

Title: *Terms and Conditions of Purchase*
Document No.: **OX3.6FM-159 Rev. 1**

1. ACCEPTANCE – The execution and return of the acknowledgment copy of this Purchase Order by the Seller, or the Seller's commencement of delivery pursuant to this Purchase Order, constitutes acceptance of this Purchase Order by the Seller. Acceptance of this Purchase Order is limited to and conditioned upon acceptance of the terms set forth below, which terms cannot be altered or amended without OX3's express written agreement. Acceptance shall be binding upon the Seller and the Seller's successors and assigns. These terms and conditions, together with such modifications and with such data relating to price and delivery as are accepted in writing by OX3, constitute the entire agreement between the parties. The rights of both parties hereunder shall be in addition to their rights and remedies at law or equity. Failure of OX3 to enforce any of its rights shall not constitute a waiver of such rights or of any other rights.

2. DELIVERY; NOTICE OF LABOR DISPUTES – Time is of the essence in the performance of this Purchase Order. If delivery dates cannot be met, the Seller shall promptly notify OX3 of the earliest possible date for delivery. Notwithstanding such notice, and unless a substitute delivery date has been expressly agreed to by OX3 in writing, the Seller's failure to effect delivery on the date specified shall entitle OX3 to cancel this order without liability to the Seller, to purchase substitute items elsewhere, and to hold the Seller accountable for any loss or additional costs incurred. Seller shall notify OX3 immediately of any actual or potential labor dispute, which is delaying or threatens to delay the timely performance of this order.

3. PRICES – All prices shall be as stated in this Purchase Order. If no price is stated for any item, OX3 will not be bound to any prices or delivery to which OX3 has not specifically agreed in writing.

4. QUANTITIES – Unless OX3 has otherwise agreed in writing, the Seller must deliver the exact quantities specified. OX3 also reserves the right to refuse or return at Seller's risk and expense shipments made in excess of OX3's orders or in advance of required schedules or to defer payment on advanced deliveries until scheduled delivery dates.

5. INSPECTION AND REJECTION – All material and workmanship shall be subject to inspection by OX3, before and after delivery. Items rejected as not conforming to this Purchase Order shall be returned to the Seller at the Seller's risk and expense and shall not be replaced by the Seller without OX3's written authorization. OX3 may require Seller to replace rejected material at Seller's expense or OX3 may accept any materials that conform to Seller's warranties and upon discovery of materials not so conforming may reject or keep and rework at Seller's expense any such materials not so conforming. OX3 may make 100% inspection at Seller's expense or reject an entire shipment if OX3's sampling plan indicates rejection at the 1% acceptable quality level (or such greater or lesser percentage as OX3 and Seller may agree upon in writing).

6. CONFORMANCE - All surface mount carrier tapes must conform to EIA-481. All moisture-sensitive packing materials must meet applicable MIL Standards. We retain return privileges for each order. Supplier warrants to OX3 that the deliverables pursuant to this agreement are no older than 2 years from date of manufacture and are made in accordance with OX3's P/N referenced. OX3 reserves the right to resell this material under its private label brands.

7. TITLE AND RISK OF LOSS – Title to and risk of loss for items purchased which conform to this Purchase Order shall pass to OX3 upon receipt at OX3's premises. Title to and risk of loss for non-conforming items shall remain with the Seller until final acceptance by OX3.

8. QUALITY – The Seller warrants all products and materials delivered or services rendered on this Purchase Order to be merchantable, fit for the uses intended, of the grade and quality specified,

and free from all defects, and to conform to all samples, drawings, descriptions and specifications furnished in all respects. This warranty shall survive any delivery, inspection, and acceptance of payment. Seller shall be liable for and save OX3 harmless from any loss, damage or expense whatsoever that OX3 may suffer from breach of any of these warranties.

9. OX3'S PROPERTY – All specifications, drawings, sketches, models, samples, tools, designs, dies, molds, patterns, jigs, fixtures, materials, technical information or data, written, oral or otherwise, and other equipment and items furnished by OX3 or on OX3's behalf, shall be and remain OX3's property, and shall be returned promptly to OX3 (together with all copies) at OX3's request. Such items and information shall be treated as confidential and shall not be used or disclosed by the Seller except as required in the course of performing this or other Purchase Orders for OX3 unless OX3 consents otherwise in writing. Seller shall prominently mark all such items as the property of and, if directed, the area in which they are located as containing property of OX3. All such property shall be held at the Seller's risk, shall be insured by the Seller at its expense or an amount equal to its replacement cost and with loss payable to OX3 and shall be delivered promptly to OX3 or designee on request. Seller shall not dispose of any such property without OX3's written consent. The provisions of this Article 8 herein above set forth shall survive delivery and payment and remain in full force until all said items are delivered to OX3 or otherwise disposed of with OX3's written consent. Seller shall, without limitation as to time, indemnify and save OX3 harmless from all claims which may be asserted against said property, including without limitation mechanic's liens or claims arising under workmen's compensation or occupational disease laws, and from all claims for injury to persons or property arising out of or related to such items unless the same are caused solely and directly by OX3's negligence. Unless OX3 has otherwise agreed in writing, information furnished or disclosed by the Seller to OX3 shall not be considered to be confidential or proprietary and shall be acquired by OX3 free of restrictions of any kind.

