



Fischer Custom Communications, Inc.

Purchase Order Terms and Conditions

1. **DEFINITION.** As used throughout the purchase order, the terms shall have the meaning set forth below:

(a) "FCC" means FISCHER CUSTOM COMMUNICATIONS, INC. or its duly authorized representative.

(b) "Supplier" means the individual, partnership, corporation, or association contracting to furnish the article(s) described in the Statement of Articles to be furnished.

(c) "Articles" refers to the goods, products, supplies, parts, assemblies, technical data, drawings, services or other items constituting the subject matter of this Purchase Order which are to be furnished by Supplier to FCC.

2. **INVOICES.** Invoices shall be submitted in number of copies noted on reverse hereof and shall contain the Purchase Order number, FCC account number, item number, description of Articles, sizes, quantities, unit prices, extended totals, bill of lading number, weight of shipment, and itemized applicable taxes.

3. **SHIPMENT AND STORAGE.**

(a) A complete packing list shall be enclosed with all shipments hereunder.

(b) Supplier shall mark containers or packages with necessary lifting, loading and shipping information, in addition to the Purchase Order number, FCC account number, dates of shipment, names and address of consignor and consignee.

(c) In storing or shipping, Supplier shall so pack the Articles as to exclude the introduction of foreign material into electrical equipment or any other mechanism or assembly in which the presence of such foreign matter would require cleaning or disassembly prior to use. Failure to comply with this clause shall be grounds for rejection of the article involved. All shipments must be packed in a manner that will provide for efficient handling and prevent damage in transit. Damage resulting from improper packing will be charged to Supplier.

(d) Material delivered to FCC more than thirty (30) days in advance of the schedule set forth herein may be returned at Supplier's expense.

4. **CHANGES.**

(a) FCC may at any time, by written Change Order, increase the quantity of Articles, suspend performance in whole or in part, extend time of delivery, or make changes within the general scope of this Purchase Order to any one or more of the following: drawings, designs or specifications in the cost of performance, or the time required for performance. Equitable adjustment shall be made to the purchase price and/or delivery schedule, and the Purchase Order shall be modified in writing accordingly. Any claim for adjustment under this clause shall be deemed waived unless asserted within forty-five (45) days from the date of receipt by Supplier of the Change Order, provided, however, that FCC, if it decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Purchase Order. Any such claim must set forth the amount of any increase or decrease in the cost of performance resulting from the change. All Articles shall be manufactured in accordance with this Purchase Order, unless a change thereto has been subsequently authorized by a written Change Order issued by an authorized procurement representative of FCC. Nothing in this clause shall excuse Supplier from proceeding with the Purchase Order as changed.

(b) FCC technical personnel may from time to time render assistance or give technical advice to or affect an exchange of information with Supplier's personnel in a liaison effort concerning the Articles. However, such exchange of information or advice shall not vest Supplier with the authority to change the Articles or the provisions of the Purchase Order, nor shall such change in Articles or provisions of the Purchase Order be binding upon FCC unless incorporated as a Change Order in accordance with Section 4(a).

The cost of property made obsolete or excess because of a Change Order is included in Supplier's claim for adjustment pursuant to this clause. FCC shall have the right to prescribe the manner of disposition of such property.

5. **WARRANTY.**

(a) Supplier warrants that all Articles shall be free from defects in workmanship and material, shall comply with the requirements of this Purchase Order and any drawings or specifications incorporated herein, and shall, where design is Supplier's responsibility, be free from defects in design. Supplier warrants that no law, regulation or ordinance of the United States, or any state or governmental authority or agency has been violated in the manufacture, procurement or sale or any of the Articles furnished or service rendered pursuant to this Purchase Order. Supplier agrees to defend, indemnify and hold FCC harmless from all damages, claims, costs and expenses, including reasonable attorney's fees incurred by FCC due to Supplier's failure to comply with the foregoing warranties. The foregoing warranties are in addition to all other warranties whether express or implied. If any Article does not meet the warranties specified herein or that are otherwise applicable, Supplier shall promptly thereupon, at no cost to FCC, correct any defects by repair or replacement. All warranties shall run to FCC and its customers.

(b) FCC approval of Supplier's design or material shall not relieve Supplier of the warranties set forth in this clause, nor shall waiver by FCC of any drawings or specification requirements for one or more Articles constitute a waiver of any such requirements for the remaining Articles to be delivered hereunder unless so stated by FCC in writing. The provisions of this clause shall not limit or affect the rights of FCC under Section 6 entitled "INSPECTION."

