



PCT EBEAM AND INTEGRATION, LLC. TERMS AND CONDITIONS OF PURCHASE

1. **Scope and Acceptance.** Unless the supplier or seller identified on the related purchase order (the "Supplier") and PCT Ebeam and Integration ("PCT") have entered into a separately executed supply agreement that governs the purchase by PCT and sale by Supplier of goods and services, then PCT's offer to purchase the goods and/or services set forth on the related purchase order (collectively, "Items") can only be accepted by Supplier upon these Terms and Conditions of Purchase. To the extent that the related purchase order might be treated as an acceptance of Supplier's prior offer, such acceptance is expressly made on condition of assent by Supplier to the terms hereof. Supplier shall have accepted these Terms and Conditions of Purchase by presenting PCT with an invoice for the Items, commencing performance (including by shipping or delivering Items to PCT or by performing any services comprising any portion of the Items) or indicating acceptance in writing or electronically. Upon such acceptance, PCT's purchase order and these Terms and Conditions of Purchase become the "Agreement" between Supplier and PCT, and constitute the sole and exclusive terms and conditions for the purchase and sale of the Items. No change, addition or modification to this Agreement, whether proposed or communicated by Supplier in a quotation, invoice, confirmation, acknowledgement or otherwise, will be effective unless set forth in a record that is signed by a duly authorized representative of PCT. **Any and all additional or different terms and conditions proposed by Supplier or included in any communication (whether in written, oral or electronic form) by Supplier to PCT in connection with the Items, whether or not they materially alter this Agreement, are hereby objected to and rejected by PCT, without any further notice of objection or rejection.**

2. Proprietary Information and Prohibited Activities.

A. General. PCT's "Proprietary Information" means all information obtained by, disclosed to, or developed by Supplier and that is based on, incorporates, constitutes, or is derived from any of the following: (i) samples, schematics, drawings, designs, specifications, manuals, forecasts and other technical, business, financial or trade secret information obtained from or through PCT, and (ii) all other proprietary and confidential information (including the terms and existence of this Agreement) provided to Supplier by PCT or obtained by Supplier from PCT's databases or systems during the term of, or in connection with the performance of, this Agreement. PCT grants to Supplier the right to use the Proprietary Information solely for the purpose of providing Items to PCT. Supplier will not disclose, discuss or use any Proprietary Information for any other purpose including, without limitation: (1) reverse engineering the Items; (2) issuing any press releases, advertising, making public statements or in any way engage in any other form of public disclosure; (3) developing, designing, manufacturing, engineering, refurbishing, selling or offering for sale, any Items, or parts or components of Items, including derivatives, improvements or equivalents thereof; or (4) assisting any third party in any manner to perform such activity. Proprietary Information shall be clearly marked by Supplier as "PCT Confidential." Supplier shall use reasonable care to protect confidentiality of the Proprietary Information, and in any event, Supplier shall use at least that degree of care that Supplier uses to protect its own similar information. If Supplier determines that it must consult third parties for the purposes of providing Items to PCT, then Supplier shall ensure that such third parties have entered into an agreement with Supplier that protects PCT's interests in the same manner as set forth in this Agreement, and Supplier shall be responsible and liable for such third parties' compliance with the terms of this Agreement. Upon request, Supplier shall promptly make such agreements available to PCT.

B. Further Information. On request, and in any event, upon termination of this Agreement, Supplier will promptly return all Proprietary Information to PCT, and will in addition, provide to PCT current and complete specifications, designs and drawings for each Item produced for PCT, and any other information that is based on or incorporates the Proprietary Information or PCT's patents, copyrights or trade or service marks. All such information shall be the sole property of PCT.

C. Prohibited Activities. Except for delivery of Items to PCT, Supplier will not reverse engineer, develop, design, manufacture, refurbish, sell or offer for sale any Items about which Supplier has received or obtained Proprietary Information or assist any third party to perform any of such activities.

D. Equitable Relief. In the event that Supplier were to breach or threaten to breach any obligations in this Section, PCT would suffer irreparable harm for which monetary damages are an inadequate remedy, and accordingly equitable relief (including preliminary and permanent injunctive relief) is appropriate (in addition to any other legal or equitable remedy available to PCT).

