

THE FOLLOWING ARE INSTRUCTIONS FROM THE FRONT SIDE OF  
SEAGATE PURCHASE ORDERS:

**INSTRUCTIONS:**

Read this entire order form, including the incorporated terms and conditions located at [http://www.seagate.com/help/legal/po\\_US.html](http://www.seagate.com/help/legal/po_US.html). The terms and conditions located at the referenced URL (“Terms”) in effect on the Order Date appearing on this order are a material part of this order. Do not accept this order unless you accept the Terms. By accepting this order you agree that you have read, understood and accepted the Terms. If you cannot access the Terms, request them from the buyer.

THE FOLLOWING ARE THE CONTRACTUAL TERMS FROM THE BACK SIDE OF  
SEAGATE PURCHASE ORDERS:

**PURCHASE ORDER**

**1. ACCEPTANCE**

1.1. **Acceptance Must Mirror Offer.** This order is an offer to purchase goods or services under these exact terms only; this order is limited to acceptance of these exact terms without modification.

1.2. **Additional Terms Are Proposals.** Any additional or different terms in your acceptance will be construed as proposals and will not become part of our contract with you unless we agree in writing to your additional terms. All references in this order to “you” or “your” refer to the supplier designated above. All references in this authorization to “us” or “we” refer to Seagate.

1.3. **Existing Agreement.** If we have an existing formal written agreement with you governing our purchase of your goods or services, then the terms in the formal written agreement will supersede any contrary terms in this order.

**2. PRICES**

2.1. **Lowest Price.** Your prices may not be greater than any prices you offer to any other customer for the same goods or services in similar quantities and condition from the time when this order is placed with you and the time it is fully performed by you.

2.2. **Last Quoted Price.** If no price is specified in this order, your price must be equal to or less than the last price you previously quoted or charged us.

2.3. **Expenses.** If this order allows for reimbursement of your expenses, you must comply with our Corporate Travel Policy, located at [http://www.seagate.com/help/legal/ctp\\_West.html](http://www.seagate.com/help/legal/ctp_West.html), which is also available from us upon request, and incorporated into this order.

2.4. **Prepay & Add.** If this order says “prepay & add,” then you must prepay all shipping costs and include the actual shipping costs on your invoice as a separate line item.

2.5. **Sales Tax.** If an item is designated as taxable, then include the actual sales tax on your invoice as a separate line item.

2.6. **Prices All Inclusive.** Except for “prepay & add” and sales tax charges, the total price in this order includes all charges and expenses related to the shipping and delivery of goods or the performance of services. If the price is based on weight of the goods, the weight ordered excludes the weight of any packaging.

2.7. **Invoices.** You will submit a separate invoice to us for each shipment. Your invoice must include this order number and may not cover more than one order.

### **3. SHIPPING TERMS**

3.1. **Incoterms.** All shipping terms in this order refer to International Chamber of Commerce, *Incoterms 2000*. If the goods are to be delivered through a “Just-In-Time” (JIT), “Vendor Managed Inventory” (VMI) or “3rd Party Logistics” (3PL) facility, the delivery destination is not the JIT, VMI or 3PL facility, but the Seagate facility where the goods are shipped from the JIT, VMI or 3PL facility.

3.2. **Transfer of Title.** Title of goods will pass to Seagate when delivery is complete according to Paragraph A4 for the designated Incoterm as defined in *Incoterms 2000*.

3.3. **Cargo Insurance.** If the designated Incoterm requires cargo insurance, you must purchase cargo insurance under Clause A (formerly “all risks”) of the London Underwriters Institute Cargo Clauses. If you do not purchase insurance under Clause A, you will bear the risk of loss for all risks that are covered under Institute Cargo Clauses, Clause A.

3.4. **Shipping Instructions.** Ship only the quantities specified in this order. Do not over-ship or under-ship. Ship your goods for arrival on the delivery date specified in this order. Enclose a packing slip with each shipment and print this order number on the packing slip and all invoices. Advise us immediately if you are unable to ship so that your goods arrive on the specified delivery date. In all shipments, you must comply with the Customs Clearance Documentation, located at [http://www.seagate.com/help/legal/customs\\_US.html](http://www.seagate.com/help/legal/customs_US.html), (including any applicable country specific requirements identified in the Customs Clearance Documentation) which is also available from us upon request, and incorporated into this order.

3.5. **Overshipments and Early Shipments.** If you ship more goods than ordered, or if you deliver the goods earlier than ordered, we may purchase some or all of the goods or return some or all of the goods at your risk and expense.

3.6. **Tax or Duty Refunds.** We reserve the right to any tax or duty refunds. You will provide us with any documents necessary to prove importation and to claim duty drawbacks or similar relief.

### **4. PACKAGING AND LABELING**

4.1. **Packaging.** You must package all goods in accordance with good commercial practice and in a manner acceptable to common carriers for shipment at the lowest rate for the goods involved, and adequate to ensure safe arrival of the goods to their destination.

