

PURCHASING TERMS and CONDITIONS

1. **PRICE:** This is a firm price order.
2. **TERMS OF PAYMENT:** Invoices shall be dated no earlier than date of shipment or delivery of service. The discount period begins upon receipt of invoice, required delivery date, or date any applicable discrepancy is resolved, whichever date is later. Buyer will pay non-discountable invoices thirty (30) days after receipt of invoice, required delivery date, acceptance, or the date any applicable discrepancy is resolved, whichever date is later.
3. **ATTACHMENTS:** Documents designated by Buyer in the body of Purchase Orders, including supplemental terms and conditions, if any, are incorporated by reference the same as if set out in full therein.
4. **CHANGES:** The Buyer reserves the right at any time to issue a written and/or verbal change order or amendment to Purchase Orders concerning any of the following: **(a)** specifications, drawings, and data incorporated in the Purchase Order where the items to be furnished are to be specially manufactured for the Buyer; **(b)** quantity; **(c)** methods of shipment or packaging; **(d)** place of delivery; **(e)** time of delivery; or **(f)** any other matters affecting the Purchase Orders.
5. **TERMINATION:** Buyer may terminate Purchase Orders for its convenience, in whole or in part, at any time prior to shipment by written, verbal, and/or electronic notice to Seller. Upon receipt of such termination notice, Seller shall promptly comply with the directions contained in such notice and shall, as required, **(a)** take action necessary to terminate the work as provided in the notice, minimizing costs and liabilities for the terminated work, and **(b)** continue the performance of any part of the work not terminated by Buyer.
6. **ASSIGNMENT:** Seller may not assign, transfer or subcontract Purchase Orders or any right or obligation hereunder without Buyer's consent.
7. **EXCUSABLE DELAY:** Fires, floods, strikes, accidents, shortages, or other causes beyond the reasonable control of the parties, which prevent Seller from delivering, or Buyer from receiving, any of the goods and services covered by Purchase Orders, shall suspend deliveries until the cause is removed, subject, however, to Buyer's right of termination for convenience under Paragraph 5.
8. **PACKAGING, PACKING LIST, AND BILL OF LADING:** Seller shall be responsible for proper packaging, loading, and tie-down to prevent damage during transportation. Buyer's weight and/or count will be accepted as final and conclusive on all shipments not accompanied by a packing list.
9. **INSPECTION:** All goods and/or services furnished hereunder will be subject to inspection and test by Buyer at all times and places and will be subject to Buyer's final inspection and approval within a reasonable time after delivery. Buyer may reject goods and/or services not in accordance with Buyer's instructions, specifications, drawings, data, or Seller's warranty (expressed or implied), or for untimely delivery. Buyer may return rejected goods to Seller at Seller's expense and Buyer shall have no further obligation for such goods. Payment for any goods or services shall not be deemed acceptance and in no event shall Buyer incur any liability for payment for rejected goods and/or services.

10. WARRANTIES: By accepting Purchase Orders from Cybernetic Research Laboratories, Inc., Seller warrants that the goods and services furnished will be free from defects in materials and workmanship, merchantable and in full conformity with Buyer's specifications, drawings, and data, and Seller's descriptions, promises, or samples, and that such goods will be fit for the Buyer's intended use, provided Seller has reason to know of such use, and that Seller will convey good title to the goods, free and clear from all liens, claims, and encumbrances. Upon Buyer's request, Seller shall furnish Buyer with a formal waiver or release of all liens by Buyer and/or Buyer's suppliers.

Seller warrants that goods or services covered by any CRL Purchase Order shall not infringe any patent, design, mask work, copyright or trademark, of any third party, either directly or contributory. Seller agrees to indemnify Buyer and hold Buyer harmless from and against all liability, loss, damage and expense, including reasonable counsel fees and costs of litigation, resulting from any claim of infringement and any litigation relating thereto. In the case where goods or a part thereof are held to constitute infringement and the use of goods or part thereof is enjoined, Seller shall, at the expense of Seller, either **(a)** procure for the Buyer the rights to continue using the goods, **(b)** replace the goods so that the goods become non-infringing, or **(c)** retake the goods and refund the purchase price and transportation and installation cost to Buyer. Such obligations shall survive acceptance of the goods or services and payment therefore by Buyer.

Where applicable, the Seller warrants that the goods covered by all purchase orders are in compliance with all laws, regulations, rules and orders relating to the importation of goods into the United States, the exportation of goods out of the country of origin, the transit of goods through intermediate countries and the sale and use of foreign made goods in the United States. Seller further warrants that it has obtained all permits, licenses, and certifications necessary for the goods to be exported out of the country of origin, imported into the United States, delivered to Buyer and used or sold within the United States.

11. TITLE; RISK OF LOSS: Title shall pass to Buyer upon Buyer's receipt of goods at destination. Risk of loss of all goods shall remain with Seller until receipt by Buyer at destination, unless otherwise specified in the Purchase Order, except for loss occasioned by gross negligence or willful neglect of Buyer or its customer.