3. **Warranty.**

A. General. Supplier warrants that, for a period of 24 months after delivery to PCT, all Items shall: (i) be free from defects in design, workmanship, material and manufacture; (ii) be of merchantable quality and be fit and suitable for the purpose intended by PCT; (iii) comply with the requirements of this Agreement, including any of PCT's specifications, drawings, samples, instructions, data or other descriptions; (iv) consist of new (not used or recycled) material; (v) be delivered with good and marketable title, free and clear of all liens, claims and encumbrances; (vi) conform to industry standards and all applicable federal, state and local laws, regulations, rulings, orders and other legal requirements; and (vii) to the extent consisting of services, be performed in a workmanlike and professional manner in accordance with the highest industry standards. The foregoing warranties are in addition to all other warranties expressed or implied and survive delivery, acceptance and payment by PCT.

B. Infringement. Supplier warrants that all Items, the sale of Items by Supplier, and the use and sale of Items by PCT are and will be free from liability for infringement of, or claim of royalties for, patent rights, copyright, trademark, trade secrets or confidential or proprietary intellectual property rights, mechanic's and other liens, and any other encumbrances of any person or entity (collectively "Rights and Encumbrances").

C. Remedies. If an Item does not meet the warranty requirements set forth herein, then in addition to any other remedies available under applicable law, PCT may, at its option: (i) require Supplier to replace the Item or repair the Item; (ii) return the Item to Supplier (at Supplier's expense) and recover the purchase price; (iii) correct the Item itself and charge Supplier the reasonable cost of correction; or (iv) return the Item to Supplier (at Supplier's expense), purchase a comparable Item in the open market, and charge Supplier with any reasonable cost differential (including expedited manufacturing and delivery charges, if applicable).

4. **Inspection and Title Transfer.** Items are subject to inspection and test by PCT at all times and places, including during the period of manufacture, and in any event, at any time prior to final acceptance. Title to an Item will transfer to PCT upon final acceptance by PCT at PCT's delivery destination, unless otherwise specified on the face of the purchase order that is related to this Agreement. Items are not accepted by reason of any preliminary inspection or payment of any invoice. If rejected or required to be corrected, in addition to any other remedy available to PCT under applicable law, PCT shall have the remedies set forth in Section 3c.

5. **Disclaimer and Limitation of Liability for Damages.** IN NO EVENT SHALL PCT BE LIABLE TO SUPPLIER OR TO ANY OTHER PERSON OR ENTITY UNDER ANY EQUITY, COMMON LAW, TORT, CONTRACT, ESTOPPEL, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR CONTINGENT DAMAGES, OR ANY DAMAGES RESULTING FROM LOSS OF SALE, BUSINESS, PROFITS, DATA, OPPORTUNITY OR GOODWILL, EVEN IF THE REMEDIES PROVIDED FOR IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE, AND EVEN IF PCT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. **Intellectual Property Rights and Licenses.**

A. Transfer to PCT. As partial consideration for this Agreement, any rights arising under patent, copyright, trade secret, trademark, mask works, moral rights, or other intellectual property rights in any jurisdiction (collectively, "IP Rights"), that are created, conceived, made or reduced to practice by or for Supplier that relate to Items are hereby irrevocably assigned and transferred to PCT by Supplier unless such IP Rights (i) were developed independent of, and do not contain or reflect the assistance (financial or otherwise), collaboration, input, involvement, development efforts, or creative or inventive contribution of PCT or PCT employees, consultants, contractors or other suppliers, and (ii) do not incorporate, reflect or rely upon PCT's Proprietary Information, and are



not an improvement, enhancement, modification, or derivative work of any IP Right belonging to PCT or transferred to PCT by this Section. Supplier shall (and shall cause its employees, agents, contractors and sub-tier suppliers (regardless whether they sell directly to Supplier) to) assign and transfer all such IP Rights to PCT consistent with the above terms.

B. License to PCT. If any Item incorporates or relies upon any IP Rights created, conceived, made or reduced to practice by or for Supplier that are not transferred to PCT by this Section (collectively "Supplier IP Rights"), then Supplier, as partial consideration for this Agreement, grants to PCT an irrevocable, non-exclusive, paid-up, royalty-free world-wide right and license, with rights of sublicense, to use, distribute, import, improve, sell and have sold such Supplier IP Rights as is necessary for PCT to fully use and/or exploit the Items. PCT shall also be entitled to grant licenses to its customers to use such Supplier IP Rights as related to the operation of PCT's products.

