



## TERMS AND CONDITIONS

**1. Definitions:** Words, as employed in this Agreement, shall have their normally accepted meanings. The following terms shall have the described meaning:

- (a) "Buyer" shall mean Carlin Systems, Inc. and/or the entity identified as the Buyer in this Contract.
- (b) "Contract" shall mean the Purchase Order, these General Terms and Conditions, and any special conditions appended hereto or documents incorporated herein.
- (c) "Goods or Services" shall mean those Goods or Services identified in this Contract, which may be changed, from time to time by the mutual written agreement of the parties.
- (d) "Seller" shall mean the party identified as the Seller in this Contract.

**2. Price:** (a) Unless otherwise specified, the prices established by this Contract are firm fixed prices. Seller warrants that any unit prices charged herein do not exceed the unit prices charged by Seller to other customers in substantially similar transactions.

(b) In the event Seller is liable to Buyer for any amounts, Buyer may, at its election, set-off against any amounts payable to Seller under this Contract.

**3. Schedule and Delivery; Notice of Delay:** Seller shall strictly adhere to all Purchase Order schedules. Time is and shall remain of the essence in the performance of this Contract. Seller shall notify Buyer, in writing, immediately of any actual or potential delay to the performance of this Contract. Such notice shall include a revised schedule and shall not constitute a waiver to Buyer's rights and remedies hereunder.

**4. Inspection and Acceptance:** (a) Buyer's final acceptance of Goods or Services is subject to Buyer's final inspection within sixty (60) days after receipt at Buyer's facility or such other place as may be designated by Buyer, notwithstanding any payment or prior test or inspection.

(b) Seller and its suppliers shall establish and maintain a quality control and inspection program as specified in the Purchase Order.

Subject to applicable national security regulations, Buyer and Buyer's representatives shall have the right of access, on a non-interference basis, to any area of Seller's or Seller's supply chain sub-tier premises where any part of the work is being performed. Seller shall flow this requirement down to its sub tier supply chain suppliers as a condition of this contract. Seller shall, without additional costs to Buyer, provide all reasonable in-plant accommodations, facilities, and assistance for the safety and convenience of the Buyer and the Buyer's representatives in the performance of their duties.

(c) Seller shall keep and maintain inspection, test and related records, which shall be available to Buyer or Buyer's representative. Furthermore, should a test record or manufacturers c of c be required for a particular item, a notation will be made on buyers P.O. Seller shall allow copies to be made and shall furnish all information required by the Buyer or Buyer's representative. Seller shall retain records for minimum (10) years unless otherwise stated.

**5. Rejection:** If Seller delivers nonconforming Goods or Services, Buyer may, at its option and Seller's expense: (i) return the goods for refund or credit; (ii) require Seller to promptly correct or replace the Goods or Services; (iii) correct the nonconformance; or, (iv) obtain conforming Goods or Services from another source. Buyer shall specify the reason for any return or rejection of nonconforming Goods or Services and/or shall describe the action taken. Seller shall be liable for any increase in costs, including procurement costs, attributable to Buyer's rejection of the nonconforming Goods or Services.

**6. Changes:** (a) By written order, Buyer may from time to time direct changes for: (i) technical requirements; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities, delivery schedules or both; (v) amount of Buyer-furnished property; (vi) time of performance; and, (vii) place of performance. (b) If any such change causes an increase or decrease in the price or in the time required for its performance, Seller shall promptly notify Buyer thereof and assert its claim for equitable adjustment within thirty (30) days after the change is ordered, and an equitable adjustment shall be made. However, nothing in this provision shall excuse Seller from proceeding immediately with the directed change(s). Changes shall not be binding upon Buyer except when specifically confirmed in a written Purchase Order or Change Order.

**7. Force Majeure:** The following events, and only the following events, shall constitute force majeure under this Contract: (a) acts of God or of a public enemy; (b) acts of Government; (c) fires; (d) floods; (e) epidemics; (f) quarantine restrictions; (g) strikes; (h) freight embargoes; and, (i) unusually severe weather. In each case, the failure to perform must be entirely beyond the control and without the fault or negligence of the Seller. Each party shall give the other immediate notice of any event that such party claims is a *Force Majeure* Condition that would prevent the party from performing its obligations hereunder, and of the cessation of the condition. A party's notice under this Section shall include the party's good faith estimate of the likely duration of the *Force Majeure* Condition.

**8. Termination for Convenience:** (a) Buyer may, by notice in writing, direct Seller to terminate work under this Contract in whole or in part, at any time, and such termination shall not constitute default. In such event, Buyer shall have all rights and obligations accruing to it either at law or in equity, including Buyer's rights to title and possession of the goods and materials paid for. Buyer may take immediate possession of all work so performed upon notice of termination. (b) Seller shall immediately stop work and limit costs incurred on the terminated work. (c) If such termination is for the convenience of the Buyer, Buyer, after deducting any amount(s) previously paid, shall reimburse Seller for the actual, reasonable, substantiated and allowable costs with the total amount to be paid by the Buyer being determined by negotiation.

