



**OCEUS NETWORKS INC.
TERMS AND CONDITIONS OF PURCHASE**

1. **Company Acceptance.** Company's written acknowledgment of, or performance (in whole or in part) pursuant to, the purchase order which references these terms (the "Order") shall constitute Company's unqualified acceptance of, and agreement to, these terms. Unless otherwise specifically agreed to in writing by Oceus Networks Inc. ("Oceus Networks"), any terms and conditions contained in any quotation, acknowledgement, invoice or any other document delivered by Company to Oceus Networks in connection with this purchase order that are in addition to, or in conflict with or inconsistent with these terms shall be void and of no force or effect.
2. **Price.** The price for the goods and/or services to be provided by Company to Oceus Networks pursuant to the Order (the "Products") shall not exceed the price stated on the face of the Order. Unless otherwise indicated herein, such price is F.O.B. Destination. No additional charge of any kind, including charges for taxes, duties, packaging, shipping, or any other additional charge, will be allowed unless expressly agreed to in writing by Oceus Networks. Pricing by weight (where applicable) covers net weight of material.
3. **Sales Tax.** Unless otherwise stated on the face of the Order, the Products purchased hereunder are exempt from sales and use taxes for the reason that such goods are purchased for resale or will be incorporated into or used/consumed in a manufactured product for resale.
4. **Payment Terms.** Unless otherwise stated in this purchase order, or Oceus Networks disputes in good faith a Company invoice, payment terms shall be net forty-five (45) days after Oceus Networks' receipt of invoice. Invoice may be submitted following delivery. Each invoice shall contain such substantiating documentation or information as may be reasonably required by Oceus Networks.
5. **Packing/Shipping.** Company agrees that each shipment of goods hereunder will be properly packed and described in accordance with Oceus Networks' specifications and applicable carrier regulations. Each shipment will be made by Company at the lowest available freight charges. All truck shipments must be classified by Company using the current "National Motor Freight Classification Tariff." Each box, crate or carton will show Oceus Networks' full "ship-to" street address. Company will provide a packing list to accompany each shipment referencing the appropriate purchase order number. The bill of lading also will reference the appropriate purchase order number. Company is responsible for packing any shipment correctly based on the carrier/mode utilized. Charges for packing and crating will be deemed part of the purchase price and no additional charges will be made therefore unless specifically requested by Oceus Networks in this purchase order. Company will ship via the carrier specified by Oceus Networks. All premium freight costs incurred by Company or Oceus Networks beyond that specified by Oceus Networks shall be borne by Company. Company is instructed to ship only the quantity(ies) specified in this purchase order. However, any over-shipment caused by conditions of loading, shipping, packing, or allowances in manufacturing process may be accepted by Oceus Networks according to the over-shipment allowance indicated on the face of this purchase order. If no allowance is shown, it will be zero percent (0%), Oceus Networks reserves the right to return any over-shipment in excess of the allowance at the Company's expense.
6. **Acceptance of Delivery/Performance.** Oceus Networks will monitor quality and timeliness of delivery. All Products provided by Company under the Order shall be in accordance with the requirements thereof, including any and all applicable exhibits or attachments and shall be subject to rejection if such Products are nonconforming therewith. With respect to Company's performance hereunder, time is of the essence. Company will provide the Products in accordance with the date(s) set forth in the Order. Any delivery or performance by Company inconsistent with such date(s) may be returned or rejected by Oceus Networks at Company's expense. No inspection or evaluation performed by Oceus Networks shall in any way relieve Company