



## ANALOG MODULES, INC. (AMI)

### PROCUREMENT TERMS AND CONDITIONS

1. **ACCEPTANCE:** Agreement by Seller to furnish the materials or services hereby ordered, or its commencement of such performance shall constitute acceptance by Seller of this purchase order subject to these terms and conditions. In the event that this purchase order does not state price and delivery, AMI will not be bound to any prices or delivery to which it has not specifically agreed in writing. Any other additional or different terms shall be deemed objected to by AMI without need of further notice of objection, and shall be of no force or effect. No variations in the delivery schedule, price, quantity, specifications or other provisions of this order, and no new, additional or different terms or provisions, will be binding on AMI unless agreed to in writing and signed by AMI's Purchasing Agent or other authorized representative.

2. **DELIVERY SCHEDULE:** Unless otherwise agreed to in writing, Seller shall not make material commitments or production arrangements in excess of the amount ordered or in advance of the time necessary to meet AMI's delivery schedule. It is the seller's responsibility to comply with this schedule, but not to anticipate AMI's requirements. Goods shipped to AMI in advance of schedule may be returned to Seller at Seller's expense or payments of invoices may be withheld until the required delivery dates, unless specific authorization is granted by AMI for advanced delivery. Partial shipments of material where no partial shipment is specified may be returned to the Seller at Seller's expense unless specific authorization is granted by AMI for partial delivery, or payment of invoices may be withheld until order is complete.

3. **CHARGES:** This order may not be filled at prices higher than quoted, without the written consent of AMI. The Seller warrants that no prices or other charges to AMI hereunder will be in violation of any price control regulation of the United States Government. No charges of any kind, including charges for boxing or cartage, will be allowed unless specifically authorized by AMI in writing. Transportation charges on materials or articles furnished under this purchase order shall be in accordance with the carrier's tariffs lawfully in effect at the time shipments are moved or the services performed.

4. **INSURANCE:** Until delivery to AMI, the Seller shall assume the risk for AMI's equity in the materials to be supplied under the terms of this purchase order. The usual forms of "all risk" insurance shall be maintained in an amount at least equal to their value and in no event less, at any time, than the aggregate of all the amounts paid the Seller on account thereof. Such insurance policies shall provide that all claims for losses thereunder shall be paid to AMI or the Seller, as interests may appear, and shall be delivered to AMI upon request. If this order deals with construction, repairs or maintenance (including painting) or any building, equipment or machinery located on the premises of AMI, or any other activity requiring the presence of Seller, its employees, agents or subcontractors, on the premises of AMI, the Seller waives as against AMI, any claims or causes of action for damages or injury to persons or property arising out of its performance of the work hereunder or of its presence on the premises of AMI, and Seller shall (i) maintain and carry Public Liability, Workmen's Compensation, and Employer's Liability Insurance covering all employees engaged in the performance of the work and all other persons who are on the property of AMI at the invitation of the Seller; (ii) indemnify, defend and save AMI harmless from and against all loss, damage, liability, claims, causes of action, or liens arising out of injury (or death) to persons or property resulting directly or indirectly from Seller's performance of the work or from the presence of Seller, its employees, agents or subcontractors, on the premises upon which the work is done; and (iii) indemnify AMI

against any loss or claim arising from the workmanship or the materials furnished by Seller.

5. **SPECIFICATIONS AND WARRANTY:** The Seller expressly warrants to AMI and to AMI's successor in interest to the goods that all materials, articles, or work covered by this order will conform to, and comply with, the terms of this order and to the applicable specifications and standards incorporated herein, will be suitable for the intended use, if such use is disclosed to Seller or is otherwise known to Seller, will be of merchantable kind and will be free from defects. The Seller agrees all materials or articles or work or any part thereof found defective within one year after delivery to AMI or to its customer, whichever is later, will be replaced without charge, if requested by AMI. The foregoing warranty shall apply to all repairs or replacements and shall extend for one year from completion of such repair or replacement. Such warranties are in addition to any other warranty, express or implied, or service guarantee of Seller.

