



## Purcell Systems' Conditions of Sale

These terms and conditions apply to all sales of any and all products ("Products") by Purcell Systems, Inc. ("Seller") to Buyer pursuant to the attached Order Acknowledgement (collectively, with these Terms and Conditions, the "Agreement").

- 1. Acceptance:** Notwithstanding anything in Buyer's purchase order, Seller's performance of any order is expressly made conditional on Buyer's agreement to Seller's Terms and Conditions unless otherwise specifically agreed to in writing by Seller. Absent such separate written agreement, Seller's commencement of performance or delivery shall not be deemed acceptance of any of Buyer's terms and conditions. This serves as a written objection to and rejection of all inconsistent or additional terms, conditions and limitations contained on any form, writing, electronic transmission, facsimile or any other method of communication of Buyer. Buyer's acceptance or use of any Product shall be deemed acceptance of these Terms and Conditions. Seller may accept or reject any Buyer order.
- 2. Payment:** Payments are due within thirty (30) days from the invoice date. Past due amounts shall bear interest at one and one-half percent (1.5%) per month or the maximum amount allowed by law, whichever is less. Buyer may not apply any adjustments to Seller's invoice without Seller's written authorization. Buyer shall bear all collection costs including, without limitation, reasonable attorneys' fees and litigation costs. Any invoice disputes not raised in writing within ten (10) days from the invoice date are waived.
- 3. Purchase Money Security Interest:** Buyer hereby (a) grants to Seller a security interest in all Products purchased hereunder and their proceeds until all payments are made in full; (b) authorizes Seller to execute and file appropriate UCC financing statements or other documents on Buyer's behalf to perfect Seller's security interest and (c) agrees to perform all acts necessary to protect Seller's interest. Seller shall be subrogated to all of Buyer's rights arising in the event of any payment or other satisfaction for damaged, lost or destroyed Products. Buyer shall execute and deliver all instruments and take all other actions necessary to secure such rights.
- 4. Changes; Cancellations:** Order changes or cancellations are subject to Seller's written approval and additional charges may apply. Seller shall not be liable for any delays due to order changes. Seller may make changes in the Products without obligation to install such changes in any Product manufactured prior thereto. Seller may make such changes to any ordered Products as do not, in Seller's judgment; interfere with the satisfactory operation of the Product. Seller may charge Buyer a cancellation charge of twenty percent (20%) if Buyer cancels any part of an order or if Seller terminates an order due to Buyer's violation of any duty to Seller.
- 5. Shipment:** Except as otherwise agreed in writing by Seller in the Order Acknowledgment, all sales are F.O.B. Seller Factory, United States. Upon Seller's notice that any shipment is ready, Buyer shall supply necessary shipping instructions. If Buyer fails to do so, Buyer shall pay all of Seller's subsequent storage, handling and other expenses. Buyer shall owe Seller the full price of the Products, irrespective of loss or damage in transit. Unless circumstances clearly indicate otherwise or Seller, in its sole discretion, chooses to ship the Products in a single lot, the Products may be shipped in separate lots. Seller shall follow the packing requirements customarily used by Seller for the shipping method selected for the Products. Seller will use commercially reasonable efforts to comply with any special packaging requirements specified by Buyer, at Buyer's additional expense.
- 6. Tax:** All government charges upon the production, shipment or sale of Products, including, without limitation, use, occupation, export and import taxes, and any other impositions by any government whatever, direct or indirect, including those required to be collected by Seller, shall be paid by Buyer or, in lieu thereof, Buyer shall furnish Seller with an exemption certificate acceptable to the taxing authority. Seller reserves and Buyer disclaims all rights to drawback of duties paid on materials used in the manufacture of the Products. Buyer shall supply Seller with proof of exportation and all other documents necessary and otherwise cooperate to obtain payment thereof.

