

DOCUMENT REVISION HISTORY

TITLE OF DOCUMENT: Supplier Terms and Conditions

NUMBER OF DOCUMENT: N/A

REVISION HISTORY INFORMATION

DATE	REVISION LEVEL	NATURE OF REVISION	TRAINING REQUIRED? (Y OR N)	APPROVED BY (INITIALS)
12/16/11	1	New Supplier Terms and Conditions posted on website.	Y	B.S.
01/05/12	2	Revised paragraph 5 to clarify supplier flow down, revised paragraph 6 to add provision for seller to notify buyer of non-conforming products prior to shipment and to get buyer approval for disposition, revised paragraph 29 to add suppliers and/or location of manufacturing facility, removed 'manufacturing' from processes in section (b).	Y	B.S.

Malmberg Engineering, Inc.
TERMS AND CONDITIONS OF PURCHASE AND SALE

1. **PRODUCTS; SERVICES.** (a) If this Order (as defined below) is for the purchase of goods, Malmberg Engineering, Inc. ("Buyer") agrees to purchase, and the supplier named on the front of the Order ("Seller") agrees to manufacture and sell to Buyer, the goods ("Products") detailed on the face of the Order and in accordance with the terms set forth in this Order. (b) If this Order is for the performance of product plating, painting, grinding and related product enhancement services ("Services"), Seller shall perform the Services in accordance with the specifications provided by Buyer and in a good and workmanlike manner. Seller acknowledges that all or component parts of a product will be delivered to Seller (the "Work-In-Process Product") for the purpose of completing additional assembly or testing. Seller shall accept delivery of and store the Work-In-Process Product in an environment appropriate to maintain the integrity of thereof.

2. **TERMS AND ACCEPTANCE.** (a) The Purchase Order delivered to Seller with respect to Buyer's order of Product and/or Services refers to the within terms and conditions by reference to following website link: <http://www.malmbergeng.com/support.html>. The within terms and conditions are incorporated by reference into the subject Purchase Order as though an original part thereof and, as so incorporated, constitute the entire agreement (collectively the "Order") between Buyer and Seller. (b) The within terms and conditions take precedence over any Seller terms and conditions. If the Order has been issued by Buyer in response to Seller's quotation, the Order is to be accepted in writing by Seller. If, however, for any reason Seller should fail to accept in writing, any conduct by Seller which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance by Seller of the Order and all of its terms. Any terms proposed in Seller's acceptance of Buyer's offer that add to, vary from, or conflict with the terms of the Order are hereby rejected. Any such proposed terms shall be void and the terms herein shall constitute the complete and exclusive statement of the terms of the contract between the parties and may hereafter be modified only by written instrument executed by Buyer. (c) If this Order has been issued by Buyer in response to an offer, and if any of the terms of this Order are additional to or different from any terms of such offer, then the issuance of this Order by Buyer shall constitute an acceptance of such offer subject to the express condition that Seller assent to such additional and different terms herein and acknowledge that this Order constitutes the entire agreement between Buyer and Seller with respect to the subject matter hereof and the subject matter of such offer, and Seller shall be deemed to have so assented and acknowledged unless Seller notifies Buyer to the contrary in writing within 10 days of receipt this Order.

3. **DELIVERY.** Time is of the essence in the performance of this Order by Seller. Delivery is to be made both in quantities and at times specified herein. If Seller's delivery shall fail to meet schedule, Buyer may, without limiting its other rights or remedies, direct Seller to adequately staff completion of the services on an expedited basis without additional cost to Buyer. Buyer shall not be liable for Seller's commitments or production arrangements in excess of the amount, or in advance of the time, necessary to meet Buyer's delivery schedule. Goods delivered in advance of schedule may, at Buyer's option, (i) be returned at Seller's expense for proper delivery, (ii) have payment therefore withheld by Buyer until the date that goods are

actually scheduled for delivery, or (iii) be placed in storage for Seller's account until delivery date specified herein.

4. **INSPECTION; QUALITY CONTROL, AND TEST.** All Products ordered hereunder shall be subject to inspection and testing by Buyer at all times and places, including, without limitation, during the period of manufacture, and with or without notice to Seller. The Products shall be subject to final inspection and to acceptance by Buyer after delivery to Buyer. If the Products are to be specifically manufactured for Buyer in accordance with drawings, designs, or specifications furnished by Buyer, all such drawings, designs, and specifications are incorporated herein and made a part of this Order, and all such Products are required to conform to such drawings, designs, and specifications. Without limiting the foregoing, Seller agrees to allow Buyer, its customers, and their respective agents and representatives, reasonable access to (a) all Seller facilities involved in the manufacture and/or production of the Products, and (b) all Seller records associated with the acquisition of materials, the production process, and the sale and delivery of the Products in order to observe, evaluate, and verify the production methods, quality control procedures, and physical environment of Seller.

