

## SIGMA DESIGN, INC. PURCHASE ORDER TERMS AND CONDITIONS

### 1. TERMS

1.1. The purchase order, together with these terms and conditions, and any attachments, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively, the "Purchase Order"), constitutes the entire agreement between the Sigma Design, Inc. ("Sigma Design") and the vendor (the "Vendor") identified in the Purchase Order. Vendor's acceptance or acknowledgement of this Purchase Order, its acceptance of any full or partial payment, or its commencement of performance constitutes Vendor's acceptance of these terms and conditions. The Purchase Order does not constitute a firm offer and may be revoked at any time prior to acceptance. Notwithstanding the foregoing, if a master agreement covering procurement of the Product or Service described in the Purchase Order exists between Vendor and Sigma Design, the terms of such master agreement shall prevail over any inconsistent terms herein.

### 2. DEFINITIONS

- 2.1. "Deliverables" means the deliverables specified in the Purchase Order (and any "Statement of Work") to be delivered on or before the Delivery Date, including, but not limited to, Products and Services.
- 2.2. "Delivery Date" means the date or dates specified in the Purchase Order by which the Vendor is required to deliver the Product or Service to Sigma Design.
- 2.3. "Harmful Code" means any virus, trojan horse, worm, backdoor or other software or hardware devices the effect of which is to permit unauthorized access to, or to disable, erase, or otherwise harm, any computer, systems or software; or a time bomb, drop dead device, or other software or hardware device designed to disable a computer program automatically with the passage of time or under the positive control of any Person, or otherwise prevent, restrict or impede the User's use of such software
- 2.4. "Intellectual Property Rights" means any patent, copyright, trademark, trade name, design, trade secret, permit, service marks, brands, propriety information, knowledge, technology, licenses, databases, computer programs, software, know how or other form of intellectual property right, title, benefits or interest and the right to ownership and registration of these rights.
- 2.5. "Preexisting Materials" means any Intellectual Property Rights or tangible personal property of Vendor or Sigma Design created before the date of this Purchase Order or outside the scope of this Purchase Order.
- 2.6. "Product or Service", "Product", or "Service" means the deliverables, products and services specified in the Purchase Order, including any SOW, to be delivered on or before the Delivery Date. "Product" further means tangible goods specified in the

Purchase Order to be delivered on or before the Delivery Date. "Service" means the service that Vendor is to perform for Sigma Design specified in the Purchase Order.

- 2.7. "Statement of Work" or "SOW" means the document specifying, without limitation, the scope, objective, and time frame of the Product Vendor will provide to Sigma Design or Service that Vendor will perform for Sigma Design.
- 2.8. "Subcontractor" means a third party providing Product or performing Service under an agreement (a "Subcontract") with Vendor.
- 2.9. "Vendor Personnel" mean Vendor's employees, consultants, agents, independent contractors and Subcontractors.
- 2.10. "Third Party Intellectual Property" means the Intellectual Property Rights of a third party which Vendor uses or incorporates into the Product or Services.

### 3. DELIVERY

- 3.1. Vendor shall adhere to the shipment or Delivery Date schedules specified in the Purchase Order. Vendor will immediately notify Sigma Design in writing upon Vendor becoming aware that Vendor's timely performance under the Purchase Order will be delayed or is likely to be delayed for any reason and provide Sigma Design a written plan to minimize the delay and propose a revised schedule for delivery. Sigma Design's acceptance of Vendor's notice will not constitute a waiver or release of any of Vendor's obligations under the Purchase Order. Vendor and Sigma Design, will negotiate remedies such as shipping via air or other expedited routing.
- 3.2. If Vendor delivers Product or Service after the Delivery Date, Sigma Design has the option to reject such Product or Service.
- 3.3. Vendor will include with each delivery of Products a Master packing list identifying the Purchase Order number(s), line item number(s), part number, size (if applicable) Sigma Design part number(s) for each of the Products (if applicable), a description and the quantity of each of the Products, the date of shipment, and evidence of inspection (if applicable), box number (if applicable). Vendor shall label multiple cartons sequentially. (e.g., box 1 of 2; box 2 of 2). The total number of shipping containers will be referenced on all shipping documents.
- 3.4. Vendor shall give written notice of shipment to Sigma Design when the goods are delivered to a commercial carrier. Vendor shall provide Sigma Design all shipping documents, including the commercial invoice, packing list, air waybill/bill of lading and any other documents necessary to release the goods to Sigma Design. The purchase order number must appear on all shipping documents, shipping labels, air waybill/bill of lading, invoices, correspondence and any other documents pertaining to the Order.
- 3.5. Vendor will include copies of documentation supporting prepaid freight charges (e.g., carrier invoices or UPS shipping log or manifest), if any, with its invoices. Sigma Design will select the carrier and mode of transportation for all shipments where freight costs will be charged to Sigma Design.

