

**EMCORE CORPORATION
STANDARD TERMS AND CONDITIONS**

REVISED JULY 2017

THE FOLLOWING TERMS AND CONDITIONS GOVERN ALL SALES OF PRODUCTS AND MATERIALS ("GOODS") BY EMCORE CORPORATION ("EMCORE"), WHETHER MADE PURSUANT TO ORAL OR WRITTEN ORDERS TO EMCORE'S REPRESENTATIVES OR SALESPERSONS OR TO ITS HOME OFFICE IN ALHAMBRA, CALIFORNIA. NO ORDER SHALL CONSTITUTE A CONTRACT UNLESS AND UNTIL ACCEPTED IN WRITING BY EMCORE.

1. TERMS AND CONDITIONS TO GOVERN

Acceptance of orders by EMCORE is based on the express condition that the purchaser of the goods ("Buyer") agrees to all of the terms and conditions expressed herein. These terms and conditions will govern unless Buyer notifies EMCORE in writing of the unacceptability with five (5) days from the receipt of these terms and conditions. Buyer's failure to object to these terms and conditions within five (5) days, or acceptance of delivery of the goods by Buyer, will constitute Buyer's assent to these terms and conditions. These terms and conditions represent the final and complete agreement of the parties, and no terms or conditions in any way modifying or changing the provisions stated herein shall be binding upon EMCORE unless made in writing and signed and approved by an officer or other authorized person at EMCORE. No modification of any of these terms shall be effected by EMCORE's shipment of goods following receipt of Buyer's purchase order or similar form containing terms and conditions additional to or different from the terms herein.

2. FORCE MAJEURE

Delay in delivery or non-delivery in whole or in part by EMCORE shall not be a breach of this agreement if performance is made impracticable by the occurrence of any one or more of the following contingencies, the non-occurrence of which is a basic assumption on which this agreement is made: (a) Fires, floods or other casualties; (b) Wars, riots, civil commotion, embargoes, governmental regulations, or martial law; (c) EMCORE's inability to obtain necessary materials (finished or otherwise) from its usual sources of supply; (d) Shortage of cars or trucks or delays in transit; (e) Existing or future strikes or other labor troubles affecting production or shipment, whether involving employees of EMCORE or employees of others, and regardless of responsibility or fault on the part of the employer; and (f) Contingencies of manufacture or shipment, whether or not of a class or kind mentioned herein, not reasonably within EMCORE's control.

3. TAXES

All taxes and excises of any nature whatsoever now or hereafter levied by governmental authority, whether foreign, federal, state, or local, upon the sale, use, or transportation of any goods covered hereby, shall be paid and borne by Buyer. Buyer is required to provide EMCORE with an exempt use certificate for state sales taxes or at EMCORE's option EMCORE shall collect or the Buyer shall directly pay state sales tax and shall provide EMCORE with proof of payment of taxes.

4. TITLE OF GOODS

Title of the goods shall pass to Buyer upon delivery thereof to the carrier. Delivery to carrier shall constitute delivery to Buyer, and thereafter the goods shall be at Buyer's risk of loss. Any claim by Buyer against EMCORE for shortage or damage occurring prior to such delivery must be made within five (5) days after receipt of the goods and accompanied by original transportation bill signed by carrier noting that carrier received the goods from EMCORE in the condition claimed by Buyer.

5. WARRANTY

Subject to the terms and conditions set forth below, EMCORE warrants the goods to be free from defects in material and workmanship. This warranty shall extend for a period of twelve months from date of shipment.

