



## NRD, LLC Purchase Order Terms and Conditions

These Purchase Order Terms and Conditions shall apply to any Purchase Order from NRD, LLC or its affiliates. For the purposes of this document, NRD, LLC shall herein be referred to as "NRD" or "Buyer".

1. **Definitions.** "Deliverables" means the goods, materials, products, software, technical data, intellectual property, drawings, personal property, personnel, services or items identified and/or listed in the Purchase Order for Buyer's internal use and/or resale.
2. **Acceptance of Purchase Order.** The Purchase Order constitutes Buyer's offer to Seller and shall become a binding contract upon the terms and conditions stated in the Purchase Order upon acceptance by Seller by any expression of acceptance, or commencement of performance, whichever occurs first. Any terms and conditions proposed by Seller in acknowledging or accepting Buyer's offer which are different from or in addition to the terms set forth in the Purchase Order shall not be binding upon Buyer and shall be void and of no effect, except to the extent expressly accepted in writing by Buyer's authorized procurement representative(s).
3. **Purchase and Most Favored Price.** The purchase price(s) specified in the Purchase Order ("Purchase Price") shall not be subject to change without the prior written approval of Buyer. Seller represents that prices quoted to or paid by Buyer shall not exceed current prices charged to any other customer of Seller for deliverables which are the same or substantially similar to, and in the same or substantially similar quantities as the Deliverables. Seller shall refund or Buyer may set off against subsequent invoices any amounts paid by Buyer in excess of such price(s).
4. **Data.** With Acceptance, Seller acknowledges that it has in its possession all applicable specifications, drawings and documents (including, without limitation, statements of work) necessary to perform its obligations under the Purchase Order at the price and schedule stated on the Purchase Order or its attachments. All such documentation shall be deemed to be a part of the Purchase Order.
5. **Packing and Shipping.** Deliveries shall be made as specified on the Purchase Order without charge for packaging or storage unless otherwise agreed in writing by Buyer. Deliverables shall be suitably packed to secure the lowest transportation costs and in accordance with the requirements of the carriers of the releases or orders subject to the Purchase Order. Seller shall use the carrier (s) selected by Buyer if Buyer so requests. Buyer's Purchase Order number(s) must be plainly marked on all packages, bills of lading, invoices and shipping orders. Buyer's count or weight shall be conclusive. Seller shall not ship in advance of schedule or make partial shipment unless otherwise agreed in writing by Buyer. Risk of loss shall be retained by Seller until delivery of the Deliverables at the location specified on the Purchase Order. Delivery according to schedule is a major condition of the Purchase Order.
6. **Taxes and Duties.** The prices stated in the Purchase Order include all applicable taxes and duties, except state and local sales and use taxes, which by statute may be passed on to Buyer. Such sales and use taxes shall be separately itemized in Seller's invoice. The Purchase Order shall include all related customs duty and import drawback rights, if any, including rights developed by substitution and rights, which may be acquired from Seller's suppliers, which Seller shall transfer to Buyer. Seller agrees to inform Buyer of the existence of all such rights, and to supply such documents as may be required to obtain such drawbacks, unless waived in writing by Buyer. Seller agrees to certify to Buyer the country of origin for Deliverables delivered under the Purchase Order.
7. **Payment.** Unless different payment terms are expressly stated on the Purchase Order, payment terms shall be sixty (60) days from Buyer's receipt of Seller's correctly presented invoice. A "correctly presented" invoice will contain the Purchase Order number sent to the billing address on the Purchase Order.
8. **Set-off.** Buyer shall be entitled at all times to set off any amount owing at any time from Seller to Buyer (or any of Buyer's affiliates and subsidiaries) against any amount payable at any time by Buyer (or any of its affiliates and subsidiaries) to Seller.
9. **Warranty.** Seller warrants to Buyer that all goods or services will conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer and will be merchantable; free from



any defects in workmanship, material and design; fit for their intended purpose and operate as intended; merchantable; and free and clear of all liens, security interests or other encumbrances. Goods and services provided hereunder will not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the goods or services by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity and shall survive acceptance of and payment for the goods ordered or services provided hereunder. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the goods or services with the foregoing warranties. If Buyer gives Seller notice of noncompliance, Seller shall, at its own expense, promptly replace or repair the defective or nonconforming goods or services and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods or services to Seller and the delivery of repaired or replacement goods or services to Buyer.