- 3.6. Vendor will preserve, pack, package and handle the Deliverables and Products so as to protect the Deliverables and Products from deterioration, loss or damage and in accordance with best commercial practices in the absence of any specifications Sigma Design may provide. Sigma Design may reject or charge Vendor for any loss or damage due to improper packing, packaging or handling.
- 3.7. Unless Sigma Design expressly instructs otherwise, Vendor will deliver all Product or Services to Sigma Design's facility at the address set forth in the Purchase Order. Risk of loss for the Deliverables and Products does not pass to Sigma Design until delivery and acceptance.

#### 4. CERTIFICATE OF CONFORMANCE

- 4.1. Vendor shall include, when indicated, with each shipment a certificate that states that the parts and materials used in the manufacture of the goods furnished under this Purchase Order or contract were tested, inspected, and/or found to be in compliance with the applicable parts and material specifications. The certificate shall also include, but is not limited to, the following information:
  - 4.1.1. Sigma Design Part number, including revision number or letter, of the item being furnished.
  - 4.1.2. Manufacturer's lot identification number of the item being furnished.
  - 4.1.3. Name of the Vendor.
  - 4.1.4. Sigma Design purchase order number.
  - 4.1.5. Signature of applicable quality representative.

#### 5. PRICE AND PAYMENT

- 5.1. Unless otherwise specified in the Purchase Order, the price for the Product or Service does not include taxes and other charges such as shipping and delivery charges, duties, customs, tariffs and other applicable fees. Vendor shall separately itemize all applicable taxes, fees and other charges on each invoice.
- 5.2. Sigma Design will pay Vendor the price in accordance with the payment terms set forth in the Purchase Order.
- 5.3. Payment shall be deemed made on the date Sigma Design's check is mailed or payment is otherwise tendered. Sigma Design may take any offered or negotiated discount on the full amount of the invoice.
- 5.4. Vendor shall promptly repay Sigma Design any amounts paid in excess of amounts due to Vendor without demand from Sigma Design.

## 6. INSPECTION AND ACCEPTANCE

- 6.1. Sigma Design may reject any or all of the Product or Service which does not conform to the applicable requirements of the Product. At Sigma Design's option, Sigma Design may:
  - 6.1.1. Return the nonconforming Product to Vendor for a full refund or credit without paying a restocking charge or return freight charges;
  - 6.1.2. Require Vendor to replace the non-conforming Product or Service;
  - 6.1.3. Repair the non-conforming Product or Service so that it meets the requirements.
  - 6.1.4. Sigma Design may accept the non-conforming Product or Service conditioned on Vendor providing a refund or credit in an amount Sigma Design reasonably determines to represent the diminished value of the non-conforming Product or Service.
- 6.2. Final inspection and acceptance by Sigma Design shall be at destination unless otherwise specified in the Purchase Order. Such inspection shall be in accordance with the stated requirements of these terms and conditions. If rejection of a shipment would result from Sigma Design's normal inspection level under such procedures, Sigma Design may, at its option, conduct an above-normal level of inspection, up to 100% inspection, and may charge Vendor the reasonable costs thereof. If a lot is rejected, Sigma Design may screen the lot at Vendor's expense.

## 7. CHANGES

- 7.1. "Change" means a change Sigma Design directs or causes within the general scope of the Purchase Order, the applicable SOW or both.
- 7.2. Sigma Design, by written order ("Change Order"), may make Changes in accordance with this Section. No Change Order will be binding on Sigma Design unless issued by an authorized representative of Sigma Design's purchasing department.
- 7.3. If Vendor asserts that Sigma Design has directed or caused a Change to the cost of or schedule for performance for which Sigma Design has not issued a Change Order, Vendor will promptly notify Sigma Design in writing of the Change, providing
  - 7.3.1. a description of the action or inaction asserted to have caused the Change;
  - 7.3.2. an estimate of the equitable adjustment that would be required for Vendor to perform the Changed Product or Service; and
  - 7.3.3. a date no less than 30 days from the date of notice by which Sigma Design must respond to Vendor's notice so that Vendor may proceed with the Product or Service unchanged. Sigma Design will evaluate Vendor's notice of Change in good faith, and if Sigma Design agrees that it has made a constructive change, Sigma Design will negotiate an adjustment to price or schedule or both in good faith, and issue a Change Order to Vendor.