6. **INSPECTION:** All materials and articles will be new, unless otherwise specified, and all materials and workmanship shall be subject to inspection and approval by AMI, its assigned inspection Agencies and/or the Government. Final inspection will be made after receipt by AMI; if rejected, the goods will be held for disposition at the Seller's risk and any expense or payment on account thereof will be promptly refunded by the Seller without prejudice to any other rights of AMI under warranties or otherwise. AMI may, in addition to any rights it may have by law, return rejected parts to Seller, require Seller to remove them, or direct their correction in place. The expense of transportation both ways, if any, shall be borne by the Seller. Any inspection or approval at the Seller's plant or elsewhere during or after manufacture, whether or not such inspection or approval be provided for by the terms of this purchase order, shall be provisional only, and shall not constitute final acceptance or be construed as a waiver of the foregoing right of inspection and approval or rejection after receipt of the materials or articles by AMI.

7. **AMI'S PROPERTY:** AMI's patterns, specifications, drawings, tools and dies, shall not be used for any purpose other than supplying AMI's requirements without AMI's consent and shall remain AMI's property, shall be kept in good condition by Seller, and upon request shall be promptly delivered to AMI.

8. **NO ASSIGNMENT OR SUBCONTRACTING:** This order, or any rights thereunder, may not be assigned or hypothecated; and none of the work which AMI contemplates being performed by Seller shall be subcontracted, without AMI's prior written consent, and if when subcontracting is allowed, Seller shall continue to comply with, and be bound by, all provisions of this order.

9. **LAWS & REGULATIONS:** Seller agrees to comply with all federal, state and local laws, ordinances, rules and regulations which may be applicable, and upon request, Seller shall certify to such compliance. Seller shall manufacture the goods covered by this order so as to comply with the FEDERAL OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 and with the standard promulgated pursuant thereto, if and to the extent applicable. Seller warrants that the articles ordered were, or will be produced, and all services will be performed, in compliance with the FAIR LABOR STANDARDS ACT OF 1938, as amended. If and to the extent applicable, Seller shall comply with the provisions of, and the rules and regulations issued pursuant to: Executive Order #11141, Non-Discrimination Because of Age; Executive Order #11246, Non-Discrimination in Employment; Executive Orders #11458 and #11625, Utilization of Minority Business Enterprises; Executive

Order #11701, Listing of Job Openings for Veterans; and the Rehabilitation Act of 1973, Employment of Handicapped Persons; as any of the same have been, or may be revised or amended from time to time. Every provision of the applicable Executive Orders, rules, regulations or laws, which is required to be incorporated in contracts of this kind is incorporated herein by reference and shall have the same force and effects as if herein set forth in full.

10. TITLE: The Seller warrants that at the time of delivery to AMI of the articles called for by this order and/or at the time payment is made by AMI on account of such articles or on account any materials, equipment supplies, or other property to be incorporated in the articles, or on account of any work, labor or services, there shall be no liens or rights of any kind lying or attached upon or against any such articles and materials; and as a condition precedent to any payment the Seller shall, upon AMI's request, furnish such affidavits and other documents and agreements with respect to liens and rights as AMI may require.

11. PATENTS, TRADEMARKS AND COPYRIGHTS: Unless otherwise agreed in writing, the Seller shall defend at Seller's expense and pay costs and damages awarded in any suit brought against AMI or its customers based on the use or sale of a furnished article constituting actual or alleged infringement of a United States patent, trademark or copyright.

12. INDEMNIFICATION: The Seller agrees to indemnify and hold AMI free and harmless from any and all claims for damages caused to persons or property as a result of defects in the items covered by this order; and from any and all liability, loss or damage arising out of any act or omission of Seller, or its agents, or employees, or out of Seller's failure to comply with any applicable laws, or governmental rules and regulations, or with any of these terms and conditions.

13. NOTICE OF DELAYS: Whenever any actual or potential cause delays or threatens to delay performance of this order, Seller shall immediately notify AMI in writing. Such notice shall include all relevant information concerning such cause of delay. Seller shall keep AMI advised during the period such actual or potential cause exists of its effect on the schedule or work and shipments or deliveries and of the measures being taken to remove it. If requested by AMI, Seller shall ship via air or other expedited routing, at no additional cost to AMI, to avoid or minimize delay to the maximum extent possible.

