

## PURCHASE ORDER TERMS AND CONDITIONS

1. THE BUYER OF GOODS UNDER THIS PURCHASE ORDER (THIS "PO") SHALL BE PIVOTAL COMMWARE, INC. ("BUYER"). THIS PO IS EXPRESSLY CONDITIONED ON ASSENT BY YOU ("SELLER") TO THESE TERMS AND CONDITIONS. BY SHIPPING THE GOODS OR BY PERFORMING THE SERVICES SPECIFIED HEREIN, SELLER AGREES TO THE TERMS, CONDITIONS, AND SPECIFICATIONS OF THE PURCHASE SET FORTH IN THIS PO AND ON ANY SHEETS OF ADDITIONAL TERMS, CONDITIONS, AND SPECIFICATIONS ATTACHED HERETO. BUYER INTENDS THAT THIS PO CONSTITUTE AN OFFER TO BUY FROM SELLER; HOWEVER, TO THE EXTENT THAT THIS PO IS INTERPRETED AS BUYER'S ACCEPTANCE OF SELLER'S OFFER TO SELL, SUCH ACCEPTANCE IS EXPRESSLY CONDITIONED ON SELLER'S ASSENT TO THESE TERMS, CONDITIONS, AND SPECIFICATIONS. EXCEPT AS SET FORTH IN ANY SIGNED, WRITTEN AGREEMENTS BETWEEN THE PARTIES, THESE TERMS, CONDITIONS, AND SPECIFICATIONS CONSTITUTE THE ENTIRE AGREEMENT OF THE PARTIES. BUYER HEREBY OBJECTS TO ANY DIFFERENT OR ADDITIONAL TERMS IN SELLER'S ACCEPTANCE OF THIS OFFER OR ANY OTHER COMMUNICATION BY SELLER.
2. PRICES. Seller's quotation shall remain in effect for a period not less than six (6) months from the date issued. All prices shall be as quoted by Seller or, if no price has been quoted, shall be Seller's lowest price in effect at the time of order placement, and shall be subject to downward adjustment only. Buyer shall not be assessed any penalties for failing to take delivery of all or part of the goods specified in this PO nor shall Buyer have to remit payment to Seller for a quantity greater than actually received.
3. TAXES. The pricing shall include all shipping costs, insurance costs (when requested in writing by Pivotal or by the applicable Pivotal affiliate), and all applicable taxes.
4. TERMS OF PAYMENT. Unless otherwise expressly stated in writing, terms are net cash forty-five (45) days from the date of invoice receipt. Partial shipments shall not be invoiced and the payment period shall not commence until order completion. Any amount due to Seller shall be adjusted for setoff for any amounts which Buyer may claim are owed by Seller or by Seller's affiliated companies and regardless of any other controversies which may exist.
5. TITLE AND DELIVERY. Unless otherwise expressly stated in writing, all sales are FCA, Seller's premises (Incoterms 2010). Notwithstanding the foregoing, title and risk of loss to goods pass to Buyer only upon acceptance by Buyer's incoming inspection. Buyer shall submit claims for shipment count discrepancies to Seller within 60 days of receipt of goods. Buyer may request the delivery of scheduled goods fifteen (15) days in advance of the date(s) scheduled. Delivery dates are of the utmost importance. In the event that any specified delivery date is not met, Seller shall be liable for a penalty of 3% of the invoiced price of the goods per week, capped at a total of 30%.
6. CANCELLATION AND RESCHEDULE. Buyer reserves the right to cancel, reschedule, or modify the contents of its order under this or any other PO without penalty or charge, by giving written notice to Seller at any time in advance of scheduled ship date.
7. REPRESENTATIONS AND WARRANTIES.
  - (a) Seller warrants the goods against faulty workmanship or the use of defective materials for either a period not less than one (1) year or Seller's standard warranty term, whichever is longer, from the date of Buyer's acceptance.