4.2. **Labeling.** Your packaging must be labeled with this order number, the date of shipment, and the names of any consignee and consignor. You must include an itemized packaging sheet with each shipment. You must mark each package with any required handling and shipping information, and you must comply with any country-of-origin markings to satisfy the customs authorities of the destination country.

### **5. CANCELLATION AND RESCHEDULING**

5.1. **Cancellation for Default.** Time is of the essence under this order. We may cancel this order in whole or in part if you do not deliver the goods or perform the services in full conformance with the warranties in Section 6 within the time specified in this order. If we cancel this order for default and it is later determined that you were not in default, your rights will be construed as if the cancellation was for our convenience under Section 5.3.

5.2. **Cancellation of Government Contract.** If this order bears a United States government contract number, we may cancel this order and any related orders upon notice of termination of the prime contract from the government. If we cancel this order for termination of a US government prime contract, we will provide fair compensation, as provided for under the Contract Settlement Act of 1944 (Public Law 395, 78th Congress).

5.3. **Cancellation for Convenience.** We may cancel this order, in whole or in part, at any time for our convenience. If we cancel this order for our convenience and we give you less than 30 days' notice of cancellation, we will reimburse your actual reasonable out-of-pocket costs that are not capable of being mitigated. To be reimbursed, you must submit your request for reimbursement within 30 days after our notice of cancellation.

5.4. **Work in Progress.** Upon receiving our notice of cancellation, regardless of the reason for the cancellation, you must immediately stop all work in progress and use your best efforts to mitigate any costs associated with the cancellation. We have the option to purchase your work in progress, including any raw materials you may have obtained to use in your work. Our price to purchase your work in progress will be a prorated price based on the percentage of work remaining to be completed. Our price to purchase any raw materials will be your actual cost. You are not entitled to any other remedy for cancellation of this order except as provided in this section.

5.5. **Rescheduling.** We may reschedule your delivery of goods or performance of services at any time without liability. The new date for delivery or performance will not be more than 180 days beyond the originally scheduled date.

## 6. WARRANTIES

6.1. **Warranty Period.** All warranties under this order continue for five years after the date of delivery to us, unless a different warranty period is stated on the face of this order.

6.2. **Warranties Regarding Goods.** You make the following warranties to us regarding all goods you provide under this order:

- (a) The goods are new and do not contain any used or refurbished parts.
- (b) The goods function properly under normal use, are of good workmanship, free from defect, of merchantable quality, and fit for our intended use.
- (c) The goods fully comply with any specifications provided by us, including without limitation our Product Stewardship specification, and any samples or documentation provided by you.
- (d) The goods are free of any encumbrances.
- (e) The goods do not violate any intellectual property rights of any third party.

6.3. **Warranties Regarding Services.** You make the following warranties to us regarding all services you provide under this order:

- (a) You perform the services with reasonable skill and care, in a professional manner and in full conformance with any specifications or statements of work provided by us.
- (b) Your performance of the services does not violate any intellectual property rights of any third party or any duty of confidentiality you owe to any third party.

6.4. **Other Warranty Terms.** The warranties listed above are in addition to any other warranties expressly made by you or imposed by law. All warranties will survive inspection and payment by us and are assignable to our successors and assigns.

6.5. **Warranty Remedies.** If any goods or services do not meet the warranties, we may, at our option, and without additional cost to us,

- (a) require you to repair or replace the goods until the goods meet the warranties,
- (b) require you to re-perform any services until the services meet the warranties,
- (c) return any of the goods to you at your expense for a full refund,
- (d) correct the non-conformance and charge you for the cost to make the correction,
- (e) engage a third party to provide substitute goods or services and charge you for the costs of obtaining the substitute goods or services from the third party.

6.6. **Remedies Nonexclusive.** The remedies listed above are in addition to any other remedies available to us in law or equity. Our review and approval of your materials or designs will not relieve you of the warranties.

## **7. LIMITATION OF LIABILITY**

7.1. **Limitation of Amount of Liability.** Our maximum liability to you arising out of this order, regardless of the basis of liability or the form of action, will not exceed the total price stated in this order plus sales tax and prepay & add charges.

7.2. **Limitation of Type of Liability.** We will not be liable to you for any indirect, special, incidental, or consequential damages, however caused, regardless of whether we are advised of the possibility of such damages.

7.3. **Exclusion of Liability of Our Employees.** Our officers, directors, employees, affiliates and other agents are not personally liable to you under this order, and will not be liable to you under any claim related to this order.

7.4. **Purpose.** The purpose of this section is to limit our potential liability arising out of this order, and that allocation of risk is reflected in the prices. This Section 7 will apply despite the failure of any remedy of its essential purpose.

## **8. INTELLECTUAL PROPERTY RIGHTS**

8.1. **Preexisting Intellectual Property.** We own all intellectual property rights related to any information or items we provide you. You may not use our intellectual property except to benefit us.

