

# **PULSER PURCHASE ORDER TERMS AND CONDITIONS**

## **1. ACCEPTANCE:**

Acceptance, acknowledgment or shipment of any part of this order constitutes Seller's agreement to all terms and conditions set forth or referenced herein and on the face hereof. This contract supercedes all prior offers and other communications and sets forth the entire understanding between Seller and Purchaser with respect to the subject matter hereof. This order constitutes an offer by Purchaser and expressly limits acceptance to the terms and conditions stated herein and no agent or employee of Purchaser is authorized to make any agreement or understanding in any way modifying the terms and conditions of this order, nor shall any additional provisions or provisions of variance herewith that may appear in Seller's quotation, acknowledgment, invoice or in any other communication from Seller to Purchaser be deemed accepted by or binding on Purchaser, such provisions being rejected by Purchaser and superseded by the terms and conditions stated herein, unless and until expressly assented to in writing with legal consideration by Purchaser's authorized representative. Stenographic and clerical errors and omissions by the Purchaser are subject to correction.

## **2. INVOICES:**

Seller agrees to invoice at the prices set forth on the face hereof or at the lowest price for comparable quantities available to any purchaser as of the time of delivery hereunder, whichever is lower. Invoices shall be rendered in triplicate and cover not more than one order. Invoices, shipping notices, bills of lading, and receipts shall be mailed promptly after shipment. Discounts shall be applicable to payments made within the stated period computed from date of receipt of proper invoice or delivery at destination, whichever is later. Payment shall, however, not be due and owing until arrival of credited days defined in each purchase order from date of acceptance provided in paragraph 5 hereof. All invoices shall be issued and payment shall be made in the currency stated on the face of this Purchase Order.

## **3. PACKAGING AND SHIPMENT:**

All items are to be suitably packaged, boxed, wrapped or crated so as to be protected against hazards of shipment, storage and exposure. All packages shall be labeled to show the number of the purchase order, weight, name of item and material of which it is made. Itemized packing slips showing the number of this Purchase Order must accompany each delivery and Seller shall mail a copy to Purchaser at destination address at time shipment is made. Purchaser's count shall be conclusive in the absence of a packing slip. No separate charge shall be made for transportation, insurance, cartons, wrapping, packing, boxing, crating, delivery, drayage or other costs, unless otherwise agreed in writing by Purchaser. Where transportation or other charges may be prepaid by Seller and billed to Purchaser, the amount thereof shall be separately stated on the invoice and supported by receipts. Seller assumes all risks in connection with the goods

ordered herein until delivery to and acceptance by Purchaser as specified and all risks in connection with goods rejected by Purchaser from time of shipment thereof to the Seller. Title to the items shipped shall pass upon delivery to and acceptance by Purchaser.

#### 4. DELIVERY AND QUANTITY:

Time and rate of delivery are of the essence, except when due to causes beyond Seller's reasonable control and without Seller's fault or negligence. Seller shall immediately notify Purchaser in the event of any threatened or actual matter that may delay Seller's performance hereunder (the anticipated duration of the delay and the causes thereof). Purchaser may by written notice of default to Seller, in addition to all other remedies, (a) terminate the whole or any part of this order in any one of the following circumstances: (i) if Seller fails to make shipment of items or fails to perform the services within the time specified herein or any extension thereof; or (ii) if Seller fails to comply with the other terms and conditions of this order; and (b) procure upon such terms as Purchaser shall deem appropriate, items or services similar to those so terminated, in which case Seller shall continue performance of this order to the extent not terminated and shall be liable to Purchaser for any excess costs for such similar items or services and any expenses incurred in connection therewith. If Purchaser requests expedited shipment of any late deliveries, Seller shall pay any additional costs of expedited shipment. Seller shall not ship ahead of the scheduled delivery date unless authorized by Purchaser in writing. Purchaser may return, at its option, all unauthorized early shipments to Seller at Seller's expense. Payments for early shipments shall be postponed until normal maturity after the scheduled delivery date.

