

TERMS AND CONDITIONS

Sony's terms and conditions revised
3/15/17

1. General

- (a) Sony Electronics Inc., its subsidiaries, and affiliated companies, shall be collectively hereinafter referred to as "**Sony**" and Vendor shall be referred to as "**Provider**".
- (b) If Sony and Provider are party to a separately negotiated written agreement applicable to the subject matter of this Purchase Order, then the terms and conditions of such agreement shall control and govern the transactions contemplated hereunder and supersede the terms set forth in this Purchase Order. Otherwise, this Purchase Order is expressly limited to the terms and conditions stated herein, and any term or condition proposed by Provider (including without limitation, delivery, price, quantity, quality and specifications) which is inconsistent with or is in addition to any term or condition of this Purchase Order is hereby rejected by Sony and shall be void and of no effect.

2. Acceptance of Purchase Order

- (a) This Purchase Order constitutes Sony's offer to Provider and shall become a binding contract subject to the terms and conditions set forth on both sides of this document upon acceptance by Provider's (i) acknowledgment, or (ii) delivery of the goods or performance of the services covered hereby, either in whole or in part.
- (b) Goods delivered in excess of the amount or in nonconformity with that called for in this Purchase Order may be refused by Sony and returned to Provider at Provider's expense.
- (c) Any goods manufactured or shipped prior to receipt of this Purchase Order are at Provider's risk and Sony will incur no responsibility resulting therefrom.
- (d) Once this Purchase Order is accepted by Provider, Provider may not, for any reason other than Sony's cancellation hereof, withhold or delay shipment of any goods or performance of any services covered hereby.

3. Cancellation of Purchase Order

- (a) Sony reserves the right to cancel this Purchase Order, in whole or in part, (i) prior to receipt of Provider's acknowledgment hereof, or (ii) in advance of a delivery schedule set forth on the reverse side thereof without liability to Provider therefor. Sony may also cancel this Purchase Order, in whole or in part, upon Provider's failure to observe and perform any of the terms and conditions hereof (including those that might otherwise be excused by force majeure or commercial impracticality) by giving Provider notice thereof and, in addition to any other remedies Sony may have at law or in equity therefor, Sony may purchase the goods or services covered hereby, in whole or in part, from an alternate vendor, and Provider will be liable to Sony for any loss incurred as a result thereof.
- (b) In the event of any institution of proceedings by or against Provider in bankruptcy or insolvency, or under any provision of the United States Bankruptcy Act, or if there is an appointment of receiver or trustee or an assignment for the benefit of creditors of Provider, Sony may cancel this Purchase Order by giving Provider notice thereof without liability to Provider therefor and without waiving any remedies it may have.

4. Shipments

- (a) Provider may not charge for packing, crating, drayage or storage unless agreed upon by Sony in writing.
- (b) All shipments must be forwarded to Sony via, FOB destination and, in the event of any variance thereto, Provider shall pay all additional expenses to which Sony may be subject as a result thereof, unless otherwise stated in the applicable Purchase Order or otherwise agreed to in writing by Sony and Provider.
- (c) All goods shipped by Provider to Sony from abroad shall be securely packed for export as light as possible and in the smallest cubical bulk consistent with safe carriage by ocean vessel, railroad or aircraft (as the case may be).
- (d) An itemized packing slip bearing Sony's Purchase Order number as shown hereon must accompany each delivery of goods from Provider to Sony; and each container must be marked to show such number.
- (e) After delivery of the goods and services covered by this Purchase Order, Provider shall submit a separate invoice to Sony at the address indicated under the "Bill To" section on the front side hereof.

