

# MERCURY COMPUTER SYSTEMS LIMITED

## PURCHASING TERMS AND CONDITIONS

**1. ENTIRE AGREEMENT.** The attached purchase order (the "PO" or "order") and these terms and conditions constitute the entire agreement (together, this "Agreement") between Mercury Computer Systems Limited ("Mercury") and the supplier of the products or services identified in the PO (the "Supplier") with respect to the product(s) (the "Product(s)") and/or services (the "Services") described in the PO, and no term or condition hereof may be amended, modified or waived except by a writing signed by an authorized representative of Mercury. Terms, if any, included on any Supplier's invoices, acknowledgment forms or other documents shall not apply and are hereby voided.

**2. COMPENSATION.** If the PO is for Products, no additional charges of any kind other than those specified on the face of this PO, and agreed to by Mercury, including charges for packing, will be allowed or paid. If the PO is for fixed-price Services, payment shall not exceed the amount set forth in the PO. If the PO is for time and materials Services, payment shall not exceed the cap stated for hourly fees and the stated cost of materials. Supplier shall be responsible for payment of all expenses not specified on the face of the PO or otherwise agreed in a writing signed by an authorized representative of Mercury. Supplier's invoices shall make reference to the identification number set forth on the PO. In the case of Products, unless otherwise stated in the PO, Supplier shall invoice Mercury upon delivery of the Products. In the case of Services, unless otherwise stated on the PO, Supplier shall invoice Mercury each month until completion of the Services.

**3. DELIVERY OF PRODUCTS.** Time is of the essence for the delivery of Products under this PO. Supplier shall deliver Products in strict conformity with all requirements set forth in this PO, including any delivery schedule and shipping instructions. If Supplier does not make deliveries as specified on the face of this PO, Mercury reserves the right to cancel/and or purchase elsewhere and hold Supplier accountable for all reasonable excess costs and expenses incurred by Mercury. Supplier shall not substitute other items or revise specifications from those specified in the PO without the prior written consent of Mercury. Supplier shall notify the Mercury Purchasing Representative in writing of any proposed change to (i) the Product(s), including any proposed change to the manufacturing location or the manufacturing process of the Products or the potential closure of the applicable manufacturing facility, or (ii) the ownership of Supplier at least thirty (30) days prior to the shipment date of such Product(s).

**4. PROVISION OF SERVICES.** Time is of the essence for the completion of Services under this PO. Supplier shall complete the Services in accordance with any schedule, and within any time, specified in the PO; provided, however, that Supplier shall not be liable to Mercury for any delay caused by unforeseeable events beyond Supplier's control. Supplier shall immediately notify the Mercury Purchasing Representative in writing of any unforeseeable event that may impact the performance of the Services. Supplier will determine the method, details and means of performing the Services, but must at all times observe Mercury's safety and security policies when performing Services at Mercury's premises. Supplier is an independent contractor of Mercury and not an employee, agent, joint venture or partner of Mercury. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Mercury and Supplier or employees or agents of Supplier. Mercury shall, however, be entitled to exercise a broad general power of supervision and control over the results of the work performed by

Supplier to ensure satisfactory performance. This power of supervision shall include the right to inspect and request modification of the scope of the PO.

### **5. WARRANTY.**

(a) Supplier warrants to Mercury that the Products will, at the time of delivery, conform to Supplier's then current documentation supplied with the Products. Supplier further warrants to Mercury that the Products will be free from defects in material and workmanship for a period of one (1) year from the date title to the Products passes to Mercury (the "Warranty Period"). Supplier will, at its sole option, repair or replace any Product or component part found by Mercury to be defective if notified, in writing within the Warranty Period, and the defective Product is returned to Supplier prepaid. Mercury must first obtain shipping instructions from Supplier prior to returning any defective Product under this warranty. All repaired/replaced Products or components are warranted for thirty (30) days or the remaining unexpired term of the original warranty, whichever is longer.

