

**PURCHASE ORDER
GENERAL TERMS AND CONDITIONS**

THESE GENERAL TERMS AND CONDITIONS are incorporated into a Purchase Order (together, the “*Order*”) between **FREEWAVE TECHNOLOGIES, INC.**, a Delaware corporation, with a principal place of business located at 5395 Pearl Parkway, Suite 100, Boulder, CO 80301 USA (“*FreeWave*” or “*Purchaser*”) and **SUPPLIER** as outlined on the Purchase Order.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, FreeWave and Supplier hereby agree as follows:

1. **BACKGROUND.** This Order sets forth the general terms and conditions of sale related to Purchaser’s purchase of the Products.

2. **ORDER TERMS.** Purchaser shall not be bound by any acknowledgment, form or other instrument that purports to relate to this Order unless Purchaser has expressly agreed to be so bound in writing. The parties acknowledge and agree that no trade usage or prior course of dealings shall be relied on or employed by either party in connection with any interpretation or construction of this Order.

3. **CHANGE ORDERS; CANCELLATION.** (a)

Purchaser may cancel this Order (or any portion thereof):

- (i) At any time prior to the date on which the Products are packaged for shipment.
- (ii) If Supplier fails to make delivery of the Products or to perform the services within the time specified herein or any extension thereof.
- (iii) Supplier fails to perform any of the other provisions of this Order or so fails to make progress as to endanger performance of this Order in accordance with its terms, or Supplier fails to provide Purchaser, in writing, within the time specified by Purchaser, adequate assurances of performance by Supplier.
- (iv) Supplier becomes insolvent or the subject of proceedings under any law relating to bankruptcy.

(b) Supplier shall continue performance of this Order to the extent not cancelled. Purchaser shall have no obligations to Supplier in respect to the cancelled part of this Order except as herein provided. Purchaser’s rights as set forth herein shall be in addition to any other rights in case of Supplier’s default.

4. **DELAY.** Whenever Supplier has knowledge that any actual or potential issue, event, or circumstance is delaying or threatens to delay the timely performance of this Order, Supplier shall immediately give written notice thereof, including all relevant information with respect thereto, to Purchaser.

5. **PAYMENT.** Purchaser shall pay the Purchase Price for the Products as set forth on the Purchase Order per the terms as defined on said Purchase Order following the date of receipt. Payment shall not constitute final acceptance. Purchaser may offset against any payment hereunder any amount owed to Purchaser by Supplier.

6. **TAXES.** Supplier acknowledges and agrees that no U.S. state, and local taxes of any kind shall be applicable to the sale of the Products to Purchaser on the basis that the Products are being acquired for re-sale by Purchaser. If purchased Product is not used for the purpose of resale then Supplier will collect the appropriate tax.

7. **PACKING, SHIPPING AND DELIVERY.** Supplier shall pack the Products in a manner adequate to ensure safe delivery of the Products and to comply with carrier’s regulations. Shipping and Delivery terms will be as agreed.

8. **INSPECTION; ACCEPTANCE; RETURN.** (a) Upon the delivery of prior written notice, Purchaser shall be permitted to visit Supplier’s manufacturing and distribution facilities to examine the manufacturing the Products subject to Supplier’s reasonable security conditions and requirements.

(b) Purchaser shall have the opportunity to inspect the Products upon the receipt of the same at Delivery Destination to ensure that the

Products satisfy the applicable specifications. Purchaser shall have the right to reject any non-conforming or defective items upon the delivery of written notice to Supplier within the 30-day period following receipt of the Products. Upon receipt of such notice, Supplier shall credit or refund to Purchaser the applicable portion of the Purchase Price. Supplier shall arrange for the non-conforming defective Products to be removed from the Delivery Destination at Supplier’s sole cost and expense.

9. **WARRANTY.** Supplier represents and warrants that all Products will be new and free from defects in material and workmanship. All goods will conform to Supplier’s specifications, drawings, and standards of quality and performance as outlined on the Purchase Order. Goods or services found to be defective in material or workmanship or nonconforming with specifications shall, at Purchaser’s option, be replaced, corrected, or repaired in place by Supplier, or be replaced at Purchaser’s premises by Supplier, or be returned to Supplier at Supplier’s expense (including transportation and handling costs) for full refund.

