

NOVITÁ TECHNOLOGIES, Inc.



VENDOR TERMS AND CONDITIONS

1. ACCEPTANCE

- 1.1 The terms and conditions below or those otherwise specifically negotiated between Buyer and Seller constitute the complete and exclusive agreement between Buyer and Seller subject only to local laws which may compulsorily override a particular provision of this agreement.
- 1.2 The acceptance of the Purchase Order, (collectively the "Order") by acknowledgment, shipment of Goods, performance of Services, or commencement of work on supplies shall constitute acceptance of the terms and conditions.
- 1.3 Buyer expressly rejects any additional or different terms and conditions, including those which appear in any quotation, acceptance, shipping documentation, invoice or acknowledgment of Seller. Seller may not assert, as a defense to the enforcement of the conditions of this Order, any conditions or limitations made in its acceptance. The terms and conditions may only be modified by Buyer's express written consent.
- 1.4 This Order may not be assigned or delegated, in whole or in part, without Buyer's prior written consent, including, but not limited to, the subcontracting of work to be performed or the transfer of tooling to third parties for the performance of work under this Order.
- 1.5 In addition this Agreement shall be supplemented by "*Novitá Supplier Handbook*" in the version that was valid when this Agreement was concluded, which has been made available to the Seller at www.novitatech.com. Novita shall be entitled to update these guidelines from time to time, in accordance with the further development of the quality management systems. The amended guidelines shall be an integral part of this Agreement unless the Supplier objects to their inclusion in a written statement, detailing his objections within one month after receipt of said guidelines.

2. CHANGES

- 2.1 Buyer may from time to time by notice to Seller make reasonable changes, within the scope of the Contract, to the drawings, specifications, materials, designs, method of shipping or packing, and the place of delivery of any Goods and/or work covered hereby, and Seller agrees to promptly make such changes. Any changes to this Order shall be made in writing or by electronic communication.
- 2.2 If any such change directly affects the price or delivery schedule of Goods or Services, an equitable adjustment will be made, provided that Seller make a written claim within five (5) days following Seller's receipt of such changes. If the parties are unable to agree upon the amount of the adjustment, acting reasonably and in good faith, Buyer may without any liability terminate the Order as to all Goods and Services affected.
- 2.3 Buyer may reschedule or cancel any delivery releases as production requirements change without additional liability.
- 2.4 Seller shall confirm any changes or rescheduling in writing, via mail, facsimile or electronic data transmission.
- 2.5 Seller shall not, without prior written consent of Buyer, make any process or design changes affecting the Goods. If Seller makes any unauthorized changes, the expense associated with rectifying such change will be assumed by the Seller.
- 2.6 The Order shall not be deemed or construed to be modified, amended, rescinded, canceled or waived in whole or in part, except by written change order signed by Buyer.

3. PERFORMANCE; DELAYS

- 3.1 Time is of the essence to all deliveries. "Delivery date" shall mean the date Goods are to arrive at Buyer's facility. Buyer requires 100% on time delivery. Seller is responsible for supporting Buyer release fluctuations of +/-15% during the agreed component lead time period to ensure on-time delivery of requirements.
- 3.2 When deliveries are specified to be in accordance with Buyer's written releases, Seller will not fabricate or assemble any Goods except to the extent authorized by the written releases or to the minimum delivery quantities in this Order. Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which shall entitle Seller to a modification of the price for Goods or Services covered by this contract.
- 3.3 Seller shall not ship ahead of schedule unless authorized by Buyer in writing. Buyer may return, at its option, all unauthorized early shipments to Seller at Seller's expense. Payments for early shipments shall be postponed until normal maturity after the scheduled delivery date.
- 3.4 Seller, when it has reason to believe that deliveries will not be made as scheduled, shall provide immediate notice to Buyer, setting forth the cause of such anticipated delay.
- 3.5 Seller agrees not to give any other customer of Seller any priority over Buyer in the allocation of Seller's production.
- 3.6 All damages suffered by Buyer and any premium transportation or other cost required to meet the specified delivery schedule will be at the expense of Seller.
- 3.7 Unless otherwise specified in the Order, shipments of Goods shall be DDP (INCOTERMS: 2000) to the Novita manufacturing site.
- 3.8 Seller shall maintain availability of the Goods purchased under this Order for at least 15 years (unless otherwise agreed in writing) after the end of mass production manufacturing. If Seller determines within this period that it will no longer be possible to ensure this, Seller must inform Buyer without delay and, if Seller is unable to offer Buyer any other reasonable possibility of supply, Seller will provide Buyer with the opportunity of procuring an all-time requirement, 12 months before production is stopped.
- 3.9 Neither party shall be liable to the other for any delay or failure to perform where such delay or failure is caused by events beyond the reasonable control of the affected party. The foregoing shall be subject to the affected party giving reasonable notice to the other party.

