



San Jose, CA 95134-1916

Fax: (408) 577-6620

Where "WJ" appears in the "Conditions of Purchase" this shall mean WJ Communications, Inc., or any subsidiary.

1. ACCEPTANCE AND MODIFICATION OF AGREEMENT.

This order becomes a binding contract, subject to the terms and conditions hereof, when accepted by acknowledgment or commencement of performance. Any modification of this order, to be valid, must be in writing and signed by WJ's authorized purchasing representative. Any acknowledgment form or other form of Seller containing terms and conditions of sale submitted by Seller to WJ shall not have the effect of modifying the terms and conditions hereof. WJ will consider Seller's request for changes only if such request is made in writing and directed to specific clauses in this order. No change shall be binding upon WJ unless specifically accepted in writing.

2. PACKING, SHIPPING, DELIVERY AND RISK OF LOSS.

a) Packing and Shipping

All shipments will be packed to prevent damage in transit, assure lowest transportation cost and meet carrier's tariff requirements. No charge will be made for boxing, crating or storage without prior written authorization of WJ.

Shipping costs shall be paid according to F.O.B. designation. Where WJ is designated as paying freight, Seller bears cost of delivery of goods to Shipper and WJ pays shipping costs in transit. Where Seller is designated as paying freight, Seller bears all shipping costs prior to receipt by WJ.

In the absence of specific instructions from WJ, shipment shall be forwarded by that means of shipment necessary to comply with the delivery date specified on the purchase order. Seller shall not insure shipments in excess of carrier's maximum liability. Materials shipped on this order must not be in excess of quantity ordered. Over shipments may be returned at Seller's expense.

b) Delivery

Time is of the essence in this order. Production schedules at WJ are dependent upon the delivery dates specified herein and delays will substantially impair the value or the contract. Seller shall bear any premium shipping costs necessary to meet contractual delivery schedule. Seller shall report any anticipated delay immediately for whatever cause, including labor disputes, material shortages or other events affecting delivery. WJ reserves the right to terminate this order for anticipated delay and for any untimely delivery. Advanced shipments may not be made without WJ's prior authorization.

c) Risk of Loss

Irrespective of the "F.O.B." designation on the face of this order, title shall pass to WJ upon receipt and acceptance by WJ at its facility and Seller shall bear the risk of loss until such receipt by WJ.

3. WARRANTIES

Acceptance of this order by Seller constitutes affirmation of fact by Seller that goods delivered and services furnished under this order, and the preservation, packaging, marking and preparation for shipment of any such goods, will be of

good quality and workmanship and will conform with the specifications, model description of goods or other requirements of this order, and shall be of merchantable quality and fit for the purpose intended. Such warranties, together with Seller's service warranties and guarantees, if any, shall survive inspection, test acceptance of and payment for the items and shall run to WJ, its successors, assigns and customers. Except for latent defects, notice of any defect or nonconformity must be given by WJ to the Seller within one (1) year after acceptance. WJ may at its option, return the defective or nonconforming item at Seller's expense for credit, or require prompt correction or replacement or have the defective item corrected or replaced at Seller's expense. Defective or nonconforming items shall not be corrected or replaced unless specified on WJ's written order. Items required to be corrected or replaced shall be subject to the provisions of this clause and the clause hereof entitled "Inspection" in the same manner and to the same extent as items originally delivered under this order. However, all warranties for corrected or replaced goods shall run for a period of one (1) year from the date of acceptance of such corrected or replaced goods.

The rights of WJ provided in this clause are in addition to any order rights provided by law, equity or by this order, including but not limited to Seller indemnification of WJ for any loss or damage resulting from the breach of any warranty expressed above. Express or specially negotiated warranties shall not extinguish the warranties set forth above. The goods and services furnished hereunder shall be deemed unique under U.C.C. Section 2716.

4. PRICE EQUALITY

If no price is agreed to herein, the goods or services furnished hereunder shall be charged at prices not exceeding last previously quoted or charged for like quantities. Seller warrants that the prices quoted herein are as low as any net price now charged by Seller to any other customer of the same class for like materials and like quantities. Seller agrees that if at any time during the pendency of this order lower net prices are quoted under similar conditions, such lower net prices shall be from that time substituted for the prices quoted herein.

