



CHL Distribution Center

a division of Cisco High-Lift of Texas, Ltd.

17018 IH 20, Cisco, TX 76437 (254) 442-2900 ph, (254) 442-2999 fax

PURCHASE ORDER – STANDARD TERMS AND CONDITIONS

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1. OFFER AND ACCEPTANCE. This Purchase Order constitutes an offer by Cisco High-Lift of Texas, Ltd. (the “Purchaser”) to purchase from the addressee (the “Seller”) the goods identified on the face side hereof on the terms and conditions set forth below. This is not a firm offer, and Purchaser may revoke it at any time prior to acceptance by Seller. Purchaser objects to the inclusion of any terms or conditions proposed by Seller which are different from or additional to the terms and conditions of this Purchase Order, and Purchaser’s acceptance of the goods of Seller shall not constitute assent to any such terms and conditions that may be proposed by Seller. Any such terms shall be void and the terms herein shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties. Purchaser shall be bound by this Purchase Order when Seller executes and returns the acknowledgment copy hereof (if any) to Purchaser. Any conduct by Seller which recognizes the existence of a contract pertaining to this Purchase Order shall constitute acceptance by Seller of this Purchase Order and all its terms and conditions. If this Purchase Order has been issued by Purchaser in response to any offer and the terms herein differ from any terms of such offer, then the issuance hereof by Purchaser shall constitute an acceptance of such offer subject to the express conditions that Seller assents to such different terms herein and acknowledges that this Purchase Order constitutes the entire agreement between Purchaser and Seller with respect to the subject matter hereof. Seller shall be deemed to have so assented and acknowledged unless it notifies Purchaser to the contrary in writing within 10 days of receipt hereof.

2. PURCHASE PRICE AND PAYMENT. The purchase price of the goods is as set forth on the face side or if no purchase price is there stated, the purchase price shall not be higher than the lowest of the price last (a) quoted; (b) charged to Purchaser; or (c) marked price. In any case, the purchase price is a firm price and is not subject to increases in the prices of Seller’s manufacturers or suppliers, or due to any other act or event. Seller warrants that the prices for the goods sold to Purchaser hereunder are not less favorable than those currently extended to any other customer for the same or like goods in equal or smaller quantities. In the event Seller reduces its price for such goods during the term hereof, Seller shall reduce the prices hereof accordingly. Unless otherwise specified on the face side, Purchaser shall pay for the goods with its check between 60-90 days after its acceptance of the goods. If a discount is allowed to Purchaser for payment within an agreed upon period, the time for taking such discount will not begin until the later of the date Purchaser actually received an invoice or the date of delivery of the goods.

3. SALES AND USE TAXES AND OTHER CHARGES. Except as may be otherwise provided herein, the purchase price includes all applicable federal, state and local taxes and other charges in effect on the date hereof. In cases of new taxes or other charges or increased rates, or the repeal of taxes or other charges or reduction of rates, the prices payable under this Purchase Order shall be adjusted accordingly. The goods purchased hereunder are to be used for one of the following purposes: (a) resale; (b) packaging and shipping materials to transfer merchandise to customers; (c) as an ingredient or component of an article to be sold; (d) will be consumed or destroyed or lose its identity in the manufacture of property destined for sale; (e) machines or specific processing equipment and repair parts or replacement thereof, exclusively and directly used by the Purchaser in the manufacturing of personal property; (f) servicing by repairing and maintaining machines and specific processing equipment, which property the Purchaser could purchase without tax at the time of such service; (g) export; or (h) otherwise exempt by statute.

4. CHANGES IN GOODS ORDERED. Purchaser reserves the right at any time to direct changes, or cause Seller to make changes to drawings, specifications of the goods or to otherwise change the scope of the work covered by this Purchase Order, including work with respect to such matters as inspection, testing or quality control, and Seller agrees to promptly make such changes.

