



CODEX DNA, INC.
TERMS AND CONDITIONS OF PURCHASE

ALL PURCHASE ORDERS (“PO”) ISSUED BY CODEX DNA, INC. OR ANY OF ITS DIRECT OR INDIRECT SUBSIDIARIES, COLLECTIVELY REFERRED TO AS “BUYER”, ARE SUBJECT TO THESE ADDITIONAL TERMS AND CONDITIONS, CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA (WITHOUT GIVING EFFECT TO THE CHOICE OF LAW PRINCIPLES THEREOF).

THE PO CONSTITUTES BUYER’S OFFER TO SELLER AND IS A BINDING CONTRACT UPON ACCEPTANCE BY SELLER BY ANY MEANS OF ACCEPTANCE, OR UPON COMMENCEMENT OF PERFORMANCE HEREUNDER, WHICHEVER OCCURS FIRST. ANY TERMS AND CONDITIONS STATED BY SELLER IN ACCEPTING OR ACKNOWLEDGING THIS PO INCONSISTENT WITH, OR IN ADDITION TO THE TERMS AND CONDITIONS CONTAINED HEREIN SHALL BE VOID AND NO EFFECT, UNLESS EXPRESSLY ACKNOWLEDGED AND ACCEPTED BY BUYER IN WRITING. IN “AGREEMENT”), THE TERMS OF SUCH AGREEMENT WILL PREVAIL.

1. **Definitions.** “Deliverable” means the goods, materials, products, software, technical data, intellectual property, drawings, personal property, personnel, services, or items identified and/or listed in this PO for Buyer’s internal use and resale.
2. **Payments.** Payment terms shall be thirty (30) days (if a different term is negotiated, it will displayed on the face of the PO) from the later of the date when Buyer receives conforming items, a correct invoice, the required delivery date, or the date any applicable discrepancy is resolved.
3. **Taxes.** The prices stated in this PO include all applicable taxes and duties, except state and local sales and use taxes, which by statute may be passed on to the Buyer. Such sales and use taxes shall be separately itemized in Seller’s invoice. If the deliverables purchased are for use in products which will be for resale, then “non-taxable” will be indicated on the face of the PO and a resale certificate made available to Seller.
4. **Delivery.** Seller shall deliver the Deliverables to Buyer, at the location (“Delivery Location”) and by the dates specified in the PO. If no delivery date is specified, Seller shall deliver the Deliverables within 10 days of Seller’s receipt of this PO and has the right to return any partially delivered Deliverables for a full refund including shipping costs. Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller’s failure to timely deliver the Deliverables. Buyer shall have no liability for payment for Deliverables delivered in advance of the delivery specified or quantities made in excess of the amounts specified by Buyer. Such items will be subject to rejection and return at the Seller’s expense.
5. **Title to goods.** Title and any Intellectual Property Rights (as defined below) associated with the Deliverables passes to Buyer upon delivery of Deliverables to the Delivery Location. Seller bears all risk of loss or damage to the Deliverables until delivery to the Delivery Location. Any exception to this term will be agreed to by both parties and indicated in writing.
6. **Inspection and Acceptance.** Payment for Deliverables under this PO shall not constitute acceptance thereof. All Deliverables purchased here under subject to inspection at Buyer’s destination either before or after payment or before or after acceptance, at Buyer’s option. Buyer may reject Deliverables not in accordance with Buyer’s instructions, specifications, drawings, data, or Seller’s warranty (express or implied). Buyer shall be entitled to a full credit for Deliverables that are rejected and may make claim for damages, including manufacturing costs, damage to materials, or articles caused by improper processing, handling, packing and other special damages incurred by Buyer. Such rights shall be in addition to any other remedies provided by law.

