

## Purchase Order Terms & Conditions

### 1 ACCEPTANCE

*This Purchase Order by Sierra Monitor Corporation, Incorporated ("Buyer") is governed by the terms and conditions set forth below. Acceptance of this purchase order is expressly limited to these terms and conditions. This purchase order may only be amended by written agreement signed by authorized representatives of both Seller and Buyer specifically referencing the terms or conditions being amended. Seller's proposed terms and conditions which are different from or additional to Buyer's terms and conditions are objected to without further notification from Buyer and shall not become part of this purchase order. Should this purchase order contain a Government contract or a subcontract number or if Buyer notifies Seller accordingly, certain clauses of the Federal Acquisition Regulation (FAR) (48 CFR Chapter 2) and the Department of Defense FAR Supplement (DFARS) may apply and are incorporated herein by reference.*

*This purchase order and the provisions of any drawings, specifications, samples, data or other documents expressly referred to herein are hereby made a part of this purchase order and constitutes the entire agreement of the parties with respect thereto. Acceptance by Seller shall take effect upon any of the following: (1) Seller's acknowledgement of this purchase order; (2) Seller's commencement of performance; (3) Seller's acceptance of any payment under this order; or (4) Seller's failure to acknowledge in writing within ten (5) working days of receipt of this purchase order.*

### 2 PRICING, RISK OF LOSS

*Buyer payment terms are NET 30. All prices shall include (1) the cost of packaging the goods purchased in a manner suitable for shipment as instructed by the Buyer on this purchase order; and (2) all applicable federal, state, and local taxes, and duties. Title to and risk of loss of or damage to goods purchased which conform to this purchase order shall pass to Buyer upon receipt and acceptance of such goods by Buyer at its premises. Title to and risk of loss of or damage to nonconforming goods shall remain with Seller. Seller warrants that the prices for the goods sold to Buyer hereunder are not less than favorable than those currently extended to any customer for the same or similar goods in similar quantities. In the event Seller reduces its prices for such goods during the term of this purchase order, Seller agrees to reduce the prices hereof correspondingly. Seller warrants that prices shown on this purchase order shall be complete and no additional charges of any type shall be added without express written consent from Buyer. Such additional charges include, but are not limited to, packaging, labeling, customs duties, taxes, storage, insurance, boxing and crating. All claims for money due or to become due from Buyer shall be subject to deduction or setoff by Buyer by reason of any counterclaim arising out of this purchase order or any other transaction with Seller.*

### 3 CHANGES

*Buyer may make changes at any time prior to the final delivery of the purchase order by written notice to the Seller. Buyer changes may affect drawings, specifications and goods or services ordered including quantity of goods, schedule of goods or services and method of packaging and delivery. If Buyer's change affects Seller's cost and/or delivery, Seller shall notify buyer within five (5) working days and provide detailed cost/schedule information for the Buyer to review. Any change to cost and/or schedule must be approved by the Buyer in writing. Nothing in this clause shall excuse Seller from proceeding with this purchase order as changed.*

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### 4 QUALITY

*Seller shall provide goods and/or services that conform to all requirements as stated on this purchase order, including but not limited to drawings, specifications, quality and contractual clauses noted herein. Seller is not permitted to deviate or substitute without prior written consent of the Buyer.*

*The Buyer, or its designated representative, or the Buyer's customer to the extent necessary, shall have the right from time to time during normal business hours after reasonable notice to enter upon Seller's premises to inspect goods or services and confirm compliance to Buyer's purchase order.*

### 5 PACKAGING, SHIPPING

*The Seller is required to package, mark and ship all goods in accordance with the requirements of this purchase order using best commercial practices to protect goods during transportation and securing the lowest transportation costs when transportation costs are payable by the Buyer.*

### 6 DELIVERY

*Seller shall make delivery to Buyer's specified destination by the required due date(s) stated in this purchase order unless otherwise agreed to in writing by both Parties. If Seller cannot meet the required due date(s), Seller is to notify Buyer promptly with a recovery date and make every reasonable effort at Seller's expense to meet Buyer's due date. Buyer shall have the right to reject any goods or services which are provided in advance of or later than the Buyer's due date(s). Time is of the essence of this purchase order and if delivery of goods or rendering of services is not completed by the time promised, Buyer reserves the right without liability in addition to its other rights and remedies to terminate this purchase order by notice effective when received by Seller as to goods not yet shipped or services not yet rendered and to purchase substitute goods or services elsewhere and charge Seller with any loss incurred. If in order to comply with the delivery date required by Buyer it becomes necessary for Seller to ship by a more expensive way than specified in this purchase order, any increased transportation costs resulting therefrom shall be paid for by Seller unless the necessity for such rerouting or expedited handling has been caused by Buyer.*