(b) Supplier shall perform the Services diligently, professionally and in accordance with all applicable professional and industry standards. Supplier shall perform the Services through the use of personnel and equipment appropriate for the type of Service to be provided and will use its best efforts in performing the Services. Mercury may inspect the results of Supplier's efforts at reasonable intervals and will inform Supplier if performance is unsatisfactory, in which event Supplier agrees to correct deficiencies within a reasonable time to be agreed between Mercury and Supplier.

**6. PROOF OF SHIPMENT.** Supplier shall forward to Mercury with the invoice the express receipt or bill of lading signed by the carrier, evidencing the fact that shipment has been made.

**7. CONFIDENTIALITY.** Supplier understands that in the course of providing Services, Supplier may have access to or receive confidential and proprietary business and technical information of Mercury, such as software programs, product plans, strategies, customer lists, etc. which are all trade secrets of Mercury (the "Information"). Supplier agrees to take strict precautions to safeguard the confidentiality of the Information and to limit access to Information to Supplier's authorized personnel who require such access to perform the Services, and each of them have agreed in writing to protect the confidentiality of such Information. Supplier further agrees to return all Information as may be requested by Mercury. Supplier shall not disclose the nature of the Services nor Mercury's information, or any of the Information to any third party. Supplier shall not disclose or use any of the Information or other confidential information in connection with providing services to any third party or otherwise. Supplier further understands and acknowledges that any breach of these terms and conditions will cause irreparable harm and injury to Mercury for which there may not be adequate remedies. Therefore, Supplier agrees that Mercury shall be entitled to injunctive and/or equitable relief in addition to all other remedies provided under this Agreement or available at law or

equity. The restrictions on confidentiality and non-disclosure as set forth in this Agreement do not prohibit or otherwise restrict Supplier from lawfully reporting information relating to fraud, waste, and abuse in the Federal Government procurement process to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

**8. SUPPLIER'S PERSONNEL.** Supplier shall be solely responsible for payment of compensation to its personnel and for all related income tax withholding and all other statutorily mandated tax withholding and the like. Supplier agrees to maintain and to provide Mercury on request with documentation of adequate insurance coverage for professional (if applicable) and general liability, bodily injury, property damage and workers' compensation coverage for its personnel who perform the Services. Supplier shall ensure that its personnel (and the personnel of its sub-tier suppliers) who are engaged in the design, manufacture, and/or delivery of the Products or who are performing the Services under this PO are made aware of (i) their contribution to the conformity of the Products or the Services, (ii) their contribution to the safety of the Products, and (ii) the importance of their ethical behavior.

**9. INSPECTION AND REJECTION.** All Products and deliverables identified on an order or resulting from the performance of the Services ("Deliverables") are subject to Mercury's inspection and testing. Mercury reserves the right, upon reasonable notice to Supplier, to conduct an on-site inspection, which may also include Mercury's customer. Mercury's inspection may, in its sole discretion, include physical, visual, and/or mechanical review, as well as any documentation necessary to substantiate Supplier's compliance with quality requirements or other specific requirements set forth in this PO. Defective Products or Deliverables, or Products or Deliverables not in accordance with the specifications, may be rejected and held for Supplier's instruction at Supplier's expense and risk, and if Supplier so directs, Mercury will return the defective Products or Deliverables to Supplier, at Supplier's cost and expense. If inspection discloses that part of the Products or Deliverables received are not in accordance with the specifications, Mercury shall have the right to cancel any unshipped portion of the order and purchase elsewhere and hold Supplier accountable therefore. Payment for Products, Services or Deliverables prior to inspection shall not constitute acceptance thereof or of any Services and is without prejudice to any and all claims that Mercury may have against Supplier. Notwithstanding inspection and payment, Supplier shall, at all times, be responsible and liable for latent defects.

**10. SUPPLIER'S/MERCURY'S PROPERTY.** All materials and equipment, including tools, furnished by Supplier in connection with Services performed at Mercury's premises shall be clearly identified as the Supplier's property and shall be returned to Supplier upon completion of the Services. Supplier shall be solely responsible for care and maintenance of such materials and equipment. All materials and equipment, including tools, furnished or paid for by Mercury in connection with the Products or Services shall be used exclusively in filling orders for Mercury, shall be clearly identified as Mercury's property, and shall be subject to removal at any time without charge or recourse upon demand

by Mercury. Supplier agrees to indemnify and hold Mercury harmless against all loss or damage to such materials and/or equipment, reasonable wear excepted.

