

**1. Acceptance.** As used herein, "Seller" means Nishati, Inc and "Buyer" means the legal entity that will buy the Product(s); "Purchase Order" (PO) means the Buyer's order for Seller's Products. Product sales by Nishati, Inc. are governed by and subject to these Terms and Conditions. The sales Quotation (Quote) constitutes the Seller's offer to Buyer. The governing Quote number (with any Revisions) and date should be referenced in POs and the Quote terms shall be reflected therein. A PO will generally not be accepted when not congruent with the governing Quote, but terms may be subject to negotiation prior to PO acceptance. Additional or modified terms in the Buyer's PO will only bind the Seller when the PO is expressly accepted by the Seller, in writing. This will typically be backed up by a Revised Quote and/or Sales Order.

**2. Changes.** Changes to the PO shall not be binding unless approved in writing by both parties. Changes that affect price or delivery schedule shall be documented in a Revised Quote or Sales Order.

**3. Shipping and Delivery.** Seller will make every reasonable effort to ship Product(s) within the estimated delivery time stated on the Quote, or as agreed by accepting a PO with as stated "fulfillment" or "due" date. This delivery time begins at receipt in full of any agreed down payment amount. Seller will typically invoice for down payments within 48 hours of PO receipt, and the estimated delivery time will apply beginning with the date down payment is received by the Seller. PO shipment terms shall be as stated in the Seller's Quote unless otherwise amended by agreement in writing and shall adhere to the most current INCOTERMS codes and meaning. The PO shall state whether incremental shipment is approved and in what quantities. When terms dictate that the Buyer is responsible for shipping costs, shipping and handling charges will be collected on the final payment invoice issued after Product ships or, in the case of incremental shipments, following each incremental shipment. Estimated shipping and handling charges can be quoted on request. Shipping quotes are subject to carrier rates at the time of shipping and subject to change. If not stated, Seller will assume increments are approved. In either case, Seller will only ship incrementally where specifically requested or when needed due to storage space limitations, and only in quantities that are reasonably cost effective as compared to a complete PO shipment. Seller is not authorized to require shipments of goods (a) in advance of the scheduled shipment dates, or (b) that exceed the PO-specified quantity(ies). Seller will promptly notify Buyer of any anticipated shipment delays, the reasons for the delay, estimated delay length, and any mitigation to avoid or minimize the delay. If Seller fails to meet scheduled shipment dates, the Buyer may direct expedited routing and some or all the excess costs may, at the Seller's discretion, be credited back to the Buyer.

**4. Packing.** Seller shall pack, palletize, or crate goods in compliance with carrier's requirements and in a manner to ensure Product protection given reasonable, non-abusive handling during shipment and storage. Handling charges include all charges for Seller packing, palletizing, or crating and will be invoiced with shipping costs. A packing list referencing the PO shall accompany each shipment.

**5. Title and Risk of Loss.** Title to goods and liability for loss or damage shall transfer from Seller to Buyer according to the INCOTERMS specified on the PO version accepted in writing by Seller.

**6. Seller Inspection and Test.** Seller maintains a rigorous pre-shipment inspection system. Certificate(s) of Compliance can be provided to the Buyer upon request for a given shipment.

**7. Buyer Receipt and Returns.** Upon receipt, and in all cases within five (5) business days, Buyer should inspect goods for damage, defects, or missing items. The goods shall be deemed accepted by Buyer, and Buyer waives the right of rejection, unless Seller receives a notice of rejection within five (5) business days following delivery, or such other period agreed in writing in advance by the parties. Buyer shall note any packaging damage or irregularities on the bill of lading and notify the carrier that they wish to initiate a claim prior to delivery personnel departing. If practical, photographic evidence should be captured in a timely manner and included as part of a claim. The Buyer shall notify Seller of Product acceptance or rejection by serial number in writing. If Buyer fails to provide this notice of acceptance, product shall be deemed accepted in the as-is condition after five (5) business days. If Buyer rejects goods as not in the condition warranted by Seller, Buyer shall describe the alleged defects in sufficient detail to assess cause and should include photographs or other supporting evidence to the maximum practical extent. Seller will then assess cause and recommend suitable remedies or provide a Return Material Authorization Number (RMA Number). All returned products must be shipped prepaid, with a clearly marked RMA number, and be accompanied by a complete description of the defect. Responsibility for damage determined to have occurred during shipping will be assigned according to the INCOTERMS specified on the PO version accepted in writing by Seller. In situations where shipping liability lies with the Seller, rejected goods will be returned to Seller at Seller's risk for replacement or credit. Buyer may claim costs incurred for packing, handling, sorting, and transporting the rejected goods by submitting them in writing to the Seller with supporting evidence.

**8. Remedies for Defective Product.** Defective product shall be handled by Buyer in a commercially reasonable manner to maximize their value to Seller and Buyer and to minimize the loss and expense of the respective parties and their customer(s). Buyer shall make allegedly defective units readily available and accessible for inspection as requested by Seller or their agents. The sole and exclusive remedy for any Products that fail to conform to any warranty by Seller shall be for Seller, at their option, to either (a) reduce the purchase price to reflect the difference in value (based upon the purchase price to the buyer) of the defective units as delivered from the value of the Products as warranted, or (b) to repair or replace the defective Products.

