

Purchase Order Terms and Conditions

This purchase order constitutes an offer by Cormetech Inc. (“Buyer”) to the supplier to whom this purchase order is issued (“Seller”) to purchase the articles, materials, services or equipment covered by this purchase order (the “Product”) exclusively upon the terms and conditions of purchase set forth below (or incorporated herein by reference) and shall become a binding contract including such terms and conditions upon either issuance of an order acknowledgment hereof by Seller or substantial performance hereunder by Seller (the “Agreement”). No contrary or additional terms or conditions of sale proposed by Seller will be accepted by Buyer and any such proposed contrary or additional terms are to be construed as proposals for addition to this Agreement which are hereby rejected unless otherwise indicated in a written instrument executed by an authorized officer of Buyer making specific reference to this purchase order and the specific contrary or additional term proposed by Seller. Seller’s performance pursuant to this order shall be deemed unqualified acceptance of the terms and conditions of purchase set forth below.

1. **PRICE** The price for the goods and materials and/or services sold hereunder shall not be higher than that appearing on the face of this order or if no price appears thereon, then no higher than the last price quoted by Seller. Seller covenants that if it should at any time prior to the delivery of the last goods covered hereby sell like articles in similar quantities to any third party at lower prices, it will notify Buyer in writing of such lower prices and Buyer will receive the full benefit of such lower prices from the date of such sale to any such third party.
2. **CONFLICT OF TERMS** The terms and conditions of Buyer stated on this order shall govern in the event of any conflict with any terms proposed by Seller, and are not subject to change by reason of any written or oral statements by Seller or by any terms stated in Seller’s acknowledgment of this order, unless such conflicting or additional terms are accepted in writing making reference to this order and signed by the Buyer. Shipment of goods or materials pursuant to this order shall be deemed to be an unqualified acceptance of the terms and conditions contained herein.
3. **WARRANTY** All Products sold and delivered to Buyer hereunder shall be in full conformity with Buyer’s specifications set forth or referred to on the face hereof or if none are set forth or referred to, shall be in conformity with Seller’s published specifications and samples provided to Buyer. All Products sold and delivered to Buyer will be new, fit and sufficient for the use intended by Buyer, and will be merchantable and of good quality and workmanship and free from defects. The foregoing warranty shall survive any acceptance of the Products by Buyer and shall be in addition to any warranty expressly furnished or represented to Buyer by Seller. Seller will defend, indemnify and hold harmless Buyer and its customers from and against any and all costs (including reasonable attorneys’ fees incurred), expenses, damages, losses, liabilities, penalties, or judgments attributable to any Product delivered hereunder that fails to conform to the warranty set forth herein or which is otherwise implied by applicable law.
4. **INSPECTION AND ACCEPTANCE** All Products delivered hereunder shall be subject to final inspection and acceptance by Buyer at its facility notwithstanding prior payment or inspection at Seller’s facility. Acceptance of any Products shall not alter or affect the warranties of Seller referenced above. Buyer may, at its option, either hold rejected Products for Seller’s instructions and at Seller’s risk, or return them to Seller at Seller’s expense and require their correction, and Seller shall promptly reimburse Buyer for any and all damages sustained by Buyer as a result of failure of Products to conform to the provisions and specifications set forth in this Agreement.
5. **CANCELLATION FOR BUYER’S CONVENIENCE** Buyer reserves the right to cancel this order or any part thereof, or terminate this Agreement, and Buyer’s sole responsibility to Seller shall be to pay the agreed price for such Products as have been delivered as of the time such cancellation is effective and to reimburse to Seller its actual costs of materials and direct labor expended by it in reasonable anticipation of its fulfillment of this Agreement which are not recoverable by Seller, provided that no allowance shall be made to Seller for any overhead or anticipated profit for undelivered Product, Buyer’s maximum liability on account thereof shall be the agreed price for the Products as set forth in paragraph 1 above, and Seller shall deliver to Buyer any inventory paid for by Buyer under this paragraph.
6. **TIME AND DELIVERY** Because Buyer’s business and operations are in part dependent on receipt of the Products that are the subject of this Agreement, timely delivery of the Products is essential to the performance of Seller’s obligations hereunder. Unless otherwise specified on the face of this Agreement, terms of delivery of the Products are F.O.B. destination with freight prepaid. Deliveries shall be made at the times and of the quantities specified on the face of this Agreement, and Seller shall not, without the written consent of Buyer, make shipments in advance of such schedule. Buyer may order expedited routing in place of scheduled routing, if necessary to meet schedule or recover time lost by any delay, in which event any excess transportation costs shall be paid by Seller. Buyer may postpone delivery of any Products covered hereby. Overshipments may be returned by Buyer at Seller’s expense or retained by Buyer at no increase in price. Seller shall not make any commitment or production arrangements in excess of the amounts, or in advance of the time, necessary to meet Buyer’s delivery schedule for Products.
7. **EXCUSABLE FAILURE OR DELAY** Neither Buyer nor Seller shall be held responsible for the failure or delay in delivery or acceptance of materials or goods sold hereunder where such failure or delays are due to any act of God or of the public enemy, war, compliance with laws, governmental acts or regulations, fire, flood, quarantine, embargo, epidemic, accidents, unusually severe weather or other causes similar to the foregoing beyond their reasonable control, but the party seeking to avail itself of any of the foregoing excuses shall promptly notify the other party in writing of the reasons for any failure or delay in delivery or acceptance and shall exert its best efforts in avoiding further delay.
8. **PATENT INDEMNIFICATION** Seller warrants freedom from patent infringement and shall indemnify Buyer against any costs (including reasonable attorney’s fees) liabilities or judgments arising from any claim of patent infringement on those items comprising Seller’s regular line of products when used for the normal purposes in the form in which they are sold by Seller. Buyer shall promptly notify Seller in writing of any claim or suit brought against it for infringement on account of its purchase or use of Seller’s goods or materials. The foregoing warranty and indemnification shall not apply in any instance where such claim of infringement arises from Seller’s good faith compliance with Buyer’s specifications.
9. **CHANGE ORDERS** No change, modification or extension of this order shall be effective against either Buyer or Seller unless it is made in writing, makes specific reference to this order and is signed by both parties.

