



**Diakont Advanced Technologies
Terms and Conditions of Purchase – Rev. A**

These Terms and Conditions of Purchase apply to all outstanding and future purchase orders ("Purchase Orders") issued by Diakont Advanced Technologies, Inc. ("Buyer"), to sellers, vendors, and suppliers for any product or service ("Product").

- 1.) Scope of Agreement. These Terms and Conditions of Purchase apply to the sale or issuance of Product provided by the Seller to the Buyer.
- 2.) Pricing. The pricing, quantity, and lead time for products listed in Buyer's Purchase Order are binding upon the Seller.
- 3.) Acceptance of Orders. A Purchase Order shall be deemed accepted by Seller in the event Seller fails to provide proper written notice of rejection within forty eight (48) hours of Buyer's issuance of the Purchase Order.
- 4.) Payment Terms. All invoices of the Seller shall be paid by the Buyer within thirty (30) days of the date of invoice unless otherwise agreed in writing by the Seller. If any amount of the invoice is disputed by the Buyer, the Buyer shall inform the Seller of the grounds for such dispute within seven (7) days of delivery of the goods and shall pay to the Seller the value of the invoice less the disputed amount in accordance with these payment terms.
- 5.) Cancellation of Purchase Orders. Buyer may cancel any Purchase Order, in whole or in part, without further obligation or liability to Seller, at any time prior to Seller's shipment of the Product covered by such Purchase Order, by providing Seller written or electronic notice of such cancellation.
- 6.) Notices. All written notices to be served from Seller to Buyer shall be sent or delivered to the Buyer's principle place of business.
- 7.) Condition of Goods. Seller shall ship all goods to Buyer in new, unused condition. Seller will take all reasonable steps to ensure the protection from loss, damage, or destruction of the services or materials it supplies to the Buyer.
- 8.) Warranty. Seller hereby warrants to Buyer that for a period of twelve (12) months following Buyer's acceptance of the Product hereunder (the "Warranty Period") such Product shall: (i) be fit for its intended purpose; (ii) be free from defects in materials, workmanship, and design; (iii) operate in conformity with the performance, functionality, and other specifications contained in its User Manual and Product Documentation; and (iv) conform to all specifications, drawings, and descriptions referenced or set forth in the applicable Purchase Order (collectively, the

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"Performance Warranty"). The Performance Warranty shall survive the termination and expiration of the Warranty Period with respect to any claim made by Buyer prior to such termination or expiration. Notwithstanding anything contained herein to the contrary, Buyer may, at its option, assign or otherwise transfer the Performance Warranty, in whole or in part, on any particular Product(s) to any of Buyer's customers; whereupon (A) such customer may enforce such Performance Warranty against Seller on, in, and for such customer's own behalf, name, and benefit, and (B) Buyer may enforce such Performance Warranty against Seller on, in, and for Buyer's or such customer's behalf, name, or benefit.

- 9.) Indemnification. Seller agrees to defend, indemnify, and hold Buyer harmless from and against damages, losses, claims, costs, and expenses (including reasonable attorney fees) related to any third party claims against Buyer arising out of (a) any allegation that any Product infringes any patent, copyright, trademark, trade secret, or other intellectual property right of a third party and (b) any personal injury, wrongful death, or property damage alleged to have been caused by the negligence of Seller or a defect in a Product. Buyer shall give Seller prompt notice of any such claims ("Claims"), and permit Seller to control the defense and settlement of Claims, and reasonably cooperate with Seller in connection with the defense and settlement of Claims. The foregoing indemnification obligations shall not be limited by the amount or existence of insurance maintained or provided by Seller.
- 10.) Time of the Essence. Seller acknowledges and agrees that time is of the essence with respect to Seller's performance under this Agreement.
- 11.) Waiver. No waiver of any provision of these Terms and Conditions (or any right or default hereunder) shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. Any such waiver shall be effective only for the instance given, and shall not operate as a waiver with respect to any other rights or obligations under this Agreement or applicable law in connection with any other instances or circumstances.
- 12.) Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, USA.
- 13.) Assignment. Neither these Terms and Conditions, nor any Purchase Order, nor any interest under either of them may be assigned or delegated by Seller without the prior written consent of Buyer.
- 14.) Publicity. Seller shall not, without the prior written consent of Buyer, advertise or otherwise disclose that Buyer has entered into this Agreement or has placed any orders with Seller. Seller shall not use Buyer's name or trademark in any press release, marketing or advertising materials without Buyer's prior written consent.

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- 15.) Specifications. All specifications, documents, and prototype articles delivered by Buyer to Seller are the property of Buyer. They are delivered solely for the purpose of Seller's performance and on the express condition that neither they nor the information contained therein shall be disclosed to others nor used for any purpose other than in connection with this work, without the prior written consent of Buyer. Such specifications, documents, and articles shall be returned to Buyer promptly upon Buyer's request. Such request may be made at any time during or after completion of Seller's performance.
- 16.) Compliance with Laws. Each party shall perform its obligations hereunder in compliance with all applicable laws, regulations, and other legal requirements, including US Export Control regulations.
- 17.) Entire Agreement. These Terms and Conditions, together with Purchase Orders issued hereunder, constitute the final and entire agreement between Buyer and Seller with respect to the purchase of the Product and supersede any terms and conditions in any acknowledgement form, invoice, or other document of Seller. These Terms and Conditions may be amended only by a written instrument duly executed by both parties, and may not be amended orally or course of performance.
- 18.) Language. The parties have expressly required that these Terms and Conditions and the applicable Purchaser Order(s) be prepared in the English language.

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