, drawings, data, design reports and other technical information, and all copies which have been made thereof to Buyer.

13. **Property Furnished to Seller by Buyer.** Title to and the right of immediate possession of all property furnished by Buyer to Seller for use hereunder, including but not restricted to tooling, designs, patterns, drawings, and materials, shall be and remain in Buyer in all stages of production. Such property shall not be used in the production of larger quantities than those specified herein except with express written consent of the buyer. All such property supplied by the Buyer shall be segregated by the Seller in the Seller's plant and, wherever possible, clearly marked so as to be easily identified as Buyer's property. Seller shall be fully responsible for all such property upon delivery to Seller until redelivery thereof to Buyer and shall protect, preserve, and maintain such property in its possession which is furnished by the Buyer as may be required. At the completion or termination of this Order all such property together with all excess materials shall be disposed of as Buyer shall direct. In the event such property is damaged or made unfit for its intended use, except for reasonable wear and tear of for the authorized use of the property in accordance with the provisions of this Order, the Buyer's cost of replacement thereof is to be paid by Seller.

14. **Non-Discrimination and Fair Labor Standards.**

(a) The Seller performing the work required by this Order shall comply with the Equal Employment Act.

(b) Seller warrants that the goods called for by this Order have been or will be produced in compliance with the Fair Labor Standards Act of 1938 (29 U.S.C. 201-219) and with any amendments to these acts as well as with the provisions of any other Federal Law with respect to labor relations, minimum wages and hours of employment, now in effect or hereafter enacted, and with any and all rules and regulations issued under each and every such Act. Seller also warrants that it does not maintain or provide segregated facilities for its employees and that it will not maintain such facilities and that it will not permit or require its employees to

perform services at any location where segregated facilities are provided.

15. **Records.** If the Order value exceeds \$500,000, the Seller agrees to maintain all records, books, and any other documents evidencing goods supplied and services rendered pursuant to this Order for (4) years from this Order's expiration date. If the order is less than \$500,000, the Seller may close the order upon receipt of final payment

16. **Contract Nondisclosure of Existence.**

(a) The parties hereto agree that this Order and the acceptance thereof shall be a contract made in the State of California, that its formation and performance are governed by the laws thereof, and that the Courts of California shall have exclusive jurisdiction of any cause of action arising therefrom. This Order, as the same may be modified or amended in writing, and any documents referred to herein, supersede all prior understandings, transactions, or communications, with respect to the matter referred to herein. The invalidity in whole or part of any condition of this Order, shall not affect the validity of other conditions.

(b) Neither party shall disclose any information about this Order, including its existence, without the prior written consent of the other.

17. **Force Majeure.** Neither party shall be liable for delays due to force majeure events including, but not limited to: acts of God; acts of Government, including changes in laws; acts of war, terrorism or public enemy, riots, civil strife, insurrection, sabotage, or espionage; fire; floods, earthquakes, and other unusually severe weather events or natural disasters; epidemics or quarantines; embargoes, strikes, lock-outs, and other actions by organized labor; and any other causes beyond the reasonable control of the affected party. The affected party will notify the other party as soon as practicable after the occurrence of such force majeure event; the notice shall include: i) the event or cause of delay; ii) the anticipated impact on the schedule; and, iii) the costs to perform the remaining effort(s) under the contract. Each of the parties, collectively and severally, shall exert all reasonable efforts to mitigate damages resulting from the occurrence of any force majeure event(s). Upon receipt of notice of a force majeure event, the parties shall meet to determine the best course of action including modification of the contract schedule, equitable adjustment of the contract price, and/or other terms and conditions affected by the force majeure event. The occurrence of any force majeure event shall not relieve either party of its payment obligations under the contract.

18. **Non Conformities and Inspection**

(a) Upon Seller discovering any non conformity on product that is to be delivered, Seller shall notify Buyer immediately. The disposition for the non conformity must be approved by the Buyer.

(b) All goods and services shall be subject to inspection and test at all reasonable times and places by Buyer or Buyer's customer before, during and after performance and delivery. Buyer may require Seller to repair, replace or reimburse the purchase price of rejected goods or Buyer may accept any goods and upon discovery of nonconformance, may reject or keep and rework any such goods not so conforming. Cost of repair, rework, replacement, inspection, transportation, repackaging, and/or reinspection by Buyer shall be at Seller's expense. Buyer's acceptance of goods or services shall not be deemed to diminish Buyer's rights or be final or binding on Buyer if latent defects, fraud, or misrepresentation on the part of Seller exists.

(c) If inspection and test are made on the premises of Seller or Seller's lower-tier subcontractors, Seller shall furnish without additional charge all reasonable facilities, information and assistance necessary for the safe and convenient inspection and tests required by the inspectors in the performance of their duty. This right of access shall be available to the Buyer, Buyer's customer, or regulatory authorities and shall include availability to all records. The foregoing provisions of this Section are supplementary to and not in lieu of the provisions of Paragraph 14 (a) above.

(d) Neither Buyer's inspection nor any Buyer failure to inspect shall relieve Seller of any responsibility to perform according to the terms of this Purchase Order.

19. **Contract Flow Down Requirements**

(a) Seller shall flow down all requirements from the buyer and the buyer's customers to its subcontractors.