



## Bullen Ultrasonics, Inc. Purchase Order Terms and Conditions

This purchase order is an offer by Bullen Ultrasonics, Inc. ("BUI") for the purchase of the goods specified on the face of this purchase order (the "Goods") from the party to whom the purchase order is addressed (the "Seller") in accordance with and subject to these terms and conditions (the "Terms"; together with the terms and conditions on the face of the purchase order, the "Order"). This Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits Seller's acceptance to the terms of the Order. These Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller's general terms and conditions of sale or any other document issued by Seller in connection with this Order.

1. Acceptance. This Order is not binding on BUI until Seller accepts the Order in writing or starts to perform in accordance with the Order. BUI may withdraw the Order at any time before it is accepted by Seller.

2. Delivery Date. Seller shall deliver the Goods in the quantities and on the date(s) specified in this Order or as otherwise agreed in writing by the parties (the "Delivery Date"). Timely delivery of the Goods is of the essence. If Seller fails to deliver the Goods in full on the Delivery Date, BUI may terminate the Order immediately by providing written notice to Seller and Seller shall indemnify BUI against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date.

3. Quantity. If Seller delivers more or less than the quantity of Goods ordered, BUI may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller's risk and expense. If BUI does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.

4. Delivery; Shipping. All Goods shall be delivered to the address specified in this Order (the "Delivery Location") during BUI's normal business hours or as otherwise instructed by BUI. Delivery shall be made in accordance with the terms on the face of this Order. Seller shall provide BUI all documents necessary to release the Goods to BUI after Seller delivers the Goods to the transportation carrier. The Order number must appear on all documents pertaining to the Order.

5. Title and Risk of Loss. Title passes to BUI upon delivery of the Goods to the Delivery Location. Seller bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location.

6. Packaging. All Goods shall be packed for shipment according to BUI's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition.

7. Amendment and Modification. No change to this Order is binding upon BUI unless it is in writing, specifically states that it amends this Order and is signed by an authorized representative of BUI.

8. Quality Review. BUI reserves the right to review and approve the Seller's Quality Management System. Standard QMS requirements include:

- 8.1 If Seller is providing special processing, it must maintain a system for validating processes similar to that of a NADCAP program, or other system as required by this Order.
- 8.2 Customer directed sources must operate in accordance with approved specifications and standards as dictated and controlled by the applicable customer.
- 8.3 If Seller is initially approved for use via certification (ISO, AS9100, ISO 17025, AS9120, etc.), it must notify BUI of any changes to that certification.

9. Inspection and Rejection of Nonconforming Goods. Seller is required to:

- 9.1 Notify BUI of nonconforming Goods upon discovery.
- 9.2 Obtain BUI approval for nonconforming product disposition.
- 9.3 Notify BUI of changes in product and/or process, changes of suppliers, and changes of manufacturing facility locations and where required obtain organizational approval.

9.4 Flow down to the supply chain the applicable requirements including customer requirements.

In addition, BUI has the right to inspect the Goods on or after the Delivery Date, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If BUI rejects any portion of the Goods, BUI has the right, effective upon written notice to Seller, to: (a) rescind the Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If BUI requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. Any inspection or other action by BUI under this Section shall not reduce or otherwise affect Seller's obligations under the Order.

10. Additional AS9100 Specific Terms.

- 10.1 All special processes required by this Order must be performed by qualified personnel.
- 10.2 BUI reserves the right of access by our representatives, our customers, any regulatory authorities to the applicable areas of all facilities, at any level of the supply chain, involved in the order and to all applicable records.
- 10.3 The supplier shall maintain the proper identification and revision status of specifications, drawings, process requirements, inspection/verification instructions and other relevant technical data.
- 10.4 BUI reserves the right to approve or specify any designs, test, inspection plans, verification, use of statistical techniques for product acceptance, and any applicable critical items, including key characteristics.
- 10.5 Seller must retain all records associated with this Order for a minimum of 10 years.
- 10.6 BUI reserves the right of final approval of product, procedures, processes, and equipment.
- 10.7 BUI reserves the right to designate requirements for test specimens for design approval, inspection/verification, investigation or auditing.

