

TERMS & CONDITIONS

KONTRON AMERICA PURCHASE ORDER TERMS & CONDITIONS

The following terms and conditions are an integral part of the purchase order. By shipping the goods ordered or by performing the work requested, seller agrees to the specifications, terms and conditions of purchase as set forth on the purchase order and on any sheets of additional specifications, terms and conditions attached to and referenced on the purchase order. Any difference in seller's terms and conditions in acceptance of this offer are denied unless agreed upon in writing prior to acceptance of the purchase order.

GENERAL REQUIREMENTS

Unless otherwise specified in the P.O, the following general requirements shall apply:

1. *INVOICES, PRICES, TAXES AND DISCOUNTS*

- A. **INVOICES.** Seller will submit invoices in duplicate showing the following information: P.O. number; item number; description of item; size of item; quantity of item; unit prices; each applicable tax; extended totals; and any other information specified elsewhere herein. A Bill of Lading or express receipt must accompany each invoice. Payment of invoice will not constitute acceptance of goods and will be subject to adjustment for errors, shortages, and defects in the goods or other failure of Seller to meet the requirements of this P.O. Buyer may at any time set off any amount owed by Buyer to Seller against any amount owed by Seller or any of its affiliated companies to Buyer.
- B. **PRICES AND TAXES.** The acceptance of this P.O. constitutes a warranty that the prices to be charged for articles or services ordered do not exceed the lowest price charged to any other customer for similar quantities and delivery requirements. Unless otherwise specified, the prices set forth in this P.O. include all applicable federal, state, and local taxes.
- C. **DISCOUNTS.** Time in connection with any discount offered by Seller will be computed from the latest of (i) the scheduled delivery date, (ii) the date of actual delivery, or (iii) the date an acceptable invoice is received. For the purpose of earning the discount, payment will be deemed to have been made on the date of mailing of Buyer's check.

D. INCOTerms. Unless otherwise specifically provided on the face of this order, the products ordered hereunder will be delivered on a delivery duty unpaid - destination basis.

2. **CHANGE**

Change in Approved Processes, Materials or Procedures: Supplier shall not change any process, material or procedure without prior written approval by *Kontron America, Inc.*, Supplier shall not change any process, material or procedure from that used to qualify material without prior notification to *Kontron America, Inc.* and approval by *Kontron America, Inc.*

Facility Change: Suppliers and sub-tier suppliers are prohibited from relocating any production, manufacturing, and/or processing facilities during performance of a *Kontron America, Inc.* P.O. without prior notification to *Kontron America, Inc.* This affords *Kontron America, Inc.* an opportunity to examine such facilities for compliance with Quality Assurance requirements, including any necessary approvals.

3. **ORDER OF PRECEDENCE RELATED TO DOCUMENTS**

In the event of a conflict in requirements between technical documents, the following order of precedence shall prevail:

1st P.O./Contract

2nd Drawings

3rd Specifications cited on the drawings

Note: Contact *Kontron America, Inc.* buyer regarding any questions regarding the order. The Configuration Requirements specified in the P.O. will contain applicable drawing, associated revision levels and supplemental drawing data as applicable.

4. **ACCESS**

Supplier agrees pursuant to receipt of a written request, to provide access to their facilities on a noninterference basis to *Kontron America, Inc.*, *Kontron's* customers, regulatory authorities and the US Government for review and source inspection purposes. The supplier further agrees to flow this clause down to their sub-tier suppliers.

5. **SUBCONTRACTING (Sub-tier suppliers)**

The Supplier shall flow down all relevant P.O. and quality requirements imposed by *Kontron America, Inc.* to any sub-tier supplier in performance of the order.

6. **GOVERNMENT CONTRACTS**

If this P.O. is issued for any purpose that is either directly or indirectly connected with the performance of a prime contract with the government or a subcontract thereunder, the terms that the Federal Acquisition Regulations or DFARs or other appropriate regulations required to be inserted in contracts or subcontracts will be deemed to apply to this P.O.

