

NERJAN DEVELOPMENT COMPANY ("NERJAN") Terms & Conditions of Purchase 05/2017

1. **DEFINITIONS.** "Goods" means those parts, articles, materials, drawings, data, or other property or services that are the subject of this Purchase Order.
2. **CONTRACT FORMATION.** If this Purchase Order is deemed to constitute acceptance of an offer, such acceptance is expressly made conditional on SUPPLIER's assent to the terms of this Purchase Order, and shipment of any part of the Goods or other commencement of performance will be deemed to constitute such assent. Any additional or different terms in any offer or acknowledgment by SUPPLIER are expressly rejected by NERJAN and will not be deemed accepted by NERJAN unless NERJAN's acceptance thereof is in writing and specifically refers to each such additional or conflicting term. SUPPLIER's acknowledgment, acceptance of payment, or commencement of performance, shall constitute SUPPLIER's unqualified acceptance of this Purchase Order.
3. **MANDATORY FLOW DOWNS.** SUPPLIER and its subcontractors will comply with all mandatory flow down clauses, whether pursuant to a U.S. government contract or otherwise, applicable to NERJAN for Goods that are the subject of this Purchase Order.
4. **INVOICING & PAYMENT.** A separate original invoice is required for each shipment under this Purchase Order. NERJAN will pay for the Goods within 30 days (net) days after the later of the date of NERJAN's receipt of the applicable invoice or the date acceptable Goods are received by NERJAN (but not earlier than the specified delivery date).
5. **PURCHASE ORDER CHANGES.** NERJAN may at any time, by written notice to SUPPLIER, make changes in the drawings, specifications, quantities, delivery schedules and shipping instructions under this Purchase Order. If any such change increases or decreases the cost of performing or the time required for performance of this Purchase Order, an equitable adjustment in prices and/or schedules will be considered by NERJAN provided that any claim by SUPPLIER for such adjustment is presented in writing with supporting documentation to NERJAN within 10 business days from the date of NERJAN's notice to SUPPLIER. No changes whatsoever will be initiated by SUPPLIER without NERJAN's written approval.
6. **CANCELLATION.** This Purchase Order may be cancelled by NERJAN at any time in whole or in part by oral notification followed by written confirmation to SUPPLIER. SUPPLIER will immediately cease performance under the Purchase Order upon receipt of notification of cancellation (unless otherwise specified by NERJAN). NERJAN agrees to consider reasonable reimbursement to SUPPLIER for finished Goods and work in process upon SUPPLIER's submission of supporting documentation within 30 days of cancellation. Any reimbursement to SUPPLIER must be mutually agreed upon. In no event will NERJAN be responsible for any loss of profit or for payment for any work that is or may be rejected upon inspection or does not conform to NERJAN's specifications or Purchase Order requirements.
7. **ROUTING, RISK OF LOSS, EXCESS SHIPMENTS AND DELAYS.** (a) Time is of the essence in the performance of this Purchase Order by SUPPLIER and SUPPLIER will take all necessary action, both normal and extraordinary, to ensure timely deliveries. (b) NERJAN may select mode of transportation, routing of, and carrier for the Goods. SUPPLIER will be liable for excess transportation costs resulting from deviation from NERJAN's instructions or promised delivery dates. (c) Title and risk of loss to Goods will pass to NERJAN at NERJAN's dock. (d) NERJAN's weight and count are conclusive, and NERJAN will have no liability for payment for Goods delivered in excess of the quantity Purchase Ordered. Excess Goods may be returned to SUPPLIER at SUPPLIER's expense. (e) If, prior to time for delivery of the Goods, SUPPLIER has reason to believe that it will be unable to meet its delivery schedule, SUPPLIER will immediately notify NERJAN in writing, will indicate the cause of delay and will use its best efforts to cure the anticipated delay. Upon receipt of notice of the anticipated delay or upon occurrence of an actual delay, NERJAN may (I) direct expedited routing of Goods, with excess costs paid by SUPPLIER, or (D) cancel the Purchase Order and purchase substitute Goods elsewhere, with resulting excess costs and expenses paid by SUPPLIER.
