

MERTS, LLC

Terms and Conditions of Purchase

MERTS, LLC (“**Buyer**”) purchase orders are subject to these Terms of Purchase. In these Terms, “**goods**” and “**services**” refer to the goods or services described in Buyer’s purchase order that Buyer is to purchase from the seller named in the purchase order (“**Seller**”), “**the order**” refers to Buyer’s purchase order, including these Terms of Purchase, and “**Contract**” refers to any contract formed pursuant to the order.

1. **Agreement.** The order is an offer to buy by Buyer, and Buyer rejects any prior offers to sell made by Seller. If the order nevertheless is in legal effect an acceptance of a prior offer by Seller, then Buyer’s acceptance is conditional upon Seller’s assent to all terms of the order that are additional to or different from the terms of Seller’s offer. By signing and returning a copy of the order or by accepting the order electronically or by shipping the goods or performing the services, Seller accepts and agrees and assents to all of the terms contained in the order.

2. **Price and Payment.** Unless Buyer agrees otherwise in writing, Buyer shall not be required to pay any sales, use or other taxes arising because of Buyer’s purchase from Seller. Buyer shall not be required to pay any late charge, interest, finance charge or similar charge. Buyer’s payment of the purchase price does not indicate its acceptance of the goods or services. Payment terms, including discount periods, shall run from the latest of (1) the scheduled date for delivery or performance, (2) the actual date of delivery of conforming goods or performance of conforming services, (3) the date of Seller’s invoice, (4) in the case of capital equipment, completion of Buyer’s final inspection and acceptance after installation, and (5) the date payment is received by Buyer from Buyer’s customer.

3. **Delivery and Delay.** Unless Buyer agrees otherwise in writing, Seller shall deliver the goods to Buyer’s customer’s facility identified in the order, at Buyer’s customer’s expense and Seller’s risk. Time of delivery or performance is of the essence, and Buyer’s stated delivery or performance date and the date for performance of any other obligation of Seller, shall not be extended or excused for any reason, including anything that Seller cannot control.

4. **Export and Import Requirements; Drawback and Refund Rights.** Seller shall prepare, maintain and, to the extent that that applicable law, regulation or customs authority requires it to do so, submit to the applicable customs authorities, all information and documentation that is necessary to comply with the applicable customs and export and import requirements of each country from which the goods will be exported and each country into which they will be imported, and Seller shall comply with all other applicable customs requirements. Whenever Buyer requests it to do so, Seller shall promptly furnish to Buyer copies of that information and documentation. Seller is solely responsible for complying with all technical compliance and country of origin requirements of each country into which the goods are to be imported. Seller assigns and transfers to Buyer all transferable customs duty and tax drawback or refund rights relating to the goods, including rights developed by substitution and rights that Seller acquires from its suppliers. Seller shall promptly inform Buyer of each such right and, upon Buyer’s request, shall promptly provide to Buyer all documents and information that are required for Buyer to obtain each such drawback and refund. Seller at all times shall maintain, and shall cause each of Seller’s suppliers and logistics providers to maintain, at each facility where the goods are manufactured or located, strict security measures that are reasonably calculated to prevent acts of terrorism with respect to the goods.

5. **Representations, Warranties And Agreements About Seller.** Seller represents and warrants to Buyer, and agrees, that (1) Seller has all necessary experience, qualifications, expertise, authority, licenses and permits to enable it to perform its obligations under the Contract, (2) the Contract is the valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, (3) Seller is and, at the time of each order will be, solvent, (4) Seller has not offered or given, and shall not offer or give, any gratuity or thing of value to any employee of Buyer or of any affiliate of Buyer and (5) Seller is and shall continue to be in compliance with all equal employment and affirmative action provisions of Executive Order 11246, the Vietnam Era Veterans’ Readjustment Assistance Act (“VEVRAA”), Section 503 of the Rehabilitation Act of 1973 and all implementing regulations under that Order, VEVRAA and Section 503.

6. **Representations, Warranties And Agreements About the Goods and Services.** Seller represents and warrants to Buyer, and agrees, that (1) the goods shall be new, (2) the goods and services shall be merchantable, of good material, workmanship and quality, fit for the purposes for which Buyer intends them and free from faults and defects, (3) the goods and services shall conform to any samples, drawings, specifications, performance criteria standards or other requirements that are referred to on the face of the order or that Buyer has otherwise specified or agreed to in writing, and (4) the goods, their manufacture, packaging, labeling, branding and sale and the services shall comply with all applicable federal, state and local laws, regulations, standards and orders, including, without limitation, the Fair Labor Standards Act of 1938 and the Occupational Safety and Health Act of 1970. (5) Seller shall promptly furnish to Buyer all information and copies of documents (including, but not limited to, complaints, inquiries, test or inspection results and warnings) that Seller receives from an end-user of the goods, a government agency, an employee or agent of Seller or any other person or source and that suggests or indicates that the goods may not conform to the requirements of this paragraph, and (6) Seller has and follows, and will continue to have and follow, adequate quality and security procedures that will assure that the goods and services will comply with the foregoing warranties, representations and agreements. If Buyer requests it, Seller shall give Buyer certificates of compliance with applicable laws and regulations.

