

# Tellabs Purchase Order Terms and Conditions

## 1. Acceptance

These terms and conditions and the written or electronic purchase order to which they relate (collectively, "Contract") shall be deemed accepted by Seller upon the earliest to occur of Seller's (a) confirmation, or (b) delivery of the goods ("Goods") or performance of the services ("Services") described on the face of the related purchase order. Goods and/or Services shall collectively be referred to as "Deliverables."

## 2. Agreement

This Contract sets forth all of the promises, agreements and conditions regarding its subject matter, supersedes all prior understandings (whether written, oral or otherwise) and constitutes the entire agreement between Tellabs and Seller ("Parties"). Modifications to this Contract, or any terms or conditions listed in Seller's acknowledgment or other future communications, shall be void unless agreed in a writing signed by Tellabs and Seller. The Contract is not assignable by Seller without Tellabs' prior written consent.

## 3. Changes

Tellabs may issue additional instructions or make changes to the following: (a) drawings, designs or specifications, (b) quantity of Goods purchased, (c) method of shipment or packing, or (d) place or date of delivery. If such instructions or changes increase or decrease Seller's cost of performance, then the Parties shall agree in writing on a price adjustment within (at most) fourteen (14) days after Tellabs' notification of such instructions or changes.

## 4. Termination

Tellabs may terminate the Contract in whole or in part by written notice at any time for convenience. Seller shall stop delivery of Goods or performance of Services on the date specified in the termination notice. Tellabs will pay Seller the order price for Goods received or Services completed before the effective date of termination; provided that Tellabs confirms its acceptance thereof. If Tellabs terminates the Contract for Cause, then Tellabs may purchase similar Goods or complete the Services on its own or via third parties and Seller shall be responsible for any excess costs that Tellabs incurs. "Cause" includes: (a) Seller fails to deliver Goods in compliance with the specified delivery time or quantities; (b) Seller fails to begin or complete any part of the Services as scheduled; (c) Deliverables do not conform to the specifications; (d) Deliverables are alleged to infringe an intellectual property right or are sold or manufactured in violation of a law, regulation, order, directive or the like; or (e) Seller refuses to furnish appropriate guarantees to protect Tellabs as permitted by law. Except as expressly stated above, Tellabs shall have no other liability to Seller for termination.

## 5. Shipping and Delivery; General Instructions

All Goods shall be received and Services completed by the delivery or completion dates specified in the Contract; but not earlier than thirty (30) days prior to such dates. Seller shall include a packing list with each Goods shipment. If Goods are not received or Services completed within the specified dates, then Tellabs may claim liquidated damages (and not penalties) at the rate of one and one-half percent (1.5%) of the price of such late or undelivered Deliverables for each week of delay; up to a maximum of fifteen percent (15%) of such price. Termination shall not release Seller from paying liquidated damages to Tellabs. The purchase order number shall appear on all packages, packing lists, bills of lading, invoices and correspondences. If a carrier's tariff freight rates depend on the value of Goods shipped, then Seller shall declare the lowest accurate value when releasing Goods to the carrier and not purchase additional insurance. Goods shall be delivered to Tellabs DDP, Tellabs named premises (Incoterms 2000). Rejected Goods shall be shipped by Tellabs to Seller FCA, Tellabs named premises (Incoterms 2000). Seller represents and warrants that each Good's country of origin and/or manufacture is accurately stated on all commercial invoices that accompany the Good, and the Good itself is marked accordingly. Seller shall provide Tellabs with a certificate of origin prior to the first shipment of a Good. Seller shall advise Tellabs at least ninety (90) days prior to a change in, or addition to, a Good's country of manufacture or origin and shall provide an updated certificate of origin prior to shipping such Good.

## 6. Extra Charges

No extra charges shall be claimed by Seller, including those for boxing, packing, crating, insurance or otherwise.

## 7. Warranties

Seller represents and warrants that: (a) Goods (i) shall conform to specifications, drawings, samples or other descriptions furnished or specified by Tellabs, (ii) are merchantable, (iii) are suitable for their ordinary or intended uses and purposes, (iv) are of high quality and free from defects in design, material and workmanship, (v) are free of all liens and encumbrances, and (vi) conform to all relevant legal and regulatory design and manufacturing requirements, including but not limited to the European Union's Restriction on the use of Hazardous Substances (RoHS) Directive, 2002/95/EC, and Waste Electrical and Electronic Equipment (WEEE) Directive, 2002/96/EC, and Seller shall promptly provide evidence of its conformance with such Directives upon Tellabs' request; (b) Seller has good and warrantable title to the Goods and the right to grant any rights and licenses granted herein; and (c) Services shall be performed in a diligent, professional and workmanlike manner in accordance with standard industry practice.



