



## ENDWAVE PURCHASE ORDER

### STANDARD TERMS AND CONDITIONS

**1. TERMS OF SALE.** As used herein, “**Seller**” means **ENDWAVE CORPORATION**, a Delaware corporation, and “**Purchaser**” means the party originating the Purchase Order by and between Seller and Purchaser to which these Standard Terms and Conditions (the “**Standard Terms and Conditions**”) are made a part hereof. All other capitalized terms will have the meanings ascribed to them in the Agreement.

THESE STANDARD TERMS AND CONDITIONS, TOGETHER WITH THE PURCHASER’S PURCHASE ORDER TO WHICH THEY ARE ATTACHED, CONSTITUTE THE FINAL, COMPLETE, EXCLUSIVE AND ENTIRE AGREEMENT BETWEEN SELLER AND PURCHASER WITH RESPECT TO THE SUBJECT MATTER OF THESE STANDARD TERMS AND CONDITIONS. ANY TERM OR CONDITION IN ANY ORDER, CONFIRMATION OR OTHER DOCUMENT FURNISHED BY PURCHASER THAT IS IN ANY WAY INCONSISTENT WITH OR IN ADDITION TO THESE STANDARD TERMS AND CONDITIONS IS HEREBY EXPRESSLY REJECTED, AND SELLER’S ACCEPTANCE OF ANY OFFER OR ORDER OF PURCHASER IS HEREBY EXPRESSLY MADE IN RELIANCE ON PURCHASER’S ASSENT TO ALL STANDARD TERMS AND CONDITIONS HEREOF. If Purchaser objects to any of these Standard Terms and Conditions, such objection must be made in writing and received by Seller within three (3) days after this document is transmitted to Purchaser. Failure to object will be conclusively deemed acceptance of these Standard Terms and Conditions. Seller’s failure to object to any term or condition in any oral or written communication from Purchaser, whether delivered before or after the date hereof, will not constitute an acceptance thereof or a waiver of any term or condition hereof.

**2. TAXES.** Prices for the products listed on the Purchase Order do not include, and Purchaser will pay for, any excise, sales, transfer, use or like taxes, and therefore the aggregate total of the Purchase Order is subject to increase in the amount of any such tax(es) (excluding tax on net profits of Seller) that Seller may be required to collect or pay upon the sale or delivery of the Products purchased hereunder. Purchaser shall submit any applicable tax-exemption certificate to Seller. Any tax-exemption certificate or other document related to Purchaser’s tax liability hereunder shall be the sole responsibility of Purchaser.

### **3. Order, Security Interest and Delivery.**

**3.1 Orders.** Purchase orders submitted by Purchaser will provide for delivery dates as quoted by the Seller. Orders from Purchaser will be deemed accepted by Seller on a reasonable basis within ten (10) days from receipt of the order and may not be cancelled except with Seller’s consent within ninety (90) days prior to the scheduled shipment date.

**3.2 Purchase Money Security Interest.** Purchaser hereby grants Seller a purchase money security interest in each Product sold by Seller to Purchaser (whether discountable or not) under the Agreement and, after such Product is resold by Purchaser, in any proceeds Purchaser receives from such resale (including accounts receivable), until payment in full to Seller of the purchase price and related charges (it being understood that upon such resale by Purchaser, such Product is no longer secured hereby). Purchaser agrees to take such further actions, and authorizes Seller to take such further actions, in furtherance of the foregoing, including without limitation the execution and filing of such financing statements and other documents as Seller reasonably requests. Purchaser acknowledges that this document constitutes a proper security agreement and maybe used in connection with any such financing statement or other document.

**4. Delivery.** Delivery of the Products will be Ex-Works Seller’s facilities or the relevant facility used by Seller to produce Products or Seller’s agent as designated by Seller. Seller will use its best efforts to deliver the Products in accordance with the specified delivery date. However, Seller will not be liable for damages as a result of any delay in delivery for any reason other than arbitrary refusal of Seller to perform. Title to Products will pass to Purchaser upon delivery thereof by Seller to a carrier designated by Seller (unless another carrier is specified by Purchaser), which carrier will act as Purchaser’s agent, and upon such delivery the Purchaser will be responsible for and bear the entire risk of loss or damage to the Products. All shipments will be shipped by Seller freight collect, or if prepaid, such freight will be subsequently billed to

Purchaser, and Purchaser will reimburse Seller for such freight in accordance with Section 6 below. Purchaser acknowledges that all delivery dates are estimates only. Seller reserves the right to deliver in advance of estimated delivery dates. Products held or stored for Purchaser after an agreed upon delivery date will be held or stored at Purchaser’s sole expense and risk. At Purchaser’s option, Seller will insure the shipments against damage to or loss of the Products. Any such shipping insurance will subsequently be billed to Purchaser, and Purchaser will reimburse Seller for such expense in accordance with Section 6 below.