5. PROPRIETARY DATA AND PROPERTY

WJ has developed and continues to develop certain designs, concepts, configurations, know-how, inventions and other technical data embodied in drawings, photographs, tape measurements, specifications, tools, jigs, dies, fixtures, materials electronic recordings and other items, herein collectively referred to as "proprietary data" which are deemed proprietary and trade secret to WJ and which WJ desires to protect from disclosure.

a) Therefore, Seller agrees to disclose Buyer's proprietary data to only those people within its organization who have a need to know for purposes of performing the order and shall prevent disclosure of such proprietary data to third parties, using no less stringent methods to protect such data as Seller uses to protect its own most valuable proprietary data.

b) Goods made or services furnished hereunder in accordance with WJ's proprietary data or data developed by Seller in connection with W J's proprietary data or data developed by Seller in connection with this order shall not be furnished or quoted to any other person or concern, nor shall they be copied, sold, or advertised for sale by Seller without W J's prior written authorization

c) All proprietary data furnished by WJ in connection with this order or tools, jigs, die fixtures, drawings or samples furnished by W J shall remain the property of W J, and shall be returned or furnished to WJ immediately upon request. Seller agrees to protect all WJ proprietary data against unauthorized disclosure and shall mark all items of proprietary data or arising there from as the property of WJ.

- d) Samples, tools, jigs, die fixtures or drawings made by Seller for performance of this order and incorporate any WJ proprietary data shall not be used for or furnished to any other customer of Seller .
- e) Further, seller shall not, without first obtaining WJ's prior written consent. in any manner advertise or publish the fact that the goods purchased herein have: been furnished or have been contracted to be furnished. Details connected with this order shall not be disclosed to any third party, nor shall goods made to WJ design be supplied to ally third party without prior written consent of WJ.
- f) The obligations of this paragraph shall survive completion or termination of this order.

6. RESPONSIBILITY FOR PROPERTY

Seller shall bear the risk and be responsible for any loss or damage to materials. tools, equipment. data or other property furnished by WJ to Seller.

7. CHANGES

- a) WJ may at any time, by written notice to Seller, signed by WJ's authorized purchasing representative, make changes, within the general scope of this order, in anyone or more of the following: (i) drawings, designs or specifications, where the goods to be furnished are to be specially manufactured for WJ in accordance therewith; (ii) method of shipment or packing; (iii) place of delivery; and (iv) quantities and delivery schedules provided herein. If any such change causes an increase or decrease in the cost of or the time required for the performance of any part of the work under this order, an equitable adjustment shall be made in the order price or delivery schedule, or both, and this order shall be modified in writing accordingly. Any claim by the Seller for adjustment under this clause must be asserted within twenty (20) days from the date of receipt by the Seller of the notification of change; provided, however, that WJ if it decides that the facts justify such action, may receive and act upon any such claim asserted at anytime prior to final payment under this order. However, nothing in this clause shall excuse the Seller from proceeding with the contract as changed.
- b) WJ technical personnel may exchange technical information with Seller's technical personnel concerning goods to be furnished. Any such exchange of information shall be only by way of assistance and shall in no way relieve Seller of obligations to perform this order. WJ shall not be bound by any change effected by Seller unless change is authorized by WJ in accordance with paragraph (a) of this clause.

8. SUSPENSION OF WORK

WJ may, by written order, suspend all or part of the work to be performed under this order for any period not to exceed ninety (90) days. Within such period, or any extension thereof to which the parties may agree, WJ shall either cancel such suspensions or terminate the work covered by suspension in accordance with paragraphs 9 or 10 hereof. Seller shall resume work whenever a suspension is canceled or expires. An equitable adjustment shall be made in the delivery schedule, or order price, or both, if the suspension results in a change in Seller's cost of performance or ability to meet the order delivery schedule, provided Seller asserts a claim for adjustment within twenty (20) days after the end of the period of suspension, and provided the suspended work is not terminated in accordance with paragraph II hereof.

