



# SMART ELECTRONICS & Assembly, Inc.

2000 W Corporate Way  
Anaheim, CA 92801

## PROCUREMENT TERMS & CONDITIONS

The following terms and conditions apply to all Smart Electronics and Assembly, Inc. purchase orders, in addition to any terms set forth on the face of an individual purchase order and any terms or other documents incorporated by reference (collectively, "Order"), unless otherwise stated in the purchase order.

1. Parties. The term "SEA" refers to Smart Electronics and Assembly, Inc. The term "Supplier" refers to the addressee set forth on the face of SEA's purchase order.

2. Acceptance. The Order, and the terms and conditions set forth herein or in any other documents incorporated by reference, shall be deemed accepted by Supplier on the earlier of Supplier's (a) shipment of goods or performance of services ordered, in total or in part, (b) commencement of performance pursuant to the Order, or (c) signing the purchase order. Acceptance of an Order must be in strict accordance with its terms, including these terms and conditions.

3. Courtesy Acknowledgment. Upon acceptance of an Order, Supplier shall immediately send written acknowledgment to SEA via fax or E-mail. Failure to send written acknowledgment shall not mean that the Order has not been accepted by Supplier.

4. Modifications. The terms and conditions of the Order may not be modified except by a writing signed by an authorized representative of SEA.

5. Labeling. Each container or package shall be clearly labeled, tagged, or marked with: (a) the Supplier's name, (b) SEA's purchase order number, (c) a tracking number, (d) a box number if there are multiple boxes, (e) necessary lifting or loading information, (f) the item number, (g) the shipment date, and (h) the names and addresses of the consignor and consignee. A complete packing list shall be enclosed with each shipment.

6. Termination. SEA may terminate the Order in whole, or in part, at no cost to SEA, if any of the following occur: (a) Supplier becomes insolvent or makes a general assignment to the benefit of creditors; (b) a voluntary or involuntary petition for bankruptcy is filed by or against Supplier; (c) if the Supplier fails to make delivery of the goods or perform the services within the time specified in the Order; (d) if the Supplier fails to perform any other provision of the Order; or (e) Supplier fails to make progress so that SEA reasonably believes that performance of the Order will not be completed timely; or (e) if the Supplier fails to hold competitive cost of the Order.

7. Warranties. Supplier warrants that all material, work product, and merchandise supplied pursuant to the Order (a) shall strictly conform to all specifications, drawings, samples, or other descriptions furnished to and approved by SEA, (b) shall be fit and serviceable for the purpose intended, as agreed to by SEA and Supplier, (c) shall be of good quality and free from defects in materials and workmanship, (d) shall be new and not refurbished or reconditioned, unless expressly agreed to in writing by SEA, and (e) shall not infringe any patent, copyright, mask work, trademark, trade secret or other intellectual property, proprietary or contractual right of any third party. In addition, Supplier warrants that SEA shall have good and marketable title to all goods (including all components thereof) purchased by SEA pursuant to the Order, free of all liens and encumbrances and that no licenses are required for SEA to use such goods. With respect to services, Supplier warrants that all services shall be provided in a professional and workmanlike manner, with a degree of skill and care consistent with current, good and sound professional procedures. Neither receipt of material, work product or merchandise nor payment therefore shall constitute a waiver of this provision. If a breach of

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warranty occurs, SEA may, in its sole discretion, and without waiving any other rights, return for credit or require prompt correction or replacement of the nonconforming goods or services.

8. Corrections. The invoice date shall be the date that the Order is to be received free of errors and defects. If the Supplier's goods are shipped with paperwork discrepancies, errors, defects, workmanship or quality issues, the invoice date will be the deadline to correct all issues. A corrected invoice and packing slip reflecting any corrections shall be furnished by Supplier to SEA.

9. Damages. Without limiting SEA's rights and remedies at law or in equity, SEA reserves the right to charge Supplier for any loss, expense, including reasonable attorneys' fees, or damage, including without limitation, expenses incurred in connection with SEA's purchase of substitute goods, incidental damages and consequential damages sustained as a result of Supplier (a) failing to deliver conforming goods or services, (b) damaging any component, good or equipment SEA provides to Supplier in connection with fulfilling the Order, or (c) any other breach of the Order.