5. **SUBCONTRACTORS; SUPPLIERS.** In the event that Seller subcontracts all or any portion of the manufacture of the Products identified in this Order, or Seller delegates any portion of Seller's performance under this Order, Seller shall cause all such subcontractors to agree in writing to terms stated in this Order obligating such subcontractor to the same obligations of Seller hereunder, and Buyer shall be a third-party beneficiary of all such agreements. Seller shall cause all of Seller's suppliers providing parts or materials that are to be incorporated into the Product to agree in writing be subject to the same obligations of performance to Seller as Seller is to Buyer under these Terms and Conditions, and Buyer shall be a third-party beneficiary of all such agreements.

6. **NON-CONFORMING GOODS.** If the Products fail to meet the specifications, or otherwise do not conform to the requirements of this Order, Buyer has the right to reject all or any portion of the Products. Products that have been delivered and rejected may be returned to Seller for replacement, correction, reimbursement, or credit as Buyer may direct. If, after notice, Seller fails to promptly replace or correct such rejected items, same may be replaced or corrected (without thereby exercising wrongful ownership) by Buyer at the expense of Seller. Any Products rejected by Buyer shall be at Seller's risk and expense, and the rejected Products shall not thereafter be tendered for acceptance unless the former rejection or requirement for correction is disclosed. Packaging and handling expense incidental to the return of rejected Products, and applicable transportation cost, shall be charged to Seller's account. Upon non-acceptance, repudiation or rejection of any goods, Buyer shall not be liable for any profit Seller would have made, nor for incidental damages. If all or any portion of the Products are determined to be non-conforming prior to shipment, Seller shall (a) promptly notify Buyer thereof, and (b), subject to Buyer approval, arrange for disposition of such non-conforming Product at Seller's sole cost and expense.

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7. **WARRANTIES.** Seller expressly warrants that, for a period of one year from the date of delivery to Buyer (or Buyer's designee) the Products shall be free from defects, shall be manufactured with good materials and workmanship, and shall conform to or exceed applicable specifications, drawings, samples, and performance specifications delivered to Seller (in the case of specially manufactured products) or in Seller's sales literature and published specifications (in the case of standard Seller products). In the event of a conflict between the terms of this Order and any Seller sales literature, the terms of this Order shall prevail. The within warranties shall not limit any warranties of additional scope given to Buyer by Seller, or limit Buyer's rights or Seller's obligations under any other provision of this Order, at law, or in equity. No warranties or rights to reject non-conforming goods are waived by Buyer by reason of Buyer supplying plans, specifications, or data, inspecting Seller's facilities, verifying production or manufacturing methods, or accepting the goods. When Buyer furnishes specifications to Seller, Seller shall immediately notify Buyer of any infringement claim of which Seller is aware, and Buyer may defend or negotiate the disposition of any such claim. Items repaired or replaced pursuant to this clause by Seller shall, unless otherwise provided herein, be subject to the same qualification or acceptance test as applicable to the item(s) at the time of the original delivery to Buyer. The foregoing warranties shall survive inspection and acceptance of and payment for the items delivered hereunder and shall run to Buyer, its successors, assigns, and customers.

8. **PRICE WARRANTY.** Buyer shall not be billed at prices higher than those stated in this Order.

9. **SELLER PRODUCT RIGHTS.** Seller warrants that the sale, use, or incorporation into manufactured products of all machines, devices, material, software, and firmware which are not of Buyer's design, composition, or manufacture shall be free and clear of infringement of any valid United States patent, copyright, trade mark, mask works, or other proprietary rights. Seller shall indemnify, defend, and hold Buyer and its customers harmless from any and all expenses, liabilities, and losses of any kind, including, but not limited to, attorney's fees, costs, expenses, and fees growing out of claims, suits, or actions alleging such infringements, which claims, suits, or actions Seller agrees to defend. Seller, as part consideration for this Order, and without further cost to Buyer, hereby grants and agrees to grant to Buyer an irrevocable, non-exclusive, royalty-free right and license to use, sell, manufacture and cause to be manufactured products embodying any and all inventions and discoveries made, conceived of, or actually reduced to practice in connection with Seller's performance of this Order.

