



## **ACKNOWLEDGEMENT OF ORDER AND TERMS AND CONDITIONS OF SALE**

This is to acknowledge receipt of your ("Buyer") purchase order for the specified products or services of Ichor Systems, Inc. or its affiliates ("Seller") and to set forth the terms and conditions ("Terms and Conditions") of sale for this order

### **TERMS AND CONDITIONS**

Seller shall sell goods and/or services (collectively, "Products") to the buyer ("Buyer") on the following terms and conditions. By its placement of any order for, or acceptance of any products, Buyer expressly agrees to these terms and conditions.

Seller hereby rejects any additional or different terms or conditions proposed by Buyer, whether or not contained in any of Buyer's business forms or on Buyer's website, and such additional or different terms and conditions shall be void and of no effect unless in a writing specifically agreed to by Seller specifically referring to and agreeing to the change.

### **BUYER'S DUTY TO INSPECT**

Buyer must immediately inspect all material for shortages, conformity with order and defects. If goods appear not to conform to the contract between Buyer and Seller, Buyer shall discontinue their use and immediately notify Seller of such condition and afford Seller a reasonable opportunity to inspect the same.

If Buyer fails to provide Seller with notice of nonconformity within 15 days, Buyer shall be deemed to have accepted the Products.

No material will be taken back and credited or replaced unless arrangements for return have been made with Seller. Seller may, at its option, replace those products proven defective or allow credit for an amount not exceeding the sum of the original purchase price thereof.

Buyer will be responsible for all costs and expenses associated with any returns of Products and will bear the risk of loss or damage of such Products, unless Seller agrees otherwise in writing.

### **PRICES AND SHIPMENT**

Unless otherwise stated in writing, all prices are quoted FOB Seller's manufacturing facility. Buyer will pay all charges and assume all risks of transportation from the FOB point. Seller shall ship Products via the method specified by Buyer. Absent specific written instructions from Buyer, Seller shall have the right to select the shipment method. Prices do not include any taxes or duties of any kind.

### **TERMS OF PAYMENT**

Where Seller has extended credit to Buyer, Payment shall be made in full 30 days following the invoice date. All amounts due are payable in US Dollars. Seller reserves the right at any time to change the amount of credit extended or to withdraw credit entirely if, in Seller's opinion, Buyer's financial condition or previous payment record so warrants. On any order on which credit is not extended by Seller, payment shall be made in advance of shipment. In the event Seller initiates any proceeding to collect any amount due from Buyer, Buyer will be liable for all collection costs and expenses, including but not limited to reasonable attorney fees and expenses. If, in the judgment of the Seller, the financial condition of the Buyer at any time does not justify continuation of production or shipment on the terms of payment originally specified, the Seller may require full or partial payment in advance and, if such payment is not made, Seller shall be entitled to cancel any order then outstanding, and Buyer shall pay Seller's cancellation charges. Absolutely no early payment discount will be allowed unless stated in a separate written agreement executed between Seller and Buyer. Notwithstanding any early payment discount agreement, certain Items are expressly excluded from discount terms, including but not limited to, 1) Buyer reimbursement of tariffs paid by Seller, 2) payment of Seller claims for stale, excess or obsolete inventory, and 3) Seller invoices for custom or specialty raw materials purchased at request of Buyer.

### LATE PENALTY

All unpaid items will be charged a 1 ½% per month late penalty beginning the second month following delivery of shipment, such charges not to exceed the maximum charge permitted by law.

### CANCELLATION CHARGES

Any request for cancellation must be provided in writing. Buyer shall pay to Seller a cancellation charge that is equal to the cost of all material procured and on order that cannot be cancelled by Seller without charge, along with the actual cost and expenses Seller has incurred, if any, that are related to the cancelled order for items including but not limited to labor, engineering, fabrication, assembly and appropriate overhead. Seller shall use its best efforts to minimize the cancellation charges, and in no event shall the cancellation charges exceed the price of the cancelled order.

### DELIVERY DATES

Buyer may expedite scheduled ship date, as determined by the original order, only with the written consent of Seller. If such consent is given, Buyer shall pay to Seller an expedite fee in accordance with all applicable handling, engineering and miscellaneous costs, including but not limited to, fabrication and assembly, labor, and appropriate overhead associated with the expedited order. Buyer may delay the scheduled ship date as determined by the original order for up to thirty (30) days without any additional charge. Buyer may not delay scheduled ship date beyond thirty (30) days without the written consent of Seller. Any order delayed more than 30 days from the original ship date without the written consent of Seller shall be considered an order cancellation unless Seller, in its sole discretion, agrees otherwise.

### CHANGE REQUESTS

Change requests for any order, including delivery, drawing, configuration, design and/or material changes, must be provided in writing by Buyer to Seller. Buyer is hereby notified that the price and delivery dates may be affected by any such changes. If any such change shall cause an increase or decrease in the price, or in the time required for performance, an equitable adjustment will be negotiated and incorporated into the order prior to Seller's obligation to proceed with the change request.

### LIMITATION OF LIABILITY

In no event shall Seller be liable to or indemnify Buyer or any other party for any special, indirect, incidental, consequential, or contingent damages (collectively, "excluded damages"), whether or not Seller has been advised of the possibility of such excluded damages, for any reason. Buyer hereby waives any liability of Seller for any excluded damages.

