



OPEX PURCHASE ORDER TERMS FOR SUPPLIERS

VERSION 1.0 -- 19 MAY 2022

THE OPEX PURCHASE ORDER (THE "PO"), OF WHICH THESE OPEX PURCHASE ORDER TERMS FOR SUPPLIERS AS WELL AS ANY ATTACHMENTS FURNISHED BY BUYER (COLLECTIVELY, "Terms"), ARE INTEGRAL PARTS, IS THE SOLE AGREEMENT BETWEEN OPEX CORPORATION, ITS SUBSIDIARIES, AND/OR OTHER AFFILIATES ISSUING THE PO ("Buyer" OR "OPEX"), ON THE ONE HAND, AND THE SELLER ("Seller"), ON THE OTHER HAND, REGARDING THE GOODS, SERVICES, OR OTHER ITEMS ("Products") FURNISHED PURSUANT TO THE PO. Seller and Buyer are sometimes referred to herein collectively as the "parties," and individually as a "party."

THESE TERMS SHALL ALSO APPLY TO TRANSACTIONS THAT DO NOT HAVE A FORMAL PURCHASE ORDER ISSUED BY OPEX OR A WRITTEN AGREEMENT DULY EXECUTED BY OPEX AND THE SELLER, IN WHICH CASE THE TERM "PO" AS USED HEREINBELOW SHALL REFER INSTEAD AN ORDER, WHETHER WRITTEN OR NOT, PLACED BY OPEX WITH SELLER.

1. Acceptance of Terms. The PO is an offer to purchase and may be accepted by Seller either in writing or by any conduct which recognizes the existence of a contract including, without limitation, the delivery of any Products to Buyer. Buyer shall not be bound by any additional or different terms proposed by Seller or any attempt by Seller to vary any of the Terms.

2. Pricing/Invoices/Payment. Unless otherwise specifically agreed in writing by Buyer, the prices shown in the PO include all applicable charges for packing, hauling, storage, insurance, and transportation as well as all federal, state, local, and other taxes, customs fees, duties, tariffs, and similar charges. Invoices will be paid net sixty (60) days after receipt of a correct invoice or acceptance of the Products by Buyer, whichever occurs later. Seller shall not invoice any goods shipped or services performed pursuant to the PO at a price higher than that shown in the PO. To the extent applicable, all invoices must itemize any freight, insurance, taxes, customs fees, duties, tariffs, and similar amounts separately. All claims by Seller for payment due or to become due from Buyer shall be

subject to deduction or set-off by Buyer by reason of any claim arising out of this or any other transaction between Buyer and Seller.

3. Shipping/Delivery/Packing. Unless otherwise expressly agreed in writing by Buyer Seller shall deliver goods DDP (Delivered Duty Paid) (Incoterms 2021) Buyer's named place of business. Time is of the essence regarding the delivery of Products, and if the goods are not delivered or the services not provided in the manner and at the times specified, Buyer reserves the right without liability and in addition to its other rights and remedies to take either or both of the following actions: (a) direct expedited delivery of the goods or performance of services, with any difference in cost caused by such change paid by Seller, and/or (b) purchase substitute goods and services and charge Seller with any loss or additional costs Buyer incurs. Seller will promptly advise Buyer of any delay in performance. All goods delivered shall be suitably packed, in accordance with the requirements of common carriers, and in a manner to secure the lowest transportation cost, and no additional amount shall be charged to the Buyer therefor unless specifically stated in the PO or otherwise expressly agreed by Buyer in writing. Goods will be packaged to secure safe and complete arrival to the delivery location without damage to the contents or others.

4. Samples and Proofs. If samples and/or proofs are required by the PO, Seller shall not forward quantity shipments until Buyer has approved in writing Seller's samples and/or proofs.