4. PACKING; MARKING; SHIPPING

- 4.1 Shipments must be preserved, packaged, handled and packed to permit efficient handling, provide protection from loss or damage, and comply with Buyer specifications, government regulations and carrier requirements. Seller shall be liable for any loss or damage due to its failure to properly preserve, package, handle or pack Goods.
- 4.2 No charges shall be allowed for packing, crating, returnable containers, import duties, transportation, documentation or media unless previously agreed to in writing and such agreement is referenced on the face of the Order. Buyer will not be responsible for delays in the payment of invoices if these requirements are not met.
- 4.3 All containers, packing lists, bill of lading and invoices must list the order number for all shipments. In addition, for Production Material, part number and quantity must also be stated on these documents. Buyer's count will be accepted as final on all shipments.

4.4 Seller upon request shall submit a Certificate of Compliance signed by an authorized representative of the Seller attesting to Seller's compliance with all government and environmental laws and regulations relating to the Goods sold. This certificate will be submitted at the beginning of deliveries and, thereafter, as directed on the material drawing.

5. QUALITY AND INSPECTION

5.1 Seller will participate in Buyer supplier quality and development program(s) and comply with all engineering releases and validation requirements and procedures, including Buyer production part approval processes, which Buyer specifies from time to time.

5.2 Seller will provide and maintain a quality assurance system approved by Buyer and which meets Buyer's written specifications.

5.3 Buyer may inspect and evaluate all Goods (including all tooling and material used in their manufacture), and all services at times and places designated by Buyer.

5.4 Seller will permit Buyer and its representatives and consultants to enter Seller's facilities at reasonable times to inspect such facilities and any goods, inventories, work-in-process, materials, machinery, equipment, tooling, fixtures, gauges and other items and processes related to Seller performance of this contract. No such inspection by Buyer will constitute acceptance by Buyer of any work-in-process or finished goods or affect the Buyer's rights.

5.5 Buyer may, at its option, reject and return any Goods which contain defective material or workmanship or which do not conform to this agreement, applicable drawings, specifications, or samples. Rejected Goods which Buyer returns to Seller and replacement or repaired Goods which are returned to Buyer shall be returned at Seller's risk and expense.

5.6 Payment for any Goods or Services does not constitute final acceptance.

5.7 Where applicable, all Goods supplied under the Order shall have a one (1) year date code limitation.

NON-CONFORMING GOODS

1. Buyer is not required to perform incoming inspections of any goods, and Seller waives any rights to require Buyer to conduct any such inspections.
2. Seller will not substitute any goods for the goods covered by this Contract unless Buyer consents in writing. If Buyer rejects any goods as non-conforming, Buyer may, at its option, (a) reduce the quantities of goods ordered under this Contract by the quantity of non-conforming goods, (b) require Seller to replace the non-conforming goods, and /or (c) exercise any other applicable rights or remedies.
3. If Seller fails to inform Buyer in writing of the manner in which Seller desires that Buyer dispose of non-conforming goods within forty-eight (48) hours of notice of Buyer's rejection of non-conforming goods (or such shorter period as is reasonable under the circumstances), Buyer will be entitled to dispose of the non-conforming goods without liability to Seller, provided, however, that in any event Buyer may elect to arrange for the shipment of any non-conforming goods back to Seller at Seller's expense. Seller will bear all risk of loss with respect to all non-conforming goods and will promptly pay or reimburse all costs incurred by Buyer to return, store or dispose any non-conforming goods.
4. Buyer's payment for any non-conforming goods will not constitute acceptance by Buyer, limit or impair Buyer's right to exercise any rights or remedies, or relieve Seller of responsibility for the non-conforming goods.

