

# **EpiWorks, Inc.**

## **Terms and Conditions**

### **1. PURCHASE ORDER ACCEPTANCE**

The items to be produced and/or the services to be performed that are identified in this Purchase Order are referred to herein as the “Work.” The Buyer acknowledges and agrees that the terms and conditions set out in this Purchase Order shall apply to the Work and may not be modified, amended, or altered except by a separately negotiated written document signed by EpiWorks, Inc. (“EpiWorks”) and specifically stating that it is intended to modify these terms and conditions. In the event such a separate written agreement is executed by both Buyer and EpiWorks and is intended as an overriding agreement to control the legal relationship between EpiWorks and Buyer with regard to the Work and other items and/or services to be provided by EpiWorks, then the terms of this Purchase Order shall supplement that agreement. In the event of any direct conflict between the terms of this Purchase Order and the terms of such agreement, the terms of that agreement shall control. Buyer’s acceptance of all or any portion of the Work shall constitute acknowledgement and agreement to all of the terms and conditions set out herein.

### **2. WARRANTY**

EpiWorks warrants that the Work will be free from defects in material and workmanship and will be in conformity with applicable specifications and drawings (the “Specifications”) for a period of three (3) months from the date of delivery. Work shall be deemed delivered to Buyer when it leaves EpiWorks’ facility for delivery to Buyer or when it is picked up by or on behalf of Buyer at EpiWorks’ facility. This warranty shall not apply to any Work which shall have been abused or misused physically or electrically, or on which the trademark shall have been defaced or obliterated. If Buyer believes any item that is part of the Work produced under this Purchase Order is not in compliance with the foregoing warranty, such Work will be accepted by EpiWorks for return and analysis of the warranty claim only if such Work is returned pursuant to a written return material authorization (“RMA”) that is requested by Buyer in writing within the 3-month warranty period. The RMA must be secured from EpiWorks and will not commit EpiWorks to the making of any repair or replacement hereunder. Any request for an RMA must list types and quantities of items or services involved, the reason for the request and the portion of the Specifications Buyer claims were not met, information concerning operating conditions involved, and the period of use. Returned items must be shipped, transportation prepaid, by the most practical method of shipment. Shipping costs will be credited to the Buyer for all Work found to be subject to warranty adjustment. Excessive transportation costs will not be allowed. EpiWorks will not accept any billing for packing, inspection, labor charges, or other incidental costs in connection with any Work returned. Unless otherwise requested by Buyer, returned Work found to meet Specifications and therefore not subject to a proper warranty claim will be sent back to Buyer, transportation collect. In all cases, EpiWorks’ determination with regard to whether or not an item is in conformity with the Specifications will be final. With respect to items found not in conformity with the Specifications, EpiWorks

may, at EpiWorks' option, either replace or repair the defective or nonconforming item. In the event that it is uneconomical to replace or repair warranted Work, EpiWorks may, at its sole option, remit the dollar equivalent based upon the original item sales price.

**THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE). IN NO EVENT WILL EPIWORKS BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING FROM BREACH OF THIS WARRANTY, EVEN IF EPIWORKS HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES. THE FOREGOING CONSTITUTES BUYER'S SOLE REMEDY AND EPIWORKS' SOLE LIABILITY FOR BREACH OF WARRANTY.**

In the event any item is replaced pursuant to the foregoing warranty, the full three-month warranty period shall apply to the replaced item.

**3. DELIVERY**

(a) EpiWorks' shipment terms are FOB, point of origin (which is EpiWorks' facility in Champaign, IL). Buyer is responsible for all shipping charges. Passage of title and risk of loss shall occur at the point of origin upon shipment to the Buyer of any items that are part of the Work.

(b) EpiWorks shall not be liable by reason of any delays in performance caused by war, fire, strikes, floods, accidents, Government priorities or regulations, delays in transportation, shortages of materials and/or supplies, or any other causes beyond its reasonable control. If shipment of any Work is delayed at Buyer's request, EpiWorks may invoice Buyer for such Work and risk of loss of such Work will pass to Buyer on the date that EpiWorks is prepared to make shipment to Buyer.

(c) Rescheduling of shipments shall be by mutual agreement. Notwithstanding the foregoing, EpiWorks' extensive line of products requires close coordination of the Buyer's requirements with EpiWorks' production schedules to avoid possible delays in shipment. Accordingly, EpiWorks reserves the right to ship in advance of EpiWorks' acknowledged schedule date. Unless otherwise stated on the face hereof, EpiWorks may ship all the goods furnished hereunder at one time, or in separate parts or lots from time to time within the shipping period herein provided. Claims that EpiWorks did not ship the total quantity of goods shown on the face hereof will be researched and reconciled with all due diligence.

**4. PAYMENT**

(a) Payment shall be due thirty (30) days from date of invoice. No early payment discounts or other discounts are allowed. Payment shall not be withheld or effect on account of any claim by Buyer against EpiWorks. EpiWorks reserves the right,

among other remedies, either to cancel any remaining Work under the Purchase Order or suspend deliveries in the event Buyer fails to pay for any invoice or shipment when payment becomes due.

