

## Terms and Conditions of Purchase Order



This Purchase Order (“Order”) is an offer by DWFRITZ Automation, Inc. (“Buyer”) to the supplier indicated on the face of this Order (“Seller”), for purchase of the materials, articles, items, and/or goods indicated in the Order (“Goods”) consisting of the specifications, drawings, samples and documents related to the Goods listed on the face of this Order or attached to or incorporated by reference therein (“Specifications”). Once accepted pursuant to the following Section, this Order, including the Specifications and any permitted modifications to this Order, constitutes the entire agreement between Seller and Buyer (Seller and Buyer may sometimes individually be referred to hereafter as a “Party,” and are collectively referred to as the “Parties”). This Order supersedes all prior understandings or agreements between the Parties and, unless otherwise stated on the face of this Order, shall be subject to the terms and conditions set forth below. Buyer may withdraw or amend the Order at any time before it is accepted by Seller in writing or before the delivery of Goods. Buyer is not obligated to any minimum purchase or future purchase obligations under this Order.

**ACCEPTANCE OF ORDER.** Seller will be deemed to have accepted this Order by doing any of the following: (i) Seller’s shipment of or furnishing of Goods, (ii) Seller’s acknowledging this Order, (iii) Seller’s commencement of performance, (iv) Seller’s acceptance of any payment (in whole or in part) or (v) if Seller has failed to provide written notification of its non-acceptance to Buyer within 5 days of Seller’s receipt of the Order. No modification of this Order shall be valid without Buyer’s written consent.

**PRICE.** The price stated in the Order includes all taxes, fees, charges and expenses payable by Buyer. Additional charges of any kind, including, but not limited to, charges for boxing, packing, cartage or other extras, will be null and void unless approved in writing by Buyer. Seller shall report and pay all taxes, including, but not limited to transfer, VAT, sales, use, excise, occupational, gross receipt and income taxes and shall indemnify and hold Buyer harmless from and against any liability arising therefrom. The Parties agree and acknowledge that if the price is not stated on the front of this Order, the price of the Goods shall be the price last quoted or billed to Buyer by Seller for the Goods, whichever is lower.

**DELIVERY. TIME IS OF THE ESSENCE WITH RESPECT TO PERFORMANCE AND DELIVERY.** Seller shall promptly notify Buyer of any delay or anticipated delay of performance or delivery. Deliveries are to be made both in quantities and on terms specified in this Order, with all deliveries to be made Ex Works (EXW) Buyer’s facility in Oregon, USA (pursuant to Incoterms 2010) unless otherwise indicated on the Order. The Goods or portions thereof, including but not limited to, data and work in progress, shall become property of Buyer and title and risk of loss to the Goods shall pass upon delivery of the Goods to the delivery point designated in the Order, or when Buyer makes payment therefore, whichever occurs earlier, and Seller shall be responsible for and shall bear risk of loss and damage to the Goods, or portions thereof, until such time. With delivery, Seller shall furnish all installation, operation and maintenance data and all relevant applicable product and safety information for the Goods. Seller and its suppliers shall, at no additional cost to Buyer, expedite delivery, to include faster means of transportation, if necessary to meet established delivery schedules.

**PACKING AND SHIPPING.** Seller shall pack, mark and ship the Goods in accordance with sound commercial practices and in such manner as to prevent damage during transport and to facilitate efficient unloading, handling and storage, and all Goods shall be clearly marked as destined for Buyer. The Order number must be shown on each package or container, packing slip and invoice. The container and Order number shall also be indicated on the bill of lading. Notwithstanding the provisions of the applicable Incoterms, Seller shall be responsible for any loss or damage due to its failure to properly preserve, package, handle (before delivery as per the applicable Incoterm) or pack the Goods. Buyer shall not be required to assert any claims for such loss or damage against the common carrier involved.

**PAYMENTS AND SET-OFFS.** Buyer shall make payment of approved invoices for Goods that conform to the Specifications and other requirements of this Order. Notwithstanding the foregoing, the Parties agree and acknowledge that Buyer may withhold or set-off payments if, in Buyer’s sole opinion, Seller failed to perform in accordance with the

