



C&D TECHNOLOGIES, INC.
Terms and Conditions of Purchase

UNLESS OTHERWISE AGREED TO IN WRITING BY C&D TECHNOLOGIES, INC., ALL PURCHASES MADE BY C&D PURSUANT TO THIS PURCHASE ORDER ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS.

1. Definitions.

- a. "Buyer" means C&D Technologies, Inc. or the operating division or subsidiary thereof indicated in any Order, including, but not limited to, Trojan Battery Company, LLC.
- b. "Purchase Order" shall mean this document, any drawings, specifications or other documents referenced herein together with all terms and conditions set forth herein (including any terms or condition provided on the reverse side of this document) as such terms may be modified, from time to time, by Buyer as provided herein.
- c. "Seller" shall mean the person or entity identified on the reverse side of this Purchase Order as the "Vendor."

- 2. Offer and Acceptance.** This Purchase Order is only an offer to enter into a contract. For this Purchase Order to be a valid and effective order, it must be executed by a duly authorized agent of the Buyer. Buyer may revoke, amend or modify this offer at any time prior to Seller's acceptance. Any of the following acts constitute Seller's acceptance of this Purchase Order and all terms and conditions herein: (a) Seller's return of an acknowledgement of this Purchase Order; (b) Seller's commencement of performance pursuant to this Purchase Order; (c) Seller's delivery of any of the items or services ordered or (d) Seller's acceptance of payment hereunder. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the terms of this offer in Seller's acceptance is hereby objected to and rejected. Acceptance of this Purchase Order is limited to and conditioned upon acceptance of those terms contained on the face of this Purchase Order and those set forth herein, which terms can not be

altered or amended without Buyer's express written agreement. Acceptance shall be binding upon Seller and Seller's successors, assigns and delegates.

If this Purchase Order is for goods, Seller expressly agrees it shall provide Buyer with at least 6 months prior written notice if Seller intends to materially change its manufacturing process or makes changes to the parts, paints and other materials used in any production part approval process (PPAP) that Seller has previously provided to Buyer and otherwise comply with the requirements set forth in Buyer's then-current supplier quality manual, such as its QAR1000 – Quality Assurance Requirements.

- 3. Prices.** Seller agrees that the prices for each item or service listed on this Purchase Order shall be as stated in this Purchase Order and are not subject to escalation prior to delivery of such item or services to Buyer. Seller represents and warrants that the prices set forth in this Purchase Order are at not more than those currently being quoted by Seller to commercial customers for the same or functionally equivalent products or services in like quantities and under similar terms and conditions. If no price is indicated on the face of this Purchase Order for any listed item or service, the price for such item or service shall be deemed to be the lowest price currently quoted or charged by Seller for that item or service, but in no event higher than the price most recently charged to Buyer by Seller for such item or service. In the event Seller reduces its price for any item or service included on this Purchase Order prior to delivery of such item or service to Buyer, Seller agrees to reduce the price of such item or service correspondingly.

4. **Payment Terms.** Unless otherwise specified on the reverse side of this Purchase Order, Buyer shall have sixty (60) calendar days from the date indicated on each invoice received from Seller to remit payment to Seller for the items and services specified in this Purchase Order; provided, however, Buyer shall be entitled to a discount in the amount of one percent (1%) of the net purchase price of the items and services covered hereunder should Buyer remit payment in full to Seller for such items and services within ten (10) calendar days of receipt of Seller's invoice.
5. **Taxes.** Unless otherwise provided in this Purchase Order, the price includes, and Seller shall pay, all excise, sales, use, transfer or other taxes, federal, state and local, in connection with the sale or delivery of the products to Buyer.
6. **Quantities.** Unless otherwise agreed to in writing by Buyer, Seller must deliver the exact quantities of the items specified in this Purchase Order. Buyer reserves the right to reject partial deliveries and to return at Seller's risk and expense any excess quantities of any items delivered by Seller pursuant to this Purchase Order.
7. **Packaging and Shipment.** Seller shall be solely responsible to ensure that all items which are to be delivered to Buyer pursuant to this Purchase Order are packed, packaged, marked and otherwise prepared for shipment by Seller in suitable containers and in a manner consistent with sound commercial practices and industry standards for the mode of transportation which is to be utilized. Seller shall mark on each container all necessary and required handling, loading and shipping instructions. Seller shall include an itemized packing list with each container or shipment. Seller shall provide to Buyer Bills of Lading for each shipment.
8. **Delivery.** Except as may otherwise be specified in writing by Buyer, delivery of all items provided in this Purchase Order shall be made F.O.B shipping point (i.e., Seller's designated shipping facility). Seller acknowledges that Buyer's production and marketing schedules are based in part upon the delivery/completion date(s) specified in this Purchase Order. TIME AND PLACE OF DELIVERY

