



WINONICS, INC.

STANDARD PURCHASE ORDER TERMS AND CONDITIONS

1. **DEFINITIONS.** (A) "Article(s)": Goods and/or services described in the face page of this Order; (B) "Buyer": the entity issuing this Order; (C) "Manufacturing Materials": Supplies and materials used to manufacture Articles; (D) "Order": Purchase order or change order for the purchase of the Articles; (E) "Seller": Person or company to which the Order is directed and which provides the Articles; (F) "Work Product": If the Articles are a service or a custom product, the Work Product is designs, discoveries, creations, works, devices, masks, models, work in progress, service deliverables, inventions, products, computer programs, software, procedures, improvements, developments, drawings, notes, NREs, documents, information and materials made, conceived or developed by Seller, alone or with others, for such Articles.

2. **ORDERS.** These Terms and Conditions shall be part of each Order Buyer may issue Seller. **EACH ORDER SHALL NOT BE VALID UNLESS EXECUTED BY BUYER'S AUTHORIZED REPRESENTATIVE.** If the parties enter into a separate written agreement governing the sale and purchase of the Articles and the terms of this Order conflicts with the terms of said agreement, such terms shall supercede the terms of the Order.

3. **ACCEPTANCE AND MODIFICATION.** An Order is Buyer's offer to Seller. At any time prior to its acceptance by Seller, Buyer may revoke the Order by notifying Seller by writing, telephone, facsimile or email. Seller's commencement of performance, delivery of any Articles, or written acknowledgement of this Order shall constitute Seller's acceptance of said Order, and the terms and conditions of this Order will constitute the agreement between Seller and Buyer.

4. **DELIVERY.** (A) Delivery of the Articles shall be made: (1) pursuant to the schedule; (2) via the carrier; and (3) to the place specified on the Order. Buyer shall not be liable for material commitments or production arrangements made in advance of the time necessary to meet the delivery schedule. Buyer reserves the right to return, shipping charges collect, or defer payment on advance deliveries until scheduled delivery dates on all Articles received in advance of the delivery schedule. If Seller fails to deliver the Articles within the time specified, Buyer may, at its option: (1) decline to accept the Articles; or (2) decline to accept the Articles and terminate the Order. (B) Seller shall package all items in suitable containers to permit safe transportation and handling. Each delivered container must be labeled and marked to identify its contents without having to be opened, and all boxes and packages must contain packing sheets listing the contents. Buyer's purchase order number as well as part number must appear on all shipping containers packing sheets, delivery tickets and bills of lading. (C) Time is of the essence in performing this Order. Should Seller experience or anticipate any delay in performing this Order, Seller shall immediately notify Buyer in writing of such delay, its expected duration and the reasons thereof. Such notification and acknowledgement by Buyer shall not constitute a waiver of this Order's delivery schedule.

5. **RISK OF LOSS; DESTRUCTION OF ARTICLES.** Seller assumes all risk of loss to the Articles until they are delivered to the place specified in the Order. Title to the Articles shall pass to Buyer upon receipt at the designated destination. If the Articles are destroyed prior to title passing to Buyer, Buyer has the option to either cancel the Order or require Seller to deliver substitute Articles of equal quantity and quality. Such substitute delivery shall be made as soon as commercially practicable. If loss of the Articles is partial, Buyer shall have the option to require Seller to deliver the Articles not destroyed upon the terms of this Order.

6. OWNERSHIP OF WORK PRODUCT. All Work Product shall at all times be and remain the sole and exclusive property of Buyer. Any services performed pursuant to this Order shall be a “work for hire.” Seller hereby assigns and transfers to Buyer all of its worldwide right, title and interest in the Work Product including all associated intellectual property rights. Seller agrees: (a) to disclose promptly in writing to Buyer all Work Product in its possession upon request from Buyer; (b) to assist Buyer in every reasonable way, at Buyer’s expense, to secure, perfect, register, apply for, maintain and defend for Buyer’s benefit all copyrights, patent rights, mask work rights, trade secret rights, and all other proprietary rights or statutory protections in and to the Work Product in Buyer’s name as it deems appropriate; and (c) to otherwise treat all Work Product as Buyer’s confidential information.

