

## Purchase Order Terms and Conditions

The Terms and Conditions including those on the face here of and those set forth below and in the Supplemental Terms and Conditions attached hereto associated with Purchase Orders are in addition to ShockWatch Inc. Corporate Policies and Procedures. In the event of conflict ShockWatch Inc. Corporate Policies, Procedures supersede the terms and conditions including those on the face here of and those set forth below and in the Supplemental Terms and Conditions attached hereto.

- 1. Terms.** The terms and conditions, including those on the face here of and those set forth below and in the Supplemental Terms and Conditions attached hereto, if any, represent the entire agreement between Supplier and Organization. Acceptance is limited to the terms and conditions, and no purported revisions of, additions to, or deletions from a Purchase Order shall be effective, whether in Supplier's proposal, invoice, acknowledgment or otherwise, and no local, general or trade custom or usage, shall be deemed to effect any variation herein unless expressly agreed to in writing by ShockWatch Inc. authorized representative. The delivery of any goods or the furnishing of any services pursuant to this Purchase Order shall constitute acceptance by Supplier of this Purchase Order subject to, and in strict accordance with, all of its terms and conditions. To the extent that terms appearing on the face of this Purchase Order are inconsistent with those set forth herein, the terms on the face shall govern. Any reference on the face of this Purchase Order to Supplier's proposal shall be exclusive of any terms and conditions attached to or referred to therein.
- 2. Specifications.** All goods and services furnished pursuant to this Purchase Order shall strictly conform to the specifications, descriptions and warranties set forth in this Purchase Order. No change in this Purchase Order shall be made except upon written application to, and subsequent written authority of ShockWatch Inc..
- 3. Time and Place of Delivery; ShockWatch's Inspection; Acceptance.** Time is of the essence of this Purchase Order. Delivery will be made as specified on the face of this Purchase Order. ShockWatch reserves the right to reject goods and to cancel all or any portion of this Purchase Order in the event of failure to deliver at the time and place specified. ShockWatch's acceptance of any part of a shipment not delivered as specified herein shall not obligate ShockWatch to accept the remainder of that shipment or any future shipments. If Supplier is required to provide Material Safety Data Sheets, they will be delivered to ShockWatch prior to delivery of any goods under this Purchase Order. All goods shall be received subject to ShockWatch's inspection and acceptance, and subject to ShockWatch's right to reject and return at Supplier's expense goods which fail to conform strictly to the requirements of this Purchase Order. All materials are subject to inspection and testing by ShockWatch at manufacturer's plant.
- 4. Extension of Time of Delivery.** ShockWatch shall not be liable to Supplier for any failure of ShockWatch to take any delivery hereunder when due, if occasioned by any event beyond ShockWatch's reasonable control, including without limitation fire, flood, earthquake, lightning or other acts of God; acts of, or compliance with the directions of, civil or military authority, including any federal, state or local agency or authority; wars; riots; insurrections; sabotage; accident; embargo; strike or other labor trouble; interruption of or delay in transportation; shortage or failure of supply of materials; or equipment breakdown. At Supplier's option, the time for delivery hereunder shall be extended to the extent of the delay occasioned by any such circumstance and the deliveries so omitted shall be made during the period of such extension.
- 5. Risk of Loss.** Risk of loss of any goods sold hereunder shall transfer to ShockWatch at the time and place of delivery; provided that risk of loss prior to actual receipt of the goods by ShockWatch shall nonetheless remain with Supplier.
- 6. Shipment.** Goods must be shipped by the particular route, method and carrier as stated in this Purchase Order. In the event that Supplier fails to ship goods on or before any scheduled shipping date, ShockWatch shall have the right to specify a more rapid method of shipment than was specified originally and Supplier shall bear, at no additional cost to ShockWatch, any increased costs occasioned thereby.