5. TERMINATION OF PURCHASE ORDER. In addition to any other rights of Purchaser to cancel or terminate this Purchase Order, Purchaser may at its option immediately terminate all or any part of this Purchase Order, at any time and for any reason, by verbal notice confirmed in writing, or by written notice. Purchaser shall not be liable for and shall not be required to make any payments to Seller, directly or on account of any claims by Seller’s subcontractors, to include, but not to be limited to, any loss of anticipated profit, unabsorbed overhead interest on claims, product development and engineering costs, rental, unamortized depreciation costs, and general and administrative burden charges from termination of this Purchase Order. Purchaser may terminate this Purchase Order for Seller’s failure to comply with any terms hereof or other default. In the event of termination for such non-compliance or default, Purchaser shall not be liable to Seller for any amount; however, Seller shall be liable to Purchaser for any extra expenses or damages incurred by Purchaser. Purchaser may also, by written notice of default to Seller, cancel this Purchase Order, or any part thereof, under any of the following circumstances: (a) if Seller fails to deliver goods or perform services in accordance with the terms specified herein, or any extension hereof by change order or amendment hereto; (b) if Seller so fails to make sufficient, timely progress in Purchaser’s judgment as to endanger timely performance by Seller of Seller’s obligations under this Purchase Order; or (c) if Seller fails to comply with any other provisions of this Purchase Order.

6. DELIVERY. Delivery of goods shall be F.O.B. at the location and on the date(s) specified on the face side hereof. Unless otherwise specified on the face side, the goods must be delivered in a single delivery and not in lots or installments. Detailed invoices shall be mailed at the time goods are shipped to Purchaser. Separate packing slips must be included in each shipment showing order number, quantity, part number and description of goods therein. Time and date of delivery are the essence of the contract arising from this Purchase Order. No shipments may be made prior to a specified delivery date unless Seller is advised by Purchaser by telegram, writing or verbal notice confirmed in writing to the contrary. Purchaser reserves the right to withhold payment of invoices for materials shipped ahead of schedule without Purchaser’s prior express approval. If delivery of items or rendering of services is not completed by the time promised, the Purchaser



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reserves the right, without liability, in addition to its other rights and remedies, to terminate this Purchase Order by notice, effective when received by Seller, as to the whole contract, and to purchase substitute items or services elsewhere and charge Seller with any loss incurred time and expenses regarding progress, deadline and general business adjustments.

7. INSPECTION AND REJECTION. Purchaser may inspect the goods before accepting delivery and before paying for the goods during business hours at its place of business, or at the place to which Seller is to ship the goods, or at the place at which any subpurchaser from Purchaser is to accept the goods, or at any other reasonable place designated by Purchaser. The goods are subject to inspection by Purchaser notwithstanding prior payment. Rejected goods may be immediately returned at Seller's expense and credit taken at the time of the return, including the cost of transportation both ways. No goods returned as defective may be replaced except as Purchaser may expressly agree. If parts are not covered by a blueprint, they must be approved in writing by Purchaser with the submission of samples. Goods may be rejected and refunded if inspection shows they are not strictly in accordance with the samples, specifications, drawings and other express and implied warranty requirements.

8. IDENTIFICATION; RISK OF LOSS; TITLE. Identification of the goods shall occur when this Purchase Order is accepted by Seller; Risk of loss and title to the goods shall not pass to Purchaser until the goods are accepted by Purchaser.

9. QUALITY OF GOODS; WARRANTIES. All of the goods shall be merchantable, free of defects in material and workmanship and shall conform strictly to the description on the face side and to all drawings, specifications, processes, materials, compounds and other criteria of Purchaser. Seller warrants the goods shall be fit and sufficient for the purpose Purchaser intends, including but not limited to dimensions, tolerances, and tensile strength. These warranties shall survive Purchaser's inspection and shall run to Purchaser and to any of Purchaser's customers or users of Purchaser's products. No term in any document or instrument of Seller that purports to disclaim any implied warranty of merchantability, fitness for a particular purpose or any other warranty, or that purports to disclaim liability for Seller's negligence, shall be effective against Purchaser. Seller will maintain information to support compliance of the goods with the drawings and specifications, warranties and other requirements of this Purchase Order and will permit Purchaser's representatives to inspect Seller's manufacturing process during the completion of this Purchase Order to determine such compliance, but no such inspection by Purchaser's representative shall relieve Seller from complying with the terms of this Purchase Order. Seller further warrants that it will have title to all of the goods furnished hereunder and the right to sell such goods at the time of delivery to Purchaser, and all such goods shall be new and unused (unless otherwise specified) at the time of delivery to Purchaser.

10. NONCONFORMING GOODS. To the extent Purchaser rejects goods as nonconforming, the quantities of this Purchase Order will automatically be reduced unless Purchaser otherwise notifies Seller. Nonconforming goods will be held by Purchaser for disposition at Seller's risk. Seller's failure to provide written instructions within ten (10) days or such shorter period as may be commercially reasonable under the circumstances after notice of non-conformity, shall entitle Purchaser at Purchaser's option, to charge Seller for storage and handling or to dispose of the goods without liability to Purchaser. Payment for nonconforming goods shall not constitute an acceptance thereof, limit or impair Purchaser's right to assert any legal or equitable remedy, or relieve Seller's responsibility for latent defects.