8. **INSPECTION OF GOODS: REJECTION OF GOODS AND REVOCATION OF ACCEPTANCE.** All Goods and related facilities will be subject to test and inspection by NERJAN, NERJAN's customers, and any applicable government agencies at all places and all times, including during the period of manufacture. SUPPLIER will provide at no cost all reasonable facilities and assistance required for any such inspections or tests conducted at SUPPLIER's premises. NERJAN's action in paying for or accepting any Goods will not constitute a waiver of any rights or remedies of NERJAN, including NERJAN's right to revoke acceptance and return any part of the Goods or the right to make a claim for damages because of the failure of the Goods to conform to this Purchase Order. For all non-conforming Goods, SUPPLIER will provide NERJAN, at NERJAN's election, a full refund or replacement of the Goods, at SUPPLIER's risk and expense, including transportation costs both ways. NERJAN may, at its option, purchase substitute Goods in lieu of non-conforming Goods, and SUPPLIER will be liable for the difference in costs, less expenses saved by NERJAN. NERJAN's rights herein will be in addition to all other rights of NERJAN under applicable law.
9. **QUALITY & WARRANTIES.** SUPPLIER warrants that all Goods delivered will strictly conform to the Purchase Order and all applicable specifications, quality documents and drawings, will be of good design (where applicable), material, and workmanship, will be free of defects, will be merchantable and fit for their intended purpose, and will meet all applicable industrial and governmental safety standards. SUPPLIER further warrants that SUPPLIER will have title to and the right to sell such Goods at the time of delivery, and that all such Goods will be new (unless otherwise specified in this Purchase Order) at the time of delivery. SUPPLIER will also transfer to NERJAN the warranties on goods and services incorporated into Goods. All warranties will survive any inspections, delivery, acceptance or payment by NERJAN, and will run to NERJAN, its successors, assigns, customers and users of Goods. NERJAN may, at its option and without cost to NERJAN, either (i) return for credit or refund any defective or nonconforming Goods, (ii) require prompt correction or replacement of the defective or nonconforming Goods, or (iii) repair the defective or nonconforming Goods and charge SUPPLIER for all related repair costs. Return to SUPPLIER of defective or nonconforming Goods and delivery to NERJAN of corrected or replaced Goods shall be at SUPPLIER's expense and SUPPLIER shall pay for all other resulting damage, loss or claims arising out of defective or non-conforming Goods. SUPPLIER's warranties with respect to repaired or replaced Goods will be the same as the warranties given with respect to the original Goods. No approval of SUPPLIER's designs, drawings, samples, test results, procedures, processes, schedules or other items by NERJAN under this Purchase Order will in any way limit or diminish SUPPLIER's warranties hereunder.
10. **QUALITY CONTROL.** SUPPLIER shall establish and maintain a quality control system acceptable to NERJAN for the Goods purchased under this Purchase Order. SUPPLIER shall permit NERJAN to review procedures, practices, processes and related documents to determine such acceptability.
11. **MATERIALS.** If NERJAN furnishes any material for fabrication under this Purchase Order, then: (a) SUPPLIER will not substitute any other material in such fabrication without NERJAN's written consent; (b) NERJAN's title to such materials shall not be affected by incorporation or attachment to any other property; (c) SUPPLIER will maintain strict accountability to ensure positive individual lot integrity of finished product; and (d) all such material (except that which becomes normal industrial waste or is replaced at SUPPLIER's expense) will be returned in the form of product or unused material to NERJAN. Inaccuracies, out of tolerance conditions or inadequacies in quality of materials accepted by SUPPLIER will not excuse performance in strict accordance with the applicable specifications, quality documents and drawings.
12. **ASSIGNMENT; SUBCONTRACTING.** SUPPLIER may not assign its rights or obligations under this Purchase Order either voluntarily or by operation of law without the prior written consent of NERJAN. SUPPLIER may not subcontract all or any substantial part of this Purchase Order without the prior written consent of NERJAN. Any consent of NERJAN will not relieve SUPPLIER of its contractual obligations under this Purchase Order.
