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## Terms and Conditions of Purchase

### 1. Acceptance:

- 1.1 The Terms and Conditions ("Terms") contained herein shall apply to all purchase orders issued by Iconix Inc., hereinafter Buyer, unless superseded by a previously executed Purchasing Agreement in which event that agreement together with these terms and conditions shall apply. The terms and conditions below together with those appearing on the face of this purchase order or on any attachments to this purchase order (collectively the "Purchase Order") constitute the complete and exclusive agreement between Buyer and Seller.
- 1.2 The acceptance of this Purchase Order, by acknowledgment, shipment of products, performance of services, or commencement of work on supplies shall constitute acceptance of the terms and conditions set forth below and on the face of this Purchase Order. The delivery date stated in the Purchase Order shall be deemed accepted by Seller unless Seller objects in writing to Buyer within two (2) business days of its receipt of this Purchase Order.
- 1.3 Buyer shall not be bound by any acknowledgement or acceptance of this Purchase Order which modifies, supersedes, or otherwise alters these terms and conditions.
- 1.4 These terms and conditions may be modified only with Buyer's express written consent.

### 2. Delivery and Quantity:

- 2.1 Time is of the essence for delivery and all other obligations arising herein. "Delivery Date" and/or "Dock Date" shall mean the date the Purchase Order line item is required to arrive at Buyer's facility.
- 2.2 If Seller fails to meet the scheduled Delivery Dates, Buyer may, at its option, cancel this Purchase Order, or any part of this order, without incurring any liability. If Buyer requests expedited shipment of any late deliveries, Seller shall pay any additional cost of expedited shipment. Seller shall be, in addition to any other remedy available to Buyer, liable for Buyer's documented additional expenses due to its failure to deliver.
- 2.3 Seller shall not ship ahead of the scheduled Delivery Date unless authorized by Buyer in writing. Buyer 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.
- 2.4 Seller, when it has reason to believe that deliveries will not be made as scheduled, shall provide immediate written notice to Buyer, setting forth the cause of such anticipated delay.
- 2.5 Notwithstanding the above, neither Buyer nor Seller shall be liable for delays or defaults due to fires, floods, earthquakes, riots, storms or acts of civil or military authority and without their fault or negligence. In the event that any such condition exists as to Seller, Buyer may at its option, exercise its rights under section 2.2 of this Purchase Order.
- 2.6 The shipping terms of delivery are "ICONIX specified location and carrier" for most deliveries. Certain products specified by the buyer will have "Supplier location". If the seller uses any other carrier or forwarder, the seller will be requested to credit buyer for any additional costs incurred. If carrier or forwarder is not specified in the shipping guidelines the seller will request the shipping instructions from the buyer.
- 2.7 The quantity covered by this Purchase Order may be expressed as an "Estimated Order Quantity". Buyer shall not have any obligation to purchase the total "Estimated Order Quantity" nor shall Buyer be liable for any expense resulting therefrom.

### 3. Packing and Shipping:

- 3.1 Shipments must be preserved, packaged, handled and packed to permit efficient handling, provide protection from loss or damage, and comply with Buyer specifications, government regulations, industry standards and carrier requirements. Seller shall be liable for any loss or damage due to its failure to properly preserve, package, handle or pack any shipment.
- 3.2 No charges shall be allowed for handling, packing, crating, returnable containers, import duties, transportation, documentation or media unless previously agreed to in writing and such agreement is referenced on the face of this Purchase Order.
- 3.3 All containers, packing lists, bill of lading and invoices must list the Purchase Order number.

- 3.4 Buyer shall not be responsible for products seized or held by customs or other government agencies. Liability for these products rests with the Seller.