**5. ACCEPTANCE.** Purchaser will promptly, and in any event within ten (10) days of delivery, inspect the Products. If any product is deemed defective by Purchaser, Purchaser will, within such ten (10) day inspection period and upon Seller’s prior written authorization, return such defective Product to Seller in accordance with Seller’s instructions, freight prepaid, in the same condition as delivered and in the same or equivalent shipping container with a description of such defect. Title to the Product and risk of loss or damage with respect to the Products will remain with Purchaser unless and until Seller confirms the defect, at which time Seller will, at Seller’s option, deliver replacements for such defective Product or refund any amounts paid for such defective Product.

### **6. TERMS OF PAYMENT.**

**6.1 Invoicing and Payments.** Unless otherwise arranged, Seller will invoice Purchaser at the time of shipment of Products hereunder. Payment terms will be net thirty (30) days from the date of delivery, provided Purchaser maintains credit arrangements satisfactory to Seller. Purchaser will make all payments as provided herein without regard to whether Purchaser has made or may make any inspection or use of any Product delivered hereunder. Any invoiced amount that is not paid when due will bear interest at the rate of twelve percent (12%) per annum or the maximum rate permitted by applicable law with respect to such obligation, whichever is less.

**6.2 Installment Shipments and Defaults.** If the Products are delivered in installments, Purchaser will pay for each installment as provided in this Section 6. Each shipment will be treated as a separate transaction, but in the event of any default by Purchaser, Seller may decline to make further shipments, without in any way affecting its rights hereunder. If, despite any default by Purchaser, Seller elects to continue to make shipments, Seller’s action will not constitute a waiver of any default by Purchaser or in any way affect Seller’s remedies under the Agreement for such default.

### **7. Patent, Copyright and Trademark Indemnity.**

**7.1 Indemnity.** Seller will defend at its own expense any action against Purchaser to the extent it is based on a valid claim of infringement of a United States patent, copyright or trademark by Seller’s Products purchased hereunder and pay those damages or costs finally awarded against Purchaser in such action that are directly attributable to such claim, provided Purchaser notifies Seller promptly in writing of any such action and prior related claims and gives Seller sole control of the defense and any negotiations for settlement or compromise. Should any Product become, or in Seller’s opinion be likely to become, the subject of a claim of infringement, Purchaser will permit Seller, at Seller’s option and expense, either:

- (a) to procure for Purchaser the right to continue using such Products;
- (b) replace or modify the same to become non-infringing; or
- (c) grant Purchaser a credit less depreciation for use, damage, and obsolescence and accept its return. Said depreciation will be an equal amount per year over the life of the Products that is agreed for purposes of this clause to be five (5) years from the date hereof.

**7.2 Limitation on Infringements.** However, Seller will have no liability to Purchaser under this clause or otherwise for any infringement, or claim thereof based upon:

- (a) the use of the Products in combination with other products, equipment, devices, software, or data not supplied by Seller; or
- (b) the combination, alteration or modification of any Product supplied hereunder if such claim would have been avoided by the absence of such combination, alteration or modification.

**7.3 Limitation of Liability.** No costs or expenses will be incurred for the account of Seller without Seller’s written consent. In no event will Seller’s total



liability under this clause exceed the aggregate consideration paid by Purchaser to Seller under the Agreement. The foregoing states the entire liability of Seller with regard to patent, copyright or trademark infringement by the Product or any portion thereof.

#### 8. Limited Warranty and Limitation of Liability.

**8.1 Warranty.** Seller warrants the Products manufactured by or on behalf of Seller and sold hereunder against faulty workmanship or the use of defective materials for a period of one (1) year, which period will commence with the date of shipment of such Products. Purchaser's remedies and Seller's liability with respect to this warranty are set forth below. This warranty is the only warranty made by Seller with respect to the Products delivered hereunder, and may be modified or amended only by a written instrument signed by a duly authorized officer of Seller and accepted by Purchaser.

**8.2 Remedy.** Any Product manufactured by or on behalf of Seller and purchased from Seller that becomes defective during the warranty period stated above will, in Seller's discretion, be repaired or replaced at Seller's facility. These remedies are available only if Seller's examination discloses to Seller's satisfaction that such defects actually exist and were not caused by Purchaser's misuse, unauthorized modifications, neglect, improper installation or testing, attempts to repair, or by accident, fire, power failure, power surge, or other hazard. Repair or replacement of a part does not extend the warranty period beyond the initial warranty period that commences with the date of original shipment of the Products.

