

MIRADRY INC PURCHASE ORDER TERMS AND CONDITIONS

1. **Price.** Prices for Products shall be as indicated on the face of this purchase order. If no price is indicated Seller warrants that the prices charged for the Products do not exceed the price last paid Seller by Purchaser for comparable products unless Purchaser has consented in writing in advance to such price increases.
2. **Changes - Purchase Order.** No changes in or additions to the terms of this purchase order, including these Terms and Conditions shall be binding upon Purchaser unless approved by Purchaser in writing.
3. **Delivery and Shipping Instructions.** Seller shall pack Products in accordance with good commercial practice, acceptable to common carriers for shipment at the lowest rates for the goods. All goods shall be shipped F.O.B. the destination indicated on the face hereof ("Delivery Point"). No extra charge shall be made for packaging materials unless expressly authorized in this purchase order. All freight, insurance and other shipping expenses to the Delivery Point will be borne by Seller. Time is and shall remain of the essence in this purchase order. No partial or complete delivery will be made prior to the delivery date(s) indicated on the face hereof without Purchaser's prior written consent. Purchaser reserves the right to refuse or return at Seller's risk and expense shipments made in excess of Purchaser's purchase orders or in advance of delivery dates specified, or to defer payment of advanced deliveries until scheduled delivery dates. Seller shall notify Purchaser immediately of any anticipated delay in Seller's performance under this purchase order.
4. **Risk of Loss.** Title and risk of loss to each Product shall remain with Seller until such Product is delivered to the Delivery Point.
5. **Payment.** Payment terms shall be net thirty (30) days from the date of invoice if not otherwise specified on the face of this purchase order.
6. **Invoices.** Each delivery shall have a corresponding invoice and shall: (a) cover no more than one purchase order; and (b) display the purchase order number.
7. **Over shipments.** Purchaser is only obligated to pay only for maximum quantities ordered. Over shipments will be held by Purchaser at Seller's risk and expense for a reasonable time awaiting shipping instructions. Return shipping charges for excess quantities will be at Seller's expense.
8. **Inspection and Acceptance.** Notwithstanding any prior inspection or payments, all Products will be subject to inspection within a reasonable period of time after receipt. Purchaser will have the right to reject, require correction, or accept with adjustment to price any Product that fails to conform to the warranty set forth in Section 11 below, or that is otherwise not in

conformity with the requirements set forth in this purchase order. Purchaser may return non-conforming Products to Seller at any time.

9. **Intellectual Property.** Seller warrants that to the best of its knowledge, the Products sold hereunder and the use of such Products in accordance with Seller's documentation do not infringe any United States or foreign patents, copyright, trademarks, or trade secrets. Seller grants Purchaser all rights and licenses necessary for Purchaser to use, transfer, pass-through and sell the products or services provided in this purchase order and to exercise the rights granted under this purchase order. Seller agrees to defend, hold harmless, and indemnify Purchaser from any claim that Seller's products or service infringes any intellectual property rights or any claim arising from the failure of Seller to comply with its warranties and obligations under this purchase order, provided Purchaser gives Seller prompt notice in writing of the institution of any such suit, reasonable assistance, and sole control of the defense and/or settlement thereof. Notwithstanding the foregoing, Seller will have no indemnity obligation under this Section 9 to the extent any Products sold hereunder are allegedly infringing as a result of Seller's compliance with specific written instructions of Purchaser. If a claim of infringement is made, Seller will, at its own expense, exercise the first of the following remedies that is practicable: (i) obtain for Purchaser the rights granted under this purchase order; (ii) modify the products or services so they are non-infringing and in compliance with this purchase order; (iii) replace the products or services with non-infringing one that comply with this purchase order; or (iv) accept the return of infringing products and the cancellation of infringing services and refund any amount paid.

10. **Publicity.** Seller shall not disclose to third parties (including denial or confirmation thereof) the existence or terms of this purchase order without Purchaser's prior written consent.

11. **Warranty.** Seller warrants that the Products (i) will be free from defects in materials, workmanship and fabrication, (ii) will be manufactured strictly in accordance with the specifications, designs, and drawings, if any, which are hereby incorporated by reference ("Specifications") and with any samples furnished by Seller and approved by Purchaser, and (iii) will be suitable for the purpose(s) communicated to Seller by Purchaser. These warranties shall survive acceptance and payment, and shall run to Purchaser, its successors, assigns, customers, and the users of Purchaser's products.

12. **Out-of-Warranty Repairs.** Seller will repair out-of-warranty Products for Purchaser at Seller's standard rates then in effect for such services.