11. ON SITE WORK BY SELLER. If any of the work required by this Purchase Order is to be performed on Purchaser's premises or on the premises of Purchaser's job site, Seller agrees that all persons performing such services for Seller shall be deemed Seller's employees or independent contractors and not agents of Purchaser, and Seller shall be solely responsible for such work and shall indemnify Purchaser and hold it harmless against any and all claims, loss and liability arising therefrom or in connection therewith.

12. PATENTS, INDEMNIFICATION AND LICENSE.

(a) Seller agrees, at its expense, to defend any suit against Purchaser for alleged infringement of patent or invention rights arising from the sale or use of Seller's goods or services and to indemnify and save Purchaser harmless from any damages, or expenses of any nature whatsoever, paid or incurred by Purchaser (or its customers) in connection with any such suit; provided, however, that this indemnity shall not apply to any such damages or expenses arising out of compliance by Seller with specifications furnished by Purchaser.

(b) Seller, as part consideration for this Purchase Order and without further cost to Purchaser, hereby grants and agrees to grant to Purchaser an irrevocable non-exclusive royalty-free right and license to use, sell, manufacture and repair products embodying any and all inventions and discoveries made, conceived or actually reduced to practice, in connection with Seller's performance of this Purchase Order.

13. CONFIDENTIALITY. All Purchaser's specifications, documents, and prototype articles are Purchaser's property which are delivered for the sole purpose of Seller's performance under this Purchase Order, and on the express condition that neither they nor the information contained therein will be disclosed to others, nor used for any purpose other than in connection with orders from Purchaser without the prior express written consent of Purchaser. Such specifications, documents and articles are to be returned to Purchaser promptly upon its written request. The obligations under this section shall survive the cancellation, termination or completion of this Purchase Order.

14. COMPLIANCE WITH LAWS. Seller agrees, in connection with the production of the goods specified herein and services performed hereunder, to comply with all applicable local, state and federal laws and regulations, rulings and executive orders issued pursuant thereto,



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and agrees to indemnify Purchaser against any loss, cost liability, or damage by reason of Seller's violation of this paragraph. Without limiting the generality of the foregoing, Seller agrees to comply with the applicable provisions of the following laws and any regulations, rulings or executive orders issued thereunder, or any amendments thereof, successors thereto, or other similar laws or regulations, any and all of which provisions are incorporated herein by reference. Applicable laws, regulations, rulings and executive orders include, but are not limited to the following: (a) The Wage Hour Act (40 U.S.C. § 324-326); (b) The Fair Labor Standards Act (29 U.S.C. § 201-219); (c) The Federal Occupational Safety and Health Act (Pub. L. 91-596); (d) Non-discrimination in Employment (Executive Order 11246, as amended by Executive Order 11375, and the rules, regulations, and relevant orders of the Secretary of Labor); (e) The Vietnam Era Veterans Readjustment Act of 1974 (Pub. L. 93-508 as it amends 38 U.S.C. § 2012); (f) The Rehabilitation Act of 1973, as amended (Pub. L. 93-112); and (g) the Walsh-Healy Public Contracts Act, as amended (41 U.S.C. § 35-45).

15. REMEDIES. In the event this Purchase Order is not complied with in any respect, Purchaser may exercise any one or more of the following remedies: (a) cancel this Purchase Order; (b) require replacement of the goods; (c) recover all loss, damage and expense (including consequential damages) resulting from such failure by set-off or otherwise; (d) return excess of early deliveries to Seller at Seller's expense; (e) require delivery by any means and (f) exercise any other available remedy. Seller shall pay or otherwise be liable for any transportation, labor and/or other expense incurred in connection with the foregoing, including Purchaser's attorneys' fees, costs and other charges incurred in connection with Purchaser's exercise of Purchaser's remedies. Seller shall indemnify Purchaser and hold it harmless from any and all claims, loss or liability of any kind, including attorneys' fees, costs and other charges for (i) alleged or actual infringement of any trademark, tradename or copyright or for claims of unfair competition by the goods or any use thereof by Purchaser, its customers or its users; (ii) Seller's negligence in the performance of Seller's obligations under this Purchase Order, or (iii) alleged or actual violation by Seller of the goods of any applicable law (statute or common law) or regulation relating to the manufacturing, packaging, labeling or sale of the goods including without limitation, the Fair Labor Standards Act of 1938 and the Federal Occupational Safety and Health Act of 1970. No term of any document or instrument of Seller shall be effective against Purchaser that purports to alter seller's responsibility for Seller's negligence, to reduce the period of limitation of actions brought by Purchaser to require arbitration or to waive Purchaser's defenses or rights to set-off against Seller or any assignee of Seller. In addition to any remedies listed in this Purchase Order, Purchaser shall also have all remedies available to it under the Uniform Commercial Code as adopted by the State of Texas. Each of the rights and remedies herein reserved to Purchaser shall be cumulative and in addition to any other or further rights or remedies provided or available in law or equity or in this Purchase Order.

