STANDARD COMMERCIAL PURCHASE ORDER TERMS AND CONDITIONS

1. **Packing and Shipment:** Deliveries shall be made as specified, without charge for boxing, crating, cartage or storage unless otherwise specified, and articles shall be suitably packed to secure lowest transportation costs and in accordance with the requirements of common carriers. Materials shall be described on Bills of Lading in accordance with current National Motor Freight or Uniform Freight Classifications, whichever is applicable. Buyer's order numbers and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing list shall accompany each box or package shipment showing Buyer's order number and symbol, item number and description of materials. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists. **SHIPPING RECEIPTS OR BILLS OF LADING SHALL BE SENT TO BUYER'S TRAFFIC DEPARTMENT ON DATE MATERIAL IS SHIPPED.** Articles shall be packed to assure against damage from weather or transportation.

2. **Warranty:** Seller warrants that all articles furnished hereunder will be merchantable, and will be free from defect in material and workmanship, and will conform to applicable specifications, drawings or descriptions furnished by Buyer. If Seller is responsible for design of the articles according to performance specifications established by Buyer, Seller warrants that the articles will be fit and sufficient for the purposes intended by Buyer. Buyer's approval of designs furnished by Seller shall not relieve Seller of its obligations under this warranty. The warranties of Seller, together with its service guarantees, shall run to Buyer and/or its customers.

3 ***Inspection:***

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by Buyer, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance.

(b) In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirement of this Purchase Order, the Buyer shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by Buyer, corrected in place by and at the expense of Seller promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Seller fails promptly to remove such supplies or lots of supplies which are required to be removed, or promptly to replace or correct such supplies or lots of supplies, Buyer either (i) may by contract or otherwise replace or correct such supplies and charge to Seller the cost occasioned the Buyer thereby; or (ii) may terminate this Purchase Order for default as provided in the clause of this Purchase Order entitled "Default." Unless Seller corrects or replaces such supplies within the delivery schedule, Buyer may require the delivery of such supplies at a reduction in price which is equitable under the circumstances.

(c) If any inspection or test is made by Buyer on the premises of Seller or a subcontractor, Seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of Buyer in the performance of its duties. If Buyer inspection or test is made at a point other than the premises of Seller or a subcontractor, it shall be at the expense of Buyer except as otherwise provided in this Purchase Order; provided, that in case of rejection Buyer shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by Buyer shall be performed in such a manner as not to unduly delay the work. Buyer reserves the right to charge to Seller any additional cost of Buyer inspection and test when supplies are not ready at the time such inspection and test is requested by Seller or when reinspection or retest is necessitated by prior rejection. Inspection and acceptance or rejection of the supplies shall be made as promptly as practicable after delivery to Buyer's plant or to such other place of final delivery as may be specified herein, irrespective of prior payment, provided for in this Purchase Order; but failure to inspect and accept or reject supplies shall neither relieve Seller from responsibility for such supplies as are not in accordance with the Purchase Order requirements nor impose liability on Buyer therefor.

(d) Seller shall provide and maintain an inspection system acceptable to Buyer covering the supplies hereunder. Records of all inspection work by Seller shall be kept complete and available to Buyer during the performance of this Purchase Order and for such longer period as may be specified elsewhere in this Purchase Order.

4. **Responsibility for Supplies:** Except as otherwise provided in this Purchase Order, Seller shall bear the risk of loss of, or damage to, the supplies covered by this Purchase Order until delivered to Buyer's Plant or to such other place as may be designated on the face of this Purchase Order, regardless of the point of inspection. Seller shall also bear the risk of loss of, or damage to rejected supplies after receipt of Buyer's notice of rejection, provided, however, that Buyer shall bear such risk as to loss or damage caused by the willful or negligent acts of its officers, agents or employees acting within the scope of their employment.