7. **DELIVERY SCHEDULES / DELAYS**

Supplier shall meet all scheduled delivery dates as specified on *Kontron America, Inc.* P.O. If the Supplier becomes aware of any circumstances that delay confirmed delivery dates, the Supplier shall immediately notify the Buyer in writing including all relevant details for the delay. Receipt by buyer of such notice will not constitute a waiver of the due dates herein. The Supplier shall seek authorization from *Kontron America, Inc.* if they wish to deliver any material more than five days earlier than the confirmed delivery date. Shipments received earlier than five working days (unless authorized on the P.O.) or more than two days after the confirmed delivery date may have a negative effect on the Supplier's performance rating. In case of delay in delivery without proper notification, *Kontron America, Inc.* reserves the right to cancel the P.O. without liability to *Kontron America, Inc.* or any other third party. Unauthorized over shipments and early shipments may be returned at Supplier's expense. Supplier shall be liable for all storage/handling charges incurred as a result of over shipments and early shipments.

8. **INSPECTION AND ACCEPTANCE**

Notwithstanding any prior inspection or payments, all goods will be subject to final inspection and acceptance at Kontron America, Inc. If any item is defective in material or workmanship, or otherwise nonconforming with the requirements of this order, Buyer reserves the right to reject, and require repair, replacement or potentially accept under concession with an adjustment in price.

9. **LOT SAMPLING**

Kontron America, Inc. reserves the right to use the latest ANSI/ASQ Z1.4 or other appropriate sampling plan based on $c=0$ for the acceptance or rejection of product. If the Supplier uses the latest ANSI/ASQ Z1.4 or other appropriate sampling plan and the sample contains rejected items, the Supplier shall perform 100% inspection for the rejected feature or parameter to ensure that zero defects are present. Rejection of a lot shall constitute 100% inspection of product for any non-conformances.

10. **QUALITY SYSTEM**

The Supplier must be able to maintain a Quality System that meets industry standards and ensures adequate product conformance and appropriate objective evidence to meet usual business responsibilities. Suppliers shall maintain a Quality System that meets ISO 9001 (current revision) or AS9100 (current revision). The Supplier shall notify Buyer within two working days if any ISO, AS, or NADCAP certifications are revoked or suspended. Notification of change of certification status (such as an upgrade) is required. New or updated certifications are to be sent to **Purchasing2@us.kontron.com**.

11. **CONTROL OF NONCONFORMING PRODUCT**

The Supplier and sub-tier suppliers shall provide prompt written notification to *Kontron America, Inc.* when nonconforming material, products or processes are discovered. The following email address shall be used for submittal **Purchasing2@us.kontron.com**. The Supplier shall not ship nonconforming material or product without a written waiver from *Kontron America, Inc.* Upon authorization to ship, the nonconforming product must be identified as nonconforming by the Supplier before shipment and all documentation related to the nonconforming product shall accompany the product.

Material rejected by *Kontron America, Inc.* and subsequently returned to *Kontron America, Inc.* shall be clearly and properly identified as returned / reworked articles. Supplier's shipping document shall contain a statement that articles are replacement or reworked articles.

12. **WARRANTY**

Seller warrants that all goods delivered (i) will be free from defects in workmanship, material, and manufacture, (ii) will comply with the requirements of this P.O., including any drawings or specifications incorporated herein or samples furnished by Seller, and (iii) where design is Seller's responsibility, will be free from defects in design. Seller further warrants that all goods purchased hereunder will be of merchantable quality and will be fit for the purposes intended by Buyer. The foregoing warranties constitute conditions to this P.O. They are in addition to all other warranties, whether express or implied, and will survive any delivery, inspection, acceptance or payment by Buyer. All warranties run to the benefit of Buyer and its customers. Buyer's approval of Seller's materials or design will not relieve Seller of any warranties. If any goods delivered do not meet the warranties specified herein or otherwise applicable, Buyer may, at its option, (i) require Seller to correct any defective or nonconforming goods by repair or replacement at no cost to Buyer, or (ii) return such defective or nonconforming goods to Seller at Seller's expense and recover from Seller the order price thereof, or (iii) correct the defective or nonconforming goods itself and charge

Seller with the cost of such correction. The warranty shall cover a minimum period of 24 months following final acceptance.

