



Purchasing Terms and Conditions

GENERAL TERMS AND CONDITIONS OF SOLICITATION/PURCHASE, (APPLICABLE TO ALL DOMESTIC FIXED-PRICE SOLICITATION/PURCHASES)

1. ACCEPTANCE AND TERMS AND CONDITIONS

- a) Seller (including Seller as Bidder or Offerer) shall accept this Purchase Order ("PO") and any amendments thereto by signing the acceptance copy and returning it to Purchaser ("Z Microsystems") promptly. However, performance or partial performance shall also constitute acceptance of this P.O.
- b) By acceptance of the PO, Seller agrees to comply with all of its terms and conditions and all specifications and other documents to which the PO and documents attached hereto refer. Z Microsystems hereby objects to any terms and conditions contained in any acknowledgment of this PO, which are different from or in addition to those recited herein.
- c) Failure by Z Microsystems either to enforce at any time any of the provisions hereof or to protest at any time any breach or default thereof shall not be construed as evidence to interpret the requirements of this PO, nor as a waiver of the requirements of such provisions, nor of the right of Z Microsystems thereafter to enforce each and every such provision. Z Microsystems approval of documents shall not relieve Seller from compliance with specifications related to this PO. All rights and obligations hereunder shall survive final performance of this PO.
- d) Any inconsistencies shall be resolved in accordance with the following descending order of precedence:
 1. Face of the PO (which term shall include continuation sheets);
 2. Special Terms and Conditions (including any applicable supplementary provisions);
 3. Statement of Work;
 4. General Terms and Conditions (including any applicable supplementary provisions);
 5. Specifications;
 6. Drawings.
- e) Until final resolution of any dispute hereunder, Seller shall proceed diligently with the performance of this PO in accordance with Z Microsystems direction.
- f) Seller shall make no change in any design, specification, configuration, material, part or manufacturing process which affects the form, fit, function, reliability, or maintainability of goods without the prior written approval of the Z Microsystems Buyer. With respect to any design, specification, configuration, material, S/B or process so approved.
- g) Seller acknowledges that it has available to it all specifications, drawings and data referenced in this PO and that they are adequate to enable Seller to perform the work called for herein in accordance with the delivery schedule.
- h) Unless otherwise specified in this PO, Seller shall deliver all material in accordance with the applicable specification/drawing revisions in effect at the time of the PO award.
- i) The interpretation enforcement obligations of this order shall be in accordance with the laws of the state of CA.
- j) Z Microsystems rights under this PO are cumulative and in addition to any other rights available at law and equity.
- k) This PO's price is Firm Fixed Price, unless indicated to the contrary elsewhere in this PO.

2. TRANSPORTATION

Unless otherwise provided in this PO; transportation shall be "FOB Destination. No insurance or premium transportation costs will be allowed unless authorized in writing. If Seller does not comply with Z Microsystems delivery schedule Z Microsystems may specify, at its sole discretion, the mode and conditions of transportation to affect delivery and deduct from any of Seller's invoices the cost of such premium transportation, if borne by Z Microsystems.



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3. NEW MATERIALS

The goods to be delivered hereunder shall consist of new materials (not used or reconditioned).

4. INSPECTION

- a) Z Microsystems and Z Microsystems customer (and the Government if this PO is, at any tier, under a Government contract) may at any time inspect Seller's and Seller's suppliers' facilities which will or may be used in the performance of this PO and, at any time and place before, during, or after manufacture or completion, may inspect and test all material and workmanship entering into the performance of this PO. No such inspection or test shall in any way relieve Seller of its obligations to furnish all required articles, materials, and services in strict accordance with the requirements of this PO. If inspection and test is made on the premises of Seller or any of its suppliers, Seller shall furnish, or cause to be furnished without additional charge, all reasonable facilities and assistance for safety and convenience of the inspectors in the performance of their duties. All inspections and tests shall be performed in such a manner as not to delay the work unduly. All goods are subject to final inspection and acceptance at Z Microsystems plant (or at any other location specified in writing by Z Microsystems) notwithstanding any payments or prior inspections. Such final inspection shall be made within a reasonable time after delivery.
- b) Seller shall provide and maintain an inspection and process control system acceptable to Z Microsystems covering the goods hereunder. Records of all inspection work by Seller shall be kept complete and available to Z Microsystems and its customers during the performance of this PO and for such longer periods as may be specified in this PO.
- c) Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the PO. Z Microsystems reserves the right to refuse acceptance if the goods or services delivered hereunder do not conform to the requirements of this contract. In the case of non-conforming goods, supplier shall repair or replace such goods at supplier's option within a reasonable period for no increase in contract price.

