



## ORTEC INC.

### STANDARD PURCHASE ORDER TERMS AND CONDITIONS

These standard terms and conditions of purchase apply to all purchase orders issued by Ortec, Inc., a South Carolina corporation[, or any of its affiliates] ("Ortec") to any person, company, vendor or supplier selling products to Ortec ("Seller"), except to the extent of any conflict with a written agreement between Ortec and Seller or other written terms Ortec has provided to Seller that specifically cover that transaction. "Purchase Terms" shall refer to these terms and conditions as amended from time to time.

**Agreement.** Seller's shipment of the goods subject to a purchase order shall be deemed an effective mode of acceptance. Any acceptance is limited to acceptance of the express terms contained in the applicable purchase order and these Purchase Terms. Any proposal or documents of Seller providing additional or different terms, or any attempt by Seller to vary any of the terms of the applicable purchase order or these Purchase Terms, is hereby expressly objected to and rejected.

**Order of Precedence.** If a provision in a purchase order directly conflicts with a provision in these Purchase Terms, the provision in these Purchase Terms will prevail unless the applicable purchase order specifically states that the provision in the applicable purchase order will prevail.

**Delivery.** Unless otherwise stated in the applicable purchase order, all goods will be shipped DDP (Delivery Duty Paid, Incoterms 2010) destination. Seller shall deliver the goods on the delivery date(s) in the applicable purchase order. **Time is of the essence.**

**Passage of Title; Risk of Loss.** Title to the goods and risk of loss shall remain with Seller until the goods have been delivered to Ortec's facility. If a shipment is not accompanied by a bill of lading, packing slip or similar delivery document, Ortec's count and/or weight will be conclusive. In the event of loss or damage in transit, Seller shall repair or replace such Goods free of any charge as soon as reasonably possible.

**Price.** Each purchase order will be filled at the price shown on such purchase order. Any change must be authorized in writing by Ortec. Prices include all customs, duties, sales, use, excise and property taxes, shipping, packaging, boxing, crating, labeling, storage, insurance, and similar charges, unless otherwise provided in the applicable purchase order.

**Invoices; Payment.** Seller will present Ortec with an invoice for the amounts due and owing pursuant to each purchase order upon delivery of the goods. Each invoice will be in a form reasonably acceptable to Ortec. Ortec will pay all undisputed amounts on each invoice 45 days from Ortec's receipt of such invoice. Ortec will have no obligation to pay any amounts that Seller fails to invoice to Ortec within 180 days after the amounts were incurred. Except as required by applicable Law

(defined below), Ortec will not be required to pay any late charge, interest, finance charge or similar charge.

**Setoff.** Without prejudice to any other right or remedy it may have, Ortec reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Ortec to Seller.

**Product Compliance.** Seller represents and warrants that all goods comply with all applicable federal, state, and local laws, codes, statutes, ordinances, rules, regulations, and requirements of any applicable jurisdiction, and orders of any governmental or regulatory authority, including but not limited to the California Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); the Consumer Product Safety Act of 1972 (as amended by the Consumer Product Safety Improvement Act of 2008); the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act; the Fair Packaging and Labeling Act; the Textile Fiber Products Identification Act; the Flammable Fabrics Act; the Wool Products Labeling Act; the Federal Food, Drug, and Cosmetic Act; the Federal Hazardous Substances Act; the Energy Policy and Conservation Act and any amendments thereto; all applicable rules and regulations regarding maximum volatile organic compound content and associated markings; all applicable rules and regulations regarding fees, assessments, and recordkeeping requirements associated with the sale of pesticides; all applicable rules and regulations of the Federal Trade Commission and the U.S. Food and Drug Administration, and all applicable rules and regulations of any other federal, state, or local agency (collectively, the "Law" or the "Laws"), and that any changes to goods hereafter made by Seller shall comply with all applicable Laws.

**Warranties.** Seller represents, warrants and guarantees that all goods furnished under any purchase order will (a) conform in all respects to all samples provided by Seller, any specifications provided by Ortec and all applicable industry standards, (b) be new, (c) be merchantable, free of contaminants and free from defects in design, materials or workmanship, and (d) be suitable for Ortec's intended purpose. All warranties implied by South Carolina's Commercial Code, including South Carolina's implied warranties of merchantability and fitness for a particular purpose, shall apply to all goods furnished under any purchase order, notwithstanding any other terms or disclaimers set forth in Seller's invoices or other confirming documents. All warranties shall survive inspection, testing, acceptance and use. Seller's warranty shall run to Ortec, its successors, assigns, customers, and users of products sold by Ortec. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Ortec's discovery of the noncompliance of the goods with the foregoing warranties.