13. **CHANGE ORDERS, CANCELLATION FOR DEFAULT AND TERMINATION FOR CONVENIENCE**

CHANGE ORDERS. The Buyer may at any time, by a written order, suspend performance hereunder, increase or decrease the ordered quantities, change the due date or make changes in any one or more of the following: applicable drawings, designs or specifications; method of shipment or packing; and/or place of delivery.

CANCELLATION FOR DEFAULT. It is understood and agreed that time is of the essence for this order because the goods or services ordered herein are needed for products of Buyer that have a very short, carefully timed market life; failure of Seller to deliver on the due date could cause Buyer's products to be unmarketable. Buyer may, by written notice, cancel this order in whole or in part if, in Buyer's good faith opinion, Seller (i) has failed to make delivery of the items or to perform the services within the time specified herein, or any extension thereof by written change order or amendment; or (ii) has failed to replace or correct defective items in accordance with the provisions of Items 7 or 8 above; or (iii) has failed to perform any of the other provisions of this P.O.; or (iv) has so failed to made progress under this P.O. as to endanger performance in accordance with its terms. If this P.O. is cancelled for Seller's default, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, goods or services similar or substantially similar to those cancelled. Seller will then be liable to Buyer for any excess costs occasioned thereby. Nothing in this Item 13 (B) is intended to excuse Seller from proceeding with any uncanceled portion of this P.O.

TERMINATION FOR CONVENIENCE. At any time for convenience, Buyer may terminate work under this P.O., in whole or in part, by written or telegraphic notice. Upon such termination, Seller will, to the extent and at the times specified by Buyer, stop all work under this P.O., place no further orders for materials to complete the work, assign to Buyer all Seller's interest under terminated subcontracts and orders, settle all claims thereunder after obtaining Buyer's approval, protect all property in which Buyer has or may acquire an interest, and transfer title and make delivery to Buyer of all articles, materials, work in process, and other things held or acquired by Seller in connection with the terminated portion of this P.O..

14. **WAIVER**

The failure of Buyer to enforce at any time any of the provisions of this P.O., to exercise any election or option provided herein, or to require at any time the performance by Seller of any of the provisions herein will not in any way be construed to be a waiver of such provisions.

15. DOCUMENTATION

Kontron America, Inc. may refuse items delivered under the P.O. if the Supplier fails to submit the required documentation, e.g. test data or reports, as specified in the P.O. A copy of documentation shall be available upon *Kontron America, Inc.* request.

16. CONFORMANCE RESPONSIBILITY

Neither surveillance, inspection and/or tests made by *Kontron America, Inc.* or their representatives at either the Supplier's facility or *Kontron America, Inc.* facility shall relieve the Supplier of the responsibility to furnish items which conform to the requirements of the P.O.

17. IDENTIFICATION/ MARKING

Materials supplied must be identifiable by lot number, material type, specification and applicable revision, etc., and traceable to records of acceptance. Material fabricated by the Seller shall be identified to the lot of materials used. When two or more parts are joined in an assembly, Seller shall prepare an assembly parts list identifying each part in the assembly by part number and serial number, and the lot number of material from which manufactured if fabricated by the Seller, or lot control number when the part is a purchased item. For raw materials, this clause applies to identification and traceability of materials to lot number, manufacturing and inspection processes, test results, and records of acceptance. Conformance by Seller's suppliers to traceability requirements of the P.O., drawing, and/or specifications, shall be the responsibility of the Seller.

