



SoftInWay, Inc.
20 Burlington Mall Road, Suite 450
Burlington, MA 01803
781-328-4310

TERMS AND CONDITIONS

1. **DEFINITIONS AND EXPLANATION.** "Buyer" means SoftInWay, Inc., its subsidiaries, and affiliates. "Seller" means the party with whom Buyer is contracting and any reference to "vendor," "subcontractor," "contractor" or "supplier" shall also mean Seller. The word "Purchase Order" ("Order") means the name or title of the instrument of contracting, including all documents, exhibits and attachments referenced thereon, and once accepted by Seller as herein provided shall constitute a valid and binding agreement between Buyer and Seller for the sale and Purchase of those goods, software, services, supplies, materials, articles, items, parts, components or assemblies ("Products") described herein. In the event of a conflict between these terms and conditions and the terms set forth in any written agreement between Buyer and Seller, the terms of any written agreement between Buyer and Seller shall prevail.

2. **ACCEPTANCE OF ORDER.** This Order is Buyer's offer to Seller. Seller's Acceptance is expressly limited to the terms of the Order and Buyer hereby objects to any additional or different terms in Seller's acceptance. Seller accepts this Order as written upon beginning performance, by invoicing, signing the Order document or other commercially acceptable means manifesting Seller's desire and intent to enter into a binding contract with Buyer.

3. **COMPLETE AGREEMENT.** This Order (together with any written agreements in existence between the parties) is the complete and exclusive statement of the terms of the agreement between Seller and Buyer.

4. **MODIFICATION.** No modification of this Order (including any additional or different terms in Seller's acceptance) shall be binding on Buyer unless agreed to in writing and issued by Buyer's Purchasing Representative.

5. **PACKING AND SHIPPING.** Unless otherwise provided on the face of this Order, the following provisions shall apply to all shipments. Seller shall; (A) comply with the Buyer Routing Guide (available upon request) for shipment of Products; (B) prepare all Products for shipment to prevent damage or deterioration; (C) defray all direct charges for preparation, packing, crating, or cartage unless separately stated in the Order; (D) consolidate into one shipment all Products to be forwarded on each day by the same means of transportation; (E) number and mark each container consecutively with applicable Order and part number; (F) indicate the container and Order numbers on the applicable bill of lading; (G) place inside the No. 1 container, one copy of the packing sheet showing Order number(s), and attach also, one copy to the outside of the container; (H) request that the Shipper include on Shipper's invoice to Buyer the appropriate Order number(s); (I) delete any declaration concerning value of the shipment except when tariff rating is dependent upon the released or declared value, in which event, value shall be released or declared at the maximum value for the lowest rating or rate.

6. **DELIVERY.** Time is of the essence in the performance of the Order. Deliveries shall be strictly in accordance with the quantities and schedule specified in the Order. If at any time appears Seller may not meet such schedule, Seller shall immediately by verbal means (to be confirmed in writing) notify Buyer of the reasons for and estimated duration of the delay and if requested by Buyer, make every effort to avoid or minimize the delay to the maximum extent possible including the expenditure of premium time and shipping via air or other means of fast transportation. Any additional cost caused by these requirements shall be borne by Seller, unless the delay in delivery arises out of causes beyond control and without the fault or negligence of Seller or its subcontractors. The foregoing requirements are in addition to all of Buyer's other rights and remedies as may be provided by law or this Order.

7. **TITLE AND RISK OF LOSS.** Unless otherwise specified herein, title to and the risk of any loss of or damage to the Products shall pass from Seller to Buyer F.O.B. Buyer's plant. Passing of title upon such delivery shall not constitute acceptance of the Products by Buyer or relieve Seller of any of its obligations hereunder. Notwithstanding any other provision in this Purchase Order, Buyer, as a reseller, shall not be liable for payment to Seller in the event that an end user customer fails to remit payment for the Products provided under this agreement, and payment obligation to Seller shall be strictly contingent upon actual receipt of payment from the end user customer, and Buyer assumes no financial responsibility for any default, insolvency, or non-payment by the end user customer.