**9. Warranty.** Unless otherwise noted in list pricing, product datasheets, or quotations for specific opportunities, Seller offers a two (2) year limited warranty covering materials and workmanship. No other warranties or representations of any kind whatsoever (including, but not limited to, any warranties of merchantability or fitness for a particular purpose or any other warranties expressed or implied by law) shall apply. Seller warranties shall be null and void as to any Products that are not handled, applied, operated and maintained in accordance with Seller written instructions, or upon any misuse or misapplication of the Products or defect or damage caused by anyone other than Seller, or in the case of modification or repair of the unit(s) by anyone other than Seller or a Seller-authorized service center, or in the case of defects which were actually discovered by Buyer or their customer or which should have been discovered by Buyer or their customer prior to use or resale.

**10. Indemnification.** (a) Buyer agrees to indemnify Seller, and their employees and customers from all liability, loss, costs, damages or expenses, including costs of suit, and attorney, accountant, and consulting fees, which any one or more of them may suffer or incur as a result of Buyer's breach of any Seller Product warranty or any other term or condition of this Product warranty; (b) Buyer further warrants that the sale, use, or incorporation into any goods or Products of any rights furnished or licensed hereunder will be free and clear of any infringement of any valid patent, copyright, trademark, or other proprietary data, and agrees they will save and hold harmless Seller and their agents, employees, customers from any liability, loss, damage, cost or expense which may be incurred by reason of infringement of any patent, copyright, trade mark, or other proprietary rights, and that they will at their own expense defend any action, suit, or claim in which such infringement is alleged with respect to the goods or services delivered hereunder. Seller

will promptly notify Buyer of any action brought against Seller by a third party; (c) Buyer agrees to indemnify Seller against any liability, loss, cost, damage or expense by reason of Buyer's noncompliance with Article 12, *infra*; (d) Buyer will indemnify and hold harmless Seller from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including accountant, attorney and consultant fees, arising out of claims, suits, allegations, or charges of Buyer's failure to comply with the provisions of export laws and regulations. (e) To the extent that Buyer's agents, employees, invitees, or subcontractors enter upon premises occupied by or under the control of Seller, or any of their customers, or suppliers, in the course of the performance of this PO, Buyer must take all necessary precautions to prevent the occurrence of any injury to or death of any persons, or of any damage to any property arising out of acts or omissions of such agents, employees, invitees or subcontractors; and except to the extent that any such injury or damage is due directly and solely to Seller's negligence, Buyer will indemnify, defend, and hold Seller, their officers, directors, consultants, employees and agents harmless from any and all costs, losses, expenses, damages, claims, suit or any liability whatsoever, including attorney, accountant, and consulting fees, arising out of any act or omission of Buyer, their agents, invitees, employees, and subcontractors.

**11. Assignment; Delegation.** Neither party may assign this Contract to any successor without prior written approval from the other party.

**12. Compliance with Laws and Regulations.** Buyer shall comply with any applicable laws, Executive Orders, or regulations. Buyer agrees to indemnify Seller against any loss, cost, liability, or damage by reason of Buyer's violation of any applicable law, Executive Order, or regulation.

**13. Publicity.** Buyer shall not authorize any news release, advertisement, or other disclosure that denies or affirms the existence of this PO nor identify the Seller as part of any PO placed by the Buyer, without the prior written consent of Seller.

**14. Seller's Data.** Buyer shall not use or disclose any data, designs, or other information belonging to or furnished by or on behalf of Seller.

**15. Invoicing and Payment.** Seller will invoice Buyer in accordance with terms in the PO version accepted in writing by Seller. Seller will invoice the Buyer for all balance payments at the time of final shipment and payment will be due Net 30 (within 30 calendar days) unless otherwise approved in writing by Seller. Buyer will pay all invoices in accordance with these terms.

**16. Taxes.** Taxes, duties, and fees applicable to the goods or services being purchased are only included in the quoted price when explicitly itemized on the PO. The Buyer is required to provide appropriate and current tax exemption certificates to avoid being charged appropriate sales taxes by the Seller.

**17. Governing Law.** POs will be constructed and interpreted according to United States Law. To the extent that the federal common law of government contracts is not applicable, the laws of Arizona shall apply without regard to choice of law principles or those laws regarding conflicts of law.

**18. Remedies.** The remedies herein reserved to Seller are cumulative and in addition to any other remedies provided at law or equity or other terms of this PO.

**19. Disputes.** Any disagreement or conflict between the parties arising under or related to this PO shall be submitted in writing. The parties will use their best efforts to resolve any disagreements or conflicts between themselves escalating the negotiation to the most senior level of each party if necessary. If such disagreement or conflict cannot be resolved to the mutual satisfaction of both parties within 90 days after receipt of the written claim, or such additional time as the parties agree in writing, then either party may bring suit in a judicial district court, Maricopa County, Arizona. Pending any final decision, Seller will proceed diligently with performance of the PO.