6. **INSPECTION.**

(a) Final inspection and acceptance of Articles shall be made by FCC after delivery or as otherwise indicated in this Purchase Order and shall be conclusive except with regards to latent defects, fraud, such gross mistakes as amount to fraud, and Supplier's warranty obligations.

(b) If any Article is other than a standard commercial article of Supplier, said article shall be subject to inspection and test by FCC to the extent practicable at all times and places including the period of manufacture and in any event, prior to final acceptance. If any inspection or test is made by FCC on the premises of Supplier, Supplier, without additional charge, shall provide all

responsible facilities and assistance for the safety and convenience of FCC inspectors in the performance of their duties. All inspections and tests shall be performed in such a manner as not to unduly delay the work. No inspection or test made prior to final inspection and acceptance shall relieve Supplier from responsibility for defects or other failure to meet the requirements of this Purchase Order.

(c) If FCC determines that any Article is defective in material or workmanship, or otherwise not in conformity with the requirements of this Purchase Order, FCC shall have the right either to reject it, require its correction or accept it with an equitable adjustment in price. Any article that has been rejected or required to be corrected shall be removed and/or corrected by and at the expense of Supplier promptly after notice. If, after being requested by FCC, Supplier fails promptly to replace or correct any defective article, FCC (i) may, by contract or otherwise, replace or correct such article and charge to Supplier the cost occasioned, or (ii) may, without further notice, terminate this Purchase Order for default in accordance with Section 7 entitled "DEFAULT."

7. **DEFAULT.**

(a) Time is of the essence of this Purchase Order.

(b) FCC may, by written notice of default to Supplier, terminate this Purchase Order or any part thereof at no charge if Supplier fails: (i) to deliver the Article in accordance with the delivery schedule specified herein or any extension thereof by Charge Order or amendments; or (ii) to replace or correct defective Articles in accordance with the provision of paragraph (c) of Section 6 entitled "INSPECTION"; or (iii) to perform any of the other provisions of paragraph (c) of Section 6 entitled "INSPECTION"; or (iv) to perform any of the other provisions of this Purchase Order or fails to make progress as to endanger performance of this Purchase Order in accordance with its terms and in either of the circumstances specified in (iii) does not correct such failure within a period of ten (10) days (or such longer period as FCC may authorize in writing) after receipt of notice from FCC specifying such failure.

(d) In the event of termination pursuant to this clause, FCC may purchase similar Articles elsewhere on such terms and in such manner as FCC may deem appropriate and Supplier shall be liable to FCC for any excess cost occasioned FCC thereby.

(e) If after notice of default under the provisions of (b) above, it is determined that failure to perform this Purchase Order is due to unforeseeable cause beyond the control and without the fault or negligence of Supplier, said notice shall be deemed to have been issued pursuant to Section 8 entitled "CANCELLATION" and the rights and obligations of the parties here shall be governed by that Section. No such cause shall excuse Supplier unless Supplier has notified FCC in writing of the existence of the cause within ten (10) days from the beginning thereof.

(f) Failure of FCC to enforce any right under this Section 7 shall not be deemed a waiver of any right hereunder. The rights and remedies of FCC shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Purchase Order.

(g) FCC shall be entitled to deduct or set-off any amount owing at any time from Supplier to FCC against any amount which Supplier may owe FCC.

8. **CANCELLATION.** FCC at any time and by written notice, may cancel this Purchase Order or any part thereof at its convenience and for any other reason than Defaults as contemplated under Section 7 in which event FCC shall be liable for the payment of reasonable cancellation charges which shall take into account, among other things, expense already incurred and Supplier's actual liabilities against commitments incidents to this Purchase Order. In no event however, shall FCC be liable for cancellation charges in excess of the Purchase Order price.

9. **PATENT INDEMNITY.**

(a) Supplier shall at its expense indemnify, hold harmless and defend FCC, its customers and all persons claiming under FCC against any suit or suits for the infringement of any patent, copyrights or trademarks, and shall indemnify the aforesaid parties against all damages, costs and expenses arising therefrom by reasons of manufacture, sale or normal and intended use of the Articles covered by the Purchase Order. FCC agrees to give Supplier prompt notice in writing of any suit for infringement and such opportunity as is afforded by applicable laws, rules or regulations to participate in the defense thereof.