Seller shall repair or replace defective Goods, or accept a return of such Goods and fully refund all payments for such Goods. Seller shall re-perform deficient Services in a fully compliant manner, or fully refund all payments for such Services. Seller shall bear all transportation costs and risk of loss pertaining to repaired or replaced goods. All warranties shall survive acceptance and payment, and are in addition to any other warranties implied in fact or by law.

## 8. Inspection and Acceptance

Deliverables are subject to inspection by Tellabs at any time prior to acceptance. Tellabs may reject any Deliverables that do not conform exactly to the Contract. Tellabs may return rejected Goods to Seller or hold them while awaiting Seller's instructions; all at Seller's risk and expense. Seller shall repair or replace rejected Goods, or re-perform rejected Services, within the original time for performance as stated in the related purchase order, or within such other timeframe agreed by Tellabs in advance in writing. Payment for Deliverables before inspection shall not constitute acceptance thereof. Acceptance shall occur upon Tellabs' written verification that Goods conform to all specifications or Services have been performed properly.

## 9. Intellectual Property

Seller represents and warrants that the use or sale of Deliverables will not infringe any patent, copyright, trademark, trade secret or other intellectual property right and shall indemnify and hold Tellabs, its agents, customers and their respective successors and assigns harmless from all liabilities, losses, costs and expenses (including attorneys' fees) by reason of any such infringement or claim thereof, and, after notice, Seller agrees to defend at its own expense by counsel acceptable to Tellabs any suits or proceedings arising from any such infringement or claim thereof. Tellabs shall retain exclusive right, title and ownership in any Goods that are manufactured in accordance with specific specifications, drawings, requirements and/or other technical documentation of Tellabs ("Special Goods"). Special Goods and any Services related thereto (including the results thereof) are "Work Made For Hire" as defined by the United States Copyright Law. Any ownership or other rights arising out of Special Goods, and Services related thereto, which are not otherwise vested automatically in Tellabs are hereby assigned to Tellabs; and Seller makes no claim of ownership in any of the above. No licenses under any patents, copyrights, trademarks, trade secrets or other intellectual property rights, express or implied, are granted by Tellabs to Seller under this Contract.

## 10. Nondiscrimination in Employment

This Section shall apply if the Tellabs entity purchasing the Deliverables is incorporated in the United States. If the related purchase order is subject to Executive Order No. 11246, Seller shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, handicap, sex or

Vietnam Era Veteran status. Seller shall take affirmative action to ensure that Equal Employment Opportunity is implemented in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. All other applicable provisions of the rules and regulations of the office of Federal Contract Compliance are herein incorporated by reference.

## 11. Injury to Person or Property; Insurance

Seller shall defend (via counsel acceptable to Tellabs), indemnify and hold Tellabs, its agents, customers and their respective successors and assigns harmless from any claim, loss, liability, damage, injury, cost or expenses (including attorneys' fees) pertaining to: (a) personal injury or property damage arising from the Deliverables or Seller's performance hereunder, or (b) claims by persons furnished by Seller or any subcontractors under Worker's Compensation or similar acts. Before providing any Deliverables, Seller shall procure public liability and contractual liability insurance against the foregoing risks and liabilities in accordance with such laws and regulations as shall apply at such place where the Seller's obligations are being discharged. Upon request, Seller shall present to Tellabs policies, certificates or other evidence of such insurance with liability limits reasonably satisfactory to Tellabs and naming Tellabs as an additional insured; provided that the limits of liability or coverage in any such insurance shall not limit the risks and liabilities assumed by Seller.

## 12. Occupational Safety and Health Act

This Section shall apply if the Tellabs entity purchasing the Deliverables is incorporated in the United States. Seller shall comply with the provisions of the Occupational Safety and Health Act of 1970 and the standards and regulations issued thereunder (collectively, "Act") and certifies that all Deliverables will conform to and comply with said Act. Seller shall defend (via counsel acceptable to Tellabs), indemnify and hold Tellabs, its agents, customers and their respective successors and assigns harmless from any damages arising from failure to comply with such Act.