5. Price; Discount; Taxes

- (a) Items purchased by Sony pursuant to this Purchase Order shall be supplied at the lowest price last charged by Provider therefor for equal quantity and shall not exceed current prices quoted or charged to any other customer for similar items and quantity. Provider will refund to Sony any amounts in excess of such price.
- (b) It is understood that any discount for anticipation offered by Provider under the Purchase Order will date from Sony's receipt of goods or from the date of the invoice, whichever is later. Payment terms are net 75 days unless otherwise specified herein.
- (c) Provider shall separately state on all invoices and acknowledgments of this Purchase Order the applicable sales taxes imposed by Federal, State or local governments, unless an exemption is available.
- (d) Provider's records relating to the goods and services covered by this Purchase Order shall be and remain subject to audit by Sony in the event of termination, equitable adjustment or when the price thereof is based on time and cost of materials.
- (e) Provider will promptly invoice Sony for all goods and services accepted by Sony. Sony will have no obligation to pay any invoice submitted more than ninety (90) days from the time when the subject goods and services were accepted by Sony.

6. Warranties; Compliance with Laws

- (a) Provider warrants that all goods and services furnished under this Purchase Order will be merchantable, fit, and safe for the purpose for which it is manufactured, free from defects in materials and workmanship, will conform to applicable specifications, drawings, samples and descriptions, and that Provider's design will be free from design defects. Additionally, Provider warrants that it has good title to any goods and deliverables resulting from the services furnished and that they are free and clear from all liens and encumbrances. These warranties will survive acceptance and payment by Sony. In the event of Provider's non-conformance with these warranties, Sony may cancel this Purchase Order, in whole or in part, by giving Provider notice thereof and, in addition to any other remedies Sony may have at law or in equity therefor, Sony may return the goods or services covered hereby, in whole or in part, at Provider's cost and expense.
- (b) Provider warrants that the goods purchased hereunder have been designed to and will comply fully with all applicable Federal, State, and local safety and environmental standards in effect on the date of shipment, including without limitation, the appropriate sections of the Occupational Safety and Health Standards.
- (c) Provider warrants that the goods covered by this Purchase Order will be produced and/or rendered in accordance with all applicable Federal, State, and local laws, orders and regulations, including without limitation, the Fair Labor Act as amended.

- (d) Provider warrants that it will comply with Sony's then-current Supplier Code of Conduct, which by this reference is incorporated herein. Upon request of Sony, Provider shall certify and provide evidence of compliance with such Supplier Code of Conduct. Sony Supplier Code of Conduct can be found at www.sony.net/csr under CSR Reporting.
- (e) Provider warrants that it is an independent contractor and under no circumstances will represent itself as an agent for Sony nor make any warranties or representation on behalf of Sony.
- (f) If this Purchase Order is issued pursuant to a contract with a local, State or Federal government unit, or any agency thereof, and such fact is communicated by Sony herein or otherwise by giving Provider notice, then:
 - (i) Provider shall allow access to any representative of the local, State or Federal government, or any agency thereof, to Provider's plants, materials, and process, and relevant books and records in connection with the goods and services covered hereby.
 - (ii) All goods and services covered hereby are subject to inspection by the governmental unit, and the governmental unit, as well as the Sony, has the right to reject any goods or services found to be non-conforming or defective.
 - (iii) The following are hereby made a part of this Purchase Order as if fully set forth herein: (i) the provisions of the Equal Opportunity clause set forth in 41 CFR 60-4(a) pursuant to the requirements of Executive Order 11246; (ii) applicable contractual requirements of the Rehabilitation Act of 1973 as set forth in 41 CFR 60-741.4; (iii) applicable contractual requirements of the Vietnam Era Veteran Readjustment Assistance Act of 1974 as set forth in 41 CFR 60-250.4; (iv) applicable contractual requirements of Public Law 95-507 concerning the utilization and employment of Small Business, Small Disadvantaged Business, and Women-Owned Business Concerns; and (v) any law, order or regulatory provision issued in addition, supplement or replacement of the foregoing. If this Purchase Order totals \$50,000 or more and Provider has 50 or more employees, Provider will develop a written Affirmation Action Compliance Program as required by 41 CFR 60.1 and file an annual Affirmation Action Report to the U.S. Government pursuant to 41 CFR 60-1.7.
- (g) Any applicable Federal Acquisition Regulations ("FAR") clauses or DOD FAR Supplement clauses that are required by the U.S. Government to be inserted into subcontracts will be deemed to be made a part of this Purchase Order.
- (h) To the extent that Provider is the importer or consignee of products shipped or exported to the United States that will be purchased subject to this Purchase Order, Provider warrants (1) that, as of the date of purchase and sale of the products, Provider has implemented and complied with the most current supply chain security guidelines ("Guidelines"), as may be amended or supplemented from time to time, published by the Department of Homeland Security and any applicable federal authorities responsible for the promulgation of such Guidelines; and, (2) that, unless otherwise stated herein, Provider is responsible for the payment of all applicable duties, taxes, and fees, and that Provider has complied with all applicable federal, state, and local laws governing the importation of articles originating and/or shipped from outside the United States.
- (i) Provider represents and warrants that (i) no software, firmware, hardware, data or product furnished to Sony hereunder creates, uses, or places on any device, system or computer any hidden or cloaked files or rootkits and (ii) any software installed to a user's computer as a result of the use of Provider's product or service shall be visible using ordinary system tools (e.g., Windows Explorer) and shall be readily removable using ordinary system tools (e.g., the Windows "Add/Remove Programs" utility).

