

Terms and Conditions for Purchase Orders Originated by a Tellabs Entity of the Asia Pacific Region

1. Acceptance

This order (“Contract”) shall be deemed accepted by Seller upon the earliest to occur of Seller’s (a) confirmation thereof, or (b) delivery of the goods (“Goods”) or performance of the services (“Services”) described on the face hereof. 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 the Tellabs entity located and/or incorporated in the Asia Pacific region originating the Purchase Order (“Tellabs”) and Seller (collectively, “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 both Tellabs and Seller. The Contract is not assignable by Seller.

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 change.

4. Termination

Tellabs may terminate the Contract (in whole or in part) for any or no reason and without charge by providing notice thereof: (a) prior to the acknowledged, scheduled ship date for Goods; or (b) at any time with respect to Services yet to be performed. If Tellabs terminates the Contract because of Seller’s breach of contract (e.g., failure to deliver the Goods or complete Services within agreed times frames, etc.), then Tellabs: (c) may (at Seller’s expense) purchase similar goods or complete the Services on its own or via third parties; and (d) shall have no further obligation to Seller.

5. General Instructions

Seller shall include a packing list with each Goods shipment. 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 lowest accurate value when releasing Goods to the carrier and not purchase additional insurance.

6. Extra Charges

No extra charges shall be made by Seller, including those for boxing, packing, crating, insurance, etc.

7. Warranties

In addition to other express or implied warranties, Seller represents, warrants, covenants and agrees that: (a) the Products shall be free from defects in workmanship and material, shall be of merchantable quality and in good working order, and shall comply with all specifications and documentation relating thereto; and (b) the Services shall be performed in a diligent, professional and workmanlike manner. Unless other agreed, all warranties shall be valid for a period of at least twelve (12) months after the Tellabs’ acceptance of the Deliverable. All warranties shall survive acceptance and payment.

8. Inspection and Acceptance

Tellabs may inspect any Deliverables within thirty (30) days after receipt (for Goods) or completion (for Services) thereof. 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. 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, warrants, covenants and agrees that the Goods (including the use thereof) will not infringe any patent, copyright, trademark, trade secret or other intellectual property right. Seller shall defend (via counsel acceptable to Tellabs), indemnify and hold Tellabs, its successors, assigns and customers harmless from any claim, loss, liability, costs and expenses (including attorneys’ fees) by reason of any such infringement or claim of infringement.

10. Injury to Person or Property

Seller shall defend (via counsel acceptable to Tellabs), indemnify and hold Tellabs, its successors, assigns and customers harmless from any claim, loss, liability, damage, injury, cost or expenses (including attorneys’ fees) pertaining to personal injury or property damage caused by the Deliverables or Seller’s performance hereunder.

11. Insurance

Where Seller is providing services to Tellabs, Seller shall procure public liability and contractual liability insurance against the risks and liabilities assumed in the preceding paragraph in accordance with such laws and regulations as shall apply at such place where the Seller's obligations are being discharged and upon request shall present to Tellabs policies or certificates of insurance or other evidence of such insurance with liability limits reasonably satisfactory to Tellabs, 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 in the preceding paragraph.

12. Government Regulations

Seller represents, warrants, covenants and agrees that it shall comply with all applicable laws, rules and regulations of governmental authorities, and procure any permits or licenses necessary to Seller's performance hereunder.

13. 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.

14. Price and Payment Terms

If the price is omitted on the face hereof, then Seller's price shall be lowest prevailing market price at the time this order is acknowledged by Seller; but not higher than the price last quoted by Seller to Tellabs. Seller may 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. 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 the Seller in such mode and manner as it shall determine.

15. Title and Risk of Loss

Goods shall be delivered to Tellabs DDP, Tellabs' named premises (Incoterms 2000). Rejected Goods shall be shipped by Tellabs to Seller FCA, Seller's named premises (Incoterms 2000). Title to Goods shall pass to Tellabs upon delivery to the destination specified on the face hereof, and such passing shall not constitute Tellabs' acceptance of the Goods. All Goods shall be free and clear of any liens and encumbrances.

16. Non-exclusive Rights

This Contract does not grant Seller an exclusive privilege to sell Deliverables to Tellabs.

17. 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.

18. Environmental Compliance

Seller represents, warrants, covenants and agrees that the Deliverables and Seller's performance hereunder shall comply with all applicable laws, statutes, regulations, rules, ordinances 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 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. Seller shall defend (via counsel acceptable to Tellabs), indemnify and hold Tellabs or Tellabs' customers harmless from any violation or breach of the terms of this section.

19. 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 ("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' or its Customers' property; and (c) be returned to Tellabs or its Customers upon request. Information disclosed by Seller shall not be considered confidential or proprietary.



20. Force Majeure

Any 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.

21. 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.

22. License

Seller grants Tellabs a royalty-free, fully paid-up, worldwide, irrevocable, perpetual, unrestricted license to use, modify, sell (directly and indirectly), sublicense, import 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.

23. Miscellaneous

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. Headings found at the beginning of each Section of 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, to the extent that the Deliverables are shipped to or performed in the United States; or (b) Sweden, to the extent that the Deliverables are shipped or performed outside the United States. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

24. Survival

Sections 7, 9, 10, 17, 19, 21 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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