

## NEXTEK, INC. PURCHASE ORDER TERMS AND CONDITIONS

1. **CONTRACT:** Before this Purchase Order becomes a contract, it is an offer to enter into a contract. This Purchase Order is revocable, in whole or in part, by Buyer, anytime prior to acceptance. This Purchase Order and all amendments thereto shall, when accepted, constitute the entire contract between Seller and acknowledgement. Any other document or oral agreement becomes binding only after mutual acceptance of a written amendment to this Purchase Order. The term "goods," as used herein, shall mean that which Buyer is purchasing from Seller, whether it be materials and products to be manufactured and/or delivered, or services to be rendered or both.
2. **DELIVERY AND RISK OF LOSS:** Buyer's production schedules and warranties to its customers are dependent upon the agreement that deliveries of the goods covered by this Purchase Order will occur on the required delivery date shown on the face hereof. Therefore, time is of the essence. Seller shall be responsible for all damages of any kind incurred or suffered by Buyer which were caused by any delay of Seller in making deliveries. Seller agrees to notify Buyer immediately if at any time it appears that Seller may not meet the delivery schedule. Such notification shall include the reasons for the delay, actual or potential, the steps being taken to remedy the constraint and the schedule Seller believes it will be able to meet. Buyer's receipt of notice shall not constitute approval of the delay or the proposed revised delivery schedule or a waiver of the delivery schedule in the Purchase Order. Any assistance furnished by Buyer to overcome delays shall not be regarded as waiving Buyer's remedies for default, including termination rights, if Seller fails to meet the contractual schedule. Unauthorized advance shipments and shipments other than for the quantity ordered are returnable at Seller's expense, identification of the goods under Section 2-501 of the Uniform Commercial Code shall occur at the moment Seller accepts this Purchase Order. Seller shall not be excused from performing his obligations hereunder if the goods identified are destroyed. Delivery shall not be deemed complete until the goods have been actually received by Buyer at its facility. The risk of loss and damage in transit, shall be upon Seller and shall not pass to Buyer until received at Buyer's facility in a condition in accordance with the terms of this Purchase Order. The cost of all return shipments shall be borne by Seller.
3. **WARRANTIES:** All warranties of Seller, whether created expressly by law or in fact, are incorporated herein by reference and shall include, and be hereby supplemented by the following express warranties: a) The goods shall comply with any and all specifications, drawings, samples, or other descriptions furnished by Buyer; b) the goods shall be merchantable, of good material and workmanship, free from defect, and suitable for their intended purpose; and c) except in the case of goods for which Buyer furnishes complete specifications, the manufacture and sale by Seller of the goods, the use, resale, installation and intended use of the goods by Buyer, and disclosures by Seller to Buyer in any manner hereunder shall not infringe upon or violate the legal or equitable rights of any person, corporation or partnership arising out of any license or franchise, or out of any patent, trademark, or other proprietary right, now or hereafter in effect. All obligations of Seller hereunder shall survive acceptance of and payment for the goods. Seller shall indemnify and hold harmless Buyer from and against all liability, loss, consequential and incidental damages, and expenses resulting from any other act or omission by Seller, its agents or employees while in the performance hereof.
4. **INSPECTION AND ACCEPTANCE:** Buyer reserves the right to inspect all goods prior to shipment by Seller, and in furtherance thereof, Seller shall permit employees or representatives of Buyer, Buyer's customer(s) and Regulatory Authorities to have access to Seller's facilities and to all applicable records, at reasonable hours. All goods shall nevertheless be received subject to final inspection and approval by Buyer after delivery at destination. Inspection and acceptance shall occur within 60 days after receipt at Buyer's facility. Defective goods may be returned at Buyer's option for credit or replacement at Seller's expense. At Buyer's option inspection may be performed on a statistical sampling basis. If the number of defects in the selected sample exceed the allowable defects, the entire lot of goods will be rejected. The rejected Goods may at Buyer's option be 100% inspected at Seller's expense. Buyer's inspection, or lack of inspection, shall not affect any express or implied warranties, nor shall Buyer waive any rights to return goods that contain latent defects discovered in the testing of Buyer's products containing such goods. If the face of this purchase order stipulates that goods shall be subject to inspection at Seller's facilities, Seller shall provide reasonable space and assistance for the safety and convenience of representatives of Buyer and its customer. At the time of inspection, Seller shall make available to such representatives, copies of all drawings, specifications, and other technical data applicable to the goods ordered. The seller shall be responsible to notify buyer of any changes in product and/or processes, changes in suppliers, changes of manufacturing facility location and, where required, obtain organization approval. Seller shall also notify the Buyer non-conforming material in a timely manner with a proper description of the issues. Direction will be given upon notification.