- 7. Packing, Marking, and Invoicing.** A packing list shall be included with each shipment. Two copies of Supplier's invoices, together with original bills of lading, properly signed by carrier's representative, COC, and QA test reports, shall be forwarded to ShockWatch not later than the day after shipments are made. Individual invoices shall be issued for each separate shipment. ShockWatch shall not be charged for packaging, boxing, crating or cartage. All invoices, packing lists, bills of lading, and each separate package within each shipment shall clearly reference piece number, ShockWatch's Purchase Order number and Supplier's packing slip number. Partial shipments must be identified as such on the shipping memoranda and invoices.
- 8. Payment; Waiver of Liens.** Payment will be made following receipt and acceptance of the goods and receipt, in proper form and substance, of all documentation required by this Purchase Order. Seller shall furnish to Buyer any analysis or breakdown of the price as ShockWatch may reasonably request. This Purchase Order shall not be filled at prices higher than last quoted or charged by Supplier, except as expressly agreed by ShockWatch. As a condition to any payment hereunder, Supplier shall furnish to ShockWatch, upon request, an executed waiver of liens and claims in form reasonably satisfactory to ShockWatch. Supplier agrees to indemnify, defend and hold harmless ShockWatch from and against any and all liens and encumbrances arising out of Supplier's performance of this Purchase Order or rising out of any claim for payment by any laborer, subcontractor or supplier of Seller.
- 9. Supplier's Warranties.** Supplier expressly warrants that for a period of one year after ShockWatch's acceptance of the goods or services hereunder, or for such longer period as may be expressly provided in this Purchase Order or under applicable law, all goods and services covered by this Statement of Work will: (a) strictly conform to Supplier's specifications, drawings, samples and other written materials and descriptions, or, to the extent the goods were purchased to ShockWatch's specifications and drawings as set forth or referred to in this Statement of Work, that the goods strictly conform with those specifications and drawings; (b) be free from defects in design, material and workmanship; (c) be of merchantable quality and suitable for the particular purposes intended, whether express or reasonably implied; and (d) bear all warnings, labels, and markings required by applicable laws and regulations. In addition, Supplier warrants that: (e) none of the goods covered hereby, to the extent they are subject to laws prohibiting adulteration or misbranding, is adulterated or misbranded within the meaning of such laws as of the date of delivery to ShockWatch; (f) all goods covered hereby may be introduced into interstate commerce without violation of applicable laws and regulations; (g) all services have been performed in a good and workmanlike manner; and (h) all goods and services furnished or rendered pursuant to this Purchase Order have been produced, sold, delivered or rendered to ShockWatch in compliance with all applicable laws and regulations, including those set forth in Section 13.
- 10. Buyer's Remedies.** Buyer's acceptance of all or any part of the goods or services provided hereunder shall not be deemed a waiver of the failure of such goods or services to conform to all of the warranties set forth in Section 9. Buyer retains the right to cancel any portion of the remaining order, to reject any portion of the goods or services delivered, or to revoke acceptance as to any portion of the goods or services accepted, and return such goods to Supplier and to recover the purchase price, any excess costs of cover, and damages, including manufacturing costs, costs of removal or recall, transportation and custodial expenses, injury to person or property incurred by ShockWatch, all in addition to ShockWatch's other remedies under this Purchase Order or applicable law. If Supplier becomes insolvent or makes an assignment for the benefit of creditors, or files or has filed against it any petition in bankruptcy, ShockWatch shall have the right to cancel this Purchase Order immediately.
- 11. Patent, Copyrights, Trademarks.** Supplier warrants that the goods furnished under or used in connection with this Purchase Order (except those furnished according to ShockWatch's specific design) and ShockWatch's express or reasonably implied intended use thereof, do not and will not infringe any patent, copyright, trademark, trade secret or other proprietary right of any third party. If any claim, suit or proceeding is made or instituted