7. Indemnity

- (a) Provider and its successors and assigns shall defend, indemnify, and hold Sony, its parents, subsidiaries, and affiliates, and the officers, directors, employees, agents, representatives, and subcontractors of each of them, harmless from and against any and all claims, suits, liabilities, costs, expenses, and damages (including attorneys' and experts' fees and court costs) arising from or incident to any claim that any goods and/or services covered by this Purchase Order as and when delivered to Sony constitutes an infringement or misappropriation of any intellectual property right. Should such goods and/or services be adjudicated to be an infringement or misappropriation, Provider will, at its own cost and expense, either procure for Sony and all persons who purchase any such goods and/or services from Sony or thereafter use the Products and/or Services, the right to continue selling and/or using same, or to replace same with non-infringing products and/or services, or to modify same so that such products or services become non-infringing, provided that such modification does not materially alter the products and/or services, characteristics, efficacy, dimensions or increase the cost of its use, operation, or maintenance.
- (b) Provider and its successors and assigns shall defend, indemnify, and hold Sony, its parents, subsidiaries, and affiliates, and the officers, directors, employees, agents, representatives, and subcontractors of each of them, harmless from and against any and all claims, suits, liabilities, costs, expenses, and damages (including attorneys' and experts' fees and court costs) arising from or incident to (i) its breach of any representation or warranty made under this Purchase Order or (ii) the use, operation or possession of any of the goods and/or services covered by this Purchase Order.

8. Assignment

Provider shall not assign this Purchase Order or any part thereof, without the prior written consent of Sony, which may be delayed or withheld by Sony for any or no reason and which, if given, shall not release Provider from its obligations and liabilities hereunder. In the event that Sony allows Provider to assign certain of its obligations to a subcontractor, Provider shall still be responsible for the quality of any work performed on its behalf by subcontractor and will be responsible for payment and all costs charged by such subcontractor.

9. Modifications

No change or other modification to any of the terms, conditions, prices, or delivers are valid, unless preapproved in writing and signed by Sony's authorized representative. Any acknowledgment form or other form of Provider containing terms and conditions of sale submitted by Provider shall not have the effect of modifying the terms and conditions hereof. Sony will consider Provider's request for changes only if such requests are in writing and are directed to specific clauses in this Purchase Order.