EMCORE's warranty does not apply if, and EMCORE shall have no liability for goods returned by Buyer as to which EMCORE's examination reveals that: (i) the goods have been exposed to unusual or excessive environmental, mechanical, electrical or thermal stress during the course of installation or use; (ii) the absolute maximum ratings are exceeded for any reason including, but not limited to, equipment variations, environment variations, the effects of changes in operating conditions due to variations in device characteristics, improper equipment design, improper device installation or application; (iii) goods malfunction is the result of misuse, abuse, improper installation or application, alteration, accident, or negligence in use, storage, transportation or handling or if the original identification markings on the goods have been removed, defaced or altered; (iv) goods are tested for Buyer by anyone other than EMCORE unless such procedures have EMCORE's prior written approval; or (v) the goods are classified as other than a commercial production unit, e.g. a design verification unit, sample, preproduction unit, developmental unit, prototype unit, incomplete (with notice) or "fallout" (i.e. out of specification with notice) unit. All warranty claims are subject to verification by EMCORE.

The liability of EMCORE hereunder is solely and exclusively limited to replacement, repair or credit at the purchase price, at EMCORE's option, for any goods which are returned by Buyer during the applicable warranty period and which are found by EMCORE to be subject to adjustment under this warranty. Buyer must notify EMCORE of any warranty claim within ten (10) days of discovery of the basis therefor, and if Buyer fails to so notify EMCORE by such time, Buyer shall be deemed to have waived such warranty claim.

The foregoing warranties extend to Buyer only, and not to Buyer's customers or to users of Buyer's products. These warranties may not be transferred or assigned, and Buyer shall make no warranty with regard to the goods to any of its customers or other users of Buyer's products, and Buyer shall indemnify and hold EMCORE harmless against any and all claims, demands, liabilities, losses, costs, fees, expenses, damages and injuries (including reasonable attorney fees) (collectively, "Claims") incurred by EMCORE in connection with, or relating to, any such warranty made by Buyer. These warranties are the only warranties made by EMCORE and shall not be enlarged by representations, descriptions, course of dealing, trade usage, rendering of technical advice, service, samples, models, or otherwise, and EMCORE MAKES NO OTHER WARRANTIES EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6. CANCELLATIONS

EMCORE reserves the right to require payment for the goods in advance, or satisfactory security, if the financial responsibility of Buyer is or becomes unsatisfactory to EMCORE. If Buyer fails to make payment in accordance with the terms of this agreement, or any collateral agreement, or fails to comply with any provision hereof, EMCORE may, at its option (and in addition to other remedies, that may be available at law or in equity), cancel any unshipped portion of this order, with Buyer remaining liable for all unpaid accounts. Goods cannot be returned and orders, once accepted, cannot be canceled without EMCORE's prior written consent. If Buyer cancels an order (i) within 90 days of the scheduled delivery date, it will be liable for the full purchase price of the goods, or (ii) 90 days or more from the scheduled delivery date, it will be responsible for all of EMCORE's costs related to the order.

7. GOVERNING LAW

This agreement shall be deemed a contract made in the State of California and governed by the laws thereof without use or reference to its conflict of laws provisions, and the parties hereby consent to the exclusive venue and jurisdiction of the courts (federal or State) located in Los Angeles County, California in the event of a dispute relating to or arising from this order.

8. DELIVERY

All deliveries will be made F.O.B. EMCORE's plant, Alhambra CA, Warminster PA, or such other place as designated by EMCORE. Buyer shall be responsible for all shipping and handling costs. Delivery of the quantity of goods ordered +/- 10% within ten business days of the proposed date of delivery shall constitute timely delivery. The proposed delivery date shall not be changed without EMCORE's written consent.

9. PATENTS/COPYRIGHTS

Without limiting Paragraph 5 above, EMCORE makes no representation or warranty as to whether the goods infringe any patent, trademark, service mark or copyright or other intellectual property right (collectively, "Intellectual Property"), and Buyer shall indemnify and hold EMCORE harmless against any and all Claims arising from any actual or claimed infringement of any Intellectual Property that arise by virtue of any use of the goods by Buyer or any of Buyer's customers or other users of Buyer's products, but only to the extent that any such infringement arises out of compliance with specifications furnished to EMCORE by Buyer.