**4. Quality/Inspection:**

- 4.1 Seller shall deliver Products conforming to applicable specifications (i.e. drawings, specification sheets, etc...) and which are 100% free of any and all defects.
- 4.2 Upon request, Seller shall make available to Buyer all Product test data relating to qualification as well as production yield as evidence of conformance to specifications and quality control.
- 4.3 All products will be subject to inspection and approval by Buyer. Buyer shall have the right to inspect the products at any time during the manufacturing process at Seller's facilities or elsewhere provided Buyer gives reasonable advance notice of each visit, and such visit does not disrupt the manufacturing capability of Seller, or violate Seller's safety or clean room procedures.
- 4.4 Buyer may, at its option, reject and return any products which contain defective material or workmanship or which do not conform to this Purchase Order, applicable drawings, specifications, or samples. Rejected products which Buyer returns to Seller and replacement or repaired products which are returned to Buyer shall be returned at Seller's risk and expense.
- 4.5 Buyer may at its option use either a lot sampling plan to assure a 1% Acceptable Quality Level (AQL) or 100% inspection at his option. Lots which fail to pass such sampling plans may, at Buyer's option, be inspected 100% at Seller's cost. Buyer may return any defective or nonconforming articles or lots to Seller at Seller's risk and expense.
- 4.6 Exercise of these remedies shall not be exclusive of or without prejudice to any other remedies provided in law or equity which are available to Buyer.
- 4.7 Payment for any products or services shall not constitute final acceptance.
- 4.8 If product is rejected, Seller agrees to supply Buyer with a Return Material Authorization Number (including replacement product if requested by Buyer) and a containment plan within twenty four (24) hours of Seller's receipt of notification. Seller further agrees to provide Buyer with an initial failure analysis and corrective action response within seven (7) days of notification. Seller agrees to provide failure analysis and corrective action in ICONIX requested format. If replacement product is found to be non-conforming or delivery of replacement product is not fulfilled as required, Buyer may, at its option, cancel the related Purchase Order in whole or part, without penalty or liability whatsoever to Buyer and/or Buyer may avail of any remedy set forth herein or pursuant to applicable law.
- 4.9 The date code limitation for all inbound components shall be twenty-four (24) months from date of manufacture except Products with: (a) customer specific age limits, (b) components having lead finishes that typically exhibit poor storage life, (c) products which contain finishes such as silver (Ag) and Palladium Silver (Pd-Ag) that do not use a Nickel (Ni) barrier, (d) moisture sensitive components which shall have a date code limitation of twelve (12) months (e) Excluding PCB's and (f) as otherwise specified by buyer.

**5. Pricing, Invoices and Payment:**

- 5.1 Seller shall sell to Buyer the products or services shown on the face of this Purchase Order at the price specified. All prices are exclusive of applicable freight charges and duties unless otherwise agreed to by Buyer.
- 5.2 Seller warrants that the prices charged for the products or services are not higher than those charged to any other customer or Buyer site for products of like grade and quality in similar quantities or for similar services performed. If Seller fails to extend Buyer such pricing, Buyer may, in addition to any other remedies available at law or equity, invoice Seller for the difference between Buyer's price and such lower price for all products already received and immediately change the price on this Purchase Order to reflect such lower price. Seller shall pay such invoice within thirty (30) days from the date of the invoice.
- 5.3 An invoice must be issued by Seller for each separate shipment made against this Purchase Order. Each invoice shall reference this Purchase Order number.
- 5.4 All invoices shall be issued and payment shall be made in the currency stated on the face of this Purchase Order.
- 5.5 Buyer shall not be liable for any federal, state or local taxes unless Buyer can not supply an appropriate tax exemption certificate. Any applicable taxes shall be separately stated on the face of this Purchase Order and separately invoiced.
- 5.6 ICONIX payment terms are thirty (30) days EOM.

**6. Warranties:**

- 6.1 Seller warrants that the products are new and unused, that it has title to the products, and that the product is free of all liens. These warranties shall be perpetual. Seller warrants that it is authorized to sell the products to Buyer.
- 6.2 Seller further warrants all products furnished under this Purchase Order are free from defects in material and workmanship and conform to applicable specifications, drawings, samples or other descriptions provided by Buyer; will fit the purpose intended; will be new and of merchantable quality and all services will be rendered in a good and workmanlike manner.
- 6.3 These warranties shall survive inspection, test, acceptance and payment and shall accrue to Buyer, its successors, assigns and customers.
- 6.4 All warranties (except for title) shall extend for 3 years after delivery of products or completion of services.
- 6.5 Warranty failures may be returned to Seller for replacement or credit at Buyer's option and at Seller's risk and expense, which includes inbound and outbound shipping and duty charges. Replacement products shall be in "like new condition" and subject to full original warranty.
- 6.6 If Seller breaches any warranty specified in this order or afforded by law, Buyer shall be entitled to avail itself cumulatively of all remedies in law or in equity.