ARE, THEREFORE, OF THE ESSENCE with respect to Seller's performance under this Purchase Order. Any provision in this Purchase Order or subsequent agreement by Buyer for installment deliveries of the items specified in this Purchase Order shall not be construed as a waiver of this requirement or as severing Seller's obligations for full, on-time, delivery of all items specified in this Purchase Order. If Seller determines that it either can not or may not complete delivery at the specified time and place, Seller shall promptly notify Buyer and indicate the earliest possible date that it is confident that it can complete delivery. Notwithstanding such notice, Seller's failure to effect conforming delivery shall entitle Buyer, without any liability to Seller hereunder, to revoke any prior acceptance of a partial delivery by Seller, to return at Seller's risk and expense all or any part of items delivered in partial satisfaction of this Purchase Order, to cancel this Purchase Order, to receive a refund of any amounts paid to Seller pursuant to this Purchase Order for any items returned to Seller, and to purchase substitute items or services elsewhere and charge Seller with any loss or additional costs incurred in connection with such purchases. If in order to comply with Buyer's required delivery date it becomes necessary for Seller to ship the items by a more expensive mode of transportation than specified in this Purchase Order, any increased transportation cost resulting therefrom shall be paid for by Seller unless the necessity for such rerouting or expedited handling has been caused by Buyer.

9. **Title and Risk of Loss.** Except as may otherwise be specified in writing by Buyer, title to and risk of loss for items purchased which conform to this Purchase Order shall pass to Buyer upon delivery to and acceptance by Buyer or its agents at the specified delivery point. Title to and risk of loss for nonconforming items shall remain with Seller.
10. **Inspection and Rejection.** Buyer reserves the right to inspect, test and, if found to be nonconforming, reject all or some lesser portion of any items identified to this Purchase Order by Seller before, during and after manufacture or delivery. If any inspection or test is to be made on Seller's premises, Buyer shall provide Seller

advance notice of such inspection or test and Seller shall provide reasonable facilities and assistance for the safety and convenience of Buyer's inspectors in such manner as not to unreasonably hinder or delay Seller's performance. All items delivered hereunder are delivered subject to Buyer's inspection, testing, approval and acceptance at the specified delivery location notwithstanding any prior inspection or testing at Seller's premises or any prior payment by Buyer for such items. In addition to Buyer's other rights and remedies available at law or equity, Buyer may return to Seller any items rejected hereunder at Seller's sole expense and may charge Seller all expenses of unpacking, examining, repacking and reshipping such items. Nothing contained in this Purchase Order shall relieve in any way the Seller from the obligation of testing, inspection and quality control.

11. **Warranty.** In addition to any other express or implied warranties applicable to the items or services to be provided hereunder, Seller warrants that all items and services delivered or provided hereunder will: (i) upon delivery and, thereafter, for the applicable standard warranty period (or, if no warranty period has been specified by Seller, for a period of one (1) year from the date of actual delivery) conform to Buyer's specifications specified in this Purchase Order (which, in all cases, shall be controlling), and any samples, drawings, descriptions or specifications provided by Seller; (ii) be merchantable, new, free from all defects in design (unless the design or specification is provided by Buyer), material and workmanship; and (iii) be free of liens and encumbrances. In addition, if Seller knows or has reason to know the particular purpose for which Buyer intends to use the items and services to be provided hereunder, Seller warrants that such items or services will be fit for such particular purpose.

Seller further represents and warrants that any goods specified in this Purchase Order comply with, and conform to, Buyer's then-current supplier manual, such as the QAR1000 – Quality Assurance Requirements and any production part approval process (PPAP) that Seller has previously provided to Buyer.

These warranties shall survive inspection, testing, delivery, acceptance, payment for, use or resale of the items or services furnished hereunder, and shall be enforceable by Buyer, its successors, assigns or customers or any end user of any product manufactured by Buyer which is associated with the items or services furnished hereunder. At its sole expense and option, when notified of any nonconformity by Buyer, Seller shall promptly repair or replace any items or, if applicable, re-do any services which do not conform to the foregoing warranties. In the event Seller fails to promptly honor the foregoing warranties, Buyer, after reasonable notice to Seller and in addition to its other remedies at law or equity, may repair or replace such items, or re-do such services, and charge Seller for any associated cost(s) and expenses incurred. Provided, however, if Buyer is either unable or opts not to repair or replace any such item or re-do any such service, Seller shall promptly refund to buyer the full purchase price paid by Buyer for all such items or services.