5. Inspection. Payment for any Products shall not constitute acceptance. All Products shall be received subject to Buyer's rights to inspect them at a reasonable time and place and in a reasonable manner and to reject (including revocation of its earlier acceptance) any Products which are, in Buyer's reasonable judgment, nonconforming. Buyer shall not be obligated, however, to inspect or reject any Product, and Buyer's inspection of, or failure to inspect or reject, any Product shall not affect any rights of Buyer under the PO, including Buyer's right (whether or not it has canceled the PO) to recover that



portion of the price that has been paid (if any) and charge Seller the reasonable expenses of inspection and return, including unpacking, examining, and re-packing. Without limiting the foregoing, if the quality of a Product is unsatisfactory in the reasonable judgment of Buyer, Buyer may reject the Product, recover that portion of the price that has been paid (if any), and charge Seller the reasonable expenses of inspection and return as applicable, including for unpacking, examining, and re-packing.

6. Title and Risk of Loss. Title and risk of loss and damage to goods purchased under the PO shall vest in Buyer upon the completion of delivery (DDP, Buyer's place of business) (Incoterms 2021) and acceptance by Buyer. However, if Seller is specifically authorized in writing to invoice Buyer for goods prior to delivery and acceptance of the goods, or prior to or during the performance of services, title to such goods shall vest in Buyer upon payment of the invoice, but the risk of loss and damage shall pass to Buyer as provided in the preceding sentence.

7. Changes. Buyer shall have the right to make changes at any time in the scope, quantities, place/time for performance, delivery schedules, methods of packaging or shipment, and/or other requirements and specifications applicable to the Products. Buyer may also direct Seller for any reason to suspend in whole or in part the provision of goods or the performance of services permanently or for such period as may be determined by Buyer. If the changes described in this section result in an increase or decrease in Seller's cost or time requirements, an equitable written adjustment shall be made upon Seller's prompt notification to Buyer of Seller's proposed adjustment. Any claim for an increase by Seller will be deemed waived unless asserted in writing within ten (10) days from receipt by Seller of the notice of the change.

8. Warranty. Seller warrants that it shall deliver clear, unrestricted, and unencumbered title to all Products, and that all Products (1) will be of good quality and workmanship and free from all defects (latent and patent); (2) will be new (unless specifically agreed otherwise in a writing signed by Buyer); (3) will conform to all specifications and descriptions furnished or specified by Buyer; (4) will conform to any samples and to any statements made on the containers, labels, sales literature, or advertisements for such Products; (5) will be

adequately contained, packaged, marked, and labeled; (6) will be merchantable and will be safe and appropriate for the purpose for which goods or services of that kind are normally used; and (7) if Seller knows or has reason to know the particular purpose for which Buyer intends to use the Products, will be fit for such particular purpose. Seller's obligations under these warranties shall survive and be unaffected by any inspection, testing, acceptance, conveyance of title, and use. These warranties shall run to Buyer, its affiliates, its subsidiaries, and to its/their customers, users, successors, and assigns. Seller agrees to promptly replace or repair any Product not conforming to the PO or to the aforesaid warranties, without any expense (including, without limitation, transportation expense) to Buyer. In the event of Seller's failure promptly to repair or replace such nonconforming Product, Buyer, after reasonable notice to Seller, reserves the right without liability and in addition to its other rights and remedies to repair or replace such Product and charge Seller for the costs incurred by Buyer in doing so. Seller shall provide Buyer at least one (1) year's advance written notice if any good covered by the PO will no longer be manufactured or produced, and Seller shall accept Buyer's orders for such goods during the term of the PO or such one-year period, whichever is longer.

9. Compliance. Seller represents and warrants that all goods and services furnished pursuant to the PO shall have been manufactured, shipped, and performed in compliance with all applicable federal, state, local, and international laws and regulations, including but not limited to: (1) all environmental and health and safety laws and regulations, including but not limited to the U.S. Federal Occupational Safety and Health Act as applicable, the Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (ROHS) (or the latest version thereof), and the Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) (or the latest version thereof); (2) all applicable laws and regulations governing fair hiring practices, the prevention of discrimination in employment, and the prevention of child and forced or compulsory labor; (3) with regard to sellers located in the United States, the U.S. Fair Labor Standards Act and the U.S. Americans with Disabilities Act; and (4) all applicable laws and regulations



requiring the Seller to secure permits, certificates, licenses, approvals, and inspections to provide the Seller's goods and services

Additionally, Seller represents and warrants that it shall conduct its business in accordance with all applicable laws and regulations relating to anti-bribery, anti-corruption, and anti-money laundering and in a manner that complies with OPEX's *Supplier Code of Conduct and Ethics* available at <https://www.opex.com/about-us/supplier-terms-and-conditions/>.