**7. Changes:**

- 7.1 Buyer reserves the right, at any time, to make changes in the specifications, drawings, samples or other description to which the products or services are to conform, the quantity and method of shipment and packaging, or in the time or place of delivery.
- 7.2 If any such change directly affects the price or delivery schedule of products or services, a reasonable adjustment will be made, provided that, Seller must make a written claim within thirty (30) days following Seller's receipt of such changes. If the parties are unable to agree upon the amount of the adjustment, acting reasonably and in good faith, Buyer may without any liability cancel this Purchase Order as to all products and services affected.
- 7.3 Unless otherwise stated on the face of this Purchase Order or in an attachment to this Purchase Order, Buyer may reschedule any delivery due at Buyer's facility more than seven calendar (7) days from the date such rescheduling without incurring any rescheduling charges or other expense.
- 7.4 Seller shall confirm, within 2 days, any changes or reschedules in writing, via mail, facsimile or electronic data transmission.
- 7.5 Seller shall not, without the prior written consent of Buyer, make any process, design or other changes to the products.
- 7.6 This Purchase Order shall not be deemed or construed to be modified, amended, rescinded, canceled or waived in whole or in part, except in writing by Buyer.

**8. Buyer Property:**

- 8.1 Any tools, equipment, programs or materials furnished to Seller by Buyer for performance of this Purchase Order or tooling specifically paid for by Buyer as part of this Purchase Order, whether itemized or included in the price of any products, shall remain Buyer's property.
- 8.2 Seller agrees to maintain Buyer's tools and use them only to fill this and any future orders for Buyer.
- 8.3 While in Seller's custody and control, Buyer's property shall be insured by Seller at Seller's expense in an amount equal to its replacement cost and Seller shall supply, at Buyer's request, evidence of the same.
- 8.4 Buyer's property shall be subject to repossession and/or removal by Buyer at any time.

**9. Intellectual Property Indemnity:**

- 9.1 Seller shall defend, indemnify, and hold harmless Buyer and its affiliates, subsidiaries, assigns, and its customers against all claims, losses, demands, fees, damages or liability incurred of any kind or nature arising from any actual or claimed infringement of any patents, trademarks, service marks, trade secrets, maskwork rights, or copyrights with respect to any products or services furnished under this Purchase Order.

- 9.2 If the use by Buyer or its affiliates, subsidiaries, assigns or customers of any product or service furnished under this Purchase Order is enjoined ("Infringing Product"), Seller shall, at its own expense, procure for Buyer 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 Buyer for the Infringing Product.
- 9.3 If the use of such products is enjoined, temporarily or permanently, Buyer may return such products to Seller for full credit and cancel any remaining portion of the Purchase Order.

#### **10. Cancellation:**

- 10.1 Buyer may cancel this Purchase Order in whole or in part at any time in the manner specified in Section 10.8, upon the occurrence of certain events, including but not limited to:
- (i) Default by Seller with respect to delivery, quality, or other obligation under this Purchase Order, or
  - (ii) Insolvency of Seller, filing by Seller of a voluntary petition in bankruptcy, filing of an involuntary petition to have Seller declared bankrupt, provided the same is not vacated within thirty (30) days from the date of such filing, or the execution by Seller of any assignment for the benefit of creditors.
- 10.2 In the case of (i) or (ii) above, Buyer shall incur no liability after giving written notice of the cancellation.
- 10.3 Buyer shall have the option to cancel this order, without cause, at its discretion. In such event, Buyer's liability shall not exceed the full price of products already manufactured to meet scheduled delivery dates. Such liability is limited to deliveries that Buyer has ordered with Dock Dates of no more than thirty (30) calendar days from the date of notification of such cancellation.
- 10.4 In the event of Buyer's cancellation, other than pursuant to section 10.1, Buyer shall only be liable for cancellation related expenses:
- (i) in the event that Seller provides a complete cost analysis for Buyer's inspection; and
  - (ii) Seller is otherwise unable to sell components or material to another source within a reasonable timeframe.
- 10.5 Upon cancellation of software or services orders, Buyer shall only be liable for the price of the work that has been completed as of the date of cancellation notice.
- 10.6 Under no circumstances shall Buyer pay cancellation charges exceeding the value of the unpaid balance of this Purchase Order.
- 10.7 If Buyer notifies Seller of the cancellation of this Purchase Order, Seller shall immediately stop all work on this Purchase Order. Buyer shall not be liable for Seller's excess material ordered or manufactured that is attributable to Seller's poor material management practices.
- 10.8 Buyer may cancel this Purchase Order orally or in writing. If Buyer provides oral notice of cancellation, Buyer will confirm such oral cancellation in writing within 24 hours.
- 10.9 Upon notification of cancellation, Seller shall provide a complete cancellation cost analysis and shall immediately notify Buyer of any anticipated cancellation costs.

