



# Purchase Terms Agreement

Updated January 21, 2015

1. **OFFER AND ACCEPTANCE.** The Purchase Order (hereinafter "Order") is an offer to purchase and is governed by the further terms and conditions contained in this agreement between the parties ("Agreement"). Any terms and conditions contained in quotations or similar forms of Seller or that may be proposed in any acknowledgment or acceptance that are in addition to or different from these terms and conditions are hereby rejected and shall not become part of the Order or Agreement without Buyer's specific written consent. The Order must be accepted by Seller by executing and returning to Buyer the Buyer's Purchase Order acknowledgment, which shall also expressly confirm Seller's acknowledgement and acceptance of the terms and conditions of this further Agreement. Seller shall not ship any goods or furnish any services in response to the Order, without first executing and returning Buyer's Purchase Order acknowledgment or Buyer may, at its sole discretion, either reject the tendered goods and/or services or treat Seller's of shipment of goods or furnishing services as constituting Seller's acceptance and assent to the terms of this Agreement.

2. **SHIPMENT.** Shipment shall be made in accordance with specific instructions from Buyer. In the absence of specific shipping instructions, shipment shall be routed via the most economical mode of commercially reasonable transportation available. Material will be classified so that the lowest Commodity Rate may be obtained for the mode of transportation to be used. Unless otherwise agreed to in writing by Buyer, prices contained herein include all charges for packing and crating., Seller is gated to suitably pack, mark and ship all goods in compliance with any applicable laws and regulations, to prevent damage, and to conform to requirements of common carriers. Notwithstanding any shipping, FOB or other terms or rights of the Buyer included herein, Buyer shall have the right to return all freight damaged merchandise to Seller and receive full credit. If requested by Buyer, Seller will mail notice of shipment same day goods are shipped.

3. **DELIVERY.** Time is of the essence. Delivery shall be made in quantities and at the time(s) specified by Buyer. Deliveries not made on the date or dates specified may be canceled or rejected by Buyer. If any goods delivered do not exactly conform to the Order, Buyer may reject such goods or the entire lot received all at no cost to Buyer. If the Order requires or authorizes deliveries of goods in separate lots, and Buyer rejects or cancels one or more separate lots, Buyer may also, at its sole discretion, exercise either or both of the following rights: (i) cancel any undelivered lots and/or; (ii) purchase any or all lots elsewhere and charge Seller with any loss or additional cost incurred as a result. Unless delay is arising out of a cause as defined in Section 16, Force Majeure, premium transportation costs to meet delivery schedules shall be at Seller's sole expense.

4. **WARRANTIES.** Seller warrants that all goods and/or services provided by it: (i) shall be of good quality and workmanship and free from defects, latent or patent; (ii) shall conform to all specifications, drawings, descriptions furnished, specified or required by Buyer; (iii) shall be merchantable and suitable and sufficient for Buyer's intended purposes; and (iv) shall be free of any claim of any third party. **NONE OF THE REMEDIES AVAILABLE TO BUYER FOR THE BREACH OF ANY OF THE FOREGOING WARRANTIES MAY BE LIMITED EXCEPT TO THE EXTENT AND IN THE MANNER AGREED UPON BY BUYER IN THIS AGREEMENT OR A SEPARATE AGREEMENT SPECIFICALLY DESIGNATING SUCH LIMITATION AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE BUYER.** Buyer's inspection and/or acceptance of and/or payment for goods and/or services shall not constitute a waiver by it of any warranties. Buyer's approval of any sample or acceptance of any goods shall not relieve Seller from the warranties or obligations contained herein.

5. **INTELLECTUAL PROPERTY.** Buyer grants herein to Seller a limited license to use the intellectual property rights of Buyer solely for the purpose of labeling, packaging, storing, and supplying the products in accordance with the terms of the Order. Provided, however, that Seller shall not label, package, store, supply or sell any products comprising any of Buyer's intellectual property including but not limited to trademarks, copyrights and trade-dress that are not specifically identified in the Order. However, if Seller infringes or in Buyer's opinion is likely to infringe the patent of Buyer, Buyer shall promptly notify Seller to confirm such claims and both parties shall discuss the licensing terms including paying reasonable royalty to

Buyer in good faith if Seller exactly infringes Buyer's patents confirmed by a court decision. Further, Buyer and Seller acknowledge that a violation of terms stated in the preceding sentence would cause immediate and irreparable harm to Buyer, for which money damages would not be inadequate. Therefore, the Buyer will be entitled to injunctive relief for the Seller's willful breach of any of its obligations under the this paragraph without proof of actual damages and without the posting of bond or other security provided that Buyer discusses the aforesaid licensing terms through amicable consultation first.. Such remedy shall not be deemed to be the exclusive remedy for such violation, but shall be in addition to all other remedies available at law or in equity.