## 8. REPRESENTATIONS AND WARRANTIES

### 8.1. Vendor represents and warrants that:

- 8.1.1. Vendor has the full power to enter into the Purchase Order and to perform its obligations under the Purchase Order;
- 8.1.2. Vendor has the right and unrestricted ability to assign the Product or Service to Sigma Design including, without limitation, the right to assign any Product or Service performed by Vendor Personnel and Subcontractors;
- 8.1.3. the Product or Service, and Sigma Design's use of the Product or Service, do not and will not infringe upon any Third Party Intellectual Property Rights or any other proprietary rights, whether contractual, statutory or common law;
- 8.1.4. Vendor will not disclose to Sigma Design, bring onto Sigma Design's premises, or induce Sigma Design to use any confidential or proprietary information that belongs to anyone other than Sigma Design or Vendor which is not covered by a non-disclosure agreement between Sigma Design and Vendor;
- 8.1.5. Software supplied by Vendor does not contain any Harmful Code;
- 8.1.6. The Product or Service does not contain any third-party software, including software that may be considered free software or open source software that:
  - 8.1.6.1. May require any software to be published, accessed or otherwise made available without the consent of Sigma Design, or
  - 8.1.6.2. May require distribution, copying, or modification of any software free of charge.
- 8.1.7. Vendor's Product or Service conforms to Sigma Design's specifications, Vendor's quotation or proposal, and Vendor's brochures or catalogs, and if none of the foregoing is applicable, then such Product or Service is suitable for the intended use. Vendor's Product and Service shall be free from defects in materials and workmanship, and specifically:
  - 8.1.7.1. Vendor has established and maintains a quality management system suitable to perform the Service and deliver the Products. Vendor shall permit Sigma Design to review and audit procedures, practices, processes and related documents to determine applicability.
  - 8.1.7.2. Vendor will promptly notify Sigma Design in writing of any discrepancy in Vendor's Product or Service, process, or quality system.
  - 8.1.7.3. If applicable, Vendor maintains an effective export and import compliance program in accordance with all applicable Trade Control Laws as defined in Section 14.
  - 8.1.7.4. Vendor is not now or at any point during the performance of the Purchase Order listed in any Denied Parties List or otherwise is denied, suspended from or revoked from export privileges by any governmental entity.
  - 8.1.7.5. Vendor has trained all employees involved with this Purchase Order or SOW to the Vendor's quality systems, Trade Control Laws and familiarized the employees involved with these Terms and Conditions.
  - 8.1.7.6. Vendor will not make any changes in Product, process, process definition, change of vendors or change of manufacturing facility location without notifying Sigma Design and obtaining written permission, such permission will not be unreasonably withheld.

8.2. TO THE EXTENT ALLOWED BY APPLICABLE LAW, NO OTHER WARRANTIES ARE MADE, EITHER EXPRESSED OR IMPLIED.

9. ASSIGNMENT AND SUBCONTRACTING

- 9.1. Vendor may not assign any of its rights or delegate any of its obligations under the Purchase Order without Sigma Design's prior written consent, which Sigma Design will not unreasonably withhold. Sigma Design may, at its option, void any attempted assignment or delegation undertaken without Sigma Design's prior written consent.
- 9.2. If Sigma Design consents to the use of a Subcontractor, Vendor will:
  - 9.2.1. guarantee and will remain liable for the performance of all subcontracted obligations;
  - 9.2.2. indemnify Sigma Design for all damages and costs of any kind, subject to the limitations in Section 12 (Indemnification), incurred by Sigma Design or any third party and caused by the acts and omissions of Vendor's Subcontractors; and
  - 9.2.3. Make all payments to its Subcontractors. If Vendor fails to timely pay a Subcontractor for Product or Service performed, Sigma Design will have the right, but not the obligation, to pay the Subcontractor and offset any amount due to Vendor by any amount paid to the Subcontractor. Vendor will defend, indemnify and hold Sigma Design harmless for all damages and costs of any kind, without limitation, incurred by Sigma Design and caused by Vendor's failure to pay a Subcontractor.