**20. Limitation of Liability.** In no event, regardless of the nature of the claim or cause of action, including but not limited to contract claims or negligence, strict liability or other tort claims, shall seller be liable for any consequential, exemplary, special, incidental or other indirect damages including, without limitation, loss of business, loss of profit, loss of business, even if buyer has been advised of the possibility of such damage or loss.

**21. Ownership.** Seller retains all patents, copyrights, trade secrets rights and other similar intellectual property rights of their creation in the goods and services and product documentation and all trademarks used on or with the goods and services. Buyer agrees to honor such rights within applicable law.

**22. Severability.** If any provision of this PO, or part thereof, becomes invalid or unenforceable by operation of law, such provision or part thereof, will be deemed severed, and the remainder hereof will continue in full force and effect.

**23. Headings.** The headings contained in this PO are for convenience of reference only, and in no way define, limit, or describe the scope of the PO.

**24. Waiver.** No waiver by the Seller of any breach by the Buyer of any obligations herein will constitute a waiver of a subsequent breach or of a breach of other Buyer obligations.

**25. Complete Agreement.** The PO is the final, complete, and exclusive agreement between Buyer and Seller with respect hereof and supersedes and cancels all prior understandings, proposals, communications, whether oral or written, and agreements between Buyer and Seller. No usage of trade, and no course of dealing between Buyer and Seller, are relevant to, supplement, or explain any term or condition used herein.

**26. Cross Guarantee.** If any affiliate of the Buyer takes any action which, if done by Buyer would constitute a breach of this PO, then the same will be deemed a breach by the Buyer with like legal effect.

**27. Independent Contractor.** Buyer affirms that they are an independent entity and not, for any purpose whatsoever, an employee or affiliate of Seller.

**28. Discontinuation.** If the goods or services that are the subject of this PO are or will be de-standardized or discontinued within one (1) year after final delivery hereunder, then Seller shall give Buyer no less than 90 days advance written notice of such de-standardization or discontinuance during which time Seller, at Seller's discretion, may accept orders from Buyer for a reasonable quantity of such items even if delivery may occur beyond the discontinuance date.

**29. Lien Waivers.** Buyer shall furnish to Seller, upon Seller's request, waivers by Buyer and all other persons entitled to assert any lien rights in connection with the performance of this PO.

**30. Insurance.** During the entire term of this PO, Seller will, at their sole cost and expense, procure and maintain insurance coverage as required by law, including Comprehensive General Liability insurance to cover the value of the PO provided by the Buyer. Such insurance must be effective prior to the commencement of delivery of the goods or performance of services that are subject to this Order.

**31. Termination.** For any reason other than Force Majeure if the Buyer requests, in writing, termination in whole or part of a PO delivery, Buyer will pay Seller for all cost of purchased inventory, finished goods, and manhours spent procuring and making ready the products in whole or part. Seller will provide a Termination Invoice for all termination costs within 5 working days and the Buyer is required to pay within 30 days of this termination invoice.

**32. Foreign Disclosure.** Performance of this PO may involve the use of or access to articles, technical data, or software that are subject to export controls under the International Traffic in Arms Regulations or the Export Administration Regulations. Buyer represents and warrants that they are in full compliance with U.S. Immigration laws and regulations and, further, that they will comply with any and all Export laws and regulations and any license(s) issued thereunder. Buyer further agrees that they will not give any foreign person access to technical data, software, or defense articles, or provide unauthorized defense services, without the Seller's prior written consent.

**33. Force Majeure.** Neither party shall be responsible for delays or failure in performance resulting from acts beyond the reasonable control of such party. Such acts include, but are not limited to, acts of God, strikes, acts of war, epidemics, Government regulations superimposed after the fact, fires, communication line failures, power failures, earthquakes, acts of terrorism, or other disasters.

**34. U. S. Government Clauses.** Unless notified by Buyer specifically in the PO, Seller is under no obligation to meet U.S. Federal Acquisition Regulation ("FAR") or Department of Defense Federal Acquisition Regulation Supplement ("DFARS") requirements or other contract "flow-downs." If the PO does specify flow downs, Seller will explicitly accept or reject these requirements and inform Buyer of acceptance or request a revised PO, as appropriate. Whenever appropriate, references in the incorporated clauses to the "Government" shall mean "Buyer"; and references to "Contractor" shall mean "Seller"; and references to "Contract" shall mean this PO except (a) when a right, act, authorization, or obligation can be granted or performed only by the Government or the Buyer Subcontract Administrator or a duly authorized representative; (b) when access to proprietary financial information or other proprietary data is required; and (c) when specifically modified. The full text of applicable U. S. Government clauses will be sent to Seller upon request. Seller further agrees that, if accepted by the Seller and to the extent required by this PO, Seller will incorporate all the FAR clauses that are incorporated in the PO by reference into any lower-tier Subcontract. Seller further covenants that they will impose the terms of this PO, by reference or otherwise, as an obligation of all subcontractors to the extent required by this PO.