



PURCHASE TERMS AND CONDITIONS

Upon acceptance of this Purchase Order Terms and Conditions (this "purchase order"), Seller agrees to the following terms and conditions, and Seller further agrees that the provisions under this purchase order, including said terms and conditions, and including all documents incorporated by reference herein, shall constitute the entire agreement by and between the parties hereto and shall supersede all prior agreements (whether verbal or written) and negotiations relating to the subject matter hereof. Acceptance may be made by written notice to 1366 Technologies Inc. ("1366").

Warranty

Seller warrants that all items ordered here under shall be merchantable and free from defects in workmanship and materials and shall strictly conform to the applicable specifications, drawings and approved samples, if any, including performance specifications and shall be suitable for the intended purpose as stated herein. These warranties shall be in addition to any other warranties, whether express, implied or statutory. All warranties shall survive inspection, acceptance and final payment by 1366. All warranties shall extend to 1366, its customers and subsequent purchasers or owners of the items or end products of which they are part. Seller agrees, at its expense, to defend or assist in the defense of any action in any court against 1366, its customers or subsequent owners at 1366's option insofar as such action is based upon alleged facts which amount to be a breach of the foregoing warranties. Seller agrees to indemnify and hold harmless 1366, and its customers or subsequent owners, for any and all liability, loss, costs and expenses, including costs of tests performed by 1366, attorneys' fees and costs of litigation resulting from any breach of Seller's warranty obligations. All warranties shall be construed as conditions as well as warranties and shall not be deemed to be exclusive.

Packing: Shipping and Risk of Loss

No charges will be allowed for boxing, wrapping or cartage or storage unless so specified in this purchase order. Seller shall pack or otherwise prepare all articles for shipment so as to secure the lowest transportation rates consistent with timely delivery, meeting carriers requirement and safeguarding against damages from weather, transportation and storage. Risk of loss on all property shipped by Seller to 1366 shall pass to 1366 at the point of destination.

Delivery

Time is of the essence in the performance of this purchase order. Seller, shall not, without 1366's prior written approval, manufacture or procure materials in advance of 1366's normal flow time or deliver in advance of schedule. In the event of termination or change, no claim shall be allowed for any such manufacture or procurement in advance of such normal flow time unless there has been such prior written consent of 1366. 1366 may, at its discretion, either retain property received in advance of delivery schedule or return to Seller, at Seller's risk and expense. If retained, time for payment and discount shall be based upon required delivery schedule dates.



PURCHASE TERMS AND CONDITIONS

Payment

Invoices shall be submitted in duplicate and shall contain the purchase order number, item number, and description of items or services, sizes, quantities, unit price and extended totals. Invoices submitted here under shall be paid within forty-five (45) days after receipt of invoices and final acceptance of delivered items by 1366. Any adjustments in Seller's invoices due to shortages, late delivery, rejections or other failures to comply with the requirements of this order, may be made by 1366 before payment. Payment does not constitute final acceptance.

Inspection

Seller shall permit 1366's inspectors and/or 1366's customers to have access to Seller's plant at all reasonable hours for the purpose of inspection of any items or work in progress covered by this purchase order. Seller, without additional cost to 1366, shall provide all reasonable facilities and assistance for the safety and convenience of such inspectors. At the time of inspection, Seller shall make available to the inspectors, samples of all drawings, specifications in process, preservation and packing data applicable to the items ordered hereunder. If requested, Seller shall promptly furnish to 1366 an inspection certificate. Supplies which do not meet specifications may be returned by 1366 to Seller, at Seller's expense, provided however, that 1366 may, at its sole discretion, retain said samples and make such expenditures for improvements, changes and alterations to said supplies as may be deemed necessary, in order to bring them into conformity with specifications, at Seller's sole expense and Seller shall promptly reimburse 1366 for any such expenditures. All items shall be subject to final inspection and acceptance at destination point, notwithstanding any prior payment, inspection and acceptance. 1366 may, at its option, (1) hold the rejected items for Seller's instructions at Seller's risk, (2) return them to Seller, at Seller's expense, or (3) terminate this order in accordance with the Termination for Cause provision. Seller shall promptly reimburse 1366 for any and all damages sustained by 1366 as the result of said failure of said item to meet specifications. 1366 reserves the right to charge Seller any and all costs of inspection and tests when items offered for final inspection and acceptance do not comply with the requirements of this purchase order. No replacement or correction of rejected items shall be made unless otherwise specified on 1366's return material orders. Seller shall credit 1366 account for the value of the items rejected plus the cost of packaging, inbound freight and handling.