10. Audit. If the PO includes goods, Buyer shall have the right (but not the obligation) to perform audits at Seller's manufacturing and other facilities for the types of Products delivered under the PO, during normal business hours upon reasonable advance notice of the date of such intended audit, in order to ensure compliance with the PO and applicable law. Furthermore, Buyer shall have the right (but not the obligation) to audit the relevant books and records of Seller to verify Seller's compliance with the PO. Seller shall maintain its books and records relating to its provision of goods and services hereunder for a period of thirty-six (36) months and make such books and records available to Buyer and its auditors, provide reasonable cooperation, and take such further action as Buyer may reasonably request at any time(s) within said thirty-six- (36-) month period. Seller agrees to conduct and document corrective and preventive actions promptly based upon the results of Buyer's audits.

11. Customs; Export Control. Seller hereby commits to comply with all applicable import and export regulations and certifies that it will obtain all necessary government approvals, licenses, permits, inspection certificates, customs clearances, or other documentation required by the laws of the originating country, the destination country, and any other country through which the any of Seller's goods may transit. As part of this obligation, Seller agrees that all deliverables will be marked with their Country of Origin according to the standards set forth under U.S. Customs regulations and that an accurate Harmonized Tariff Schedule Classification, Country of Origin, Export Control Classification Number and Valuation will be provided at the time the product is shipped to Buyer. Seller also agrees to provide a true and correct Certificate of Origin, according to the format prescribed by Buyer, for each

product/at the time of shipment, and to provide Buyer with any additional information necessary to substantiate any claim or defense related to the Classification, Country of Origin, and Valuation of the deliverables, as discussed above. Seller agrees to indemnify and hold Buyer harmless with respect to any claim related to the correctness of the certifications provided by Seller. Finally, Seller agrees to not source any deliverables under the PO from Cuba, Iran, Sudan, Syria, and North Korea or from any other countries or individuals subject to general restriction under U.S. laws and regulations and under other applicable laws and regulations.

12. Confidentiality; Data Protection; Publicity. Seller shall treat as confidential all information furnished by Buyer in connection with PO. Without the express written permission of Buyer, Seller shall not disclose to any third party or use for any purpose other than performance under the PO any such information, including, without limitation, any pricing, methods, specifications, instructions, processes, financial data, lists, apparatuses, tools, statistics, programs, research, developments, designs, drawings, customer lists, or marketing information of Buyer. Seller shall not disclose the fact that Buyer has contracted to purchase goods from Seller without Buyer's written permission. Furthermore, Seller shall comply with all applicable federal, state, local and international data protection laws such as the EU General Data Protection Regulation (Regulation EU 2016/679) as applicable. Seller shall not, without Buyer's prior written consent, in any manner advertise or publish the fact Seller has furnished, or contracted to furnish, to Buyer any goods or services, or that Buyer endorses Seller or its goods or services.

13. Work Product; Licenses.

A. Retained Intellectual Property. Each party retains all right, title, and interest (including all proprietary rights) in and to its Retained Intellectual Property. "Retained Intellectual Property" consists of each party's concepts, data, designs, developments, documentation, drawings, hardware, improvements, information, inventions, processes, software, techniques, technology, tools, and any other intellectual property, and any third-party licenses or other rights to use any of the foregoing, that (a) exists prior to the Effective Date; or (b) are developed entirely independently by a party, at any time, (i) without any use, knowledge of, or reference to,



the other party's confidential information or other information obtained in connection with this Agreement and (ii) do not constitute Work Product (as defined below).

B. Work Product. For purposes of this PO, "Work Product" includes, without limitation, all designs, discoveries, creations, works, devices, masks, models, work in progress, service deliverables, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, information and materials made, conceived, or developed by Seller, alone or with others, which result from or relate to the services performed pursuant to the PO, and all copies thereof. Standard goods manufactured by Seller and sold to Buyer without having been designed, customized, or modified for Buyer do not constitute Work Product. All Work Product shall at all times be and remain the sole and exclusive property of Buyer. Seller hereby agrees to irrevocably assign and transfer to Buyer and does hereby assign and transfer to Buyer all of its worldwide right, title, and interest in and to the Work Product including all associated intellectual property rights. Buyer will have the sole right to determine the treatment of any Work Product, including the right to keep it as trade secret, execute and file patent applications on it, to use and disclose it without prior patent application, to file registrations for copyright or trademark in its own name, or to follow any other procedure that Buyer deems appropriate.