Buyer’s approval of a sample, drawing, specification or standard shall not relieve Seller of any of its warranties under this paragraph, including, without limitation, its warranties of merchantability, fitness and compliance with laws. Seller’s warranties extend to future performance of the goods and services and survive inspection, tests, acceptance and payment and shall be considered to have been given not only to Buyer but also to Buyer’s customers and to end- users of the goods.

7. **Indemnity.** Seller shall indemnify and hold Buyer and its directors, officers and employees (“**representatives**”) harmless (and defend Buyer and its representatives if it requests) as to any claims, liabilities, losses, damages and expenses (including, without limitation, attorneys’ fees and other legal expenses) brought against or incurred by Buyer or its representatives because of (1) any breach by Seller of any of its warranties to, or agreements with, Buyer, (2) any claim that any of the goods or services infringes any patent, trademark, copyright or other intellectual property right, anywhere in the world or (3) any death, injury or damage to any person or property, or any recall, alleged to have been caused by the goods or services or by Seller’s manufacture of the goods or performance of the services.

8. **Changes.** Buyer may at any time, by written notice to Seller and without liability, change the order or the Contract as to (1) specifications for the goods or services, (2) time or place of delivery or performance, (3) method of packing or shipment or (4) quantity of the goods or extent of the services.

9. **Termination at Buyer’s Option.** Buyer may terminate the order or the Contract, in whole or in part, at any time by written notice to Seller stating the extent and effective date of termination. Termination under this paragraph shall terminate only Seller’s obligation and right to deliver goods or provide services under any provision of the Contract other than this paragraph and shall not terminate or impair Seller’s other obligations, or any of Buyer’s rights, under the Contract.

10. **Buyer’s Remedies.** Without limiting other rights and remedies available to it, Buyer may, at its option, (1) return nonconforming goods to Seller, at Seller’s risk and expense, and require Seller either to give Buyer full credit against the price or promptly to repair or replace the goods at Seller’s risk and expense, (2) retain nonconforming goods and set off losses against any amount that Buyer owes Seller or (3) repair or replace nonconforming goods and charge Seller with the expense. If at any time (a) Seller defaults in the performance of any of Seller’s obligations to Buyer under the Contract or under any other agreement between Seller and Buyer, (b) Seller repudiates the Contract or (c) any warranty or representation that Seller made to Buyer in or in connection with the Contract is false or misleading in any material respect, then Buyer may terminate the Contract, in whole or part, without liability to Seller, and Seller shall promptly pay to Buyer all damages that Buyer incurred as a result of the termination and as a result of the event or circumstance on the basis of which Buyer terminated. If Buyer does terminate the Contract, then Seller, if and to the extent that Buyer demands, shall immediately deliver to Buyer all finished and unfinished goods and all work-in-process and raw materials that Seller acquired for use in the manufacture or processing of the goods and all designs, drawings, specifications and software that Buyer is purchasing from Seller under the Contract, including all work-in-process, all source, object and pseudo codes, all preexisting programs intended to be incorporated in the software and all intellectual property rights in the foregoing. Buyer’s payment of part or the entire purchase price shall not be a precondition to Seller’s obligation to make the delivery. After Seller has made the delivery and Buyer has determined its damages (including, without limitation, any cost of “cover” or of completing the manufacture or processing of the goods), then Buyer will pay to Seller any excess of (1) any unpaid part of the purchase price properly allocable to any conforming goods, work-in-process and raw materials that Seller delivered to Buyer over (2) Buyer’s damages. Buyer’s termination under this paragraph shall terminate only Seller’s obligation and right to deliver goods or provide services other than as this paragraph requires and shall not terminate or impair Seller’s other obligations, or any of Buyer’s rights, under the Contract. In addition to Buyer’s rights described in these Terms of Purchase, Buyer has all of the other rights and remedies that the law gives to buyers, including the right to recover incidental and consequential damages that result from Seller’s breach. Buyer shall not lose any right just because it does not exercise it. Buyer shall have the full statutory period of limitations to bring any action that arises out of Buyer’s agreement with Seller. A reasonable time for Buyer to reject or revoke acceptance of the goods is not less than one year from the date of delivery. A reasonable time for Buyer to notify Seller of any breach is not less than two years from when Buyer discovers the breach.

11. **Insurance.** Seller agrees to provide Buyer with a Certificate of Insurance with the following minimum requirements: General Liability - \$1,000,000 each occurrence; \$2,000,000 products & completed operations aggregate; \$2,000,000 general aggregate. Automobile - \$1,000,000 each occurrence including hired & non-owned liability. Workers Compensation - Statutory for State of Domicile with Employers Liability limits of \$500,000 bodily injury by accident, each accident; \$500,000 bodily injury by disease, policy limit; \$500,000 bodily injury by disease, each employee. Umbrella Liability - \$3,000,000 annual aggregate. Seller will include Buyer as Additional Insured with respects to the General Liability and Umbrella Liability coverage.