



## **TESTING HOUSE**

**Terms and Conditions applicable to any purchase of hardware, software, interface, source codes, testing services, hereinafter “products”, made by Testing House de México, S. de R.L. de C.V., hereinafter “Testing House” to any Seller.**

**1.-REVOCATION AND EFFECT OF ORDER.** This purchase order ("Order") may be revoked at any time prior to Testing House's receipt of written acceptance by Seller. This Order expressly limits acceptance to the terms of this Order and Testing House hereby objects to any different or additional terms contained in any response to this Order. To the extent that this Order might be treated as an acceptance of Seller's prior offer, such acceptance is expressly made on condition of assent by Seller to the terms hereof, and the shipment of the products covered by this Order ("Products") by Seller shall constitute such assent. In addition to the other terms in this Order, this Order expressly includes all implied warranties and all of Testing House's remedies set forth in the Code of Commerce of California. The terms of this Order are the sole and exclusive terms on which Testing House agrees to be bound.

**2.- DELIVERY.** Time is of the essence in this Order. Delivery of the Products shall be made pursuant to the schedule, via the carrier, and to the place specified on the face hereof unless changed by written instructions from Testing House prior to shipment. Seller shall promptly inform Testing House of any anticipated delay in shipment. If Seller anticipates two (2) business days of delay then Seller agrees to cover shipping charges from his plant to Testing House. Testing House reserves the right to return, shipping charges collect, all Products received more than three (3) business days after the specified delivery date. If this Order calls for delivery in installments and Seller fails to deliver an installment on the designated delivery date, Testing House may decline to accept subsequent installments and terminate the balance of this Order.

**3.- SHIPPING INSTRUCTIONS.** Unless otherwise specified on the face hereof, all Products shall be packaged by Seller in suitable containers to permit safe transportation and handling. Each delivered container must be labeled and marked to identify contents without opening, and all boxes and packages must contain packing sheets listing contents. Testing House's purchase order number, as well as Testing House's part number(s), must appear on all shipping containers, packing sheets, delivery tickets, and bills of lading. All Products shall be shipped on carriers certified compliant with C-TPAT (Customs-Trade Partnership Against Terrorism). All shipping instructions should be confirmed by the Seller with Testing House at least one day prior to the committed delivery date.

**4.- TITLE AND RISK OF LOSS.** Unless otherwise specified on this Order, Products shall be delivered DDP Testing House's location designated on the face hereof (Incoterms 2010), at which time title and risk of loss on the Products shall pass to Testing House. Products package should be insured for the full commercial



## **TESTING HOUSE**

value in USD of the product. If any of the ordered Products are destroyed or materially damaged prior to the time risk of loss passes to Testing House, Testing House may cancel this Order as to the destroyed or materially damaged Products or require the prompt delivery of substitute Products of equal quantity and quality.

**5.- PRICE AND PAYMENT.** The price to be paid by Testing House for the Products shall be that stated on the face hereof. Payment terms shall be net ninety (90) days from Testing House's receipt of Products unless otherwise specified on the face hereof. Seller invoices must list only one Testing House item number and one Testing House purchase order number, unless the invoices are for "maintenance, repair and operations" ("MRO") items or bin stocking programs. Unless otherwise specified on the face hereof, the price of the Products includes all shipping charges, taxes, VAT, duties and packaging. Personal property taxes assessable upon the Products prior to the receipt by Testing House shall be borne by Seller.

**6.- INSPECTION.** Testing House shall have thirty (30) days from the date of receipt of the Products for inspection and acceptance testing. Any Products not rejected during that initial 30-day period shall be deemed accepted.

**7.-WARRANTIES.** Seller warrants to Testing House and its customers that the Products shall be free of liens, new and unused, perform in accordance with all applicable specifications including Seller's published specifications and be free from defects in materials, workmanship and design for a period of at least two (2) years from Testing House's receipt of such Products. Without limiting Testing House right to pursue any applicable remedies, Products not meeting this warranty may in particular be returned to Seller for credit or replacement at Seller's expense, and at Testing House or final user option.