10. **ASSIGNMENT** Neither this order nor any right or obligation hereunder shall be transferred or assigned by the Seller without the express written approval of the Buyer. Seller is not permitted to engage subcontractors in connection with the performance of its obligations to Buyer hereunder without the prior consent of Buyer.
11. **WAIVER** The failure of the Buyer to insist in any one or more instances upon the full performance of any of the terms, covenants or conditions of this order or to exercise any rights it may have hereunder shall not be construed as a waiver of any legal rights it may have with respect to such nonperformance or be construed as Buyer's condoning further nonperformance of such terms, covenants or conditions.
12. **COMPLIANCE with HEALTH and ENVIRONMENTAL LAWS:** Seller shall furnish only goods, services, and materials which comply with the Occupational Safety and Health Act and all local, state, and federal laws, codes, and regulations relating to safety, health, and environmental compliance. In the event that Seller's work does not comply with any such laws, codes, and regulations, Seller shall correct any such noncompliance at its sole expense and indemnify and hold Buyer harmless from any claims, costs, fines, penalties, expenses, liabilities, or losses on account of any such noncompliance.
13. **FAIR LABOR STANDARDS** All shipments of goods and supplies will be accompanied by Seller's certification as follows: "We hereby certify that in the production of the goods and/or the performance of the services covered by this invoice we have complied with all applicable requirements of Sections 6, 7 and 12 of the fair Labor Standards Act, as amended and regulations and orders of the United States Department of Labor issued under Section 14 thereof".
14. **EQUAL OPPORTUNITY COMPLIANCE** Seller represents and warrants that it complies with Title 7 of the Civil Rights Act of 1984 as amended, and with all regulations and orders promulgated thereunder, including Executive Orders 11246 and 11375, concerning equal employment opportunity, all of which are incorporated herein by reference and upon request. Seller will furnish Buyer with certificates declaring Seller's compliance. Seller represents and warrants that it complies with Title 5, Veteran Employment and Readjustment Act of 1972 and Executive Order 11701 and (Pub Law 95-50) and that it has complied with all applicable federal regulations relating to affirmative action programs (and sub-contracting plans thereunder,)
15. **SERVICES** Where Seller supplies services to Buyer under this order, all of the above terms and conditions shall apply. All new technology (including but not limited to Inventions, patentable or not), new equipment or a new manufacturing process resulting from services performed by Seller for Buyer under this order shall be the exclusive property of Buyer.
16. **CONTAINER SEAL REQUIREMENTS** All goods or materials sold under this order that are delivered via freight container, shall have bolt seals which meet ISO PAS 17712 standards as required by the CBP.
17. **ASSIGNMENT OF WORK PRODUCT TO BUYER** All work product developed by Seller in connection with its performance under this Agreement, including (but not limited to) computer files, concepts, ideas, designs, discoveries, drawings, inventions, models, plans, programming, schedules, specifications, technical documentation, software, or source code ("Work Product") are Buyer's property as of the time of creation and all right, title and interest, including (without limitation) copyright interest, shall belong exclusively to Buyer. Seller is not permitted to retain copies of such Work Product and shall deliver all Work Product to Buyer with the Products ordered hereunder. This Agreement transfers all right, title or interest, including (without limitation) copyright and patent, that Seller may otherwise have in such Work Product to Buyer. Seller will at Buyer's request execute and deliver such documents as in Buyer's opinion may be necessary, proper, appropriate, convenient or expedient to protect, register, enforce or evidence further Buyer's ownership of such Work Product. Seller