C. No Unauthorized Modification of PCT IP Rights. Supplier shall not (and shall cause its employees, agents, contractors and sub-tier suppliers not to) improve, enhance, or modify IP Rights of PCT without PCT's prior written consent; if such an improvement, enhancement, or modification is nevertheless made, Supplier hereby irrevocably assigns and transfers to PCT, and Supplier shall cause its employees, agents, contractors, and sub-tier suppliers (regardless whether they sell directly to Supplier) to also assign and transfer to PCT, all IP Rights in each such improvement, enhancement, or modification. If any of the foregoing transfers and assignments are to any extent ineffective, Supplier shall grant to PCT an irrevocable, non-exclusive, paid-up, royalty-free world-wide right and license with rights of sublicense, to use, distribute, import, improve, sell and have sold, and make and have made such modifications to PCT's IP Rights.

7. **Responsibility for Goods; Risk of Loss.** Notwithstanding any prior inspections, risk of loss with respect to Items shall transfer from Supplier to PCT in accordance with the shipping terms set forth on the purchase order that is related to this Agreement. Supplier bears all such risks with respect to any Items: (i) rejected by PCT; or (ii) required to be corrected; provided, however, that PCT shall be responsible for loss occasioned solely by the gross negligence of PCT's employees acting within the scope of their employment. Items shall be shipped to PCT by Supplier in accordance with the terms of this Agreement.

8. **Duty Drawback.** Supplier will provide PCT with documentation acceptable to U.S. Customs and Border Protection ("CBP"), including CBP entry data and information, and receipts for duties paid, as PCT determines necessary for PCT to qualify for duty drawback. At the time of delivery of the merchandise, but in no event later than thirty (30) days after each calendar quarter, Supplier will provide said documents accompanied by a completed Delivery Certificate for Purposes of Drawback (CBP Form 7552) or other documentation required pursuant to 19 C.F.R. 191, or successor regulations. Supplier specifically transfers any rights to drawback to PCT, and will not to file any drawback claims for the delivered merchandise, and further will maintain any and all records required by law which relate to the delivered merchandise and provide them to CBP upon request.

9. Cancellation.

A. General. PCT may cancel this Agreement in whole or in part by written or electronic notice, if Supplier: (i) fails to deliver Items in accordance with specified delivery times, Item requirements or other specifications; (ii) fails to replace or correct defective Items as PCT requires; (iii) fails to comply strictly with any provision of or repudiates or anticipatorily repudiates this Agreement; (iv) becomes insolvent, files a petition for relief under any bankruptcy, insolvency or similar law, makes an assignment for the benefit of its creditors, or takes any action for (or in anticipation of) any of the foregoing or (v) there is a change in control or material change in the ownership of Supplier's business, or other extraordinary transaction with respect to Supplier.

B. Upon Cancellation. Upon cancellation pursuant to this Section, Supplier shall: (i) supply any portion of the Items for which this Agreement is not cancelled; (ii) be liable for additional costs, if any, for the purchase of similar goods and services to cover such default; and (iii) at PCT's request, transfer title and deliver to PCT: (a) any completed Items, (b) any partially completed Items and (c) all unique materials and tooling. Prices for partially completed Items and unique materials shall be negotiated, but in no event shall they exceed the price set forth on the related purchase order. PCT's rights and remedies as described herein are in addition to any other rights and remedies provided at law or in equity.

10. Indemnity by Supplier. Supplier shall defend, indemnify and hold harmless PCT (and its officers, directors, employees, managers, customers, agents and representatives) from and against any and all actions, claims, suits, losses, penalties, damages (whether actual, punitive, consequential or otherwise) and associated costs and expenses (including attorney's fees, expert's fees, and costs of investigation) and all liabilities or obligations (collectively, "Losses") that are caused in whole or in part by: (i) any actual or alleged infringement of any Rights and Encumbrances; (ii) any breach by Supplier of this Agreement; (iii) the delivery, condition, use or operation of the Items; (iv) any negligent, grossly negligent or intentional act, error or omission by Supplier, its employees, officers, agents or representatives in the performance of this Agreement; or (v) any claims that are for, in the nature of, or that arise under warranty, strict liability or products liability with respect to or in connection with the Items. Supplier shall be obligated to fulfill its indemnification, defense and hold harmless obligations under this Agreement regardless of whether any Losses result from the concurrent or partial negligence of PCT.

