



TERMS AND CONDITIONS OF PURCHASE

Revised and effective for all Orders placed after November 11, 2019

ALL PURCHASES BY ASTERION OF ANY GOODS ARE SUBJECT TO THE ASTERION TERMS AND CONDITIONS OF PURCHASE EFFECTIVE ON THE DATE ANY ORDER IS ISSUED BY ASTERION AND ALL OF THESE TERMS AND CONDITIONS OF PURCHASE ARE INCORPORATED IN FULL BY THIS REFERENCE. THESE TERMS AND CONDITIONS OF PURCHASE ARE AVAILABLE AT www.asterionstc.com/purchaseterms, AND ALSO WILL BE PROVIDED BY MAIL OR FAX TO THE SELLER UPON REQUEST. ASTERION, LLC LIMITS ACCEPTANCE OF ANY ORDER TO THESE TERMS OF PURCHASE AND OBJECTS TO ANY OTHER ADDITIONAL OR DIFFERENT TERMS IN THE SELLER'S ORDER OR ACCEPTANCE.

1. **Definitions.** Capitalized terms used but not defined herein have the following meanings:
 - a. **"Goods"** means any goods purchased by Asterion from Seller pursuant to or in connection with an Order, including, without limitation, equipment, parts, materials, and supplies.
 - b. **"Order"** means any purchase order, confirmation, or agreement regarding the purchase of Goods.
 - c. **"Seller"** means the party providing Goods.
 - d. **"Terms"** means these General Terms and Conditions of Purchase.
 - e. **"Asterion"** means Asterion, LLC, an Indiana Limited Liability Company.
2. **Applicability.** These Terms apply to and are incorporated into any Order to which they are attached or referenced as though the Terms were fully set forth in such Order. Together with the Order, these Terms: (i) constitute the entire agreement between Seller and Asterion for the purchase of Goods; (ii) supersede all prior or contemporaneous understandings, discussions, proposals, negotiations, representations, warranties, agreements, and communications, both oral and written, regarding the same; and (iii) exclude any terms or conditions provided by Seller, which will be null and void and of no force. **THE PURCHASE OF ANY GOODS BY ASTERION IS SUBJECT TO, EXPRESSLY LIMITED TO, AND EXPRESSLY CONDITIONED UPON SELLER'S ACCEPTANCE OF THESE TERMS. IF THERE IS A DISCREPANCY BETWEEN THE ORDER AND THESE TERMS, THEN THESE TERMS PREVAIL TO THE EXTENT OF THE DISCREPANCY UNLESS OTHERWISE STATED IN THE ORDER. ANY TERMS OR CONDITIONS SUBMITTED BY SELLER TO ASTERION THAT ARE INCONSISTENT WITH, DIFFERENT THAN, OR ADDITIONAL TO THESE TERMS ARE REJECTED. PAYMENT FOR THE GOODS DOES NOT CONSTITUTE ACCEPTANCE OF SELLER'S TERMS OR CONDITIONS AND DOES NOT MODIFY OR AMEND THESE TERMS.**
3. **Acceptance.** Unless otherwise set forth therein, the Order will be deemed accepted by Seller upon the earlier of Seller's: (i) written acceptance; (ii) failure to accept or reject the Order within five (5) days of its receipt; (iii) commencement of performance in accordance with the Order; or (iv) issuance of an invoice in connection with the Order.