6. INTELLECTUAL PROPERTY WARRANTY. In no events shall Seller be liable to Buyer or any other third party for any damages of any kind if the allegation is based on (a) products made or sold according to the specifications provided by Buyer; (b) the combination or modification of the products not made by Seller; (c) use of the products outside of the scope of the instruction of Seller. If the goods furnished pursuant to the Order are not made to the Buyer's specifications, Seller represents and warrants that (a) the goods furnished hereunder will not infringe any patent, trademark, copyright, or other intellectual property, proprietary or statutory right; (b) Seller shall, at Seller's expense defend any and all actions based on a specific allegation that making, using, offering to sell, selling, exporting and/or importing the goods furnished hereunder infringes any patent, trademark, copyright, or other intellectual property, proprietary or statutory right, provided, however, that Seller shall have control over any such litigation; and, (c) Seller shall, at Seller's expense, indemnify and hold harmless Buyer and Buyer's customers against any liability, cost, loss, or expense of any kind incurred by Buyer and Buyer's customers in connection with an allegation that making, using, offering to sell, selling, exporting and/or importing the goods furnished hereunder infringes any patent, trademark, copyright, or other intellectual property, proprietary or statutory right. Buyer shall promptly notify Seller of any infringement allegation concerning the goods furnished hereunder and submit related documentation to Seller within one week of receipt of such claims. To accomplish the provisions of this Paragraph, Seller shall permit representatives of Buyer to visit Seller's facilities for the purpose of observing the manufacturing, testing, labeling, packaging and storing of products. Buyer agrees to give Seller reasonable notice of any proposed visit to the facilities of Buyer. Any such visits shall be during normal business hours on work days and any information gathered

7. INDEMNITY AND INSURANCE. Seller shall indemnify and hold Buyer harmless, and at Seller's expense, defend Buyer from all liability, loss and expense, or claims, arising out of death or injury to any person or damage to any property, or any other damage or loss, by whomsoever suffered, resulting in whole or in part from any alleged or actual defect, whether latent or patent, in goods sold to Buyer hereunder including without limitation actual or alleged improper construction or design or failure to comply with specifications, or from non-complying services sold to the Buyer hereunder, or from actual or alleged violation by such services or goods (or their manufacture possession, use or sale) of any federal, state or local rule, regulation or governmental order, or from the failure of such goods or services to comply with any express or implied warranty of Seller or with any of the provisions which govern Seller's performance under this Agreement; provided that this indemnity shall be null and void to the extent such liability, loss or expense, or claim(s) therefor, results solely from the negligence of Buyer. Seller will obtain and maintain in force, at no expense to Buyer, Liability insurance naming Buyer as an additional insured and in amounts and with companies acceptable to Buyer, to cover any liability, loss or damage of the kinds above referred to.

8. PRICE AND QUANTITIES. If no price is stipulated herein, the goods or services shall be charged at prices not exceeding those last previously quoted or charged to Buyer for goods or services of like kind or quality. Seller warrants that the prices named herein are as low as any net price now given by Seller to any other customer for goods or services of like kind or quality. Seller agrees that if at any time or before the actual shipping date or the last shipping date specified hereon, whichever occurs last, lower net prices are quoted to any other customer said lower net prices shall be applied to this Order and shall be substituted for the prices contained herein. Goods shipped under this Order must be shipped in the quantity ordered. Over or under shipments may be returned at the option of the Buyer and at the Seller's expense.

9. TOOLS. Unless otherwise specified, all necessary material or tools including, without limitation, dies, gauges, jigs or fixtures required to execute this Order are to be supplied by Seller. If Buyer agrees to pay for or furnish any material or tools, dies, gauges, jigs or fixtures in connection with this Order said items shall be identified by Seller as the property of the Buyer, shall be segregated, when practical, from Seller's similar property and shall be and remain

Buyer's property and shall be used exclusively for Buyer unless Buyer directs otherwise in writing. Seller will account for said items and keep them fully covered by insurance at all times without expense to Buyer. It is understood and agreed that said items may be removed by Buyer at any time and shall not otherwise be disposed of by Seller without written permission from Buyer. Seller will maintain said tools and similar equipment in good working condition and will return them to Buyer on request on termination of the work for which they were furnished.