*Buyer reserves the right to inspect all goods and services purchased hereunder and at Buyer's discretion, Buyer may reject nonconforming goods and/or services. Buyer reserves all rights under applicable laws including, without limitation, rights under the Uniform Commercial code. Should Seller provide additional nonconforming goods and/or services against this purchase order, Seller shall, at Buyer's request, provide a written corrective action report for Buyer's review and approval. Payment for the goods delivered hereunder shall not constitute acceptance thereof. Buyer shall have the right to inspect such goods and to reject any or all said goods which are defective or nonconforming in Buyer's sole judgment. Goods rejected and goods supplied in excess of quantities called for herein may be returned to Seller at its expense and, in addition to other rights of Buyer, Buyer may charge Seller all expenses of unpacking, examining, repacking and reshipping such goods. In the event Buyer receives goods whose defects or nonconformity is not apparent on examination, Buyer reserves the right to require replacement, as well as payment of damages. Nothing contained in this purchase order shall relieve Seller in any way from the obligation of testing, inspection and quality control.*

### 7 FORCE MAJEURE

*Neither Party shall be liable for delays due to force majeure, including but not limited to, weather conditions, fires, floods, earthquakes, accidents, labor disputes, strikes, disruptions, acts of civil or military authorities, war, terrorism, riots, a total or partial shutdown of either Party's facilities, or other acts of God*

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*or any other causes beyond the reasonable control of either Party. Should such cause continue for more than thirty (30) days, the Buyer may at its own option cancel this purchase order and all its obligations to the Seller.*

### 8 WARRANTY

*Seller warrants to the Buyer that the goods and/or services conform to all written specifications and drawings provided by Seller, will be free of defects in material and workmanship for a period of one (1) year from the date of shipment unless otherwise agreed to in writing, will be new, will conform to any statements made on the containers or labels or advertisements for such goods or services, and that all goods will be adequately and properly contained, packaged, marked and labeled. Seller warrants that all goods and services furnished*

*Hereunder will be merchantable and will be safe and appropriate for the purpose for which goods or services of that kind are normally used. If Seller knows or has reason to know the particular purpose for which Buyer intends to use the goods or services, Seller warrants that such goods or services will be fit for such particular purpose. Seller warrants that goods or services furnished will conform in all respects to any samples provided by Seller to Buyer. Any inspection, test, acceptance or use of the goods or services furnished hereunder shall not affect Seller's obligation hereunder and such warranties shall survive inspection, test, acceptance and use. Seller's warranty shall run to Buyer, its successors, assigns and customers and users of products sold by Buyer. Seller agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly, without expense to Buyer, when notified of such nonconformity by Buyer, provided Buyer elects to provide Seller with the opportunity to do so. In the event of failure of Seller to correct defects in or replace nonconforming goods or services promptly, Buyer, after reasonable notice to Seller, may make such corrections or replace such goods or services and charge Seller for the cost incurred by Buyer to do so.*

*In addition to any remedies available under the Uniform Commercial Code, Buyer may elect, at Buyer's sole discretion, to return defective goods to Seller at Seller's expense for credit, repair or replacement of defective goods as may be elected by Buyer.*

### 9 INTELLECTUAL PROPERTY

*For Goods and/or services developed by the Seller, Seller agrees to indemnify, defend and hold harmless Buyer and any of Buyer's customers from and against any and all liabilities, losses, expenses (including reasonable attorneys' fees), actions, suits, claims, demands or prosecutions that may be made, brought or instituted against the Buyer for any alleged infringement of any patent, trademark, copyright or any other intellectual property rights infringement or alleged direct or contributory infringement by reason of the manufacture, use or sale of the Goods.*

### 10 INDEMNIFICATION

*Seller agrees to indemnify and hold harmless Buyer including Buyer's employees, directors, and agents from any and all claims, demands, losses, damages, penalties, lawsuits, and costs arising out of, or relating to the Goods, and/or services provided by the Seller including Seller's performance or failure to perform obligations under this purchase order, including any claims based on Seller's breach or alleged breach of warranty. In the event that a recall of any Goods is necessitated by a defect, failure to conform to specifications, applicable laws, government order or any other reason, Seller shall bear all costs and expenses of such recall including, without limitation, notifying customers, customer refunds, costs of returning Goods, lost profits and other expenses incurred by Buyer in connection therewith.*

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### **11 CONFIDENTIALITY**

*Any and all information, including but not limited to materials that contain information, specifications, drawings, samples, designs, patents, trade secrets, financial data, or other information that Buyer identifies as confidential disclosed to Seller by or on behalf of Buyer in connection with this purchase order shall remain the exclusive property of the Buyer and be kept confidential by the Seller and its employees and/or agents and shall not be disclosed to any third party or used except for the purposes of performance against this purchase order without written consent from the Buyer.*

*The obligations under this confidentiality clause set forth above shall survive completion of performance against this purchase order and/or expiration or termination of this purchase order.*

