



---

43 Broad Street • Unit C103 • Hudson, MA 01749 • Tel: (978) 461-1140 • FAX: (978) 461-1146

---

## **General Purchase Order Terms & Conditions**

### **Diamond Technologies Inc (DTI)**

---

#### **CONTRACT FORMATION**

These Terms and Conditions, the provisions of any document referring to these Terms and Conditions, any attachments thereto, and any samples, drawings or specifications referred to therein, shall collectively constitute the "Purchase Order", referred to as PO in this document. The PO shall constitute our offer to purchase from you the products and services ordered ("Products"). We may revoke this offer to at any time before your acceptance. Upon acceptance, you agree to sell and deliver Products to us in accordance with this PO. You shall be deemed to have accepted this offer by sending us a written acknowledgement, by delivering any Product ordered, or by commencement of work on Products to be specially manufactured for us.

If applicable, you (supplier) are responsible to flow PO specifications and requirements to any sub-tier supplier; including any key characteristics, design and development control, and/or test specifications. If test specimens are required, it will be communicated to you through drawings, PO requirement flow downs, contract and/or quality improvement actions. You are required to adhere to DTI's requirements and approval before release of methods, processes, and equipment; including technical data, specifications, drawings, process requirements and work instructions. The release of products and services will be specified per PO; any changes to release will need DTI approval prior to amendment. We require suppliers to sustain competence, including any required qualification of persons. Personnel should be aware of their contribution to product or service conformity, quality and safety, and importance of ethical behavior. DTI maintains control and monitoring of supplier performance; statistical techniques are in place for product acceptance and related instructions from supplier including requiring a QMS, and customer or DTI approved external providers. Supplier must provide notification of nonconformance to service or product; change to processes, products, or service including change to external provider and change of manufacturing location; and adhere to DTI or Customer specified counterfeit prevention process. Supplier is responsible for their contribution to product or service conformity, contribution to product safety, and ethical behavior. Supplier is responsible for verification or validation required by DTI, design and development control processes, critical items, test, inspection, and verification. DTI and customer requirements must flow down to external providers; test reports should be provided for design approval, inspection/ verification, investigation, and auditing. Records should be retained per customer requirements. DTI and their customers have rights to access applicable areas of facilities and applicable documented information.

#### **COMMERCIAL TERMS**

Price. Prices for Products are not subject to increase, except as may be permitted below under "Changes". Price covers the net weight of material, and no extra charges of any kind (including charges for containers, insurance, packing, crating, storage, handling or cartage, interest charges, service charges and the like) will be allowed. Unless prohibited by law, you will separately indicate on your invoice any tax that is required to be imposed on the sale of Products.

Changes by Us (DTI). All quantities ordered may be revised as our requirements change. We may at any time make changes in Product specifications, drawings, designs, delivery dates, shipping instructions or other terms of the PO. Such changes will be confirmed in writing signed by our authorized representative. You must notify us within ten (10) days of our notice whether and to what extent such changes will affect price or time of delivery.

Changes by You (Supplier). You agree to notify us of all changes to Products, services, suppliers, or process definition affecting form, fit, or function and, where required, obtain our approval prior to delivery of Product. Additionally, DTI requires notification of any change in manufacturing facility locations whether or not you (the supplier) feel it will affect Form, Fit, or Function.

Transportation. Shipping instructions are to follow DTI's Routing & Transportation Guide or specific instructions provided on DTI Purchase Order.

## General Purchase Order Terms & Conditions

---

Title and Risk of Loss. Title and risk of loss will pass to us when the Products are delivered to our dock, designated drop ship location.

Inspection and Rejection. Products are subject to our right of inspection and rejection. Our making of any payment to you does not constitute our acceptance of Products and we reserve our rights with respect to defects in Products. You agree to provide and maintain inspection and process control systems acceptable to us with respect to the manufacture of Products and you agree to keep and make available complete records (including but not limited to certificates of conformance and traceability records), of all of your inspection work and process control work for a minimum of seven (7) years or specific retention period based on customer agreement. DTI's customers (or designated representatives), and applicable regulatory authorities may inspect Products, applicable records, and facilities at any place of manufacture, including any sub-tier suppliers, without waiving our right to subsequently reject or revoke acceptance for issues identified at a later time. An entire shipment may be rejected based on a reasonable sampling by us that yield sufficient failures to reject the whole shipment.

Conforming Product. All product delivered are to be in complete compliance with all applicable descriptions, specifications, statutory and regulatory requirements unless documented approval for deviation has been authorized by DTI. Requests for deviation must be approved by DTI prior to shipment of the product. DTI may provide tentative approval to ship but reserves the right to subsequently withdraw approval if it is determined that the product in question cannot be used for its intended application, or DTI's customer subsequently rejects the use of the material.