  - (b) Buyer reserves the right to initiate claims for defective or nonconforming goods at any time during the warranty period. Seller is required to repair or replace said goods or refund the purchase price of said goods upon return to Buyer, at the option of the Seller.
  - (c) After Buyer has returned goods to Seller or Seller has reclaimed goods due to their being defective or nonconforming, no goods shall be reshipped to Buyer without Seller's prior written description of the claimed defect or nonconformity and Buyer's express written authorization for such reshipment. Acceptance of said reshipment by Buyer shall be based on Buyer's evaluation of conformance of goods to the written specifications in force at the time of sale.
  - (d) Seller represents, warrants and undertakes that the goods and services supplied under this PO comply in all respects with Buyer's specification(s) and all modifications that may be agreed in writing between Buyer and Seller.
  - (e) Seller undertakes that services to be rendered under this PO: (i) shall be performed in a good and workmanlike fashion and with all due speed, care, skill and diligence. Seller shall ensure that all of its personnel and sub-contractors are suitably qualified to perform the services and that all necessary licenses, work permits or other authorizations have been obtained and will be maintained for the duration of the performance of the services.
  - (f) If any materials which are required by Buyer for the provision of the services are not delivered fully in accordance with any stipulations in this PO, Seller shall, without limiting Buyer's other remedies, immediately effect correct delivery and shall be responsible for any additional costs and expenses incurred by both parties in so doing.
  - (g) Except as set forth in this Section 7, Seller hereby disclaims all other express and implied warranties.
8. SPECIFICATIONS. Unless otherwise expressly stated in writing, all goods shall be manufactured in accordance with the specifications agreed upon by Buyer and Seller. Seller shall provide Buyer a written copy of all specifications agreed upon by Buyer and Seller to which all goods to be delivered shall conform prior to the delivery of any goods to Buyer. Failure to deliver the agreed specifications for manufactured goods in writing shall be deemed a breach of this PO and good and sufficient grounds for Buyer's rejection of goods as defective and nonconforming.
9. CHANGES. Seller may not, without written notice and approval of Buyer, make modifications or changes to any of the goods to be delivered under this PO, within the scope of this PO in any one or more of the following: (a) drawings, design, statement of work or the specifications of goods to be delivered under this PO; (b) method of shipment or packing of goods to be delivered under this PO; (c) place of inspection, delivery or acceptance of goods to be delivered under this PO; (d) quantities of goods to be delivered under this PO; (e) delivery schedules for the goods under this PO; and (f) the amount of Seller-furnished property.
10. INSPECTIONS. Buyer reserves the right to conduct inspections (not to exceed thirty (30) days from delivery) of goods to be purchased, prior to any acceptance.
11. SUBCONTRACTING. Seller shall not subcontract all or part of the work on the goods to be supplied under this PO without prior approval of Buyer. If so approved, Seller will (a) not place subcontracts under this PO that provide for any method of payment by Buyer which has not been specifically approved by Buyer prior to the subcontracting agreement; and (b) select subcontractors and suppliers on a competitive basis to an extent consistent with the objectives and requirements of Seller's overall business operations.
12. ASSIGNMENT. Seller shall not delegate any duties nor assign any rights or claims under this PO without Buyer's prior written consent, and any attempted assignment or delegation of duties shall be null and void.