**7. Inspection and Acceptance of Products:** The Products shall be inspected by Buyer upon delivery. Products shall be deemed accepted by Buyer unless Buyer submits a written claim regarding Product condition or noncompliance with specifications to Seller within fifteen (15) calendar days of delivery. Any such written claim must state the particular respects in which the Products fail to conform to the terms of the order. No inspection or expediting by Buyer at the facilities of Seller's suppliers is authorized. Seller may produce and ship any Product from any of its facilities. If Buyer wrongfully rejects the Products or revokes acceptance thereof, or fails to make any payment when due, or repudiates this Agreement, Seller may recover as damages the price stated herein for such Products and any costs of collection, including reasonable attorneys' fees. Upon such recovery of the price, the Products shall become the property of Buyer.

**8. Title and Risk of Loss:** Title to and risk of loss of the Products shall pass to Buyer upon placement of the Products into the possession of Buyer or Buyer's designated agent for shipment (F.O.B. Seller Factory). If delivery is made by common carrier, title to and risk of loss of the Products shall, subject to stoppage of Products in transit, pass to Buyer upon placement of the Products into possession of the carrier.

**9. Returns:** Products may only be returned after obtaining Seller's authorization and must be in new condition, with complete identification, shipped freight prepaid, in accordance with Seller's instructions. Returned Products are subject to a restocking charge. Custom-built Products may not be returned for credit.

**10. Documentation:** Seller shall provide Buyer with that data/documentation which is identified in Seller's quotation or standard product literature, which is available on Seller's website. Additional copies or unique data/documentation may be available to Buyer upon request at additional cost.

**11. Confidential Information:** Except for marketing and other materials Seller releases to the public generally, all information and materials provided by Seller, including, but not limited to, pricing and discounts, are confidential and proprietary, whether or not identified as such ("Confidential Information"). Buyer shall hold all Confidential Information in confidence and shall disclose it only to its employees who have a need to know, and shall not use it detrimentally to Seller. Buyer shall not, and shall not attempt to, disassemble or reverse engineer any of Seller Products.

**12. Limited Warranty:** SELLER'S WARRANTY OBLIGATIONS WITH RESPECT TO ANY PRODUCT SHALL BE LIMITED TO COMPLYING WITH ITS PUBLISHED LIMITED WARRANTY FOR THAT PRODUCT AS IN EFFECT FROM TIME-TO-TIME. BUYER ACKNOWLEDGES IT HAS RECEIVED A COPY OF SELLER'S LIMITED WARRANTY. ALL OTHER WARRANTIES ARE EXCLUDED INCLUDING, WITHOUT LIMITATION, EXPRESS AND IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OF TRADE, OR COURSE OF PERFORMANCE. NO AGENT, EMPLOYEE, OR REPRESENTATIVE OF SELLER HAS ANY AUTHORITY TO BIND SELLER TO ANY AFFIRMATION, REPRESENTATION, OR WARRANTY CONCERNING THE PRODUCTS OTHER THAN AS STATED IN THE PUBLISHED LIMITED WARRANTY.

**13. Indemnification:**

(a) Buyer shall indemnify, defend and hold harmless Seller and its directors, officers, employees, affiliates and assigns from and against any and all losses, damages (including incidental and consequential damages), expenses (including court costs, reasonable attorneys' fees, interest expenses and amounts paid in compromise or settlement), suits, actions, claims, penalties, liabilities or obligations (individually, "Loss"; collectively, "Losses") related to, caused by, arising from or on account of

- (i) Buyer's purchase, receipt, storage, handling, use, sale, or shipping of Products or any other goods, or provision of any services or any other act or omission of Buyer;
- (ii) Buyer's negligence, willful misconduct or violation of applicable laws, or regulations;
- (iii) any claim of any person that the execution or performance of the Agreement violates any rights of such person;
- (iv) any warranty, promise, representation, assurance or other statement made by Buyer that is different from or in addition to Seller's standard express limited warranties concerning the Products;
- (v) any actual or alleged defects in any Products manufactured to the specifications provided by Buyer and any actual or alleged defects in any parts supplied or provided to Buyer, unless such defect is due to the negligence of Seller;

- (vi) any third party's allegation that the Products or any item into which the Products are attached or incorporated infringes or misappropriates any copyright, patent, trade secret, trademark, trade name, or other property interest or proprietary rights of such third party;
- (vii) the failure of Buyer to comply with any covenant, provision or agreement of the Buyer contained herein; or
- (viii) any and all claims resulting from special marking of Products or containers in accordance with Buyer's request.