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provisions of this Order, or if set-offs in favor of Buyer in this or other transactions between the Parties are asserted. Payments of invoices shall be based upon and the discount period shall start from the latest one of the following dates: (a) Buyer's receipt and acceptance of the Goods; or (b) the specific date stated in this Order. Unless otherwise agreed in writing by the Parties or indicated on the Order, payment of invoices shall be made net 60 days. Seller shall timely pay claims of all of its suppliers furnishing goods and services for or used in providing the Goods. Seller agrees that Buyer may, at Buyer's option, make payments directly to suppliers of Seller whenever Buyer has reason to believe Seller has not paid or is likely not to pay promptly such suppliers the amounts due them for goods and services used for this Order. Seller hereby grants to Buyer a security interest in the Goods or parts thereof for which Buyer prepays or advances funds under this Order, to the extent of such payments or advanced funds. Seller shall execute and file all documents and financial statements necessary to perfect such security interest. Seller shall furnish, if requested, as a condition of payment, releases and waivers of lien and claims consisting of terms acceptable to Buyer before payment of invoices are made hereunder. To the extent allowed by applicable laws, Seller agrees to waive all liens which it may otherwise assert in the resolution of disputes arising out of performance of this Order.

**BUYER CHANGES.** Buyer may at any time, by written request, suspend or extend the time for delivery, or make changes in: (a) the quantities ordered; (b) the delivery schedule or place of delivery; (c) the method of shipment; or (d) the Specifications applicable to this Order. Seller will make best efforts to accommodate any such requests. Seller grants free, safe and clear access to Buyer to any of Seller's and Seller's suppliers' premises for Buyer to investigate the status of such expedited requests and Seller's conformance with fulfillment of expedited requests. If any such change affects Seller's cost or time of delivery, an equitable adjustment may be made to the Order price or delivery, as appropriate, by mutual written agreement of the Parties. Request for adjustment must be brought to the attention of Buyer, by written notice from Seller, within 15 days of Buyer's notification of change, or Seller shall forego its right to adjusted prices of delivery dates. Changes to price or delivery affected without prior written approval of Buyer shall be the responsibility of Seller and costs thereof shall be borne by Seller.

**QUALITY CONTROL.** Seller shall maintain a proper and consistent quality program that is acceptable to Buyer and that meets best industry standards, to assure that the Goods shall comply with the standards of quality stated in this Order and meet the requirements of this Order in workmanship, materials, acceptance, Specifications, performance and reliability.

**INSPECTION AND ACCEPTANCE OF GOODS.** Goods ordered pursuant to this Order are subject to Buyer's and its customers' audits, inspections and tests at all times and places. If requested by Buyer, Seller shall provide to Buyer the results of all samplings, analysis, inspections or tests relating to the Goods and/or this Order. In addition to other remedies hereunder or available under law, Buyer may reject or revoke acceptance of any Goods that fail to comply with the Specifications or other requirements, representations or warranties of this Order including quantity ("**Non-Conforming Goods**"). Non-Conforming Goods will be held pending Buyer's instructions and at Seller's risk of loss, and if Buyer so directs, will be returned to Seller at Seller's expense. If inspection discloses that the Goods are Non-Conforming Goods, Buyer shall have the right, at Buyer's option, to (i) cancel any unshipped portion of the Order and receive a full refund of any amounts paid for the unshipped portions (ii) rescind the Order in its entirety and receive a full refund of any amounts paid; (iii) accept the Non-Conforming Goods at a reasonably reduced price; or (iv) reject the Non-Conforming Goods and require replacement of the rejected Non-Conforming Goods. The making of, or failure to make any inspection of, payment for, or acceptance of Goods shall in no way impair Buyer's right to reject or revoke acceptance of Non-Conforming Goods at any time, in which case Seller shall bear all cost of repair, replacement and transportation of the Non-Conforming Goods, and shall reimburse Buyer in respect of all costs and expenses (including, without limitation, inspection, handling and storage costs) reasonably incurred by Buyer in connection therewith. Buyer's review or approval of Seller's methods, manufacturing procedures, drawings, calculations and other documents shall not relieve Seller of any responsibility for Goods delivered hereunder. If Seller fails to timely deliver Goods to replace Non-Conforming Goods, Buyer may replace such Non-Conforming Goods with goods from a third party, charge Seller the difference in cost and terminate this Order for cause.

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**WARRANTIES.** Seller represents and warrants that the Goods and all portions thereof shall: (a) be free and clear of all liens, security interests and encumbrances and free from defects in title, design, material and workmanship; (b) conform to all current and applicable specifications and performance criteria including the Specifications; (c) be new, merchantable and fit for their intended purposes; (d) have met and complied with all tests required; (e) meet and comply with all process, design, utility, mechanical, performance and other guarantees required by this Order; (f) be manufactured and sold in compliance with all applicable federal, state and local laws, rules and regulations including, without limitation, all laws regarding anti-bribery, anti-corruption, occupational health or safety issues, labor laws, product safety laws, export control, unfair competition, anti-discrimination, false advertising, and hazardous waste or toxic substances management, handling or disposal laws, as applicable; (g) not contain hazardous substances including heavy metals and toxic substances that require a consumer notification under California's Proposition 65 or, if such materials are present, they will be present at or below the applicable safe harbor levels established by California's Proposition 65, and (h) not infringe the intellectual property rights of a third party. Seller further represents and warrants that Seller has obtained all the permits, licenses, and approvals necessary to manufacture and/or supply the Goods as required by this Order. Buyer may assign to its customers and end-users of the Goods any warranty rights Buyer may have under this Order.