**9. Termination for Default:** (a) Buyer may, by written Notice of Default to Seller, terminate this Contract in whole or in part, or, at Buyer's sole discretion, require the Seller to post such financial assurance as Buyer deems reasonably necessary, if the Seller fails to: (i) deliver the goods or to perform the services within the time specified in this Contract or any extension; (ii) make progress, so as to endanger performance of this Contract; or, (iii) perform any of the other provisions of this Contract.



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(b) Buyer may require Seller to transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer, any partially completed goods and raw material, parts, tools, dies, jigs, fixtures, plans, drawings, services, information and contract rights (Materials) as Seller has produced or acquired for the performance of this Contract, including the assignment to Buyer of Seller's subcontracts. Seller further agrees to protect and preserve property in the possession of Seller in which Buyer has an interest. Payment for completed goods delivered to and accepted by Buyer shall be at the Contract price. Payment for unfinished Goods or Services, which have been delivered to and accepted by Buyer and for the protection and preservation of property, shall be at a price determined in the same manner as provided in the Termination for Convenience provision hereof except that Seller shall not be entitled to profit. Buyer may withhold from Seller moneys otherwise due Seller for completed goods and/or Materials in such amounts as Buyer determines necessary to protect Buyer against loss due to outstanding liens or claims against said goods and Materials. (c) Seller shall promptly notify Buyer if Seller is the subject of any petition in bankruptcy. In the event of Seller's bankruptcy, Buyer may require Seller to post such financial assurance, as Buyer, in its sole discretion, deems necessary. Failure to post such financial assurance upon ten (10) days written notice shall constitute a default under this Contract. The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by law or under this Contract.

**10. Goods Warranty:** Unless stated otherwise in the documents accompanying these terms and conditions, Seller shall warrant all goods against defects in design and performance for a period of one year following delivery. If this Contract is for delivery of goods, Seller shall observe, comply with and afford Buyer all applicable Uniform Commercial Code warranties contained in the New York Consolidated Laws, and Seller hereby acknowledges that Buyer does not waive or accept any disclaimer of any such warranties.

**11. Notification of Nonconforming Product:** Supplier shall notify Buyer of any nonconforming product detected by the Supplier prior to shipment or after delivery to the Buyer, and obtain Buyer approval for nonconforming product disposition.

**12. Notification of Changes in Product/Process Definition:** Supplier shall notify Buyer of any changes in product and/or process definition, changes of suppliers, and changes of manufacturing facility location that affects or could affect product acceptance.

**13. Right of Access:** Unless stated otherwise in the documents accompanying these terms and conditions, Seller shall allow right of access to Buyer, Buyer's Customer, and regulatory authorities to all facilities involved in the order, and to all applicable records.

**14. Disputes:** The provisions of this Contract shall be interpreted in accordance with the laws of the State of New York without resort to said state's Conflict of Law rule, and in accordance with its fair meaning and not strictly against either party. Pending final resolution of a dispute hereunder, Seller shall proceed diligently with the performance of this Contract and in accordance with all the Terms and Conditions contained herein and with the Buyer's direction thereof. Buyer and Seller shall each bear its own costs of processing any dispute hereunder.

**15. Assignment:** Neither this order nor any rights or obligations herein may be assigned by you nor may you delegate the performance of any of your duties hereunder without, in either case, the Buyer's prior written consent.

**16. Release of Information to Public:** Seller shall not, without the prior written consent of Buyer, make any release of information concerning this order or any other information related to Buyer (other than to Seller's employees and subcontractors that is required for the performance of their duties), including copies of this order or identifying the items sold by Seller to Buyer, nor use the name of Buyer in any advertising or publicity, except as may be necessary to comply with proper legal demand.

**17. Purchase Order Confirmation:** This order must be confirmed. Purchase order is not effective until Buyer receives a copy executed and signed by an authorized representative of the seller acknowledging the terms and conditions of this order. Shipment of merchandise also implies acceptance of the terms and conditions of this purchase order as well as the noted quality clauses. b) Any additional or different terms or conditions which may appear in any communication from Seller are hereby expressly objected to and shall not be effective or binding unless specifically agreed to in writing by Buyer's Purchase Department. c) Buyer's acceptance of goods shall not deem acceptance of any additional or different terms or conditions, unless such acceptance specifically recognizes and assents to their inclusion. d) Buyer reserves the right to cancel any purchase and return any product that does not have a signed confirmation.

**18. Shipping:** All goods are to be shipped freight collect, F.O.B. destination by the specified carrier, unless otherwise stated. a) DO NOT CHARGE INSURANCE except upon Buyer's written request. b) Regardless of F.O.B. point, Seller agrees to bear all risk of loss, injury, or destruction of goods and materials ordered herein which occur prior to acceptance by Buyer. c) No such loss, injury, or destruction shall release Seller from any obligations hereunder.

