

PURCHASE ORDER TERMS AND CONDITIONS

1. Definitions.

“Pacific Lasertec” means Pacific Lasertec, LLC, a Delaware Limited Liability Company.

“Affiliate” means, with respect to a Party, a corporation or any other entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Party.

“Authority” means (a) any supranational, multinational, national, federal, provincial, territorial, regional, state, county, municipal, local or other governmental or public department, commission, council, central bank, court, arbitral body with legal jurisdiction, commission, board, tribunal, bureau, agency or instrumentality, whether domestic or foreign, (b) any subdivision or authority of any of the foregoing, or (c) any quasi-governmental or private body exercising any regulatory, expropriation or tax authority under, or for the account of, any of the above.

“Delivery Date” means the deadline, delivery or performance date for the Products in the Order Details or Supplemental Agreement.

“Goods” means any goods, deliverables, software as a product, and/or any other materials ordered by Purchaser from Seller pursuant to the Purchase Order.

“Laws” means (a) all constitutions, treaties, laws, statutes, codes, ordinances, orders, decrees, rules, regulations and municipal by-laws, whether domestic, foreign or international, (b) all judgments, orders, writs, injunctions, decisions, rulings and decrees of any Authority, (c) all policies, voluntary restraints, practices and guidelines of, or contracts with, any Authority which, although not actually having the force of law, are considered by such Authority as requiring compliance as if having the force of law, and (d) all industry guidelines, policies, codes of practice and standards relating to, or having jurisdiction over, any Product.

“Order Details” means any of the following details on the face of the Purchase Order: Product description, quantity, price, Delivery Date, Delivery Point, delivery terms, and payment terms.

“Parties” means Purchaser and Seller, and “Party” means Purchaser or Seller, as applicable.

“Products” means Goods and/or Services, as applicable.

“Purchase Order” means the applicable written or electronic purchase order issued by Purchaser to Seller for Products, including the Order Details and these Terms and Conditions.

“Purchaser” means Pacific Lasertec or the Pacific Lasertec Affiliate that issues the Purchase Order for Products.

“Purchaser Confidential Information” means (a) the existence and terms of any Purchase Order and (b) all information provided by Purchaser or its Affiliates to Seller in writing, orally, visually and/or in another form or any information seen or heard while on the premises of Purchaser or its Affiliates, including, information relating to products, customers, suppliers, data, processes, prototypes, samples, plans, marketing plans, reports, forecasts, technical, financial, commercial and personal information, research, research results, strategies, and trade secrets. Purchaser Confidential Information shall not include any information which (i) is known to Seller before receipt thereof in connection with the Purchase Order, as evidenced by Seller’s written records; (ii) is disclosed to Seller without restriction by a third party and that third party has a legal right to make such disclosure; (iii) is or becomes part of the public domain through no fault of Seller; or (iv) is independently developed by or for Seller without use of the Purchaser Confidential Information, as evidenced by Seller’s written records.

“Seller” means the supplier or service provider to which Purchaser issues the Purchase Order.

“Services” means any services ordered by Purchaser from Seller pursuant to the Purchase Order.

“Supplemental Agreement” means any separate supply, services or other written agreement signed by Purchaser and Seller governing the purchase of Products.

“Terms and Conditions” means these terms and conditions.

2. Acceptance of Terms. Purchaser’s order for Products is expressly conditioned upon Seller’s acceptance of the Purchase Order. If Seller ships or delivers any Goods or performs any Services, Seller will be deemed to have agreed to the Purchase Order. With the exception of any Supplemental Agreement, other terms and conditions (including any terms and conditions unilaterally proposed by Seller) are hereby expressly rejected by Purchaser, and failure by Purchaser to object to any other term or condition, and/or Purchaser’s acceptance of any Products, shall not be deemed acceptance of Seller’s terms or conditions. If the Purchase Order is not acceptable, SELLER SHALL ADVISE PURCHASER IN WRITING upon receipt of the Purchase Order.