### WARRANTY

Ichor Systems warrants to the purchaser that its Product is free from defects in workmanship under normal use and service. The effective period of this warranty is twelve (12) months from date of Product shipment from the factory. Any modification to the Product by the purchaser or any third party voids this warranty. This warranty shall not extend to any Product, that in Seller's judgment, has been affected by damage or wear resulting from operations performed after the sale, or misuse, accident, negligence, tampering, abrasion, faulty installation, inadequate or improper maintenance, unusual physical or electrical stress, power failure, transportation, operation with media not meeting or maintaining Product specifications, or altering of Product, damage or casualty. All warranty returns must have prior return material authorization from Seller. If Seller determines that the Product does not conform to this warranty, Seller shall repair or replace the Product, as Seller deems appropriate, free of charge. Replacement parts will be warranted for the remainder of the twelve (12) month warranty period. If such repair or replacement is not feasible, Seller may refund the purchase price. If, however, the Product is deemed by Seller not to be defective, the owner shall reimburse Seller at published repair or replacement rates. Products provided by any other person or entity besides Seller that integrate with or are physically incorporated into or with the Seller's Products are not covered by this warranty. Warranty terms for Product materials and components shall be as passed through from the original equipment manufacturer to the Buyer.

## DISCLAIMER OF WARRANTY

Seller makes no warranty of merchantability or fitness for a particular purpose. Warranties made by Seller herein are in lieu of all other warranties, oral or written, expressed or implied, by operation of law or otherwise, and except as explicitly set forth herein, no statement, representation, promise, affirmation of fact or specifications made by Seller or any other person or entity constitutes a warranty.

## LIMITATION OF REMEDY AND DAMAGES

Buyer's sole and exclusive remedy against Seller for any breach of warranty or for any other claim with respect to products, including negligence or strict liability, shall be the replacement or repair of the defective product, or the return of the purchase price. The choice of a particular remedy will be made by Seller at its sole discretion. Seller will perform repairs or replacements only during regular working hours in accordance with Seller's normal, non-emergency service practices. Buyer agrees that it will provide all necessary access and assistance to Seller in effecting the chosen remedy.

## WARRANTY CLAIMS

All claims by Buyer against Seller concerning defective products must be in writing and received by Seller within the warranty period and within thirty (30) days of the date of Buyer's detection of the alleged basis for the claim. Failure to give written notice of any claim within such time period shall constitute a waiver by Buyer of such claim.

## INDEMNIFICATION

Buyer assumes, upon title being passed to Buyer, all risk, insurable interest and liability for physical loss, damage or injury to persons or property of Buyer or others, arising out of the use or possession of the Products. Buyer agrees to indemnify and hold Seller harmless from any and all claims or liabilities asserted against Seller in connection with the use or possession of said Products, except to the extent that such claims arise out of the negligence of Seller.

## INTELLECTUAL PROPERTY

Buyers agrees that any and all designs, drawings, schematics, computer graphics and bills of material of the Products and their specifications, collectively ("Intellectual Property"), are the sole property of Seller and may only be used by Buyer, and the original user if Buyer resells Products for internal documentation. Seller agrees to indemnify Buyer and hold them harmless from and against claims resulting from any Intellectual Property infringement Claims with respect to any Product. In the event of any such claims Seller shall, in its sole discretion, either supply Buyer with non-infringing replacement of the affected Product, secure a license to use the infringing Product, or modify the infringing Product to make them substantially equal but noninfringing. This constitutes Buyer's sole and exclusive remedy for all third-party infringement claims. Notwithstanding the foregoing, Seller shall have no obligations under this section to the extent an Intellectual Property infringement claim results from any modification or change made to a Product that is not performed or authorized by Seller, or that arises out of the combination of a Product with another component, item or product.

## MISCELLANEOUS

Neither party will be liable to the other for delays or failures in performance, including late delivery and non-delivery, arising from strikes, fire, war, accident, explosion, acts of God, unavoidable production delays of the Products, or any other cause beyond the parties' reasonable control.

All disputes relating to this Agreement will be resolved solely through arbitration pursuant to the then current rules for commercial arbitration of the American Arbitration Association unless otherwise agreed by the parties in writing; provided, however, that either party may seek preliminary injunctive relief in court proceedings prior to the resolution of such arbitration.

#### ASSIGNMENT

Buyer shall not assign its rights or delegate its duties hereunder or any interest therein or any rights hereunder without the prior written consent of Seller, and any such assignment, without such consent, shall be void.

#### MODIFICATION

No agreement or understanding in any way modifying the conditions of this order shall be binding upon Seller unless made in writing and approved by Seller.

#### SEVERABILITY

If any provision herein shall be held to be unlawful or unenforceable, the remaining provisions herein shall remain in full force and effect.

#### EXPORT CONTROL

Any and all obligations of Seller to provide the Products, as well as any technical data, shall be subject in all respects to all applicable laws and regulations pertaining to export control.

Buyer represents and warrants that it will not export or re-export the Products or technical data related thereto except in conformity with such laws and regulations. If the Product being ordered is for export, upon the request of Seller, the Buyer must provide Seller with the name of the ultimate end-user of the Product and any intermediate consignees or export agents together with a detailed description of the end-use.