10. **Inspection.** The Deliverables may be inspected and/or tested by Buyer at any time, place and stage of production or distribution, and if at Seller's premises, Seller, without additional charge, shall provide all reasonable facilities and assistance required for safe and convenient inspection and testing. The foregoing shall not relieve Seller of its obligation to permit Buyer full and adequate inspection and testing away from Seller's premises. Buyer may base rejection of any or all Deliverables on inspection by sampling or any other reason permitted by Article 2 of the Uniform Commercial Code. Payment shall not constitute Buyer's acceptance of the Deliverables nor impair Buyer's right to inspect and/or test the Deliverables or exercise any of its remedies. Upon notice of rejection of defective Deliverables, risk of loss of such Deliverables shall be upon Seller until redelivery, if any, to Buyer. Rejected Deliverables may be returned to Seller or held by Buyer, both at Seller's risk and expense, subject to Seller's disposal instructions.
11. **Change Orders.** Buyer shall have the right by written notice to change the terms of the Purchase Order, the drawings, specifications or other descriptions, the time, method or place of delivery or the method of shipment or packaging or to suspend delivery of the Deliverables. Upon receipt of such notice, Seller shall proceed promptly to make such changes. If any such change causes a change in the cost of the Deliverables or in the time required for performance, Seller shall provide prompt notice to Buyer of any such change and an equitable adjustment shall be negotiated promptly and the Purchase Order shall be modified in writing accordingly.
12. **Inventory Liability.** Should the fulfillment of any purchase order require Seller to procure materials or services above and beyond the scope of the Purchase Order, Buyer will have no liability for said materials or services unless the Supplier, prior to acceptance of Purchase Order, receives, in writing, formal acceptance of liability specifically laying out in detail by part or service the extent of the liability from the Buyer..
13. **Title.** Title to and the right of immediate possession of all articles, tooling, equipment, software, or materials furnished to Seller or paid for by Buyer directly or indirectly for use by Seller in connection with the Purchase Order shall be and remain in Buyer. Seller shall be (a) responsible on a replacement cost basis for all loss or damage to such articles, tooling, equipment, software or materials while in its possession and insure its risk in this respect with adequate all risk property insurance; (b) clearly mark the same as belonging to Buyer, keep it segregated in Seller's facility and treat it confidentially as provided in the Purchase Order; (c) keep the same in good operating condition; and (d) use the same exclusively in connection with the delivery of the Deliverables for the Purchase Order and not for any production of larger quantities than specified or in advance of normal production schedules, except with Buyer's prior written consent. Articles, tooling, equipment, software, or materials furnished to Seller shall not include government- furnished items of this sort. Upon completion of the Purchase Order, all articles, tooling, equipment, software, or materials furnished to Seller or paid for by Buyer shall be disposed of by Seller at Seller's expense as Buyer directs in writing. With the exception of software not specifically developed for Buyer under the Purchase Order, (i) all Deliverables shall be the sole and exclusive property of the Buyer, and where applicable, shall be considered "works made for hire" under the U.S. Copyright Act (Title 17, United States Code), and all intellectual property, proprietary and industrial rights associated with Deliverables shall be owned exclusively by Buyer; (ii) by the Purchase Order, Seller assigns to Buyer for no additional consideration all such rights to the Deliverables, including the right to any extensions and renewals of such rights; and (iii) if requested by Buyer, Seller shall, without additional consideration, sign a separate written assignment of such rights to



Buyer or any other document necessary for Buyer to establish, maintain or enforce such rights in the Deliverables.