3. Order of Precedence. In the event of a conflict between the Order Details and the Terms and Conditions, the Order Details will prevail. The rights and obligations under the Purchase Order will be complementary and additive to the rights and obligations under the Supplemental Agreement, provided that, in the event of a conflict between the Purchase Order and a Supplemental Agreement, the Supplemental Agreement will prevail.

4. Cancellation. Purchaser may at any time terminate, cancel or suspend all or any part of the Purchase Order without cause or for cause immediately upon written notice to Seller and without incurring any liability to Seller. Any such termination or cancellation shall not affect any rights or obligations that have previously accrued.

5. Price. The price for any Product must be equal to or less than the price indicated in the Order Details unless otherwise agreed to by Purchaser in writing. Prices shall cover all activities required to deliver the Goods or perform the Services.

6. Payment Terms. Purchaser will make undisputed payments for Products that meet all applicable requirements set forth in the Purchase Order or any Supplemental Agreement within forty five (45) days after the later of: (a) receipt of the Goods or completion of performance of the Services identified in the Purchase Order or Supplemental Agreement; (b) receipt of a complete invoice; and (c) if Goods, receipt of appropriate shipping documents. Purchaser may withhold payment of any amounts that it disputes in good faith. Payment of an invoice shall not constitute acceptance of any Products, and the invoice will be adjusted for any errors, shortages and defects. Any billing dispute will not be cause for Seller's non-delivery of Goods or non-performance of Services.

7. Reimbursement of Expenses. Any reimbursement of Seller's expenses must be agreed upon in advance in writing by Purchaser; any pre-approved travel expenses will be subject to Purchaser's service provider travel guidelines.

8. Setoff. Purchaser may deduct any amount owed by Seller to Purchaser or its Affiliates from any amount payable by Purchaser or its Affiliates.

9. Tax. Each Party will be responsible, as required under applicable Law, for identifying and paying all taxes that are imposed on that Party with respect to the transactions and payments under the Purchase Order. Seller may charge, and Purchaser will pay, applicable sales, use, value added and services taxes ("Indirect Taxes") that Seller is legally obligated to collect from Purchaser; provided, however, that Seller will not collect, and Purchaser will not pay to Seller, any Indirect Taxes for which Purchaser furnishes Seller with an exemption certificate or a direct payment certificate for which Purchaser may claim an available exemption from such Indirect Taxes. Notwithstanding any other language herein, where any payment payable by Purchaser to Seller pursuant to the Purchase Order is subject to any withholding or similar tax, Purchaser shall be entitled to pay the applicable withholding or similar tax to the appropriate Authority and deduct the amount paid from the amount due to Seller.

10. Representations and Warranties.

- (a) Seller covenants, represents and warrants that:
- (i) it will comply with (A) all applicable Laws, including those related to customs, anti-boycott, trade embargo, import/export control, immigration, privacy, labeling,

environmental, hazardous materials, restricted substances, health, safety and labor, including child welfare, wage and hour, the Anti-Kickback Law (42 USC 1320a-7b) and similar applicable Laws, and (B) applicable policies while on Purchaser's or its Affiliates' premises;

(ii) it will obtain all permits and approvals as necessary in connection with its sale of Goods or performance of Services;

(iii) the Goods (A) will be safe, free from defects in manufacturing, design, workmanship, and materials; (B) will not be adulterated or misbranded; (C) will conform with applicable requirements, specifications and quality standards identified in the Purchase Order and/or Supplemental Agreement; (D) will be free and clear of all liens, claims and encumbrances and other claims against title; (E) will be of merchantable quality, new and unused (unless otherwise specified in the Purchase Order and/or Supplemental Agreement), and fit and suitable for the purposes intended by Purchaser; (F) and any Work Product (as defined below in Section 24) will not infringe or misappropriate any third party's U.S. or foreign patent, trademark, trade name, service mark, copyright, trade secret or other intellectual property rights; (G) will not contain, at the time of delivery to Purchaser or its Affiliates, any computer virus or other similar harmful, malicious or hidden program; and (H) will comply with all other requirements under applicable Laws;