**8.3 Disclaimer and Limitations.** THE EXPRESS WARRANTY ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. No representation or other affirmation of fact, including but not limited to statements regarding capacity, suitability for use or performance of Products, whether made by Seller employees or otherwise will be deemed to be a warranty by Seller for any purpose or give rise to any liability of Seller whatsoever unless contained in the Agreement. THE EXPRESS OBLIGATION STATED ABOVE IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF SELLER FOR DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS, DAMAGE OR INJURY, DIRECT OR CONSEQUENTIAL (INCLUDING ANY LOSS OF PROFITS, USE, BUSINESS OR THE LIKE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SAME), ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE OR PERFORMANCE OF SELLER'S PRODUCTS, AND IT IS AGREED THAT REPAIR OR REPLACEMENT IS SELLER'S SOLE LIABILITY AND PURCHASER'S SOLE REMEDY FOR SUCH LOSS, DAMAGE OR INJURY, THIS LIMITATION OF SELLER'S LIABILITY WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR BASED ON A WARRANTY. ANY ACTION AGAINST SELLER MUST BE BROUGHT WITHIN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION ARISES. THE PARTIES EXPRESSLY AGREE THAT THE PRODUCTS ARE NOT CONSUMER GOODS.

#### 9. Data and Proprietary Rights in Data.

**9.1 Confidentiality.** All documentation, designs, drawings, samples, specifications, publications, schedules, engineering details and related data of Seller pertaining to the Products supplied by Seller in connection with these Standard Terms and Conditions are and will remain the proprietary and confidential information of Seller (the "Confidential Information"). Purchaser will protect such Confidential Information from disclosure to others with the same degree of care it exercises in protecting its own confidential information. Purchaser will not use any Confidential Information except as is contemplated by the Agreement. Purchaser will not duplicate or reproduce any Confidential Information without the express prior written consent of Seller. Any Confidential Information so duplicated or reproduced will be returned promptly to Seller upon request. Purchaser will enforce against its employees and agents these obligations of confidentiality.

**9.2 Exceptions.** Notwithstanding the foregoing, information disclosed to Purchaser will not be deemed to be Confidential Information if:

(a) Purchaser establishes that the information was already known to Purchaser, without any obligation to keep it confidential, at the time of its receipt from Seller, as evidenced by documents in the possession of Purchaser prepared or received prior to Seller's disclosure; or

(b) Purchaser establishes that the information was publicly known at the time of its receipt by Purchaser from Seller or has become publicly known other than by a breach of these Standard Terms and Conditions or other action or omission by Purchaser.

**10. EXPORT.** Regardless of any disclosure by Purchaser to Seller of the ultimate destination of the Products, Purchaser will not export, directly or indirectly, any Seller product without first obtaining an export license from the U.S. Department of Commerce, U.S. Department of State, or any other agency or department of the United States Government, as required, or without otherwise complying with the U.S. Export Administration Act, as amended, and all rules and regulations thereunder.

**11. SUBSTITUTIONS AND MODIFICATIONS.** Seller will have the right to make substitutions and modifications in the specifications of Products sold under the Agreement provided that such substitutions or modifications will not materially affect overall product performance.

**12. GENERAL.** These Standard Terms and Conditions become a valid binding contract of Seller and Purchaser upon the dispatch to Purchaser of the Purchase Order executed by a duly authorized officer or designee of Seller. THIS CONTRACT (WHICH INCLUDES THE AGREEMENT) WILL FOR ALL PURPOSES BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA AS SUCH LAWS ARE APPLIED TO CONTRACTS BETWEEN CALIFORNIA RESIDENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN CALIFORNIA, AND IN NO EVENT WILL THIS CONTRACT BE GOVERNED BY THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. This contract is not assignable or delegable without the prior written consent of an officer of Seller, and any attempt to assign or delegate any rights, duties or obligations under this contract without such consent will be void. All rights and remedies hereunder will be cumulative and may be exercised singularly or concurrently. If any legal action is brought to enforce any obligation hereunder, the prevailing party will be entitled to receive its attorney's fees and court costs in addition to any other relief it may receive. If either party fails to perform any term of this contract and the other party does not enforce that term, failure to enforce on that occasion will not prevent enforcement on later occasions of that or any other term. Seller will not be responsible for failure to fulfill its obligations hereunder due to causes beyond its reasonable control, including without limitations acts of God, acts or omissions of civil or military authority, fire, strikes, floods, riots or wars. In the event that any portion of the Agreement between Seller and Purchaser (including these Standard Terms and Conditions and any other exhibits attached to the Agreement and incorporated by reference thereto) will be held to be unenforceable, that portion (to the extent not unenforceable) and the remaining portions of the Agreement will remain in full force and effect. Any deviation from or addition to the Agreement (including any exhibits attached thereto or other documents incorporated by reference and these Standard Terms and Conditions) must be in writing and will not be valid unless confirmed in writing by a duly authorized officer or designee of Seller.

#### 13. Notices.

**13.1 Procedure.** All notices required or permitted under these Standard Terms and Conditions or the Agreement will be in writing and will be deemed to have been given upon

- (a) receipt, if by personal delivery;
- (b) when sent, if sent by confirmed telecopy; or
- (c) five (5) days after deposit in the mail, if sent by certified or registered mail with postage prepaid, and return receipt requested.

**13.2 Addresses.** The addresses of the parties (until written notice of change will have been given in accordance with this provision) will be as set forth in the Agreement.