10. Governing Law and Dispute Resolution

The interpretation or performance of this Purchase Order shall be construed in accordance with and governed by the laws of the State of Delaware and the Uniform Commercial Code as enacted therein. Any dispute relating to this Purchase Order shall be determined by binding arbitration in San Diego, California, pursuant to JAMS' Streamlined Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction. This arbitration clause shall not preclude parties from seeking equitable relief or other provisional remedies in aid of arbitration from a court, provided such action is brought exclusively before a court of appropriate jurisdiction in San Diego, California. In the event of any dispute related to this Purchase Order, the prevailing party will be entitled to recover all its expenses related to such dispute including reasonable attorneys' and experts' fees and court costs. **THE PARTIES WILL NOT RAISE IN CONNECTION HERewith, AND HEREBY WAIVE, ANY DEFENSES BASED UPON THE VENUE, THE INCONVENIENCE OF THE FORUM, THE LACK OF PERSONAL JURISDICTION, IN ANY ACTION OR SUIT ARISING FROM SUCH DISPUTE.**

11. Proprietary & Confidential Information

- (a) Provider shall hold in strict confidence all information disclosed to Provider by Sony and make no use of such information, including the existence and terms and conditions of this Purchase Order, without Sony's prior written consent which may be delayed or withheld for any or no reason.
- (b) Provider acknowledges that, among other things, any and all employee information or personal data of such employees furnished to Provider by Sony or learned by Provider as a result of its performance of services pursuant to this Purchase Order, constitutes confidential information of Sony, and Provider shall not use any such information for any purpose other than such uses as are approved in advance in writing by Sony or which are necessary to Provider's performance hereof.

12. Liability

All goods and services covered by this Purchase Order shall be subject to Sony's acceptance as to quality and conformance to specifications.

13. Assignment of Materials

Provider hereby gives, assigns and conveys, in perpetuity, to Sony its entire right, title and interest, including copyright, in and to all works made for hire covered by this Purchase Order created or acquired by Provider for Sony in connection herewith, including, but not limited to, photographs, copies, drawings, musical scores, text, diagrams, plans, literature, models and prototypes, and appoints Sony as Provider's attorney-in-fact with a limited power to execute assignments of such right, title and interest as Sony may determine. Provider shall provide to Sony all copies of those works made for hire. Provider warrants and represents to Sony that it is the creator of such works made for hire, that they are original with Provider, and that neither they nor this assignment infringes or otherwise conflicts or interferes with any rights whatsoever of any third party.

14. Ethics Guidelines

Sony's employees and members of their immediate families may not have any financial interest, direct or indirect, in or solicit or accept anything of value from any business supplying goods or services to it, including any arrangement to receive commissions, royalties, property, loans, profits or shares in such business, and shall communicate this to its own employees and promptly give Sony notice thereof by calling Sony's Ethics Helpline.

15. Insurance

Throughout the term of this Agreement, Provider shall maintain the following coverages with carriers having a Best's rating of A- VII or above: (i) Workers' Compensation, minimum statutory limits, and Employer's Liability with limits of \$1,000,000/ accident, \$1,000,000/ disease each employee, \$1,000,000/ disease aggregate; and (ii) General Liability, including blanket contractual and products liability, with minimum limits of \$2,000,000 per occurrence, \$4,000,000 aggregate.

16. Limitation of Liability

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR LOSSES WHICH MAY BE SUFFERED BY EITHER OF THEM IN CONNECTION WITH THE SUBJECT MATTER HEREOF. SUCH DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, COMPENSATION, REIMBURSEMENT OR DAMAGES ON ACCOUNT OF PRESENT OR PROSPECTIVE PROFITS, EXPENDITURES, INVESTMENTS OR COMMITMENTS, WHETHER MADE IN THE ESTABLISHMENT, DEVELOPMENT OR MAINTENANCE OF BUSINESS REPUTATION OR GOODWILL.

17. Severability

In the event any term or condition of this Purchase Order is held to be invalid or otherwise unenforceable by a court of competent jurisdiction, such term or condition shall be enforced to the extent possible consistent with the stated intention of the parties, or, if incapable of such enforcement, will be deemed to be deleted from this Purchase Order, while the remaining provisions of this Purchase Order will remain in full force and effect.