(iv) it will perform all Services in a competent, professional and workmanlike manner, and it has the required qualifications and expertise to perform

(b) Anti-corruption. Seller covenants, represents and warrants that: (i) it is now in compliance with and shall continue to comply with, all applicable Laws related to anti-corruption; (ii) neither it nor any persons employed or acting on its behalf (including employees, directors, agents, consultants, or subcontractors) will (A) (1) give, offer or promise to give, or (2) accept, receive, or agree to accept or receive, directly or indirectly, anything else of value in any form to any person to secure a business advantage, to obtain or retain a business advantage, or to direct business to, or away from, any person or entity; or (B) provide any facilitation, expediting or grease payment to any official or employee of an Authority to expedite or secure the performance of routine Authority actions; and (iii) neither it nor any owner, partner, officer, director or employee of Seller or of its Affiliates (collectively, "Representatives") is an official or employee of any Authority. Seller will notify Purchaser in writing prior to any Representative becoming an official or employee of an Authority, and such individual will not perform Services without Purchaser's prior written consent.

(d) Conflict Minerals. Seller covenants, represents and warrants that it shall, at its sole cost and expense, promptly comply with all reasonable information requests from Purchaser, in the form and format requested, regarding the

source and chain of custody of any Conflict Minerals present in Goods. Seller shall conduct reasonable due diligence and inquiry to gather such information, and certify that, to Seller's best knowledge, such information is true, accurate and complete. Seller shall immediately contact Purchaser in the event of any changes to such information. "Conflict Minerals" means columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives, which are limited to tantalum, tin, and tungsten as further defined in Section 1502 of the U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act and its implementing regulations.

11. Breach of Warranty. In the event a Product fails to meet the warranties above or otherwise fails to conform to the Terms and Conditions or any Supplemental Agreement, Purchaser may at its option: (a) request a full refund of any amount paid and cancel any outstanding Purchase Orders for the non-conforming Products, and, if Goods, return them to Seller, at Seller's sole cost and expense; or (b) request that Seller repair or replace non-conforming Goods or re-perform non-conforming Services as quickly as reasonably possible, as Purchaser directs, at Seller's sole cost and expense.

12. Delivery Terms. Goods shall be shipped Ex-Works (Incoterms 2010) at the origin point specified in the Order Details or otherwise specified in writing by Purchaser ("Delivery Point").

13. Title. Title to and ownership of the Goods shall transfer to Purchaser upon delivery to carrier unless otherwise specified in writing by Purchaser.

14. Shipping. Seller shall ensure that each shipment of Goods delivered contains, as applicable, a reference to the Purchase Order number, a packaging list containing the quantity and Purchaser's part number as indicated in the Order Details, a valid Certificate of Origin, a valid Certificate of Analysis or Certificate of Conformance with the related specifications and Seller's product code / part number, and the tariff classification code number; Purchaser reserves the right to refuse delivery of any Goods without these documents. Shipments must equal the quantity ordered, unless otherwise agreed by Purchaser in writing.

15. Cargo Safety & Security Requirements. Seller will package, load and ship the Goods in accordance with any requirements provided by Purchaser. In the absence of such requirements, Seller will package, load and ship the Goods in a manner sufficient to prevent damage to, or loss of, the Goods during shipment and in accordance with applicable Laws regarding dangerous goods transportation.

16. Composition Data. For any Product, including, but not limited to, any substance, preparation or article (including any electric or electronic equipment or sub-assembly or component part thereof), supplied by Seller, Seller must, at its sole cost and expense, provide promptly upon request applicable safety data sheets, composition data, chemical reports, data composition or similar technical or other supporting documentation indicating the chemical composition of the Product

17. Time of the Essence. Time is of the essence for the supply of all Goods and the performance of all Services. Seller will furnish sufficient resources, including labor, material, and equipment, to meet the Delivery Date, at no additional charge to Purchaser.