## 13. Compliance with Laws

Seller represents and warrants that it shall comply with all applicable laws, rules and regulations and procure any permits or licenses necessary to perform the Contract. Seller shall hold Tellabs, its agents, customers and their respective successors and assigns harmless from any liability, cost or expense arising from failure of such compliance.

## 14. Taxes

Seller shall be responsible for all taxes (including withholding, value added, goods and services, excise, use or other taxes) pertaining to the production, sale, delivery or use of the Deliverables.



## 15. Price and Payment Terms

If the price is omitted on the face of the related purchase order, then Seller's price shall be the lowest prevailing market price at the time Seller acknowledges the order; but not higher than the price last quoted by Seller to Tellabs. If Tellabs' purchase price is bound to a foreign exchange and a fluctuation in such exchange rate increases Tellabs' purchase price by more than two percent (2%), then any fluctuations beyond such two percent (2%) limit shall be ignored. Seller shall issue invoices after Tellabs' receipt and acceptance of the pertinent Deliverable. Tellabs shall pay undisputed invoices within forty-five (45) days after Tellabs' receipt of such invoice. Applicable taxes shall be stated separately on the invoice. The cash discount period, if any, shall date from Tellabs' receipt of the invoice. Notwithstanding the same, Tellabs may withhold all or part of such payment if Tellabs determines that Seller has failed to perform any part of its obligations. Seller shall not impose any interest, fees or charges against such withheld payments. Unless otherwise agreed, Tellabs shall make payment to Seller in such mode and manner as Tellabs shall determine.

## 16. Title and Risk of Loss

Title to Goods shall pass to Tellabs upon delivery to the destination specified in the related purchase order, and such passing shall not constitute Tellabs' acceptance of the Goods. Risk of loss shall be as dictated by the applicable Incoterm. All means of production (including but not limited to tools, models, equipment or raw materials) provided by Tellabs to Seller to be used for manufacturing or testing Deliverables shall remain the sole and exclusive property of Tellabs.

## 17. Nonexclusive Rights; Forecasts

This Contract does not grant Seller an exclusive privilege to sell Deliverables to Tellabs. Forecasts provided to Seller by Tellabs are nonbinding estimates only.

## 18. Independent Contractor

Seller and Tellabs are each engaged in an independent business. Each Party shall perform its obligations as an independent contractor and not as the agent, employee or servant of the other Party. Each Party shall be solely responsible for: (a) the employment, direction, supervision, compensation and discharge of its own employees, agents and subcontractors, including compliance with social security, withholding and all other applicable regulations; and (b) its own acts and those acts of its employees, agents and subcontractors.

## 19. Environmental Compliance

Seller represents and warrants that the Deliverables and Seller's performance hereunder shall comply with all applicable laws, statutes, regulations, rules, ordinances, directives and codes regarding the packaging, handling, use, storage, processing, transportation, treatment or disposal of Goods that are, or contain, hazardous or toxic wastes, substances or materials ("Hazardous Material"). Seller shall provide advice or assistance to Tellabs or its customers in the use and disposal of Hazardous Material.

Seller shall obtain all licenses, permits and authorizations from all governments or agencies that have, or may assert, jurisdiction over any aspects of Seller's performance hereunder. Seller shall notify Tellabs or its customers at least thirty (30) days prior to shipment of any Goods containing Hazardous Material. Each self-contained unit or carrier shall be marked to identify the existence of Hazardous Material and its name. Tellabs may terminate any order for Hazardous Material within thirty (30) days after such notification from Seller without any liability to Tellabs. Upon request, before shipping Goods or performing Services, Seller will provide to Tellabs a Material Safety Data Sheet pursuant to OSHA Hazardous Communication Standard, 29 CFR 1910.1200 describing any Hazardous Material used or intended to be used to perform a Service; provided that the Tellabs entity purchasing the Deliverables is incorporated in the United States. For purposes of the Material Safety Data Sheet, "Hazardous Material" means any item that may be classified under either federal or state law as hazardous. The statement must describe the Hazardous Material in sufficient detail to allow Tellabs to properly handle and dispose of the item. Seller will immediately notify Tellabs of any Goods sold that fail to comply with an applicable safety commission or (if the Tellabs entity purchasing the Deliverables is incorporated in the United States) the Environmental Protection Agency. Seller shall defend, indemnify and hold Tellabs, its agents, customers and their respective successors and assigns harmless from any losses, fines and/or other penalties incurred, including but not limited to reasonable attorneys' fees, arising from its failure to comply with this Section.