7. **Insurance.** Seller agrees to provide and to maintain in effect at all times during the term of the PO, at Seller's sole expense, insurance coverage required by law to protect the parties from any liability which may arise out of or result from performing the obligations of this PO, including, but is not limited to, commercial general liability (including product liability) in a sum of no less than \$2 million in aggregate and \$1 million per occurrence with financially sound and reputable insurers. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance evidencing the insurance coverage specified in this PO. The certificate of insurance shall name Buyer as an additional insured. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer and its indemnitees.
8. **Indemnification.** Seller agrees to indemnify, defend, and hold Buyer harmless from and against all losses, damages, liability, actions, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees and other expenses of litigation), suffered, incurred, or asserted by or against Buyer (a) by reason of Seller's breach of warranty, (b) by reason of Seller's breach of any term of this PO, or (c) by reason of personal injury, including death, or property damage sustained by a third party, resulting from or arising out of an act or omission of Seller, or Seller's agents, employees, or contractors in fulfillment of this PO, or any actual or alleged infringement of any United States patent, copyright or trade secret arising out of the Deliverables supplied to Buyer by Seller. The provisions of this paragraph 8 shall survive the termination of the PO.
9. **Warranties.** Seller hereby warrants that the Deliverables furnished hereunder shall be free from defects in material, workmanship, and design; of merchantable quality and fit for Buyer's purposes and that they shall conform with Buyer's instructions, specifications, drawings, and data. Seller further warrants that the Deliverables furnished hereunder shall conform to all representations, affirmations, promises, descriptions, samples or models forming the basis of this PO. Seller further warrants that all services performed for or on behalf of Buyer as Deliverables will be performed in a competent, workmanlike manner and shall be free from faults and defects. Seller warrants that Deliverables covered by this PO shall not infringe any patent, design, mask work, copyright, or trademark, of any third party, either directly or contributory. Seller agrees that these warranties shall survive any inspection, acceptance, or payment by Buyer.
10. **Confidential Information.** Unless otherwise agreed by Buyer in writing, Seller shall keep confidential and not disclose to any third party, any confidential and/or proprietary information or material provided by Buyer to Seller in connection with Seller's performance under this PO is prepared by Seller specifically for Buyer pursuant to or in anticipation of this PO, including but not limited to any drawings, masters, software, specifications, raw materials, components, data, business information or plans, customer lists or other customer information, trade secrets, know-how, technical information ("Confidential Information"). Seller shall use Confidential Information solely for Seller's performance of this PO for Buyer and Sell therefrom in performing services or providing goods for any other customer of Seller, or any other person or entity.
11. **Intellectual Property Rights.** "Intellectual Property Rights" are defined as the collective worldwide intellectual property rights now held or hereafter filed, issues, created or acquired by a Party arising under statutory or common law or by contract, for (i) all classes or types of patents and patent applications, (ii) all works of authorship, including all copyrights and moral rights in both published and unpublished works and all registrations and applications; (iii) all masks works and all registrations and applications; and (iv) all inventions, know-how, trade secrets, and confidential and proprietary technical and non-technical information. The term Intellectual Property Rights shall include, but is not limited to, proprietary rights in any invention, discovery, development, improvement, design, idea, suggestion, writing, computer software, sound recording, pictorial reproduction, schematic, drawing, or other graphic representation, and works of any similar nature, whether or not protectable by statute or common law. All right, title and interest in and to Intellectual Property Rights of whatever nature arising out of or related to Deliverables shall vest in, and be the sole and exclusive property of, Buyer, whether or not specifically recognized or perfected under applicable law. For purposes of all copyright and similar laws, it is expressly agreed upon between Buyer and Seller that Deliverables shall be deemed "works for hire" to be owned by Buyer. Buyer will own all Intellectual Property Rights in any copies, translations, modifications, adaptations or derivatives of any services or sole right to copy, distribute, amend, modify, develop, sublicense, sell, transfer and assign the services and deliverables, associated documentation, or any enhancements thereof.

12. **Preexisting Works.** Buyer acknowledges Seller's ownership in all Intellectual Property Rights in all material that can be evidenced by Seller to have been created by the Seller prior to the commencement of the work related to the Deliverables (the "Pre-Existing Works") that do not include or reference Confidential Information of Buyer, which shall remain vested in the Seller. The Seller shall grant to Buyer a worldwide, perpetual, fully paid up, irrevocable, non-exclusive and non-transferable license to use, copy and modify the Pre-Existing Works related to the Deliverables purchased by Buyer.
13. **Publicity.** Seller shall not make or publish any notice, advertisement, press release, or other communication with respect to the PO, its contents, or the goods or services without Buyer's prior written consent. Seller shall not use Buyer's name or log in any of its advertising, client list, or sales promotional material.
14. **Termination.** At any time, Buyer, at its option, may terminate this PO for convenience in whole or in part by written notice. A stop work order or any other form of written notice requiring Seller to immediately cease performance under this PO shall obligate Seller to immediately stop work and take any actions necessary to mitigate the impact of such notice.
15. **Assignment.** Seller may not assign this PO in whole or in part without the prior written consent of the Buyer.
16. **Force Majeure.** Both parties shall be relieved from any and all liability under or in connection with this PO to the extent that such liability arises from any failure to perform any of its obligations under or in connection with this PO has been caused or contributed to by a force majeure event or circumstance including acts of God, war, hostilities (whether war be declared or not), civil disturbance, government action, strikes, lockouts, or labor disputes, computer virus, or any other event or circumstances or cause whatsoever beyond the reasonable control of the party.
17. **Use of Subcontractors.** Seller may subcontract any of its obligations under this PO Agreement to a subcontractor provided that (a) Seller shall remain at all times primarily responsible for the acts and omissions of any such subcontractor and shall retain any such liability and responsibility under this PO as if such subcontracted activities were performed by Seller; (b) Buyer has provided prior written express consent to such subcontractor; and (c) Seller shall not subcontract any of its obligations hereunder to any Buyer's competitor.
18. **Waiver of Failure to Enforce a Provision.** Failure by either party at any time to enforce any provision of this PO against the other shall not be construed as a waiver entitlement and shall not affect the validity of this PO.