**11. PRE-EXISTING INTELLECTUAL PROPERTY.** Title to all Intellectual Property (as defined below) furnished to Supplier by or on behalf of Mercury ("Mercury Pre-Existing Intellectual Property") and all Intellectual Property Rights therein (as defined below) or thereto shall at all times remain in Mercury. Supplier acknowledges the propriety and confidential nature of any Mercury Pre-Existing Intellectual Property. Supplier shall use Mercury Pre-Existing Intellectual Property only in connection with this order and, without the prior written approval of Mercury, shall not disclose any Mercury Pre-Existing Intellectual Property to any person, firm, corporation or other entity, other than Mercury's or Supplier's employees, subcontractors or government inspectors; provided that, in the case of Supplier's employees or subcontractors, each such employee or subcontractor has signed a written confidentiality agreement that is at least as protective of the applicable Mercury Pre-Existing Intellectual Property as this Agreement. Supplier shall upon Mercury's request or upon completion of this order, promptly return all Mercury Pre-Existing Intellectual Property to Mercury. "Intellectual Property" means any and all intellectual property and tangible embodiments thereof, including without limitation inventions, discoveries, designs, drawings, specifications, developments, methods, modifications, improvements, processes, know-how, show-how, techniques, algorithms, databases, computer software and code, mask works, formulae, techniques, trade secrets, graphics or images, text, audio or visual works, materials that document design or design processes, or that document research or testing, schematics, diagrams, product specifications and other works of authorship. "Intellectual Property Rights" means, collectively, all rights in, to and under patents, trade secret rights, copyrights, trademarks, service marks, trade dress and similar rights of any type under the laws of any governmental authority.

**12. NEW INTELLECTUAL PROPERTY.** If Supplier is engaged by Mercury under this PO to perform Services, then any Intellectual Property furnished to Mercury by or on behalf of Supplier under such PO ("New Intellectual Property") constitutes "works made for hire" for Mercury, and Mercury will be considered the author and will be the owner of the New Intellectual Property and all Intellectual Property Rights in or to such New Intellectual Property or that claim or cover such New Intellectual Property. If any New Intellectual Property does not qualify for treatment as "works made for hire", or if Supplier retains any interest therein for any other reason, Supplier hereby assigns and transfers, and will assign and transfer, to Mercury all ownership and interest in such New Intellectual Property and any and all Intellectual Property Rights in and to any New Intellectual Property or that claim or cover any New Intellectual Property. Supplier acknowledges that all personnel performing Services for Mercury under this Agreement have executed appropriate agreements with Supplier so that Supplier may fulfill Supplier's obligations under this Section 12. Supplier agrees to execute any documents of assignment or registration requested by Mercury relating to any and all New Intellectual Property and/or any and all Intellectual Property Rights in and to any New Intellectual Property or any that claim or cover any New Intellectual Property. Supplier agrees at the cost and expense of Mercury to cooperate fully with Mercury, both during and after the Services engagement, with respect to the procurement, maintenance and enforcement of Intellectual Property Rights in or related to New Intellectual Property.

**13. INDEMNIFICATION.** Supplier, at its own expense, shall indemnify, defend and hold Mercury and its customers harmless from and against any and all claims, demands, suits, judgments, damages and liabilities, costs and expenses (including reasonable attorneys fees and court costs) arising directly or indirectly out of or in connection with (a) performance of the Services, (b) any allegation that any Product infringes or violates any United States or foreign patent, copyright, trademark, trade name, mask work, trade secret right or any other intellectual property right of any third party, (c) any allegation that any Deliverable infringes or violates any United States or foreign copyright or trade secret right of any third party or (d) any breach of Supplier's other obligations under this Agreement.

**14. COMPLIANCE WITH LAWS.** Supplier shall, at all times, comply with all applicable laws, ordinances, and regulations relating to performance of the Services and the Products including those related to environmental protection, hazardous materials, and export and represents and covenants that the Services will be performed and the Products will be produced and provided in compliance with all such requirements of the applicable laws, ordinances, and regulations.