13. **Changes - Specifications.** Purchaser shall have the right by written order to make changes from time to time in the work to be performed or the Products to be furnished by Seller hereunder, provided that Purchaser requests such changes prior to the scheduled delivery date for the Products. If such changes materially increase or decrease Seller's obligations hereunder, the parties will negotiate in good faith an equitable adjustment to the Price. Any claim for adjustment must be asserted in writing by Seller within thirty (30) days from the date the change is ordered. Nothing contained in this Section 13 shall relieve Seller from proceeding without delay in the performance of its obligations hereunder as changed.

14. **Cancellation.**

(a) Cancellation for Cause. Purchaser may cancel this purchase order, in whole or in part, without liability to Purchaser if, in Purchaser's good-faith opinion, Seller (i) has failed to make delivery of the Products within the time specified herein, or any extension thereof by written change order or amendment; or (ii) has failed to replace or correct defective Products in accordance with the provisions of Sections 8 and 11 above; or (iii) has failed to perform any of the other provisions of this purchase order as to endanger performance in accordance with its terms. If the purchase order is canceled for cause, Purchaser may procure, upon such terms and in such manner as Purchaser may deem appropriate, goods or services similar or substantially similar to those canceled. Seller will then be liable to Purchaser for any excess costs occasioned thereby. If all or a portion of this purchase order is canceled for cause, Purchaser may require Seller to transfer title and to deliver to Purchaser, in the manner and to the extent directed by Purchaser, (i) all completed items not yet delivered and (ii) any partially completed items and materials that Seller has produced or acquired for the performance of the terminated portion. Seller will, upon direction of Purchaser, protect and preserve the property listed in this Section 14(a) that is in the possession of the Seller. Payment for completed items delivered to and accepted by Purchaser under this Section 14(a) will be in an amount (not to exceed the contract price) agreed upon by Seller and Purchaser; however, Seller's obligation to carry out Purchaser's direction as to the delivery, protection, and preservation of such property will not be contingent upon prior agreement as to such amount.

(b) Cancellation for Convenience. Purchaser may cancel or reschedule this purchase order free of charge and in whole or in part, at any time prior to shipment for its convenience, by written notice to Seller prior to the scheduled delivery date. Seller shall submit cancellation claims with respect to Seller's non-cancelable third-party commitments as set forth in Section 14(c) below, within sixty (60) days after the effective date of the cancellation, and such claims shall be subject to equitable adjustment based on negotiation. Seller's failure to submit such claim within sixty (60) days will constitute waiver of all claims and a release of all Purchaser's liabilities. Purchaser shall have the right to reasonably audit all elements of any cancellation claim and Seller shall make available to Purchaser on request all books, records, and papers relating thereto for one (1) year from the date of cancellation.

(c) Effect of Cancellation. Any cancellation by Purchaser, whether for default or otherwise, shall be without prejudice to any claims for damages or other rights of Purchaser against Seller. On receipt by Seller of Purchaser's notice of cancellation, Seller shall and to the extent specified in such notice, stop work hereunder and the placement of subcontracts, terminate work under subcontracts outstanding hereunder, use best efforts to revoke any financial commitments to third parties and take any necessary action to protect property in Seller's possession in which Purchaser has or may acquire an interest. Upon cancellation of this purchase order, all rights and licenses granted hereunder shall terminate and Seller shall return Purchaser's Confidential Information as defined in Section 15 below. Nothing in this Section 14 is intended to excuse Seller from proceeding with any uncanceled portion of this purchase order.

(d) Survival of Provisions. The rights and obligations of the parties pursuant to Sections 9, 10, 11, 12, 14(b), 14(c), 14(d), 15, 16, 18, 19, 20, and 21 shall survive the cancellation, termination or expiration of this purchase order for any reason.

15. **Confidentiality.** Seller agrees that any data, designs, specifications and all other business, product, technical and financial information it obtains from Purchaser, including information relating to any purchase order, shall be "Confidential Information" and is the sole property of Purchaser. Confidential Information shall also include all information supplied to Seller by Purchaser and marked "Confidential" or "Proprietary". Seller agrees that it will not use in any way for its own account or the account of any third party, nor disclose to any third party, any such Confidential Information. In the event of cancellation of this purchase order, there shall be no use or disclosure by Seller of any Confidential Information of Purchaser, and Seller shall not manufacture or have manufactured any devices, components or assemblies using any of Purchaser's Confidential Information.

16. **Proprietary Rights.** Purchaser shall retain all right, title, and interest in and to any and all data, designs, specifications and all other business, product, technical and financial information furnished to Seller by Purchaser and all intellectual property rights thereto. To the extent that Seller has engaged in any technical development work at the behest of Purchaser or in response to this Purchase Order, any intellectual property related to arising from such technical development shall be owned by Purchaser. Seller hereby makes any necessary assignments to affect the ownership provisions of this Section 16. Seller agrees to execute such documents and take such other actions as Purchaser may reasonably request to evidence and perfect the foregoing assignments.

