

Ballard Technology, Inc.

Purchase Order Terms and Conditions

1. GENERAL PROVISIONS

- a. The Purchase Order, together with these terms and conditions, and any attachments and exhibits, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively the "Purchase Order") constitutes the entire and exclusive agreement between Ballard Technology, Inc. (BALLARD) and the supplier (SUPPLIER) identified in the Purchase Order. Unless specifically agreed to in writing by a BALLARD authorized representative, BALLARD objects to, and is not bound by, any term or condition that differs from these terms and conditions. SUPPLIER's electronic acceptance, acknowledgement of this Purchase Order, or commencement of performance constitutes SUPPLIER's acceptance of these terms and conditions.
- b. The term "ARTICLE(S)" refers to the goods, products, supplies, assemblies, technical data, drawings, services, or other terms constituting the subject matter of this Purchase Order, which are provided by SUPPLIER to BALLARD hereunder.
- c. This agreement shall be governed by the laws of the State of Washington without regard to its conflict of law provisions. The provisions of the United Nations Convention on the International Sale of Goods shall not apply to this Agreement.
- d. All disputes under this Purchase Order that are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity. Until final resolution of any dispute hereunder, SUPPLIER shall diligently proceed with the performance of this Purchase Order as directed by BALLARD.
- e. The failure to exercise any right under this Purchase Order shall not be deemed to be a waiver of such right, and shall not affect the right to enforce each and every right hereof. The waiver of any breach of any term, provision, covenant or condition herein contained shall not be deemed to be a waiver of any: (i) subsequent breach of such term, provision, covenant or condition; or (ii) other term, provision, covenant, or condition.
- f. SUPPLIER may not assign any of its rights, duties, or obligations hereunder without the prior written consent of BALLARD, which BALLARD will not unreasonably withhold. BALLARD may, at its option, void any attempted assignment or delegation undertaken without BALLARD's prior written consent.
- g. If BALLARD consents to the use of a Subcontractor, SUPPLIER will:
 - i. Guarantee and will remain liable for the performance of all subcontracted obligations.
 - ii. Indemnify BALLARD for all damages and costs of any kind, subject to the limitations in Section 7 (Limitations of Liability) incurred by BALLARD or any third party and caused by the acts and omissions of SUPPLIER's Subcontractors.
 - iii. Make all payments to its Subcontractors. If SUPPLIER fails to timely pay a Subcontractor for work performed, BALLARD will have the right, but not the obligation, to pay the Subcontractor and offset any amount due to SUPPLIER by any amount paid to the Subcontractor. SUPPLIER will defend, indemnify and hold BALLARD harmless for all damages and costs of any kind, without limitation, incurred by BALLARD and caused by SUPPLIER's failure to pay a Subcontractor.
 - iv. To the extent allowed by applicable law, no person who is not a party to Purchase Order shall be entitled to enforce or take the benefit of any of its terms whether as a result of applicable legislation or otherwise.
 - v. Flow down all applicable requirements of this Purchase Order, including key characteristics, to its Subcontractors.

2. QUALITY

- a. SUPPLIER is responsible for the quality of the ARTICLES delivered, as well as for strict compliance with the specifications set forth in the Purchase Order or in any separate documents that may govern the provision of the products. SUPPLIER shall flow down to its supply chain all applicable requirements described in this section.
- b. SUPPLIER shall provide and maintain a quality control system necessary for compliance with the specifications set forth in the Purchase Order or in any separate documents that may govern the provision of the products including any other specific quality requirements. SUPPLIER shall promptly notify BALLARD of the loss of its certification or other significant changes in the status or effectiveness of its quality control system.
- c. SUPPLIER shall obtain BALLARD's approval before making any changes to materials, products, or processes that could affect form, fit, function, quality, or previous First Article Inspection results. Unless otherwise indicated by BALLARD in writing in the Purchase Order or on other drawings or specifications in connection with the ARTICLES ordered, all statutory, official and/or customary standards apply to the ARTICLES.
- d. SUPPLIER shall not deliver to BALLARD without specific written authorization from Ballard any non-conforming ARTICLES or ARTICLES containing counterfeit parts. SUPPLIER shall provide BALLARD with timely reporting, disposition requirements, and specific identity when a previously delivered ARTICLE is found by the SUPPLIER to be non-conforming or containing counterfeit parts.
- e. SUPPLIER shall keep and maintain inspection, test and related records, for a minimum of ten (10) years. These records shall be available to BALLARD or BALLARD's representative. SUPPLIER shall allow copies to be made and shall furnish all information required by BALLARD or BALLARD's representative upon request. When records are discarded, they shall be permanently destroyed.
- f. SUPPLIER shall grant right of access to BALLARD, its customers, and regulatory authorities to all of SUPPLIER's facilities and quality records, processes, and procedures associated with this Purchase Order.