4. **Packing and Shipping.** Seller shall pack and ship all Goods: (i) pursuant to Asterion's reasonable written instructions and specifications; (ii) in a manner sufficient to ensure that they are delivered in undamaged condition; and (iii) in accordance with all applicable laws, rules, and regulations. Unless otherwise set forth in the Order, each shipment must: (a) reference the applicable Order; (b) include a safety data sheet for the Goods, as applicable; (c) include a certificate of analysis for the Goods, as applicable; and (d) be accompanied by all applicable shipping documents. Seller shall conspicuously, legibly, and permanently mark all Goods, in English, with their applicable country of origin. Seller shall be responsible for any costs, expenses, fines, and penalties incurred by Asterion as a result of Seller's improper marking of Goods. If requested by Asterion, Seller shall also provide a certificate of origin for the Goods within five (5) days of Asterion's request. Unless otherwise set forth in the Order, Seller shall be responsible for all costs and expenses associated with packing and marking the Goods, and Asterion shall not be required to return any packing materials.
5. **Delivery.** Seller shall deliver the Goods in the quantities, on the date, and at the place set forth in the Order. Unless otherwise set forth in the Order, Seller shall deliver all Goods DDP Asterion's facility (Incoterms[®] 2010). Title and risk of loss will pass from Seller to Asterion upon delivery. TIME IS OF THE ESSENCE WITH RESPECT TO ALL DELIVERIES. Failure to deliver the Goods within the time stated will constitute a material breach of the Order. In the event of any anticipated or actual delay in delivery, Seller shall: (i) provide Asterion with prompt written notice stating the reason for delay, action being taken to minimize the delay, and expected delivery date; and (ii) upon Asterion's request, provide expedited delivery at no additional cost to Asterion. Unless expressly authorized by Asterion in writing, Seller shall not deliver any Goods prior to the scheduled delivery dates.
6. **Inspection and Rejection.** Asterion may inspect the Goods at any time after delivery. Notwithstanding any such inspection, payment, or acceptance, Asterion may reject all or any portion of the Goods due to any defect or nonconformance by providing Seller with written notice of rejection within a reasonable time after delivery or discovery of any defect or nonconformance. If Asterion rejects any portion of the Goods, then Asterion may: (i) return the Goods at Seller's risk and expense for correction, replacement, or refund; (ii) accept the Goods as is, subject to an appropriate reduction in the applicable price; (iii) accept and correct the Goods at Seller's expense; and/or (iv) pursue any other right or remedy available to Asterion, including termination of the Order.
7. **Changes.** At any time, Asterion may direct Seller to make reasonable changes to the Goods' specifications, performance, quantity, packaging, shipment, and/or delivery (each, a "Change Request"). Within five (5) days of its receipt of any Change Request, Seller shall provide Asterion with written notice identifying and supporting the impact, if any, that the Change Request may have on the cost or time required to perform the Order (each, an "Adjustment Notice"). Within ten (10) days of its receipt of any Adjustment Notice, Asterion shall notify Seller whether to proceed with the change pursuant to the Adjustment Notice. If Asterion does not provide Seller with such notice, then the Change Request will be deemed withdrawn and Seller shall proceed pursuant to the Order. However, if Asterion directs Seller to proceed with the change pursuant to the Adjustment Notice, then the Order will be deemed amended accordingly.



8. **Price and Payment Terms.** The price for the Goods will be the amount set forth in the applicable Order. If the prices are not set forth in the Order, then Seller shall immediately notify Asterion and Asterion shall promptly issue a revised Order. Unless otherwise set forth in the Order, the price of Goods includes, and Seller shall be responsible for, all taxes, impositions, duties, fees, and other charges. No increase in price will be effective without the prior written consent of Asterion. Asterion shall pay all accurate and properly submitted invoiced amounts due to Seller within sixty (60) days after Asterion's receipt of such invoice, except for any amounts disputed by Asterion in good faith. Without prejudice to any other right or remedy it may have, Asterion reserves the right to set off any amount owing to it by Seller against any amount payable by Asterion to Seller under the Order.
9. **Termination for Cause.** Asterion may immediately terminate all or any part of the Order for cause by providing Seller with written notice if: (i) Seller fails to deliver Goods in accordance with the Order or these Terms; (ii) Seller fails to provide Asterion with reasonable assurances of future performance; (iii) the Goods become subject to any applicable anti-dumping or countervailing duty order; (iv) Seller becomes insolvent or files a petition for bankruptcy; and/or (v) Seller becomes a party to any proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of its creditors. If Asterion terminates the Order for cause, then Asterion shall only be liable to Seller for Goods accepted by Asterion prior to the date of termination and Seller shall be liable to Asterion for all damages incurred by Asterion as a result of such termination.
10. **Termination for Convenience.** Asterion may terminate all or any part of the Order for convenience by providing Seller with thirty (30) days' prior written notice. If Asterion terminates the Order for convenience, then Asterion shall reimburse Seller for all reasonable costs and expenses incurred by Seller in connection with its performance under the Order, and pay for all goods accepted by Asterion up to the date of termination. Asterion reserves the right to audit Seller's Books and Records to confirm the date of any such costs or expenses.
11. **Warranties.** Seller represents and warrants to Asterion that the Goods will, at the time of delivery and for a period of one (1) year thereafter: (i) comply with all specifications set forth in the Order or as otherwise agreed upon by the parties in writing; (ii) be free from all defects in design, material, assembly, and workmanship; (iii) be free from all liens, judgments, and other encumbrances; (iv) be new, merchantable, fit, and suitable for the purposes intended; (v) be manufactured, sold, and delivered in compliance with all relevant laws, rules, and regulations; and (vi) not infringe or misappropriate any third party's intellectual property rights or trade secrets (collectively, "Warranties"). The Warranties are cumulative and in addition to any other warranty provided by law or equity. The Warranties survive any inspection, payment, or acceptance by Asterion. Any applicable statute of limitations runs from the date of Asterion's discovery of the noncompliance of the Goods with the Warranties. Seller shall promptly reimburse Asterion for any loss, damage, cost, fee, or expense incurred by Asterion as a result of any breach of the Warranties.

