



## PURCHASE ORDER TERMS & CONDITIONS

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All Electron Beam Industries, Inc. Orders are subject to the following Terms & Conditions:

### Definitions Used in this Order:

- **“Buyer”**- means Electron Beam Industries, Inc. entity whose name appears on the face of this order.
- **“Claims”**- means all claims, demands, causes of action, liabilities, damages, judgements, settlements, awards, losses, costs and expenses (including the costs of litigation and reasonable attorneys’ fees) of any kind or character that arise out of, or are related to, this Order.
- **“Confidential Information”** - means any non-public or proprietary information related to the subject matter of this Order that is provided by or on behalf of EBI.
- **“Deliverable”**- means item(s) supplied by the Supplier to EBI that is the subject of this order.
- **“Delivery Date”**- means the date for delivery originally agreed by the parties.
- **“Force Majeure”** – means acts of God, laws and regulations, government action, war, terrorism, civil disturbance,
- **“Good”** or **“Goods”** – means the tangible property manufactured or supplied to EBI by Supplier, in whole or in part, in Supplier’s completion of its obligations under this order.
- **“Order”** – means the Purchase Order to which these Terms and Conditions are attached.
- **“Rules”** – means the Commercial Arbitration Rules of the American Arbitration Association.
- **“Supplier”** – means the party identified as the “Vendor” on the face of this order.
- **“Work”** – means any services performed for any Goods provided to EBI by Supplier, in whole or in part, as requested by this Order.

### **APPLICABILITY**

The following Terms and Conditions shall apply to purchases of all articles, materials, work or services (“Supplies”) by Buyer.

### **ACCEPTANCE OF ORDER**

Purchase orders, including Terms & Conditions of purchase and/or any quality requirements, shall be considered accepted upon the Supplier’s acknowledgement, but not be binding until accepted by the Buyer in writing.

### **ASSIGNMENT**

This order shall not be assignable by Supplier, voluntarily or involuntarily, nor shall a subcontract be made with any other party for the furnishing of any of the completed or substantially completed Work, including any Goods constituting spare parts or other services covered by this Order, without Buyer’s prior express written consent.

### **CHANGES**

Supplier will not change its rates during the term of this order. Buyer may issue a revised Order to change any aspect of the original Order. In the event revised Order results in an increase or



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decrease in expense to Supplier, then Supplier shall immediately notify Buyer and the parties will negotiate a mutually agreeable rate prior to Supplier performing any Work under such revised Order. Any changes shall be documented in revised Order.

### **COMPLIANCE WITH LAWS**

In the performance of this Order, Supplier agrees to comply with all applicable local, state and federal laws and executive orders and regulations issued pursuant thereto. Supplier further agrees to indemnify Buyer against any loss, cost, damage, or liability by reason of Supplier's violation of this Section.

### **DELIVERY**

Deliveries shall be in strict accordance with the schedule and quantities as specified in this Order. If it appears Seller's deliveries will not meet such schedule, or if Seller's deliveries fail to meet such schedule, upon request by Buyer, and in addition to any other rights or remedies provided to Buyer by law or under this Order, Seller shall ship via expedited routing necessary to meet such schedule or to recover maximum possible time lost by failure to deliver on schedule, and pay the cost difference between the expedited routing and the Order routing without Seller's fault or negligence. At Buyer's option, any early deliveries may be returned to Seller at Seller's expense or payment deferred to the date payment would become due according to the specific schedule.

### **FORCE MAJEURE**

Buyer shall not be liable for any failure to perform including failure to (i) accept performance of Services or, (ii) take delivery of the Products, caused by circumstances beyond its control which make such performance commercially impractical including, but not limited to, acts of God, fire, flood, acts of war, terrorism, government action, accident, labor difficulties or shortage, inability to obtain goods, equipment or transportation. In the event Buyer shall be so excused, either party may terminate the Order.

### **INDEMNIFICATION**

Seller hereby agrees to indemnify and hold harmless Buyer, and its directors, officers, agents and employees, from and against any and all claims, liabilities, demands, damages, losses, causes of action and judgments (a) brought by any person, corporation, or other entity not a party to this Order, whether arising from injury or death to persons or loss or damage to property or otherwise (collectively, Third Party Claims), and reasonable attorneys' fees and costs and expenses incident thereto to the extent such Third Party Claims arise from (i) any defect in the design, workmanship or material of any Item or component thereof including software provided by Seller to Buyer hereunder or (ii) any negligence (whether active or passive) or willful misconduct of Seller, its suppliers of any tier or its or their directors, officers, agents, or employees; and (b) arising out of or in connection with any breach by Seller of its warranty stated in this order.