Seller represents and warrants to Ortec that the title conveyed on all goods produced and delivered to Ortec under these Purchase Terms and any purchase order will be good and marketable, and the goods will be delivered free from any security interest or other lien or encumbrance (including any statutory or common law lien). Ortec or its duly authorized representative shall be entitled to inspect the goods during manufacture while in Seller's possession or the possession of any sub-contractor to Seller and upon delivery; provided, however, that no such inspection nor any failure to reject the goods shall constitute or imply acceptance of the goods by Ortec.

**Certificate of Analysis.** If requested by Ortec, Seller shall provide a complete and accurate Certificate of Analysis with each shipment of goods. Seller acknowledges that Ortec will rely on the Certificate of Analysis and intends to introduce goods directly into its manufacturing processes without independent analysis by Ortec.

**Material Safety Data Sheets.** An appropriate material safety data sheet ("MSDS") and labeling, as and if required by Law, will precede, or accompany each shipment by Seller. Further, Seller shall send to Ortec updated MSDS's and labeling as required by Law.

**Changes to Goods.** Seller shall send process change notifications in writing to Ortec no less than six (6) months in advance for any of the following: MSDS modification, change in Seller's specifications, change in critical raw materials, change in sourcing location, change in Certificate of Origin status, change in method of manufacture or significant changes in statistical process control or statistical quality control of key properties.

**Records; Audit and Inspection Rights.** For a period of seven (7) years after the sale of any goods or such longer period as may be required by applicable Law, Seller will maintain complete and accurate books and records of all transactions and activities of Seller that relate to Seller's production, storage, delivery and sale of the goods, including complete and accurate manufacturing, processing, packaging and quality control records. Upon reasonable request and during regular business hours, Ortec may, at its own expense, or may have its Representatives (defined below) or an independent third party, inspect Seller's facility where the goods are produced and/or audit such books, records and other documents as necessary to verify compliance with the terms and conditions of these Purchase Terms and any and all purchase orders.

**Non-Conforming Goods.** Any goods that fail to conform to the requirements of the applicable purchase order, specifications, or these Purchase Terms or that a governmental agency declares are unfit or otherwise unsafe for their intended use or in violation of any Law will be considered non-conforming ("Non-Conforming Goods"). Seller will promptly furnish to Ortec all information and copies of all documents (including any complaints, inquiries, test or inspection results, internal reviews, warnings, declarations or notices) that Seller receives that suggest or indicate that any goods, or any ingredient of, or any material included in, any goods, or any packaging or

supplies used in connection with any goods, may be Non-Conforming Goods.

1. Ortec will have the right to reject any Non-Conforming Goods by written notice after Ortec discovers the nonconformity.
2. If Seller requests, Ortec will either return such rejected Non-Conforming Goods to Seller or dispose of same, at Seller's risk and expense, and Seller will reimburse Ortec for all commercially reasonable charges, expenses or commissions incurred in the inspection, receipt, transportation, care, custody and disposal of the Non-Conforming Goods.
3. Ortec may require Seller to replace the rejected Non-Conforming Goods as soon as possible or terminate the applicable purchase order pertaining to the Non-Conforming Goods for cause pursuant to these Purchase Terms. If payment has already been made for the rejected Non-Conforming Goods, then Ortec will be entitled to a credit or refund, at Ortec's option, of that payment, and Seller will reimburse Ortec for all commercially reasonable charges, expenses or commissions incurred in the inspection, receipt, transportation, care, custody and disposal of the Non-Conforming Goods.
4. If Ortec has incorporated any rejected Non-Conforming Goods into any products, and such products remain in Ortec's possession or control, Seller will reimburse Ortec for the costs incurred in the production of such products along with all commercially reasonable charges, expenses or commissions incurred in the inspection, transportation, receipt, care, custody and disposal of such products, net of any salvage value received in connection with such disposal.
5. If Ortec has incorporated any rejected Non-Conforming Goods into any products, and such products are no longer in Ortec's possession or control, Ortec will have the right to field correct, withdraw, recall or repurchase such Non-Conforming Goods or products from any third party in possession or control of such Non-Conforming Goods or products, and Seller will reimburse Ortec for all reasonable costs incurred by Ortec in connection therewith, including all commercially reasonable charges, expenses or commissions incurred in the inspection, transportation, receipt, care, custody and disposal of such Non-Conforming Goods or products, net of any salvage value received in connection with such disposal. Upon Ortec's request, Seller will assist Ortec in any or all reasonable aspects of a field correction, withdrawal, recall or repurchase, including developing a plan therefore and preparing and furnishing any required reports, records, and other information.