18. PACKAGING/ HANDLING / PRESERVATION/ SHIPMENT

All items delivered on this order must be adequately preserved, packaged, handled, and contained to prevent deterioration and damage during shipment. The shipping method should ensure safe arrival at the intended destination in accordance with best commercial practices unless special packaging and shipping instructions are specified by the P.O., drawing, or specification. Special packaging/handling instructions may include, but are not limited to, unique marking requirements, special material traceability, or use of custom or reusable containers. If the shipment contains multiple processed lots/batches/date codes, then each processed lot/batch/date code must be segregated and clearly identified to maintain complete traceability in each shipment.

19. CORRECTIVE ACTION REQUESTS

When a quality problem exists, *Kontron America, Inc.* may request corrective action from the Supplier (Supplier Corrective/Preventive Action Request). Such request shall be responded to in the specified time listed on the SCAR as due date and shall include the following information:

- Containment Actions
- Investigation
- Root Cause
- Permanent Corrective Action (Recommended Actions)
- Implement Permanent Corrective Action
- Action Taken to Prevent Recurrence
- Effectiveness of the action taken
- Copies of supporting documentation

When a formal Supplier Corrective Action Request (SCAR) is submitted to the Supplier, the Supplier shall use *Kontron America, Inc.*'s form. Supporting objective evidence is required to be part of the SCAR's response.

20. ESD CONTROL PROGRAM

When items delivered under the P.O. are Electrostatic Discharge Sensitive (ESDS), the Supplier shall have an ESD control program in place which prevents ESD damage during all phases of fabrication, testing, handling, storage, and packaging for delivery. Nonmanufacturing Distributors shall handle, store, package and identify such items under an ESD control program which ensures continuation of the manufacturer's ESD control program. Shipping containers shall have prominent marking/identification which identifies contents as ESD sensitive.

21. FOREIGN OBJECT DEBRIS/DAMAGE (FOD) PREVENTION PROGRAM

Supplier shall maintain a FOD prevention program to ensure products or deliverables are manufactured in accordance with drawings or specifications and free from foreign object damage or debris. National Aerospace Standard NAS-412 shall be used as a guideline to comply with this requirement. The supplier shall inspect deliverables for foreign objects/debris and shall certify that such items are free from any foreign materials that could result in FOD. The seller's FOD Control Program shall be documented and effective. This requirement shall be flown down to sub-tier suppliers wherever applicable to prevent entry of FOD into the deliverable product.

22. QUALIFIED PERSONNEL

The Supplier's personnel performing work on Kontron America, Inc. products and services shall be adequately trained to assure that their skills and competency levels will result in products that meet all contract requirements.

In addition, supplier shall ensure that employees are aware of:

- Their contribution to the product and / or service conformity
- Their contribution to product safety as applicable
- The importance of ethical behavior

23. COUNTERFEIT PARTS PREVENTION

Counterfeit parts are of special concern to Kontron America. A counterfeit prevention system shall meet the requirements of AS6081, AS5553 and shall be in accordance with DFARS 252.246. If suspect/counterfeit parts are furnished under this P.O. or are found in any of the goods delivered to KAI they will be impounded by the Buyer. The Seller shall be liable for all costs, including but not limited to Buyer's internal and external costs, relating to the removal and replacement of said parts. To avoid or lessen the possibility of the inadvertent use of counterfeit parts, the Seller shall only purchase components and parts procured directly from the Original Equipment Manufacturer (OEMs), through the OEM's authorized distributor chain, or if through an independent Distributor, Seller must make available to Buyer (if Buyer requests) OEM documentation that authenticates traceability of the components to the applicable OEM.

24. MAINTENANCE OF RECORDS

Supplier shall maintain and make available to *Kontron America, Inc.* all records for, or related to, *Kontron America, Inc.* products. Records must be retained at least ten (10) years following *Kontron America, Inc.*'s final payment under its prime contract unless otherwise specified. Accordingly, the Supplier shall receive written approval from a *Kontron America, Inc.* Authorized Representative prior to destroying any of these records.