against ShockWatch alleging any such infringement, Supplier shall indemnify, defend and hold ShockWatch harmless from and against any damages, liabilities, judgments, costs and expenses (including without limitation reasonable attorney's fees) it may incur in connection with any such claim, suit or proceeding. In the event that the goods or ShockWatch's use is held in any suit or proceeding to constitute an infringement, or if Supplier determines that there is a substantial risk of a finding of such infringement, Supplier agrees, as appropriate, and at its expense to: (a) procure for ShockWatch, at no expense to ShockWatch, the right to continue using the goods, (b) replace the goods with equivalent goods that meet the requirements of this Purchase Order and that do not infringe any such rights, or (c) modify the goods so that they become non-infringing.

**12. INDEMNIFICATION.** To the fullest extent permitted by law, Supplier agrees to indemnify, defend, and hold harmless ShockWatch, its affiliates, and their respective directors, officers, employees and agents (the "Indemnified Parties") from and against all claims, demands, causes of action, losses, costs and expenses (including without limitation reasonable attorneys' fees and costs of defense) (collectively, "Losses") arising out of or incident to Supplier's performance hereunder, or the presence of Supplier, its employees, agents or invitees ("Supplier Parties") on ShockWatch's premises, provided that such Losses are attributable to (a) the negligence or willful misconduct of the Supplier Parties, (b) the failure of the Supplier Parties to comply with applicable laws, or (c) bodily injury, sickness, disease or death (including but not limited to bodily injury, sickness, disease or death of the employees of Supplier or Buyer), or to damage to or destruction of tangible property (including the loss of use thereof); in each case regardless of whether or not caused in part by the negligence or other fault of any Indemnified Party hereunder; provided that Supplier shall not be liable for Losses caused by the sole negligence or willful misconduct of any Indemnified Party. Supplier's indemnification obligations under this Section 12 shall not be limited by applicable Workers' Compensation or other disability or employee benefit laws, and, solely as respects the indemnities set forth in this Section, Supplier hereby expressly waives any rights it may have to assert any immunities or defenses that it may have under such laws against any Indemnified Party.

**13. Laws and Regulations.** All goods furnished or services rendered pursuant to this Purchase Order shall be produced, sold, delivered, or rendered to ShockWatch in compliance with all applicable laws and regulations, including without limitation, the Federal Fair Labor Standards Act of 1938, as amended, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, Section 503 of the Rehabilitation Act of 1973, Executive Order 11246, Section 402 of the Vietnam Veterans' Readjustment Assistance Act of 1974, the Occupational Safety and Health Act of 1970, as amended ("OSHA"), (in the event of a conflict between the requirements of OSHA and any industry codes or standards applicable to this Purchase Order, the more stringent requirement shall apply), the Noise Control Act of 1972, all applicable environmental laws and regulations, including without limitation, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and the standards of accessibility set forth in Section 402 of the Americans with Disabilities Act, and the rules, regulations and orders pertaining to the above. Supplier also agrees that the following clauses from the Code of Federal Regulations shall also apply to this Purchase Order and shall be incorporated herein by reference: the Equal Employment Opportunity Clause, the Certification of Nonsegregated Facilities required by paragraph (7) of Executive Order 11246, the Utilization of Minority Business Enterprises and the Minority Business Enterprises Subcontracting program clauses, the Affirmative Action for Handicapped Worker's clause, and the Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era clause are, by this reference, incorporated herein and made part hereof.

**14. Termination.** ShockWatch may at any time, without cause, terminate this Purchase Order in whole or in part upon written notice to Supplier. In such event, Supplier shall be entitled to a reasonable termination fee consisting of a percentage of the Purchase Order price reflecting the percentage of the work, goods delivered or services properly performed prior to termination.

Payment of such termination fee shall be Supplier's sole remedy. Upon ShockWatch's request, Seller shall preserve, protect and deliver to ShockWatch, at ShockWatch's expense, materials on hand, work in progress, and completed work, both in its own and in its suppliers' plants.

**15. Assignment and Set-Off.** Supplier shall not assign its rights or delegate its performance hereunder, nor any interest herein, without ShockWatch's prior written consent and any attempted assignment or delegation without such consent shall be void. ShockWatch shall be entitled at all times to set-off any amount owing from Supplier to ShockWatch, whether under this Statement of Work or otherwise, against any amounts otherwise payable to Supplier.

**16. Confidentiality.** Supplier and its directors, officers, employees and agents shall not disclose to any third party any information pertaining to the goods provided or services performed hereunder, or pertaining to ShockWatch's business or operations which Supplier obtains or has access to in connection herewith, without the prior written consent of ShockWatch.

**17. No Waiver of Defaults.** No failure by ShockWatch to enforce at any time any of the terms or conditions of this Purchase Order shall constitute a waiver thereof or in any way impair ShockWatch's right at any time to avail itself of such remedies as it may have to enforce such terms or conditions. No waiver by ShockWatch hereunder will be effective unless in writing and signed by ShockWatch authorized representative.