6. PRICING; INVOICING; PAYMENT

- 6.1 Seller shall sell to Buyer the Goods or Services shown on the face of the Order at the price specified. All prices are inclusive of applicable freight charges and duties unless otherwise agreed.
- 6.2 Seller warrants that the prices charged for the Goods or Services are not higher than those charged to any other customer or Buyer site for Goods of like grade and quality in similar quantities or for similar Services performed by skilled personnel.
- 6.3 Seller agrees to promptly render a complete and correct invoice to Buyer after delivery of the Goods or the performance of Services, and to accept payment in cash or its equivalent. Each invoice shall reference the order number.
- 6.4 Buyer shall not be liable for any federal, state or local taxes unless separately stated on the face of the Order and separately invoiced.
- 6.5 Standard payment terms are Net 60, unless otherwise stated on Seller's Purchase Order or Schedule Agreement. Time for payment and the period for cash discount privilege shall not begin to run until both Seller's invoice and Goods have been received. Buyer may withhold payment until proof of the absence of any liens or encumbrances on the Goods is given to Buyer's satisfaction.

7. WARRANTY/ CHARGEBACK

- 7.1 Seller warrants that all Goods and Services covered by this Order conform to the specifications, drawings, samples or other description upon which this Order is based, shall be fit and sufficient for the purpose intended, merchantable, of good material and workmanship and free from defect.
- 7.2 Seller warrants that it has title to the Goods and this warranty shall be perpetual.
- 7.3 These warranties shall survive inspection, test, acceptance and payment and shall run to Buyer, its customers and users of its products.
- 7.4 All warranties (except for title) shall be enforceable for the period specified by Buyer's customer (at least 12 months for aftermarket, at least 36 months for OE business) after delivery of Goods or completion of Services.
- 7.5 Seller agrees to promptly replace or correct defects of any Goods or Services not conforming to the foregoing warranty, without expense to Buyer, when notified of such nonconformity by Buyer.
- 7.6 If Seller fails to promptly correct defects in or replace nonconforming Goods, Buyer may make such corrections or replace such Goods and Services at Seller's expense or return them for credit or refund. In addition to other remedies, Buyer may reject nonconforming Goods and return them to Seller at Seller's expense.
- 7.7 All costs incurred by Buyer for non-conformities in parts, or line shutdowns associated with goods supplied by Seller, and costs associated with non-conformities in processes provided to Buyer by Seller's sub-contracted processor(s), shall be charged back as is reasonable by Seller.
- 7.8 If a defect is only discovered after further processing of Products despite compliance with the provisions above, Seller shall be obliged to bear all the costs in connection with the exchange or rectification of defective Products. The costs include the costs of inspection, transportation, labor and material, regardless of whether these costs are incurred at Seller's, at Buyer's or at third parties' facilities. These costs shall also include all costs of any exchange or repair of products into which Buyer has fitted defective Products.

7.9 If a recurrent failure makes it necessary to replace a whole production series of Products or Buyer's products into which the Products have been assembled, because the root cause analysis in each individual case is not economical, nor possible nor reasonable, Seller must also bear the costs referred to section 7.8 for those defective Products even though analysis of all those defective Products was not performed.

8. LABOR DISPUTES

Seller will notify Buyer immediately of any actual or potential labor dispute that is delaying or threatens to delay timely performance of this Order. Seller will notify Buyer in writing 6 months in advance on the expiration of any current labor contract. At least 10 days before a labor contract expires, Seller will establish, at its expense a 40 working day supply of Goods in a neutral warehouse site to be located at least fifty 50 miles from Seller's manufacturing location. By authorizing the additional inventory, Buyer commits to buy the entire quantity of conforming Products requested and produced.