3. INSPECTION AND ACCEPTANCE

- a. Final inspection and acceptance of ARTICLES shall be made by BALLARD after delivery or as otherwise indicated in the Purchase Order and shall be conclusive except with regard to latent defects, fraud, such gross mistakes as amount to fraud, and the SUPPLIER's warranty obligations.
- b. BALLARD may reject any or all of the ARTICLES which do not conform to the applicable requirements. At BALLARD's option, BALLARD may (i) return the non-conforming ARTICLES to SUPPLIER for a refund or credit; (ii) require SUPPLIER to replace the non-conforming ARTICLES; or (iii) repair the non-conforming ARTICLES so that it/they meet the requirements. As an alternative to (i) through (iii), BALLARD may accept the non-conforming ARTICLES conditioned on SUPPLIER providing a refund or credit in an amount BALLARD reasonably determines to represent the diminished value of the non-conforming ARTICLES. BALLARD's payment to SUPPLIER for ARTICLES prior to BALLARD'S timely rejection of such ARTICLES as non-conforming will not be deemed as acceptable by BALLARD.

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4. WARRANTY

SUPPLIER warrants that its ARTICLES are merchantable, of best quality, free from defects in materials and workmanship, as ordered and described and in strict conformance with all descriptions, drawings and specifications submitted by BALLARD. The SUPPLIER further warrants that it has clear title to all ARTICLES and that they are being delivered free and clear of any encumbrance. All warranties shall be deemed conditions as well as warranties.

5. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- a. SUPPLIER represents and warrants that neither the ARTICLES nor the sale thereof covered by this Purchase Order will infringe upon or violate any trademarks, patents, copyright or other legal rights of third parties. SUPPLIER agrees to indemnify and save BALLARD harmless from and against any and all claims, liability, loss, costs, attorneys' fees, expenses and damages due to or arising from any such alleged infringement or violation.
- b. All specifications, data and other information furnished by BALLARD or its agents is confidential and shall be treated by SUPPLIER as confidential and proprietary and not disclosed to any other person or used for any purpose other than performing this contract, unless SUPPLIER obtains written permission from BALLARD to do so. Any such information shall be returned to BALLARD after completion of performance by SUPPLIER hereunder or when requested by BALLARD. All such information or other intellectual property of BALLARD shall remain the exclusive property of BALLARD and no license thereto to SUPPLIER shall be implied hereunder (except as necessary to perform its obligations hereunder, and then solely for the benefit of BALLARD).
- c. SUPPLIER shall not publish any information developed under this Purchase Order, nor disclose, confirm, or deny any details about the existence or subject matter of this Purchase Order, or use BALLARD's name in connection with SUPPLIER's sales promotion or publicity without prior written approval of BALLARD.

6. INSURANCE

SUPPLIER shall indemnify and defend BALLARD from any and all claims or liabilities arising out of such work. SUPPLIER shall maintain all necessary insurance coverages, including public liability and Worker's Compensation Insurance. Furthermore, SUPPLIER shall maintain general liability and product liability insurance in accordance with standard industry practice.

7. INDEPENDENT CONTRACTOR RELATIONSHIP

SUPPLIER acknowledges and agrees that it is acting under this Purchase Order solely as an independent contractor, and not as an employee of BALLARD, and shall have no authority to act for or bind or obligate BALLARD in any manner except to the extent specifically authorized in writing by BALLARD. SUPPLIER acknowledges that it is solely responsible for determining the manner and means of performance hereunder. Accordingly, nothing herein contained shall be construed as creating the relationship of employer and employee between BALLARD and SUPPLIER. No Agency relationship is created between BALLARD and SUPPLIER by this Purchase Order and SUPPLIER is not an agent of BALLARD. SUPPLIER will not hold itself out as an agent of BALLARD, and shall not execute any documents on behalf of BALLARD. SUPPLIER shall not utilize BALLARD's letterhead, business card, or BALLARD's trademarks.

