

# TERMS AND CONDITIONS OF DIGITRACE LTD PURCHASE ORDER

## 1. Acceptance

Acceptance of this order by Seller's signature and return to DIGITRACE the duplicate "acceptance" copy hereof or by other means of acknowledgment or shipment of goods ordered or performance of services called for hereunder shall constitute acceptance by the Seller of the terms and conditions contained in this order. Any terms or conditions proposed by Seller inconsistent with or in addition to the terms and conditions contained herein shall be void and of no effect unless specifically agreed to by an ownership partner of Digitrace LTD. Their terms and conditions together with such written modifications, constitute the entire agreement between the parties.

## 2. Inspection

Payment of Seller's invoice does not constitute acceptance of the goods paid for. All materials or articles shipped on this order shall be subject to our inspection at our plant and may be returned at your expense if not strictly conforming to specifications and the terms and conditions hereof. We reserve the right to spot inspect each shipment in all cases where such inspection is our established practice, and to accept or reject all or any part of any shipment as not to specifications on the basis of such spot inspection. No returned goods are to be replaced unless an additional purchase order requiring replacement is duly issued.

## 3. Packing Slips

Separate packing slips must be included in each shipping container, showing order number, part number or description of goods, and quantity.

## 4. Exclusive Rights

All drawings, blueprints, specifications or other property furnished by DIGITRACE to Seller, and intended for use in connection with this purchase order and any material including tools, dies, jigs, fixtures, patterns and molds furnished or specifically paid for by DIGITRACE (where itemized separately on the order or where order states that price includes same), shall at all times be DIGITRACE property, and shall be so identified by Seller and shall be subject to disposition as directed by DIGITRACE where no longer required for this order. Nothing of the kinds described in this paragraph as belonging to DIGITRACE shall be used except for DIGITRACE's order, nor shall any goods furnished under this order to DIGITRACE's patterns, specifications, drawings, dies, tools or molds be furnished or quoted to others.

## 5. Nondisclosures

This order is confidential and no information concerning it is to be disclosed to any third party without our permission.

## 6. Compliance with F.L.S.A.

You agree that all goods covered by this order will be produced and delivered in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, and in compliance with any applicable laws and regulations relating to employment, wages and hours of labor. Acquisition by us of such goods shall be deemed to be in reliance upon your assurance that such goods were produced in compliance with such requirements, all shipment memos and invoices rendered by you to us for such goods being deemed to incorporate such assurance with the same force and effect as if such assurance were fully set forth therein.

## 7. Patents

You warrant that the sale or use of the material or articles covered by this order, either alone or in combination with other materials, will not infringe or contribute to the infringement of any United States or foreign patent, trademark or copyright, and covenant to defend every suit brought against us, or any party selling or using any of our products, for any infringement claimed to have arisen by reason of our sale or use of said material or articles, and further covenant to pay all expenses, including counsel fees, incurred in and about the defense of any such suit, and all costs, damages, or profits which may be recovered therein.

## 8. Subcontracting

No part of this order shall, in any event, be subcontracted without our written permission, except where such subcontracting is necessarily implied.

## 9. Special Charges

No extra or special charge will be allowed for packing, crating, cartage, drayage or storage, unless specifically stated hereon.

## 10. Overshipment

Quantities in excess of the amount shown on this order may be returned at Seller's expense.

## 11. Cancellation

We reserve the right to terminate this order without liability if our stated requirements for deliveries or specifications are not met, or for any other default by you of the terms or conditions hereof.

## 12. Notice of Labor Disputes

You shall give us immediate notice of any actual or seriously threatened labor dispute which is delaying or may delay your performance hereunder and such notice to other parties in interests as we shall request upon receipt of any such notice from you.