#### 5. INSPECTION:

Seller shall provide and maintain an inspection system adequate to insure that all work being performed and goods delivered conform to the requirements of this contract. In addition, Purchaser may, to the extent practicable and at all reasonable times and places, inspect or test the work (including without limitation, raw materials, components, intermediate assemblies and end products) being performed under this contract. If any inspection or test is made by Purchaser on the premises of Seller or a lower tier subcontractor, all reasonable facilities and assistance necessary to such inspection shall be provided by Seller without any additional charge. Purchaser may, at its option, reject and return any goods which contain defective material or workmanship or which do not conform to this Purchase Order, applicable drawings, specifications, or samples. Rejected goods which Purchaser returns to Seller and replacement or repaired goods which are returned to Purchaser shall be returned at Seller's risk and expense. Purchaser may at its option use either a sampling plan or 100% inspection. Lots which fail to pass such sampling plans may, at Purchaser's option, be inspected 100% at Seller's cost. Acceptance of the work and/or goods by Purchaser shall not relieve Seller of its liability for work and/or goods which do not conform to the requirements of this contract.

#### 6. WARRANTY:

Seller warrants that all items and work will conform with applicable drawings, specifications, samples and other descriptions. Seller warrants that (i) it has title to the goods, (ii) the goods are free and clear of all liens and (iii) all goods and work will be merchantable and free from defects

in design, materials and workmanship and if not of Purchaser's design, will be suitable for the purpose intended whether expressed or reasonably implied. Purchaser's approval of designs furnished by Seller shall not relieve Seller of its obligations under this contract. Seller warrants that all services will be rendered in a good and workmanlike manner. The foregoing warranties are in addition to warranties created by operation of law and shall survive acceptance and payment and shall run to the Purchaser, its customers and the user of the item. Warranty failures may be returned to Seller for replacement, repair, refund or credit at Purchaser's option and at Seller's risk and expense. Replacement goods shall be subject to full original warranty.

## 7. PATENT INDEMNITY:

Seller agrees, at its own expense, to indemnify, defend and save Purchaser, its officers, directors, employees, affiliates and customers harmless from all liability, loss or expense, including costs of settlement and attorneys fees, resulting from any claim that Purchaser's use, possession or sale of the items furnished Purchaser hereunder infringes any copyright, patent, trademark or other intellectual property right or is a misappropriation of any trade secret. The foregoing indemnity shall not apply to items furnished Purchaser in accordance with a design supplied by Purchaser.

If the use by Purchaser or its affiliates, subsidiaries, assigns or customers of any good or service furnished under this Purchase Order is enjoined ("Infringing Product"), Seller shall, at its own expense, procure for Purchaser the right to continue using the Infringing Product. If Seller is unable to do so, Seller shall at its own expense, either replace the Infringing Product with a non-infringing product, or modify the Infringing Product so that it becomes non-infringing. If Seller is unable to replace or modify the Infringing Product, Seller shall promptly refund in full all costs paid by Purchaser for the Infringing Product. If the use of such goods is enjoined, temporarily or permanently, Purchaser may return such goods to Seller for a full refund and cancel any remaining portion of the Purchase Order.

## 8. PURCHASER'S PROPERTY:

Title to and the right to immediate possession of all tools, molds, dies, parts, supplies, jigs, fixtures, plans, drawings, specifications and all other equipment, materials and property that are furnished by Purchaser for Seller's use hereunder; or are procured, produced, manufactured or fabricated by Seller in connection with Seller's performance hereunder; or are in any manner paid for directly or indirectly by Purchaser (all of which is collectively referred to as "Purchaser's Property") shall at all times be and remain with Purchaser. Seller shall take all measures which Purchaser deems appropriate to perfect or evidence Purchaser's title to all Purchaser's Property, including without limitation executing and filing informational financing statements and other documents with respect thereto, and for such purpose Seller hereby irrevocably appoints Purchaser as Seller's attorney-in-fact to execute all such documents in Seller's name and on Seller's behalf. Seller shall clearly mark or otherwise adequately identify all Purchaser's Property as belonging to Purchaser. Seller shall not transfer possession of any Purchaser's Property to any third party, or delegate or assign any of Purchaser's obligations with respect thereto, unless otherwise specifically agreed by Purchaser in writing.