13. **COUNTERFEIT GOODS.**
 - a. SUPPLIER shall not furnish Counterfeit Goods to NERJAN, defined as Goods or separately-identifiable items or components of Goods that: (i) are an unauthorized copy or substitute of an Original Equipment Manufacturer or Original Component Manufacturer (collectively, "OEM") item; (ii) are not traceable to an OEM sufficient to ensure authenticity in OEM design and manufacture; (iii) do not contain proper external or internal materials or components required by the OEM or are not constructed in accordance with OEM design; (iv) have been reworked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OEM design but not disclosed as such or are represented as OEM authentic or new; or (v) have not passed successfully all OEM required testing, verification, screening, and quality control processes. Notwithstanding the foregoing, Goods or item that contain modifications, repairs, re-work, or re-marking as a result of SUPPLIER's or its subcontractor's design authority, material review procedures, quality control processes or parts management plans, and that have not been misrepresented or mislabeled without legal right to do so, shall not be deemed Counterfeit Goods. Counterfeit Goods shall be deemed nonconforming to this Purchase Order.
 - b. SUPPLIER shall implement an appropriate strategy to ensure that Goods furnished to NERJAN under this Purchase Order are not Counterfeit Goods. SUPPLIER's strategy shall include, but is not limited to, the direct procurement of items from OEMs or authorized suppliers, conducting approved testing or inspection to ensure the authenticity of items, and, when items are to be procured from non-authorized suppliers, obtaining from such non-authorized suppliers appropriate certificates of conformance that provide one or more of the following: (i) the OEM's original certificate of conformance for the item; (ii) sufficient records providing unbroken supply chain traceability to the OEM; or (iii) test and inspection records demonstrating the item's authenticity.
 - c. If SUPPLIER becomes aware or suspects that it has furnished Counterfeit Goods to NERJAN under this Purchase Order, SUPPLIER promptly, but in no case later than thirty (30) days from discovery, shall notify NERJAN and replace, at SUPPLIER's expense, such Counterfeit Goods with OEM or NERJAN-approved Goods that conform to the requirements of this Purchase Order. SUPPLIER shall be liable for all costs related to the replacement of Counterfeit Goods and any testing or validation necessitated by the installation of, authentic Goods after Counterfeit Goods have been replaced.
 - d. SUPPLIER bears responsibility for procuring authentic Goods or items from its subcontractors and shall ensure that all such subcontractors comply with the requirements of this Article.
14. **NERJAN'S PROPERTY & CONFIDENTIALITY.** NERJAN retains title and ownership of all information, materials and intellectual property furnished to SUPPLIER in connection with performance of this Purchase Order, and the same will be: (i) treated as NERJAN's confidential information, segregated from SUPPLIER's property, and individually marked and identified as NERJAN's property; (ii) used by SUPPLIER exclusively for the purpose of completing this Purchase Order; and (iii) returned to NERJAN at NERJAN's direction or upon completion, termination, or cancellation of this Purchase Order, along with all copies or reproductions, unless otherwise agreed in writing by NERJAN.
15. **COMPLIANCE WITH LAWS: TRADE CONTROLS.** In performing work under this Purchase Order, SUPPLIER and its subcontractors will comply with all applicable federal, state, and local laws, and the rules and regulations of any governmental authority. This includes strict compliance with all applicable export control laws and regulations of the United States and all applicable laws and regulations governing imports, exports and trade remedies under U.S. foreign or other relevant jurisdictions. NERJAN reserves the right to cancel any Purchase Order without penalty or liability to NERJAN in the event SUPPLIER's performance under this Purchase Order does not comply with such laws, rules and regulations. SUPPLIER will defend, indemnify and hold NERJAN harmless for any non-compliance by SUPPLIER or its subcontractors.