10. CHANGES – OX3 may, at any time and from time to time, by written notice to the Seller, suspend work, make changes in specifications, designs, testing, packing and destinations and postponements in delivery schedules. If any such suspension or change causes a material increase or decrease in the cost of or the time required for performance of this order, an equitable adjustment shall be negotiated promptly as to the price or delivery schedule or both. Any claim by the Seller for adjustment under this clause shall be made within 10 days after receipt of written notice of the suspension or change, and any claim not made within the 10-day period shall be deemed waived. Such claim shall be followed as soon as practicable with specification of the amount claimed and supporting cost figures. No change orders shall be binding upon OX3 unless they are made in writing and signed by OX3's duly authorized representative.

11. PATENTS – The Seller shall indemnify and hold OX3 and OX3's employees, agents and customers harmless from any and all claims, liabilities, damages, expenses or loss of any kind and defend all actions and proceedings at its expense, resulting from infringements or alleged infringements by the sale, use or incorporation into manufactured products of all items furnished by the Seller of any United States or foreign patents, trademarks, copyrights or other proprietary rights, except where such infringement or alleged infringement arises solely from the Seller's compliance with OX3's instructions.

12. ASSIGNMENT – The Seller shall not delegate any duties nor assign any rights or claims under this Purchase Order without OX3's



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prior written consent, and any such attempted delegation or assignment shall be void. In any case, assigned accounts shall be subject to set-off, recoupment or other claim of OX3 against Seller.

13. SET-OFF – Any amount owed to the Seller by OX3 shall be subject to deduction for any set-off or counterclaim arising out of this or any other Purchase Order to the Seller from OX3.

14. BANKRUPTCY – OX3 shall be entitled to cancel, without liability, any unfilled part of this Purchase Order in the event of proceedings, voluntary or involuntary, in bankruptcy or insolvency, by or against the Seller, or in the event of the appointment, with or without the Seller's consent, or any trustee or receiver for any substantial portion of the Seller's assets or any assignee for the benefit of its creditors. In such event, all deposits or prepayments shall be deemed to have been held in trust for OX3's benefit and shall be returned to OX3 promptly on request.

15. COMPLIANCE WITH LAWS – Seller warrants that the materials to be furnished and the services to be rendered under this order, and the classes of property described in Article 8 shall be manufactured, sold and used in compliance with all applicable federal, state and local laws, ordinances, codes, rules and regulations, including, without limitation, the Occupational Safety and Health Act and the Fair Labor Standards Act of 1938.

16. GOVERNING LAW – This Purchase Order shall be construed as a sealed instrument and the rights and obligations of the parties hereunder shall in all events and for all purposes be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts without regard to any choice of law principle that would dictate the application of the laws of another jurisdiction. Any action, suit or other legal proceeding that is commenced to resolve any matter arising under or relating to any provision of this Purchase Order shall be commenced only in a court of the Commonwealth of Massachusetts (or, if appropriate, a federal court located within Massachusetts), and Seller hereby consents to the jurisdiction of such a court. Seller hereto irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law and consents to the jurisdiction of the courts of the Commonwealth of Massachusetts. Seller further hereby waives any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Purchase Order.

17. GOVERNMENT CONTRACT PROVISIONS – Purchase Orders which specify a government contract number or otherwise indicate that the materials purchased are intended for use under government contracts or subcontracts shall be subject to and deemed to incorporate all clauses and provisions of the Armed Services Procurement Regulations which are required to be included in such contracts and subcontracts.

18. ADDITIONAL OR INCONSISTENT TERMS – Terms and conditions set forth in any document provided by the Seller to OX3 which differ from, conflict with or are not included in this Purchase Order shall not become a part of any agreement between OX3 and the Seller unless such terms and conditions are specifically accepted by OX3 in writing.

19. TERMINATION; BREACH OF CONTRACT – OX3 may, by notice in writing, direct Seller to terminate this order or work under this order in whole or in part at any time and such termination shall not constitute a default. In no event shall Seller be entitled to anticipatory profits, or to special or consequential damages. In the event of Seller's default or potential inability to perform this order, Seller agrees upon demand by OX3 to deliver to OX3 the raw materials and work in process acquired in order to perform under this order, and OX3 may then complete the work deducting the cost of such completion from the price, or in the alternative pay to Seller the cost of such raw materials and work in process.

20. SPECIFICATIONS – material made in accordance with OX3's specifications and drawings shall not be furnished or quoted to any other person or concern without OX3's written consent. In the event of conflict between specifications, drawings, samples, designated type, part number or catalog description, the specifications shall govern over drawings, drawings over samples, whether or not approved by OX3, and samples over designated type, part number of catalog description. In cases of ambiguity in the specifications, drawings or other requirements of the order, Seller must, before proceeding, consult OX3, whose written interpretation shall be final.

21. TAXES – The price stated on the face hereof includes all taxes. All local, state and federal excise, sales and use taxes, when applicable, shall be stated separately on Seller's invoice.

22. GRATUITIES – Seller warrants that it has not offered or given and will not offer or give to any employee, agent or representative of OX3 any gratuity with a view toward securing any business from OX3 or influencing such person with respect to the terms, conditions or performance of any contract with or order from OX3. Any breach of this warranty shall be a material breach of each and every contract between OX3 and the Seller.

23. INDEMNITY AGAINST CLAIMS – Seller shall indemnify OX3 against all loss on account of claims of injury to persons (including death) or damage to property which may result in any way from any act or omission of Seller, or of its agents, employees or subcontractors. Seller shall also maintain such public liability, property damage, employers' liability and compensation insurance and motor vehicle liability insurance (personal injury and property damage) as will protect Seller or its subcontractors and OX3 from said risks and from any claims under any applicable workmen's compensation or occupational disease statutes.

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