9. TERMINATION AT BUYER'S OPTION

WJ may terminate: this order in whole or in part by written or telegraphic notice of termination, whereupon Seller will terminate pursuant to the notice the work started under the order. Seller will promptly advise WJ of the quantities of applicable work and material on hand or purchased for this order prior to termination and of the most favorable disposition that Seller can make thereof. Seller will comply with WJ's instructions regarding disposition of such work and material within 30 days after receipt of such notice of termination. Seller will submit all its claims pursuant thereto. WJ will have the right to check such claims at any reasonable time by inspecting and auditing the records, facilities, work or materials of Seller relating to this order.

WJ will pay Seller the order price of finished work and the cost to Seller (excluding profit or losses) of work in process and raw materials. based on any audit WJ may conduct and generally accepted accounting principles; less, however. (a) the reasonable value or cost (whichever is higher) of any items used or sold by Seller and (b) the value of any defective, damaged or destroyed work or material. WJ will make no payments for completed work, work in progress or material fabricated or procured by WJ beyond that authorized in writing by WJ. Payment made under this clause will constitute WJ's only liability in the event this order is terminated as provided herein. Seller's acceptance of such payment will

constitute an acknowledgment that WJ has fully discharged such liability. The provisions of this clause will not apply to any termination by WJ for default by Seller or for any other cause allowed by law or under this order.

10. DEFAULT

Seller shall be in default in performance of this order for any action or failure to act, constituting a breach of contract at law, including but not limited to (a) Seller's failure to deliver the goods or services furnished hereunder in compliance with the delivery schedule, or (b) Seller's failure to comply within ten (10) days of having received written notice from WJ with any other provisions of this order or failure to make progress so as to endanger performance. Notice of default will be given by WJ to Seller. If Seller is in default, WJ may terminate this order, or any part thereof, and may invoke all rights and remedies provided by law or under this order, including but not limited to the procurement of similar goods from other suppliers on such terms and conditions as WJ determines to be appropriate. and charging of Seller for any excess costs thereby incurred, in addition to any other damages suffered by WJ as a result of the default. Additionally, upon such termination, WJ may require that Seller transfer title and deliver to WJ (a) any completed supplies and (b) such partially completed supplies and materials, parts, plans, drawings, information and other contract rights as Seller has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated, and the Seller shall, upon direction of W J, protect and preserve property in the possession of the Seller in which WJ has an interest. The rights of WJ under this clause shall be in addition to any other rights provided by law, equity, or by this order.

11. CONTINGENCIES--FORCE MAJEURE

Neither party shall be responsible for its failure to perform due to causes beyond its reasonable control such as acts of God, fire, theft, war, riot, embargoes or acts of civil or military authorities. If delivery is to be delayed by such contingencies, Seller shall immediately notify Buyer in writing and if the delay is expected to continue more than thirty (30) days, Buyer may either (i) extend time of performance, or (ii) terminate the uncompleted portion of the order at no cost to Buyer.

12. PATENTS, TRADEMARKS, TRADE NAMES AND COPYRIGHTS

Seller agrees to indemnify and save harmless WJ, its officers, agents, successors, assigns, and customers against all damages. claims. demands. attorneys' fees and costs of any kind for actual or alleged infringement of any trade name, trademark, cop)rights or patent (unless the goods ordered are of WJ's design) arising in connection with the possession, sale or use or any goods or services furnished by Seller hereunder.

13. COMPLIANCE WITH LAWS

Seller warrants that (i) in the performance of this order it will comply with all applicable laws including but not limited to local, state and federal laws and regulations including but not limited to the Departments of Commerce Department of Transportation and the U.S. and California Environmental Protection Agencies. (ii) no law, rule or ordinance of the United States, a state or any other governmental agency has been violated in the manufacture or sale of the items or in the performance of services covered by this order, and will defend and hold WJ harmless from loss, cost or damage as result of any such actual or alleged violation, or breach of the warranties herein.