10. **NON DISCLOSURE.** Seller shall keep confidential the information contained within this Purchase Order and any information provided to Seller (including but not limited to designs, specifications, and drawings) in connection with this Purchase Order and Seller shall not (i) use, (ii) disclose, (iii) copy or (iv) allow access to the information contained within this Purchase Order and any information provided to Seller in connection with this Purchase Order except in the normal and proper course of performing pursuant to this Purchase Order. Seller shall not, without the prior written consent of Buyer, disclose that it has furnished or has contracted to furnish Buyer the goods or services herein. Goods furnished hereunder specially made to Buyer's design, instructions, specifications, or requirements shall not be supplied by Seller to any third party without the express prior written permission of Buyer. Unless otherwise agreed in writing by Buyer, any information disclosed by Seller to Buyer shall be disclosed on a non-confidential basis and shall not be considered confidential or proprietary to Seller and Buyer may use such information without restriction.

11. **CHANGES.** Buyer reserves the right at any time prior to shipment to make changes as to: (i) specifications of any goods to be specifically manufactured for Buyer; (ii) methods of shipment or packing; (iii) place of delivery; (iv) schedule of delivery; and (v) reduce, increase or cancel the quantities ordered. If any such change causes an increase or decrease in the cost of or the time required for performance of this Order, an equitable adjustment shall be made in the contract price or delivery schedule or both. Any claim by Seller for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days from receipt by Seller of the change.

12. **CANCELLATION AND REMEDIES.** (a) Buyer may cancel this Order in whole or in part if, (i) the goods and or services furnished do not conform to Buyer's specification or requirements; (ii) Seller fails to make deliveries as provided herein; (iii) Seller breaches any other term or condition herein; (iv) any representation by Seller proves to have been false or misleading in any material respect; (v) Seller is insolvent, a petition is filed for reorganization of Seller or for its adjudication as a bankrupt Seller makes an assignment for benefit of creditors, a receiver or trustee is appointed for any of Seller's assets or any other type of insolvency proceeding or formal or informal proceeding for the dissolution, liquidation, or winding up of affairs of Seller is commenced. In the event of any such cancellation, Buyer shall have the rights, in addition to its other rights (i) to refuse to accept delivery of goods and/or performance of services; (ii) within one year after delivery, to return to Seller at Seller's expense any goods already delivered and at Buyer's option, either recover all payments made therefor and expenses incident thereto or, at Seller's expense, to receive replacement therefor, except that the rights set forth in this provision (ii) shall not be available upon cancellation by Buyer because of the occurrence, alone, of any of the events set forth in (v) above; (iii) to recover any advance payments to Seller for undelivered or returned goods and/or services not fully performed; and (iv) to purchase elsewhere and charge Seller with any loss incurred as a result thereof. Buyer's right to return goods is not affected by any assignment by Seller of moneys due or to become due hereunder. (b) Upon cancellation as aforesaid, Buyer shall not have any liability to Seller except that Seller may charge to Buyer only the allocable part of the price for conforming goods delivered, and not returned, and for services performed to the extent that Buyer receives material benefit there from. In addition, Buyer shall have the option of paying to Seller, Seller's actual costs for undelivered goods, in which event, such goods, whether in process or finished, and raw materials therefor, shall become Buyer's property and shall be delivered to Buyer as herein provided. In no event shall Buyer be obligated to pay to Seller an amount greater than the prices herein for said delivered and undelivered goods in total.

13. **LIMITATION OF LIABILITY.** (A) SELLER'S MAXIMUM AGGREGATE LIABILITY TO BUYER UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE THE AMOUNT OF 10% OF THE AMOUNT PAID BY BUYER AND RECEIVED BY SELLER. (B) SELLER EXPRESSLY EXCLUDES ALL EXPRESS OR IMPLIED WARRANTIES IN RELATION TO LED die-packaged products (including but not limited to substrate, epi structure, chip, bonding, coating, package, phosphor or any combination thereof.)

14. **NONASSIGNABILITY.** Seller may not assign any right or interest in this Order nor delegate performance of any of its obligations without Buyer's prior written consent.