10. LIMITATION OF LIABILITY

IN NO EVENT SHALL EMCORE BE LIABLE FOR PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, ANTICIPATED OR LOST PROFITS, INCIDENTAL DAMAGES OR LOSS OF TIME OR OTHER LOSSES OR EXPENSES INCURRED BY BUYER OR ANY THIRD PARTY, DIRECTLY OR INDIRECTLY, ARISING FROM ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN TORT (INCLUDING NEGLIGENCE), CONTRACT, STRICT LIABILITY OR OTHERWISE, AND REGARDLESS OF WHETHER EMCORE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES. MOREOVER, IN NO EVENT SHALL EMCORE'S TOTAL LIABILITY (TOGETHER WITH THE LIABILITY OF ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS) EXCEED THE AMOUNT THEREFORE PAID BY BUYER IN RESPECT OF THE GOODS HEREUNDER.

11. EXPORT RESTRICTIONS

Buyer shall obtain all licenses, permits and approvals required by any government and shall comply with all applicable laws, rules, policies and procedures of the applicable government and other competent authorities. Buyer will indemnify and hold EMCORE harmless for any violation or alleged violation by Buyer of such laws, rules, policies or procedures. Buyer shall not transmit, export or re-export, directly or indirectly, separately or as part of any system, the goods or any technical data (including processes and services) received from EMCORE, without first obtaining any licence required by the applicable government, including without limitation, the United States Government and/or any other applicable competent authority. Buyer also certifies that none of the goods or technical data supplied by EMCORE hereunder will be sold or otherwise transferred to, or made available for use by or for, any entity that is engaged in the design, development, production or use of nuclear, biological or chemical weapons or missile technology.

12. SEVERABILITY

If any part, term or provision of these Terms and Conditions shall be held illegal, unenforceable, or in conflict with any law of a federal, state or local government having jurisdiction over these Terms and Conditions, the validity of the remaining portions of these Terms and Conditions shall not be affected thereby.

13. PROPRIETARY INFORMATION AND TECHNOLOGY RIGHTS

Any documentation, data, or information of any kind that is marked "Confidential" or "Proprietary" or that would otherwise reasonably be considered as such under the circumstances ("Confidential Information") supplied by EMCORE to Buyer shall be deemed proprietary to EMCORE and treated as confidential by Buyer. Without limiting the foregoing, except as expressly agreed to by EMCORE in writing, the structure of, and growth technology and fab processes relating to, the goods shall constitute Confidential Information of EMCORE. EMCORE retains for itself all proprietary rights in and to all Confidential Information. Buyer shall not disclose, without EMCORE's written consent, any Confidential Information to any other person, or use Confidential Information for any purpose other than in connection with its business relationship with EMCORE and its use of the goods. The obligations under this paragraph shall survive the cancellation, termination or completion of this agreement. EMCORE may, at its sole option, require Buyer to execute a separate confidentiality agreement acceptable to EMCORE as a condition to providing any documentation or data which it considers proprietary or confidential. All derivatives of, improvements to, or technological advances with respect to, the Confidential Information or other technology disclosed by EMCORE to Buyer, regardless of whether embodied in the goods shall belong to EMCORE and Buyer shall have no rights therein. Moreover, Buyer shall use the goods only as a component its products and shall not reverse engineer or otherwise disassemble or decompile the goods. Any improvement to the goods developed through the use of any Confidential Information shall be the sole property of EMCORE, and Buyer hereby assigns to EMCORE all right, title and interest therein and shall fully cooperate with and assist EMCORE in perfecting such ownership rights, including any patent applications relating thereto.

14. SALE CONVEYS NO LICENSE

The sale of goods hereunder does not convey any license under any patent, copyright, trade secret or other proprietary right with respect to which EMCORE can grant licenses. EMCORE expressly reserves all of its rights with respect to such patent, copyright, trade secret and/or other proprietary rights.