## 13. Cancellation

DIGITRACE reserves the right to cancel if material is not delivered within the time specified or does not strictly conform to the terms of this order or if by reason of fire or other casualty, DIGITRACE cannot operate its place of business, or if the goods are stock items not made to DIGITRACE's specifications. In the event of Seller's bankruptcy, insolvency, receivership, reorganization or assignment for creditors, or cessation of business, or default under any other contract with DIGITRACE, DIGITRACE at its option may cancel any then undelivered portion of this order.

## 14. Warranties

Seller warrants material supplied hereunder, to conform to specification, to be fit for purpose intended, merchantable, of highest quality and workmanship, and free from defects, and Seller will indemnify DIGITRACE against all liabilities for damages or injuries incurred by DIGITRACE as a result of defective material or workmanship in the materials supplied hereunder. Seller warrants that it has good title to the materials furnished hereunder, free and clear of all liens and encumbrances; that the materials and work supplied hereunder will conform in every particular to the drawings, specifications, sample or other description furnished; will be of the highest quality and free of defects in materials and workmanship and will be suitable for the purpose intended if DIGITRACE has communicated such intended purpose to Seller. Such warranties shall be effective for a period of time equal to the Seller's regular warranty period but not less than 12 months. In the event any defects appear during the warranty period, Seller shall replace the materials or workmanship free of charge and shall also be liable for any special or consequential damages sustained by DIGITRACE or any other person as a result of such defects.

15. The remedies herein reserved by DIGITRACE shall be cumulative in addition to any other legal remedies. No waiver of a breach or any provision of this purchase order shall constitute a waiver of continuing our future breach of such provision or any other of the provisions hereof.

16. The contract resulting from this order shall be governed and construed to the laws of the State of Michigan and shall not be assignable by Seller without DIGITRACE's written consent.

## 17. Material Furnished by DIGITRACE

Any material furnished by DIGITRACE on other than a charge basis in connection with this order shall be deemed as held by Seller upon consignment and Seller agrees to pay for all such materials spoiled by it or not otherwise satisfactorily accounted for. The Seller at its own expense, shall keep such material insured for the benefit of DIGITRACE at all times while in its possession.

## 18. Tools, Dies, Jigs, Patterns, and Other Equipment

The Seller shall be considered to have only temporary possession of all tools, dies, jigs, fixtures, patterns and other equipment necessary for producing material pursuant to this order, the cost of which shall have been paid by DIGITRACE and shall deliver all or any part thereof to DIGITRACE upon demand. The Seller, at its own expense, shall keep the same in working condition and insured for the benefit of DIGITRACE at all times while in its possession.

## 19. Returns

Materials ordered are subject to DIGITRACE's inspection, weight and count, and its approval or rejection, despite prior payment. If materials are rejected or found before or after acceptance not to be as warranted, DIGITRACE may return same at Seller's risk and expense for full credit, or may retain said materials and collect damages from Seller, or cancel this order in whole or part, or with Seller's consent DIGITRACE may rework same at Seller's risk and expense. Rejected or defective materials shall be replaced or repaired by Seller without charge upon receipt of DIGITRACE's formal purchase order or debit memo.

## 20. Indemnification

In the event that Seller is required to enter premises owned, leased, occupied by, or under the control of DIGITRACE during the performance of services hereunder or during delivery of articles herein contemplated, Seller agrees to indemnify and save harmless DIGITRACE, its officers, employees and agents from all cost, loss, expense, damages, claims, suits or liability resulting from injury, including death, to person or property arising from or in any manner growing out of the actions of Seller or its subcontractors, or their respective employees; and Seller agrees to maintain and require its subcontractors to maintain (1) public liability and property damage insurance (both general and vehicle) in amounts, satisfactory to DIGITRACE to cover the obligations set forth above, and (2) proper workmen's compensation insurance covering all employees engaged in performance of such services and/or delivery. Seller shall furnish to DIGITRACE certificates in duplicate evidencing such insurance, and such certificates shall provide that no expiration, termination or modification of the insurance coverage shall take place without the insurance company giving 30 days prior written notice thereof to DIGITRACE.