

Purchase Order

Sun Automation Group Purchase Order Terms and Conditions

As used in these terms and conditions, "Purchaser" means Sun Automation Inc. /a Sun Automation Group and "Seller" means the purveyor of articles, materials, parts, work, and/or labor referenced on the reverse. These terms and conditions govern the purchase of goods and/or services by Purchaser. These terms and conditions take precedence over Seller's additional or different terms and conditions to which notice of Purchaser's objection is hereby given. Purchaser's terms and conditions control over Seller's additional or different terms and conditions regardless of whether or not Purchaser has signed or agreed to any of Seller's terms and conditions, even if Purchaser has been advised of such additional or different terms. Purchaser's additional written or typed terms and conditions for any particular sale shall take precedence over these printed terms and conditions.

Offer to Purchase : This Purchase Order is an offer to purchase and not a preliminary negotiation or a solicitation of an offer to sell. Any sales order received in response to this Purchase Order shall constitute an acceptance of Purchaser's offer (even though such sales order may purport to be an offer or counter-offer which contemplates acceptance) on these stated terms and conditions and an agreement hereunder.

Quantities and Price : Purchaser's count shall be accepted as conclusive on all shipments not accompanied by a packing slip. Purchaser reserves the right to reject and return any material in excess of the quantities specified herein. To the extent that the prices for articles or services ordered hereunder are not specified herein, the prices for those articles or services, unless otherwise agreed by Purchaser, shall be those prices applicable to Purchaser's most recent order for articles or services of comparable quantity, or if there is no such order, then Seller's most recent quotation for the same.

Engineering : The price offer by Purchaser includes such engineering design work that is normal and standard in the industry. In the event that unforeseen or extraordinary engineering work is required by Purchaser, then Purchaser, at its sole option and discretion, may cancel the sale without penalty or decrease the price to be paid to Seller.

Warranties : Seller expressly warrants that all articles, materials, parts, and work covered by this Purchase Order will conform to the specifications, drawings, samples, or other description(s) furnished or adopted by Purchaser, and shall be merchantable, of good workmanship and material, and free from defects. These warranties are in addition to any other warranties specified herein or by Seller or as otherwise implied or required by law, and shall survive acceptance and payment. In the case of ambiguity in specifications, drawing, or other requirements of this Purchase Order, Seller, before proceeding, must consult Purchaser, whose written interpretation of such ambiguity shall be final and conclusive resolution of the ambiguity.

If any part is found to have been damaged or defective when received or used by Purchaser, Seller agrees to replace or repair, F.O.B. Seller's place of business, such damaged or defective part.

Inspection : All articles, parts, materials, and workmanship tendered by Seller in the performance of this Purchase Order are subject to inspection and testing by Purchaser before and after delivery, notwithstanding prior acceptance or payment. No preliminary inspection by or on behalf of the Purchaser shall relieve Seller of its own obligation to make full and adequate tests and inspection. Seller agrees to furnish all reasonable and necessary facilities and assistance for tests and inspections to be made on its premises by or on behalf of Purchaser. Any article, part, material, or workmanship not accepted may be held by Purchaser, after notice of rejection to Seller, at Seller's risk and expense and subject to Seller's order or at the option of Purchaser, and in addition to Purchaser's other rights, Seller shall replace the same or reimburse Purchaser for its expenses to rework, inspect, transport, and repackage (as applicable) the rejected article, part, material, or workmanship. Seller shall pay the costs of all of Purchaser's articles, parts, or materials which may be damaged due to any improper workmanship on the part of Seller.

Delivery : Deliveries must be made by Seller in accordance with the delivery schedule specified herein. If, for any reason, Seller cannot or will not make delivery by the time specified, Seller shall immediately notify Purchaser to that effect stating Seller's reasons. Purchaser reserves the right to reject or return, at Seller's risk and expense, all articles or materials shipped which are in excess of or in advance of the time or quantity specified for delivery, or to defer payment for advance deliveries until the specified delivery date(s). All shipments shall be made F.O.B. Seller's place of business, with the carrier for such shipments to be selected by Purchaser unless otherwise agreed by the parties. In no event shall Purchaser be liable for any delay in delivery, nor shall the carrier be deemed an agent of the Purchaser.