14. **Confidential Information.** Seller shall not disclose to any third party or use any confidential information of Buyer's concerning the Purchase Order or other material intended for use in connection with the Purchase Order without Buyer's prior written consent. Any knowledge or information which Seller may disclose to Buyer in connection with the purchase of any of the Deliverables shall not, unless Buyer otherwise specifically agrees in writing, be deemed to be confidential information and shall be acquired free from any restriction as part of the consideration for the Purchase Order. For purposes of this Section 15 (Confidential Information), any Personal Data supplied by Buyer shall be deemed confidential information of Buyer and Seller shall treat it as such.
15. **Termination for Default.** Buyer may, by written notice to Seller, cancel the Purchase Order or any release or order subject to the Purchase Order for default, (a) if Seller fails to deliver the Deliverables strictly within the time specified in the Purchase Order, or if no time is specified, within a reasonable time; (b) if the Deliverables delivered do not conform to the Purchase Order or if Seller fails to perform any of the other provisions of the Purchase Order, or so fails to make progress as to endanger performance of the Purchase Order in accordance with its terms; or (c) if Seller's financial condition shall at any time become unsatisfactory to Buyer. Upon such cancellation, Buyer shall not be liable to Seller for any amount. Seller will deliver to Buyer any of the Deliverables for which Buyer shall make written request prior to or upon cancellation, for which Buyer will pay Seller the fair value of any such Deliverables so requested and delivered. Buyer may pursue any remedies available at law or in equity and Seller shall be liable to Buyer for any and all damages suffered by Buyer by reason of Seller's default. Seller shall cooperate with any transition of the delivery of the Deliverables as reasonably requested by Buyer.
16. **Termination for Convenience.** At any time, Buyer, at its option, may terminate this order for convenience in whole or in part by written notice. A stop work order or any other form of written notice requiring Seller to immediately cease performance under the Purchase Order shall obligate Seller to immediately stop work and take any actions necessary to mitigate the impact of such notice. If Buyer does not give Seller written notice to resume work within twenty (20) days after its initial stop work order, the Purchase Order shall then be deemed terminated for Buyer's convenience as of the twenty-first (21st) day after the initial stop work order. Any claim of Seller shall not exceed reasonable demonstrated costs it has incurred in performance of the Purchase Order prior to notice of termination and shall in no event exceed the total amount of the Purchase Order. Buyer shall remit to Seller any payment due to Seller for documentable and reasonable costs incurred before receipt of Buyer's notice of termination in performance of the Purchase Order.
17. **Compliance with Law.** Each party shall comply with all applicable laws, including without limitation, government export control, privacy and data protection laws, and anti-bribery laws
18. **Delays.** Whenever an actual or potential labor dispute or other event beyond the reasonable control and without the fault or negligence of the Seller is delaying or threatens to delay the timely delivery of the Deliverables, Seller shall immediately give written notice of delay, including all relevant information regarding the delay, to Buyer. In addition, Seller shall take all reasonable steps to avoid or remove the cause of such delay and mitigate the harm of such delay to Buyer and will resume performance (if suspended) as soon as the cause of delay is removed. In the event the Seller's performance is delayed or is expected to be delayed by more than ten (10) business days, the Buyer upon written notice to Seller may terminate the Purchase Order for its convenience in accordance with Section 16 of the Purchase Order.
19. **Assignment and Subcontract.** Neither the Purchase Order nor any duty or right under the Purchase Order shall be delegated, assigned or subcontracted without the prior written consent of Buyer. Any assignment not made in accordance with the terms and conditions of this Section is void and of no effect.
20. **Advertising.** Seller shall not, without the prior written consent of Buyer, in any manner advertise or publish the fact that Seller has contracted to furnish Buyer the Deliverables under the Purchase Order.
21. **Indemnification.** Seller shall indemnify and hold Purchaser and its affiliates harmless and, on Purchaser's request, shall defend each of them from and against any or all third party claims, demands, litigation, or proceedings of whatever kind, whether based upon negligence, breach of express or implied warranty, strict liability, infringement of intellectual property rights, or any other theory, and from and against all direct,



indirect, special, exemplary, incidental or consequential damages of every kind whatsoever, arising out of, by reason of, or in any way connected with the goods and/or services, the design, manner of preparation, manufacture, construction, completion, or delivery or non-delivery of any goods and/or services by Seller, any breach by Seller of any of its obligations hereunder, or any other act, omission or negligence of Seller or any of Seller's employees, workers, servants, agents, subcontractors, or suppliers. Seller shall, on request, pay or reimburse Purchaser or any other party entitled to indemnification hereunder for all costs and expenses, including attorneys' fees, as incurred by Purchaser or such other party in connection with any such claim, demand, litigation, proceeding, loss, or damage. In addition, for infringement claims, Seller will, at its own expense and at Purchaser's option, either procure for Purchaser the right to continue using the allegedly infringing item, replace it with a non-infringing equivalent, or remove it and refund the purchase price and the transportation and installation costs thereof.