12. **Intellectual Property; Noninfringement.**

- a. Seller acknowledges and agrees that all specifications, drawings, diagrams, schematics, sketches, models, samples, designs, technical information or data, written, oral, or otherwise, furnished by Buyer or on buyer's behalf is and shall remain Buyer's sole and exclusive property, and shall be returned promptly to Buyer or its designee (together with all copies) upon the earlier of Buyer's request or the termination or completion of this Purchase Order. Seller acknowledges and agrees that all such intellectual or proprietary property, as well as the terms of this Purchase Order and the existence and content of the relationship between the Seller and Buyer, shall be treated as confidential, and shall not be used or disclosed by Seller except as required in the course of performance hereunder or under other Purchase Orders of Buyer. Unless otherwise agreed to in writing by Buyer, information and material furnished or disclosed by Seller to Buyer shall not be considered to be confidential or proprietary, and shall be acquired by us free of restrictions of any kind.

- b. Seller acknowledges and agrees that any copyrightable work made, designed or developed for us in connection with the performance of this Purchase Order shall be a "work made for hire" within the meaning of Section 201 of the Copyright Law of 1976. Seller hereby assigns to us any and all inventions, discoveries, computer programs, software, data, technologies, designs, innovations and improvements, and the related patents, copyrights, trademarks, trade names and other intellectual property rights and applications therefor, made or conceived by seller or its agents or employees in connection with the performance of this Purchase Order. Seller hereby appoints any of Buyer's officers as its duly authorized attorney, and Seller agrees to cooperate to the extent it may reasonably request, for the purposes of executing, filing, prosecuting and protecting the foregoing.
 - c. Seller represents and warrants that the items and services delivered or provided hereunder do not infringe any United States or foreign patent, trademark, trade secret or copyright, or any proprietary, intellectual property, contract or other right held by any third party.
 - d. Seller shall include all provisions of this Section 12 for the benefit of Buyer, including this Section 12(d), in all of its subcontracts associated with this Purchase Order.
13. **Tools and Equipment.** All tools, dies, molds, patterns, jigs, masks and other equipment and materials furnished by Buyer to Seller or paid for by Buyer, directly or indirectly, and any replacements shall remain Buyer's property. Seller shall safely store such property separately from Seller's property, shall plainly identify such property as Buyer's property and shall not use such property in any other manner whatsoever, except in filling this or other Purchase Orders of Buyer. All such property shall be held at Seller's risk, shall be insured by Seller at its expense for an amount equal to its replacement cost and shall be returned promptly to Buyer upon the earlier of its request or the termination or completion of this Purchase Order.
14. **Changes.** Buyer may, at any time, by written notice to Seller, make changes in drawings,

designs, specifications, method of packing or shipment, quantity ordered, delivery location or delivery schedule and Seller shall either promptly comply therewith or promptly notify Buyer in writing why it can not comply therewith. If any such change causes an increase or decrease in Seller's cost or time required for performance, Seller shall document such impact to Buyer in writing and an equitable adjustment shall be made to the price or delivery schedule, or both and this Purchase Order shall, upon agreement by Buyer in writing, be modified accordingly. Seller agrees to accept any such changes subject to this paragraph. Any claim by Seller for adjustment under this Section 14 shall be deemed waived unless made in writing within ten (10) calendar days after receipt of written notice by us of the change. No change, modification or revision of this Purchase Order shall be binding upon Buyer unless such change is in writing and signed by a duly authorized representative of Buyer.

15. **Compliance with Laws.** Seller shall comply with all applicable governmental laws, ordinances, codes, rules, regulations, programs, plans and orders in the performance of this Purchase Order including, without limitation, the Age Discrimination in Employment Act, and Executive Order 11246, as amended, along with the implementing rules and regulations of the Office of Federal Contracts Compliance, Section 503 of the Rehabilitation Act of 1977, as amended; and 38USC 4212 of the Vietnam-Era Veterans' Readjustment Act of 1974, as amended. At Buyer's request, Seller shall provide appropriate certificates of compliance.
16. **Code of Conduct.** Seller hereby covenants and agrees that it accepts and shall comply with C&D Technologies' Business Partner Code of Conduct, available at <http://www.cdtechno.com/legal>, as it may reasonably be amended by C&D from time to time.
17. **Government Contract Provisions.** Purchase Orders which Seller is aware will be used to satisfy a government contract or subcontract or specify either a government contract number or otherwise indicate that one or more items specified in this Purchase Order will be used to satisfy a

government contract or subcontract shall be subject to and deemed to fully incorporate all clauses and provisions which are contained in such contracts and subcontracts which are applicable to Seller. A list of those clauses to be flowed down from Buyer or Buyer's customers' contract(s) with the U.S. Government is available, and incorporated herein, at <http://www.cdtechno.com/legal>, as it may be reasonably amended by Buyer from time to time ("Appendix). Any failure to indicate that a clause is flowed down in the Appendix does not nullify the incorporation of such clause, per this provision.