10. **PROPRIETARY INFORMATION.** If a separate Proprietary Information Agreement exists between the Buyer and Seller which relates to the subject matter of this Order, then Proprietary Information (as defined below) furnished by one party to the other shall be protected pursuant to such Proprietary Information Agreement. If no separate Proprietary Information Agreement exists between the parties, Seller agrees to keep confidential and not to disclose to any person any Proprietary Information received from Buyer in connection with this Order. Seller further agrees to use Proprietary Information only for purposes necessary to performing this Order. Neither the existence of this Order nor the disclosure hereunder of Proprietary Information or any other information shall

be construed as granting expressly by implication, by estoppel, or otherwise, a license under any invention or patent now or hereafter owned or controlled by Buyer or Buyer's customer, except as specifically set forth herein. The obligations of this clause shall survive the completion, cancellation, or termination of this Order. For purposes of this Order, "Proprietary Information" means all information related to the intellectual and/or proprietary property rights, including, but not limited to, software data, electronic files, price lists, customer lists, manufacturing details, proprietary processes, "know how", designs, and blue prints, of Buyer and Buyer's customers.

11. **INDEMNIFICATION.** Seller shall indemnify, defend, and hold Buyer harmless from and against any and all liabilities, claims, obligations, losses, costs, expenses, damages, judgments, awards, causes of action, actions, liens and deficiencies ("collectively "Losses") which are imposed on, incurred by, or asserted against Buyer based upon, resulting from, or arising out of: (a) any untruth or inaccuracy of any representation, warranty or statement by Seller in this Order or in any Seller sales literature; (b) any breach of or default in the performance of any agreement, covenant or obligation of Seller under this Order; (c) claims by third parties arising from Seller's manufacture of the Products; (d) the handling, mishandling, compromising, or destruction of or damage to any Work-In-Process Products delivered to Seller for assembly and/or testing; (e) any personal injury or property damage arising out of acts or omissions of Seller or its agents, employees, or subcontractors in connection with performance under or fulfillment of this Order, except to the extent that any such injury or damage is due directly and solely to Buyer's negligence; (f) compromising or destruction or, or damage to the Products at any time during the manufacturing process and prior to delivery to Buyer, and (g) any cost or expense (including, without limitation, settlement costs and attorneys', accountants' and experts' fees and court costs) incurred by Buyer in connection with any of the foregoing.

12. **BUYER'S PROPERTY.** Title to all property furnished by Buyer to Seller shall remain with Buyer or Buyer's customer, as applicable. Seller shall not alter or use such property for any purpose or for any other party other than that specified by Buyer without the prior written consent of Buyer. Seller shall keep adequate records, which shall be made available to Buyer upon request, and shall store, protect, preserve, repair, and maintain such property in accordance with sound industrial practice, all at Seller's expense. In the event that Buyer's property becomes lost or damaged to any extent for any cause while in Seller's possession, Seller agrees to replace or repair such property, at Seller's expense, in accordance with Buyer's request. At the completion or any termination of the work for the goods or services for which Buyer's property was required, Seller shall request disposition instructions for all such property, or the remainder thereof, whether in its original form or in semi-processed form. Seller shall make such property available to Buyer per Buyer's request, including preparation, packaging, and shipping as directed. Expense for preparation for shipment shall be for Seller's account and shipment shall be made FOB Seller's plant. Buyer may, at its sole discretion and by written notice, divest itself of title in favor of Seller.

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13. RELATIONSHIP OF THE PARTIES. The relationship of Seller to Buyer shall be that of an independent contractor, and nothing herein contained shall be construed as creating any employer/employee, partnership, joint venture, agency, or other relationship of any kind. Seller's employees, agents and representatives (hereinafter collectively "Employees") performing services under this Order shall at all times be under Seller's direction and control. Seller shall pay all wages, salaries, and other amounts due its Employees in connection with performance under this Order, and shall be responsible for all reports and obligations for its Employees, including, but not limited to, social security and income tax withholdings, unemployment compensation, worker's compensation, and equal employment opportunity reporting.

14. SERVICE RATES AND INVOICING. The rates for straight time and overtime work, for which Seller will bill Buyer with respect to Services furnished under this Order shall be those set forth in this Order. Buyer shall make no payment for work performed during holiday, or other overtime periods, unless such work is expressly authorized in advance by Buyer. Seller represents that the rates set forth in this Order include all profit, wages, salaries, overhead, taxes, and other costs and expenses.

15. PAYMENT. Payment due dates, including discount periods, will be calculated from the later of (a) receipt of correct invoice, or (b) acceptance of Service or Product. Payment terms are as set forth on the front of the Order or, if not so set forth, net 30 days from the later of (a) and (b). Payment of invoice shall not constitute approval or acceptance of Services or Products rendered. At any time prior to final payment under this Order, Buyer may have invoices audited as to validity. Payment of Seller's invoices shall be subject to adjustment for any amounts found upon audit or otherwise to have been improperly invoiced.