(b) Seller shall indemnify, defend and hold harmless Buyer and its directors, officers, employees, affiliates and assigns from and against any and all Losses related to, caused by, arising from or on account of the failure of Seller to (i) comply with any covenant, provision or agreement of Seller contained herein and (ii) any third party's allegation that any Product infringes or misappropriates any copyright, patent, trade secret, trademark, trade name or other property interest or proprietary rights of such third party, except for any Products manufactured pursuant to Buyer's instructions of specifications.

(c) Promptly after receipt by any party hereto (the "Indemnitee") of any demand, claim or circumstance which, with the lapse of time, would give rise to a claim or the commencement (or threatened commencement) of any action, proceeding or investigation (an "Asserted Liability") that may result in a Loss, the Indemnitee shall give notice thereof (the "Claims Notice") to the other party hereto (the "Indemnifying Party"). The Claims Notice shall describe the Asserted Liability in reasonable detail, and shall indicate the amount (estimated, if necessary) of the Loss that has been or may be suffered by the Indemnitee.

(d) The Indemnifying Party may elect to compromise or defend, at its own expense and by its own counsel, any Asserted Liability and, if it does so, the Indemnifying Party shall have the right to make all decisions with respect to the handling of the defense of such Asserted Liability. If the Indemnifying Party elects to compromise or defend such Asserted Liability, it shall within thirty (30) days of the Claims Notice (or sooner, if the nature of the Asserted Liability so requires) notify the Indemnitee of its intent to do so, and the Indemnitee shall cooperate, as requested by and at the expense of the Indemnifying Party, in the compromise of or defense against such Asserted Liability. If the Indemnifying Party elects not to compromise or defend the Asserted Liability, fails to notify the Indemnitee of its election as herein provided or contests its obligation to indemnify under this Agreement, the Indemnitee may pay, compromise or defend such Asserted Liability. Notwithstanding the foregoing, neither the Indemnifying Party nor the Indemnitee may settle or compromise any claim over the objection of the other; provided, however, that consent to settlement or compromise shall not be unreasonably withheld. In any event, the Indemnitee and the Indemnifying Party may participate, at their own expense, in the defense of such Asserted Liability. If the Indemnifying Party chooses to defend any claim, the Indemnitee shall make available to the Indemnifying Party any books, records, or other documents within its control that are necessary or appropriate for such defense.

(e) Notwithstanding any other provisions herein, a Party's sole remedy for any claim under or relating to or arising out of this Agreement or the Products or services to be provided, whether in contract, warranty or tort or under any legal or equitable theory, shall be to seek indemnity under this Section.

**14. Limitation of Liability:** REGARDLESS OF THE FORM OF ACTION, SELLER'S LIABILITY RELATING TO THE PRODUCTS, THE MANUFACTURE, SHIPPING, SALE OR USE OF THE PRODUCTS OR THE SERVICES PROVIDED SHALL NOT EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC PRODUCT(S) OR SERVICES GIVING RISE TO THE CAUSE OF ACTION. SELLER, ITS AFFILIATES, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF USE, DOWNTIME, LOSS OF DATA, FAILURE TO DETECT ANY FLAW IN ANY SUBJECT MATTER OF ANY TEST, LOSS OF GOODWILL, BUSINESS INTERRUPTION, DELAY IN PERFORMANCE, OR LOST OPPORTUNITIES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE IN CONNECTION WITH THE SUPPLY OR SUBSEQUENT USE OR HANDLING OF THE PRODUCTS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SELLER, ITS AFFILIATES, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS SHALL NOT BE LIABLE FOR PROPERTY DAMAGE AND/OR THIRD PARTY CLAIMS COVERED BY INSURANCE PROVIDED TO BUYER, ITS ASSIGNS, AND EACH SUCCESSOR IN INTEREST TO THE PRODUCTS.