5. MINOR DISCREPANCIES

- a) If material contains minor discrepancies, which cannot be reworked to conform to 100% of the drawing requirements, Seller shall report such discrepancies as soon as possible for potential Z Microsystems Material Review consideration. Major and Critical discrepancies will not be considered for Z Microsystems Material Review. The following information shall be included in the report: PO number and amendment, part number, revision letter, part name, serial numbers, quantity of defective parts, nature and cause of defects, and corrective action.
- b) Z Microsystems requiring reports of defective material shall not imply willingness to accept such material nor does it relieve the Seller of its performance obligations hereunder.

6. DELIVERY

Delivery shall be at the location described elsewhere in this PO.

- a) If, without written authorization from Z Microsystems Seller ships goods so as to arrive more than thirty (30) days in advance of schedule, Z Microsystems may return the goods at Seller's expense. Seller shall not invoice Z Microsystems for payment prior to the scheduled delivery date.
- b) If delivery is delayed or threatened to be delayed by any event, Seller shall immediately notify Z Microsystems Buyer of the estimated delay involved, and the reasons therefore. Seller shall insert the substance of this clause in all Purchase Orders and subcontracts issued hereunder.

7. TERMINATION FOR DEFAULT

- a) Z Microsystems may, by written notice of default to Seller, terminate this PO in whole or in part if the Seller fails to:
 1. deliver the goods or to perform the services within the time specified in this PO or any extension; or



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2. make progress, so as to endanger performance of this PO; or
 3. perform any of the other provisions of this contract; and in either of these latter two circumstances does not cure such failure within (10) days (or such longer period as Z Microsystems may authorize in writing) after receipt of the notice from Z Microsystems specifying the failure.
- b) If this PO is terminated for default, Z Microsystems may require Seller to deliver to Z Microsystems any (1) supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of the PO. Z Microsystems shall pay the PO price for completed supplies delivered and accepted. Z Microsystems and Seller shall agree on the amount of payment for all other deliverables.
- c) Seller shall not be liable to Z Microsystems for delays in performance occasioned by or caused beyond Seller's reasonable control and without its fault or negligence, including but not limited to acts of God or of the public enemy, acts of the government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of Seller's suppliers at any tier provided, however, that the delays of Seller's suppliers at any tier are beyond the control of both Seller and its suppliers and without fault, or negligence of either.
- d) Seller shall promptly notify Z Microsystems Buyer, if Seller is the subject of any petition in bankruptcy.
- e) The rights and remedies of Z Microsystems in this clause are in addition to any other rights and remedies provided by law or under this PO.

8. TERMINATION FOR CONVENIENCE

Termination for the Government's (Z Microsystems) Convenience. In cases where the Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Seller shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Seller shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Seller can demonstrate to the satisfaction of the Government using its standard record keeping system, to have resulted from the termination. The Seller shall not be required to comply with the Cost Accounting Standards or contract cost principles for this purpose. The Seller shall not be paid for any work performed or costs incurred, which reasonably could have been avoided.

9. CHANGES

- a) Z Microsystems may at any time, by a written Order, make changes within the general scope of this PO, in any one or more of the following:
1. The drawings, designs, or specifications where the goods to be furnished are to be specially manufactured for Z Microsystems in accordance therewith;
 2. Description of services to be performed;
 3. The method of shipment or packing;
 4. The place of delivery, inspection and acceptance;
 5. The amount of property or services furnished or to be furnished to Seller. If such Order causes a change in the cost of, or the time required for, performance of this PO, an equitable adjustment shall be made in the price and/or delivery schedule, and in such other provisions of this PO that are affected. Such adjustment shall be accomplished by a written amendment to this PO signed by both parties. Any claim by Seller for such adjustment must be made within twenty (20) days from the date of receipt of such change, although Z Microsystems in its sole discretion may receive and act upon any such claim at any time before final payment.



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- b) (b) Only the Buyer is authorized on behalf of Z Microsystems to issue changes whether formal or informal. If any direction or instruction by Z Microsystems personnel is deemed by Seller to constitute such a change, the Seller shall not rely upon such instruction or direction without the written confirmation of Z Microsystems Buyer.
- c) (c) Nothing in this clause, including any disagreement with Z Microsystems as to the equitable adjustment to be made shall excuse Seller from proceeding with the PO as changed.

10. INFORMATION DISCLOSED TO Z MICROSYSTEMS

Except for information specifically identified in writing as proprietary in Seller's proposal to Z Microsystems prior to award of this PO, any knowledge or information which Seller has disclosed or may hereafter disclose to Z Microsystems in connection with the purchase of the goods and services covered by this PO shall not, unless otherwise specifically agreed upon in writing by Z Microsystems, be deemed to be confidential or proprietary information; and it shall be acquired by Z Microsystems free from any restrictions regarding its use or disclosure.