**15. TERMINATION.**

(a) These terms and conditions will become effective on the date the PO is issued by Mercury and will continue in effect through the completion of the Services or Mercury's acceptance of the Products. In the event of any termination of this Agreement, Sections 7, 11, 12, 13 and 15 hereof shall survive and continue in effect.

(b) Mercury may terminate the PO, in whole or in part, at any time for its convenience, by written or telegraphic notice or by facsimile. Such notice shall state the extent and effective date of such termination; and upon the receipt thereof, the Supplier shall, as and to the extent directed by Mercury, terminate its performance of the Services or production of the Products.

(c) In the event of termination of the Services for Mercury's convenience, Supplier shall be entitled to payment for all Services performed through the effective date of termination specified by Mercury in the notice provided under subparagraph (b).

(d) In the event of termination of production of Products for Mercury's convenience, Mercury shall have no liability to Supplier with respect to any Products covered by such termination that (i) are scheduled herein for shipment by Supplier more than 30 days from the date that notice of termination is sent by Mercury, or (ii) are standard items in Supplier's catalogs or inventory or not custom-made for Mercury, or (iii) constitute the balance of an order as to which Mercury's inspection of Products previously received thereunder has disclosed any substantial noncompliance of such Products with applicable specifications.

(e) With respect to termination of a portion of this order to which the provisions of subparagraphs (c), (d) or (g) do not apply, Mercury will, if applicable, pay the following cancellation charges: (i)

the charge, if any specified on the face of this PO: (ii) if no such charge is specified, the agreed price of all Products which have been completed as of the date of notice of termination, and the actual supportable costs incurred by Supplier for any work-in-process hereunder that are properly allocable or apportionable thereto under recognized commercial accounting practices and standards.

(f) With the prior written consent of Mercury, Supplier may retain at an agreed price or sell at an approved price any completed Products or work-in-process the cost of which is allocable or apportionable to this order under sub-paragraph (e)(ii) above, and will credit or pay the amounts so agreed or received as Mercury directs. As directed by Mercury, Supplier will transfer proper legal title to, and make delivery of, any such Product and work-in-process not so retained or sold.

(g) Without prejudice to any other right or remedy available to Mercury at law or in equity and in addition to and not in limitation of the rights of Mercury under any other section of this Agreement, Mercury may terminate the PO in the event Supplier becomes insolvent, files a petition in bankruptcy or fails to cure a material breach or violation of this Agreement. Such termination shall be effective upon Supplier's receipt of notice of termination. In such event, Mercury shall not be obligated to pay Supplier for Products, Services or work-in-process.

**16. BANKRUPTCY.** In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Supplier or in the event of the appointment, with or without Supplier's consent, of an assignee for the benefit of creditors or of a receiver, Mercury shall be entitled to cancel any unfiled part of the PO without any liability whatsoever.

**17. GOVERNING LAW.** This Agreement shall be governed by and construed according to the laws of England and Supplier consents to the exclusive jurisdiction of the English courts for all disputes relating to such Agreement. Any legal action against Mercury under this PO must be commenced within one (1) year after such cause of action accrues.

**18. HAZARDOUS SUBSTANCES.** At Mercury's request, Supplier shall supply a declaration of conformance describing material and chemical content of the Products supplied to Mercury, and information regarding proper and safe disassembly techniques to facilitate recycling and reclamation activities.

**19. CHANGES.** Mercury may at any time, by written order, make changes in the (1) drawings, designs, or specifications, (2) methods of packing or shipment, (3) quantity of items ordered, (4) time of delivery, or (5) place of delivery. In such event, an equitable adjustment request by Supplier, if any, must be made within fifteen (15) days from the date of receipt of the change order.

**20. RIGHT OF ACCESS.** Mercury, Mercury's customers, and the applicable regulatory authorities shall have the right to access all applicable facilities of Supplier and other applicable facilities at any level of Supplier's supply chain that are involved in the performance of this PO. In addition, Mercury, Mercury's customers, and the applicable regulatory authorities shall have the right to access all records of Supplier and the records at any level of Supplier's supply chain that are relevant to this PO.