of their obligation to furnish all Products in strict accordance with the requirements of the Order. At Oceus Networks' sole discretion, any rejected nonconforming Products may be returned for refund of amounts paid, credit against future purchases or replacement at Company's risk and expense. No items returned as defective shall be replaced without written authorization from Oceus Networks. Acceptance of Products will be made by Oceus Networks only in writing through a document entitled "Final Acceptance." The parties expressly agree that payment by Oceus Networks shall not constitute acceptance unless accompanied by such document. Company further agrees that in the event these Products are for resale to a specific Oceus Networks customer, nothing in these terms or in the Order shall require Oceus Networks to accept any Product prior to acceptance thereof by Oceus Networks' customer, if applicable. Issuance by Oceus Networks of its Final Acceptance shall be conclusive upon Oceus Networks, except for latent defects, fraud, or gross negligence amounting to fraud.
7. **Title and Risk.** Title to the goods provided by Company pursuant to this purchase order will pass to Oceus Networks upon Company's delivery of the goods to a common carrier for shipment to Oceus Networks. Company will bear the risk of loss of or damage to such goods until the delivery of such goods is accepted by Oceus Networks.
8. **Work Products.** The work product of Company's services, including results and all ideas, developments and inventions that Company conceives or reduces to practice during the course of performing services under this purchase order (the "Work Product"), shall be the exclusive property of Oceus Networks. Upon Oceus Networks' request, Company shall execute any document and render such other assistance as reasonably necessary to perfect Oceus Networks' full right, title and interest worldwide in the Work Product.
9. **Quality and Inspection.** Oceus Networks reserves the right to review manufacturing activities. (a) Company agrees to provide and maintain a quality control system to an industry recognized Quality Standard and to provide access to Company's facilities at all reasonable times by Oceus Networks, authorized Customer representatives and Regulatory Authorities. Company agrees to include and to require its subcontractors to include, the substance of this provision, including this sentence in each of its subcontractors under this Contract. Further, Company shall be in compliance with any other specific quality requirements identified in this Contract. (b) Records of all quality control inspection work by Company shall be kept complete and available to Oceus Networks and its Customers. (c) Company agrees to notify Oceus Networks' Procurement Representatives prior to Company's shipment of non-conforming material to Oceus Networks. Additionally, Company shall notify Oceus Networks' Representative if Company discovers a previously delivered product does not meet the requirements of this order. (d) Company agrees to notify Oceus Networks' Procurement Representative with changes in product and/or processes which affect compliance with applicable Specifications or Technical Data Sheets.
10. **Warranty.** Company warrants to Oceus Networks that the goods and other articles and materials provided by Company pursuant to this purchase order (i) will be new, of merchantable quality, fit for the particular purposes for which they are purchased, free from defects in material, workmanship and design, and in strict compliance with the specifications, samples, drawings, designs and other requirements approved, provided or adopted by Oceus Networks, (ii) will be free and clear of all claims, liens, encumbrances or other interests of any third party, and (iii) will not infringe or violate any copyright, trademark, patent, trade secret or other proprietary rights of any other person. Company further warrants that the services to be performed by Company pursuant to this purchase order will be performed in a professional, workmanlike, and diligent manner. In the event of a breach of any of the warranties set forth herein, Oceus Networks may, at Company's expense, return the defective item to Company for repair or replacement (at Oceus