11. INFORMATION DISCLOSED TO SELLER

Seller shall keep confidential all information, drawings, specifications, or other data "Z Microsystems Information" either:

- a) furnished by Z Microsystems and captioned as confidential or Z Microsystems Proprietary; or
- b) prepared by Seller specifically in connection with the performance of this PO and Seller shall not divulge or use such "Z Microsystems Information", drawings, specifications or data to provide goods or services to any other customer, nor shall seller export "Z Microsystems Information" without the expressed approval of Z Microsystems. Except as required for the efficient performance of this PO, Seller shall not make copies or permit copies to be made without the prior written consent of Z Microsystems. Seller shall thereafter make no further use, either directly or indirectly, of any such information, drawings, specifications, data, or of any derivation without obtaining Z Microsystems' written consent. Proprietary data is to be returned to Z Microsystems or destroyed with a destruction certificate supplied to Z Microsystems when the proprietary data is no longer needed. This clause shall not apply to information after its entry into the public domain otherwise than as a result of a breach of this clause, nor shall it limit any rights the Government may have in such information.

12. FURNISHED PROPERTY

- a) Z Microsystems may furnish Seller property owned by either Z Microsystems or its customer and required by Seller for the performance of the work under this PO, or have Seller acquire property for Z Microsystems or its customer's account (hereafter referred to as "Furnished Property"). This may include, without limitation, tools, equipment or material of every description, and any replacement thereof or any material affixed or attached thereto.
- b) Title to Furnished Property shall not vest in Seller. Title thereto shall not be affected by the incorporation or attachment thereto of any property not owned by Z Microsystems or its customer; nor shall any Furnished Property or any part thereof, be or become a fixture or lose its identity because it is affixed to any realty. Seller shall maintain property control records of Furnished Property consistent with good business practice and as may be prescribed by Z Microsystems. Seller shall issue such reports as Z Microsystems may require. Seller shall cause all Furnished Property to be clearly marked (if not so marked) to show that it is property of Z Microsystems or its customer.
- c) Except as may be authorized by Z Microsystems in writing, Furnished Property shall be used only for the performance of this PO.
- d) Seller shall, in accordance with sound industrial practice and without additional charge to Z Microsystems, maintain in operating condition, repair, protect, and preserve Furnished Property until disposed of by Seller in accordance with this clause.
- e) Seller assumes the risk of, and shall be responsible for any loss of or damage to Furnished Property in Seller's possession except for reasonable wear and tear resulting from performance of this PO.
- f) Z Microsystems (and its customer where the Furnished Property is customer owned or financed) shall at all reasonable times have access to the premises wherein any Furnished Property is located.



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- g) Upon the completion of this PO, Seller shall submit, in a form acceptable to Z Microsystems, inventory schedules covering all items of Furnished Property not consumed in the performance of this PO (including any scrap). Seller shall hold the same at no charge for sixty (60) days. After this, Seller shall dismantle, prepare for shipment and, at Z Microsystems direction store or deliver said property (at Z Microsystems expense), or make such other disposal of Furnished Property as directed by Z Microsystems. The net proceeds of any such disposal shall be credited to the price of the PO or shall be paid over as Z Microsystems may direct.

13. WORK ON Z MICROSYSTEMS OR ITS CUSTOMER'S PREMISES

- a) If this PO involves work by Seller on the premises of Z Microsystems or its customers, Seller shall comply with all safety and security regulations and shall take all precautions required by any of these or otherwise necessary to prevent the occurrence of any injury to person or property during the progress of such work. Seller shall promptly inform Z Microsystems of any such injury or damage.
- b) Seller shall provide timely notice to Z Microsystems prior to the introduction to the premises of any hazardous material as defined in any Federal, state or local law or ordinance or in any lawful order, rule or regulation there under applicable to the premises. Seller shall equip its employees, agents and subcontractors, for the use of such hazardous material, and for such other hazardous materials, as identified by Z Microsystems or its customer on the premises.

15. NON-ASSIGNMENT

Neither this PO nor any rights or obligations under it shall be assigned to third parties by Seller without the prior written consent of Z Microsystems. However, claims for any payment due or to become due under this PO may be assigned by Seller without such consent, if Z Microsystems is promptly furnished with written notice and a signed copy of any such assignment. Payment to an assignee of any such claim shall be subject to set off or recoupment for any present or future claim or claims, which Z Microsystems may have against Seller.