10. TERM AND TERMINATION

- 10.1. The Purchase Order will remain in effect with respect to any SOW already issued prior to expiration of the term of the Purchase Order until such SOW is either terminated or the Product or Service is completed and accepted.
- 10.2. Sigma Design may terminate this Purchase Order, any SOW, or both at any time, for no reason or for any reason, upon 15 days written notice to Vendor. Upon receipt of notice of such termination, Vendor will inform Sigma Design of the extent to which it has completed performance as of the date of the notice, and Vendor will collect and deliver to Sigma Design whatever Product or Service then exists. Sigma Design will pay Vendor for all Products or Service performed and accepted through the effective date of the termination, provided that Sigma Design will not be obligated to pay any more than the payment that would have become due had Vendor completed and Sigma Design had accepted the Product or Service. In the event of termination, Vendor shall immediately stop all work and shall immediately cause any and all of Vendor's vendors and Subcontractors to stop work. Vendor shall not be paid for any work or costs that could reasonably be avoided. In no event shall Sigma be obligated to pay for lost profits, anticipated profits, and unabsorbed indirect costs or unabsorbed overhead. Sigma Design will have no further payment obligation in connection with any termination.

- 10.3. Either party may terminate this Purchase Order, any SOW or both, immediately by delivering written notice to the other party for any material breach not cured within 30 days of receipt of notice of the breach. Sigma Design shall have no further payment obligation to Vendor under any terminated Purchase Order or SOW if Sigma Design terminates the Purchase Order or SOW.
- 10.4. Any obligations or duties which, by their nature, extend beyond the expiration or termination of the Purchase Order shall survive the expiration or termination of the Purchase Order.

## 11. CONFIDENTIAL INFORMATION AND PUBLICITY

- 11.1. If Sigma Design and Vendor have entered into a Non-Disclosure Agreement (“NDA”) or Mutual Confidentiality Agreement (“MCA”) which covers disclosure of confidential information under the Purchase Order, and if the term of the NDA/MCA expires before the expiration or termination of the Purchase Order, then the term of the NDA/MCA shall be automatically extended to match the term of the Purchase Order.
- 11.2. The parties shall treat the terms, conditions, and existence of the Purchase Order as Confidential Information as defined in the NDA/MCA.
- 11.3. Vendor shall obtain Sigma Design’s written consent prior to any publication, presentation, public announcement, press release, or other disclosure concerning its relationship as a vendor to Sigma Design.

## 12. INDEMNIFICATION

- 12.1. For Section 11, a “Claim” is any claim, demand, loss, damage, liability, cost or expense (including professional fees and costs as incurred) for which one party (the “Indemnifying Party”) may be obligated to defend, indemnify and hold the other party (the “Indemnified Party”) harmless. The Indemnified Party shall include all subsidiaries, directors, officers, employees and agents.
- 12.2. Vendor shall defend, indemnify and hold Sigma Design harmless from and against any and all Claims as incurred, arising out of or in connection with any act or omission of Vendor (including its Subcontractors) in the delivery of the Product or performance of the Service; any breach of any representation, warranty or covenant hereunder; or any infringement of a third party’s Intellectual Property Rights or any other rights.
- 12.3. Each party will indemnify and hold the other party harmless from and against any and all Claims, as incurred, arising out of any negligent or willful acts or omissions of the Indemnifying Party which results in personal injury (including death) or damage to tangible property (not including lost or damaged data).
- 12.4. The Indemnified Party will provide the Indemnifying Party with prompt written notice of the Claim and permit the Indemnifying Party to control the defense, settlement, adjustment, or compromise of any Claim. The Indemnified Party may

employ counsel at its own expense to assist it with respect to any Claim. The Indemnified Party will have no authority to settle any Claim on the Indemnified Party's behalf.

- 12.5. If a third party enjoins or interferes with Sigma Design's use of any Product or Service, then in addition to Vendor's obligations under Section 11.2, Vendor will use its best efforts to:
  - 12.5.1. obtain any licenses necessary to permit Sigma Design to continue to use the Product or Service;
  - 12.5.2. replace or modify the Product or Service as necessary to permit Sigma Design to continue to use of the Product or Service; or
  - 12.5.3. Promptly refund to Sigma Design the amount paid for any Product or Service for which a third party enjoins or interferes with Sigma Design's use of the Product or Service.