14. CHANGES: AMI may at any time, by written order, without notice to any surety, make changes or additions in or to drawings, designs, specifications, instructions for work, method of shipment or packing, or place of delivery; and, Seller shall forthwith proceed with its work under the contract as changed. If any such change causes an increase or decrease in the cost of, or the time required for, performance under the contract, Seller shall notify AMI in writing immediately and an appropriate equitable adjustment will be made in the price, or time of delivery, or both, by written modification of the contract. Seller's failure to assert a written claim for adjustment within 30 days after Seller's receipt of AMI's change order shall constitute a waiver of such claim.

15. CANCELLATION:

(a) All shipping or delivery dates in this order are firm. Time is of the essence in the performance of this order, and no acts of AMI shall constitute a waiver of this provision.

(b) AMI reserves the right to cancel this order, in whole or in part, by written notice, without liability, except for goods previously delivered and accepted, subject to setoff of any claim AMI may have against Seller, if: (1) Seller fails to deliver or perform as specified, or if Seller breaches any of the terms and conditions or warranties hereof; or (2) Seller ceases to conduct its operations in

the normal course of business, or any proceeding is brought against or instituted by Seller under bankruptcy or insolvency laws, or a receiver for Seller is appointed or applied for or an assignment for the benefit of creditors is made by Seller.

(c) AMI may, at any time, terminate this order, in whole or in part, for its convenience upon written to the Seller, in which event, upon receipt of such notice, unless otherwise directed by AMI, Seller shall immediately discontinue all work, and the filling of orders for materials and supplies in connection with the performance of this purchase order, and shall proceed to cancel promptly all orders outstanding; and AMI shall negotiate with the Seller an amount to be paid in full settlement for the reasonable and necessary expenses incurred directly incident to this order up to the date of cancellation. AMI, however, shall not be liable for any loss of profits on this order or the portion thereof so cancelled. If such cancellation is caused by termination of a government contract, AMI will reimburse the Seller to the extent that reimbursement, if any, received by AMI from the government on account of termination of its contract is attributable to this order.

16. INVOICE: A separate invoice for each shipment, bearing the AMI order number, must be mailed promptly. When a shipment made by another concern is invoiced by Seller, the invoice, and other papers, must bear the name of shipper and point from which shipment originated. **All non-recurring items (i.e. FAI, stencils, tooling, engineering services, etc.) SHALL BE INVOICED SEPARATELY. Evidence of AMI approval of First Article Inspections shall be attached to the invoice.**

17. PAYMENT: Payment of invoices will be calculated from the date acceptable invoices conforming to the order are received at AMI's designated offices, or from the date of receipt of acceptable goods at AMI, whichever is later.

18. SHIPPING: Unless otherwise instructed, the Seller shall prepay all transportation and related shipping charges and shall itemize such charges on the invoice. In the absence of specific routing instructions, shipments are to be made "Best Way". AMI's purchase order number and other identification specified shall appear conspicuously on all documents, shipping notices, bills of lading, packing lists, invoices and other papers, and on each package, box, bundle or other type container. All goods shall be packaged and packed adequately to ensure arrival at destination in an undamaged condition. All export shipments must be boxed and otherwise protected to prevent damage in transit and meet all export shipping requirements.

19. GOVERNMENT CONTRACT PROVISIONS: If indicated on the P.O. that the goods or services covered by this order are for use by AMI in performing any U.S. Governmental Agency Contract, or for performance of a subcontract under such contract, then and in that event, the Seller agrees to perform in accord with, to abide by, and to comply with, all of the applicable provisions as referenced on the P.O.

20. COST ACCOUNTING STANDARDS: When applicable, Seller shall comply with Public Law 91-379 dated August 15, 1970 and all of the rules, regulations and standards prescribed by the Cost Account Standards Board. Seller agrees to indemnify and hold AMI free and harmless from any and all liability, loss or damage arising out of failure of Seller, or Seller's subcontractors, if any to comply with said law, rules, regulations or standards, as the same may be revised or amended from time to time.

21. GENERAL: This P.O., and any documents incorporated herein by reference, supersede all prior understandings, transactions and communications, or writings with respect to the matters referred to herein, and constitute the sole and entire agreement between the parties. Any representation, promise, course of dealing, or trade

usage, not contained or referenced herein, shall not be binding on AMI. No modification, amendment, revision, waiver, or other change shall be binding on AMI unless agreed to in writing by AMI. All warranties herein shall be construed as conditions as well as warranties, and the warranties and conditions herein contained shall not be deemed to be exclusive.