Patent and Trademark Rights : The Seller warrants that the articles, materials, or parts sold do not violate the patent or trademark rights of any third party. In the event that suit for the violation of the patent or trademark rights of a third party is brought against the Purchaser by reason of the Seller's alleged breach of this patent or trademark warranty, then the Purchaser shall immediately notify the Seller in writing of such suit and Seller agrees, at its own cost and expense, to indemnify, defend, and hold harmless the Purchaser against and in respect of any and all suits, controversies, demands, and liabilities arising out of any such suit(s), and pay any and all costs, expenses, losses or damages or deficiencies arising from or in connection with, any violation of this warranty of non-infringement, including Purchaser's reasonable attorney's fees. Seller shall, at any time up to ninety (90) days after it is finally adjudicated that such infringement exists, at no expense to Purchaser, minimize Purchaser's damages or Seller's liability.

- By altering the goods to make them non-infringing provided that such non-infringing goods will fulfill substantially the same function as they fulfill prior to such alteration;
- By exchanging non-infringing goods which will fulfill substantially the same function as the infringing goods which in that case become Seller's property;
- By obtaining a settlement or license permitting Purchaser's use of any allegedly infringing goods; or
- By removing and repurchasing the infringing goods at Purchaser's straight-line depreciated cost plus the cost of transportation, installation, and removal.

Copyrights : Seller acknowledges that Purchaser may hold copyrights, registered and unregistered, in and to the specifications, drawings, samples, designs, bills of materials, descriptions, and other copyrightable subject matter provided to Seller by Purchaser, and Seller agrees that Seller or any of its employees, agents, officers, or representatives shall not reproduce or copy (except to the minimum extent necessary for performance under this Purchase Order), prepare derivatives of, distribute copies of, or otherwise use or disseminate any such copyrightable subject matter, shall not attempt to do so, and shall not permit any other party to do so.

Changes : Purchaser shall have the right, by giving written notice to Seller, to make changes in the drawings, specifications, design, quantities, and delivery schedule of the articles, materials, parts, or labor ordered. Upon receipt of any such notice, Seller shall proceed promptly to make such changes in accordance with such notice. Seller shall deliver to Purchaser, as promptly as possible, a statement showing the effect of any such change on the delivery schedule.

Termination : Purchaser may terminate this order or the articles, parts, and material delivered or to be delivered or the work performed or to be performed under this order in whole or in part by written or telegraphic notice to Seller. Purchaser reserves the right to terminate any part of the undelivered portion of this Purchase Order if Seller does not make deliveries as specified and required hereunder or if Seller breaches any of the terms hereof, including any warranties by Seller, and to purchase elsewhere material(s) representing the undelivered portion and charge Seller with any loss or added cost incurred as a result.

Purchaser may also cancel this Purchase Order and any contract formed hereunder, in whole or in part, at any time due to causes other than those specified above in this paragraph, and in such event, Purchaser shall reimburse Seller for its reasonable and necessary expenses incurred in the performance of the obligations under this order up to the date of cancellation, but Purchaser shall not be liable for any of Seller's loss or profits on the contract or portion thereof so cancelled. When Purchaser reimburses Seller in accordance therewith in the event of any such cancellation, material produced hereunder for the account of Purchaser prior to cancellation shall be disposed of in accordance with the instructions of Purchaser.

Purchaser's Property : Whenever Seller has in its possession any of Purchaser's property, Seller shall be deemed an insurer thereof and shall be responsible for its safe return. Equipment, patterns, dies, tooling materials, specifications, and drawings supplied or paid for by Purchaser in connection with this order shall remain Purchaser's property, shall not be used except for work performed for Purchaser at Purchaser's request, and upon request by Purchaser, shall be returned to it F.O.B. its point of shipping as specified on the face thereof, together with all completed articles, materials, and parts and all those in process if so specified by Purchaser.