- 12. Indemnification.** SELLER SHALL INDEMNIFY, DEFEND, AND HOLD ASTERION, INCLUDING ITS SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, CUSTOMERS, SUBSIDIARIES, AFFILIATES, AND REPRESENTATIVES, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, DEMANDS, SUITS, PROCEEDINGS, DAMAGES, LIABILITIES, FINES, FEES, SETTLEMENTS, PENALTIES, COSTS, AND EXPENSES (INCLUDING COURT COSTS AND REASONABLE ATTORNEYS' FEES) OF ANY KIND OR NATURE (COLLECTIVELY, "CLAIMS") ARISING OUT OF OR RELATING TO SELLER'S OR ITS DIRECTORS', OFFICERS', EMPLOYEES', AGENTS', REPRESENTATIVES', OR PERMITTED ASSIGNS': (I) BREACH OF THE WARRANTIES; (II) NEGLIGENCE, STRICT LIABILITY, OR WILLFUL MISCONDUCT; (III) VIOLATION OF ANY APPLICABLE LAW, RULE, OR REGULATION; AND/OR (IV) BREACH OF THE ORDER OR THESE TERMS, WHETHER SUCH CLAIMS ARISE FROM TORT, CONTRACT, QUASICONTRACT, OR OTHERWISE.
- 13. Insurance.** Seller shall, at its own cost and expense, procure and maintain the following insurance coverage and limits: (i) commercial general liability insurance identifying Asterion as an additional insured, covering bodily injury, death, personal and advertising injury, and property damage from premises, operations, independent contractors, products, and completed operations, and with limits of at least \$1 million per occurrence and \$2 million in the aggregate; (ii) workers' compensation insurance in accordance with all applicable laws and statutory limits; (iii) employers' liability insurance identifying Asterion as an additional insured with limits of at least \$1 million per occurrence; and (iv) if licensed automobiles are used in connection with the work, then automobile liability insurance identifying Asterion as an additional insured covering all such vehicles with limits of at least \$1 million per occurrence. Upon Asterion's request, Seller shall provide Asterion with certificates of insurance evidencing full compliance with the foregoing.
- 14. Compliance with Laws.** Seller shall: (i) comply with all applicable laws, rules, and regulations, including, without limitation, those regarding anti-corruption, anti-bribery, human rights, and environmental health and safety; and (ii) maintain in effect all licenses, permissions, authorizations, consents, and permits necessary to carry out Seller's obligations under the Order and these Terms.
- 15. Trade Compliance.** Seller acknowledges that the Goods, including software, documentation, and technical data related thereto ("Controlled Goods"), may be subject to certain trade laws, rules, and regulations, including, without limitation, the Export Administration Regulations (EAR) of the U.S. Department of Commerce ("Trade Laws"). Seller shall comply with all applicable Trade Laws related to any Controlled Goods. Seller shall provide Asterion with prompt written notice if: (i) any Goods constitute Controlled Goods or are otherwise subject to Trade Laws; (ii) Seller's trade privileges are denied, suspended, or revoked, in whole or in part; and/or (iii) Seller becomes aware of any actual or alleged violation of any Trade Laws. Unless otherwise set forth in the Order, Seller shall be responsible for obtaining, at its sole cost and expense, any export licenses or trade approvals related to the Goods.