22. **Insurance.** Seller shall maintain Commercial General Liability insurance, including public, product, premises and completed operations, contractual and vendors liability, with limits of not less than \$2,000,000 per occurrence and in the aggregate. Such insurance must: (a) be maintained with an insurance carrier reasonably acceptable to Buyer; (b) be written in a form reasonably acceptable to Buyer; (c) be primary and noncontributory with respect to any insurance carried by or on behalf of Buyer, (d) contain a waiver of subrogation in favor of Buyer; and (e) include Buyer as an additional insured. On Buyer's request, Seller shall provide Buyer with certificates of insurance evidencing the coverage required hereunder. Seller must notify Buyer at least 30 days in advance of any material change, cancellation or nonrenewal of any such policy, except that ten days' notice is required in the event of cancellation for non-payment of premium.
23. **Hazardous Chemicals and Hazardous Materials.** Prior to shipment or transfer of any hazardous chemical(s), as defined by regulations promulgated pursuant to the Occupational Health and Safety Act ("OSHA"), Seller shall provide Buyer with a complete, up-to-date Material Safety Data Sheet and shall properly mark such hazardous chemical(s) with a label satisfying the requirements of OSHA's Hazard Communication Standard (29 CFR Part 1910.1200 et seq.). Any shipment or transfer by Seller of any hazardous material(s) (as defined by regulations promulgated by the U.S. Department of Transportation ("DOT") and Appendix A of Federal Standard number 313A), shall be conducted consistent with the requirements of DOT regulations promulgated at 40 CFR Part 171 et seq.
24. **Relationship of Parties.** The Seller and Buyer are independent contractors. Nothing in the Purchase Order shall be deemed to create a partnership, joint venture, franchise, employment, or agency relationship between the parties. Neither party shall have the power or authority to bind or obligate the other party.
25. **Waiver.** Any failure or delay by either party in exercising any right or remedy will not constitute a waiver.
26. **Force Majeure.** Neither party shall be liable to the other for any delay or failure in performing its obligations under this Order to the extent such delay or failure is caused by an event or circumstance that is beyond that party's reasonable control, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable (a "Force Majeure Event"). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, strikes, embargoes or industrial disturbances. Seller's economic hardship, labor difficulties or changes in market conditions are not considered Force Majeure Events. Seller shall use all diligent efforts to immediately notify Buyer in writing of any actual or potential Force Majeure Event, end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under this Order. If a Force Majeure Event prevents Seller from carrying out its obligations under this Order for a continuous period of more than ten (10) business days, Buyer may terminate this Order immediately and without liability by written notice.
27. **Entire Agreement.** Unless another agreement expressly references and incorporates the Purchase Order into such agreement (or otherwise makes the Purchase Order supplementary to such agreement) and such agreement provides for an order of precedence, the Purchase Order, together with any data referenced in the Purchase Order, constitutes the entire agreement and exclusive statement of the terms between the parties with respect to the purchase and sale of the Deliverables under the Purchase Order and terminates and supersedes all previous negotiations, communications, representations, or agreements between the



parties. No alteration, modification or amendment of any of the provisions in the Purchase Order shall be binding unless in writing and signed by Buyer's authorized procurement representative(s). If any provision of the Purchase Order is held to be illegal, invalid or unenforceable by a court of competent jurisdiction, all other provisions shall remain in full force and effect.

28. **Governing Law.** The Purchase Order shall be governed by the laws of Erie County within the State of New York, without giving effect to conflicts of law principles.
29. **Survival.** Any provision in the Purchase Order which, by its nature, would reasonably be expected to be performed after the termination of the Purchase Order shall survive and be enforceable after such termination.
30. **Limitation of Liability.** In no event shall Buyer be liable for any incidental, indirect, special, consequential or punitive damages, even if Buyer knew or should have known of the possibility of such damages.
31. **Government Contracts.** If this Order is issued under any U.S. Government agency contract or subcontract thereunder, then Seller shall comply with all of the applicable provisions of Title 48 of the Code of Federal Regulations ("CFR") relating to procurement by U.S. Governmental agencies. Seller is charged with knowing and complying with any and all such provisions incorporated herein