

# MELINK CORPORATION TERMS AND CONDITIONS

**1. Definitions.** "Deliverables" means the goods, materials, products, software, technical data, intellectual property, drawings, personal property, services or items identified and/or listed in this purchase order for Melink Corporation's internal use and resale.

"Personal data" means any information that can identify a specific living individual. "Parties" means, collectively, Vendor and Melink Corporation.

**2. Acceptance of Purchase Order.** This purchase order constitutes Melink Corporation's offer to Vendor and shall become a binding contract upon the terms and conditions stated in this purchase order upon acceptance by Vendor by any expression of acceptance, or commencement of performance, whichever occurs first. This purchase order, together with any data referenced in Section 3, constitutes the entire agreement and exclusive statement of the terms between the Parties with respect to the purchase and sale of the Deliverables under this purchase order and terminates and supersedes all previous negotiations, communications, representations, or agreements between the Parties. Any terms and conditions proposed by Vendor in acknowledging or accepting Melink Corporation's offer which are different from or in addition to the terms set forth in this purchase order shall not be binding upon Melink Corporation and shall be void and of no effect, except to the extent expressly accepted in writing by Melink Corporation's authorized procurement representative(s).

**3. Data/Documentation.** Vendor acknowledges that it has in its possession all applicable specifications, drawings and documents (including, without limitation, statements of work) necessary to perform its obligations under this purchase order at the price and schedule stated on this purchase order or its attachments. All such documentation shall be deemed to be a part of this purchase order.

**4. Delivery.** Time is of the essence. Unless otherwise specified on this purchase order, Vendor shall deliver Deliverables DDP (Incoterms 2010). Risk of loss shall be retained by Vendor until delivery of the Deliverables at the location specified on this purchase order. Vendor agrees to comply with Melink Corporation's shipping, delivery, installation or startup schedules (as applicable) without any delay and without anticipating Melink Corporation's requirements. Shipments must equal the exact amounts identified in the Order and no partial shipments or runt cartons, changes or substitutions in specifications may be made without Melink Corporation's prior written consent. Melink Corporation's acceptance of late shipments or partial shipments shall not constitute a waiver of any of Melink Corporation's rights to collect damages for goods not delivered or for late delivery. Vendor shall report to Melink Corporation any delays in a schedule immediately as they become known to Vendor. If dates are not specified on the purchase order, Vendor shall procure materials, fabricate, assemble and ship goods or provide services only as authorized by shipment releases Melink Corporation issues to Vendor. Melink Corporation may return overshipments to Vendor for a complete refund at Vendor's expense for all packing, handling, sorting and transportation. Melink Corporation may from time to time, and with reasonable notice, suspend schedules specified in the purchase order or such shipment releases. If it becomes necessary for Vendor to ship by a more expensive mode than specified on

the Order in order to meet a schedule, Vendor shall pay any resulting premium transportation cost.

**5. Taxes and Duties.** The prices stated in this purchase order include all applicable taxes and duties, except state and local sales and use taxes, which by statute may be passed on to Melink Corporation. Such sales and use taxes shall be separately itemized in Vendor's invoice. Melink Corporation shall benefit from all customs duty and import drawback rights, if any, including rights developed by substitution and rights, which may be acquired from Vendor's Vendors, which Vendor shall transfer to Melink Corporation. Vendor agrees to inform Melink Corporation of the existence of all such rights, and to supply such documents as may be required to obtain such drawbacks, unless waived in writing by Melink Corporation. Vendor agrees to certify to Melink Corporation the country of origin for Deliverables delivered under this purchase order.

**6. Payment and Prices.** Unless different payment terms are expressly stated on this purchase order, payment terms for undisputed invoices shall be forty-five (45) days from Melink Corporation's receipt of Vendor's correctly presented invoice. A "correctly presented" invoice will contain this purchase order number sent to the billing address on this purchase order.

**7. Set-off.** Melink Corporation shall be entitled at all times to set off any amount owing at any time from Vendor to Melink Corporation (or any of Melink Corporation's affiliates and subsidiaries) against any amount payable at any time by Melink Corporation (or any of its affiliates and subsidiaries) to Vendor.