15. **GOVERNMENTAL LAWS.** Seller warrants that it has complied with all applicable laws, rules and regulations of the United States government and of any state and municipal government which may now or hereafter govern performance under this contract including without limitation and if applicable, the manufacture of goods purchased hereunder. The products or services rendered under this Agreement must be in conformance with national and international foreign trade and customs requirements, including any embargos, sanctions or directives, or this Agreement may be subject to termination by Buyer.

16. **GOVERNMENT SUBCONTRACT.** In the event that this Order bears a government contract number on the face hereof, Seller agrees to comply with all pertinent provisions, agreements and clauses of said contract and pertinent Presidential directives and executive orders to the extent that they apply to the subject matter of this Order and all said pertinent provisions, agreements, clauses, directives and executive orders are herein incorporated by this reference. A copy of said contract or part thereof that Buyer deems applicable to this Order will be given to Seller upon written request.

17. **FORCE MAJEURE.** Seller shall not be liable for delay in delivery arising out of the following causes beyond its control: acts of God, fires, strike, lockout, flood, epidemic, war, insurrection or riot, act of military authority, transportation embargo , provided that Seller provides notice in writing thereof the said event within five (5) days of the commencement thereof. Buyer may extend the delivery schedule to accommodate the delay in delivery caused by the above events(s); however, should said event continue during the term of this Order for a cumulative total of thirty (30) days or more, Buyer may cancel this Order effective immediately upon written notice to Seller, and Buyer's only obligation to Seller shall be as set forth in Section 11 (b) herein.

18. **CODE OF CONDUCT.** The Seller is obliged to comply with the laws of the applicable legal system(s). In particular, the Seller will not engage, actively or passively, nor directly or indirectly in any form of bribery, in any violation of basic human rights of employees or any child labor. Moreover, the Seller will take responsibility for the health and safety of its employees, the Seller will act in accordance with the applicable environmental laws and will use best efforts to promote this Code of Conduct among its suppliers. In addition to other rights and remedies the Buyer may have, the Buyer may terminate the contract and/or any purchase order issued thereunder in case of breach of these obligations by the Seller. However, provided that Seller's breach of contract is capable of remedy, Buyer's right to terminate is subject to the proviso that such breach has not been remedied by the Seller within a reasonable grace period set by Buyer.

19. **SUPPLY CHAIN SECURITY.** The Buyer supports internationally recognized initiatives to secure the commercial supply chain (e.g., C-TPAT, WCO SAFE Framework of Standards) so as to assure freight and or merchandise is not compromised contrary to law. Therefore, the Seller must implement reasonable security control standards to ensure integrity and correctness of merchandise and accompanying commercial documentation relative to the Buyer's transaction. Both parties agree that they will comply with all US export control laws, rules and regulations. The Seller must reasonably address the following disciplines when delivering merchandise to the Buyer: (i) Procedural Security: Procedures should be in place to protect against un-manifested material being introduced into the supply chain. (ii) Physical & Access Security: Seller's facilities should be safeguarded to resist unlawful entry and protect against outside intrusion. Adequate measures should be considered for positively identifying employees, visitors, and vendors and to prevent unauthorized access to information technology systems. (iii) Personnel Security: Seller, in accordance with local laws, should conduct employment screening and interviewing of prospective employees to include periodic background checks and application verifications. (iv) Education and Training Awareness: A security awareness program should be provided to employees covering cargo integrity, determining and addressing unauthorized access and communication protocols for notifying policing agencies when suspected or known illegal activities are present. (v) Conveyance Security: Seller should implement reasonable steps to protect against the introduction of unauthorized personnel and material in conveyance (e.g., containers, trucks, drums, etc.) destined to the Buyer. If as a result of facilitating a shipment to the Buyer, the Seller suspects a supply chain security breach or

concern after the dispatch from its facility, the Seller is obligated to notify the Buyer immediately.

20. **NON DISCRIMINATION:** Keystone Technologies LLC., through its responsible managers, recruits, hires, upgrades, trains, and promotes in all job titles without regard to race, color, religion, sex, national origin, age, persons with a disability, or status as a special disabled veteran, **RECENTLY SEPARATED VETERANS, OTHER PROTECTED VETERANS, AND ARMED FORCES SERVICE MEDAL VETERANS** or a veteran of the Vietnam Era, except where an accommodation is unavailable and an individual's disability is a bona fide occupational dis-qualification.