### **12 TERMINATION FOR CONVENIENCE**

*Buyer reserves the right to terminate all or any part of this purchase order at any time without cause via written notice of termination and Seller will cease all performance as specified and take all necessary actions to minimize costs and protect property in Seller's possession in which Buyer has a vested interest until final disposition instructions have been provided by Buyer to Seller. In the event of a termination without cause, Seller shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of the notice of termination, or for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided. Seller will provide Buyer with any termination claim including supporting documentation in writing no later than thirty (30) days following Buyer's written notice to terminate. Buyer reserves the right to inspect Seller's records, facilities, materials, work in progress and finished goods for the purpose of establishing the Seller's claim. Final payment will be based on a mutually agreed to value in writing by both Parties and paid within thirty (30) day upon settlement. In no event shall payment exceed the total value of the purchase order less any payments previously made to complete performance hereunder.*

### **13 TERMINATION FOR DEFAULT**

*In addition to any other remedies under the Uniform Commercial Code, Buyer reserves the right to terminate all or any part of this purchase order at any time without incurring any liability to the Seller, in the event: (A) Seller's breach of contract or failure to perform, including, without limitation, late deliveries, deliveries of goods which are defective or which do not conform to this Purchase Order and failure to provide Buyer, upon request, of reasonable assurances of future performance; (B) Seller becomes insolvent, enters into an assignment for the benefit of creditors, voluntarily or involuntarily enters bankruptcy, has a receiver appointed, or otherwise exhibits its inability to pay its debts as they mature. In the event of termination due to Seller's default, Buyer shall not be liable to Seller for any amount and Seller shall be liable to Buyer for any and all damages sustained by reason of the default which gave rise to the termination.*

### **14 ASSIGNMENT**

*Seller shall not assign, transfer, subcontract or otherwise dispose of any rights or obligations, whole or in part, to any third party without prior written consent of the Buyer. Any prohibited assignment shall be null and void for all purposes.*

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### **15 EXPORT COMPLIANCE**

*The Seller shall comply with all applicable U.S. export control laws for goods, services, technical data and other information provided by the Buyer to the Seller in connection with this order. No goods, services, technical data or other information provided by the Buyer or developed or produced by the Seller under this purchase order may be exported, transferred, or disclosed outside the United States or to any foreign person, unless the Buyer provides written consent and the Seller obtains all required export licenses and/or other approvals from the U.S. Government.*

### **16 COMPLIANCE WITH LAWS**

*Seller agrees to comply with all federal, state, and local laws, executive orders, rules, regulations, ordinances, and conventions that may be applicable to Seller's performance of its obligations for this purchase order. At Buyer's request, Seller shall certify in writing its compliance with the foregoing including but not limited to, a certification that products and services provided are in compliance with all applicable requirements of the Fair Labor Standards Act.*

### **17 GOVERNING LAW AND JURISDICTION**

*This purchase order and the rights and obligations of Seller and Buyer shall be governed by and construed in accordance with the internal laws of the State of California in the United States of America without regard to conflicts of laws. Seller consents to jurisdiction, venue and forum in a State Court located in the County of Alameda, State of California, United States of America.*

### **18 CONFLICT MINERALS**

*Seller agrees to (a) certify in writing to Buyer on an annual basis, by December 31 or any other date determined and communicated by Buyer, that no materials found within any products provided by the Seller to the Buyer qualify as "Conflict Minerals" originating in any manner from "Covered Countries" as defined in the Securities & Exchange Commission rule on Conflict Minerals at 17 CFR Parts 240 and 249b; and (b) Seller shall also provide annual written notice to the Buyer of the origin of all conflict minerals found in any products provided to the Buyer; and (c) if Seller cannot determine the origin of any conflict minerals within its products provided to the Buyer, Seller shall provide full written notification and explanation of such determinations. To the maximum extent practicable, Seller shall incorporate and require its subcontractors at all lower levels to provide the identical three (3) part certification and reporting to the Seller. Seller shall fully incorporate subcontractor certifications and reporting into the annual certification and reporting to the Buyer.*

### **19 WAIVER/SEVERABILITY**

*Buyer's failure to require performance of any term or condition shall not affect the Buyer's right to require performance at any time, nor shall a waiver of any breach or default of this purchase order establish a waiver of any subsequent breach or default or a waiver of the provision, term or condition itself.*

### **20 RELATIONSHIP OF PARTIES**

*The Parties hereto intend to establish a relationship of Buyer and Seller and as such are independent contractors with neither Party having authority as an agent or legal representative of the other to create any obligation, express or implied, on behalf of the other.*

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### 21 Limitation on Buyer's Liability – Statute of Limitations

*In no event shall Buyer be liable for anticipated profits or for special, incidental or consequential damages. Liability of Buyer on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this purchase order or from the performance or breach thereof shall in no case exceed the price allocable to the goods 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 and services delivered hereunder must commence within one (1) year after the cause of action has accrued.*

### 22 ATTORNEYS FEES

*In the event of any action by Buyer to enforce or interpret this purchase order, Buyer shall be entitled to recover from Seller its reasonable attorneys' fees, costs and expenses in addition to any other relief to which Buyer may be entitled.*

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