#### **11. Liability:**

- 11.1 Buyer's maximum liability for breach of this Purchase Order shall be limited to the remaining unpaid balance of the total cost of the outstanding balance of products or services on the face of this Purchase Order.
- 11.2 Seller shall be liable for the cost of manufactured or partially manufactured assemblies where Buyer has incorporated Seller's defective products provided that:
- (i) Buyer did not cause the defect in the products,
  - (ii) Buyer used reasonable efforts to inspect the products for defects, and
  - (iii) Buyer stopped production with the suspect products after becoming aware of the problem.
- 11.3 Notwithstanding the above, Buyer shall retain the right to avail itself of any remedy available at law or in equity.



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**12. Confidentiality:**

- 12.1 Seller agrees to keep confidential from any third party all information obtained from Buyer while performing obligations pursuant to this Purchase Order, including but not limited to Buyer's specifications, drawings, pricing, usage/schedules, verbal understandings, or site observations. Seller shall use at least the same care in protecting Buyer's confidential information as Seller uses in protecting its own confidential information.
- 12.2 Seller further agrees that such information shall be distributed internally on a need to know basis and shall not be used, except to perform obligations pursuant to this Purchase Order, without prior written permission of Buyer.
- 12.3 Seller shall not disclose the existence of this Purchase Order to any third party, including the products or services supplied, prices, pictures, descriptions, or samples without prior written approval from Buyer.

**13. Compliance with Applicable Laws:**

- 13.1 Seller certifies that all of the products or services to be furnished to Buyer to fulfill this Purchase Order will be manufactured or supplied by Seller in accordance with all currently applicable federal, state, and local laws, rules, regulations and orders, including without limitation environmental laws, rules, regulations, orders, and permits. Upon request, Seller shall furnish Buyer with specific certifications of legal compliance.
- 13.2 Seller agrees specifically to comply with all Federal, State and local laws, statutes, ordinances, rules, regulations and relevant orders of the Secretary of Labor relating to equal employment opportunity.

**14. Toxic Substances:**

Unless otherwise stated on the face of this Purchase Order, Seller hereby warrants to Buyer that all products provided to Buyer are safe for their foreseeable use, are not defined as a 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 Buyer harmless for any expenses incurred by reason of Seller's delivery to Buyer of hazardous or toxic substances.

**15. Notices:**

- 15.1 Any notice to Buyer shall be directed to Buyer's authorized representative whose signature appears on the face of this Purchase Order.
- 15.2 Any notice required pursuant to this Purchase Order shall be in writing and shall be deemed received as of the date of actual receipt of written notice.

**16. Miscellaneous:**

- 16.1 Seller shall not delegate any duties or assign any rights under this Purchase Order. Any attempted delegation or assignment shall be void.
- 16.2 Failure by Buyer to insist upon strict compliance to the terms and conditions of this Purchase Order is not a waiver of the term or condition. The waiver of any term or condition of this Purchase Order must be in writing. No such waiver shall be construed as a waiver of any other term or condition nor as a waiver of any subsequent breach of the same term or condition.
- 16.3 If any provisions herein shall be held to be invalid or unenforceable for any reason, such provisions shall, to the extent of such invalidity or unenforceability, be reformed or, if necessary, severed to the minimum extent necessary to render the remainder of this Purchase Order to be valid or enforceable, but without in any way affecting the remainder of such provision or any other provision contained herein, all of which shall continue in full force and effect.
- 16.4 In the absence of any signed, written agreement to the contrary, Buyer reserves the right to return within 6 months of delivery, without cause, a partial or full quantity of any items delivered under Iconix Purchase Orders. The time elapsed shall be measured from the delivery to Iconix's request for return instructions. Buyer's indebtedness shall be reduced by the amount invoiced for the items returned, without deductions for restocking or other fees imposed by the Seller.



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- 16.5 This Purchase Order shall be construed in accordance with, and governed by, the laws of the state of New York. Seller hereby consents to submit any disputes arising hereunder to New York courts with jurisdiction over Kings County, New York.
- 16.6 To the extent required by Executive Order No. 11,246 and its implementing regulations, this Purchase Order incorporates by reference the Equal Opportunity Clause, 41 CFR 60-1.4(a).
- 16.7 Seller represents, to the best of its knowledge and belief, that the Seller and any of its Principals (as defined in 48 C.F.R. 52.209-5) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.
- 16.8 Seller represents that it has not within a three-year period preceding this agreement, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in this paragraph.
- Seller warrants that all its packaging, components and/or Products supplied by Seller will not contain higher levels of the banned substances than those allowed by all applicable federal, state, and local laws, regulations, statutes, mandates, etc.. Buyer may change the content listed below upon prior written notice to Seller. Except, as otherwise specified, such changes shall be effective after three (3) months after the date of notification.