8. **INVOICE AND PAYMENT.** Unless otherwise specified, a separate invoice shall be issued for each shipment. No invoice shall be issued prior to shipment of Products. No payment will be made prior to receipt of Products and the correct invoice, and Buyer reserves the right to delay payment until the Products have been accepted. Payment terms are net sixty (60) days. Payment due dates, including discount periods, will be computed from date of receipt of Products and correct invoice (whichever is later). Unless freight and other charges are itemized, any discount taken will be taken on the full amount of the invoice. Buyer has the right without loss of discount privileges to pay invoices covering Products shipped in advance of the schedule at the normal maturity after the date specified for delivery. Any payment shall not constitute acceptance of the Products. To assure timely payment, invoices shall (1) be sent to the billing address displayed on PO (2) show PO # and PO Line number, (3) match PO description (4) not exceed PO quantity (5) not exceed PO amount and (6) where possible, avoid partial billing.



9. **PRICE WARRANTY.** Seller warrants that the price of the ordered Products does not exceed the price charged by Seller to any other customer purchasing the same Products in like or smaller quantities, and under similar conditions of purchase.

10. **INSPECTION, ACCEPTANCE AND REJECTION.** All Products are subject to final inspection and acceptance at destination, notwithstanding the F.O.B. point or any payment or prior inspection at source. Final inspection will be made at a reasonable time after receipt of Products. Buyer's failure to inspect any of the Products hereunder shall neither relieve Seller from responsibility for such Products as are not in accordance with the requirements of this Order nor impose liability on Buyer. Any tender of Products which is nonconforming as to the quality or quantity or the delivery schedule shall constitute a breach of this Order and Buyer shall have the absolute right to reject such Products. Buyer shall notify Seller as to such rejection and Buyer shall have all the remedies as provided by law and this Order.

11. **WARRANTIES.** Seller warrants that all Products delivered under this Order shall conform to the requirements of this Order (including all applicable descriptions, performance criteria, specifications and drawings); shall be free from defects in material and workmanship and shall, to the extent not manufactured pursuant to detailed designs furnished by Buyer, be free from all defects in design and fit for the intended purposes. Buyer's approval of designs furnished by Seller or any approval of Seller's "First Article" shall not relieve Seller of its Obligations under this Warranty. Seller further warrants that it will have good title to the Products, free and clear of all liens and encumbrances and will transfer such title to Buyer. This warranty shall survive any inspection, delivery, acceptance or payment by Buyer.

12. **TERMINATION FOR CONVENIENCE.** Buyer reserves the right to terminate this Order or any part hereof for its sole convenience.

13. **TERMINATION FOR CAUSE.** Buyer may also terminate this Order or any part hereof for cause in the event of any default by the Seller, or if the Seller fails to comply with any of the terms and conditions of this offer. Without limiting any other rights of termination that Buyer may have, late deliveries, deliveries of products which are defective, or which do not conform to this order, and failure to provide Buyer, upon request, of adequate assurances of future performance shall all be causes allowing Buyer to terminate this Order for cause.

14. **DISCLOSURE OR DISPOSAL.** Seller shall safeguard and keep secure all designs processes, drawings, specifications, reports, Data and other technical or proprietary information and the features of all parts, equipment, tools, gauges, patterns, and other items furnished or disclosed to Seller by Buyer. Unless otherwise provided herein, or authorized by Buyer in writing, Seller shall use such information and items, and the features thereof, only in the performance of this Order. Thus, Seller shall not sell, or otherwise dispose of as scrap or otherwise, any completed or partially completed or defective Products without defacing or rendering such Products unsuitable for use. Upon completion or termination of this Order, Seller shall, at Seller's expense, make such disposition of all such information, items and Products as herein required or as may be subsequently directed by Buyer.

15. **PATENT AND COPYRIGHT INDEMNITY.** Seller shall defend Buyer, Buyer's customers, and any subsequent seller or user of the Products against all claims and proceedings alleging infringement of any United States or foreign patent and copyright by any Products delivered under this Order, and Seller shall hold them harmless from any resulting liabilities and losses, provided Seller is reasonably notified of such claims and proceedings. Seller's obligation shall not apply to Products manufactured pursuant to detailed designs developed and furnished by Buyer not to any infringement arising from the use or sale of Products in combination with items not delivered by Seller if such infringement would not have occurred from the use or sale of such Products solely for the purpose for which they were designed or sold to Buyer.