Networks' option), in which event Company will provide Oceus Networks with a Return Material Authorization within one working day from the initial call from Oceus Networks. Company will, at its expense, deliver the repaired or replacement item to Oceus Networks within seven (7) days from such initial call from Oceus Networks, or such shorter time as may be directed by Oceus Networks.

11. Compliance with Laws. Company agrees and warrants that it will comply with the provisions of all applicable federal, state, county and local laws, ordinances, regulations and codes ("Laws") in its performance of this purchase order, including but not limited to, the timely payment of all taxes (e.g., self-employment, social security, income, sales, and other applicable state and federal taxes). Company specifically agrees not to re-export, resell or otherwise dispose of technology or goods transferred pursuant to this purchase order and will comply with all applicable export laws and regulations and will neither undertake, nor cause, nor permit to be undertaken, any activity which is (1) illegal under any Laws or export laws or regulations; or (2) would have the effect of causing Oceus Networks to be in violation of any Laws.
12. Insurance. a) Without limiting Company's indemnity obligations or waiving any of Oceus Networks' rights, during Company's performance under this purchase order, Company shall maintain sufficient insurance (i) as required by law; (ii) to adequately protect Company from third party claims; and (iii) to satisfy the following minimum insurance requirements: (A) Commercial General Liability with minimum limits of \$1,000,000 Each Occurrence, \$1,000,000 Annual General Aggregate, \$1,000,000 Products-Completed Operations, and \$1,000,000 Personal and Advertising Injury with no contractual liability exclusion. Coverage shall include Independent Contractors and Contractual Liability; (B) Commercial Automobile Liability with minimum combined single limits of \$1,000,000 Each Accident. Coverage shall include any owned (if applicable), hired, rented, leased and non-owned vehicles; (C) Workers' Compensation and Employer's Liability in accordance with statutory and federal laws and requirements. Employer's Liability shall have minimum limits of \$500,000 Each Accident, \$500,000 Disease Each Employee, and \$500,000 Disease Policy Limit. Coverage shall include Voluntary Compensation; and (D) Commercial Umbrella/Excess Liability with minimum limits of \$3,000,000 Each Occurrence and \$3,000,000 Annual Aggregate. Coverage shall include terms and conditions on a following form basis in excess of the underlying minimum coverage required above. b) Insurers shall have jurisdictional authorization and minimum A.M. Best financial rating of "A VIII." c) Policies shall: (i) be occurrence based; (ii) be primary and noncontributory; (iii) have adequate territorial and navigation limits; (iv) not be cancelled or non-renewed without thirty (30) days prior written notice to Oceus Networks; (v) hold Company solely responsible for premiums, deductibles and retentions; and (vi) respond to all claims and actions, including defense, brought in the United States, its territories and possessions, and Canada. d) Commercial General Liability policy shall be endorsed to name Oceus Networks, its affiliates, directors, officers, employees and agents as Additional Insured for on-going and completed operations. Policy shall contain a "cross-liability" or "severability of interest" clause or endorsement. e) Workers' Compensation, Commercial General Liability, Commercial Auto Liability and Employer's Liability policies shall be endorsed to provide Waiver of Subrogation in favor of Oceus Networks, its affiliates, directors, officers, employees and agents. f) Company is solely responsible for its subcontractors of all tiers.
13. Indemnity. Company will indemnify and hold harmless Oceus Networks and its employees, agents and customers from and against any and all claims, actions, damages, or other liabilities (including reasonable attorneys' fees, court costs and other costs of defense) caused by or arising from any act, error, or omission of Company or its employees, agents or assistants or any breach or alleged breach by Company or its employees, agents or assistants of any covenant or warranty made by Company in this purchase order. The provisions of this Section will survive the expiration or termination of this purchase order for any reason.
14. Intellectual Property. Company shall defend, indemnify and hold harmless Oceus Networks, its agents, employee, officers and directors from and

against any and all costs, expenses (including attorney's fees), claims and causes of action payable to a third party with regard to any third party claim filed against Oceus Networks alleging that a Company's Product or associated data delivered with Product infringes any third party's Intellectual Property Rights or applications thereof (including but not limited to patents, utility models, mask work protections, industrial designs, copyrights and trademarks) (with respect to patents, that are issued as of the Effective Date); provided that Company receives prompt written notice of and reasonable cooperation in the defense of any claim hereunder, and has sole control of the defense and/or settlement of the claim. Notwithstanding the foregoing, Company agrees that it will not settle a claim that would further expose Oceus Networks to liability regarding the indemnified matter without Oceus Networks' prior consent (which consent shall not unreasonably be withheld). In the defense or settlement of an infringement claim, if the Products are, or Company believes the Products will be, permanently or temporarily enjoined, Company may (i) obtain the right for Oceus Networks to continue to use, sell, distribute or otherwise dispose of the Product (as authorized herein), or (ii) replace or modify the Product at Company's sole expense so that it becomes non-infringing without detracting from functional performance; or, if the foregoing remedies are not readily available, Company may request a return of the Products and then will refund the fees paid for the applicable enjoined Product which refund shall include the actual costs of returning such Product to a facility within the Territory designated by the Company.

The foregoing indemnity obligations do not apply to claims resulting from Products or portions thereof:

- 1) where such Products were modified after delivery by Company, unless such infringement would have occurred regardless of such modification or such modification was performed by Company or at Company's request;
- 2) where such Products were combined with other products, processes or materials, unless such infringement would have occurred regardless of such combination;
- 3) where use of such Product is not in accordance with this Agreement and the applicable Documentation, unless such infringement would have occurred regardless of such use; or to the extent the Products or portions thereof are made in whole or in part in accordance with Oceus Networks' specifications or requirements, unless such infringement would have occurred regardless of Oceus Networks' specifications or requirements.