Termination Without Cause

1366 may terminate without cause the work to be performed hereunder in whole or in part, at any time, by written notice to Seller. Such notice shall state the extent and effect or date of such termination and, upon receipt thereof, Seller shall comply with the directions pertaining to work stoppages there under and the placement of future orders or subcontracts hereunder. The parties shall thereupon in good faith attempt to agree by negotiation within a reasonable time upon the amount of reimbursement, if any, to be paid to Seller or 1366 for such termination.



PURCHASE TERMS AND CONDITIONS

Default

1366 shall be entitled to terminate any and all contracts (including, but not limited to, this or any other purchase order) between the parties in the event that 1366 receives any notice (written or oral) if the Seller: (i) defaults in or commits any breach of its obligations to 1366; or (ii) commits any act of bankruptcy; or (iii) files a petition in bankruptcy or has a petition in bankruptcy (led against it (voluntary or involuntary)); or (iv) has a receiver, trustee or custodian appointed or takes possession of any of Seller's assets; or (v) fails to deliver the items in accordance with the delivery schedule specified herein or any written extension thereof; or (vi) fails to replace, repair or otherwise correct any defects with respect to items in accordance with the provisions of the Inspection as set forth above.

In the event that this purchase order provides for the furnishing of items in more than one lot, 1366 may terminate the entire order. In the event of termination pursuant to an event of Default, 1366, in addition to its right of termination as set forth above, may (i) purchase similar items elsewhere on such terms and in such manner as 1366 may deem necessary, in its sole and absolute discretion, and the Seller shall be liable to 1366 for any excess costs occasioned by 1366 thereby; or (ii) provide such materials, supplies, equipment and labor as may be necessary to complete said work, pay for same and deduct the amount so paid for money there or thereafter due Seller; or (iii) order all work under this purchase order stopped immediately and enter upon the premises and take possession, for use in completing the work of all the materials, regardless of stage of completion, supplies, tools, equipment and appliances of the Seller thereon and complete the work, or have same completed by others, and be liable to Seller for no further payment under this purchase order, until final payment is due, and then only if, to the extent that the unpaid balance of the amount to be paid under this purchase order exceeds the damages and expenses of 1366 in finishing the work; or (iv) require the Seller to transfer title and deliver to 1366, as directed by 1366, any (x) completed supplies and (y) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Seller has specifically produced or acquired for the terminated portion of this purchase order. Upon direction of 1366, the Seller shall also protect and preserve property in its possession in which 1366, or 1366 customers, have an interest.

Failure of 1366 to enforce any right under this clause shall not be deemed as a waiver of any right hereunder. The rights and remedies of 1366 under this clause shall not be exclusive and are in addition to other rights and remedies provided by law or equity or under the terms of this purchase order.

Changes



PURCHASE TERMS AND CONDITIONS

1366 shall have the right at any time to make changes in the drawings, designs, specifications, quantities, delivery schedules, shipments or packaging in place of inspection or point of delivery of any items of this purchase order. No change shall be effective unless authorized in writing by 1366. In the event such changes result in the delay or increase or decrease in expense to Seller, Seller shall notify 1366 immediately and negotiate an equitable adjustment, provided, however, that Seller shall, in all events, proceed diligently to perform the work or services or supply the items contracted for under this purchase order as so changed. No change by Seller for such equitable adjustment shall be valid unless submitted to 1366 within thirty (30) days from the date of such change. 1366 shall have the right to review or audit Seller's records in the event of such a request.