5. **PACKING AND SHIPPING:** a) Seller shall ship only as specified herein, or as subsequently directed in writing, and in strict conformity with the governing tariff rules and regulations; b) Seller shall pack or otherwise prepare all goods to meet carrier requirements and safeguard against damage from weather and transportation; c) No charges shall be allowed for packing or cartage unless specifically noted herein; d) Unless otherwise agreed upon in writing by Buyer, goods must be shipped prepaid at Seller expense; e) Each package shall be marked to show Purchase Order number and include a packing sheet in each package.
6. **TAXES AND PRICE:** a) Except as otherwise specified herein, or as prohibited by law, Seller shall pay all sales, use, excise or other taxes, federal, state and local, that may be levied upon any of the goods, or the parties hereto, by reason of the sale, delivery or use of the goods. All taxes of any nature which are billed to Buyer shall be specifically identified and separately stated. If any tax or portion thereof which is included or added to the price paid to Seller is subsequently refunded to Seller, Seller shall promptly pay to Buyer the amount of such refund. b) Seller warrants that the price charged for the goods is no higher than charged other purchasers for commodities of like grade and quality.
7. **PAYMENTS:** a) Payments shall be made upon the submission of proper invoices for goods delivered and accepted. With respect to any discount offered, time shall be computed from the date of delivery or from the date correct invoice is received by Buyer, whichever last occurs. Payment is deemed to be made, for the purpose of earning the discount, on the date Buyer's check is mailed. b) Seller shall certify, at the time of submitting invoices that all goods and services were manufactured or performed in compliance with the Full Labor Standard Act.
8. **INFORMATION DISCLOSED:** No information or knowledge, heretofore or hereafter disclosed to Buyer in the performance of or in connection with this Purchase Order, shall be deemed to be confidential or proprietary, unless otherwise expressly agreed to in writing by Buyer, and any such information or knowledge shall be free from any restrictions, other than a claim for patent infringement, as part of the consideration for this Purchase Order.
9. **ADVERTISING:** Seller shall not, without first obtaining written consent of Buyer, in any manner advertise, publish, or disclose the existence or acceptance of this Purchase Order nor any details connected herewith, or the content of any information or knowledge transmitted by Buyer hereunder, to any third party.
10. **DRAWINGS AND TECHNICAL DATA:** Seller, if required as part of its performance hereunder, shall, on or before delivery of any goods, supply any and all printed materials, such as catalogs, drawings, cuts, certified prints, characteristic curves, parts list, service and technical manuals, and diagrams relating to such goods. The failure of Seller to deliver the foregoing printed material required shall constitute a basis for nonpayment of the price of the goods until delivery is made. All such printed materials supplied by, or specifically prepared at the request of Buyer, shall at all times be and remain the property of Buyer and shall be held in confidence by Seller. Provided, however, Seller may use such drawings, data, designs, and other technical information to produce items for direct sale to the U.S. Government where the U.S. Government has the right to use the technical information required to produce such items. If during the term of this order, Buyer's representatives review drawings, specifications, or other data developed by the Seller in connection with the order and make suggestions or comments or approve such documents and data, such action is only an expression of opinion by Buyer and shall not serve to relieve Seller of any responsibility for performance of this order in accordance with its terms. Seller must flow down requirements to sub-tier vendors including key characteristics, record retention and other items as listed on the Buyer's purchase order, where applicable.
11. **INDEMNIFICATION:** To the extent that Seller's agents, employees or subcontractors enter upon premises occupied by or under the control of Buyer, Seller shall indemnify and hold Buyer harmless against all liabilities, losses, damages and expenses, including attorney's fees, for personal injuries, death or property damage except in those instances where such liability, losses, damages or expenses are due solely and directly to Buyer's negligence.
12. **ASSIGNMENT:** Seller shall neither delegate any duties, nor assign any rights or claims hereunder, without prior written consent of Buyer, and any such attempted delegation or assignment shall be void without Buyer's prior written consent. Such consent shall not be deemed as a waiver of any of Buyer's rights to recoupment or set-off of claims arising out of this or any other transaction with Seller, its divisions, affiliates or subsidiaries or to adjust matters with Seller without notice to the assignee.

13. **CHANGES:** Buyer may at any time, by written direction, and without notice to any sureties or assignees, make changes in the drawings, specifications, quantities; delivery schedules, method of shipment or packaging. Should any such change increase or reduce the cost of, or the time required for performance of, an order, an equitable adjustment will be made in the contract price or delivery schedule.  
Provided, however, any requests for an increase in the contract price or an extension in delivery schedule must be made within fifteen (15) working days from the date of such written direction. Failure to agree upon an equitable adjustment shall not relieve the Seller from proceeding without any delay in performance under this Purchase Order, as changed. Where the cost of any property is made obsolete or excess as a result of any change for which Seller makes a claim, Buyer shall have the right to prescribe the manner of disposition of such property.