5. **Delivery:** Delivery shall be strictly in accordance with the delivery schedule of this order. If Seller's deliveries fail to meet such schedule with the result that Buyer elects to call upon Seller for expedited shipments, Seller will allow the difference between freight and express rates. Parts fabricated beyond Buyer's releases are at Seller's risk. **INVOICES COVERING ARTICLES SHIPPED IN ADVANCE OF THE SCHEDULE WILL NOT BE PAID UNTIL THEIR NORMAL MATURITY AFTER THE DATE SPECIFIED FOR DELIVERY.**

6. **Invoicing:** Invoices shall be mailed in triplicate, only one (1) of which shall be identified as "Original," immediately after each shipment to:

MAXWELL LABORATORIES, INC.
9244 BALBOA AVENUE
SAN DIEGO, CALIFORNIA 92123

Each invoice shall contain the following certification:

"We hereby certify that these goods were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act of 1938, as amended, and all regulations and orders of the Administrator of the Wage and Hour Division issued under Section 14 thereof."

Delays in receiving invoice; errors or omissions on invoice; or lack of supporting documentation required by the terms of this order, will be cause for withholding settlement without losing discount privilege.

7. **Special Tools:** Dies, tools and patterns specially developed for and used in the manufacture of the articles herein ordered shall be furnished by and at the expense of Seller, and shall be kept in good condition and, when necessary, shall be replaced by Seller without expense to Buyer.

Buyer may at any time become the owner and entitled to possession of any or all such special tooling acquired or manufactured specially for use in the performance of this order if any portion of the cost of such special tooling is included in the price of articles, material and work covered by this order, upon Seller being reimbursed the unpaid amount of Seller's cost of such special tooling.

If the price stated on the face hereof includes separately the cost of any such dies, tools and/or patterns acquired by Seller for the purpose of filling this order, such dies, tools and/or patterns shall become the property of Buyer, and Seller shall, to the extent feasible, identify said property as Buyer directs. When this order has been completed, such dies, tools and/or patterns shall be disposed of as Buyer may direct.

8. **Buyer Furnished Property:** Seller assumes complete liability for any tooling, articles or material furnished by Buyer to Seller in connection with this Purchase Order and Seller agrees to pay Buyer for all such tooling, articles or material spoiled by it or not otherwise accounted for to Buyer's satisfaction. The furnishing to Seller of any tooling, articles, or material in connection with this Purchase Order shall not, unless otherwise expressly provided, be construed to vest title thereto in Seller.

9. ***Insurance:*** *Seller agrees, if and when requested by Buyer,* to procure a policy or policies of insurance in form satisfactory to the Buyer, insuring all property on Seller's premises owned by Buyer against loss or damage resulting from fire (including extended coverage), malicious mischief and vandalism. Satisfactory evidence of such insurance shall be submitted to Buyer within a reasonable period of time after request by Buyer.

10. **Changes:** Buyer may at any time, by a written order, and without notice to the sureties, make changes within the general scope of this Purchase Order, in any one or more of the following: (i) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for Buyer in accordance therewith; (ii) method of shipment or packing; (iii) place of delivery; and (iv) the period of performance of work, and Seller shall comply therewith. 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 Purchase Order, whether changed or not changed by any such order, an equitable adjustment shall be made in the Purchase Order price or delivery schedule, or both, and the Purchase Order shall be modified in writing accordingly. Any claim by Seller for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by Seller of the notification of change; provided, however, that Buyer, if it decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Purchase Order. Where the cost of property made obsolete or excess as result of a change is included in Seller's claim for adjustment, Buyer shall have the right to prescribe the manner of disposition of such property. Failure to agree on any claim for equitable adjustment under this clause shall be a dispute and the Seller may thereupon pursue any remedy which it may have in any court of competent jurisdiction. Pending the resolution of any such dispute the Seller shall diligently pursue the performance of the Purchase Order as changed. Except as expressly provided for elsewhere in this Purchase Order, the parties agree that there shall be no adjustment in the price or time for performance hereunder unless an authorized representative of Buyer's Purchasing Department shall have directed a change hereto by the issuance of a written change order to this Purchase Order.