10. **REPRODUCTION.**

(a) Supplier agrees to and does hereby grant to FCC the right to reproduce, use and dispose of all or any part of the reports, drawings, blueprints, data, and technical information delivered to FCC pursuant to this Purchase Order, and Supplier agrees to indemnify, defend and hold harmless FCC against any claims, loss, costs or damages FCC may incur as a result of its exercising its rights under this Section. FCC shall give Supplier prompt notice in writing any suit or action alleging such liability.

(b) If the Articles are designed by FCC, Supplier shall not reproduce in any form any of such Articles or parts without FCC's prior written consent. Without such written consent, Supplier shall not supply or disclose any information regarding such Articles or any equipment or material used therein, nor incorporate in other products or Articles any special features of design or manufacture peculiar to the Articles.

11. **SPECIAL TOOLS.**

(a) As used in this clause the term "Special Tools" shall include tools especially developed hereunder as well as designs, special tests equipment, jigs, dies, fixtures, templates, patterns and drawings.

(b) Title to all tools described in the Statement of Articles shall vest in FCC upon payment therefore by FCC. Acceptance of a reasonable number of Articles produced from Special Tools shall be a condition precedent to such payment. Each Special Tool shall be conspicuously labeled "FCC property."

(c) FCC shall upon completion or termination of this Purchase Order be entitled to storage of Special Tools by Supplier, at no additional cost, for a period not to exceed one (1) year, and have the right to direct disposition of such tools at no additional cost except for freight and shipping charges.



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Notwithstanding the risk or loss provisions contained in Section 13 entitled "GENERAL," any risk of loss or damage of Special Tools during such storage period, except caused by the negligence of Supplier or its employees, shall be FCC's risk. Special Tools so stored should not be destroyed or disposed of without FCC's written permission. Tools paid for or furnished by FCC shall be FCC's property, and Supplier shall not encumber or dispose of them in any way. Such tools shall be maintained in first class condition and used exclusively for production under FCC Purchase Order.

12. **INTELLECTUAL PROPERTY.** Any intellectual property owned by FCC, including but not limited to drawings, documentation, and designs, provided to Supplier in connection with this Purchase Order are proprietary to FCC, shall be treated by Supplier as proprietary, and shall be returned to FCC immediately upon request by FCC. Supplier shall regard and preserve as confidential, all information related to the business of FCC and its customers and suppliers, that may be obtained because of this Purchase Order.

13. **GENERAL.**

(a) This Purchase Order shall be governed by, subject to, and construed according to the laws of the State of California. Supplier will comply with all applicable federal, state, and local laws.

(b) No subcontract shall be made by Supplier with any other party for furnishing any of the Articles in completed or substantially completed form or the work herein contracted for, and Supplier shall not assign this Purchase Order. FCC may assign this Purchase Order, in whole or in part, to its parent, subsidiaries, affiliated or successor companies upon notice to Supplier.

(c) In the event of the appointment of a trustee receiver or liquidator for all or a portion of Supplier's property, or for any act of bankruptcy by Supplier as defined in Section 3 of the Bankruptcy Act, as amended, or for any voluntary petition in bankruptcy by Supplier, FCC may terminate the right of Supplier to proceed with the further performance of this Purchase Order without further obligation as evidenced by a Change Order or written Amendment signed by a duly authorized representative of FCC.

(d) This Purchase Order shall be governed, construed and interpreted under the laws of the California. This Purchase Order shall take precedence over any pre-printed terms, quotes, letters, or invoices. In any action or proceeding involving the enforcement or interpretation of this Purchase Order, the prevailing party, whether plaintiff or defendant shall be entitled to reimbursement of its attorneys' fees and all costs and expenses incurred in connection therewith. Any lawsuit, litigation, claim or dispute arising from or related to this Purchase Order or the sale of Articles contemplated hereby, shall take place in the state or federal courts located in Los Angeles County, California, and Supplier and FCC voluntarily submit themselves to the exclusive jurisdictions of such courts.

(e) FCC reserves the right to audit and review with reasonable notice to the Supplier, Supplier's books, ledgers, supporting records and documentation and related procedures and controls which pertain to any to this Purchase Order. This right will survive the termination of the Agreement.

14. **DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM (DPAS)**

(a) The United States government has established a program to require preferential acceptance and performance of contracts and orders supporting certain approved national defense and energy programs. If this order is covered by this program, FCC will so inform you and your company will then be required to give this order priority in production over all other non-DPAS classified orders. Suppliers are prohibited from raising prices to perform a DPAS classified order. DPAS has two levels of priority: DX-- classified orders are the highest priority while DO-- classified orders are second in priority to DX-- orders. You can obtain additional information about DPAS at www.bis.doc.gov/dpas/default.htm.