Shipments. Supplier agrees to make shipments in the quantities and at the times specified in the PO. Each shipment shall include a packing list which contains the PO number, product identification, quantity shipped, date of shipment and such information as we may require. You will mark each container to show our PO number and to identify contents without opening. Unless otherwise expressly stated, time is of the essence. You agree to notify us immediately if you ever have reason to believe that any Product will not be delivered as ordered, or a shipment will not be made as scheduled.

Invoices. Your invoices shall contain the PO number, item number, quantity, unit of measure, unit price, total invoice amount, and such other information as may be required by the PO or other written instructions from us.

Warranty. You represent and warrant that the Products will: (i) be owned by you and free of all liens, claims or encumbrances; (ii) conform strictly to all express or implied specifications, drawings, plans, instructions, samples or other descriptions; (iii) be fit and sufficient for the purpose(s) for which they were manufactured and sold, and if you know (or have reason to know) of a particular purpose for which we or our customers intend to use the Products, will be fit for such particular purpose; (iv) be new and merchantable; and (v) be free from defects in design, material and workmanship, whether latent or otherwise. You represent and warrant that neither the Products nor use of the Products will infringe any patent, copyright, trade secret, trademark or other property right of a third party. You represent and warrant that any service you may provide will be performed in a competent manner and be fit for any purpose for which you know or have reason to know we or our customers intend to use such service. You agree that these warranties: (i) survive the inspection, acceptance and use of the Products by us and our customers; (ii) are for the benefit of us and our successors, assignee, customers and users of our products; and (iii) are in addition to any warranties and remedies to which we may otherwise agree or which are provided by law. You agree to extend our customers and us (and to enforce) any warranties received from your suppliers. You agree that all product warranties and all remedies for warranty failures commence upon delivery of the Products to us and continue until the later of (i) the 365<sup>th</sup> day following our acceptance of the Product or (ii) the 365<sup>th</sup> day following the acceptance by our customer of any of product of ours that includes your Product as a part or component or (iii) the normal expiration of your standard warranty. Products failing to meet the warranties will be returned for credit at your cost. We may return in- warranty Defective Products to you without prior authorization but with preliminary notification.

Indemnification. You agree to defend, indemnify and hold us and our customers harmless from and against any and all claims (including without limitation claims for infringement of intellectual property, breach of contract, death or injury to a person or injury to property, or other tort claims), liabilities, damages (whether direct or indirect, incidental or consequential) and expenses (including court costs and attorneys' fees) arising out of or relating to the breach by you of any covenant, representation or warranty contained in this PO, or from any act or omission of you or your agents, employees or subcontractors. We will notify you of any such claim, suit or proceeding and will assist you (at your expense) in the defense of the same.

## TERMINATION

Without Cause. We may terminate all or any part of the PO at our convenience, without cause, at any time by giving you ten (10) days written notice. In such event, you shall immediately cease all work and terminate all orders and contracts, and we

## General Purchase Order Terms & Conditions

---

shall be liable to you only for your reasonable actual costs as a direct result of the termination which may not be recovered or mitigated (e.g. purchased materials and labor costs incurred prior to receipt of notice of termination). You will notify us in writing of such costs within thirty (30) days of termination. The foregoing shall constitute our only liability to you for termination without cause.

**With Cause.** If you default, we may terminate all or any part of the PO without liability to you by giving notice to you. A default will occur if you: (i) fail to perform within the time period specified in the PO; (ii) so fail to make progress as to endanger performance of the PO; (iii) fail to comply with the applicable laws and regulations under which you do business. We may terminate this PO upon a default and if you do not cure the default within ten (10) days (or any longer period we authorize in writing) after your receipt of our written notice of default. Additionally, if we determine that any of your representations, warranties, certifications or covenants are untrue, we shall have the right to terminate this PO immediately without further compensation to you, and you shall compensate us for any damages suffered by us as a result of your untrue representations, warranties, certifications, or breach of covenants. A default will also occur if you fail to meet your financial obligations as they become due, if any proceeding under the bankruptcy or insolvency laws is brought against you, a receiver is appointed for you, or you make an assignment for the benefit of creditors. If a PO is terminated due to our default, without prejudice to any other legal or equitable remedies available to us, we will have the right to: (a) refuse to accept delivery of any and all Products; (b) return to you unused Products already accepted and recover from you payments made for such Products (and for our freight, storage and other expenses); (c) recover any advance payments to you for undelivered or returned Products; (d) purchase Products elsewhere and charge you with any resultant losses, including without limitation incidental or consequential damages incurred which are attributed to your default; and (e) take title to and possession of any previously undeliverable part of work performed under this PO.