warrants and represents that any tangible Work Product developed by it pursuant to this Agreement will be either original to Seller, in the public domain, or obtained by Seller with the written consent of the owner thereof to use such other works or intellectual property in or to develop the Work Product. Seller shall defend, indemnify and hold harmless Buyer and its customers from and against any and all costs (including reasonable attorneys' fees incurred), expenses, losses, damages, liabilities, penalties, or judgments relating to any claim or allegation that any Work Product infringes any intellectual property right of any third party.
18. **CONFIDENTIALITY** All data and other information obtained by Seller from Buyer in connection with this Agreement, and any Work Product to be delivered to Buyer hereunder, shall be held in strict confidence by Seller and used solely for the purposes originally intended in connection with this Agreement. Seller shall treat such data, information and Work Product with the same degree of confidence that it uses to protect its own proprietary or confidential information (but not less than a reasonable standard of care) and shall ensure that each of its employees to whom such data, information or Work Product is known is bound to maintain the confidentiality of such data, information or Work Product by separate agreement with Seller or by operation of law.
19. **INSURANCE** If Seller performs any services for Buyer on Buyer's premises, during the term of this Agreement and for a period of at least one year after completion of Seller's obligations pursuant hereunder, Seller will maintain the following levels of insurance coverage with a reputable and financially sound insurance carrier: (a) Workers' Compensation insurance as required by applicable law; (b) Employer's Liability insurance with limits not less than US \$1 million; (c) Commercial General Liability, including Products and Completed Operations and Contractual Liability, with a minimum combined single limit of US \$2 million per occurrence; and (d) Excess Liability insurance with limits not less than US \$5 million. Seller will provide Buyer with an insurance certificate from its insurance carriers for each of the required foregoing insurance coverages, which shall also name Buyer as an additional insured for Commercial General Liability and Excess Liability insurance. Seller shall require each of its subcontractors (regardless of tier), if any, to carry insurance in accordance with all of the above terms set forth in the preceding sentences.
20. **INDEPENDENT CONTRACTOR** Nothing in this Agreement is intended to, or does, create any joint venture, partnership, agency or similar relationship between Buyer and Seller, other than a buyer and seller relationship. Seller shall not be, and is not authorized to represent itself as, an agent or representative of Buyer for any purposes.

21. GOVERNING LAW This Agreement shall be governed exclusively by the laws of the State of New York without regard to its conflicts of laws principles that would have a contrary result. The United Nations Convention on the International Sale of Goods shall not apply to this Agreement. Any dispute, claim, or controversy between Buyer and Seller related to this Agreement that cannot be resolved through good faith negotiations shall be finally venued in the New York State Supreme Court situate in Steuben County, New York or the US Federal District Court of the Western District of New York.
22. SITE RULES If Seller performs any services for Buyer on Buyer's premises ("Site"), its employees, and its subcontractors (regardless of tier) shall comply with and observe all directions, rules, and regulations of Buyer relating to conduct while on Buyer's Site. These directions, rules, and regulations ("Rules") include, but are not limited to the following: safety and health, fire prevention, environmental, housekeeping, maintenance and protection of the Site, delivery and storage of materials, ingress and egress to the premises, parking, employee conduct, and public relations. Copies of such Site Rules will be furnished to Seller upon request.

REVISION 7,(12/12/2009)