9. REMEDIES; WAIVER; APPROVAL

- 9.1 The rights and remedies reserved in this Order to Buyer are cumulative and in addition to any other or further rights and remedies available at law or in equity.
- 9.2 If any Goods fail to conform to the warranties provided by Seller, Buyer shall notify Seller and Seller shall, if requested by Buyer, reimburse Buyer for any incidental damage caused by the nonconforming Goods, including costs, expenses and losses incurred by Buyer (a) in inspecting, sorting, repairing or replacing nonconforming Goods; (b) resulting from production interruptions, (c) conducting recall campaigns or other corrective service actions, and (d) claims for personal injury (including death) or property damage caused by such nonconforming Goods.
- 9.3 No waiver of any breach of any provision of this Order will constitute a waiver of any other breach or a waiver of such provision.
- 9.4 Buyer's approval of documents shall not relieve Supplier from complying with any requirements of this Order.
- 9.5 Buyer and Seller will on occasion agree to specific warranty sharing agreements in order to ensure an appropriate level of cost management with regard to warranty.

10. BUYER PROPERTY

- 10.1 All tools, dies, equipment, programs or other material furnished by Buyer to Seller, for performance of the Order or tooling specifically paid for by Buyer, and any replacement thereof, or anything affixed or attached thereto, whether itemized or included in the price of any Goods, shall remain Buyer's property. Such property, if it can reasonably be done, shall be plainly marked or otherwise adequately identified by Seller as property of Buyer, and shall be safely stored separate and apart from Seller's property.
- 10.2 Seller agrees to maintain Buyer's tools, using them only to fill this and similar future Orders for Buyer. Seller shall not substitute any property for such and shall not use such property except for filling Buyer's Order. Seller also agrees not to make changes to the tool without Buyer's approval, and Seller will ensure the tool is maintained to the latest approved design release.
- 10.3 While in Seller's care, custody, and control, such property shall be held at Seller's risk, maintained in accordance with good commercial practice, and subject to removal at Buyer's request. Seller

shall be responsible for, and shall promptly notify Buyer of, any loss or damage. Seller will keep such tooling or property in its possession and/or control fully covered by insurance, free of liens and encumbrances and will replace such tooling or property when lost, damaged or destroyed.

- 10.4 Buyer shall have the right to enter Seller's premises at all reasonable times to inspect such property and Seller's records with respect thereto. Buyer's property shall be subject to repossession and/or removal by Buyer at any time.
- 10.5 All requests for reimbursement for tooling costs are subject to review, approval and audit by Buyer.

11. PATENT INDEMNITY

- 11.1 Seller warrants that the Goods or Services sold will not infringe any U.S. or foreign patent and or/any third party intellectual property right, and Seller will, at its expense, defend, indemnify and save harmless Buyer, its agents and customers and the users of any Goods or Services covered by this Order from any and all liability, loss, damage, or expense which may be incurred by any of them, including without limitation attorney fees and costs, arising out of, or in connection with, or related to any claim of defect in the design, materials, manufacture or sale of such Goods or Services, or in any way related to Seller's performance of its obligations under this Order.
- 11.2 Seller agrees that it will, at its own expense, defend any action, suit or claim in which infringement is alleged provided Seller is duly notified as to such suit.
- 11.3 If the use by Buyer or its affiliates, subsidiaries, assigns or customers of any good or service is enjoined ("Infringing Product"), Seller shall, at its own expense, procure for Buyer the right to continue using the Infringing Product. If Seller is unable to do so, Seller shall at its own expense, either replace the Infringing Product with a non-infringing product, or modify the Infringing Product so that it becomes non-infringing. If Seller is unable to replace or modify the Infringing Product, Seller shall refund in full all cost paid by Buyer for the Infringing Product.
- 11.4 Seller agrees that part manufactured based on Buyer's drawings and/or specifications may not be used for Seller's own use or sold to third parties without Buyer's express written authorization.

12. TERMINATION

- 12.1 Buyer may terminate the Order in whole or in part at any time in the manner specified in Section 12.3 upon the occurrence of certain events, including but not limited to:
- i. Default by Seller with respect to cost competitiveness, delivery, quality, failure to maintain technology, or other obligation under the Order, or
 - ii. Insolvency of Seller, filing by Seller of a voluntary petition in bankruptcy, filing of any involuntary petition to have Seller declared bankrupt, provided the same is not vacated within thirty (30) days from the date of such filing, or the execution by Seller of any assignment for the benefit of creditors.
- 12.2 In the case of (i) or (ii) above, Buyer shall incur no liability after giving proper notice and reasons for the termination. Any property of Buyer, as defined in the Order, shall be accessible to and subject to repossession by Buyer.
- 12.3 Buyer will notify Seller of the termination of the Order and Seller shall immediately stop all work on the Order. If Buyer provides verbal notice, Buyer will immediately confirm termination in writing. Seller shall provide a complete cancellation cost analysis and shall immediately notify Buyer of any anticipated extraordinary cancellations costs.