16. INSURANCE. Seller shall maintain such public liability, property damage and workers' compensation insurance as may be necessary to indemnify Purchaser and hold it harmless in accordance with the requirements of this Purchase Order. Upon Purchaser's request, Seller agrees to submit to Purchaser certificates of insurance evidencing such insurance coverage and naming Purchaser as an additional named insured and shall provide Purchaser not less than thirty (30) days' notice of cancellation.

17. PURCHASER'S PROPERTY. All drawings, special tools, dies, patterns, jigs and fixtures supplied by Purchaser or paid for by Purchaser shall remain Purchaser's property. Seller shall at Seller's expense maintain all of Purchaser's property in Seller's possession in good condition and repair and keep it adequately insured. Seller will promptly comply with all disposal and shipping instructions furnished by Purchaser. Until such instructions are complied with, such drawings, special tools, dies, patterns, jigs and fixtures shall be used by Seller only for the manufacture or production of Purchaser's goods and shall be kept confidential. Purchaser's supplying property to Seller for Seller's use in performance under this purchase Order shall not limit in any way Seller's obligation to provide conforming goods.

18. ASSIGNMENT AND SUBCONTRACTING. Seller will not assign or subcontract (in whole or in part) this Purchase Order or its obligations under it without Purchaser's prior written consent.

19. RELATIONSHIP OF THE PARTIES. Seller and Purchaser are independent contracting parties and nothing in this Purchase Order shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

20. FORCE MAJEURE. Purchaser may delay or be excused from timely performance of its obligations under this Purchase Order if Purchaser's failure to perform in a timely manner was caused by an Act of God or similar causes beyond its control.

21. HAZARD INFORMATION. Seller will provide Purchaser with three (3) copies of appropriate MATERIAL SAFETY DATA SHEETS (MSDS) with Seller's initial shipment to Purchaser, and with the first shipment after an MSDS that is updated for any reason, including a change in processes or material of the article. If the goods subject to this Purchase Order do not require an MSDS, Seller shall provide Purchaser with a statement to that effect.

22. TOXIC SUBSTANCES. Seller warrants that each and every chemical substance transferred to Purchaser in connection with this Purchase Order is at the time of such transfer on the lists of chemical substances compiled and published by the administrator of the Environmental Protection Agency pursuant to the Toxic Substance Control Act and the regulations promulgated under it. If the status of any



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such substance on such lists is changed in any respect, Seller shall immediately notify Purchaser of such change in writing.

23. COMPLIANCE CERTIFICATION IF NEEDED. In accepting this Purchase Order, Seller hereby certifies that Seller is in compliance with all applicable laws, statutes, ordinances, governmental administrative orders, rules and regulations. In the event Seller claims an exemption from any matters referred to above, upon Purchaser's request Seller shall provide Purchaser with a signed statement containing the factual basis for such exemption.

24. GOVERNING LAW; AMENDMENT OR MODIFICATION; WAIVER. This Purchase Order and the contract arising from it shall be governed by the laws of the State of Texas. All terms used in this Purchase Order that are defined or given meaning in the Uniform Commercial Code, as adopted in the State of Texas, shall have the same definition and meaning for purposes of this Purchase Order and any contract arising from it. This Purchase Order and any contract arising from it cannot be amended or modified as against Purchaser except by a writing signed by an authorized officer of Purchaser. No claim or right of Purchaser arising out of any breach of any of Seller's obligations to Purchaser may be discharged by an purported waiver or renunciation unless such waiver or renunciation is made expressly by Purchaser in writing and is supported by consideration.