11. Price. The price of the Goods is the price stated in the Order (the "Price"). If no price is included in the Order, the Price shall be the price set out in Seller's published price list in force as of the date of the Order. Unless otherwise specified in the Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, and applicable taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of BUI.

12. Payment Terms. Seller shall issue an invoice to BUI on or any time after the completion of delivery and only in accordance with the Terms. BUI shall pay all properly invoiced amounts due to Seller within the negotiated number of days (noted on the Order) after BUI's receipt of such invoice, except for any amounts disputed by BUI in good faith. Without prejudice to any other right or remedy it may have, BUI reserves the right to set off at any time any amount owing to it by Seller against any amount payable by BUI to Seller.

13. Warranties. Seller warrants to BUI that for a period of 12 months from the Delivery Date, all Goods will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable

specifications, drawings, designs, samples and other requirements specified by BUI; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by BUI. These warranties are cumulative and in addition to any other warranty provided by law or equity.

14. General Indemnification. Seller shall defend, indemnify and hold harmless BUI, its affiliates, successors and assigns, and their respective directors, officers, shareholders and employees and BUI's customers (collectively, "**Indemnitees**") from and against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorneys' and professional fees and costs, the cost of enforcing any right to indemnification hereunder (collectively, "**Losses**") arising out of or in connection with the products purchased from Seller or from Seller's negligence, willful misconduct or breach of these Terms. Seller shall not enter into any settlement without BUI's or Indemnitee's prior written consent.

15. Intellectual Property Indemnification. Seller shall, at its expense, defend, indemnify and hold harmless BUI and any Indemnitee against any and all Losses arising out of or in connection with any claim that BUI's or Indemnitee's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party.

16. Insurance. During the term of the Order, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$1,000,000 with financially sound and reputable insurers. Upon BUI's request, Seller shall provide BUI with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in this Order and naming BUI as an additional insured. Seller shall provide BUI with 30 days' advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against BUI's insurers and BUI or the Indemnitees.

17. Compliance with Law. Seller is in compliance with and shall comply with all applicable laws, regulations and ordinances. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Order.

18. Termination. BUI may terminate this Order, in whole or in part, at any time with or without cause for undelivered Goods on 30 days' prior written notice to Seller. In addition to any remedies that may be provided under these Terms, BUI may terminate this Order with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods, if Seller has not performed or complied with any of these Terms, in whole or in part. If the Seller becomes insolvent, files a petition for bankruptcy or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then the BUI may terminate this Order upon written notice to Seller. If BUI terminates the Order for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted by BUI prior to the termination.

19. Limitation of Liability. Nothing in this Order shall exclude or limit (a) Seller's liability under Sections 13, 14, 15 and 21 hereof, or (b) Seller's liability for fraud, personal injury or death caused by its negligence or willful misconduct.

20. Waiver. No waiver by any party of any of the provisions of the Order shall be effective unless set forth in writing and signed by the party so waiving. Except as set forth in the Order, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Order shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

21. Confidential Information. All non-public, confidential or proprietary information of BUI, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by BUI to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by BUI in writing. Upon BUI's request, Seller shall promptly return all documents and other materials received from BUI. BUI shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller from a third party not bound by confidentiality.

22. Force Majeure. Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence ("**Force Majeure Event**"), including but not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any *Force Majeure* Event are minimized and resume performance under the Order. If a *Force Majeure* Event prevents Seller from carrying out its obligations under the Order for a continuous period of more than 10 business days, BUI may terminate this Order immediately by giving written notice to Seller.

23. Assignment. Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without the prior written consent of BUI. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder.

24. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in the Order shall be construed as creating any agency, partnership, joint venture, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from this Order.

25. No Third-Party Beneficiaries. This Order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

26. Governing Law; Venue. All matters arising out of or relating to this Order shall be governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provisions. Any legal suit, action or proceeding arising out of or relating to this Order shall be instituted in the federal courts of the United States of America or the courts of the State of Ohio in each case located in Preble County or Montgomery County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

27. Cumulative Remedies. The rights and remedies under this Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

28. Severability. If any term or provision of this Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

29. Survival. Provisions of this Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including, but not limited to, the following provisions: Warranties, General Indemnification, Intellectual Property Indemnification, Insurance, Compliance with Laws, Confidentiality, Governing Law; Venue, and Survival.