While any Purchaser's Property remains in Seller's possession, Seller shall at its expense maintain the same in good operating condition and repair and in compliance with all warranties

contained herein. Seller shall be responsible for and shall bear all risk of loss or damage to all Purchasers' Property while in Seller's care, custody, possession or control, and shall insure such risks with full replacement value. Unless otherwise agreed by Purchaser in writing, Seller will use all Purchaser's Property solely and exclusively to perform for Purchaser's benefit hereunder, and not for the benefit of any other party.

Seller, as a material part of the consideration hereunder, hereby assumes all risk of damage to property or injury to persons arising from its use of all Purchaser's Property. Seller shall defend, indemnify and hold Purchaser, its employees, officers, directors and affiliates harmless from and against any and all claims arising from Seller's use of Purchaser's Property, including all attorney's fees, expenses and liabilities incurred in the defense or settlement of any such claims, and, in the event of any claim against Purchaser by any employee or agent of Seller, Seller's liability and indemnification obligation hereunder shall not be limited by any amount recoverable by such persons under worker's compensation or similar applicable law. Seller shall maintain such liability insurance with respect to its obligations under this Section as reasonable and customary and as Purchaser may from time to time require.

Purchaser shall have the right to recover immediate possession of all Purchasers' Property at any time, with or without cause, and without any additional charge or fee being assessed to Purchaser by reason of such recovery. Upon Purchaser's request, Seller shall deliver all Purchasers' Property to Purchaser, FOB Seller's dock, in good condition and repair, normal wear and tear only excepted.

## 9. PURCHASER'S DESIGN:

If the items or parts thereof, contracted for hereunder, are of Purchaser's design the Seller shall not reproduce for others any such item or parts thereof without the prior written consent of Purchaser, nor shall Seller supply or disclose to others any information regarding such items or parts thereof, nor incorporate in other products or articles any special feature of design or manufacture, considered by Purchaser to be peculiar or unique to the items or parts thereof, without such prior written consent.

## 10. PATENT RIGHTS:

The expression "Subject Inventions" herein means each invention, improvement and discovery (whether or not patentable) conceived and/or first actually reduced to practice in or related to the performance of this order, which was done upon the understanding that an order would be awarded to Seller by Purchaser, and the expression "Technical Personnel" means each person employed by or working for or with Seller, who would reasonably be expected to make inventions hereunder.

When payment is made for development or research work to be performed in accordance with special requirements of the Purchaser, Seller agrees:

(a) To obtain promptly Patent Rights agreements with Technical Personnel, requiring said Technical Personnel to disclose promptly in writing, and assign to Purchaser directly or to Seller, all Subject Inventions made by Technical Personnel either solely or jointly with others. If

Subject Inventions are first assigned to Seller, then Seller agrees to and does hereby assign to Purchaser, its successors and assigns the entire and exclusive right, title and interest throughout the world in and to said Subject Invention. Said Patent Rights agreements shall specify that, upon request of Purchaser and without compensation therefore, Technical Personnel and Seller shall cooperate fully and do all rightful acts, including the execution of papers and proper oaths, which in the opinion of Purchaser may be necessary or desirable in obtaining, sustaining or reissuing United States Letters, Patents and Foreign Patents on all of said Subject Inventions, and for maintaining Purchaser's title thereto. Said Patent Rights agreements shall also specify that the Technical Personnel shall treat as confidential all information obtained by Technical Personnel in connection with the performance of this order and shall not publish or disclose this information to others at any time without written consent of Purchaser.

(b) Concerning Subject Inventions, Seller agrees to obtain and deliver promptly to Purchaser complete written descriptions of Subject Inventions along with complete assignments from Technical Personnel and to reassign, transfer and set over promptly unto Purchaser the entire and exclusive rights, title and interest in said Subject Inventions and all United States and foreign applications for patents, and subsequently issued patents based upon Subject Invention.

© The parties designated by Purchaser for preparing application(s) for patents at Purchaser's request shall be entitled to the additional technical assistance and advice of Technical Personnel at Purchaser's expense at the rate paid by Seller to Technical Personnel.

(d) If, to the best of Technical Personnel's and Seller's knowledge and benefits, no Subject Inventions have been conceived and/or first actually reduced to practice under this order, the Seller shall so certify to Purchaser upon request.