18. Cancellation.

- a. In addition to its other rights and remedies at law or equity, Buyer may, at any time, by written notice to Seller, cancel the whole or any portion of this Purchase Order either for cause or solely for its convenience. In the event of any such cancellation, Buyer may procure, upon such terms and in such manner as it may deem appropriate, items compatible to the items covered by this Purchase Order. Seller shall immediately stop all work hereunder on that portion of this Purchase Order which is cancelled and, accordingly, shall immediately notify all of its affected suppliers or subcontractors that it is canceling all related orders and to cease all associated work. Seller shall be paid a reasonable termination charge consisting of a percentage of the Purchase Order price, reflecting the percentage of the work performed by Seller prior to the notice of termination plus actual costs directly associated with Buyer's cancellation. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by its suppliers or subcontractors which Seller could reasonably have avoided. In the event of any such cancellation, Buyer may also require Seller to deliver to it in the manner and to the extent directed by Buyer, any completed or partially completed items indicated on this Purchase Order subject to the payment by Buyer to Seller of an allocable portion of the price as may be agreed to by and between Buyer and Seller. Seller shall continue performance of this Purchase Order with respect to any portion of this Purchase Order which is not cancelled by Buyer. Notwithstanding the foregoing, if the goods or services purchased

under this Purchase Order are non-custom in nature and sold in the ordinary course of Seller's business, Seller shall use commercially reasonable efforts to mitigate Buyer's liability under this section by selling said goods or services to a third party ("Mitigating Sales"). Buyer's obligations to purchase goods or services following cancellation under this section shall be reduced proportionally in the event of Mitigating Sales. Except as expressly set forth in this section, Buyer shall have no obligation or liability to Seller associated with its cancellation of all or a portion of this Purchase Order.

- b. Without limitation, any breach which remains uncured more than thirty (30) calendar days following notification to Seller, late deliveries, deliveries of items which are defective or which do not conform to this Purchase Order, insolvency by Seller, or failure to provide Buyer, upon request, of reasonable assurances of future performance shall each constitute good cause to cancel this Purchase Order.
 - c. All of Seller's obligations set forth in this Purchase Order shall survive the cancellation, termination or completion of this Purchase Order.
- 19. Assignment.** Seller may not delegate or subcontract any of its duties or assign any of its rights or claims hereunder without the prior written approval of Buyer and any attempted delegation or assignment by Seller in violation of this Section shall be void.
- 20. Governing Law.** This Purchase Order shall be governed, construed and enforced solely by the Laws of the State of Delaware. Buyer and Seller further agree that venue for any action to enforce or interpret these terms and conditions shall be adjudicated exclusively in a state court located in Montgomery County, Pennsylvania, or in the federal courts for the Eastern District of Pennsylvania and all parties hereby consent to the jurisdiction of such court in any such action or proceeding and waive any objection to venue based on inconvenient forum. Buyer and Seller hereby irrevocably waive any right to a jury trial in connection with this Purchase Order or any breach hereof.