7. PAYMENT. (A) The price paid by Buyer for Articles purchased under this Order shall be: (1) the amount stated on this Order or (2) Seller’s quoted price on the date of shipment, whichever is lower (the “Price”). In the event shipment of Articles are made in installments, Seller shall have no right to demand payment until after the last shipment is received by Buyer pursuant to the Order. (B) Unless otherwise specified in this Order, the Price shall include all applicable taxes (except sales/use tax, if applicable) and other charges such as packaging costs, shipping costs, duties, customs, tariffs, and government imposed surcharges. All personal property taxes assessable upon the Articles prior to the receipt by Buyer of Articles shall be borne by Seller. (C) Within 90 days after delivery of Articles, Seller shall send to Buyer individual invoices, with a reference to the applicable purchase order, for each shipment of Articles made pursuant to this Order. Buyer reserves the right to return all incorrect invoices and withhold payment until a correct invoice is received. Unless otherwise specified in the face of this Order, Buyer shall pay the invoiced amount within 30 days after receipt of a correct invoice. Payment is made on the date Buyer mails the payment check to Seller. Payment shall not constitute acceptance of Articles. Payment shall not prejudice Buyer’s right to return nonconforming Articles nor its right to receive credit or reimbursement for the nonconforming Articles.

8. INSPECTION. Buyer shall have a reasonable time after receipt of Articles and before payment to inspect them for conformity to this Order. Articles shall not be deemed accepted until Buyer has inspected Articles and has run adequate tests to determine whether the Articles conform to the specifications hereof. Use of a portion of the Articles for the purpose of testing shall not constitute an acceptance of the Articles. If the Articles delivered to Buyer do not wholly conform with the provisions hereof, Buyer shall have the right to reject such Articles. Buyer shall return nonconforming goods to Seller freight collect, and the risk of loss shall pass to Seller upon Buyer’s delivery of the Articles to the common carrier.

9. CHANGES. At any time, Buyer may by written notice, make changes to the scope of this Order in any one or more of the following: (1) drawings, designs or specifications; (2) method of shipping or packaging; (3) place of inspection, delivery or acceptance; (4) amount of Buyer-furnished Manufacturing Materials, if applicable; and (5) quantity. Seller shall proceed immediately to perform this Order as changed. If any such change causes a material increase or decrease in the cost of, or the time required for the performance of any part of the work in this Order, Buyer and Seller will agree upon an equitable adjustment in the purchase price or delivery schedule or both. To qualify for adjustment consideration, Seller must send written notice to Buyer of Seller’s intent to file a claim under this clause within 21 days from the date of receipt by Seller of such written notice of change. Seller shall proceed with the changed Order pending resolution of any claim for adjustment. Buyer may act upon any such claim at any time prior to final payment under the Order. Nothing in this clause shall excuse Seller from proceeding with this Order as changed.

10. ITEMS FURNISHED BY BUYER. All designs, patterns, drawings, other data, and Manufacturing Materials furnished or paid for by Buyer to Seller (“Buyer-furnished Items”) shall remain the sole property of Buyer. All Buyer-furnished Items shall be held at Seller’s risk and shall be insured by

Seller while in its custody or control in an amount equal to the replacement cost thereof with the proceeds of a loss to be paid to Buyer. Upon completion or cancellation of this Order, all Buyer-furnished Items not incorporated in the Articles shall be returned to Buyer in good condition unless otherwise agreed to by Buyer.

11. **TERMINATION.** Buyer may terminate this Order in whole or in part at any time without cause by written notice to Seller. On the date of receipt of such written notice (the "Termination Date"), Seller shall immediately cease work, including, but not limited to, the manufacture and procurement of materials and subcontracted items for the fulfillment of the terminated portion of this Order. In the event of termination, Buyer and Seller shall employ their best efforts to agree upon the amount of reimbursement, if any, to be paid to Seller for such termination, subject to the following provisions: (A) If this Order is for goods, Seller shall mitigate its claim to the maximum extent, and Seller shall be entitled to: (a) the actual cost, plus 5% of said cost, of Manufacturing Materials which Seller is unable to cancel, return or divert to other uses within 90 days of the Termination Date; and (b) the reasonable cost of direct labor incurred by Seller up to the Termination Date. (B) If this Order is for services, Seller shall mitigate its claim to the maximum extent and Seller shall be entitled to the actual cost incurred in preparation to perform said services. (C) The amount of reimbursement shall not exceed the total price of this Order nor shall Seller be entitled to consequential or incidental damages due to cancellation of this Order.