10. Indemnity. Supplier shall indemnify, defend and hold harmless SEA, its directors, officers, employees, servants, agents, shareholders, and its affiliates (each an "Indemnified Party") from and against all legal actions, claims, judgments, loss, damages, costs, liabilities, charges or expenses, including, without limitation, reasonable attorneys' fees, which an Indemnified Party may incur, be liable for, suffer or sustain on account of any damage, wrong, loss, death, or injury of any kind or nature whatsoever caused by or resulting from (a) any act, breach, conduct, or omission of Supplier related to or arising out of the Order, including, without limitation, any alleged breach of warranty (whether express or implied); (b) any failure of Supplier's goods or services to conform to any applicable specifications, descriptions or samples; (c) any defects in materials, design or workmanship or the goods or services of Supplier; or (d) any claim or infringement of any patent in connection with the production of goods or performance of any work hereunder or the use of such goods

11. Limitation of Liability. SEA shall not be liable to Supplier, its employees, representatives, agents, affiliates, Suppliers, or subcontractors for loss of anticipated profits, incidental damages or consequential damages. Without limiting the foregoing, SEA's liability for any claim arising directly or indirectly under or in connection with the Order shall in no event exceed the cost of the goods or services giving rise to the claim. SEA shall have no liability for penalties of any kind.

12. Timely Delivery. Time is of the essence in fulfillment of the Order. Shipment and delivery shall be made in accordance with the Order. SEA may, at its option, and without limitation of any of its other rights, cancel any unfilled part of the Order if complete and conforming delivery is not made within the times specified. SEA is not required to accept partial or incomplete delivery. Acceptance of any part of the Order shall not bind SEA to accept any future shipments.

13. Inspection. SEA shall have the right to inspect and test all goods and/or services delivered pursuant to the Order. Neither receipt nor payment for goods and/or services shall constitute acceptance. SEA may reject any or all items that are nonconforming, as determined by SEA's sole reasonable judgment. SEA's failure to inspect shall not relieve Supplier of any of its responsibilities. Goods shipped in quantities in excess of SEA's stated requirements may be returned at Supplier's expense. If goods are rejected, they will be held at Supplier's risk and expense and Supplier shall bear the risk of loss or damage to such goods until received by Supplier.

14. Risk of Loss. Supplier shall bear the risk of loss of or damage to all goods purchased pursuant to the Order until they are received by SEA.

15. No Property Rights. Supplier shall have no ownership rights or interest to any property, including without limitation, tools, software, drawings, diagrams, documentation or any other intellectual property that SEA may provide Supplier in connection with Supplier's performance of the Order. Upon SEA's demand, Supplier shall immediately return all such property to SEA.

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16. Entire Agreement. The Order represents the entire agreement between Supplier and SEA with respect to the goods and/or services described in the Order. Any oral communications between Supplier and SEA shall not be part of this Order.

17. Choice of Law and Venue. All matters arising under or related to the Order shall be construed and enforced in accordance with the laws of the State of California, without regard to conflicts of law rules. Any and all actions commenced against SEA or Supplier with respect to the Order shall be filed in the state or federal court in Orange County, California.

18. Severability. In the event that any of the provisions of the Order is held by a court or other tribunal with competent jurisdiction to be illegal, invalid, or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary, so that the Order shall otherwise remain in full force and effect.

19. Waiver. No waiver by SEA of any provision of the Order or any breach hereunder shall be deemed a waiver of any other provision or subsequent breach, nor shall any such waiver constitute a continuing waiver. Delay or failure of SEA to enforce performance of any provision of the Order or to exercise any rights or remedies hereunder shall not be deemed a waiver.

20. Headings. The headings of the sections, subsections and paragraphs of these terms and conditions have been added for convenience only, shall not be deemed to be part of the Order, and shall not be used to construe the terms of the Order.

21. Attorneys Fees. The parties to this Agreement shall pay all reasonable legal fees, costs and expenses, including, without limitation, attorneys' fees that the other party may reasonably incur in order to enforce any provision of this Agreement, if the party seeking enforcement prevails on the merits of its action.