16. COMPLIANCE WITH LAWS

- a) Seller shall comply with the applicable provision of all Federal, state, and local laws and ordinances and all lawful orders, rules, and regulations there under; and such compliance's shall be a material requirement of this PO.
- b) Seller represents that the goods to be furnished hereunder were or will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended.
- c) Seller warrants that each chemical substance constituting or contained in goods sold or otherwise transferred to Z Microsystems hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec 2601 at seq.) as amended.
- d) Seller shall provide to Z Microsystems with each delivery any Material Safety Data Sheet applicable to the goods and containing such information as required by the Occupational Safety and Health Act and regulations.

17. PUBLIC RELEASE OF INFORMATION

No public release (including, without limitation, photographs, films, announcements, denials or confirmations of same on any part of the subject matter of this PO or any phase of any program) hereunder shall be made without the prior written approval of Z Microsystems.

18. EXTRA CHARGES

The price stated on the PO covers all work required by Seller to satisfy the requirements of the PO.

19. SECURITY INTERESTS

Seller shall cooperate with Z Microsystems in executing such documents as Z Microsystems deems appropriate to protect the security interest of Z Microsystems and Z Microsystems customers in Seller's work-in-process and Furnished Property.



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20. FOREIGN PURCHASES

(Applies if the PO involves goods imported into the U.S.)

- a) If elsewhere in this PO Z Microsystems is indicated as importer of record. Seller warrants that all sales hereunder are or will be made at not less than fair value under the United States Anti-Dumping Law (19 U.S.C. 1673 et seq.).
- b) If elsewhere in this PO Z Microsystems is not indicated as importer of record, then Seller agrees that:
 1. Z Microsystems will not be a party to the importation of goods, the transaction(s) represented by this PO will be consummated after importation, and Seller will neither cause nor permit Z Microsystems name to be shown as "Importer of Record" on any customs declarations; and
 2. Upon request and where applicable, Seller will provide to Z Microsystems Customs Form 7543 entitled "Certificate of Delivery," properly executed.

21. PATENT INDEMNITY

The Seller shall indemnify Z Microsystems, its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of any U.S. or foreign patent, trademark or copyright arising out of the performance of this contract.

22. LIMITATIONS OF ACTION

Seller hereby agrees to waive all applicable statutes of limitations applicable to any Z Microsystems action against Seller under this PO until one (1) year after all such statutes applicable to any action by Z Microsystems Customer against Z Microsystems based on alleged breaches of requirements of Z Microsystems higher-tier contract occurring, in whole or in part, by reason of the alleged actions or inaction's of Seller constituting noncompliance by Seller with requirements of this PO; until (1) year following the expiration of the applicable statutes of limitation applicable to Z Microsystems Customer's action against Z Microsystems.

23. OCEAN TRANSPORT OF GOVERNMENT-OWNED SUPPLIES

The Seller shall advise Z Microsystems of any proposed transportation by ocean vessels of Government-owned property in the possession of Seller or his subcontractor (including property under which title will pass to Z Microsystems or the Government prior to such transportation) in the performance of this PO. Such property shall subsequently be transported only on United States-flag vessels as directed by Z Microsystems.

24. CONTROVERSIES

- a) In the event that Seller asserts any claim against Z Microsystems for additional compensation or damages for breach of contract; and if such claim, if valid, would entitle Z Microsystems to relief, in whole or in part, under Z Microsystems higher tier contract; Seller shall institute no action or suit against Z Microsystems in any court; until Z Microsystems has exhausted its remedies (unless not otherwise timely pursued) under such higher tier contract before any relevant contracting officer, board of contract appeals, and courts, (hereinafter collectively "Adjudicative Bodies"); and the findings of fact and conclusions of law of such Adjudicative Bodies, if Z Microsystems shall have afforded Seller an opportunity to participate in proceedings before such Adjudicative Bodies, shall be binding as collateral estoppel on Z Microsystems and Seller. On all other issues, the findings of fact and conclusions of law of such Adjudicative Bodies shall be binding as collateral estoppel upon Z Microsystems and Seller, if Z Microsystems shall have afforded Seller an opportunity to participate in proceedings before such Adjudicative Bodies.
- b) In the event that a contracting officer under Z Microsystems higher-tier contract renders any decision whereby any action or failure to act on the part of Seller is held to render Z Microsystems in default of its obligations under such higher-tier contract, such decision shall be binding upon Seller; if Z Microsystems shall afford Seller an opportunity to participate in proceedings before an appropriate Adjudicative Body.
- c) In no event shall decisions of Adjudicative Bodies contemplated by this clause determine issues of fact or of law between Z Microsystems and Seller not cognizable before such Adjudicative Bodies.