#### 11. SET OFF:

Any monies due Seller or any of its affiliated companies by Purchaser or any of its affiliated companies for any items furnished hereunder may at Purchaser's option be applied to the payment of any sums owing by Seller to Purchaser.

#### 12. ASSIGNMENT AND DELEGATION:

Seller may not assign, pledge, or in any manner encumber Seller's rights under this Purchaser Order or delegate its performance or obligations hereunder without Purchaser's prior written consent.

#### 13. CHANGES:

Purchaser may at any time, by written notice, make changes, within the general scope of this order, in the specifications, designs, drawings, quantity ordered, methods of shipment, packaging, or place or time of delivery. If any such change directly causes an increase or decrease in the cost of or the time required for the performance of any part of the work under this order, an equitable adjustment shall be agreed to by the parties with respect to the price or delivery schedule, or both, and this order shall be modified in writing accordingly. Any claim by Seller for an adjustment must be made in writing within thirty (30) days of the receipt of any

such change notice. Nothing contained herein shall relieve the Seller from proceeding without delay to perform this order as changed.

Unless otherwise stated on the face of this Purchase Order, Purchaser may reschedule any delivery due at Purchaser's facility before the delivery date without incurring any rescheduling charges or other expense. Seller shall confirm, within 2 days, any changes or reschedules in writing, via mail, facsimile or electronic data transmission. Seller shall not, without the prior written consent of Purchaser, make any change in the manufacturing or other processes, manufacturing facility, specification, design or raw materials or make any other change that affects the form, fit or function of the goods.

#### 14. METALS:

Any precious or semi-precious metals that Purchaser or its agent provides to Seller for incorporation into goods or use in connection with services is provided on a consignment basis and shall not be commingled with any other metals or materials held by the Seller without the express prior written consent of Purchaser. Unless otherwise agreed to in writing by Purchaser, Purchaser and/or its agents shall retain title to the metal at all times and shall have the right to require Seller to return such metal at any time.

#### 15. CANCELLATION:

In addition to all of the other rights which Purchaser may have to cancel this Purchase Order, Purchaser shall have the further right, without assigning any reason therefore, to terminate any work hereunder, in whole or in part, at any time. Purchaser will not be liable to Seller for any amount if the goods are part of Seller's standard commercial products or for any raw materials or supplies that can be returned, cancelled or otherwise used in Seller's operations. In no event shall Purchaser be liable for special, indirect, consequential or punitive damages whether based on contract, tort, strict liability or otherwise. Upon notification of cancellation, Seller shall provide a complete cancellation cost analysis and shall immediately notify Purchaser of any anticipated cancellation costs. Cancellation charges shall be subject to Purchaser's agreement and audit.

#### 16. INDEMNIFICATION:

In the event Seller, its employees, agents or subcontractors enter premises occupied by or under the control of Purchaser in the performance of this order, Seller agrees that it will defend, indemnify and hold harmless Purchaser, its officers, directors, affiliates and employees from any loss, costs, damage, expense or liability (including attorneys' fees) by reason of property damage or personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with such entry.

#### 17. COMPLIANCE WITH ALL LAWS/INDEMNIFICATION:

Seller warrants and it is a condition of this Purchase Order, that all performance hereunder shall be in accordance with all applicable Federal, State and local laws, regulations and orders, including, but not limited to: OSHA, environmental regulations, licenses or permits, and the Fair Labor Standards Act of 1938, as amended. Upon request, Seller shall furnish Purchaser with specific certifications of legal compliance. Until received by Purchaser, all goods are Seller's



sole responsibility including, but not limited to, the responsibility for proper, lawful handling or shipment of such goods, or of any by-product or waste stream resulting there from. Seller shall defend, indemnify and hold harmless Purchaser, its directors, officers, employees, affiliates and agents from any and all claims, demands, suits or actions, environmentally related or of any other nature whatsoever including attorney's fees, and expenses arising from Seller's activity in the performance or omission of any specified, required or requested services for or on behalf of Purchaser.