11. ***Advertising:*** *Seller shall not, without first obtaining the written* consent of Buyer, in any manner advertise or publish the fact that Seller has supplied or contracted to supply to Buyer the articles herein mentioned.

12. **Patent Indemnity:** Seller agrees to indemnify Buyer, its customers, and agents against any liability, including costs and expenses, for or by reason of any actual or alleged infringement of any patent arising out of the manufacture, use, sale, delivery, or disposal of supplies or articles furnished under this Purchase Order, except where such supplies or articles would be normally non-infringing but are rendered infringing by reason of Seller's compliance with Buyer's detail design and stated requirement for specific structure. Buyer shall notify Seller, as soon as practicable, of any claim of infringement received by it.

13. **Rights and Reservations:** All drawings, designs, information, tools, patterns, equipment and other items supplied by Buyer, and proprietary rights embodied therein, are reserved, and the same shall not be used or reproduced for any purpose whatsoever except the performance of work under this Purchase Order. Where payment is made for experimental, developmental or research work performed hereunder, Seller shall disclose and does hereby assign to Buyer all inventions resulting therefrom and does grant Buyer the right to use for any purpose all data specified to be delivered under this Purchase Order.

14. **Default and Excusable Delays:** Buyer reserves the right to cancel all or any part of the undelivered portion of this Purchase Order in the event Seller fails to perform any of the provisions of this Purchase Order, or so fails to make progress as to endanger performance of this Purchase Order in accordance with its terms, or if deliveries are not made within specified times. Buyer shall also have the right to cancel this order or any part thereof if Seller becomes insolvent, or a bankruptcy petition is filed which is not vacated within thirty (30) days from the date of filing.

The failure of Buyer to insist upon strict performance of any of the terms of this Purchase Order, or to excercise any rights herein conferred, shall not be construed as a waiver of Buyer's right to assert or rely on any such terms or rights on any future occasion.

15. **Assignment:** Seller may not assign this Purchase Order, or any portion thereof, except that Seller may, upon the prior written consent of Buyer, assign claims for monies due or to become due hereunder, provided in such event, Seller shall supply Buyer promptly with two (2) copies of any such assignment, and provided further that payment to an assignee of any claim hereunder shall be subject to setoff or recoupment for any present or future claim or claims which Buyer may have against Seller.

16. **Subcontracting:** Seller agrees to obtain Buyer's approval before subcontracting this order or any substantial portion thereof; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw material.

17. **Security Regulations:** Seller agrees that prior military security clearance will be obtained by any of its personnel requiring access to Buyer's plant premises for the purpose of performing the work covered by this Purchase Order.

18. **Termination:** The Termination clause set forth in Section 8-706 of Armed Services Procurement Regulation, as in effect on the date of this order, is hereby incorporated herein by reference, except the term 'the Government' and the immediately preceding word such as 'and,' 'or,' or 'by,' wherever appearing in said clause, are deleted. The provisions of this clause shall not limit nor affect the rights or remedies of Buyer stated in other clauses of this order or provided by law in the event of default or breach by Seller. The parties further agree that Section 8 of ASPR is hereby incorporated, to the extent applicable, for the purpose of determining items of allowable cost.

19. **Government Property:** In the event of any tooling, articles or materials of any type designated as Government property or as Government owned, is furnished to or acquired hereunder by Seller or in connection herewith, Seller assumes complete liability therefor unless otherwise provided on the face of this Purchase Order and Seller shall comply with Appendix B of ASPR which is incorporated herein by this reference.

20. **Equal Opportunity:** During the performance of this contract the subcontractor agrees to comply with Executive Order No. 10925, dated 6 March 1961, as amended by Executive Order No. 11114, dated 22 June 1963, regarding equal opportunity for all qualified persons, without regard to race, creed, color or national origin

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