21. **Force Majeure.** Except for an obligation to pay any sum when due hereunder, neither Buyer nor Seller shall, under any circumstances, be liable for any delay in or default of any of its obligations hereunder when such delay or default is directly or indirectly caused by or in any manner arises out of any cause beyond its reasonable control and not due to its negligence including, without limitation, fire, flood, accident, act of God, war, embargo, strike, fuel, material and supply shortages or transportation delays (collectively, "Force Majeure Events"). Each party agrees to notify the other as soon as possible of the occurrence of any Force Majeure Event. Upon the occurrence of a Force Majeure Event, the affected party's performance hereunder shall immediately be suspended and any affected delivery or ship dates shall be automatically extended for a period equal to the duration of the Force Majeure Event.
22. **Insurance.** In the event that Seller's obligations hereunder require or contemplate performance of services by Seller's employees, or persons under contract to Seller, to be done on Buyer's property, or property of Buyer's customers, Seller shall, at all times prior to full delivery hereunder, maintain with an insurance company or companies having an A.M. Best rating of A-VIII or higher, Comprehensive General Liability Insurance (including coverage for liability hereunder) in the minimum amount of \$1,000,000 combined single limit per occurrence. In addition, Seller shall maintain all insurance coverages required by law, including Workmen's Compensation insurance. The insurance coverages specified herein are not intended and shall not be construed as limiting Seller's liability or Buyer's right to indemnity hereunder.
23. **Indemnification.**
- a. Seller shall defend, indemnify and hold Buyer harmless against any and all losses, damages, demands, claims or liabilities, actions, causes of action, suits, costs and expenses (including attorney's fees and defense costs) arising out of or resulting in any way from: (i) any defect in the goods or services purchased hereunder; (ii) any act or omission of Seller, its agents, employees or subcontractors; (iii) actual or alleged infringement of any U.S or foreign patents, trademarks, copyrights, or other proprietary rights associated with the items or services specified in this Purchase Order, or (iv) breach of this contract.
- b. In the event that Seller is required, as part of its fulfillment of the terms of this Purchase Order, to perform work or services on Buyer's premises or on the premises of Buyer's customers, Seller assumes sole responsibility and liability for losses, expenses, damage, demands and claims in connection with or arising out of any bodily injury (including death) or property damage, which may be alleged to have been sustained in connection with the performance of such work or services by Seller. Seller shall indemnify and hold Buyer harmless from and against any and all losses, damages, demands, claims or liabilities, actions, causes of action, suits, costs and expenses (including attorney's fees and defense costs) arising out of or resulting in any way from the performance of such work or services by Seller or its employees, agents or subcontractors.
- c. The indemnification rights provided herein shall be in addition to the warranty obligations of Seller and any other rights or remedies available to Buyer at law or equity.
24. **Independent Contractor.** Nothing herein is intended or shall be construed as creating or establishing the relationship of employer and employee, agency, partnership, or joint venture between Buyer and Seller nor any director, officer, agent or employee of Seller. Seller is being engaged as and shall perform all of its obligations hereunder as an independent contractor. Nothing herein is intended or shall be construed by any person as granting Seller the right, privilege or authority to make or execute an agreement on behalf of or otherwise bind or obligate Buyer in any way.
25. **Entire Agreement.** This Purchase Order is the complete and exclusive statement of the contract between Buyer and Seller with respect to Buyer's purchase of the items and services covered herein. No waiver, consent, modification, amendment or change of the terms of this Purchase Order shall be binding unless in writing and signed by Buyer and Seller. In case of a conflict between the terms and

conditions on the face of this Purchase Order and the terms and conditions contained on the reverse side of this Purchase Order, the terms on the face of this Purchase Order shall control; and any documents referred to on the face hereof, constitute the entire agreement between the parties.

26. **Additional or Inconsistent Terms.** Any term or condition set forth in any document or form provided to us by Seller which is any way different from, inconsistent with or in addition to the terms and conditions set forth herein shall not become a part of this Purchase Order or be binding on Buyer. If Seller objects to any term or condition set forth herein, Seller must notify Buyer of its objection in writing at the address indicated on the reverse side of this Purchase Order not less than ten (10) calendar days prior to Seller's delivery. Buyer's failure to object to terms contained in any communication from Seller shall not constitute a waiver of such term or condition.
27. **Setoff.** All claims for money due or to become due from Buyer shall be subject to deduction or setoff by the Buyer by reason of any counter-claim arising out of this or any other transaction with Seller.
28. **Cumulative Remedies/Waiver.** The remedies contained herein are cumulative and in addition to any other remedies at law or equity. Buyer's failure to enforce, or waiver of a breach of, any provision of this Purchase Order shall not constitute a waiver of any other breach or of such provision.
29. **EEO Clause.** The Equal Opportunity Clauses required by Executive Order 11246, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C 4212 (formerly 2012), Section 503 of the Rehabilitation Act of 1973, as amended, Executive Order 13201, as amended, as their implementing regulations at 41 CFR Chapter 60 (41 CFR 60-1.4, 41 CFR 60-250.5, 41 CFR 60-300.5 and 41 CFR 60-741.5 respectively) are part of this purchase order and binding upon the Seller (Subcontractor, Vendor, or Supplier) unless exempted by rules, regulation or orders of the Secretary of Labor.
30. **Notices.** Any notice or communication required or permitted under this Purchase Order shall be in writing and shall be deemed received when personally delivered or three calendar days after being sent via first-class mail, postage prepaid, to a party at the address specified herein or at such other address as either party may from time to time designate to the other