THE FOREGOING PROVISIONS OF THIS SECTION 14 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF THE PARTIES AND THE EXCLUSIVE REMEDY WITH RESPECT TO ANY VIOLATION OR INFRINGEMENT OF PROPRIETARY RIGHTS, INCLUDING BUT NOT LIMITED TO ANY PATENT, COPYRIGHT, TRADEMARK, BY THE PRODUCTS OR SERVICES OF THE PARTIES, OR ANY PART THEREOF, SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION 15.

15. Confidentiality. Company will maintain in strict confidence any and all information provided by Oceus Networks in connection with this purchase order and will use such information solely to perform Company's obligations hereunder. The provisions of this Section will survive the expiration or termination of this purchase order for any reason.
16. Limitation of Liability. IN NO EVENT SHALL OCEUS NETWORKS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THIS PURCHASE ORDER, WHETHER BASED ON ACTION OR CLAIM IN CONTRACT, EQUITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), INTENDED CONDUCT, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH DAMAGES ARE FORESEEABLE. The provisions of this Section will survive the expiration or termination of this purchase order for any reason.
17. Termination. Oceus Networks may terminate this purchase order in the event of any breach of any provision hereof by Company. In



addition, Oceus Networks may, in its sole discretion and without liability, terminate or modify (e.g., change the date of delivery or performance) this purchase order at any time; provided that Oceus Networks provides Company with written notice thereof prior to Company's delivery of the goods or completion of the services (as the case may be).

18. Notice of Labor Disputes. If any actual or potential labor disputes delay or threaten to delay the timely performance of this purchase order, Company shall immediately notify Oceus Networks.
19. Reservation of Rights. Oceus Networks expressly reserves the rights and remedies which are available to it at law or equity, including but not limited to rights and remedies set forth in the Uniform Commercial Code.
20. Purchases in Support of Federal Government. If this purchase is in support of a Federal Government end user, those terms and conditions required to be included by Federal Regulation are incorporated by reference, whether or not attached.
21. Miscellaneous. This purchase order shall be governed by the laws of the Commonwealth of Virginia, other than the choice of law rules. Oceus Networks may at all times set off any amount owing for any reason from Company to Oceus Networks or any of its affiliates against any amount payable by Oceus Networks in connection with this purchase order. Any disputes arising under or relating to this purchase order shall be resolved in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Arbitration shall be held in Fairfax County, Virginia, or such other place as the parties may agree and shall include an award of attorneys' fees (and the amount of such fees) to the prevailing party. The arbitrator's award shall be final and binding, and judgment thereon may be entered in any court having jurisdiction over the party against which enforcement is sought. The parties agree that all arbitral proceedings conducted under this Section 19 shall be kept confidential, and all information, documentation and materials in whatever form disclosed in the course of such arbitral proceeding shall be used solely for the purpose of those proceedings. Company may not assign or subcontract any of its rights or obligations hereunder without Oceus Networks' prior written consent. The provisions of this purchase order shall be severable, and if any provisions shall be held unenforceable the remaining provisions shall remain in full force and effect. Oceus Networks' remedies set forth in this purchase order will be cumulative and in addition to and not in lieu of any other remedies available to it at law, in equity or otherwise. Expiration or termination of this purchase order for any reason shall not release either party from any liability or obligation set forth in this purchase order which (i) the parties have expressly agreed will survive any such expiration or termination, (ii) remain to be performed or (iii) by their nature would be intended to be applicable following such expiration or termination. No change, waiver or discharge will be valid unless in writing signed by an authorized representative of the party against whom such change, waiver or discharge is sought to be enforced. The point of contract for questions or issues arising under this purchase order shall be the Buyer identified on the face of the purchase order. This purchase order constitutes the entire agreement between Oceus Networks and Company with respect to the subject matter hereof.