11. Force Majeure. A failure by either party to perform due to causes beyond the reasonable control of and without the fault or negligence of such party is deemed excusable during the period in which such cause of failure continues. Such causes may include acts of God, or the public enemy, acts of Government (in sovereign or contractual capacity), fire, flood, epidemic, strike, freight embargo and unusually severe weather. When Supplier becomes aware of any actual or potential force majeure condition, Supplier shall immediately notify PCT of the condition, and PCT may, at its option, while such condition is pending, obtain alternative goods or services to the Items from another supplier and/or terminate this Agreement, in each case without liability under this Agreement.

12. Shipping and Delivery. Time is of the essence. Performance by delivery or otherwise of Items must be made on the delivery or other performance date specified in the related purchase order. No partial delivery or delivery of added quantities shall be made unless PCT has given prior written consent. Applicable shipping terms shall be as set forth on the purchase order that is related to this Agreement. All prices for Items shown in this Agreement shall be deemed to include any fees or costs related to handling, packaging, crating, export or other related delivery expenses unless otherwise set forth in this Agreement. If the related purchase order indicates PCT will be responsible to pay for the delivery of Items, then Supplier will use the carrier and service level (e.g., ground, air, second-day, next-day) specified by PCT, and adhere to those instructions PCT in advance in writing, and PCT shall not be responsible for (i) delivery costs and expenses incurred as a result of Supplier's use of an unauthorized carrier or of a service level that exceeds the service level specified by PCT; (ii) any additional delivery costs and expenses incurred because of Supplier's use of expedited delivery methods or failure to comply with PCT's shipping instructions; or (iii) any delivery costs and expenses incurred in connection with the transportation of Items between Supplier and a sub-tier supplier or any other supplier, transportation of Items between Supplier and a sub-tier supplier or any other supplier. PCT may recover and offset or adjust payment for those delivery costs and expenses that PCT incurs, and for which PCT is not responsible under this Section. Supplier shall cause PCT's purchase order number for the Items (the "PO Number") to appear conspicuously on each package, box or other type of container for Items. In the event such PO Number does not appear conspicuously on each such package, box or other type of container, PCT at its option may return at Supplier's expense the Items delivered in each such improperly marked or unmarked package, box or other type of container. ALL SHIPMENTS MUST CONTAIN PACKING LISTS SHOWING: PO NUMBER; DESCRIPTION OF ITEMS; QUANTITY; AND PART NUMBER. PCT's determination of the quantity of any Items shipped without a packing list shall be final.

13. Termination for Convenience. PCT may terminate this Agreement for its convenience in whole or in part at any time by written or electronic notice. Upon such termination, Supplier shall, to the extent practicable and at the time specified by PCT, stop work and terminate outstanding orders under the Agreement, protect all property in which PCT has or may acquire an interest, and transfer title and make delivery to PCT of all Items, materials or other property held or acquired by Supplier in connection with the terminated portion of this Agreement. PCT's maximum liability for Items related to such termination shall be a pro-rata amount of the total Agreement price, less advances or other payments, based upon the price for Items delivered or completed prior to termination, and the actual costs (including a reasonable profit) for work in process incurred by Supplier which are allocable to the terminated portion of this Agreement. PCT shall have no liability at law or in equity under this Section unless Supplier submits a detailed claim to PCT within six months after PCT's notice of termination.

14. Change Orders. By written notice, PCT may suspend performance under this Agreement, change the quantities of Items, extend or shorten delivery requirements or make other changes within the general scope of this Agreement, including without limitation: (i) applicable specifications, drawings, and other documents; (ii) method of shipment or packing; and (iii) place or date of delivery, inspection or acceptance. If such a change causes an increase in the cost of or time required for Supplier's performance, an equitable adjustment agreeable to PCT shall be made in the price or other terms of this Agreement if requested by Supplier prior to change implementation. Supplier shall continue with performance of this Agreement in accordance with the notice of change or amendment. A change by PCT pursuant to this Section shall not constitute a breach or default by PCT.