**19. Defective Product:** Seller must guarantee a return for all defective products. a) Goods rejected by Buyer for whatever reason shall be held, transported and/or stored at Seller's sole expense. Seller shall promptly reimburse Buyer for any such expenses. B) Defective product purchase COD will be returned COD to Seller or COD check will be cancelled, at Buyer's discretion. c) Seller is responsible for all costs associated RoHS noncompliance returns and will accept a full return for all parts not meeting RoHS compliance criteria if necessary. d) Seller is 100% responsible for all monetary and/or rework costs associated with product failures in addition to any further cost whatsoever associated with product failures. e) If suspect parts/counterfeit parts are furnished under this agreement such parts shall be impounded by Buyer. Buyer may provide a sample batch Supplier for verification and authentication. In addition, Buyer reserves the right to send such items to the appropriate manufacturer and appropriate authorities for investigation. f) Seller shall be liable for all costs relating to impound, investigation, removal, or replacement of suspect/counterfeit parts.



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**20. Complete Agreement:** The Purchase Order, which includes any supplementary sheets, schedules, exhibits, and/or attachments annexed hereto by Buyer, contains the complete and entire agreement between the parties with respect to the subject matter of this Purchase Order, when accepted by acknowledgement, commencement, or performance. Goods purchased on this Purchase Order are to be of the latest revision level unless otherwise specified different on the Purchase Order. It supersedes any other communications, representations or agreements whether verbal or written. This Purchase Order may be accepted only on all the terms and conditions herein stated. Additional or different terms proposed by the Seller shall not be applicable, unless accepted in writing by the Buyer and made a part of this order. No acceptance by Buyer of or payment for goods ordered hereunder shall be deemed a waiver of the foregoing or an acceptance of any additional or different terms contained in any acknowledgement, invoice, or other form sent or delivered by Seller to Buyer.

**21. Products, Methods, and Processes:** Any knowledge or information which the Seller shall have disclosed or may hereafter disclose to the buyer incident to the placing and filling of this purchase Order shall not, unless otherwise specifically agreed upon in writing by the buyer, be deemed to be confidential or proprietary information, and accordingly shall be acquired free from any restrictions (other than restrictions which may derive from a valid patent.)

**22. Packaging, Shipment, and Transportation:** All charges for boxing, packing, crating, and storage are included in the price stated herein. Goods shall be suitably packed to secure lowest transportation costs and to conform to the requirements of common carriers and any applicable specifications. All packages must bear Buyer's Purchase Order number. If purchase terms are F.O.B. shipping point. Seller will conform to Buyer's established routing and shipping instructions.

**23. Applicable Law:** All questions concerning the interpretation, construction, performance, and enforcement of this contract and remedies in the event of default shall be resolved in accordance with the laws of the state of New York.

**24. Set-Off:** Buyer shall be entitled, at all times, to set-off any amount owing, at any time, from Seller to Buyer against any amount payable at any time by Buyer in connection with this Purchase Order.

**25. Record Retention:** Seller shall maintain records of this transaction and all associated records for a minimum of 10 years from date of shipment, unless otherwise specified in the Purchase Order.

**26. Flow Down of Requirements:** The Seller shall flow down all applicable Purchase Order requirements to the supply chain.

**27. Revision Level:** Unless otherwise requested, all product supplied must be to the latest revision level.

**28. ITAR/EAC:** Seller must notify buyer if an ITAR or EAC product is being purchased.

**29. Counterfeit Product Avoidance:** The Seller shall provide, whenever possible, product that is traceable to the original manufacturer to ensure authenticity. The Seller shall provide documentation tracing back to the original manufacturer of the material or component being purchased. If no documentation can be provided, the Seller must notify the Buyer, and cannot ship product until the Buyer provides a record of approved deviations from use of original component manufacturer, franchised distributor, or approved mill.

**30. Industry Alerts:** Seller must maintain a closed-loop process to use Industry Alerts/GIDEP/ERAI to identify, control and correct potential nonconforming material, including: timely review and notification of Industry Alerts for potential impact to hardware; documenting impact assessment/disposition of Industry Alerts to evaluate for program impact (determination of actual usage of an alerted item); purging/quarantining of all affected stock, including work in process (WIP) and finished goods; customer notification of impact to already shipped stock, impact to delivery schedules, etc.; submittal of program Bill of Material (BOM) to GIDEP Operations Center for evaluation; and establishing process for handling GIDEP notifications that a submitted bill of material (BOM) contains an alerted item.

**31. Equipment Traceability Requirements:** The seller shall ensure that all equipment used for final product acceptance and/or for equipment calibration is traceable to international or national measurement standards (e.g., NIST.)

**32. Quality Management System:** Seller must maintain an effective quality management system to ensure product and process integrity.

**33. Product Safety:** Seller must maintain the state of the product so that it is able to perform to its designed or intended purpose without causing unacceptable risk of harm to a person or damage to property.

**34. Ethical Behavior:** Seller must maintain and implement an ethics behavior program appropriate for its business throughout the performance of this contract.

**34. Product or Service Conformity:** Seller must ensure that personnel have the appropriate skills and experience to handle and process the product or service conformity throughout the performance of this contract.