- 12.4 Terminations not included in (i) or (ii) above shall be negotiated by the parties, in which case Buyer's liability shall not exceed the full price for quantities already completed, in accordance with releases on order, to meet scheduled delivery dates up to thirty (30) calendar days from the date of notification of cancellation, unless a different number of days is specified on the Order.
- 12.5 Under no circumstance shall Buyer pay any charges if: (a) Seller is not willing to provide a complete cost analysis for Buyer's inspection, or (b) Seller can sell components or material to another source.
- 12.6 Upon cancellation of software or service order, Buyer shall only be liable for the price of the work that has been completed.
- 12.7 Buyer shall have no liability with respect to Goods or components procured, or work done, or supplies partially fabricated, in excess of authority contained in this Order or in any shipment release issued to Seller pursuant hereto. In no event shall Buyer be liable for prospective or anticipated profits by reason of any termination.
- 12.8 If the Buyer has its contract with its customer terminated for convenience or other cause by its customer, Buyer will terminate this Order with Seller on terms consistent with the terms negotiated with Buyer's customer.

13. **INSURANCE**

Seller will provide worker's compensation, comprehensive general liability, automobile, public liability, and property damage insurance in amounts and coverages sufficient to cover all claims hereunder. Upon request of Buyer, such policies will name Buyer as an additional insured and contain endorsements stating that the policies are primary and not excess over or contributory with any other valid, applicable, and collectible insurance in force for Buyer. Buyer may require Seller to furnish evidence of the foregoing insurance but failure to comply with these insurance requirements will not relieve Seller of its liability and obligation under this clause.

14. **PRODUCT LIABILITY**

14.1 Indemnification. Seller will indemnify and defend Buyer against third-party claims or demands for injury or death to persons, property damage, economic loss, and any resulting damages, losses, costs and expenses (including reasonable legal fees), regardless of whether the claim or demand arises under tort, contract, strict liability, or other legal theories, if and to the extent caused by Seller's defective design or manufacture of Products or provision of Services, or its negligent acts or omissions in its performance under the Contract.

14.2 This **Section 14** will not apply to the extent that the injury, loss, or damage results from (1) Buyer's specification of materials in the Products, (2) Buyer's design of the Products, (3) any alteration or improper repair, maintenance, handling, or installation of the Products by anyone other than Seller, or (4) the integration or interaction of the Products with systems or components not supplied by Seller.

14.3 The parties will cooperate with each other to determine the root cause of a defect in or failure of the Products (and related systems and components) and an equitable allocation of responsibility among all responsible parties. Seller may examine and test all available Products and related systems and components that are subject to a third-party claim.

15. **RECALL/REPAIR CAMPAIGN**

15.1 If Seller's Goods or Services create or contribute to a vehicle or component repair campaign or safety recall due to a vehicle or component defect, or non-compliance with the National Traffic and

Motor Vehicle Safety Act, as revised, Seller shall be liable for costs and damages resulting from a Recall only if the Recall results in whole or in part from a failure of the Goods to conform to the warranties in **Section 7** during the warranty period specified in the Contract.

15.2 If Seller is liable for a Recall, the extent of Seller's liability will be negotiated on a case-by-case basis based on (1) a good faith allocation of responsibility for the Recall, (2) the reasonableness of the costs and damages incurred, (3) the quantity purchased and Contract price of the affected Goods, and (4) other relevant factors.

15.3 Buyer must (i) notify Seller as soon as practicable after Buyer learns that a Recall being considered implicates the Products, (ii) provide Seller with available performance evaluations, accident reports, engineering investigations, and other data relating to the potential Recall, (iii) provide Seller a reasonable opportunity to participate in inquiries and discussions among Buyer, its customer, and governmental agencies regarding the need for and scope of the Recall, and (iv) consult with Seller about the most cost-effective method of modifying or replacing vehicle systems or component parts, including the Products, in order to remedy the alleged defect or non-compliance.