#### 18. TOXIC SUBSTANCES:

Unless otherwise stated on the face of this Purchase Order, Seller hereby warrants to Purchaser that all goods provided to Purchaser are safe for their foreseeable use, are not defined as hazardous or toxic substances under applicable Federal, State or local law and present no hazard to persons or the environment. Seller agrees to defend, indemnify and hold Purchaser, its officers, directors, employees and affiliates harmless for any expenses incurred by reason of Seller's delivery to Purchaser of hazardous or toxic substances.

#### 19. DEFAULT:

Purchaser may, by a written order, terminate this contract in whole or in part if Seller (1) fails to make delivery of the goods or perform the services within the time specified in this contract or any extension thereof, (2) fails to perform any of the other provisions of this contract or so fails to make progress as to endanger performance of this contract in accordance with its terms and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as Purchaser may authorize in writing) after receipt of notice from Purchaser specifying such failure, or (3) becomes insolvent or fails if requested to provide additional assurance of financial solvency or of performance when it reasonably appears to Purchaser that Seller is not or will not be financially solvent or may not perform in accordance with the contract.

If Purchaser terminates part of the work under this contract, Seller shall continue performance of this contract to the extent not terminated. If Purchaser elects not to terminate under this clause, it shall promptly notify Seller, in writing, of this election and Seller shall continue performance of this contract. Such election shall not prevent Purchaser from pursuing any other remedy available under this contract or at law or from terminating for any subsequent breach.

If Seller's default is not the result of an excusable delay as provided herein, Purchaser may purchase goods or services similar to those so terminated and Seller shall be liable to Purchaser for any excess costs for such similar goods or services and other damages Purchaser may suffer. If Seller's default is the result of an excusable delay caused by an act of Purchaser, or it is determined that Seller was not in default under the provisions of this contract, Seller shall receive payments in the same manner as if the contract had been terminated in accordance with the cancellation clause of the contract.

If this contract is terminated as provided herein, Purchaser in addition to any other rights provided in the clause, may require Seller to transfer title, and deliver to Purchaser in the manner and to the extent directed by Purchaser, (1) any completed goods, and (2) such partially

completed goods and materials, parts, tools, dies, jigs, fixture plans, drawings, information and contract rights (hereinafter called “manufacturing materials”) as Seller has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated and Seller shall upon direction of Purchaser, protect and preserve property in possession of Seller.

## 20. DISPUTES:

Any claims or controversy relating to this contract or arising out of the performance hereof, which is not disposed of by agreement, shall be decided by Purchaser who shall reduce such decision to writing and furnish a copy to Seller. The decision of Purchaser shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, Seller mails or otherwise furnishes to Purchaser written notice that it desires to contest the decision of Purchaser. Such contest shall be considered a “dispute” within the meaning of this contract. Each dispute shall, at the election of Purchaser, be disposed of either by a court of competent jurisdiction in the city of Purchaser’s place of business or by arbitration. Notwithstanding the foregoing, Purchaser may require any dispute to be resolved in a court of competent jurisdiction in a place designated by Purchaser to obtain jurisdiction over and service in third parties whose presence is in Purchaser’s judgment, necessary to resolve all questions relating to the dispute in one action. Pending final disposition of a dispute, Seller shall proceed diligently with the performance of this contract in accordance with Purchaser’s decision.

## 21. TAXES:

The contract price shall include all applicable Federal, State and Local taxes, value added taxes, duties or other charges in effect on the contract date, whether or not separately stated. Seller shall pay said taxes and hold Purchaser harmless there from. If the face hereof indicates that this purchase is for resale or export, there will be no Federal, State or Local taxes included in the contract price.

## 22. GOVERNMENT CONTRACTS OR SUBCONTRACTS:

Incorporated herein by reference and made an express part hereof are all current clauses which Purchaser is required by law, regulations, or applicable Government contracts or subcontracts to insert in its subcontracts or orders, and other clauses of standard Government contract forms to the extent the same are applicable to Purchaser’s operations requiring the purchased items.

## 23. NON-DISCRIMINATION IN EMPLOYMENT:

In connection with performance of work hereunder, the Seller agrees to comply with all provisions of U.S. Executive Order No. 11246 of September 24, 1965, as amended, and rules, regulations and orders pertaining thereto.