**15. Default:** If Buyer defaults on any of its obligations, Seller shall have all rights and remedies of a secured party under Pennsylvania U.C.C. Article 9 or equivalent and may, without prejudice, defer further shipment until such defaults are remedied or decline further performance of any agreement with Buyer. If Seller has reasonable grounds for insecurity regarding Buyer's performance, Seller may demand adequate assurance of due performance and, until Seller receives such assurance, may suspend its performance hereunder. If Seller does not receive such assurance within thirty (30) days of its request, Seller may suspend performance of its obligations, cancel any or all pending orders, discontinue all sales to Buyer, sell only on a cash-with-order basis, or declare any and all unpaid balances immediately due and payable.

**16. Force Majeure:** Seller shall not be liable for any failures or delays due to acts beyond Seller's control including, without limitation, acts of God, war (declared or undeclared), embargoes, labor actions, fires, floods, earthquakes, accidents, terrorist acts, government mandates, restrictions, or other actions, equipment failure, shortages or inability to obtain components or subcontracted work or raw materials, damage by the elements, transportation difficulties, production delays or unusually severe weather conditions.

**17. Intellectual Property:** Seller supplies products which may be (i) Seller's standard commercial products ("Category 1 Products"); (ii) purchased from other sources ("Category 2 Products"); or (iii) manufactured by Seller to Buyer's specifications ("Category 3 Products"). Seller warrants that Category 1 Products shall be delivered free of any third party's rightful claim for infringement of any U.S. registered patents and trademarks. Seller shall defend, indemnify, and hold Buyer harmless against any claims, damages, losses, or other expenses (including reasonable attorney's fees) ("Claim") arising from breach of this warranty, provided Buyer promptly notifies Seller and gives assistance necessary for the defense of such suit. If any such Category 1 Products are found to be infringing and their use is enjoined, Seller shall, at its own expense, provide Buyer with a commercially acceptable alternative including, without limitation, procuring for Buyer the right to continue using the Category 1 Products, replacing them with a non-infringing product, or modifying them so they become non-infringing. These rights shall not apply if Buyer has modified the Category 1 Products. Regarding Category 2 Products, Seller will have no duty except to take commercially reasonable steps to ensure that Buyer enjoys the same rights as Seller against the parties who manufactured the items or sold them to Seller. Seller assumes no obligation with respect to Category 3 Products. This paragraph states the entire liability of Seller for intellectual property infringement by the Products supplied or any part thereof.

**18. Technical Assistance:** Technical advice and recommendations ("Advice") of Seller are intended for use by persons having appropriate skill, at their own risk. Seller assumes no responsibility, and Buyer waives all claims against Seller, for results or damages due to the use of Seller's Advice.

**19. Product Withdrawals, Modifications and Supply:** Nothing in this Agreement shall be construed to require Seller to sell or continue to sell or supply any of its Products, or to continue, discontinue or change any model or type of Product. Seller may discontinue any Product or change the design of any Product at any time and shall not be liable under any circumstances for failure to furnish Products previously furnished, or for failure to modify Products previously sold. Whenever a Product is in short supply, Seller may allocate the available supply among any or all of its customers, including Buyer, in such manner as Seller in its sole discretion deems appropriate.

**20. Nuclear Waiver; Indemnity:** Buyer shall defend, indemnify and hold Seller harmless from any Claim arising from use of the Products in any nuclear facility or related applications or activities, whether the cause of action be based in contract, tort (including negligence), strict liability or otherwise and from all indirect, special, incidental, exemplary, punitive or consequential damages arising out of a "nuclear incident" as defined in the Atomic Energy Act. Buyer waives all rights of recovery for any claims.