(b) Any tax, duty, custom, or other fee of any nature imposed upon this transaction by any federal, state, or local government authority shall be paid by the Buyer, in addition to the price quoted or invoiced; provided, however, EpiWorks shall be responsible for all taxes based upon its net income with regard to the Work. In the event EpiWorks is required to prepay any such tax, duty, custom, or other fee, Buyer will reimburse EpiWorks thereafter.

(c) Unless specifically otherwise agreed in writing by Buyer and EpiWorks, all payments are to be made in United States Dollars (USD\$). If made by check, the check must be drawn on a U.S. Bank. All banking charges, if any, are to be pre-paid by the Buyer. In the event any payment by Buyer shall be dishonored or otherwise not immediately collectible, EpiWorks reserves the right by written notice to require advance payments, or subsequent payments to be made by cashier's check, money order, or other immediately available funds.

(d) Buyer hereby grants EpiWorks a purchase money security interest in the Work and any proceeds thereof to secure Buyer's obligation to pay the full price of the Work. Such security interest shall terminate upon payment in full by Buyer of such price. Buyer shall execute such further documents, financing statements, and other instruments as may be requested by EpiWorks to perfect such security interest.

**5. DEFAULT: CANCELLATION**

(a) In the event that either party defaults in any of the terms, conditions, obligations, undertakings, covenants, or liabilities set forth herein, the other party shall give the defaulting party written notice of such default. If the defaulting party does not remedy such default within ninety (90) days following receipt of written notice thereof, the party giving notice may cancel the Purchase Order by providing the defaulting party with a written notice of cancellation. In addition, either party may cancel the Purchase Order by providing written notice to the other party in the event the other party becomes insolvent, unable to meet its debts as they become due, files a petition for bankruptcy under any chapter of the U.S. bankruptcy laws, enters into any arrangement or composition with creditors, or goes or is put into liquidation, if that party is unable to provide sufficient additional assurance of financial ability to perform within five (5) days of written request. Cancellation of the Purchase Order shall not relieve either party from its obligations hereunder which shall have accrued prior to such cancellation. Cancellation by Buyer of the Purchase Order pursuant to this article shall be Buyer's sole and exclusive remedy for any breach by EpiWorks.

(b) Purchase Orders accepted by EpiWorks can only be canceled for Buyer's convenience by providing written notice at least ninety (90) days prior to the acknowledged ship date. In the event a Purchase Order is canceled for Buyer's convenience, Buyer will be liable for the full sales price of all finished goods, plus the

total cost of all work in process, all raw materials purchased for the Work, including those with long lead time and/or bulk material, a reasonable profit and any other commitment made by, or cost incurred by EpiWorks for the specific purpose of complying with the Purchase Order. In no event will Buyer's liability under this section exceed the total value of the cancelled portion of the Purchase Order.

**6. GOVERNING LAWS AND EXPORT CONTROL**

(a) The Work and this Purchase Order shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to its conflicts of law provisions.

(b) Buyer shall be bound by the same U35 Government Export Controls to third party countries, as are imposed upon EpiWorks. The Purchase Order is subject to any applicable export approval as may be required by the U.S. Government.

**7. NO INTELLECTUAL PROPERTY RIGHTS GRANTED**

Nothing in this agreement is intended to grant any rights under any circumstances to any of EpiWorks patents, copyrights, trade secrets or other intellectual property. EpiWorks retains sole ownership and rights to any and all intellectual property related to its business and technology.

**8. ARBITRATION (APPLICABLE TO INTERNATIONAL ORDERS ONLY)**

Buyer and EpiWorks shall attempt in good faith to resolve any dispute or disagreement ("Dispute") arising from the Purchase Order promptly by negotiation between executive management of each party who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of the Purchase Order. If any Dispute is not settled to the mutual satisfaction of Buyer and EpiWorks within sixty (60) days (or such longer period as mutually agreed upon) from the date that one party informs the other in writing that a Dispute exists, then it shall be exclusively settled by binding arbitration before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect on the date that such notice is given and strictly in accordance with the terms of the Purchase Order and the substantive laws of the State of Illinois (but not its conflicts of law provisions). The arbitration shall be held in Champaign, Illinois and conducted in the English language. Judgment may be entered on the order of the arbitrator in a federal or state court located in Champaign County, Illinois.

**9. TAXES EXEMPTION CLAIM AND IMPORT DUTIES**

(a) In the event Buyer claims the right to purchase any item of the Work without local, state, or federal taxes, or other duties being applied, Buyer shall provide EpiWorks with a current and valid certificate of the appropriate taxing authority certifying the right of Buyer, and the extent of such right, to purchase items on that basis.

(b) Except as expressly agreed to in writing by EpiWorks, any and all customs, duties, taxes, or other fees in any form which may be charged or assessed with respect to the importation into any foreign country of any Work, documentation or information furnished or sold shall be for the account of and paid for by the Buyer.

**10. BUYER'S INDEMNIFICATION**

(a) Buyer hereby warrants all of the Work performed by EpiWorks, including items manufactured by EpiWorks, that meet Buyer's Specifications shall be free of the rightful claim of any third person for infringement of any patent or other right.