14. **BAILMENT:** Unless otherwise provided herein, all supplies, materials, drawings, manuals, facilities, tools, jigs, dies, fixtures, patterns or equipment furnished to Seller by Buyer shall remain the property of Buyer. Seller shall bear risk of all loss and damage thereto, normal wear and tear excepted, while such property is in Seller's actual or constructive possession. Such property shall at all times be properly housed and maintained by Seller, shall not be moved from Seller's premises without prior written authority from Buyer, and shall, upon request by Buyer, be immediately returned to Buyer. Further, such property shall be identified and marked by Seller as Buyer's property and shall be used only as expressly authorized by Buyer. Such property shall be adequately insured by Seller for any and all losses while in Seller's possession, and shall be returned to Buyer in the same condition when received, reasonable wear and tear excepted.
15. **TOOLING:** Unless otherwise specified in this order, all tooling, all other articles required for the performance hereof shall be furnished by seller, and shall be maintained in good condition, and replaced when necessary at Seller's expense. If the Buyer agrees to pay Seller for special tooling and other articles, either separately or as a stated part of the unit prices of goods purchased herein, Buyer shall upon making payment therefor have the option to take title and possession of such special tooling and articles, including any dies, tools, gauges, fixtures, and patterns.
16. **NON-WAIVER:** The remedies herein reserved or created shall be cumulative and additional to any other or further remedies provided in law or in equity. Buyer may waive any breach of the terms or conditions hereof without waiving any other prior or subsequent breach.
17. **INVOICES; STATEMENTS; AUDIT OF BOOKS:** unless otherwise provided in this Purchase Order, no invoice shall be issued and no payment will be made prior to physical delivery of goods, or completion of the rendering of services, to Buyer. Individual Invoices, in triplicate, showing this Purchase Order number, description of goods as shown herein, number of cartons shipped, and carrier and weight, shall be issued for each shipment applying hereto. One copy of each individual invoice must be plainly marked "ORIGINAL." Shipping charges and all applicable taxes, or charges for which buyer has agreed to pay, and has not furnished an exemption certificate, shall be itemized separately on Seller's Invoices. Unless such charges are itemized, Buyer may take the applicable discount on the full amount of each invoice. Seller agrees that its books and records, of such parts thereof as may relate to the performance hereunder, shall at all reasonable times be subject to inspection and audit by duly authorized representatives of BUYER.
18. **HEADINGS:** The Headings used herein are for reference purposes only and shall not affect the meaning or interpretation of this Purchase Order.
19. **SEVERABILITY:** Any provisions of this Purchase Order prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof.
20. **COMPLIANCE WITH LAWS:**
- Seller shall comply with all statutes, ordinances, legal directives and regulations in its performance under this Purchase order. In the event the goods do not conform with any legal requirements and Buyer is penalized for such nonconformance, Seller shall indemnify Buyer for all penalties, costs, and expenses, including interest, levies against Buyer.
  - The "Equal Opportunity" clause in SAPR 7-103.18(a) is incorporated herein by reference, except "Contractor" means Seller.
21. **TERMINATION:** (i) Buyer shall have the right at any time and for any reason to terminate this Purchase Order in its entirety or in part for its convenience, and not as a breach, in accordance with the provisions of Section 8-706, entitled "Termination," of the Defense Acquisition Regulations (DAR), which Section is specifically incorporated herein by a reference. (ii) In addition to the rights conferred in subparagraph (i), Buyer may terminate this Purchase Order.
22. **WAIVER:** The failure of Buyer in any one or more instances to enforce any of its rights or to insist upon performance of any of the terms or conditions of this Purchase Order shall not be construed as waiving any of the terms and conditions of this Purchase Order or any of Buyer's rights or remedies.
23. **QUALITY:** a) The Buyer shall have the right of approval of the Seller's Quality System (QMS). It is preferred that the QMS is certified by a 3<sup>rd</sup> party. If this is not the case, the buyer will review the QMS and make a determination of acceptance dependent on the purchase order conditions. The Supplier will ensure their employees are aware of their contribution to: Product conformity, product safety, and the importance of ethical behavior.  
b) The supplier shall only provide authentic components directly from the original component manufacturer (OCM), or the original equipment manufacturer (OEM), or through an OCM/OEM authorized distributor chain. The supplier shall have a documented plan to control, detect and avoid supplying counterfeit electronic components to Nextek. The supplier shall immediately notify Nextek, via the Purchasing Representative of any suspect counterfeit or fraudulent parts or materiel that may have been used in product delivered.
24. **Control and Monitoring of Suppliers:** External providers must maintain a target composite score of ≥90%. If levels drop below target, the external provider will be notified and may be placed on conditional status or disapproved if not corrected. This score is a weighted combination of On Time Delivery (OTD) and quality (non-conformances).