18. Delivery Date Compliance. If Seller does not deliver the Goods or perform the Services by the applicable Delivery Date, Seller will be liable to Purchaser for any losses, including cover of damages, and, if Purchaser elects not to cancel, upon Purchaser's request, Seller will expedite delivery or performance at Seller's sole cost and expense. If Seller delivers the Goods more than ten (10) business days earlier than Purchaser's requested Delivery Date, Purchaser may refuse Delivery and/or return Goods to Seller at Seller's expense in its sole discretion.

19. Indemnification. Seller shall, at its own cost and expense, defend, indemnify and hold harmless Purchaser and its Affiliates and their respective employees, directors, officers, agents and contractors, from and against any and all losses, liabilities, damages, costs and expenses (including attorneys' fees and expenses), suits, proceedings or claims arising out of or in any way related to: (a) Seller's negligence, recklessness, willful misconduct, or intentional or wrongful conduct, including in the design, development, manufacture or shipment of any Product; (b) Seller's breach of the Purchase Order or any Supplemental Agreement; (c) any actual or alleged infringement or misappropriation of any U.S. or foreign patent, trademark, trade name, service mark, copyright, trade secret or other intellectual property rights with respect to a Product; or (d) death of, or injury to, any person, damage to any property, or any other damage or loss, suffered by any person or party, resulting or claimed to result, in whole or in part, from (i) any actual or alleged defect in a Product, whether latent or patent, including actual or alleged improper construction or design, (ii) any failure to conform to the Product specifications, or with any warranty, or (iii) any claim of strict liability (or similar legal theory) or tort related to any Product.

20. Insurance. Seller will purchase and maintain, at its own cost and expense, commercial insurance of the types and minimum amounts as follows with licensed insurers with a minimum A.M. Best rating of "A-": (a) U.S.\$2,000,000 per occurrence of commercial general liability insurance, including products liability and contractual liability; (b) workers compensation insurance as required by applicable Law and U.S.\$1,000,000 per occurrence for employers liability coverage; (c) in the event consulting Services are provided, U.S.\$2,000,000 per claim for professional liability insurance. With respect to requirements in clauses (a) and (c), Seller shall include Purchaser and its Affiliates as additional insureds if so requested. Seller will provide to Purchaser upon request, certificates of insurance evidencing the required insurance and terms. Seller will provide thirty (30) days' advance notice in the event of any cancellation, non-renewal, or material modifications of this required insurance. Purchaser's acceptance of certificates of insurance providing for other or different coverage than required in this section shall in no event be deemed a waiver of any provisions of the Terms and Conditions. The

minimum insurance requirements set forth in this section do not in any way limit any indemnity obligation or other liability of Seller.

21. Limitation of Liability. PURCHASER AND ITS AFFILIATES WILL NOT BE LIABLE TO SELLER OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING LOST TIME, LOST PROFITS OR LOST SALES) ARISING FROM ANY TRANSACTIONS UNDER THE PURCHASE ORDER OR ANY SUPPLEMENTAL AGREEMENT.

22. Confidential Information. Seller shall not use any Purchaser Confidential Information except to the extent necessary to carry out its obligations hereunder. Seller shall keep Purchaser Confidential Information confidential and not disclose Purchaser Confidential Information to any third party unless compelled to do so by judicial or administrative process or, in the opinion of counsel, by the requirements of applicable Law or with Purchaser's prior written consent. Seller will treat all Purchaser Confidential Information with the same degree of care as Seller accords its own confidential information, but in no event with less than reasonable care.

23. Publicity. Seller will not disclose the existence or terms of the Purchase Order or a Supplemental Agreement or use the name of Pacific Lasertec or its Affiliates' names, logos or other indicia in any publicity or advertising, announcement, brochure, customer list or website, without prior written consent from Pacific Lasertec or its designee.