- a) **Epidemic Failure:** Should Products shipped in any 90-day period to Testing House or should all Products cumulatively received by Testing House experience a failure rate of more than 3% from the same defect or more than 5% from cumulative defects, Seller shall prepare a plan for diagnosing and addressing the problem and will be responsible for all costs incurred by Testing House and its customers in rectifying such failures, including, without limitation, for engineering changes, testing and field-recovery costs, as well as for all damages.

**8.- ITEMS FURNISHED BY TESTING HOUSE.** Unless otherwise specified by Testing House in writing, all designs, tools, patterns, drawings, data, materials, and equipment supplied to Seller or paid for by Testing House shall remain the property of Testing House, shall be used only for making the Products for Testing House, shall be insured by Seller at replacement value, and shall be returned to Testing House in good condition upon completion of this Order. Seller assumes all responsibility for the accuracy of tooling used in the production of the Products, whether such tooling is fabricated by Seller or furnished by Testing House.



## **TESTING HOUSE**

**9.- INDEMNITY.** Seller agrees to indemnify, defend and hold Testing House and its customers harmless from and against any and all claims, actions, losses, expenses, damages, penalties, fines, liabilities and settlements arising from any actual, alleged or threatened third-party claims relating to (a) any infringement, misappropriation or violation on the part of Seller's Products of any third party's patent, copyright, trade secret, mask work, trademark, trademark rights or any other intellectual property right,(b) personal injury or property damage caused by the Products, (c) defects in the Products which amount to a breach of Seller's warranties in Section 7 or 15; (d) breach of Section 16, or (e) as a result of any negligent or reckless act or willful misconduct of the Seller.

**10.- CHANGES.** Testing House may, by purchase order amendment issued to Seller, change (a) the method of shipment or packing, (b) the drawings, designs, or specifications, (c) the place of delivery, or (d) the shipment date. Seller shall promptly inform Testing House of any modifications to the delivery schedule necessitated by the changes. If any Products are designated non-cancelable/non-returnable ("NCNR"), Testing House may reschedule the delivery of any NCNR Products at any time up to the time of shipment for a period of up to ninety (90) days beyond the delivery date, and Testing House shall not have any liability for any costs associated with such rescheduling. Within two (2) days from receipt of a purchase order amendment, Seller shall notify Testing House in writing of any increase or decrease in the cost of performance caused by a purchase order amendment and provide supporting documentation. Testing House shall make an equitable adjustment in the Order to reflect valid cost variances due to the changes requested by Testing House. Seller shall advise Testing House in writing of any foreseeable part shortages.

**11.- TERMINATION AND REMEDIES.** Testing House may terminate this Order in whole or in part at any time by written notice to Seller, even Orders in which Products are designated as non-cancelable/non-returnable. Seller will thereupon immediately (a) stop work on the cancelled Products; (b) notify its subcontractors to do likewise; (c) cancel orders for components for the cancelled Products; (d) return unneeded components for cancelled Products to their suppliers or divert such components to jobs for other customers; and (e) broker non-returnable, unneeded components for cancelled Products. Seller shall not be entitled to compensation for cancelled non-custom Products. Except for termination due to default or delay of Seller, Seller shall be entitled to commercially reasonable compensation for NCNR Products and custom components thereof on hand at the termination date as follows: Testing House will purchase (a) finished Products at the Order price, (b) work-in-process items at a reasonable pro-rata percentage of the finished Products Order price based on the percentage of completion, and (c) custom components for the cancelled Products, which Seller properly ordered and was not able to cancel, return, or broker using diligent efforts within 90 days after cancellation, at Seller's cost for such custom components. The total compensation paid by Testing House for such cancellation shall not exceed the price on the Order for the cancelled Products. In the event that Testing House breaches its



obligations under this Order, and fails to cure within a commercially reasonable time after receiving written notice of such default, Seller's exclusive remedy shall be to receive direct damages for the Products in question as if such Products were cancelled, computed in the manner set forth in the fourth sentence of this section. In no event shall Seller be entitled to indirect, incidental, consequential, special, or punitive damages or loss of profit, for Testing House's breach of the terms and conditions of this Order, or for any other act or omission occurring as a result of Testing House breach of its performance obligations under this Order.

**12.- WAIVER.** No claim or right arising out of the breach of this Order by Seller can be discharged by a waiver of the claim or right by Testing House unless the waiver is supported by consideration and is in writing signed by Testing House.