16. SHIPMENT; RISK OF LOSS. Shipping and freight is FOB at Seller's plant, unless otherwise indicated, plus charges for any special packaging or handling required by Buyer. Seller shall enclose a packing slip not showing prices in each container, and on shipments not so accompanied, Buyer's count or weight shall be conclusive. Seller assumes all risk of loss with respect to the Work-In-Process Product while in the possession or control of Seller. Risk of loss passes to Buyer upon delivery to the carrier at the FOB point. No extra charge for packaging or insurance shall be allowed unless specifically noted herein. Goods shall (i) be packaged to ensure safe arrival at destination, (ii) be described to conform to carrier's classification rules so as to obtain lowest transportation cost, and (iii) not be insured nor show declared value for shipment beyond FOB point. Seller shall notify Buyer in advance of shipment so that Buyer may acquire appropriate insurance from the FOB point to the point of delivery.

17. SET-OFF. Buyer is entitled at all times to set off any amount owing at any time from Seller, or any of its affiliated companies to Buyer, against any amount payable at any time by Buyer or any of its affiliated companies to Seller.

18. DISPUTES. Any dispute arising under, out of, or in connection with this Order that is not settled by agreement of the parties may be resolved by appropriate legal proceedings. Pending any

decision, appeal, or judgment, or the settlement of any such dispute arising under, out of, or in connection with this Order (except with respect to any cancellation or termination of Order work), Seller shall proceed diligently with the performance of this Order.

19. REMEDIES. Each of the rights and remedies reserved by Buyer in this Order shall be cumulative and additional to any other or further remedies provided in law or equity or in this Order. A waiver of a breach of any provision hereof shall not constitute a waiver of any other breach.

20. ASSIGNMENT. Neither this Order nor any interest therein, including any claims for monies due or to become due with respect thereto, may be assigned except with the written consent of Buyer, which consent shall not be unreasonably withheld. Notwithstanding any approved assignment, any payment to any assignee of any claim under this Order, in consequence of such consent, shall be subject to set-off, recoupment, or other reduction for any claim that Buyer may have against Seller.

21. NOTICE OF LABOR DISPUTES. Whenever Seller has knowledge that any actual or potential labor dispute is delaying, or threatens to delay, the timely performance of this Order, Seller shall immediately give written notice thereof, including all relevant information with respect thereto, to Buyer. Seller shall insert the substance of this clause, including this sentence, in any subcontract hereunder.

22. COMPLIANCE WITH LAWS. Seller shall, in the performance of work or services under this Order, fully comply with all applicable federal, state, or local laws, rules, regulations, or ordinances.

23. INTELLECTUAL PROPERTY. Notwithstanding any other provision of the Order to the contrary, Buyer shall retain a worldwide, royalty free, unrestricted, non-exclusive, right and license to use all technical data and intellectual property created by the Seller under this Order, and to make, use and sell products derived therefrom.

24. FORCE MAJEURE. Neither party shall be responsible to the other party for any delay in performing its obligations under this Order due to any events of *force majeure*, except as otherwise provided for within this clause. *Force majeure* means any act of God, war, act or failure to act of any government in its sovereign capacity, fire, flood, earthquake, strike, epidemic, quarantine, embargo, nuclear incident, terrorist attack, or any other act beyond reasonable control and without the fault of either party or its subcontractors. The party whose performance of obligations hereunder has been affected by any events of *force majeure* shall notify the other party within five calendar days thereafter by sending a detailed statement and sufficient evidence with respect thereto, and shall likewise notify promptly of any subsequent change in the circumstances. The affected party shall exercise its best efforts under the circumstances to remove or remedy the events of *force majeure* and the effects thereof and resume full performance hereof as soon as possible.

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25. TERMINATION FOR CONVENIENCE. Buyer may at any time terminate this Order in whole or in part for its convenience upon written notice to Seller. In the event of termination by Buyer prior to completion of this Order, Seller shall be entitled to reasonable termination charges consisting of a percentage of the Order price reflecting the percentage of the work performed prior to termination, plus any reasonably incurred settlement expenses.