### 13. LIABILITY

- 13.1. Notwithstanding anything else in the purchase order or otherwise, sigma design will not be liable to vendor with respect to the subject matter of the purchase order under any contract, negligence, strict liability or other legal or equitable theory for any amounts in excess of the amount sigma design paid to vendor in the six months preceding the event or circumstance giving rise to such liability.
- 13.2. In no event will sigma design be liable to vendor for any incidental, indirect, special, consequential damages or loss of profits arising out of, or in connection with, the purchase order, whether or not sigma design was advised of the possibility of such damage.
- 13.3. The limitations will apply notwithstanding any failure of essential purpose of any limited remedy provided herein. Nothing in the purchase order limits either party's liability for bodily injury of a person, death, or physical damage to property or any liability which cannot be excluded under applicable law.

### 14. INSURANCE

- 14.1. Vendor will secure and maintain insurance, and will ensure Vendor's Subcontractors secure and maintain insurance coverage, providing coverage for liabilities to third parties for bodily injury (personal injury) and damage to property in amounts sufficient to protect Sigma Design in the event of such injury or damage, and will be in compliance with any and all laws, regulations or orders addressing the liabilities of an employer to its employees for injuries and disease suffered in connection with employment. Vendor further will maintain such additional types and limits of insurance as is customary for a company of similar size and similar operations to Vendor in the jurisdiction or jurisdictions in which Vendor's operations take place.



**15. COMPLIANCE WITH LAWS**

- 15.1. Vendor represents and warrants that it will comply with all applicable local, state, national and foreign laws, regulations, decrees, orders and policies pertaining to its performance of its obligations under this Purchase Order (“Laws”). In particular and without limitation, Export Administration Regulations (“EAR”) of the U.S. Department of Commerce, the U.S. Department of State International Traffic in Arms Regulations (“ITAR”). Vendor’s failure to comply with this provision shall constitute a material breach of this Purchase Order.
- 15.2. Vendor shall promptly notify Sigma Design of any actual or alleged violations of any applicable Laws; any suits, actions, proceedings, notices, citations, inquiries or other communications from any government entity or third party regarding the Purchase Order and a violation or potential violation of any applicable Laws, or any event, action or occurrence that could reasonably impact Vendor’s Representations and Warranties.

**16. RIGHT TO VISITS, INSPECTION, TESTING AND AUDITS**

- 16.1. Sigma Design shall have the right to visit vendor’s facilities, to perform inspections, tests, and audit procedures, practices, processes and documents related to quality assurance and quality control. Sigma Design will provide reasonable notice and perform such inspections and testing during normal business hours. There shall be no additional charge to Sigma Design in exercising this right.

**17. RECORD RETENTION**

- 17.1. Product Traceability. If required in the Purchase Order, Vendor shall maintain all records and traceability of all materials applicable to the Purchase Order in a systematic manner for a period of three (3) years (or as otherwise required and agreed upon).

**18. GOVERNING LAW**

- 18.1. The Purchase Order will be construed in accordance with, and all disputes will be governed by, the laws of the State of Washington, without regard to its conflict of laws rules.

## 19. GENERAL

- 19.1. All notices and communications with respect to this Agreement shall be in writing by mail, e-mail, or other means as agreed to by the parties, and sent to the addresses stated on the front of the Purchase Order.
- 19.2. A party's election not to insist on strict performance of any requirement of the Purchase Order or these Terms and Conditions will not operate or be construed to waive any future omission or breach, or any other provision of the Purchase Order or these Terms and Conditions except as expressly and affirmatively disclaimed in the Purchase Order, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that Sigma Design or Vendor may have at law or in equity.
- 19.3. If any provision of the Terms and Conditions is or becomes void or unenforceable by law, the remainder shall be valid and enforceable.
- 19.4. Vendor agrees that Sigma Design approvals of Vendor's technical and quality specifications, drawings, plans, procedures, reports, and other submissions shall not relieve Vendor from its obligations to perform all requirements of these Terms and Conditions.
- 19.5. Vendor and Sigma Design are independent entities. No partnership of any kind between any parties is intended by, or constituted through, this agreement or the Purchaser Order.
- 19.6. Force majeure: Neither party shall be liable to the other due to any delay or failure to perform its obligations under the Contract if and to the extent that such delay or failure is caused by circumstances beyond the reasonable control of that party which, by their nature, could not have been foreseen by such a party or was unavoidable if foreseeable.
- 19.7. In the performance of the Purchase Order, Vendor agrees to comply with all applicable local, state and federal laws, executive orders and regulations. Further, Vendor agrees to comply with all flow down provisions required by the terms of any applicable government contract specifically identified by Sigma Design.