**21. Ownership:** Seller shall have all right, title, and interest in and to all statutory and non-statutory intellectual property rights worldwide which are available to protect discoveries, ideas, designs, inventions, improvements, processes, works of authorship (including software), trade secrets, and other intellectual property of any kind including, without limitation, patents, copyrights, and all other rights available to protect trade secrets and confidential information, based in whole or in part on inventions, developments, or improvements created, conceived or reduced to practice by or on behalf of Seller in connection with any Product sold hereunder. Buyer's employees will cooperate in the preparation of any application for intellectual property rights in the U.S. and other countries with respect to any invention, development, or improvement.

**22. Legal Compliance:** Without limitation of any other provision of this Agreement, Seller and Buyer shall perform their obligations hereunder at all times in accordance with all applicable federal, state and local statutes, regulations and rules. Buyer shall not ship, transfer or export any Seller Products, separately or as part of another Product or system, directly or indirectly, into any country except as permitted by the U.S. Export Administration Act and the regulations thereunder, or use any Seller's Products for any purpose prohibited by such Act. Buyer is solely responsible for obtaining all applicable permits associated with the purchase and use of the Products.

**23. Standard Forms:** The parties may use any of their standard purchase orders and other forms for purposes of convenience only. All purchases of Products by Buyer from Seller shall be subject to the terms and conditions of this Agreement and the Seller's standard commercial terms and conditions as in effect from time to time. Any provisions in the parties' standard form documents, including Buyer's purchase orders or Seller's standard commercial terms and conditions which are inconsistent or in conflict with those set forth herein, shall be void and of no force or effect.

**24. Notice:** Any notice given or required under this Agreement shall be in writing and delivered by registered mail to Seller and to Buyer at the address set forth above, or to such other address as either party shall have last designated by notice given in the manner provided, and all such notices shall be deemed to have been given upon the mailing thereof by registered mail, postage and registration charges prepaid.

**25. General:** Buyer shall not assign its rights or delegate its obligations without Seller's prior written consent. These Terms and Conditions are binding on both parties, their successors and permitted assigns. Any provision found invalid or unenforceable under applicable law, shall to that extent be deemed omitted and shall not affect the remainder of these Terms and Conditions. No action, regardless of form, arising out of the sale of Products and services may be brought by either party more than one (1) year after the cause of action has accrued. These Terms and Conditions constitute the sole and entire contract of sale of the Products. There are no other promises, representations, or warranties by either party to other party pertaining to the subject matter hereof. No modification or addition to this Agreement or waiver of the forms or conditions hereof shall be binding upon any party hereto unless in writing and signed by the parties. No agent, employee or representative of the Seller shall have any authority to bind Seller to any affirmation, representation, agreement, covenant or warranty and none shall be enforceable by Buyer unless specifically included in this Agreement., All prior discussions, understandings, arrangements, electronic transmissions and all previous agreements between the parties of whatever nature or kind regarding the sale of the Products are herein superseded. These Terms and Conditions may only be modified by a writing signed by an authorized Seller representative. Seller's waiver of any term or breach hereof shall not be construed as a waiver of any other term or existing or future breach. These Terms and Conditions shall be construed under the laws of the Commonwealth of Pennsylvania without reference to conflicts of law principles. The United Nations Convention on the International Sale of Goods shall not apply. Disputes hereunder shall be subject to the exclusive jurisdiction and venue of the courts of the Court of Common Pleas of Berks County, Pennsylvania or the United States District Court for the Eastern District of Pennsylvania. The parties waive any right to jury trial. Clerical errors in quotations and specifications may be corrected at any time by Seller. These Terms and Conditions are binding on both parties and their successors and permitted assigns.

**26. Non-discrimination:** Seller warrants that it shall not, in performing its obligations, discriminate against any employee or applicant for employment on the basis of race, creed, color, age, sex, or national origin; or on the basis of the employee or applicant being a disabled veteran or veteran of the Vietnam Era, in regard to a position for which the employee or applicant is qualified.

**27. Translation:** This document may be translated into one or more languages; however, the English translation shall be the official version and shall prevail over all other translations. All dollar amounts are United States' currency unless specified otherwise.