## 24. REMEDIES:

Remedies herein reserved by Purchaser shall be cumulative, and in addition to any other remedies in law or equity. No waiver or modification of any provision hereof shall arise or be valid unless made in writing duly executed by a properly designated representative of each of the



parties hereto. No waiver of a breach of any provision of this Purchase Order shall constitute a waiver of any other breach, or of such provision. In no event shall Purchaser be liable for any punitive, special, indirect, incidental or consequential damages of any nature, including but not limited to, underutilization of labor or facilities, loss of revenues or anticipated profits, potential damage to business reputation or loss of business opportunity, whether based on contract, tort (including negligence) strict liability or otherwise.

## 25. SELLER'S LIABILITY:

Seller assumes the entire responsibility and liability for losses, expenses, damages, demands and claims in connection with or arising out of any personal injury or alleged personal injury (including death), and/or damage or destruction or alleged damage or destruction to property sustained or alleged to have been sustained in connection with or to have arisen out of the negligent performance of the work by or willful misconduct of Seller, its agents, employees, subcontractors, and consultants, save and except liability as may result from or be in connection with, the willful or negligent act or omission of Purchaser, its officers, directors, affiliates, agents, employees or independent contractors acting for Purchaser. Seller shall indemnify and hold harmless Purchaser, its officers, directors, agents and employees from any and all liability for such losses, expenses, damages, demands and claims and shall defend any suit or action brought against any or all of them based on any alleged personal injury or damage and shall pay any damage costs and expenses, including attorney's fees, in connection with or resulting from such suit or action.

## 26. APPLICABLE LAW:

The sale of goods and services delivered by Seller in North America, Asia and Europe shall be governed by the laws of the Commonwealth of Pennsylvania (USA), Singapore and England, respectively, notwithstanding any conflicts of law principles. The United Nations Conventions on Contracts for the International Sale of Goods shall not apply.

## 27. CONFIDENTIAL INFORMATION:

SELLER agrees that it will at all times hold in confidence for Purchaser all designs, know-how, techniques, devices, drawings, specifications, patterns, technical information, documents, business plans, item requirements, forecasts and similar data, oral, written or otherwise, conveyed by Purchaser to Seller in connection herewith or procured, developed, produced, manufactured or fabricated by Seller in connection with Seller's performance hereunder (collectively, "information"). Seller shall exercise the same degree of care to prevent disclosure of any information to others as it takes to preserve and safeguard its own proprietary information, but in any event, no less than a reasonable degree of care. Seller shall not, without the prior written consent of Purchaser, reproduce any information, nor disclose information to any party, nor use information for any purpose other than performance for the benefit of Purchaser hereunder.

Any technical knowledge or information of Seller which the Seller shall have disclosed or may hereafter disclose to the Purchaser in connection with the goods or services or other performance covered by this order shall not unless otherwise specifically agreed upon in writing by the

Purchaser, be deemed to be confidential or proprietary information and shall be acquired by Purchaser free from any restrictions as part of the consideration of this Purchase Order.

#### 28. NOTICES:

All notices of demands of any kind which either Seller or Purchaser may be required or desire to serve upon the other under the terms of this contract shall be in writing and shall be served by personal service or by mail at the address of the receiving party set forth in the contract (or at such different addresses as may be designated by such party by written notice to the other party). All notices or demands by mail shall be by certified or registered mail, return receipt requested and shall be deemed complete upon mailing, postage prepaid.

#### 29. PARAGRAPH HEADINGS AND LANGUAGE INTERPRETATION:

The paragraph headings contained herein are for convenience of reference only and shall not be considered as substantive parts of this contract. The use of the singular or plural form shall include the other form and the use of a masculine, feminine or neuter shall include the other genders.

#### 30. ATTORNEYS FEES:

Seller agrees to pay Purchaser any attorneys fees and other costs and expenses incurred by Purchaser in connection with the enforcement of this contract in the event of default by Seller.

#### 31. SEVERABILITY:

If any part of the terms and conditions stated herein is held void or unenforceable, such part, to the extent void or unenforceable will be treated as severable, leaving valid the remainder of the terms and conditions which shall be deemed revised so as to remain enforceable to the greatest extent possible consistent with such holding.