### COMPLIANCE

You represent, warrant, certify and covenant that your performance under this PO will comply with all applicable US, European Union, state/provincial and local laws and regulations, including, without limitation, those prohibiting bribery or similar payments or practices, and those related to environmental protection, health and safety, and minority owned businesses. You further represent, warrant, certify and covenant that: (i) you and your suppliers will not use child, forced or prison labor, the labor of persons in violation of the minimum working age in the country of manufacture, or labor in violation of minimum wage, hour of service, or overtime laws in the country of manufacture or in any jurisdiction in which services are provided under this PO in connection with the manufacture and supply of Products; (ii) you and your employees will not offer gifts, bribes, kickbacks, free travel or other cash or non-cash incentives to our employees; (iii) you and your suppliers are in full compliance with the Immigration Reform Control Act of 1986, as amended, including compliance with the immigration and Naturalization Services' I-9 regulations, and (iv) your delivery of Products constitutes your certification that you have complied with all applicable requirements. You will provide us all information necessary to enable us to comply with the laws and regulations applicable to our use of Products.

You further represent, warrant, certify and covenant that you will take appropriate actions to provide a safe and healthy workplace and to protect local environmental quality in all of your activities.

You further represent, warrant, certify and covenant that each chemical substance constituting or contained in goods sold or otherwise transferred to DTI, a Massachusetts corporation, hereunder is compliant with respect to the list of chemical substances compiled and published by (a) the Administrator of the Environmental Protection Agency; or (b) the European Inventory of Existing Commercial Chemical Substances (EINECS) or the European List of Notified Chemical Substances (ELINCS); or (c) any equivalent lists in any other jurisdictions to which we inform you the goods will likely be shipped.

You represent, warrant, certify and covenant that said Product supplied under this PO contains only permissible levels of restricted substances under EU Directive 2015/863 (RoHS3), as amended.

You further represent, warrant, certify and covenant that none of the goods supplied under this PO contains any: (a) arsenic, asbestos, benzene, polychlorinated biphenyls (PCBs), or carbon tetrachloride (b) any chemical restricted under the Montreal Protocol on ozone-depleting substances; or (c) any other chemical the use of which is restricted in any other jurisdictions to which we inform you the goods are likely to be shipped; unless we expressly agree otherwise in writing as an addendum to this PO.

Unless exempt, you will comply with all equal opportunity and affirmative action regulations. Segregated facilities are strictly prohibited.

## General Purchase Order Terms & Conditions

---

If any goods or other materials sold or otherwise transferred to us hereunder contain hazardous materials, you shall provide all relevant information required pursuant to applicable requirements, such as the; (a) Occupational Safety and Health Act (OSHA) regulations 29 CFR 1910.1200, including a completed Safety Data Sheet (SDS) 1910.1200 App D and mandated labeling information; or (b) similar EU SDS/labeling requirements; or (c) any similar requirements in any other jurisdictions to which we inform you the goods are likely to be shipped.

### OTHER TERMS

Our Property. All tools, dies, drawings, plans, data, manufacturing aids, testing or other equipment or materials, inventions, technology, trade secrets or other proprietary information, and all intellectual property rights in the foregoing, which we furnish to you, or which is developed or acquired at our expense in the performance of work hereunder, shall be our property. You hereby assign and agree to assign to us, and to cause your employees to assign to us, in each case without additional compensation, all such property. Tangible property will be held at your risk and subject to removal at our written request (in which event you will redeliver such property to us at your expense).

Your Information. Unless expressly agreed in writing to the contrary, any knowledge or information which you disclose to us will not be considered confidential or proprietary information, and we may use it free from any restrictions. You acknowledge that we will use and rely upon information you furnish to us and that you will indemnify and hold us harmless from any and all costs and damages suffered by us as a result of any inaccuracies in such information.

Our Information. You agree to keep confidential any materials or information furnished by us to you. You will not disclose or use, directly or indirectly, such materials or information for any purpose other than the purposes of this PO. You will return to us, at your expense, all such materials and information upon completion of work, termination of this PO or our request.

Country of Origin. At our request, you will state the country of origin on products, packaging or your invoices, and provide acceptable documentation establishing the country of origin, including without limitation, certifications of origin for Products subject to the NAFTA preferential duty provisions.

Audit Rights. At our request, you will furnish and allow us to audit any documents you have relating to the performance of your obligations under this PO or other applicable legal requirements. Additionally, at our request, you will allow us reasonable access to the sites where the work under this PO is being performed in order to assess (1) work quality, (2) conformance to our specifications, and (3) conformance with your representations, warranties, certifications and covenants under this PO.

Intellectual Property. No rights are granted to you under any of our patents, copyrights, trade secrets or other property rights except as may be expressly agreed to by us. You will not use or incorporate into products any intellectual property of others without their written permission. Without limiting your indemnity with respect to intellectual property, if the use of a Product or any part thereof is enjoined by a court, you will, at our option and your expense, either procure for us the right to continue using the Product or part, replace the same with a non-infringing equivalent, or remove the Product, refund the purchase price and reimburse us for any related costs incurred by us.