Indemnity for Infringement

The Seller shall, at its expense, indemnify and hold harmless 1366, its customers and all persons claiming under 1366, against any suit or suits for the infringement of any patent, copyright or trademark or any misappropriation of trade secrets, and shall defend indemnity the aforesaid parties against all damages, costs and expenses, including all legal expense, arising there from by reason of the manufacture, sale or the natural and intended use of the items covered by this purchase order. Seller shall be given adequate notice of such claims and assume full and exclusive control in the defense thereof.

Indemnification

Seller agrees to defend, hold harmless and indemnify 1366 from and against any claim due to Seller's negligence or other wrongful acts or omissions in Seller's performance of this agreement. Seller shall maintain, in amounts deemed acceptable to 1366, at 1366's sole and absolute discretion, such insurance as will protect 1366 from said risks and from any claim. Upon request of 1366, Seller shall furnish 1366 certificate of such insurance providing that at least ten (10) days prior written notice in writing shall be given to 1366 of cancellation or reduction of coverage.

Assignment

Seller shall not assign any rights or claims under this purchase order without the prior written consent of 1366 and, absent 1366's prior written consent, any such intended assignment shall be void and of no force or effect. All claims from money due or to become due from 1366 shall be subject to deduction by 1366 for any setoff or claims which 1366 may have against Seller arising out of this or any other of the 1366 purchase orders with Seller, whether such setoff or counterclaim arose before or after such assignment by Seller.

Independent Contractor

The Seller is and shall be deemed to be an independent contractor at all times during the performance of the work specified in the purchase order.



PURCHASE TERMS AND CONDITIONS

Disputes

Any disputes concerning issues under this purchase order, which are not resolved by agreement of the parties to the purchase order, may be settled by appropriate legal action at law or in equity or such other procedure as may be agreed to by the parties. As an alternative to the foregoing, the parties may settle disputes via arbitration. Pending any prosecution, appeal or final decision referred to this paragraph, or the settlement of any dispute arising under this purchase order, the Seller shall proceed diligently as directed by 1366 with the performance of the purchase order. In the event of a dispute resulting in litigation, Seller shall reimburse 1366 reasonable attorneys' fees and costs whenever 1366 prevails. Likewise, 1366 shall reimburse Sellers reasonable attorneys' fees and costs whenever Seller prevails.

Remedies and Non-Waivers

Except as otherwise expressly provided, the remedies provided hereunder shall be cumulative and in addition to the rights and remedies in law or equity. No waiver of a breach of any provision of this purchase order shall constitute a waiver of any other breach of any such provision.

Jurisdiction

This Purchase Order shall be construed in accordance with the laws of the State of Massachusetts. All rights and remedies of 1366 under this purchase order are cumulative and are in addition many legal rights and remedies of 1366. All actions or legal proceedings arising out of or relating to this purchase order shall be instituted exclusively in the United States District Court for the District of Boston, Massachusetts.

Protection of Information

The information contained in this purchase order is the property of purchaser and is disclosed in confidence. It shall be returned upon request, and shall not be used except to render service to purchaser, disclosed to others, or reproduced without the express written consent of purchaser. If consent is given for any reproduction, this notice shall be provided thereon. Use of the information to manufacture products or provide services other than for purchaser will be subject to negotiations of suitable terms and compensation to purchaser.

Seller's Information

Notwithstanding any document marking to the contrary, any knowledge or information which seller shall have disclosed or may hereafter disclose to purchase incident to the placing and filling of this order shall not, unless otherwise specifically agreed upon in a written proprietary information agreement between the parties which refers to or is incorporated into this order, be deemed to be confidential or



PURCHASE TERMS AND CONDITIONS

proprietary information and accordingly purchaser shall not be liable for any use or disclosure thereof (other than liability which may result from a claim by seller for patent infringement by purchaser).

Additional Provisions

In the event that this Purchase Order has been issued in support of or as a subcontract under any contract issued subject to Federal Acquisition Regulations, the Prime Contract and all mandatory clauses therein are incorporated herein by reference and are binding upon the Seller.