24. Ownership of Developments. All reports, data, communications, material, information, deliverables, inventions, discoveries, or improvements reduced to practice, made or developed by Seller in connection with the Purchase Order ("Work Product") shall be promptly disclosed to, and be the sole property of, Purchaser. Seller hereby assigns to Purchaser all right, title and interest in Work Product without any obligation on Purchaser to pay royalties or other remuneration for the Work Product. To the extent the foregoing is copyrightable, it shall be deemed a "Work Made for Hire" under the U.S. Copyright Act of 1976 or any applicable foreign equivalent and shall become and remain the sole property of Purchaser, if not, then Seller hereby assigns such Work Product to Purchaser.

25. Pre-existing Intellectual Property. Notwithstanding the above, neither Purchaser nor Seller shall acquire ownership of any materials, information, know-how, tools, models, methodologies, techniques and/or other intellectual property owned by the other Party, the other Party's respective Affiliates or licensors independent of the Purchase Order (collectively, "Pre-existing Intellectual Property"). Purchaser's unique part numbers and/or model numbers are proprietary designations and shall be considered Pre-existing Intellectual Property of Purchaser.

26. License. Seller hereby grants to Purchaser and its Affiliates a non-exclusive, irrevocable, royalty-free worldwide license to use, modify, and enhance the Pre-existing Intellectual Property (including the right to

sublicense) to the extent that such license is required to enable Purchaser and its Affiliates to make use of or otherwise exploit the Products, including Work Product.

27. Audit. To verify Seller's compliance with the Purchase Order, Purchaser and its representatives will have the right, at reasonable times and places and upon reasonable notice, to (a) inspect all facilities, resources and procedures employed by Seller in manufacturing or providing the Products; and (b) examine all books and records relating to the Products.

28. Remedies Not Exclusive. The rights and remedies of Purchaser provided under these Terms and Conditions are cumulative and not exclusive and are in addition to any other rights and remedies provided at Law or in equity or in any Supplemental Agreement.

29. Independent Contractor. The relationship of the Parties is that of independent contractors. The Parties will not be deemed partners or joint ventures, nor will one Party be deemed an agent or employee of the other Party. Neither Party has any express or implied right to assume or create any obligation on behalf of, or in the name of, the other Party or to bind the other Party to any contract, agreement or undertaking with any third party, and no conduct of a Party shall be deemed to imply such right.

30. Fraud and Abuse. The Parties intend and acknowledge that (a) neither the Purchase Order nor any payment made under it, is in exchange for any explicit or implicit agreement or understanding that Seller refer, prescribe, recommend, use or purchase any products of Purchaser or its Affiliates, and (b) the total payment for the Products represents the fair market value and has not been determined in any manner that takes into account the volume or value of any referrals or business between Seller and Purchaser or its Affiliates.

31. Assignment. Seller shall not assign the Purchase Order without Purchaser's prior written consent, which Purchaser may withhold in its sole discretion, and any attempted assignment without Purchaser's consent will be void. Any permitted assignee shall assume in writing all obligations of Seller under the Purchase Order and any Supplemental Agreement; provided, however, that Seller shall remain primarily liable for such obligations. Purchaser may assign the Purchase Order without the consent of Seller. The Purchase Order will be binding upon and inure to the benefit of the permitted assigns of each Party.

32. Subcontracting. Seller will not subcontract or delegate any duty under the Purchase Order without Purchaser's prior written consent, which Purchaser may withhold in its sole discretion. Seller will remain responsible and liable for the acts and omissions of any subcontractor as if such activities had been performed by Seller.

33. Third Party Beneficiary. Purchaser Affiliates are intended third party beneficiaries of these Terms and Conditions. Nothing in these Terms and Conditions is intended to, or shall, confer any right, benefit or remedy of

any nature whatsoever upon any third party other than Purchaser Affiliates.

34. Entire Agreement. The Purchase Order and, if applicable, any Supplemental Agreement, contains the entire agreement between the Parties with respect to its subject matter, and supersedes all previous agreements, negotiations, discussions, writings, understandings, commitments and conversations with respect to such subject matter.