## 20. Information

All specifications, drawings, sketches, schematics, models, samples, tools, computer or other apparatus, programs, technical or business information or data (written, oral or otherwise, and all copies thereof) of Tellabs or its customers or any information developed by Seller at Tellabs' request ("Tellabs' Information") shall: (a) be considered confidential and proprietary, and used only by those Seller employees with a need to know in order to assure Seller's performance under this Contract; (b) remain Tellabs' property; and (c) be returned to Tellabs upon request. Information disclosed by Seller shall not be considered confidential or proprietary.

## 21. Force Majeure

Failure by either Party to fulfill its obligations shall not be deemed a breach of this Contract if that failure is due to causes that are outside the reasonable control of a Party and cannot be avoided by the exercise of due care ("Force Majeure"). Notice of Force Majeure shall be made promptly in writing to the other Party. The performance of a Party's obligations under this Contract shall be suspended for as long as Force Majeure exists. Each Party shall take reasonable steps to limit the effect of Force Majeure. If Force Majeure continues for more than six (6) months, then either Party shall have the right to terminate this Contract upon written notice.

## 22. Limitation of Liability

Tellabs shall not be liable for any incidental, consequential, punitive, indirect or special damages or liabilities of any kind, including but not limited to business interruption, lost profits, loss of use or loss



of data, under any theory of liability and even if Tellabs was advised of the likelihood of such damages or liabilities. In no event shall Tellabs' liability exceed the net purchase price paid for the pertinent Deliverable under the Contract.

### 23. License

Seller grants Tellabs a royalty-free, fully paid, worldwide, irrevocable, perpetual, unrestricted license to use, modify, sell (directly and indirectly), sublicense, import, support and service any software or documentation portion of the Deliverables. Seller grants Tellabs the right to market and distribute, under Tellabs' applicable labels and trademarks, the Goods, either alone or in combination with other equipment or material.

### 24. C-TPAT Compliance

Seller shall inform Tellabs of Seller's Customs-Trade Partnership Against Terrorism (C-TPAT) program membership status. If Seller is not a C-TPAT participant, then Seller shall take such reasonable measures as to ensure the physical integrity and security of all shipments to or on behalf of Tellabs against the unauthorized introduction of harmful or dangerous materials, drugs, contraband, weapons, weapons of mass destruction or unauthorized personnel in transportation conveyances or containers. Such measures may include, but are not limited to: (a) physical security of manufacturing, packing and shipping areas, and restrictions on access of unauthorized personnel to such areas; (b) personnel screening; and (c) development, implementation and maintenance of written procedures to protect the security and integrity of all shipments. Tellabs is a certified member of the C-TPAT program and strongly urges Seller to adopt the security standards of this program. Seller may obtain information pertaining to C-TPAT

security requirements at the website <http://www.cbp.gov>. As a C-TPAT member, Tellabs is required to make periodic assessments of its supply chain based upon C-TPAT security criteria. Seller shall take such reasonable measures as necessary to cooperate with any Tellabs supply chain security assessments and to ensure that pertinent security measures are in place and followed throughout Supplier's supply chain.

### 25. General

Remedies listed herein shall not prejudice Tellabs' right to pursue any other rights or remedies at law or in equity. Waiver of a breach under this Contract shall not constitute a waiver of any other breach. If any provision of this Contract is invalid or unenforceable, then the remainder of the Contract shall not be affected. Seller shall not publish or use any advertising, sales promotion, press releases or publicity matters relating to this Contract without Tellabs' prior written approval. Section headings in this Contract are for convenience only and shall not affect the interpretation thereof. Words importing the singular also include the plural and vice versa. This Contract shall be governed by the laws of the following (excluding their conflict of laws provisions): (a) Illinois, if the Tellabs entity purchasing Deliverables is incorporated in the United States; or (b) Sweden, in all other instances. Neither the United Nations Convention on Contracts for the International Sale of Goods nor the Uniform Computer Information Transaction Act shall apply.

### 26. Survival

Sections 7, 9, 11, 19, 20, 22, 23 and any provision of this Agreement that, given its purpose, interpretation or context, logically should survive the expiration or termination of this Contract shall so survive.

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