Confidential Information : Purchaser's "Confidential Information" includes any business information, the identity of any articles, materials, parts, work, or labor purchased by Purchaser, trade secrets and all information not publicly available and which provides a competitive advantage in the industry, including, but not limited to, technical specifications, designs, plans, know-how, instruction manuals, financial information, costs, pricing information, and Purchaser's ideas that are reasonably related to the business of the Purchaser that have not been previously publicly released. Seller, or other recipient of Purchaser's Confidential Information, will treat the Confidential Information as secret and confidential to the same reasonable extent that Seller, or other recipient, protects its own valuable proprietary information. Seller, or other recipient of Purchaser's confidential information, shall not divulge, directly or indirectly, to any other person for any purpose whatsoever such Confidential Information and shall not make use of such without the prior written consent of the Purchaser.

Prohibition Against Reverse Engineering : The Confidential Information furnished to Seller by Purchaser may contain valuable trade secrets, technical know-how, and/or patentable subject matter owned by Purchaser, and Seller agrees that Seller or any of its employees, agents, officers, or representatives shall not reverse engineer, disassemble, copy, distribute, or otherwise deconstruct any of the Confidential Information (including but not limited to specifications, drawings, samples, or other descriptions) furnished to Seller by Purchaser, shall not attempt to do so, and shall not permit any other party to do so, except as may be agreed in writing.

Damages and Risk of Loss : Seller assumes all responsibility for risk of loss or other damages to all articles and materials ordered hereunder or in its custody pursuant hereto until delivered to Purchaser F.O.B. Seller's shipping point as specified on the face hereof. In no event shall Purchaser be liable for anticipated profits or for damages on account of negligence or for incidental or consequential damages.

Indemnification of Claims : In addition to any other terms of indemnity contained hereinabove, Seller agrees to indemnify Purchaser against all claims, whether on account of negligence or otherwise, excluding negligence of Purchaser, asserted by any persons other than Purchaser's employees, arising out of or resulting from Seller's performance or non-performance of this Purchase Order, including Purchaser's reasonable attorney's fees. Upon request by Purchaser, Seller agrees to furnish certificates in a form satisfactory to Purchaser evidencing adequate coverage for the benefit of both Seller and Purchaser as to workman's compensation, occupations disease, unemployment compensation, fire and extended coverage, and public liability, including contractual liability on both owned and non-owned vehicles. Upon request of Purchaser, Seller shall provide a Certificate of Insurance evidencing such coverage with a provision for a ten (10) day notice of cancellation to the Purchaser.

Assignment : No right or obligation under this Purchase Order (including the right to receive money due and to become due hereunder) shall be assigned by Seller without the prior written consent of Purchaser, and any purported assignment without such consent shall be void.

Packing and Taxes : No charges will be allowed for taxes, boxing, packing or returnable cartons unless stated and agreed to by Purchaser. Shipments must be packaged to conform with all relevant requirements of rail or master carrier freight classification.

Force Majeure : In the event that either party is prevented from performing any of its obligations, duties, or responsibilities under this Purchase Order on account of any law or locally binding order, regulation, direction, or act of any government department, agency, or corporation having jurisdiction over such party, or on account of wars, strikes, or other labor disturbances, fires, floods, acts of God, acts of terrorism, or because of any causes beyond the control of the that party, then that party shall be excused from performance for the period that it is prevented from doing so by any of the foregoing.

Miscellaneous : No delay or failure on the part of Purchaser in exercising any right hereunder shall constitute a waiver of any rights hereunder. Either party may cancel this Purchase Order without obligation in the event that the other party becomes bankrupt or insolvent or makes an assignment for the benefit of creditors. This Purchase Order, when accepted, shall supersede all prior understandings, transactions, and communications between the parties, whether oral or written, pertaining to the subject matter hereof. Purchaser and Seller agree that jurisdiction is appropriate in the State of Maryland, that they are subject to the jurisdiction of the federal or state courts in Maryland, and that venue is proper in the federal or state courts in Maryland. This agreement shall be governed by and construed in accordance with the laws of the State of Maryland, excluding conflicts of laws principles.

Notices/Addresses : All notices required or permitted to be given to Purchaser shall be in writing and mailed, by certified mail, return receipt requested, and addressed as follows: Sun Automation Group, 66 Loveton Circle, Sparks, Maryland 21152. Copyright © 2004 Sun Automation Inc. /a Sun Automation Group (5/04)