35. Amendment. Any modification to the Purchase Order must be in writing and signed by an authorized representative of each Party.

36. Governing Law. The Purchase Order shall be governed by the laws of the State of California, U.S., without regard to its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

37. Venue. Subject to the Dispute Resolution section below, for any legal action relating to the Purchase Order, the Parties consent to the exclusive jurisdiction and venue of the federal courts of the Southern District of California and, if there is no jurisdiction in federal court, to the exclusive jurisdiction and venue of the state courts of San Diego County, California, U.S.

38. Dispute Resolution. Any controversy or claim arising out of or related to this Agreement or the breach thereof shall be resolved whenever possible by negotiations between the Purchaser and Seller. If such negotiations do not resolve the controversy or claim, then the claim or controversy shall be submitted to the International Court of Arbitration of the International Chamber of Commerce for binding arbitration under the Rules of Arbitration of the International Chamber of Commerce (the "ICC Rules"). The arbitration proceedings shall be held in San Diego County, California, USA, in the English language. There shall be a single arbitrator who shall be selected in accordance with the ICC Rules. Judgment upon the arbitration award or an application for a judicial acceptance of the arbitration award or an order of enforcement of the arbitration award, as the case may be, may be entered in or obtained from any court having jurisdiction. Costs of the arbitration proceeding shall be borne equally by the Company or Companies, on the one hand, and Distributor, on the other hand, except that each Party shall bear all of its own attorneys' fees and other legal costs and expenses.

39. Injunctive Relief. Notwithstanding the Dispute Resolution section above, Purchaser may seek injunctive relief by a court of competent jurisdiction in accordance with the Venue section above.

40. Interpretation. Any use of the word "including" in these Terms and Conditions means "including without limitation." Unless otherwise specified in a particular case, the word

"days" refers to calendar days. The headings of the sections of these Terms and Conditions have been added for the convenience of the Parties and shall not be deemed a part hereof.

41. Notice. Any notices required or permitted under the Purchase Order will be in writing, will refer specifically to the Purchase Order, and will be sent by recognized national or international overnight courier or registered or certified mail, postage prepaid, return receipt requested, or delivered by hand to the address set forth in the Purchase Order. Notices under the Purchase Order will be deemed to be duly given: (a) when delivered by hand; (b) two days after deposit with a recognized national or international courier; or (c) on the delivery date indicated in the return receipt for registered or certified mail. A Party may change its contact information immediately upon written notice to the other Party in accordance with this section.

42. Change and Recall Notices. Seller must immediately notify Purchaser in writing of any changes that may impact or impacts the Goods, including, but not limited to, changes (a) in the source of the Goods if obtained from a third party by Seller, (b) in the manufacturing process or site changes, or (c) that may affect the Goods' quality, form, fit or function. Seller must immediately notify Purchaser in writing of any recall that impacts the Goods. Seller will reimburse Purchaser for any losses, damages, liabilities, costs and expenses incurred by Purchaser or its Affiliates in connection with any such changes that Purchaser was not notified of or any such recall.

44. Waiver. Any waiver by Purchaser of any rights or obligations under the Purchase Order must be in writing and signed by Purchaser's authorized representative, and such waiver will not apply to any other rights or obligations. Any acceptance or payment of all or any part of the purchase price for the Products by Purchaser does not constitute a waiver of any of the rights of Purchaser.

45. Severability. If any provision of the Terms and Conditions or Supplemental Agreement is held to be invalid or unenforceable, the other provisions will not be affected by such invalidity or unenforceability.

46. Survival. All provisions of the Purchase Order that by their nature should survive termination or cancellation, including those regarding audit, indemnification, confidentiality, and warranties, as well as any accrued obligations, will survive any termination or cancellation of the Purchase Order; warranties survive any delivery or performance by Seller or inspection, acceptance or payment for the Products by Purchaser.