10. **COMPLIANCE WITH LAWS.** The Products provided hereunder may be controlled for export purposes under the International Traffic in Arms Regulations (ITAR) controlled by the U.S. Department of State or the Export Administration Regulations (EAR) controlled by the U.S. Department of Commerce. ITAR controlled technology may not be exported without prior written authorization and certain EAR technology requires a prior license depending upon its categorization, destination, end-user and end-use. Supplier shall comply with the applicable provisions of any federal, state or local law or ordinance and all orders, rules and regulations issued there under applicable to the manufacture and sale of its Products, including but not limited to U.S. export laws, statutes and regulations. Supplier shall have full responsibility for obtaining any necessary export licenses or authorization. For any Order in excess of \$10,000 USD Supplier shall abide by 41 CFR 60-741.5(a) which prohibits discrimination on the basis of disability, and requires affirmative action to employ and advance qualified individuals with disabilities.

11. **PUBLICITY.** Supplier shall not, without first obtaining the written consent of Purchaser, in any manner advertise or publish the fact that Supplier has furnished or contracted to furnish Purchaser with the Products hereunder, or disclose any of the details connected with this Order to any third party, except as may be required to perform this Order.

12. **CONFIDENTIALITY.** Supplier agrees that it will keep confidential and not disclose, disseminate or publish the features of any equipment, tools, gauges, patterns, designs, drawings, engineering data, computer programs and software or other technical or proprietary information furnished, loaned or bailed by Purchaser hereunder (hereinafter collectively referred to as “Items”, and use such Items only in the performance of this Purchase Order or, if authorized, other orders from Purchaser and not otherwise, without Purchaser’s prior written consent. Notwithstanding any other provision herein, Purchaser and Supplier shall each retain ownership of, and all right, title and interest in and to, their respective pre-existing Intellectual Property. All such Items furnished, loaned or

bailed by Purchaser hereunder are the property of Purchaser and shall be returned to Purchaser at its request.

13. **INDEMNIFICATION.** Supplier shall indemnify, defend and hold Purchaser and Purchaser's customers (hereinafter collectively referred to as "*Indemnitees*") harmless from and against any claim, suit or proceeding ("*Claim*") brought against Indemnitees by a third party asserting that the Products, or any part thereof, furnished under this Order, or Purchaser's use (including resale) thereof, constitutes an infringement of any patent, trademark, trade secret, copyright or other intellectual property right of a third party, and Supplier shall pay all damages and costs awarded against and reasonable expenses incurred by Indemnitees in connection with such Claim including reasonable attorneys' fees. In the event such Products or use thereof are enjoined in whole or in part, Supplier shall at its expense and option undertake one of the following: (i) obtain for Indemnitees the right to continue the use of such Products; (ii) in a manner acceptable to Indemnitees, substitute equivalent goods or services or make modifications thereto so as to avoid such infringement and extend this indemnity thereto; or (iii) refund to Indemnitees an amount equal to the purchase price for such Products plus any excess costs or expenses incurred in obtaining substitute goods or services from another source.

14. **MISCELLANEOUS.** (a) Purchaser may not assign any of its rights or delegate any of its obligations under this Order without the prior written consent of Supplier. Supplier may not delegate its obligations under this Order without the prior written consent of Purchaser; (b) All notices, requests, claims, demands and other communications provided for in this Order shall be in writing and shall be made by delivery in person, by courier service, or by certified

mail (postage prepaid, return receipt requested), sent or delivered to the receiving party at the address of such party as set forth above, or to such other address as may be designated from time to time by a party in writing to the other party in accordance with this Section 14; (c) This Order shall be governed by and construed in accordance with the laws of Colorado, including all matters of construction, validity and performance except conflicts of laws. Any suit, claim, cause of action or other action to enforce any term or condition set forth herein or otherwise arising out of this Order shall be brought exclusively in the district court for the City and County of Boulder, Colorado or the federal court in Denver, Colorado, and both parties hereby irrevocably submit to the venue and jurisdiction of such courts and waive any right to remove any such suit, claim, cause of action or other action to any other venue; (d) In the event that any of the terms of this Order are or become illegal or unenforceable, such terms shall be null and void and shall be deemed deleted from this Order, and all the remaining terms of this Order shall remain in full force and effect; (e) Except as otherwise expressly provided herein, the parties may amend this Order, from time to time, in writing signed by duly authorized officers of the parties; and (f) No waiver of any provision of this Order, nor consent to any departure by either party therefrom, shall in any event be effective unless the same shall be in writing and signed by a duly authorized officer of the party to be charged with the waiver or consent, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.