16. **INDEMNIFICATION.** SUPPLIER agrees to defend, indemnify and hold NERJAN, including its officers, directors, employees, parent, subsidiaries, affiliates and agents (collectively, the "Indemnified Party"), harmless of and from any claim, loss, cost, damage, settlement or judgment arising out of SUPPLIER's provision of Goods to the Indemnified Party or the presence of SUPPLIER's employees, agents or subcontractors on the Indemnified Party's premises. This duty to defend, indemnify and hold harmless extends to any legal claim or proceeding, whether based on contract, warranty, infringement, strict liability in tort, negligence or other legal theory, and also extends not only to third party claims but also to any loss suffered directly by the Indemnified Party. NERJAN is entitled to control SUPPLIER's defense of NERJAN hereunder.
17. **INSURANCE.** SUPPLIER will furnish to NERJAN a certificate of insurance showing that SUPPLIER has obtained insurance coverage in the following minimum amounts (or such higher minimum amounts as NERJAN may, in its sole discretion, specify in writing): (a) Worker's Compensation- statutory limits for the state or states in which the work is to be performed; (b) Employer's Liability- \$1,000,000; (c) Commercial General Liability \$1,000,000 combined single limit per occurrence including Premises and Operations, Independent Contractors, Contractual Liability and Products and Completed Operations coverages; and (d) Automobile Liability (including owned, hired and non-owned vehicles)- \$1,000,000, combined single limit per occurrence. Such certificate will set forth the insurance company, amount of coverage, the policy numbers, and date of expiration, and will include a thirty days' notice of cancellation to NERJAN clause. NERJAN must be named as an additional insured party under each of these policies with the exception of the worker's compensation policy. Such insurance coverage must be maintained by SUPPLIER at all times while it is performing work under this Purchase Order. Compliance by SUPPLIER with these insurance requirements does not affect SUPPLIER's indemnification or other liabilities under this Purchase Order.
18. **APPLICABLE LAW & DISPUTES.** The interpretation of this Purchase Order and the rights and obligations of the parties hereto will be construed and governed by the laws enacted in the state of Connecticut, excluding its choice of law rules and excluding the U.N. Convention on Contracts for the International Sale of Goods. The complaining party will first notify the other party in writing of the alleged dispute and the parties will attempt in good faith to resolve the dispute through prompt discussion and meeting between representatives having decision-making authority regarding the dispute. If the dispute is not resolved by the 30th day after written notice of the dispute was first made, the complaining party may seek appropriate legal action provided that either party may seek preliminary injunctive or other equitable relief at any time to prevent irreparable harm. The parties agree to personal jurisdiction in the state of Connecticut. Upon mutual agreement, the parties may engage a neutral mediator to facilitate resolution of the dispute. A person who is not a party to this Purchase Order shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Purchase Order.
19. **LIMITATION OF NERJAN'S LIABILITY.** Any liability of NERJAN for any breach of any term or condition imposed upon it, whether such term or condition is contained in this Purchase Order or otherwise, will not exceed the purchase price for the Goods directly involved in the alleged breach. NERJAN will not under any circumstance be liable for consequential or incidental damages.
20. **PRECEDENCE.** Any inconsistencies in this Purchase Order shall be resolved in accordance with the following descending Purchase Order of precedence: (1) face of the Purchase Order, including any special terms and conditions; (2) these Terms and Conditions of Purchase and any schedules hereto; and (3) the Statement of Work.
21. **RETENTION OF RECORDS.** Unless a longer period is specified in this Purchase Order or by law or regulation, SUPPLIER shall retain all records related to this Purchase Order for ten (10) years from the date of final payment received by SUPPLIER. Records related to this Purchase Order include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, shipping and export, and certification records. At no additional cost, SUPPLIER shall timely provide access to such records to the US Government and/or NERJAN upon request.
22. **ENTIRE AGREEMENT.** This Purchase Order (and any long-term agreement under which this Purchase Order is issued, if one exists) constitutes the entire agreement between the parties with respect to the subject matter herein and therein and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writings and all other communications between the parties. No waiver, alteration, modification or addition to this Purchase Order will be binding unless expressly agreed to in writing and signed by duly authorized representatives of NERJAN and SUPPLIER. A waiver of any of the terms or conditions hereof will not be deemed a continuing waiver, but will apply solely to the instance to which the waiver is directed.