17. **Compliance with Laws.** Seller shall manufacture and label Products in strict accordance with all applicable federal, state, local and other governmental laws, rules, orders, and regulations, including any and all health and safety laws and regulations ("Laws"). Seller shall be responsible for current and ongoing familiarity and compliance with all Laws applicable to the manufacture, sale, operation, and use of the Products. In addition, Seller shall monitor the appropriate information sources closely for changes in such Laws.

18. **Damages.** Purchaser's liability for breach of this purchase order shall not exceed the purchase price of the Products giving rise to the liability. IN NO EVENT SHALL PURCHASER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR PRODUCT LIABILITY, REGARDLESS OF WHETHER PURCHASER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

19. **Indemnity.** Seller shall defend, indemnify, and hold harmless Purchaser, its officers, agents, employees, customers and users of the Products (collectively, the "Indemnitees"), from and against any liability, damage, loss, or expense (including reasonable attorneys' fees and expenses of litigation) in connection with any claims, suits, or proceedings alleging: (a) any

personal injury, death, or property damage under any theory of product liability (including, but not limited to, actions in tort (including negligence), contract, and strict liability) concerning any product, process or service made, used or sold by Seller or its subcontractors hereunder unless such claim, suit, or proceeding results directly from a design defect in Specifications furnished by Purchaser to Seller; (b) the failure of Seller to timely deliver the Products; or (c) actions and proceedings brought by the federal government or any state or local government, or any agency or instrumentality thereof by reason of any claim or findings by said public authority that any Product is not as herein guaranteed and warranted.

20. **Quality.** Seller shall, where required by Purchaser or under applicable law, manufacture Products in accordance with then-current good manufacturing practice and standards as provided for (and as amended from time to time) in the current Quality System Regulations (QSR), as defined by the U.S. Food and Drug Administration (FDA), including 21 C.F.R. § 820 et seq. and in ISO 9000, and/or ISO 13485, as applicable and specifically agrees to notify Purchaser prior to initiating any changes to materials or material sources, processes (including equipment and manufacturing location), or testing affecting products or services provided to Purchaser for determination of impact in accordance with Title 21, Code of Federal Regulations, Section 820.50. Seller shall permit Purchaser or its representatives and/or the FDA or other regulatory authorities to conduct periodic monitoring visits, at mutually acceptable times and during Seller's regular business hours, to inspect and audit manufacturing and other activities hereunder, the facilities used, and relevant books and records in order to determine Seller's compliance with Laws and this purchase order, and Seller shall cooperate with Purchaser or its representatives and/or the FDA or other regulatory authorities during such periodic monitoring visits.

21. **Miscellaneous Provisions.**

21.1 Governing Law and Jurisdiction. This purchase order shall be governed by and interpreted in accordance with the laws of the State of California without reference to conflicts of law principles. Any dispute arising out of this purchase order shall be brought in, and the parties' consent to personal and exclusive jurisdiction of and venue in, the state and federal courts within San Francisco, California.

21.2 Severability. In the event that any provision or provisions of this purchase order shall be held to be unenforceable, the parties shall renegotiate those provisions in good faith to be valid, enforceable substitute provisions which provisions shall reflect as closely as possible the intent of the original provisions of this purchase order. If the parties fail to negotiate a substitute provision, this purchase order will continue in full force and effect without said provision and will be interpreted to reflect the original intent of the parties.

21.3 Independent Contractors. The relationship of Purchaser and Seller hereunder is that of independent contractors and nothing contained herein will be construed (i) to give a party the power to direct or control the day-to-day activities of the other or (ii) to constitute the parties as partners, joint venturers, co-owners, or otherwise as participants in a joint or common enterprise.

21.4 Force Majeure. Neither party shall be liable for damages for any delay arising out of Acts of God, fire, flood, labor disputes, riots, wars or other causes beyond their reasonable control.

21.5 Assignment. Neither party may assign or delegate this purchase order or any of its licenses, rights or duties under this purchase order without the prior written consent of the other party, provided that Purchaser may assign this purchase order without such consent to a person or entity into which it has merged, or which has otherwise succeeded to all or substantially all of its business or assets to which this purchase order relates.

21.6 Waiver. The failure of either party to enforce at any time the provisions of this purchase order shall in no way be constituted to be a present or future waiver of such provisions, nor in any way affect the validity of either party to enforce each and every such provision thereafter.

21.7 Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid, or otherwise delivered by hand, by messenger or by telecommunication, addressed to the other party at the addresses set forth on this purchase order or at such other address furnished with a notice in the manner set forth herein.

21.8 Entire Agreement. This purchase order, including the Specifications, constitutes the entire agreement between the parties and supersedes all previous agreements and understandings, whether oral or written, between the parties with respect to the subject matter hereof. This purchase order may be modified or amended only in a writing signed by the duly authorized representatives of both parties.