16. USE AND PROTECTION OF INFORMATION

The specifications, drawing, designs, manufacturing data and other information transmitted to Seller by Buyer in connection with the performance of this Order are the property of Buyer and may be covered by one or more patents, patent applications or copyrights. Seller will handle all of this information in such a manner that it is kept confidential and is not used for any purpose detrimental to the interest of Buyer. Seller will secure written approval from Buyer before any of this information is released to anyone other than those requiring the information for the performance of work under this Order. The information will be returned promptly to Buyer upon request.

17. RIGHTS IN DEVELOPMENT

17.1 If performance under the Order includes experimental, developmental or research effort and such work is paid for in whole or in part by Buyer, Seller shall disclose to Buyer all confidential processes, know-how, or trade secrets relating to such work. If production is cancelled due to lack of requirements or other reasons, Buyer has the right to purchase design development at actual cost.

17.2 Upon request, Seller shall assign to Buyer each invention and property right relating to the work described in Section 17.1.

18. COMPLIANCE WITH APPLICABLE LAWS

18.1 Seller agrees to comply with all applicable federal, state and local laws, regulations and ordinance and to indemnify Buyer against all liability for Seller's failure to comply. The foregoing obligation includes without limitation compliance with all statutory, regulatory and contractual requirements that may be applicable to environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety.

18.2 Buyer has the right to utilize third party "audit" or independent verification concerning items which the Seller deems confidential or proprietary.

19. CLAIMS ADJUSTMENT

In addition to any right of setoff or recoupment provided by law, Buyer may at any time and without notice deduct, debit memo, or set-off claims by Seller (or its assignee or financing institution) for amounts due or to become due from Buyer against any claims that Buyer has or may have arising out of this or any other transaction between Buyer and Seller.

20. CUSTOMS

Seller will promptly notify Buyer in writing of material or components used by Seller in filling this Order that Seller purchases in a country other than the country in which the Goods are delivered to Buyer. Seller will furnish Buyer with any documentation necessary to establish the country of origin. Seller will promptly advise Buyer of any material or components imported into the country of origin and any duty included in the purchase price of the Goods. Seller warrants that the information regarding the import or export of the Goods supplied to Buyer is true and correct and that all sales covered by this Order will be made at not less than fair value under the anti-dumping laws of the countries to which the Goods are exported.

21. HAZARDOUS SUBSTANCE LABELS

Seller will notify Buyer in writing upon receipt of this Order if the products are subject to laws or regulations relating to hazardous or toxic substances, hazardous waste disposal, or to any other environmental or safety and health regulations. Seller will furnish all appropriate shipping certification and instructions for shipping, safety, handling, exposure, and disposal (including, without limitation, material data safety sheets) in a form understandable by Buyer's non-technical personnel and in enough detail to identify all action that the user must take concerning the material.

22. ELECTRONIC DATA INTERCHANGE

If requested by Buyer, Seller will use commercially reasonable efforts to implement electronic data interchange or another electronic procurement system determined by Buyer for order processing. All transactions shall be in accordance with Buyer's users manual for electronic data interchange or other electronic procurement system. Implementation of electronic data interchange and transactions by Seller will be at Seller's expense.

23. PUBLICITY

The parties may use their business relationship for advertising purposes only with the prior written consent of the other party. Seller will not place its, or any third party's trademark or designation on a part if it bears a trademark of Buyer or its affiliate, an identifying mark specified by Buyer, or if the part is based on Buyer's design. Seller will sell such marked parts only to Buyer and will not sell them to third parties without Buyer's prior written consent.

24. RELATIONSHIP

Neither Seller nor its subcontractors, or the employees or agents of any of them, shall be deemed to be Buyer's employees, or agents. Seller and its subcontractors are independent contractors and Seller shall be wholly responsible for withholding or payment of all federal, state and local income and other payroll taxes with respect to its employees, including contributions from them and as required by law.

25. FINANCIAL INFORMATION

25.1 Seller shall provide Buyer annually with any financial evidence required to confirm its financial health to the Buyer, up to and including its audited financial statements immediately after they become available to Seller or as otherwise agreed.

25.2 Upon written request Seller shall also provide to Buyer such interim, internal financial statements that would be made available to any other customer of similar magnitude.