**INTELLECTUAL PROPERTY RIGHTS.** Any Buyer designs, drawings, Specifications, or other intellectual property rights provided by Buyer to Seller ("**Buyer IP**") are the sole and exclusive property of Buyer. If Seller contributes any improvement to Buyer IP, Seller hereby assigns all right, title and interest to such improvements to Buyer. Buyer hereby grants to Seller a revocable, royalty-free, non-exclusive, non-transferable license to use the Buyer IP solely for use in connection with manufacturing the Goods for sale to Buyer pursuant to this Order. All information with respect to the Buyer IP shall be confidential and proprietary information of Buyer. Except for the Buyer IP, all drawings, specifications, designs and any other intellectual property rights in the Goods are the sole exclusive property of Seller. All intellectual property created by Seller pursuant to the Order including Work Product will become the property of Buyer. Seller agrees that all creative work prepared or originated by Seller for Buyer, or during or within the scope of the Order that may be subject to protection under federal copyright laws ("**Work Product**"), shall be the sole property of Buyer upon fixation in a tangible medium of expression. Seller expressly acknowledges that the Work Product is to be considered "work for hire" within the meaning of the United States Copyright Act (the "**Act**"), and Buyer is to be the "author" within the meaning of the Act. All copyrights in the Work Product, as well as all copies of such Work Product, in any medium, shall be owned exclusively by Buyer on their creation, and Seller expressly disclaims any interest in them.

**TOOLING/MOLDS.** Any components, machinery, equipment or tools that are provided by Buyer or are created by Seller using Buyer IP ("**Tooling**") shall at all times be and remain the property of Buyer. Tooling will only be used by Seller for the manufacture of the Goods. Seller shall always communicate that the Tooling is the property of Buyer, will mark the Tooling as being the property of Buyer, and will insure and maintain the Tooling at Seller's expense. Title to all Tooling shall remain with Buyer but Seller will have the risk of loss while the Tooling is in Seller's possession.

**ASSIGNMENT/SUBCONTRACTING.** Unless specifically outlined in this Order (including the Specifications), Seller shall not without Buyer's consent in writing assign or sub-contract this Order or any part thereof. Any such consent shall not relieve the Seller of any of his obligations under the contract. In the event Seller uses any approved subcontractors, Seller shall ensure such subcontractor's compliance with this Order and shall be responsible for their performance and any breach of this Order. The Seller shall ensure that it includes corresponding conditions to those set out in this Order in the Seller's contracts with its supply chain, particularly in relation to inspection, customer flow-down requirements, regulatory and quality compliance and rights of recourse, including on termination

**INSURANCE.** Seller represents and warrants to Buyer that it has in place with reputable insurers such insurance policies in coverage amounts that would be maintained by a prudent supplier of goods similar to the Goods, including, as applicable, professional errors and omissions liability insurance and comprehensive commercial general liability insurance (including product liability coverage, all-risk contractors' equipment insurance, and automobile liability insurance). Seller shall also maintain the statutory requirements for workers' compensation insurance. In addition, Seller maintain, at its own cost, such insurance policies and coverages as may be reasonably required by Buyer from time to time. Seller will promptly deliver to Buyer, as and when requested, written proof of such insurance. Buyer will be named as an additional

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insured under any such policies. Such insurance will provide that it cannot be cancelled, or materially changed so as to affect the coverage provided under this Order, without the insurer providing at least 30 days prior written notice to Buyer.

**TERMINATION.** Buyer may, at its sole discretion, terminate this Order or any part thereof for no cause at any time, in which case Seller shall be entitled to payment of an equitable amount for authorized work performed up to the time of such termination, provided requests for payment must be made by Seller in writing within 30 days after the effective day of termination. Buyer may also terminate this Order for Cause by providing written notice to Seller and then will not be obligated to make any equitable payment to Seller for work performed. For purposes of this Order, “Cause” shall mean (a) if Seller breaches any term of this Order; (b) if, in the opinion of Buyer, Seller fails to make progress or fails to provide reasonable assurances of Seller’s progress, thereby endangering timely delivery; or (c) in case of any proceeding by or against Seller in bankruptcy, insolvency, the appointment of receiver or trustee or the assignment for the benefit of creditors. Seller shall indemnify and hold harmless Buyer for all costs, losses, expenses and damages incurred by Buyer by reason of such termination for Cause. On termination, Seller will deliver to Buyer, Ex Works Buyer, and at Seller’s cost (i) any Goods, Goods-in-process or materials purchase by Seller for making the Goods for which Buyer has made any full or partial payment and Buyer and Seller will negotiate in good faith the cost of any such items, and (ii) all Tooling.