22. **APPLICABLE LAW:** The rights and obligations of the parties shall be governed in all respects by the laws of the state or commonwealth in which this purchase order is issued.

23. **EXPORT RELATED REQUIREMENTS--**(a) Export Compliance. Seller is advised that its performance of this Purchase Order may involve the use of or access to articles, technical data or software that is subject to export controls under 22 United States Code 2751 – 2796 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401 – 2420 (Export Administration Act) and 15 Code of Federal Regulations 768 – 799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Laws and Regulations"). Seller, if it engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services, hereby certifies that it is registered with the U.S. Department of State, Directorate of Defense Trade Controls, as defined in 22 CFR Part 122, Registration of Manufacturers and Exporters. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued thereunder.

(b) Seller shall exercise strict control covering the disclosure of and access to technical data, information and other items received under this Purchase Order in accordance with U.S. export control laws and regulations, including but not limited to the ITAR. Seller agrees that no technical data, information or other items provided by Buyer in connection with this Purchase Order shall be provided to any foreign persons or to a foreign entity, including without limitation, a foreign employee or subsidiary of Seller (including those located in the U.S.), without the express written authorization of Buyer and Seller's obtaining of the appropriate export license, technical assistance agreement or other requisite authorization for ITAR-controlled technical data or items. Seller shall consult with Buyer to determine whether the information provided by Buyer is technical data as outlined in the ITAR (22 CFR 120-130) prior to any release to a third party abiding by the terms outlined herein.

(c) Indemnification. Seller shall indemnify and save harmless AMI from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorneys' fees, arising out of claims, suit, allegations or charges of Seller's failure to comply with the provisions of this Clause and breach of the warranty set forth in paragraph (a). Any failure of Seller to comply with the requirements or any breach of the warranty contained in this clause shall be a material breach of this purchase order.

(d) Subcontracts. The substance of this clause shall be incorporated into any subcontract or purchase order entered into by the Seller for the performance of any part of the work under this purchase order.

24. **PROTECTION OF INFORMATION** - (a) If a separate confidentiality, nondisclosure, or proprietary information agreement exists between AMI and Seller which relates to the subject matter of this purchase order, then confidential or proprietary information furnished by one party to the other party shall be protected pursuant to such agreement, and paragraphs (b) through (g) of this clause shall not apply.

(b) If no separate confidentiality, nondisclosure, or proprietary information agreement exists between AMI and Seller, paragraphs (c) through (g) of this clause apply.

(c) For purposes of this clause, "Information" shall mean information disclosed to Seller by AMI in connection with this

purchase order, which is either identified to Seller as being proprietary or which is information a reasonable person would understand to be such information. Examples of Information include, but are not limited to, customer lists, pricing policies, market analyses, business plans or programs, software, specifications, manuals, print-outs, notes and annotations, performance data, designs, drawings, dimensions, processes, data, reports, photographs, and engineering, manufacturing or technical information related to AMI's products, services, equipment or processes, as well as duplicates, copies or derivative works thereof. Information shall not mean any information previously known to Seller without obligation of confidence, or which becomes publicly disclosed, or which is rightfully received by Seller from a third party without obligation of confidence.

(d) Information furnished to Seller shall remain AMI's proprietary property, shall be duplicated only as authorized in writing by AMI, and shall be returned to AMI upon request or when no longer required for the performance of this purchase order. Seller shall not disclose Information to any third party, and shall take all reasonable precautions to prevent the disclosure of Information to third parties, including any foreign national, firm or country, and foreign nationals employed by or associated with Seller's company except as specifically authorized by AMI. Seller agrees not to use Information to develop any product, service or system, or to support any third party in the development of any product, service or system.

(e) Data and information provided by Seller shall be considered proprietary only when marked as proprietary. Seller's proprietary data and information will be used by AMI only upon approval by Seller. AMI may use unmarked Seller's data and information for any purpose.

(f) Seller's obligations with respect to Information disclosed hereunder prior to the performance in full or termination of this purchase order shall not, except as expressly set forth herein, be affected by such performance in full or termination.

(g) AMI or its authorized representatives may at any time audit all pertinent books, records and files of Seller in order to verify compliance with this clause. Seller will, in all of its contracts with its suppliers relating to any AMI purchase order, include provisions which secure for AMI all of the rights and protections provided for by this clause.