25. CYBER SECURITY

Contractors must provide adequate security for covered contractor information systems," to include implementing the security controls of National Institute of Standards and Technology (NIST) SP 800-171, as soon as practical but no later than Dec 31, 2017. A "covered contractor information system" is defined as an unclassified system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information. Please refer to DFAR 252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting

26. **CONFLICT MINERALS**

Supplier agrees to comply with all US Laws and Kontron America, Inc.'s policy relevant to usage, restrictions of conflict materials sourced from the Democratic Republic of the Congo (DRC) or adjoining countries. For more detailed information, please refer to our website at: <https://www.kontron.com/about-kontron/corporate-responsibility/material-declaration/conflict-minerals-faq>

27. **BUSINESS CONTINUITY PLAN**

Suppliers are expected to establish a comprehensive crisis management/business continuity approach to address potential disruptions and disasters. The approach should include plan of action, checklist of activities, communication plans, escalation procedures, and organization with teams, roles, and responsibilities.

Suppliers must plan for the following (as applicable) disruptions:

- A. Business Continuity to deal with event-based risks such as environmental disasters, human disruption and /or technical disasters.
- B. Supply Chain Continuity to check and prepare the "Supplier's" sub-tier suppliers to deal with potential disruptions (proactive) and disaster situations (reactive)
- C. IT Disaster Recovery and IT Security for "Supplier" telecommunications, data, systems and infrastructure
- D. Eliminate potential disruptions due to financial and regulatory noncompliance

28. **CODE OF CONDUCT**

Kontron America, Inc. expects our suppliers to comply with our code of conduct or have a code of conduct which includes the elements of the Kontron Code of Conduct. A full listing of our code of conduct can be found at: <https://www.kontron.com/about-kontron/sustainability/code-of-conduct-english-1.1.pdf>

29. **APPLICABLE LAW**

This P.O. will be governed by the laws of the State of California, USA.

30. **INDEMNIFICATION**

Seller agrees to indemnify Buyer, its agents, customers, successors, and assigns against any loss, damage, and liability (including costs and expenses) for actual or alleged infringement of any patent, copyright or trademark arising out of the use or sale of the goods

by Buyer, its agents or customers provided, however, that Buyer must notify Seller of any suit, claim or demand involving such infringement and permit Seller to defend against or settle the same. If any injunction is issued as the result of any such infringement, Seller agrees, at Buyer's option, to (i) refund to Buyer the amounts paid to Seller for the goods covered by the injunction, or (ii) furnish Buyer with acceptable and no infringing goods. Seller agrees to indemnify Buyer against any and all liability and expense resulting from any alleged defect in the goods, whether latent or patent, including allegedly improper construction and design, or from the failure of the goods to comply with specifications. Seller warrants that there are no liabilities for royalties, mechanics liens or other encumbrances on the goods supplied and agrees to indemnify Buyer against any such liabilities. The above indemnifications are in addition to all other rights of indemnification of Buyer against Seller.

31. *NONDISCLOSURE OF CONFIDENTIAL MATTERS*

Seller will not quote for sale to others, without Buyer's written authorization, any goods purchased under Buyer's specifications or drawings. All specifications, drawings, samples, and other data furnished by Buyer will be treated by Seller as confidential information, will remain Buyer's property, and will be returned to Buyer on request.

32. *ASSIGNMENTS*

No right or obligation under this P.O. (including the right to receive monies due) may be assigned by Seller without the prior written consent of Buyer, and any purported assignment without such consent will be void. Buyer may assign this P.O. at any time if such assignment is considered necessary by Buyer in connection with a sale of Buyer's assets or a transfer of its obligations.

33. *PATENT LICENSE*

Seller, as part consideration for this P.O. and without further cost to Buyer, hereby grants to Buyer (and, to the extent requested by Buyer, to the government) an irrevocable, non-exclusive, royalty free license to use, sell, manufacture, and cause to be manufactured products embodying any inventions and discoveries made, conceived or actually reduced to practice in connection with the performance of this P.O..

34. *REMEDIES*

The remedies stated herein are in addition to all other remedies at law or in equity.