12. **WARRANTIES.** (A) If this Order is for goods, Seller warrants that the goods delivered shall be free from defects in materials and workmanship and shall conform to all applicable specifications for the period provided in Seller's standard warranty covering the goods, which Seller shall furnish to Buyer. Such warranty shall run both to Buyer and its customers. (B) If this Order is for services, Seller warrants that the services shall be completed in a professional, workmanlike manner, with the degree of skill and care that is required by current, good and sound professional procedures. Further, Seller warrants that said services shall be completed in accordance with applicable specifications and shall be correct and appropriate for the purposes contemplated in this Order.

13. **SECURITY INTEREST.** Buyer shall not be obligated to give and Seller may not reserve any security interest in the Articles purchased under this Order to secure any portion of the purchase price not paid at the time of delivery.

14. **INDEMNITY.** (A) Seller shall indemnify, hold harmless, and at Buyer's request, defend Buyer, its officers, directors, customers, agents and employees, against all claims, liabilities, damages, losses and expenses, including attorneys' fees and cost of suit arising out of or in any way connected with the Articles provided under this Order, including, without limitation, any claim based on (1) the death or bodily injury to any person, destruction or damage to property, (2) the negligence, omissions, or willful misconduct of Seller or Seller's agents, and (3) alleged infringement by the Articles of a patent, copyright, trademark, trade secret, or other proprietary right of a third party. Seller shall not settle any such suit or claim without Buyer's prior written approval. Seller agrees to pay or reimburse all reasonable costs that may be incurred by Buyer in enforcing this indemnity, including attorneys' fees. (B) Should Buyer's use, or use by its distributors, subcontractors, or customers, of any Articles purchased from Seller be enjoined, be threatened by injunction, or be the subject of any legal proceeding for alleged infringement, Seller shall, at its sole cost and expense, either (1) substitute fully equivalent non-infringing Articles; (2) modify the Articles so that they no longer infringe but remain fully equivalent in functionality; (3) obtain for Buyer, its distributors, subcontractors, and customers the right to continue using the Articles; or (4) if none of the foregoing is possible, refund all amounts paid for the infringing Articles upon return of such Articles to Seller freight collect.

15. ASSIGNMENT AND DELEGATION. Except with written permission from Buyer, Seller may not assign any right or interest in this Order nor delegate any obligation or performance owed under this Order. Any unauthorized assignment or delegation shall be null and void. Claims for moneys due under this Order may be assigned by Seller provided that Seller notifies Buyer in writing of such assignment. Payment to an assignee shall be subject to set-off or recoupment for any present or future claims which Buyer may have against Seller. Notwithstanding any assignment or claims for moneys due hereunder, Buyer reserves the right to make direct settlements and adjustments in price with Seller under the terms of this Order without notice to any assignee.

16. REMEDIES. In the event of a breach of the terms and conditions of this Order by Seller, Buyer shall have all remedies provided by law subject to Seller's right to collect the Price for goods accepted by Buyer. **IN NO EVENT SHALL BUYER BE LIABLE TO SELLER, SELLER'S AGENTS, SELLER'S EMPLOYEES OR ANY THIRD PARTIES FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS ORDER, WHETHER OR NOT BUYER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL BUYER'S LIABILITY EXCEED THE ORDER PRICE.**

17. DISPUTE RESOLUTION. Any dispute arising out of or relating to these terms and conditions, or breach thereof, shall be first submitted to mediation. If the dispute cannot be resolved within 30 days after such matter is submitted to mediation, then the dispute shall be submitted to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect. All discovery must be submitted within 45 days after submission to arbitration, and the arbitrators shall have the right to limit discovery. The decision of the arbitrators shall be final and may be entered as judgment in any court of competent jurisdiction.

18. GOVERNING LAW; ATTORNEYS' FEES. The terms and conditions of this Order shall be construed in accordance with, and disputes shall be governed by, the laws of the State of California. The U.N. Convention on Contracts for the International Sale of Goods shall not apply. In any action to enforce the terms and conditions of this Order, the prevailing party shall be entitled to recover all court costs and expenses and reasonable attorneys' fees.