16. **Confidential Information.** Seller shall treat the Order and any sensitive, proprietary, or confidential information provided by Asterion (“Confidential Information”) as strictly confidential. Regardless of form and whether marked, designated, or otherwise identified as “confidential,” Seller shall: (i) not use Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under the Order or these Terms; (ii) not disclose or copy any Confidential Information without the prior written consent of Asterion; and (iii) treat Confidential Information with at least the same standard of care that Seller treats its own information of a similar nature, but with no less than a commercially reasonable standard of care. Asterion shall retain the exclusive right, title, and interest in and to all Confidential Information.
17. **Intellectual Property.** All inventions, designs, drawings, technologies, improvements, processes, copyrights, trademarks, know-how, and intellectual property (collectively, “Intellectual Property”) that Seller creates or develops in connection with the Order which are based upon or embody any Confidential Information belong to Asterion. Seller assigns to Asterion all right, title, and interest in and to such Intellectual Property and grants to Asterion, as necessary, a perpetual, worldwide, non-exclusive, paid-up, royalty free license to use any other intellectual property incorporated into the Goods.
18. **Disclaimer of Damages. ASTERION DISCLAIMS AND SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR PRODUCTION DOWN-TIME, IN CONNECTION WITH THE GOODS, THE ORDER, OR THESE TERMS, EVEN IF ASTERION HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.**
19. **Amendment and Assignment.** No amendment or modification of the Order or these Terms will be valid or binding unless made in writing and signed by an authorized representative of each party. Seller shall not assign, delegate, or subcontract its rights or obligations under the Order or these Terms without the prior written consent of Asterion, and any attempted assignment, delegation, or subcontract without such consent will be void.
20. **Governing Law.** The Order and these Terms are governed by the laws of the State of Indiana, without regard to its conflict-of-law principles. Any claim or controversy arising out of the Agreement or these Terms must be brought exclusively in either the Circuit or Superior Court of Marion County, Indiana, or the United States District Court for the Southern District of Indiana, all of which courts are located in Indianapolis, Indiana. Seller consents and agrees that such jurisdiction and venue lie exclusively in these courts and Seller hereby waives any and all defenses that it may have regarding such jurisdiction or venue.
21. **Notice.** All notices, request, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed if to Asterion at P.O. Box 68809, 5425 West 84th Street, Indianapolis, Indiana 46268 and if to Seller at the addresses set forth on any quotation or invoice prepared by Seller relating to the Goods. All Notices shall be delivered by personal delivery, recognized overnight courier (with all fees prepaid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt of the receiving party, and (ii) if the party giving the Notice has complied with the requirements of this Section.

22. **Severability and Waiver.** If any provision of the Agreement or these Terms is deemed invalid or unenforceable, then such provision will be severed from the Agreement or these Terms, as applicable, and have no further impact on the remaining provisions. No waiver by Asterion of any of the provisions of the Agreement or these Terms is effective unless explicitly set forth in writing and signed by a duly authorized representative of either party. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
23. **Amendment and Assignment.** Any amendment or modification of the Agreement or these Terms will be null and void and of no force unless it: (i) is in writing; (ii) is signed by a duly authorized representative of each party; (iii) expressly refers to the specific provision to be amended; and (iv) expressly indicates the parties' agreement to amend such provision. Seller shall not assign, delegate, or subcontract its rights or obligations under the Agreement or these Terms without the prior written consent of Asterion, and any attempted assignment, delegation, or subcontract without such consent shall be void. Notwithstanding the foregoing, these Terms may be amended by placing a notice of such amendment on the Asterion website. Any such amendment shall be effective fifteen (15) days after notice of the amendment is posted on the Asterion website. Amendments shall not affect any existing Agreement and shall only affect transactions which occur after the effective date of the amendment.
24. **No Third-Party Beneficiaries.** The Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or confers upon any other person or entity, any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.
25. **Independent Contractor.** Seller and Asterion are independent contracting parties, and nothing in the Order or these Terms will make either party the agent of the other or grant either party any authority to assume or create any obligation on behalf of or in the name of the other.
26. **Survival.** The following Sections survive the expiration or termination of the Order or these Terms: 9 (Termination for Cause); 10 (Termination for Convenience); 11 (Warranties); 12 (Indemnification); 15 (Trade Compliance); 16 (Confidential Information); 17 (Intellectual Property); 18 (Disclaimer of Damages); and 20 (Governing Law).