**13.- ASSIGNMENT.** Seller shall not assign its rights or obligations under this Order without the advance written consent of Testing House. Testing House may assign its rights under this Order to a subsidiary or affiliate upon written notice to Seller.

**14.- CONFIDENTIALITY.** Neither party shall, without first obtaining the other's written permission, advertise, publish, or disclose the terms, details, pricing or specifications of this Order, the amount of revenue generated or to be generated from this Order, nor will either party communicate the fact that Seller has furnished or has contracted to furnish Testing House with the Products. Both parties agree to maintain in confidence those materials and information either has designated as being confidential or proprietary information.

**15.- QUALITY REQUIREMENTS.** Seller shall comply, and shall cause all Products to comply, with all applicable Testing House and Testing House Customers quality and technical requirements, which are incorporated on project bases as part of the parts order form.

**16.- COMPLIANCE WITH LAWS.** Seller shall comply with all applicable laws concerning the materials content and the manufacture and distribution of Products, and shall ensure that its activities in performance of this Order in connection with these Terms and Conditions of Purchase shall not cause Testing House to be in violation of any laws, including without limitation applicable import or export laws, packaging regulations including the ISPM 15 "Requirements of Wood Packaging Materials", Social Responsibility code of conduct requirements (including, upon request, submission of compliance proof to the EICC requirement through submission of a Self Assessment Questionnaire administered by either a 3rd party affiliated with the EICC organization or Testing House), and any applicable Supply Chain security guidelines of the countries in which Testing House conducts business.

- a) **Social Responsibility:** Seller agrees to comply with the Electronic Industry Code of Conduct ("EICC") found at <http://www.eicc.info/>.



- b) **Anti-Terrorism Security Measures:** Seller warrants it is in compliance with and will cause each of its subcontractors and suppliers to comply with (1) all applicable laws relating to anti-terrorism security measures and (2) all Supply Chain Security guidelines as defined by the importing country, including but not limited to: C-TPAT (Customs-Trade Partnership Against Terrorism) as published by the United States, the STP (Secure Trade Program) as published by Singapore, and the AEO (Authorized Economic Operator) as published by the European Union. Supplier warrants that all eligible locations shipping to Testing House are registered to all applicable Known Shipper programs.
- c) **Anti-Corruption Measures:** Seller warrants that in performing its work pursuant to the Order under these Terms and Conditions of Purchase, Seller, its affiliates and agents have not and will not pay, offer or promise to pay, or authorize the payment, directly or indirectly, of any money or anything of value to any government official, government employee, political party or candidate for political office for the purpose of influencing any act or decision of such person or of the government to obtain or retain business, or direct business to any person or business. Seller further warrants it, its affiliates and its agents have not and will not pay, offer or promise to pay, or authorize the payment directly or indirectly, of any money or anything of value to any employee of Testing House to obtain or retain business.

**17.- DISPUTE RESOLUTION.** Any dispute arising out of or relating to this Order shall be settled by the Courts of California. This clause shall not preclude parties from seeking provisional remedies from a court of appropriate jurisdiction. For any Testing House buying entity incorporated in the Americas, California laws apply, excluding those portions relating to conflicts of laws.

**18.- INTENDED BENEFICIARIES.** Seller agrees that Testing House customers are intended "creditor" beneficiaries of Sections 7, 9, 15, and 16.

**19.- INTERPRETATION.** As a result of accepting Testing House's Order, Seller acknowledges that this Order, including the provisions on its face, and these Terms and Conditions of Purchase contain the entire agreement between the parties concerning the purchase and sale of the Products, unless a General Business Agreement (or other similar, functional agreement) is in place between Testing House and Seller, in which case the terms in that agreement take precedence over any similar or comparable terms stated here. Except to the extent Testing House has relied upon statements and writings of Seller and Seller's agents in connection with this Order, there are no oral understandings, representations, or agreements relative to this Order, which are not fully expressed herein. Seller warrants that Seller is familiar with and agrees to be bound by the above Testing House's Terms and Conditions of Purchase, which can also be found at the following website: [www.testinghouse.com.mx](http://www.testinghouse.com.mx). Testing House requires high ethical standards from employees and suppliers. Report suspected violations to the Testing House Ethics to the general manager of the Testing House branch office.