**8. Warranty.** Vendor warrants to Melink Corporation and to any customer of Melink Corporation or user of Deliverables that all Deliverables will conform to applicable specifications, drawings, descriptions, and samples, and will be of new manufacture, good workmanship and materials, be free from design defect, claim, encumbrance or lien, be merchantable and be suitable for the purpose intended by Melink Corporation. Vendor warrants that it has full title, right, power and authority to enter into this purchase order and perform its obligations under the purchase order. Vendor warrants that Deliverables that are services shall be performed in a professional and workmanlike manner. If the Deliverables delivered under this purchase order do not meet the warranties specified in this purchase order or other applicable warranties, Melink Corporation may, at its option, return at Vendor's expense, the defective or nonconforming Deliverables for credit, refund or set-off, correct, have corrected, or replace, or require Vendor to correct or replace, at no cost to Melink Corporation, any defective or nonconforming Deliverables, including, without limitation, re-perform any Deliverables that are services. Return shipping to Melink Corporation of corrected or replacement Deliverables shall be at Vendor's expense. Deliverables required to be corrected or replaced (including, without limitation, the re-performance of any Deliverables that are services) shall be subject to this Section 8 and Section 9 (Inspection) in the same manner and to the same extent as Deliverables originally delivered under this purchase order. Vendor's warranties shall run to Melink Corporation, its affiliates, subsidiaries, customers or users of the Deliverables and shall not be deemed to be exclusive of any other remedy at law or in equity available to Melink Corporation, its affiliates, subsidiaries, customers or users of the Deliverables. Melink Corporation's inspection, approval, acceptance, use of, or payment for all or any part of the Deliverables shall in no way affect its warranty rights.

**9. Inspection.** The Deliverables may be inspected and/or tested by Melink Corporation at any time, place and stage of production or distribution, and if at Vendor's premises, Vendor, without additional charge, shall provide all reasonable facilities and assistance required for safe and convenient inspection and testing. The foregoing shall not relieve Vendor of its obligation to permit Melink Corporation full and adequate inspection and testing away from Vendor's premises. Melink Corporation may base rejection of any or all Deliverables on inspection by sampling or any other reasonable method. Payment shall not constitute Melink Corporation's acceptance of the Deliverables nor impair Melink Corporation's right to inspect and/or test the Deliverables or exercise any of its remedies. Upon notice of rejection of defective Deliverables, risk of loss of such Deliverables shall be upon Vendor until redelivery, if any, to Melink Corporation. Rejected Deliverables may be returned to Vendor or held by Melink Corporation, both at Vendor's risk and expense, subject to Vendor's disposal instructions.

**10. Default.** Melink Corporation may, by written notice to Vendor, cancel this purchase order or any release or order subject to this purchase order for default, (a) if Vendor fails to deliver the Deliverables strictly within the time specified in this purchase order, or if no time is specified, within a reasonable time; (b) if the Deliverables delivered do not conform to this purchase order or if Vendor fails to perform any of the other provisions of this purchase order, or so fails to make progress as to endanger performance of this purchase order in accordance with its terms; or (c) if Vendor's financial condition shall at any time become unsatisfactory to Melink Corporation. Upon such cancellation, Melink Corporation shall not be liable to Vendor for any amount. Vendor will deliver to Melink Corporation any of the Deliverables for which Melink Corporation shall make written request prior to or upon cancellation, for which Melink Corporation will compensate Vendor for documentable and reasonable costs incurred by Vendor to provide such Deliverables, which costs may not exceed the original purchase price of the Deliverables. Vendor shall cooperate with any transition of the delivery of the Deliverables as reasonably requested by Melink Corporation.

**11. Change Orders.** Melink Corporation shall have the right by written notice to change the terms of this purchase order, the drawings, specifications or other descriptions, the time, method or place of delivery or the method of shipment or packaging or to suspend delivery of the Deliverables. Upon receipt of such notice, Vendor shall proceed promptly to make such changes. If any such change causes a change in the cost of the Deliverables or in the time required for performance, Vendor shall provide prompt notice to Melink Corporation of any such change and an equitable adjustment shall be negotiated promptly and this purchase order shall be modified in writing accordingly.