8. SHIPPING AND DELIVERY; TITLE

- a. SUPPLIER shall strictly adhere to all Purchase Order schedules. Time is and shall remain of the essence in the performance of this Purchase Order. SUPPLIER shall notify BALLARD in writing immediately of any actual or potential delay to the performance of this Purchase Order. Such notice shall include a revised schedule and shall not constitute a waiver to BALLARD's rights and remedies hereunder.
- b. SUPPLIER will preserve, pack, package and handle the ARTICLES so as to protect the ARTICLES from loss or damage and in accordance with best commercial practices in the absence of any specifications BALLARD may provide. The SUPPLIER shall bear liability for any damage caused by inadequate packaging of the ARTICLES. Without limiting the foregoing, SUPPLIER shall observe the requirements of any local laws and regulations relating to hazardous ARTICLES, including, without limitation, with respect to its accompanying information, packing, labeling, reporting, carriage and disposal. SUPPLIER will include with each delivery of products a packing list identifying the Purchase Order number, the BALLARD part number for each of the ARTICLES (if applicable), a description and the quantity of each of the ARTICLES, and the date of shipment. Unless BALLARD expressly instructs otherwise, SUPPLIER will deliver all ARTICLES to BALLARD's plant at the address set forth in the Purchase Order. Unless otherwise indicated by BALLARD in writing in the Purchase Order, SUPPLIER assumes responsibility for all shipping and delivery charges including, without limitation, customs, duties, costs, taxes and insurance.
- c. Title to ARTICLES and risk of loss or damage to ARTICLES, except for any loss or damage covered by warranty hereunder, shall pass to BALLARD only upon delivery of goods to BALLARD's site (or such other F.O.B. point specified by BALLARD in this Purchase Order); provided, however, that if installation services are specified herein, title and risk of loss shall not pass to BALLARD until such installation services have been performed by SUPPLIER and accepted by BALLARD.

9. PRICE, INVOICES & SET-OFFS

- a. SUPPLIER warrants that the prices for the goods or services sold to BALLARD hereunder are not less favorable than those currently extended to any other customer for the same or similar ARTICLES in similar quantities. If SUPPLIER reduces its price for such ARTICLES during the term of this Purchase Order, SUPPLIER agrees to reduce the price hereof correspondingly. SUPPLIER warrants that prices shown on this Purchase Order are complete, and no additional charges of any type shall be added without BALLARD's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing and crating.
- b. Invoices may be mailed when ARTICLES are shipped, but the time for payment shall not commence until BALLARD's actual or scheduled receipt, whichever is later, of ARTICLES at their destination or upon satisfactory completion of services. BALLARD shall promptly pay SUPPLIER the amount due within 30 days, except if identified elsewhere in the Purchase Order, unless the invoiced amount is in dispute. BALLARD may withhold for shortages and/or non-conforming ARTICLES.

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- c. In the event SUPPLIER is liable to BALLARD for any amounts, BALLARD may, at its election, set-off against any amounts payable to SUPPLIER under this Purchase Order.

10. INSOLVENCY

If at any time BALLARD determines that SUPPLIER's financial condition does not justify continued performance on the terms agreed upon, BALLARD shall be entitled to terminate this agreement without liability therefor. In the event of the insolvency of the SUPPLIER or in the event any proceeding is brought by or against the SUPPLIER, voluntarily or involuntarily, under bankruptcy or insolvency laws, BALLARD shall be entitled to suspend or terminate this agreement without liability therefor.

11. TAXES AND DUTIES

No federal, state, or local taxes on the ARTICLES furnished under this Purchase Order or on the sale, purchase, transportation, use, or possession thereof shall be included on any invoice rendered to BALLARD unless specifically itemized. If BALLARD furnishes the SUPPLIER an exemption certificate or other similar proof of exemption with respect to any federal, state or local tax, the invoice price shall be adjusted to eliminate such tax.