16. **ASSIGNMENT** Seller may not assign its obligations hereunder without the prior written consent of Buyer.

17. **CONTRACTORS.** Individuals working on Buyer's property are required to comply with all local, state, province or country laws and regulations governing workplace safety and hazardous substances and materials usage. In addition, Seller shall comply with the conditions contained in Buyer's Safety Policy and all other applicable Environmental, Health, Safety and Security ("EHS&S") requirements, U.S. Government Denied Parties screening requirements, and any applicable Visa requirements. Seller is responsible for the direct management and supervision of its personnel through its designated representative and shall be free to exercise discretion and independent judgment as the method and means of performance of the services contracted for by Buyer. Seller's personnel and subcontractors shall in no way be considered employees of Buyer and Seller's personnel and subcontractors will not, by virtue of this Agreement, be entitled or eligible to participate in any benefits or privileges offered by Buyer.

18. **COMPLIANCE WITH LAWS.** Seller warrants that in the performance of this Order, it will comply with all applicable Federal, State and Local laws.

19. **NONWAIVER.** Any failure at any time of Buyer to enforce any provision of this Order shall not constitute a waiver of such provision or prejudice against the right of Buyer to enforce such provision at any subsequent time.



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20. **PARTIAL INVALIDITY.** If any provision of this Order is or becomes void or unenforceable by force or operation of law, the other provisions shall remain valid and enforceable.

21. **CLEARANCE OF MATERIALS INTENDED FOR PUBLIC RELEASE.** No news release, including photographs and films, advertisement, public announcement, denial or confirmation of the same, or any part of the subject matter of this Order or any phase of any program hereunder shall be made without prior written approval of Buyer.

22. **TAXES.** All prices herein, unless otherwise provided, include all applicable Federal, state and local taxes as may be assessed against Seller except those sales or use taxes required by law to be paid by Buyer.

23. **INDEMNIFICATION.** Seller shall indemnify and hold harmless Buyer, its agents, consignees, employees and representative from and against all expenses, losses, claims, demands, or causes of action of whatever kind, including negligence, breach of express or implied warranty, failure to warn, or strict liability, and from and against all special, indirect, incidental, or consequential damages, including lost profits, of every kind whatsoever arising out of, by reason of, or in any way connected with, accidents, occurrences, injuries or losses to or of any person or property, including Buyer or Buyer's property, which may occur before or after acceptance of the completed Items by Buyer, in any way due or resulting from in whole or in part, the design, preparation, manufacture, construction, completion, warning or failure to warn, or of delivery or non-delivery of Items, including such as are caused by any subcontractor of Seller. Immediately upon receipt from Buyer of written notice of any suit or claim relating to any risk described in this section and upon written request by Buyer, Seller shall assume the defense of the litigation. In any event, Seller shall pay for or reimburse Buyer for all costs and expenses, including attorneys' fees, arising out of any suit or claim relating to any risk described in this Section. If requested by Buyer, Seller shall maintain policies of liability insurance, declaring Buyer as a named insured, in such amounts as Buyer shall designate, to protect Buyer from all the risks described in this Section. Such policies of insurance shall not be cancelable except upon ten days' written notice to Buyer. Upon request, Seller shall furnish proof of such insurance to Buyer.

24. **AMENDMENT OF TERMS.** Buyer reserves the right to update or amend these Terms and Conditions at any time. Any such updates shall be effective upon posting to the Buyer's website or upon written notice to the Seller, whichever occurs first. Continued acceptance or fulfillment of Orders after such notice shall constitute the Seller's acceptance of the updated terms.

25. **SAFETY.** If the goods supplied hereunder or the services performed hereunder involve any risk of injury or death to persons or damage to property, Seller shall provide Buyer with a written description of the nature and extent of such risk, including a description of any precautions which should be taken to minimize risk.