**12. Title.** Title to and the right of immediate possession of all articles, tooling, equipment, software, or materials furnished to Vendor or paid for by Melink Corporation directly or indirectly for use by Vendor in connection with this purchase order shall be and remain in Melink Corporation. Vendor shall be (a) responsible on a replacement cost basis for all loss or damage to such articles, tooling, equipment, software or materials while in its possession and insure its risk in this respect in accordance with Section 12; (b) clearly mark the same as belonging to Melink Corporation, keep it segregated in Vendor's facility and treat it confidentially as provided in this purchase order; (c) keep the same in good operating condition; and (d) use the same exclusively in connection

with the delivery of the Deliverables for this purchase order and not for any production of larger quantities than specified or in advance of normal production schedules, except with Melink Corporation's prior written consent. Articles, tooling, equipment, software, or materials furnished to Vendor shall not include government-furnished items of this sort. Upon completion of this purchase order, all articles, tooling, equipment, software, or materials furnished to Vendor or paid for by Melink Corporation shall be disposed of by Vendor at Vendor's expense as Melink Corporation directs in writing. With the exception of software not specifically developed for Melink Corporation under this purchase order, (i) all Deliverables shall be the sole and exclusive property of the Melink Corporation, and where applicable, shall be considered "works made for hire" under the U.S. Copyright Act (Title 17, United States Code), and all intellectual property, proprietary and industrial rights associated with Deliverables shall be owned exclusively by Melink Corporation; (ii) by this purchase order, Vendor assigns to Melink Corporation for no additional consideration all such rights to the Deliverables, including the right to any extensions and renewals of such rights; and (iii) if requested by Melink Corporation, Vendor shall, without additional consideration, sign a separate written assignment of such rights to Melink Corporation or any other document necessary for Melink Corporation to establish, maintain or enforce such rights in the Deliverables.

**13. Intellectual Property and Proprietary Rights.** Vendor shall at its expense indemnify, defend and hold harmless, Melink Corporation, its directors, officers, employees, affiliates, subsidiaries, agents, customers and end users, from any and all loss, damages or liability (including, without limitation, reasonable legal fees and costs) on account of, or resulting from, any claim of infringement of any existing or future copyrights, patents, or trademarks, misappropriation of any trade secrets, or violation of any other intellectual, proprietary or industrial rights, with respect to any of the Deliverables. The fact that Melink Corporation furnishes specifications to Vendor with respect to any of the Deliverables shall neither relieve the Vendor from its obligations under this purchase order nor limit Vendor's liability in connection with the Deliverables, nor constitute an undertaking by Melink Corporation to hold Vendor harmless against any such claim which arises out of compliance with the specifications.

**14. Confidential Information.** For purposes of this Section 14, the term "Confidential Information" means any and all proprietary information belonging to Melink Corporation, including, but not limited to, information concerning customers, suppliers, samples, product specifications and names, pricing, trade secrets, drawings and schematics, manufacturing processes, procedures, know how, computer and any other processed or collated data, computer programs, marketing and advertising data, product development plans, and distribution and marketing plans. "Confidential Information" also includes Personal Data supplied or provided by Melink Corporation. Vendor shall not disclose to any third party or use any Confidential Information of Melink Corporation's concerning this purchase order or other material intended for use in connection with this purchase order without Melink Corporation's prior written consent. Any knowledge or information which Vendor may disclose to Melink Corporation in connection with the purchase of any of the Deliverables shall not, unless Melink Corporation otherwise specifically agrees in writing, be deemed to be Confidential Information and shall be acquired free from any restriction as part of the consideration for this purchase order.