12. LIMITATIONS OF LIABILITY

BALLARD's maximum aggregate liability for its acts or omissions hereunder shall be limited to a sum no greater than the aggregate value of the ARTICLES scheduled for delivery per the Purchase Order issued. FURTHER, IN NO EVENT SHALL BALLARD BE LIABLE FOR PUNITIVE, DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR ITS ACTS OR OMISSIONS HEREUNDER. Any action against BALLARD relating to the ARTICLES delivered hereunder must be commenced within one year after the cause of action has accrued.

13. EXCUSABLE DELAYS/FORCE MAJEURE

The following events, and only the following events, shall constitute force majeure under this Purchase Order: (i) acts of God or of a public enemy; (ii) acts of Government; (iii) fires; (iv) floods; (v) epidemics; (vi) quarantine restrictions; (vii) strikes; (viii) freight embargoes; and, (ix) unusually severe weather. In each case, the failure to perform must be entirely beyond the control and without the fault or negligence of SUPPLIER. Each party shall give the other immediate notice of any event that such party claims is a Force Majeure condition that would prevent the party from performing its obligations hereunder, and of the cessation of the condition. A party's notice under this section shall include the party's good faith estimate of the likely duration of the Force Majeure condition.

14. CHANGES

- a. By written order, BALLARD may from time to time direct changes for: (i) technical requirements; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities, delivery schedules or both; (v) amount of BALLARD-furnished property; (vi) time of performance; and (vii) place of performance.
- b. If any such changes cause an increase or decrease in the price or in the time required for its performance, SUPPLIER shall promptly notify BALLARD thereof and assert its claim for equitable adjustment within ten (10) days after the change is ordered, and an equitable adjustment shall be made. However, nothing in this provision shall excuse SUPPLIER from proceeding immediately with the directed change(s). Changes shall not be binding upon BALLARD except when specifically confirmed in a written Purchase Order or Change Order.

15. TERMINATION

- a. FOR CONVENIENCE: BALLARD may terminate all or any part of this Purchase Order at any time for its sole convenience. Upon such termination, SUPPLIER shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to stop such work. SUPPLIER shall not be paid any termination charge, except with respect to services and custom-made goods, for which SUPPLIER shall be paid a percentage of the Purchase Order price reflecting the percentage of the work performed prior to the notice of termination.
- b. FOR DEFAULT: (i) BALLARD may by written Notice of Default to SUPPLIER, terminate this Purchase Order in whole or in part, or, at BALLARD's sole discretion, require SUPPLIER to post such financial assurance as BALLARD deems reasonably necessary, if SUPPLIER fails to: (a) deliver ARTICLES within the time specified in this Purchase Order or any extension; (b) make progress, so as to endanger performance of this Purchase Order, or, (c) perform any of the other provisions of this Purchase Order. (ii) BALLARD may require SUPPLIER to transfer title and deliver to BALLARD, in the manner and to the extent directed by BALLARD, any partially completed ARTICLES and raw materials as SUPPLIER has produced or acquired for the performance of this Purchase Order, including the assignment to BALLARD of SUPPLIER's subcontracts. SUPPLIER further agrees to protect and preserve property in the possession of SUPPLIER in which BALLARD has an interest. Payment for completed ARTICLES delivered to and accepted by BALLARD shall be at the Purchase Order price. Payment for unfinished ARTICLES, which have been delivered to and accepted by BALLARD and for the protection and preservation of property, shall be at a price determined in the same manner as provided in the Termination for Convenience provision hereof except that SUPPLIER shall not be entitled to profit. BALLARD may withhold from SUPPLIER moneys otherwise due SUPPLIER for completed ARTICLES in such amounts as BALLARD determines necessary to protect BALLARD against loss due to outstanding liens or claims against such ARTICLES.

16. COMPLIANCE WITH LAWS

SUPPLIER warrants that all goods provided hereunder have been produced and all services performed are in compliance with applicable federal, state and local laws, ordinances, codes, rules, regulations or standards, including without limitation, the Fair Labor Standards Act, and those pertaining to the manufacture, labeling, invoicing and sale of such goods or services, environmental protection, immigration, employment and occupational safety and health. SUPPLIERS located within the United States also warrant that they shall at all times comply with applicable provisions relating to government contractors and subcontractors, which provisions, and any contract clauses required thereunder, are incorporated in this Purchase Order by reference as if set forth in full. BALLARD will make a list of applicable regulations available on request. SUPPLIER agrees to comply with such regulations and to provide BALLARD with compliance certification.