14. HAZARDOUS MATERIALS

- a) If goods or services provided hereunder include hazardous materials as defined by relevant local, state, or national law, Seller represents and warrants that Seller and its employees providing Services to Buyer understand the nature of and hazards associated with the handling, transportation, and use of such hazardous materials, as applicable to Seller. Seller will be fully responsible for indemnification of any liability resulting from Seller's actions in connections with (i) providing such hazardous materials to Buyer, or (ii) the use of such hazardous materials in providing Services to Buyer.
- b) Seller will promptly provide Buyer with safety data sheets and any other documentation reasonable necessary to enable Buyer to comply with applicable laws and regulations.
- c) Seller hereby certifies that Items supplied to Buyer do not "contain" and are not "manufactured with" any ozone depleting substances, as those terms are defined by law.

15. ASSIGNMENT OF RIGHTS

The term "subcontract" includes but is not limited to purchase orders, changes and/or modifications thereto. Neither this order nor any right or obligation hereunder (including claims for moneys due) shall be assigned by Seller without prior written consent of WJ. All claims for moneys due or to become due from WJ shall be subject to set-off or counterclaim arising out of this or any other WJ contract with Seller, whether before or after date of this order.

16. INSPECTION, PERFORMANCE AND REJECTION

a) Inspection

All goods to be delivered or services to be furnished under this order shall, at all times and places, including during of manufacture, be subject to inspection and test by WJ (or its authorized agents). WJ shall have access to all areas of Seller's premises and to the premises of Seller's subcontractors in which work on this order is being performed. Seller and Seller's subcontractors shall provide all reasonable facilities for and assistance to WJ in the performance of their duties. WJ will accept or give notice of rejection of goods delivered or services furnished under this order within a reasonable time after receipt. All goods to be supplied or services to be furnished under this order are subject to final inspection and acceptance at WJ's plant, notwithstanding any payment or other prior inspection or design approvals. However, inspection or test by WJ does not relieve Seller from any responsibility regarding defects or other failures to meet the requirements of this order prior to acceptance, and acceptance shall in no event be conclusive regarding latent defects, fraud or such gross mistakes as to amount to fraud. WJ may, at its option, return rejected goods to Seller for credit only or require prompt replacement or correction of rejected goods, all at Seller's expense, including an equitable reduction in the price of this order for rejected goods. Seller shall not resubmit returned goods to WJ without prior written approval and instruction from WJ. Seller shall identify resubmitted goods as previously rejected. WJ may, at its option, reject nonconforming services and require the prompt correction or an equitable reduction in the price of this order or exercise any other remedy provided in paragraph II hereof. WJ reserves the right to charge the Seller any additional cost of inspection and test when goods or services are not ready at the time such inspection and test are required by WJ, or when re-inspection or retest is necessitated by prior rejection.

b) Performance

All goods delivered or services furnished hereunder shall be in strict accordance with the terms and conditions hereof; substantial performance is not acceptable. If samples or first articles are submitted and accepted by WJ, Seller warrants that all subsequent deliveries shall conform to performance specifications and to such first articles or samples. Should a dispute arise over changes to the order, or performance by Seller or acceptability of goods or services, Seller shall not be entitled to stop work pending resolution or such dispute.

c) Rejection

Goods or services not meeting performance specifications of this order shall be rejected as set forth above. WJ shall have all rights provided by the U.C.C. as to rejected goods or services.

17. QUALITY ASSURANCE

a) Quality Assurance Records

Seller shall provide and maintain a quality assurance and control system acceptable to WJ. By delivering the goods or furnishing the services covered by this order, and acceptance of payment for the same, Seller warrants that he has on file in his possession, inspection, test and Analysis reports for the goods delivered or services rendered which reports are adequate to prove conformance by such goods or services to the specifications called for herein. Seller further warrants that such inspection, test and Analysis reports will be available for examination by WJ and/or its authorized representative for II period or four (4) years from the date of delivery.

b) Corrective Action Analysis

When requested by WJ, Seller shall perform a documented corrective action analysis on any goods or services rejected by WJ within two (2) weeks after receipt by Seller of such request. Such analysis shall include the exact cause of the discrepancy and the Seller's corrective action to prevent its recurrence. If WJ returns said goods with such request, Seller shall submit its corrective action analysis to WJ within two (2) weeks after shipment to WJ of the repaired goods or their replacement, when such shipment is authorized by WJ.