**15. Termination.** At any time Melink Corporation, at its option, may terminate this order for convenience in whole or in part by written notice. A stop work order or any other form of written notice requiring Vendor to immediately cease performance under this purchase order shall obligate Vendor to immediately stop work and take any actions necessary to mitigate the impact of such notice. If Melink Corporation does not give Vendor written notice to resume work within twenty (20) days after its initial stop work order, this purchase order shall then be deemed terminated for Melink Corporation's convenience as of the twenty-first (21st) day after the initial stop work order. Any claim of Vendor shall not exceed reasonable demonstrated costs it has incurred in performance of this purchase order prior to notice of termination and shall in no event exceed the total amount of this purchase order. Melink Corporation shall remit to Vendor any payment due to Vendor for documentable and reasonable costs incurred before receipt of Melink Corporation's notice of termination in performance of this purchase order.

**16. Compliance with Law.** Each Party shall comply with all applicable law, including without limitation, government export control, and privacy and data protection laws.

**17. Assignment and Subcontract.** Vendor shall not delegate, assign or subcontract this purchase order nor any duty or right under this purchase order without the prior written consent of Melink Corporation. Any delegation, assignment or subcontract not made in accordance with the terms and conditions of this Section is void and of no effect.

**18. Advertising.** Vendor shall not, without the prior written consent of Melink Corporation, in any manner advertise or publish the fact that Vendor has contracted to furnish Melink Corporation the Deliverables under this purchase order.

**19. Insurance.** During the performance of this purchase order, Vendor shall maintain in full force and effect, at its sole cost and expense, general liability insurance coverage, covering activities performed under this purchase order, including without limitation, coverage of all property liability exposure and all contractual liability exposure. All insurance shall be placed with reputable insurance companies acceptable to Melink Corporation with a current rating in A.M. Bests Insurance Rating guide of at least A:VII and licensed to do business in the country(ies), state(s) or province(s) where the purchase order is being performed. Vendor shall maintain insurance with the minimum policy limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Vendor shall require such insurance policies to name Melink Corporation as an additional insured. Vendor shall furnish to Melink Corporation upon request original Certificates of Insurance including all required amendatory endorsements and a copy of the Declarations and Endorsement Page of the general liability insurance policy listing all policy endorsements to Melink Corporation.

**20. Relationship of Parties.** The Vendor and Melink Corporation are independent contractors. Nothing in this purchase order shall be deemed to create a partnership, joint venture, franchise, employment, or agency relationship between the Parties. Neither Party shall have the power or authority to bind or obligate the other Party.

**21. Waiver.** Any failure or delay by either Party in exercising any right or remedy will not constitute a waiver.

**22. Amendment.** No alteration, modification or amendment of any of the provisions in this purchase order shall be binding unless in writing and signed by Melink Corporation's authorized procurement representative(s).

**23. Survival.** Any provision in this purchase order which, by its nature, would reasonably be expected to be performed after the termination of this purchase order shall survive and be enforceable after such termination.

**24. Indemnification.** Vendor shall, at its expense, indemnify, defend and hold harmless Melink Corporation, its directors, officers, employees, affiliates, subsidiaries, agents, customers and users of Deliverables, from any and all loss (including, without limitation, death, personal injury and the loss of use of any property), damages or liabilities (including, without limitation, reasonable legal fees and costs) arising out of or resulting in any way from (a) any defect in the Deliverables, (b) from any default of Vendor pursuant to Section 10 and (c) from any act or omission of Vendor, its agents, employees or permitted subcontractors in connection with the Deliverables. This indemnification shall be in addition to Vendor's warranty obligations set forth in Section 8.

**25. Limitation of Liability.** In no event shall Melink Corporation be liable for any incidental, indirect, special, consequential, or punitive damages, even if Melink Corporation knew or should have known of the possibility of such damages.

**26. Governing Law; Jurisdiction.** All matters arising out of or relating to this purchase order are governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule (whether of the State of Ohio or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Ohio. The Parties hereby agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this purchase order. Any legal suit, action, or proceeding arising out of or relating to this purchase order shall be instituted in the courts of the State of Ohio located in the County of Clermont, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Each Party irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any action, proceeding, cause of action or counterclaim arising out of or relating to this purchase order.

**27. Severability.** If any term or provision of this purchase order is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this purchase order or invalidate or render unenforceable such term or provision in any other jurisdiction.