21. **ENVIRONMENTAL AND SAFETY REQUIREMENTS:** All Sellers furnishing materials or performing work on Buyer's premises agree to the following terms: (i) Supplied goods and services shall be in full compliance with applicable federal, state and local governmental laws, and international directives such as ROHS 2002/95/EG and WEEE 2002/96/EG. (ii) All Sellers' personnel shall be fully trained and otherwise qualified and competent to perform work assigned to them that has environmental impacts or safety risks. (iii) As to all third-party claims and liabilities and associated costs relating to or arising out of the Seller's work at Buyer's plant, the Seller shall indemnify and hold Buyer harmless; and maintain insurance coverage in amounts Buyer set forth in its Insurance Requirements for Seller. (iv) Provide immediate notice, orally and in writing, to the Buyer of all related accidents, incidents and claims by third-parties.

22. **AUDIT RIGHTS OF BUYER.** Buyer shall have the right at reasonable times to audit the books, documents and records of Seller to the extent such books, documents and records involve transactions related to this Purchase Order. Seller further agrees to preserve such books, documents and records as required by law but not less than 3 years from the date of the final transaction. Seller shall give full and free access to all records to the Buyer and/or its authorized representatives.

23. **EXPORT CONTROL AND FOREIGN TRADE DATA REGULATIONS.** Supplier shall comply with all applicable export control, customs and foreign trade regulations. Supplier shall advise Buyer in writing within two weeks of receipt of the order - and in case of any changes to the order without undue delay - of any information and data required by Buyer to comply with all Foreign Trade Regulations in case of export and import as well as re-export, including without limitation, all applicable export list numbers, including the Export Control Classification Number according to the U.S. Commerce Control List (ECCN); and the statistical commodity code according to the current commodity classification for foreign trade statistics and the HS (Harmonized System) coding; and the country of origin (non-preferential origin); and - upon request of Buyer- Supplier's declaration of preferential origin (in case of European suppliers) or preferential certificates (in case of non-European suppliers). Supplier shall be liable for any expenses and/or damages incurred by Buyer due to Suppliers breach of its obligations as stated in this section.

24. **MISCELLANEOUS.** (i) Buyer shall have the right to inspect any work being performed for Buyer by Seller and to inspect Seller's equipment and facilities at any time during business hours. (ii) Whenever Seller shall have in its possession any property of Buyer, Seller shall be deemed an insurer thereof and responsible for its safe return to Buyer. (iii) Whenever Buyer has the right to demand of Seller adequate assurance of due performance, Buyer shall be the sole judge of the adequacy of assurance given by the Seller. (iv) Except as otherwise specifically provided in this Order, Seller shall be liable for and shall pay any sales use excise or other tax or custom duty or fee which may be imposed upon any of the goods or their sales, use or delivery. (v) No delay or omission by Buyer in exercising any right of remedy hereunder shall be a waiver thereof or of any other right or remedy. No single or partial waiver by Buyer thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. All rights and remedies of Buyer hereunder are cumulative. (vi) Headings of paragraphs are for convenience only and shall not be used in the construction or interpretation of this Order. (vii) This Order and the Agreement resulting here from shall be construed under and governed by the laws of the State of Pennsylvania, excluding its conflict of law rules. (viii) If any provision of this Order shall be held invalid, the remainder shall nevertheless be deemed valid and effective. Each provision hereof is being stipulated separately in the event one or more of such provisions should be held invalid. (ix) The Order and Agreement represent the entire understanding and agreement between the parties and supersedes any and all prior understandings, written or oral. (x) No course of prior dealings between Buyer and Seller and no usage of the trade shall be relevant to supplement or explain this Agreement. (xi) Any modification of the

Order and Agreement must be in writing signed by authorized representatives of Seller and Buyer.

25. SURVIVAL OF PROVISIONS. The following paragraphs shall specifically survive the cancellation of the Order and/or termination this Agreement: 4-9 and 14-15, and all other paragraphs of this Agreement that by their nature extend beyond termination.

26. INDEPENDENT CONTRACTORS. It is understood that both Parties hereto are independent contractors and engage in the operation of their own respective businesses. Neither Party hereto is to be considered the agent of the other Party for any purpose whatsoever and neither Party has any authority to enter into any contract or assume any obligation for the other Party or to make any warranty or representation on behalf of the other Party. Each Party shall be fully responsible for its own employees, servants and agents, and the employees, servants and agents of one Party shall not be deemed to be employees, servants and agents of the other Party for any purpose whatsoever.

I understand and agree to the terms and conditions stated within this agreement:

Vendor Name: \_\_\_\_\_

Authorized Representative \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_