**Services/Consulting (non goods orders).** Where sections can be relevant, this document also pertains to professional, consulting, engineering, or other technical services, and labor for maintenance, repair, and operating services. Professional liability insurance is additionally required coverage. Documented verification of professional education,

credentials, licenses and permits are required when requested by Ortec. A sole proprietor's Social Security number is required for 1099 purposes. No order may automatically renew, and all orders are for a specified period of time, limited number of services/performances, and/or have a maximum total cost limit. Ortec's property in Seller's possession is considered a bailment. Seller is financially responsible for their performance and/or the results of Ortec utilizing property acted upon by the Seller or following Seller's professional recommendations/design regardless of whether or not Seller was paid for services. Timely reports/certifications are required to define results found or actions performed. For work that is under disputed specification/definition or subjective quality or definition of completion, Ortec will solely determine when resolution is satisfactory.

**Compliance with Law.** Seller is in compliance with and shall comply with all applicable Laws. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the applicable purchase order. Seller shall comply with all export and import Laws of all countries involved in the sale of goods under each purchase order. Seller assumes all responsibility for shipments of goods requiring any government import clearance. Ortec may terminate a purchase order if any government authority imposes antidumping duties, countervailing duties, or any retaliatory duties on the goods. Seller hereby certifies that no child, slavery, forced labor or human trafficking was involved with the goods purchased hereunder or the materials incorporated therein. Supplier also agrees to abide by Ortec's Supplier Code of Conduct found on Ortec's website at:

[https://ortecinc.com/cms\\_files/wp-content/uploads/2021/03/Supplier-Code-of-Conduct.pdf](https://ortecinc.com/cms_files/wp-content/uploads/2021/03/Supplier-Code-of-Conduct.pdf)

**Conflict Minerals.** Seller covenants that the goods will not contain (i) conflict minerals (as such term is defined in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, "Conflict Minerals"), or (ii) any minerals or other resources that if included in the goods would trigger a violation of U.S. Executive Order 13671.

**Anti-Bribery.** Seller and its shareholders, officers, directors, employees, agents, and anyone acting on its behalf (collectively, the "Representatives") are in compliance with all applicable national and international anti-bribery and anti-corruption Laws, including but not limited to the US Foreign Corrupt Practices Act (collectively, the "Anti-Bribery Laws"). Seller has adopted and maintains adequate policies, procedures, and controls to ensure that Seller and its Representatives have complied and will comply with all Anti-Bribery Laws, including at a minimum policies and procedures relating to prevention of bribery, accounting for financial transactions, due diligence on third parties, and training of personnel.

**Government Contracts.** If Seller is notified that the goods covered by a purchase order are ordered by Ortec under a U.S. government contract, Seller agrees that federal statutes and

regulations applicable to Ortec as a government contract are accepted and binding on Seller insofar as required by statute, regulation or the provisions of the government contract.

**Indemnification.** Seller will indemnify, defend and hold harmless Ortec, its officers, directors, shareholders, employees, agents, successors and assigns (each, an "Indemnitee") from any and all third party claims, demands, actions or threats of action (whether in law, equity or in an alternative proceeding), losses, liabilities, damages (including taxes), and all related costs and expenses, including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties (collectively, "Losses"), and threatened Losses due to, arising from or relating to any defect or nonconformance in the goods purchased hereunder, or from any act or omission of Seller or its Representatives. This indemnification shall be in addition to the warranty obligations of Seller. Ortec may be represented by and actively participate through its own counsel at its own expense in any suit or proceeding.

**Intellectual Property Indemnification.** Seller, the goods provided to Ortec and the use thereof by Ortec shall not infringe on any party's intellectual property rights, including any party's confidential information, trade secrets, copyrights or patents. Seller shall, at its expense, defend, indemnify and hold harmless any Indemnitee against any and all Losses arising out of or in connection with any claim that Ortec's or Indemnitee's use or possession of the goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Indemnitee's prior written consent.

**Insurance.** Seller shall maintain such public liability insurance, including product liability, contractual liability, automotive liability insurance (including non-owned automotive liability), workers' compensation and employer's liability insurance as will adequately protect Ortec against all Losses. Seller agrees to submit certificates of insurance evidencing its insurance coverage when requested by Ortec. All insurance coverage provided to Ortec by Seller pursuant to these terms and conditions shall be primary insurance with respect to Seller's obligations and shall not be or be considered to be contributing insurance with any of Ortec's policies of insurance. No recovery by Ortec under any policy of insurance procured by Seller shall limit, waive, or bar any other right, remedy, claim, cause of action or recovery that Ortec may have against Seller under these terms and conditions or applicable Law.