**18. Survival; Remedies Cumulative.** All agreements and representations of Supplier herein (including those regarding, confidentiality, indemnification and warranties) shall survive delivery and final payment hereunder, or any earlier termination hereof. All of the rights and remedies available to ShockWatch hereunder are in addition to, and not in limitation of, the rights and remedies otherwise available at law or in equity.

**19. Severability.** Any provision of this Purchase Order that is unenforceable in any jurisdiction shall be ineffective to the extent of such unenforceability (but shall be enforced to the maximum extent permissible) without invalidating the remaining provisions hereof.

**20. Governing Law.** This Purchase Order shall be governed by the laws of the state from which ShockWatch Inc. issues this Purchase Order, without giving effect to its principles of conflicts of law.

## ShockWatch Supplemental Purchase Order Conditions

**SPOC – 01** The Supplier warrants that all material and work covered by the Purchase Order will conform to ShockWatch specifications, drawings, the bill of material ( BOM ), work instructions, samples or other descriptions furnished by way of the ShockWatch Purchase Order, Statement of Work or documentation as provided by ShockWatch Inc. representation.

**SPOC – 02** All material received shall be subject to ShockWatch Inspection and Disposition. Defective Material or Material not in accordance with ShockWatch specifications will be held at the Suppliers risk or returned at the Suppliers expense and no replacement is warranted without the express authorization of ShockWatch Purchasing. Note: Payment for Material made prior to ShockWatch Inspection does not constitute acceptance of the order.

**SPOC – 03** Suppliers shall not, without first obtaining the written consent of ShockWatch Inc., in any manner advertise or publish the fact that the Supplier has contracted to furnish material to ShockWatch Inc..

**SPOC – 04** The Supplier agrees not to transmit to any Third Party, any drawings, specifications, work instructions, design data, samples or any information in the Purchase Order Package without the express written consent of ShockWatch Inc..

**SPOC – 05** Responsibility for Inspection: The Supplier shall be responsible for the performance of all required Inspections. ShockWatch Inc. reserves the right to sample-inspect and to perform any conformity testing deemed necessary to ensure the product complies with all the technical requirements of the ShockWatch Purchase Order, product specifications and ShockWatch Inc. Quality Management System.

**SPOC – 06** Classification of Tests: All Inspection Operations are classified as acceptance tests and shall be performed on each unit specified by the Purchase Order. Sample Inspection can be authorized by ShockWatch Inc. once acceptable baseline Quality levels are established by the Supplier and approved by ShockWatch Inc..

**SPOC – 07** Supplier Data Package: Each order received at ShockWatch Inc. shall have a Data Package affixed to the outside of the shipment, and another Data Package in one of the containers of the shipment. This container must be identified: Data Package Enclosed. The Data Package shall include copies of the following as applicable/required;

- The ShockWatch Inc. Purchase Order.
- The Suppliers Invoice.
- A Certificate of Conformance
- Shipping Documentation
- Lot Number and Quantity

**SPOC – 08** First Article / Proof Build / Pre-Production Approvals

The Supplier shall submit to ShockWatch Inc. sufficient samples for evaluation prior to commencing Full Scale Production. The number of sample units for approval shall be specified by the ShockWatch Inc. The Samples shall meet all the production requirements of ShockWatch Inc.

**SPOC – 09** ShockWatch Inc. reserves the right to debit any Supplier for Inspection Operation Costs arising from need to purge the Suppliers Discrepant Material from ShockWatch Inc. Stores.

**SPOC – 10** ShockWatch Inc. requires Type 1 traceability with this order. This is Lot Control Traceability. All products must have this Identification marked on the product in a visually accessible area. The Marking will contain the last five digits of your ShockWatch Supplier ID Number, followed by a dash, followed by the date of the shipment to ShockWatch Inc..

Example: 12345 – 050508 ( this would be a shipment dated May 5 2008 )

**SPOC – 11** ShockWatch Inc. requires Type 2 traceability with this order. This is Traceability by Serialization. All products must have this Identification marked on the product in a visually accessible area. The Marking will contain the last five digits of your ShockWatch Supplier ID Number, followed by a dash, followed by a sequential 5 digit number assigned by the Supplier. Each Serial Number will be unique to each individual manufactured unit.

Example: 12345 - 00101