**INCONSISTENT TERMS.** Buyer is not bound by and hereby expressly rejects Seller’s general conditions of sale and any additional or different terms or provisions that may appear on any proposal, quotation, price list, acknowledgment, invoice, packing slip or the like used by Seller. Course of performance, course of dealing, and usage of trade shall not be applied to modify this Order.

**COUNTERFEIT GOODS.** All Goods provided by the Seller to the Buyer, including any Goods that are provided by Seller via Seller’s subcontractors, must be original and genuine, and in full compliance with all of this Order including the Specifications. Seller warrants that it has received from all of its subcontractors and suppliers all data necessary to comply with this obligation and the Seller has validated all such data. Seller will ensure that none of the Goods are counterfeit, inaccurately marked, or in any manner misrepresented. The Seller shall operate a counterfeit control process for all Goods regardless of industry sector consistent with these provisions and reasonable commercial terms for applicable industry sectors, and the Buyer shall have the right to audit, inspect and/or approve the process at any time before or after delivery of the Goods

**INDEMNITIES.** Seller shall indemnify, defend and hold harmless Buyer, its affiliates, and their respective officers, directors, shareholders, employees, consultants, and agents from and against any claims, fines, losses, actions, damages, expenses, deficiencies, awards, liabilities, penalties (including reasonable attorney’s fees) related to or arising out of: (a) death, bodily injury, or loss or damage to real or tangible personal property resulting from the use of or any actual or alleged defect in the Goods, or from the failure of the Goods to comply with the warranties hereunder; (b) any claim that the Goods infringe or violate the intellectual property rights or other rights of any person; (c) any negligent act or omission of Seller, its affiliates, or their employees, agents or subcontractors; (d) a breach by Seller, its employees, agents or contractors of any representation, warranty or covenant, or any non-fulfillment of any obligation of Seller, under this Order; ; (e) any liens or encumbrances relating to any Goods; (f) any violation of any law, regulation or ordinance by Seller, its employees, agents or contractors; or (g) any dispute between Seller and any of its employees, subcontractors or suppliers.

**CONFLICT MINERALS.** Seller warrants that, to its knowledge, no tantalum, tin, tungsten and/or gold (“Conflict Minerals”) contained in any Good originated from the Democratic Republic of the Congo or an adjoining country, unless the Conflict Minerals were processed by a facility listed as conformant pursuant to the RMI Responsible Minerals Assurance Process. Seller agrees to abide by the terms and conditions in Buyer’s Conflict Minerals Policy and to communicate to its sub-suppliers Seller’s own commitment to responsible sourcing and legal compliance. Seller agrees to cooperate and work with its sub-suppliers in an attempt to ensure traceability of Conflict Minerals, at least to the smelter or refiner level, to maintain and record all Conflict Minerals traceability documentation for five years and to provide such documentation to Buyer upon request.

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**GOVERNING LAW; VENUE.** This Order shall be governed by the laws of the State of Oregon, United States of America, without regard to application of conflicts of laws principles that would require the application of any other law. Seller hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the federal and state courts sitting in Multnomah County, Oregon for any actions, suits or proceedings arising out of or relating to this Order (and each Party agrees not to commence any action, suit or proceeding relating thereto except in such courts). The Parties hereto hereby irrevocably waive any objection to venue of any action, suit or proceeding, arising out of the Order, in the courts sitting in Multnomah County, Oregon and hereby further waive and agree not to plead or claim in any such court that such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. In addition to other remedies, the prevailing Party shall be entitled to recover such amount as the court may adjudge reasonable as attorney's fees and expenses in the enforcement action or any appeal. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Order.

**MISCELLANEOUS.** No modification of this Order shall be effective without Buyer's prior written consent. There is no relationship of partnership, joint venture, employment, franchise or agency between the Parties, and Seller will not have the power to bind Buyer or incur obligations on Buyer's behalf without Buyer's prior written consent. If any term or provision of this Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Order or invalidate or render unenforceable such term or provision in any other jurisdiction. This Order is drafted in the English language. If this Order is translated into any other language, the English language text shall prevail. Any notice given under or in connection with this Order shall be in the English language.

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