**Limitation on Ortec's Liability.** In no event shall Ortec be liable for anticipated profits or indirect, incidental, consequential, punitive, special, or exemplary damages or for penalties of any description.

**Confidential Information.** All non-public, confidential or proprietary information of Ortec, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Ortec to Seller, whether

disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the applicable purchase order is confidential, solely for the use of performing such purchase order and may not be disclosed or copied unless authorized by Ortec in writing. Upon Ortec's request, Seller shall promptly return all documents and other materials received from Ortec. Ortec shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party.

**Public Statements.** Seller shall not, without the prior written consent of Ortec, originate any publicity (including any news release or public announcement) nor use any logos, trademarks, service marks or names of Ortec or any of its affiliates, or disclose the nature and business of the relationship in any form.

**Force Majeure. "Force Majeure Event"** means any event or circumstance beyond the reasonable control of the impacted party, including, but not limited to government action or failure of the government to act where such action is required, strike or other labor dispute, fire, act of God or unusually severe weather, epidemics, pandemics or contagion, or unavailability of raw materials, supplies, transportation or utilities. Ortec may delay delivery or acceptance occasioned by a Force Majeure Event in which case Seller shall hold such goods at the direction of Ortec and shall deliver them when the cause of the delay has been removed.

**Allocation.** If Seller is aware of or anticipates any shortage of supply, it shall promptly notify Ortec of such shortage and its estimated duration. If shortages occur in Seller's supply of the goods as a result of a Force Majeure Event, Seller shall allocate its available supply among Ortec and its other customers on a pro rata basis based on the amount of purchases made by each customer during the preceding twelve (12) months and each customer's forecasted needs for the following twelve (12) months. Ortec may either deduct the quantity of goods not shipped because of this allocation from the quantity it must purchase hereunder or require the Seller to deliver the missed quantity once the shortage has ended, in Ortec's sole discretion. If any shortage continues for a period of more than thirty (30) days after Ortec's receipt of notice of the shortage, Ortec shall have the right to terminate the applicable purchase order upon written notice to Seller.

**Termination for Convenience of Ortec.** Ortec may terminate any purchase order or any part of a purchase order for its convenience at any time upon notice to Seller. Upon such notice, Seller shall stop all work and follow Ortec's instructions with respect to the disposition of materials in process, title to which shall vest in Ortec. Ortec shall pay Seller's actual costs for work performed through the date of termination and Seller shall have a duty to mitigate such costs.

**Termination for Cause.** Ortec may terminate a purchase order or any part of a purchase order for cause in the event of any

default by Seller, including any failure to comply with any terms and conditions set forth in a purchase order or these Purchase Terms. Late deliveries, deliveries of products that are defective or that do not conform to the applicable purchase order and failure to provide Ortec, upon request, with reasonable assurances of future performance shall all be bases for termination for cause.

**Assignments and Subcontracting.** No part of any purchase order may be assigned or subcontracted by Seller without prior written approval of Ortec.

**Notices.** All notices must be in writing and will be deemed given only when sent by first class mail (return receipt requested), hand-delivered or sent by documented overnight delivery service to the party to whom the notice is directed, at its address indicated in the applicable purchase order or by written notice.

**Entire Agreement.** The applicable purchase order, these Purchase Terms and any documents included by reference in such purchase order constitute the entire agreement between Ortec and Seller with respect to the transaction in such purchase order and may not be modified by course of performance, course of dealing or usage of trade.

**Modifications.** No purchase order nor these Purchase Terms may be modified or amended except in writing signed by both Ortec and Seller specifically referring to the applicable purchase order and/or these Purchase Terms.

**Waiver.** Ortec's failure to insist on performance of any of the terms or conditions in a purchase order or these Purchase Terms or to exercise any right or privilege, or Ortec's waiver of any breach of a purchase order or these Purchase Terms shall not waive any other terms, conditions or privileges, whether of the same or similar type.

**Severability.** If any clause or provision in these Purchase Terms is determined to be invalid, the remaining provisions of these Purchase Terms will remain in full force and effect.

**Choice of Law and Venue.** These terms and conditions shall be interpreted pursuant to the Laws of the State of South Carolina without giving effect to its choice of law provisions. Litigation brought to contest disputes arising under this purchase order shall be brought only in the state or federal courts of the State of South Carolina. The United Nations Convention on Contracts for the International Sale of Goods is excluded.

**Remedies.** Each of the rights and remedies reserved by Ortec in a purchase order or in these Purchase Terms shall be cumulative and additional to any other or further remedies provided by law or equity, or in these Purchase Terms.

**Survival.** Provisions of these Purchase Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of any purchase order.

**Last Updated: 03/15/21**