12. CONFIDENTIALITY; LIMITED USE: Unless otherwise agreed by Buyer in writing, Seller shall keep confidential and not disclose to any third party, any confidential and/or proprietary materials provided by Buyer to Seller in connection with Seller's performance of any Purchase Order or prepared by Seller specifically for Buyer pursuant to any Purchase Order, including but not limited to any drawings, masters, software, specifications, raw materials, components, data, business information or plans, customer lists or other customer information ("Confidential Information"). Seller shall not make any copies of Confidential Information except as specifically authorized by Buyer in writing. At the completion of the Purchase Order, or upon Buyer's request, Seller shall promptly return to Buyer all Confidential Information not consumed in the performance of the Purchase Order, together with any copies in Seller's possession. Seller shall use Confidential Information solely for Seller's performance of the Purchase Order for Buyer, and Seller shall not, without Buyer's written consent, directly or indirectly use Confidential Information or information derived therefrom in performing services or providing goods for any other customer of Seller, or any other person or entity.

13. Purchasing information shall describe the product to be purchased including where applicable:

- a. Requirements relative to supplier notification to organization of nonconforming product and arrangements for organization approval of supplier nonconforming material,
- b. Requirements for the supplier to notify the organization of changes in product and/or process definition and, where required, obtain organization approval,
- c. Right of access by the organization, their customer, and regulatory authorities to all facilities involved in the order and to all applicable records, and
- d. Requirements for the supplier to flow down to sub-tier suppliers the applicable requirements in the purchasing documents, including key characteristics where required.

14. RESOLUTION OF CONFLICTS OR INCONSISTENCIES OCCURRING IN THE PURCHASE ORDER:

It is Seller's responsibility to comply with all Purchase Orders and all referenced documents, and to clarify with Buyer any inconsistencies or conflicts in any part of the Purchase Order or referenced documents. Should Seller fail to contact Buyer to resolve conflicts or inconsistencies, Seller will be solely responsible for errors resulting from said conflicts or inconsistencies. Where documents are referenced, the version in effect at the time of order placement shall apply.

15. BUYER'S TERMS AND CONDITIONS APPLY:

Acknowledgement of the Purchase Order, shipment of any goods or commencement of work pursuant to the Purchase Order shall be deemed an acceptance of these general Terms and Conditions. No modification of or release from Purchase Orders shall be binding unless agreed to in writing by the parties and specifically labeled as a modification or release. Unless specifically agreed to otherwise by Buyer and Seller, these terms and conditions supersede any submitted by Seller in any proposal or acknowledgement.

16. EXTRA CHARGES:

No charges for extras or for cartage or boxing or storage will be allowed unless the same has been agreed upon in writing by Buyer. All goods must be forwarded in accordance with Buyer's shipping instructions, otherwise the difference in freight rate will be charged to the Seller.

17. SUBSTITUTIONS:

No substitution of materials or accessories may be made without written permission from Buyer.

18. WORK PERFORMED ON BUYER'S OR BUYER'S CUSTOMER'S PREMISES:

If Seller's work under the Purchase Order involves operations by Seller on the premises of Buyer or one of Buyer's customers, Seller shall take all necessary precautions and such additional precautions as Buyer or Buyer's customer may prescribe to prevent the occurrence of any injury to persons or property during the progress of such work and, except to the extent that any such injury is due solely and directly to Buyer's or Buyer's customer negligence, shall indemnify Buyer against all claims, liability, damage, or loss (including expenses and attorneys' fees) which may result in any way from any act or omission of the Seller, or Seller's agents, employees, or contractors; and shall maintain public liability, property damage, and employer's liability and compensation insurance as will protect Buyer and Buyer's customer from said risks and from any claims under any applicable worker compensation and occupational disease acts.

- 19. INDEMNIFICATION:** Seller agrees to indemnify, defend, and hold Buyer harmless from and against all losses, damages, liability, actions, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees and other expenses of litigation), suffered, incurred, or asserted by or against Buyer (a) by reason of Seller's breach of a warranty, (b) by reason of Seller's breach of any term of the Purchase Order, or (c) by reason of personal injury, including death or property damage sustained by a third party, resulting from or arising out of an act or omission of Seller, or Seller's agents, employees, or contractors in fulfillment of the Purchase Order.
- 20. CUMULATIVE REMEDIES; WAIVERS; SURVIVAL OF WARRANTIES:** The remedies herein reserved to Buyer shall be cumulative, and additional to any other or further remedies provided in law or equity. No waiver by Buyer of any term or condition of a Purchase Order shall be construed as a permanent waiver of such term or condition or of any other term and condition. Seller's warranties shall survive the completion or cancellation of the Purchase Order.
- 21. "GOODS" AND "SERVICES":** The term "goods" as used herein means any and all materials, parts, products, machines, tooling, test equipment, technical data, computer software, computer software documentation, and other tangible items or documentary information furnished or required to be furnished by Seller under the Purchase Order. The term "services" means any and all technical assistance, support, maintenance, consultation, construction work, and other effort furnished or required to be furnished by Seller under the Purchase Order other than labor furnished in connection with the production of goods.
- 22. ENTIRE AGREEMENT:** Unless superseded by a specific signed agreement between Buyer and Seller, this agreement shall include the Purchase Order, these general Terms and Conditions, QMS Requirements, and all attachments referred to in the Purchase Order, shall constitute the entire agreement of the parties with regard to the subject matter contained herein. All other prior or contemporaneous representations, warranties, covenants, or agreements between Seller and Buyer, or their representatives, with respect to the subject matter are hereby superseded. The term "Purchase Order" as used herein means the first and continuation pages of Cybernetic Research Laboratories, Inc. completed Purchase Order form, including any special provisions contained therein. This agreement shall not be modified except by mutual written agreement of the parties.