C. License to Seller's Retained Intellectual Property. To the extent Supplier's Retained Intellectual Property is embodied or incorporated in any Work Product, Supplier hereby grants Buyer and its affiliates a non-exclusive, worldwide, perpetual, irrevocable, transferable, royalty-free, fully paid-up license to such Retained Intellectual Property necessary to (a) use, make, have made, sell, offer to sell, reproduce, perform, display, distribute, and import such Work Product, (b) adapt, modify, and create derivative works of such Work Product, and (c) sublicense the foregoing rights. Supplier will enter into agreements with its Personnel or any other party as necessary to fully effect such license grant.

14. Buyer's Property; Seller's Tools, Equipment, and Materials. Unless otherwise agreed in writing, any and all designs, drawings, blueprints, molds, tools, equipment, and other materials of every description which Buyer furnishes to Seller or pays for, and any replacement thereof, or any materials affixed or attached thereto, shall be and

remain the personal property of Buyer. Seller shall not substitute any property for Buyer's property and shall not use such property except in filling Buyer's orders. All tools, equipment, and other materials are to be maintained in good condition by Seller for as long as they remain active and returned to Buyer promptly upon request. Seller represents and warrants that all tools, equipment, and other materials furnished to Buyer are of a kind and type readily accepted by and transferable within an industry of like nature of Seller, with only limited, reasonable modification. Buyer reserves the right to enter Seller's premises during normal business hours to retrieve any of the items above (e.g., in the event of Seller's bankruptcy, etc.).

15. IP Indemnity. Seller agrees to indemnify and hold Buyer, its affiliates, subsidiaries, and its/their respective successors, assigns, and each of their respective officers, directors, employees, agents, contractors, customers, and users harmless from all liabilities, claims, demands, judgments, decrees, other actions, damages, royalties, costs, losses, and expenses (including incident attorney's fees) arising from any infringement or claimed infringement of any patent, copyright, trademark, trade secret, or other proprietary right occasioned by the use or sale by Buyer of Products covered by the PO. Seller agrees that it will, upon request of Buyer and at Seller's own expense, defend or assist in the defense of any action which may be brought against Buyer for such infringement or claimed infringement and that Buyer may be represented by and actively participate through its own counsel in any such action.

16. General Indemnity; Insurance. Seller agrees to defend, indemnify and hold Buyer, its affiliates and their respective successors, assigns, and each of their respective officers, directors, employees, agents, contractors, customers, and users harmless against all liabilities, claims, demands, other actions, judgments, decrees, damages, costs, losses and expenses arising from (1) any breach by Seller of any provision, covenant, representation, or warranty set forth or referenced in the PO, (2) the failure of any Product to meet the requirements of federal, state, local, or any other applicable law or regulation; (3) any act or omission, direct or indirect, negligence, or willful misconduct of Seller, its agents, representatives, employees, or subcontractors; (4) any actual or alleged defect or nonconformity in the services or in the design, manufacturer, material of the goods; (5) any personal



injury or property damage arising out of or resulting from any defective or nonconforming Product or from any act or omission of Seller, its agents, representatives, employees, or subcontractors; and (6) any Product recalls. Seller shall obtain and keep in force for three years after the last delivery of goods or services under the PO insurance coverage that is reasonable for providers of similar size in Seller's industry, including reasonable coverages and amounts customary in such industry. Within five (5) days of receipt of a request from Buyer, Seller agrees to provide Buyer with a certificate of insurance evidencing Seller's insurance coverages.

17. Remedies. If Seller breaches this Agreement, Buyer, in addition to the remedies expressly set forth in this PO, shall have all other remedies available by law and at equity.

18. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL BUYER'S OR ITS RELATED ENTITIES' AGGREGATE LIABILITY ARISING OUT OR RELATED TO THIS PO EXCEED THE TOTAL AMOUNT ACTUALLY PAID OR PAYABLE BY BUYER TO SELLER FOR THE APPLICABLE GOODS OR SERVICES FURNISHED UNDER THIS PO THAT CAUSED THE LIABILITY, NOR WILL BUYER OR ITS RELATED LEGAL ENTITIES BE LIABLE FOR ANY LOST REVENUES, LOST PROFITS, INCIDENTAL, DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR OTHER SIMILAR LOSSES AND DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

19. Termination. Buyer may cancel or terminate this PO in whole or in part at any time and without cause. Upon notice of cancellation or termination, Seller will inform Buyer of the extent to which it has completed its performance under this PO as of the date of the notice and collect and deliver to Buyer any Products which then exists. If the PO is canceled or terminated in whole or in part by Buyer, Seller shall be compensated proportionately to the extent that items have been accepted by Buyer or services properly rendered in accordance with the PO prior to the date of cancellation or termination less any deductions or set-off. Buyer shall have no further liability.

20. Force Majeure. Either party shall be excused from its obligations hereunder if it is unable to perform by reason of an unforeseeable occurrence beyond its reasonable control, including but not limited to, fires,

floods, accidents, civil unrest, acts of God, war, governmental embargoes excluding however strikes, industrial disputes, unanticipated market shortages of labor, materials, or supplies. Notwithstanding the foregoing, obligations may only be excused if the party affected by such circumstance or event (i) gives the other party prompt written notice of such circumstance or event promptly after its occurrence; (ii) has fully complied with Section 21 (Business Continuity); and (iii) has used its commercially reasonable best efforts to minimize the effect of such circumstance or event. The other party may terminate the PO at its option if such circumstance or condition shall continue for more than thirty (30) days.

21. Business Continuity. Seller acknowledges its performance under the PO may play a crucial role in Buyer's product supply and/or customer service commitment, and that Seller's business operations must be resilient and capable of withstanding the effects of disruptions in service. Seller represents and warrants that it has and updates a business continuity plan ("BCP") to ensure the timely delivery of goods and services. Seller agrees to deliver a copy of its BCP to Buyer upon Buyer's request, to notify Buyer in a timely manner of any actual or anticipated business continuity events, and to its use its commercially reasonable best efforts to cure any such non-compliance with its as soon as practicable.

22. Relationship of the Parties. Seller is an independent contractor, and nothing contained in this PO will be deemed or construed to create a partnership, joint venture, agency, or other relationship between the parties other than that of seller and buyer.

23. Assignment; Subcontracting. No part of the PO may be assigned, transferred, or subcontracted by Seller without the prior written consent of Buyer.

24. Severability. In the event that any one or more of the provisions contained in the PO, or the application thereof in any circumstances, is held invalid or unenforceable in any respect under applicable law, (1) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid and unenforceable provision and (2) such invalidity or unenforceability shall not affect any other provision of the PO.



25. Headings. The captions in the PO are not part of the PO but are instead included merely for the convenience of reference only and shall not affect meaning or interpretation.

26. Survival. Any provision of these Terms that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the PO shall remain in full force and effect.

27. Waiver. Buyer may waive performance or compliance with any terms and conditions hereof, but any such waiver shall be effective only if given in writing and shall be effective only with respect to the specific circumstances for which it is given. Buyer's failure to assert a right hereunder or to insist upon compliance with any term or condition of these PO terms shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition.

28. Entire Agreement. The PO, including all descriptions and attachments furnished by Buyer, constitutes the entire agreement and understanding between the parties and supersedes and replaces any and all prior or contemporaneous representations, agreements, or understandings of any kind, whether written or oral, relating to the subject matter hereof. No change, modification, or revision of the PO is valid unless specifically unless made in writing and duly signed by both Buyer and Seller.

29. Governing Law. The construction, interpretation, and performance of the PO, including without limitation of these Terms, and all transactions thereunder shall be governed by the laws of the State of New Jersey, USA and the laws of the United States applicable therein, without regard to any conflicts of law provisions that would otherwise require the application of the law of any other jurisdiction. Any action brought in relation to the PO shall be brought exclusively in the state and/or federal courts in the State of New Jersey, USA.