Trademarks. The names and trademarks of each party shall remain their sole and exclusive property. If you place one of our trademarks on any Product, or if a Product is unique to us, such Product will not bear your name or trademark and will not be sold to anyone else.

Publicity. You may not, without our prior written consent, advertise or publish the fact that we have contracted to purchase goods or services from you, disclose information relating to this PO, or use our name or trademarks, or the names or trademarks of any of our affiliates or customers.

Work on Our Premises. If you work on our premises or the premises of our customer, you will comply with any applicable site rules and regulations. Except to the extent a claim is due solely and directly to our negligence or our customer's negligence, you will indemnify us and the customer from any claim which may result in any way from any act or omission of you or your agents, employees or subcontractors while on our premises or the premises of our customer.

Insurance. You agree to maintain such public liability insurance (including without limitation: workers compensation, employer's liability, comprehensive general liability, product liability and property damage insurance) as will adequately protect us in the event of any liability arising under this PO and, upon our request, you will provide us with evidence of such Insurance.

Governing Law. The validity, interpretation and construction of the Agreement shall be governed by and construed in accordance with Laws of the Commonwealth of Massachusetts, USA. DTI and Supplier hereby agree to submit to the exclusive jurisdiction of the courts of the Commonwealth of Massachusetts.

## General Purchase Order Terms & Conditions

---

Limitation of Damages. IN NO EVENT WILL WE BE LIABLE TO YOU FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO LOST PROFITS AND LOST BUSINESS), WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE ARISING OUT OF OR RELATED TO THIS PO, AND WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Remedies. The rights and remedies herein are cumulative and in addition to all other rights and remedies available at law or in equity.

Waiver and Invalidity. Any waiver or renunciation of a claim or right arising out of breach must be in writing and signed by the injured party. Any failure to enforce any provision of the PO may not be construed as a waiver of such provision or any other provision nor of the right to enforce such provision. The invalidity, in whole or in part, of any provision hereof shall not affect the remainder of the provisions.

Assignment. You may not assign any right or delegate any duty hereunder without our prior written consent. Any attempted assignment or delegation by you will be void.

Independent Contractor. The parties acknowledge that they are independent contractors and no other relationship, including without limitation partnership, joint venture, employment, franchise, master/servant or principal/agent is intended by these Conditions. Neither party has the right to bind or obligate the other.

Statement to Prevent Transactions with Denied Persons/Debarred Parties/SDN. To ensure compliance of U.S. export laws, DTI does not conduct any business transaction with the "Denied Persons List" published by the U.S. Department of Commerce, the "Denied Parties List" published by the Department of State and the "Specially Designated Nationals" list published by the Department of Treasury, Foreign Assets Control. DTI expects all suppliers and its subcontractors to comply with these laws. (You may view the U.S. Government Web sites of the agencies noted above to access their lists).

Force Majeure. Supplier shall be liable for any failure or delay in performance in connection with the order, except where such failure or delay results from causes that are, at one and the same time: unforeseeable, unavoidable, outside of its control and without its fault or negligence, provided supplier give buyer, within three days of supplier's learning of such cause, written notice to the effect that a failure or delay by supplier will occur or has occurred. If a failure or delay in performance is caused by an event affecting any of the suppliers' suppliers, such failure or delay shall not be excusable unless such event is an excusable delay as defined above and the good or service to be provided by such supplier is not obtainable by supplier from other sources in time for timely delivery of good to buyer. Buyer may cancel without liability to supplier its purchase of any good affected by supplier's failure or delay in performance and, if the delay is expected to last for a period that could impact delivery to buyer's customers, buyer may cancel, without liability, any portion of or the entire order.

Anti-Bribery. (i) The Supplier shall comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption, including the Foreign Corrupt Practices Act of 1977 and Bribery Act 2010, and shall ensure that it has in place adequate procedures to ensure compliance with the such bribery laws to prevent bribery, and shall use all reasonable endeavors to ensure that all of its personnel, all others associated with it, and all of its subcontractors involved with this Agreement so comply. (ii) The expressions 'adequate procedures' and 'associated' shall be construed in accordance with the Bribery Act 2010 and documents published under it. (iii) Without limitation to the above, the Supplier shall not make or receive any bribe (as defined in the FCPA or the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and will implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

Disaster Recovery. Supplier shall develop and maintain a disaster recovery plan acceptable to buyer for the recovery and continuation of business related to the design, development, certification, manufacture, sale, use and/or support of the good(s) furnished hereunder, in the event of a disaster or emergency. The disaster recovery plan shall, among other things, prevent or limit the interruption of the supply of good(s) in conformity with the requirement set forth herein. Supplier shall furnish a copy of disaster recovery plan to buyer upon request.