15. Invoices; Payment Terms. Invoices shall contain purchase order number, a description of Items, quantities, unit prices, extended totals, applicable taxes and any other information specified by PCT. PCT shall have no obligation to honor invoices for Items at any increased prices unless any such increase shall have been confirmed in a written instrument executed by a duly authorized representative of PCT. Payment of an invoice shall not constitute acceptance of Items and shall be subject to adjustment for errors, shortages, defects, or other causes. PCT may set off any amount owed by PCT against any amount owed by Supplier or any of its affiliated companies to PCT. Payment in connection with any discount term will be calculated from: (i) scheduled delivery date, (ii) actual delivery date, or (iii) the date an acceptable invoice is received, whichever is latest; and payment under a discount term is deemed made on the date of mailing of PCT's check. If payment is made electronically, payment shall be deemed made when the Supplier's depository institution receives or has control of the payment. PCT makes payments based on a weekly schedule where PCT designates one day per week (the "Weekly Payment Date") for payments due to Supplier. If the due date for payment to Supplier falls between Weekly Payment Dates, then Supplier will be paid on the next Weekly Payment Date.

16. Extras; Substitutions. No substitution of materials or accessories for Items shall be made without PCT's advance written consent. No charges for extras shall be made unless such extras have been ordered in writing by PCT and the price agreed upon in writing by PCT and Supplier.

17. Import and Export. Both parties shall comply with all applicable import and export control laws or regulations of any country (including the United States) with jurisdiction over the Parties or transactions occurring under this Agreement ("Import/Export Laws"). Neither party shall export, re-export or disclose Items or data to persons or destinations in violation of Import/Export Laws. Whichever party is responsible for the design of an Item must provide the other party with the information required to comply with Import/Export Laws. Supplier must provide all documentation required by U.S. Customs Regulations.

18. Miscellaneous.

A. Assignments. No right or obligation under this Agreement may be assigned by Supplier without the prior written consent of PCT. PCT may assign the rights or obligations or both of this Agreement in whole or part at any time.

B. Waiver. If PCT fails to insist on performance of any term or condition, or fails to exercise any right or privilege hereunder, such failure shall not constitute a waiver of such term, condition, right or privilege.

C. Survival of Obligations; Severability. The obligations of the following sections shall survive the cancellation, termination or expiration of this Agreement: 1, 2, 3, 5, 6, 7, 8, 9b, 10, 12, 13, 15, 16, 17 and 18c. Any provision of this Agreement that is held unenforceable or invalid for any reason shall be severed and the remainder of the Agreement shall continue in effect.

D. Compliance with Laws. Supplier warrants, represents and covenants that no law, rule, regulation, order or ordinance of the United States, any state, any locality, any governmental agency or authority of any country has been, or will be, violated in supplying, manufacturing, transporting, installing or delivering the Items.

E. Independent Contractor. Regardless and independent of any administrative, judicial or other governmental determination to the contrary, no persons employed by Supplier or Supplier's contractors or suppliers in connection with manufacture, production,



performance or delivery of Items under this Agreement shall be held or construed to be PCT's employees under any federal, state or local law, regulation, ruling, order or other legal requirement (including those dealing with income or social security tax withholding, unemployment or workers' compensation, or any other law dealing with the obligations of an employer to its employees), and Supplier shall indemnify, defend and hold harmless PCT (and its officers, directors, employees, managers, customers, agents and representatives) against and from all taxes, contributions, assessments or other costs or Losses imposed by or relating to any such law, regulation, ruling, order or other legal requirement.

F. Governing Law, Exclusive Forum. The Agreement shall be interpreted, enforced and governed by the laws of the State of Iowa, excluding its choice of law rules. The exclusive forum for any dispute related in any way to this Agreement or the Parties' relationship shall lie in the courts, state or federal, of Iowa, and venue shall lie in the courts of Scott County. Items shall be deemed and shall qualify as goods under the Uniform Commercial Code as adopted in Iowa. Each Party consents to personal jurisdiction in the above courts.

G. CISG. With respect to transactions to which the 1980 United Nations Convention on Contracts for the International Sale of Goods ("CISG") would otherwise apply, the rights and obligations of the parties under the Agreement shall not be governed by the provisions of the CISG.