26. TERMINATION FOR DEFAULT. Buyer may terminate this Order in whole or in part for default in the event of the occurrence of any of the following: (1)(i) Insolvency of the Seller (Seller shall be deemed to be insolvent if it has ceased to pay its debts in the ordinary course of business); (ii) the filing of a voluntary petition to have Seller declared bankrupt; (iii) the appointment of a receiver or trustee for Seller, or (iv) the execution by Seller of an assignment for the benefit of creditors; or (2) Failure of Seller to (i) deliver the supplies or perform the services within the time specified in this Order or any authorized extension, (ii) make progress so as to endanger the performance of this Order, or (iii) perform to any other substantive provisions of this Order. The Seller shall diligently proceed with performance of any portion of the Order not terminated.

27. EFFECT OF TERMINATION. Any termination by Buyer, whether for default or otherwise, shall be without prejudice to any claims for damages or other rights of Buyer against Seller. Buyer shall have the right to audit all elements of any termination claim, and Seller shall make available to Buyer on request all books, records, and papers relating thereto.

28. STOP-WORK ORDER. The Buyer may, at any time, by written order to the Seller, require the Seller to stop all, or any part, of the work called for by this Order for a period of up to 90 days after the written order is delivered to the Seller, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the stop-work order, the Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Seller, or such shorter period as identified in the notice to Seller, or within any extension of that period to which the parties shall have agreed, the Buyer shall either (1) cancel the stop-work order; or (2) terminate the work covered by the stop-work order as provided for in this Order.

If a stop-work order issued under this clause is canceled, or the period of that order or any extension thereof expires, the Seller shall resume work. The Buyer shall make an equitable adjustment in the delivery schedule or contract price, or both, and this Order shall be modified in writing accordingly, if (1) the stop-work order results in an increase in the time required for, or in the Seller's cost properly allocable to, the performance of any part of this Order; and (2) the Seller asserts its rights to the adjustment within 20 days after the end of the period of work stoppage.

If a stop-work order is not canceled and the work covered by the stop-work order is terminated for the convenience of the Buyer, the Buyer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement. If a stop-work order is not canceled and the work covered by the order is terminated for default

of Seller, the Buyer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order subject to offset for any damages or Losses arising from such default.

29. CHANGES. (a) Buyer may at any time, by a written order, make changes within the general scope of this Order for compliance by Seller, in any one or more of the following: (i) drawings, designs, or specifications, where the supplies or services to be furnished are to be specifically manufactured or produced for Buyer in accordance therewith; (ii) method of shipment or packing; (iii) place of delivery; and (iv) delivery schedule and period of performance of work. 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 (whether or not changed by such written order), an equitable adjustment shall be made in the Order price or delivery schedule and period of performance, or both, and the Order shall be modified in writing accordingly. Any claim by Seller for equitable adjustment under this clause shall be asserted within 10 days from the date of receipt by Seller of the notification of change. In the event that Seller fails to timely advise Buyer that an adjustment is necessary, such failure shall constitute Seller's agreement to perform such change in accordance with the price and delivery requirements specified in the original Order and/or any subsequent revisions thereto. (b) Seller shall immediately notify Buyer of any changes in Product components, materials, specifications, processes, suppliers, and/or location of the manufacturing facility, and Seller shall obtain Buyer's prior written approval to any such changes or modifications, which approval may be granted or withheld in Buyer's sole discretion.

30. LIMITATION OF BUYER'S LIABILITY; STATUTE OF LIMITATIONS. In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages. Buyer's liability on any claim of any kind for any loss or damage arising out of or connected with or resulting from this Order, or from the performance or breach thereof, shall, in no case, exceed the price allocable to the Products or Services or unit thereof which gives rise to the claim. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer as to the goods or services delivered hereunder must be commenced within one year after the cause of action has accrued.

31. SEVERABILITY. The invalidity, in whole or in part, of any provision of this Order shall not void or otherwise affect the validity of any other provision.

32. RECORDS RETENTION. Seller shall retain all records relating the manufacture of the Products (or the delivery of Services) hereunder, and Seller's performance under the Order and these terms and conditions for a period of seven years from and after the completion of performance under the Order.

33. GOVERNING LAW. This Order, and the acceptance thereof, shall be a contract made in the state of California, and shall be governed by and construed according to the laws of the state of California without regard to its choice of laws provisions; provided, however, this Order shall be given a fair and reasonable interpretation without regard to or aid of provisions of California law which interpret ambiguities against the drafter.

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34. **JURISDICTION; VENUE; FEES.** Suit to enforce this Agreement may be brought only in the federal and state courts located in the County of Alameda, California, and such courts have exclusive *in personam* jurisdiction and venue with respect to such party. In any action to enforce or interpret this Agreement, the prevailing party is entitled to recover, as an element of the costs of suit, and not as damages, reasonable attorneys' fees to be fixed by the court (including, without limitation, costs, expenses and fees on any appeal).