(b) In case any portion of the Work is held to constitute an infringement and EpiWorks or the Work is enjoined, Buyer shall, at its option, either procure for EpiWorks the right to continue the Work or modify the Specifications for the Work so that it becomes non-infringing. Buyer shall pay for all additional fees and cost associated with any of these options. In the event that the Buyer does not find a viable option, the Buyer will pay EpiWorks the full price of the original Work ordered.

(c) IN NO EVENT WILL EPIWORKS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES ARISING FROM BREACH OF THIS WARRANTY, EVEN IF EPIWORKS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**11. DATA AND INTELLECTUAL PROPERTY RIGHTS**

(a) Any technical data, drawings, designs, inventions or intellectual property, tooling or other tangible property, and other information which EpiWorks uses or discloses to Buyer in the performance of the Work or otherwise related thereto is and shall remain proprietary to EpiWorks, shall be referred to herein as EpiWorks' confidential information, and shall be protected by Buyer in the same manner as Buyer protects its own confidential information but with no less than a reasonable degree of care.

Buyer agrees not to disclose any such confidential information to any third party, including its affiliates, nor to use it for any purpose other than as intended by EpiWorks.

(b) No provision of this Purchase Order shall have the effect of, or be deemed to, transfer to either party any right or license of any kind in any of the other party's intellectual property, confidential information, or other rights.

(c) Buyer may not provide all or any portion of the Work to any of EpiWorks' competition without prior written approval by EpiWorks.

(d) Unless otherwise expressly set forth in writing by EpiWorks, non-recurring engineering charges and all charges of a similar nature which may be billed to Buyer for work performed by EpiWorks in connection with the Work (including but not

limited to tooling charges, partial preparation charges, drawing or design charges, set-up or fit-up charges, and the like) represent only part of the cost thereof incurred by EpiWorks. EpiWorks' confidential information and services utilized in performing the Work are not, and shall not be deemed to be, work for hire, and Buyer does not acquire any right, title or interest in, or license (either express or implied) thereto.

**12. CERTIFICATE OF CONFORMANCE TEST DATA**

Unless specifically noted herein, only Certificate of Conformance characterization data agreed to in advance in writing by both EpiWorks and Buyer will be included in the selling price. Any additional tests requested by Buyer, and agreed to be performed by EpiWorks, shall be performed by EpiWorks at the Buyer's expense.

**13. FAIR LABOR STANDARDS ACT OF 1938**

EpiWorks represents that with respect to the production of the articles and/or the performance of the services stated herein, it has fully complied with all of the applicable provisions of the Fair Labor Standards Act of 1938, as amended, including sections 6, 7, and 12, regulations under section 14, and all other applicable Administrative regulations.

**14. EXECUTIVE ORDER 11246**

In connection with performance of Work hereunder, EpiWorks agrees to comply with all provisions, including specifically paragraphs (1) through (7), Sec 202 of Executive Order No. 11246 of September 24, 1965, as amended, and rules, regulations and order pertaining thereto.

**15. LIMITATION OF EPIWORKS' LIABILITY**

The aggregate cumulative total liability for which EpiWorks is obligated to pay Buyer hereunder, whether for breach of warranty or contract, indemnifications herein, tort (including negligence), or otherwise, shall not exceed the payments made to EpiWorks in connection with the Work under the Purchase Order which gave rise to such liability. In no event shall EpiWorks have any liability for any indirect, special, consequential, incidental, or punitive damages arising out of or in connection with the Purchase Order, even if EpiWorks has been advised of the possibilities of such damages.

**15. MISCELLANEOUS**

(a) Waiver. Any waiver by EpiWorks of any of these terms and conditions shall not be deemed to be a continuing waiver and shall not preclude EpiWorks from subsequently enforcing such rights on that or any subsequent occasion.

(b) Limitation on Claims. Buyer shall bring no action for any claim of breach by EpiWorks more than one (1) year after the occurrence of the event.

(c) Assignment. Buyer's rights under the Purchase Order may not be transferred or assigned in whole or in part without the prior written consent of EpiWorks.

(d) Entire Agreement. The terms and conditions of this Purchase Order, together with any separate written agreement referred to in Section 1 above, if any, shall constitute the entire agreement between the parties, and may not be modified except by a written document executed by both EpiWorks and Buyer.

(e) Invalidity. If any provision hereof is held to be invalid or unenforceable for any reason, the remaining provisions hereof shall continue in full force as if such invalid or unenforceable provision had been stricken.

(f) Jurisdiction and Venue. Buyer consents to the jurisdiction and venue of the state and federal courts located in Champaign County, Illinois, and waives right to contest this jurisdiction and venue on the grounds of inconvenience or otherwise. Buyer further waives any right to bring any action or proceeding in any court other than as set forth herein.

(g) Captions. All captions are for convenience and shall not control the interpretation of the sections hereof.

(h) EpiWorks' Costs. In the event of any breach by Buyer, EpiWorks shall be entitled to recover all costs, including attorneys' fees incurred, in enforcing its rights hereunder.