18. TAXES

Except as may be otherwise provided in the order, no sales tax shall be payable, and the price is inclusive of all other applicable taxes.

19. INSOLVENCY

In the event of any proceeding, voluntary or involuntary, i.e. bankruptcy or insolvency by or against Seller, or in the event of the appointment, with or without the Seller's consent, of an assignee for the benefit of creditors, or of a receiver, WJ may elect to cancel any unfulfilled part of this order without further cost or liability.

20. INDEMNIFICATION AND INSURANCE

a) Seller agrees to protect, defend, indemnify and hold Buyer harmless from and against any and all claims, liabilities, demands, penalties, forfeitures, suits, judgments and the associated costs and expenses (including attorney's fees), which Buyer may hereafter incur, as a result of death or personal injury (including bodily injury) to any person, destruction or damage to any property, or any violation of governmental law, regulation, or orders, caused, in whole or by (a) Seller's breach of any term or provision of this Agreement, (b) errors, omissions, or willful acts by Seller, its employees, agents, or subcontractors in the performance of this Agreement, (c) the presence of Seller's agents, employees, or subcontractors ("personnel") or equipment on WJ property, or (d) the use by Seller's personnel of WJ provided property and equipment, whether or not claims are based on the condition of such property and equipment or any alleged negligence of WJ in permitting its use.

b) Seller represents that it carries insurance in at least the following amounts:

- i) Workers' Compensation--statutory limits
- ii) Employer's Liability--\$500,000 per employee
- iii) Blanket General Liability--\$1,000,000
- iv) Automobile Liability--\$1,000,000

Such policies or certificates of insurance shall be furnished to WJ upon request.

21. INDEPENDENT CONTRACTOR

In performing Services under this Agreement, Seller shall be deemed an independent contractor and its personnel and other representatives shall not act as nor be agents or employees of Buyer. As an independent contractor, Seller will be solely responsible for determining the means and methods for performing the required Services. Seller shall have complete charge and responsibility for personnel employed by Seller; however, Buyer reserves the right to instruct Seller to remove from Buyer's premises immediately any of Seller's personnel who is in breach of Section 22 of this Agreement. Such removal shall not affect Seller's obligation to provide Services under this Agreement.

22. SECURITY

Seller confirms, to the best of its knowledge, that employees of Seller performing work at Buyer's facilities have no record of criminal convictions involving drugs, assaultive or combative behavior or theft within the last five years. Seller understands that such employees may be subject to criminal history investigations by Buyer at Buyer's expense and will be denied access to Buyer's facilities if any such criminal convictions are discovered.

23. DISPUTES

a) Any dispute arising under this purchase order, which is not settled by agreement of the parties, shall be settled by arbitration, under the commercial rules of the American Arbitration Association, applying California law, with venue at San Jose, California. Pending decision or settlement of any dispute, Seller shall proceed diligently with the performance of this purchase order. Failure of Seller to so proceed shall be cause for default termination.

24. ENTIRE AGREEMENT

This purchase order and the documents identified herein constitute the sole and exclusive understanding between the parties and all prior agreements and understandings are merged herein.

25. NONWAIVER

WJ's failure to insist on strict performance of any provision of this order, or acceptance of nonconforming goods or services shall not be deemed to be a waiver of W J's rights or remedies, or a waiver of any subsequent default in performance.

26. PRECEDENCE

In the event of any inconsistency among the referenced documents, attachments, drawings, specifications or other provisions of this order, the following order of precedence shall apply

- a) Special terms and conditions
- b) General terms and conditions
- c) Specifications
- d) Drawings
- e) All other attachments or documents incorporated herein by reference