**21. MATERIAL REVIEW BOARD (MRB).** Unless otherwise specified in this PO, Supplier and its suppliers and subcontractors do not have the authority to process "use-as-is", "repair", standard repair procedures (SRPs), or "non-SRPs" via their material review board (MRB). These dispositions, as well as deviations and requests for waivers, requiring MRB disposition shall be submitted to Mercury for approval (this does not include rework or scrap). Supplier shall utilize its appropriate nonconforming material disposition form and submit it to the Mercury Purchasing Representative for approval by Mercury.

**22. GENERAL.** Supplier may not assign, delegate or subcontract its rights, duties or obligations under this PO without the prior written consent of Mercury. Mercury's rights and remedies hereunder are cumulative and are in addition to any rights and remedies provided at law or in equity. In no event will Mercury be liable for consequential, special, indirect, incidental or punitive damages, or lost profits on account of termination or an alleged breach by Mercury. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect. Supplier shall not use, and shall cause its employees, other personnel, and approved subcontractors to refrain from using, Mercury's name, logo, trademark, or any other intellectual property of Mercury in any marketing or advertising materials, customer lists, or any website of Supplier without Mercury's prior written approval, which may be withheld for any reason.

### **23. QUALITY**

Certificate of Conformance/Compliance (CoC):

The Supplier shall provide a CoC with each delivery of Product The CoC provided with this PO shall contain as a minimum:

- Purchase Order number
- Manufacturer's name, if different from Seller's
- Part number /Lot number(s) or Date Code(s)/ revision (as applicable) of the Products in the shipment.

The Supplier certifies that all Product delivered to Mercury satisfy this PO and are fully compliant to this Agreement. The Supplier has in its possession acquisition traceability documentation provided by/from the Original Equipment or Component Manufacturer and/or all previous Franchised/Authorized distributors within the supply chain for all material contained in the Products.

Date Code Restriction: Parts with a Date Code older than 3 years, at the date of shipment, shall not be delivered to Mercury. Older parts are allowed in case of re-screening; the date of the re-screen shall be identified on the CoC or attribute datasheet for each shipment provided with test report.

### **24. COUNTERFEIT MATERIEL**

#### **Definition:**

- Materiel: materiel refers to material, parts, assemblies and other procured items, including electronic parts.
- Suspect materiel: materiel, items, or products in which there is an indication by visual inspection, testing, or other information that it may meet the definition of fraudulent materiel or counterfeit materiel provided below.
- Fraudulent materiel: Suspect materiel misrepresented to the customer as meeting the customer's requirements.
- Counterfeit materiel: Fraudulent materiel that has been

- confirmed to be a copy, imitation or substitute that has been represented, identified, or marked as genuine, and/or altered by a source without legal right with intent to mislead, deceive or defraud.
- Original Manufacturer: An organization that designs and/or engineers and produces materiel and is pursuing or has obtained the intellectual property rights to that materiel.
- Franchised Distributor: A distributor with which the original manufacturer has a contractual agreement to buy, stock, re-package, sell and distribute its product lines.

#### **Conditions:**

- Only new and authentic materiel is to be delivered or used in Products delivered to Mercury. No suspect or counterfeit materiel is allowed to be delivered to Mercury or used in Products delivered to Mercury.
- Materiel shall be purchased directly from its Original Manufacturer or through the Franchised Distributor(s) for the said materiel. Documentation provided shall include Manufacturer's name, address, part number, date code, lot code, serialization and/or any other batch identification.
- If counterfeit or suspect materiel is provided under a Mercury PO and found in any of the Products delivered, such Product item will be impounded by Mercury. The Supplier shall promptly replace such counterfeit or suspect materiel with materiel acceptable to Mercury, and the Supplier shall be liable for all costs related to removal or replacement of said materiel.
- Mercury reserves all contractual rights and remedies to address grievances and detrimental impacts caused by counterfeit or suspect materiel delivered.