8.2. **Developed Intellectual Property.** The goods or services ordered are specially ordered or commissioned by us and are works made for hire. You transfer to us, without further consideration, all rights and interest in any intellectual property developed by you during your performance of any services or delivery of any goods under this order. You must immediately disclose to us any intellectual property developed by you arising out of your performance of the services. You agree to take all necessary actions to effect your grant and assign your interest in any intellectual property developed by you including but not limited to executing all documents as may be required under applicable laws.

8.3. **Intellectual Property Indemnification.** You will defend and indemnify us and our directors, officers, employees and affiliates against any claim alleging that your goods or services infringe or violate a patent, copyright, trademark, trade dress, trade secret, or any other contractual right, proprietary right or intellectual property right of any third party.

## **9. CONFIDENTIALITY**

9.1. **Confidential Information.** Any information regarding our intellectual property is our confidential information. The existence of this order and the information in this order is our confidential information. Any other information that we provide to you that is identified as “confidential,” or is identified with similar language, or which under the circumstances surrounding disclosure ought to be treated as confidential, is our confidential information.

9.2. **Nondisclosure.** Except as required by law, you may neither disclose our confidential information to any third party nor use our confidential information for any purpose other than your performance under this order without our prior written consent. You must segregate our confidential information from all other information. You must destroy or return our confidential information to us upon our request.

## **10. INDEMNIFICATION AND INSURANCE**

10.1. **General Indemnification.** You will defend and indemnify us and our directors, officers, employees and affiliates against any claim or action arising out of your performance of this order.

10.2. **Insurance.** You will maintain general commercial liability insurance in the minimum amount of US \$1,000,000 combined single limit for personal injury and property damage. If you have employees, you must maintain employer’s liability in a minimum amount of US \$2,000,000 per occurrence and workers’ compensation insurance in accordance with law. Your insurance must include a waiver of the insurer’s subrogation rights against us, unless prohibited by law.

## **11. DISPUTE RESOLUTION**

11.1. **Good-Faith Negotiation Followed by Mediation.** The parties will attempt to resolve any dispute relating to this order through good faith, informal efforts. Any dispute the parties are unable to resolve between themselves will be submitted to mediation before a mutually agreed mediator of Judicial Arbitration And Mediation Services (JAMS) to be scheduled within 10 business days. Mediation will be conducted at a JAMS facility in Santa Clara County, California. The parties will bear their own costs.

11.2. **No Action Pending Mediation.** Neither party may bring any other action until completion of mediation. Any court of competent jurisdiction may enforce the provisions of this section, and the party seeking enforcement will be entitled to an award of attorney’s fees and costs to be paid by the party against whom enforcement is ordered.

11.3. **Exclusion for Equitable Relief for Confidentiality.** We may seek equitable relief at any time to enforce the provisions of Section 9 of this order.

## **12. MISCELLANEOUS**

12.1. **Governing Law.** This order is governed by the laws of the State of California, USA, without regard to its conflicts of laws rules. The United Nations Convention on Contracts for the International Sale of Goods will not apply.

12.2. **Jurisdiction.** All disputes, litigation or other proceedings arising under or relating to this Agreement will take place in Santa Clara County, California, USA. You consent to exclusive jurisdiction and venue of the courts located in Santa Clara County, California, USA.

12.3. **Compliance With Laws.** You must comply with all applicable laws in performing your obligations under this order, including without limitation those governing environment, health and safety, and labor and employment practices. You must require that your sub-suppliers also comply with all applicable laws and regulations in effect. Upon request, you will certify that you comply with all applicable laws and regulations. We may audit you to confirm your compliance with this section.

12.4. **International Trade Compliance.** The goods or services licensed or sold under this order, and the transaction contemplated by this order, which may include technology and software, are subject to the customs and export control laws and regulations of the United States ("U.S.") and may also be subject to the customs and export laws and regulations of the country in which the goods are manufactured or received. Further, under U.S. law, the goods shipped under this order may not be sold, leased or otherwise transferred to restricted countries, or used by a restricted end-user or an end-user engaged in activities related to weapons of mass destruction including, without limitation, activities related to designing, developing, producing or using nuclear weapons, materials, or facilities, missiles or supporting missile projects, or chemical or biological weapons. You acknowledge that it is your responsibility to comply with and abide by the laws and regulations referenced in this section, and that any person or entity to which you ask Seagate to send product has also been made aware of the associated export controls.

12.5. **Assignment.** You may not assign your rights or delegate your duties under this order to any third party without our prior written consent.

12.6. **Severability; Survival.** Sections 7, 8, 9 and 10.1 are material to this order, are not severable, and will survive termination or cancellation of this order. Section 6 will survive for 6 years after delivery of goods or completion of services. If any term or provision of this order is or becomes invalid under any applicable law, then the remainder of this order will not be affected thereby and the remaining terms and provisions of this order will remain in effect as if the invalid portion were not a part of this order.

*(US, Rev 22 April 2009)*