### **INSPECTION AND ACCEPTANCE**

All Product shall be subject to inspection and test at all times and places, including the period of manufacture, by Buyer and/or its customers. If any inspection or test is made on Seller's premises,



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Seller, without additional charge shall: (i) provide all reasonable facilities and assistance for the safety and convenience of Buyer and its customer's inspectors; (ii) make available to the inspector's copies of all drawings, specifications, and processes applicable to the Product ordered; and (iii) promptly furnish Buyer with any and all resulting inspection certificates. All articles are subject to final inspection and acceptance at Buyer's plant notwithstanding any payment or prior inspections. Buyer may reject and hold at Seller's expense, subject to Seller's disposal, all Products not conforming to applicable specifications, drawings, samples, or descriptions (discrepancy). Additionally, Buyer may deem the Product to have a discrepancy due to lack of or improper certifications, packing lists, and other required paperwork delivered with Products. Without limiting any other rights or remedies it may have as provided herein or at law or equity, Buyer, at its option, may (i) require Seller to repair or replace at Seller's expense any Product which fails to meet this Order's requirements; (ii) require Seller to refund the price of any such Product; (iii) elect to retain and repair any such Product and offset Buyer's costs in effecting correction from the price of the Product; and/or (iv) offset from the price of the Product any and all damages and expenses incurred by Buyer as a result of such rejection. Seller shall maintain an inspection system suitable to buyer.

### **INSURANCE**

Seller shall maintain comprehensive general liability insurance covering bodily injury, property damage, contractual liability, products liability and completed operations, and worker's compensation and employer's liability insurance, in such amounts as are reasonably adequate to insure against the risks to Seller's operations. At Buyer's request, such policies shall include Buyer as an additional insured and loss payee thereof, as Buyer's interests may appear and shall include a waiver of subrogation in Buyer's favor. At Buyer's request, Seller shall furnish to Buyer a certificate of insurance or other satisfactory evidence of insurance.

### **PACKING AND SHIPPING**

All items shall be prepared and packed in accordance with sound commercial practices to prevent damage or deterioration, secure lowest transportation rates and comply with carrier tariffs. No charges will be paid by Buyer for preparation, packing, crating or cartage unless otherwise stated in this Order. Seller shall comply with Buyer's shipping instructions. Order number(s) shall appear on all correspondence, shipping labels and shipping documents, including all packing slips, bills of lading, air bills and invoices. All packing slips shall include Buyer's part number, where applicable, description, quantity, and a statement as to whether the Order is partially or completely filled.

### **PAYMENT**

Payment terms are described on the face of this Order. The original and other copies of invoices shall be mailed at or after the time of shipment. The time for payment of Supplier's invoices shall commence upon the date of actual receipt of invoices in complete accordance with the requirements of this Order or the date of acceptance of goods, whichever is later.

### **PRICING**

Seller shall furnish the supplies and/or services at the price or prices stated in this order. Any increases or decreases in any stated price will only be reflected through an amendment of this Order.



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If this Order is placed on an open basis and in absence of a subsequent agreement, then the price to Buyer shall be no higher than the Seller's lowest prevailing price for the same or substantially similar supplies or services of comparable quality on the date of the Order.

### **PROPRIETARY RIGHTS**

(i) Seller shall keep confidential any technical, process or economic information derived from or contained in any drawings, specifications, software or other data ("Confidential Information") furnished by Buyer and shall not divulge, export or use, directly or indirectly, any such Confidential Information without obtaining Buyer's express prior written consent. All such Confidential Information shall be promptly returned to Buyer on request. (ii) Any intellectual property first made or conceived by Seller in performance of this Order that was derived from or based on the use of information supplied by Buyer shall be considered to be the property of Buyer, and Seller shall execute such documents necessary to perfect Buyer's title thereto.

### **SEVERABILITY**

If any term of this Order is held invalid or unenforceable for any reason, the remaining terms of this Order shall continue in full force and effect as if this Order had been executed with the invalid portion eliminated, provided the effectiveness of the remaining portions of this Order will not defeat the overall intent of the parties. In such a situation, the parties agree, to the extent legal and possible, to incorporate a replacement clause to accomplish the originally intended effect.

### **TERMINATION FOR CONVENIENCE**

Buyer may, by notice in writing, terminate the Order or work under the Order, for convenience and without cause, in whole or in part, at any time, and such termination shall not constitute default. In the event of partial termination, Seller shall not be excused from performance of the non-terminated balance of the Products or Services.

### **TERMINATION FOR DEFAULT**

Buyer may by notice in writing to Seller, terminate the Order, in whole or in part, at any time if Seller fails (i) to perform within the time specified herein or any extension thereof; or (ii) to perform any of the other provisions of this Order, or (iii) to make progress as to endanger performance of this Order, and in any case, does not cure such failure within a period of ten (10) days from its receipt of Buyer's notice. Upon termination, Buyer may procure, as it deems appropriate, products or services similar to those that were to be provided under the Order, and Seller shall be liable to Buyer for the cost of such products or services. Upon the termination of this Agreement for any reason, each party will be released from all obligations to the other arising after the date of termination, except for those which by their terms survive such termination.

### **WAIVER**

The failure of Buyer in any one or more instances to insist on performance of any provision of this Order shall not be construed to be a waiver of such provision in any subsequent instance.



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### **WARRANTY**

In addition to any other express or implied warranties, Seller warrants that items furnished pursuant to this order will be (i) free from defects in workmanship and material, (ii) free from defects except to the extent that such items comply with detailed designs provided by Buyer, (iii) suitable for the purposes, if any, which are stated on the face of this order and (iv) in conformity with all other requirements of this order. In addition to any other rights Buyer may have, if items delivered pursuant to this order are found, within one year after acceptance not to be as warranted, Buyer may return such items to Seller, at Seller's expense, for correction, replacement or credit, as Buyer may direct. Any items corrected or furnished in replacement shall also be subject to all the provisions of this Article to the same extent as items initially furnished.