13. INTELLECTUAL PROPERTY. Seller shall indemnify and hold Buyer harmless from any and all claims, liabilities, damages or expenses resulting from infringements or alleged infringements (direct or indirect) of United States or foreign patents, copyrights, trademarks or other proprietary rights arising from (i) Buyer's purchase, use, possession, sale or delivery of any product sold to Buyer hereunder, or (ii) Buyer's purchase or use of any product in any patented machine or process. No purchase of any product shall be construed as granting to Seller any license or other right to (a) apparatus or circuits in which the products or parts may be used; (b) a process or machine in connection with which they may be used; or (c) the process for their manufacture. Seller hereby acknowledges that the copyright in all documents, designs and plans supplied by Buyer belongs to Buyer and shall not, without the written consent of Buyer, copy or use any such documents, designs or plans or any technical data obtained from Buyer. In addition, all writings, software, drawings, designs, copyrightable material, mask works, inventions, improvements, developments and discoveries (collectively referred to as the "Work Product") made, conceived, or reduced to practice by Seller, solely or in collaboration with others during the course of this PO that are incorporated into any product, deliverables or other information provided to Buyer under this PO, are the sole property of Buyer, and Seller further hereby assigns (or causes to be assigned) to Buyer all right, title, and interest in and to all such Work Product. The Seller likewise agrees to waive or cause the waiver of any moral rights arising from the creation of intellectual property rights in the Work Product.
14. COMPLIANCE WITH LAWS. Seller shall carry out the transactions contemplated by this PO and shall otherwise deal with the goods sold in conformity with all applicable laws, rules or regulations of the State of Washington, United States, or any political subdivision thereof, or any other applicable laws, rules or regulations or any other governing body with jurisdiction over the place of sale or purchase, including, without limitation, the Export Administration Act, and Seller shall obtain all permits and licenses required in connection with the manufacture, purchase, installation, sale, shipment or use of any of the goods. As required by federal law and to the extent applicable, Buyer incorporates by reference FAR 52.219-8, Utilization of Small Business Concerns, in this PO to the extent that this PO offers further subcontracting opportunities. Seller shall fully cooperate with Buyer in satisfying the disclosure requirements of Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") with regard to Conflict Minerals (as defined in the Dodd-Frank Act), including providing accurate and complete information regarding the source of components provided to Buyer. Seller shall promptly notify Buyer in the event there are any changes to the information provided to Buyer with respect to Conflict Minerals. Seller shall not conduct any business transaction in support of its business with Buyer with any individual person or entity on the Denied Persons List, Entity List, or Unverified List published by the U.S. Department of Commerce, or the Specially Designated Nationals and Blocked Persons List published by the U.S. Department of Treasury, Office of Foreign Assets Control.
15. DISPUTE RESOLUTION. The validity, interpretation, and performance of these terms and conditions and any purchase made hereunder shall be governed by the laws of the State of Washington, without regard to conflict of law principles. The parties expressly consent to the jurisdiction of the state and federal courts located in the State of Washington. All disputes arising directly under the express terms of this PO, if any, or the grounds for termination thereof shall be resolved as follows: The senior management of both parties shall meet to attempt to resolve such disputes. If the disputes cannot be resolved by the senior management, either party may make a written demand for formal dispute resolution and specify therein the scope of the dispute. Within thirty (30) days after such written notification, the parties agree to meet for one (1) day with an impartial mediator and consider dispute resolution alternatives other than litigation, including referral to the National Patent Board.
16. LIMITATION OF LIABILITY. IN NO EVENT SHALL BUYER BE LIABLE OR RESPONSIBLE FOR ANY DIRECT DAMAGES IN EXCESS OF \$250,000 OR ANY INDIRECT, SPECIAL, COMPENSATORY, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES OF ANY NATURE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR REVENUES) INCURRED BY SELLER OR ANY THIRD PARTY, WHETHER OR NOT BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES.
17. INDEMNIFICATION. To the extent that Seller's agents, employees or subcontractors enter upon the premises occupied by or under the control of Buyer, or any of its customers, or suppliers in the course of the performance of this PO, Seller shall take all necessary precautions to prevent the occurrence of any injury (including death) to any persons, or of any damage to the property arising out of acts or omissions of Seller's agents, employees or subcontractors, and except to the extent that any such injury or damage is due directly and solely to Buyer's gross negligence, Seller shall indemnify, defend and hold Buyer, its officers, employees, and agents, harmless from any and all costs, losses, damages, claims, suits or any liability whatsoever, including reasonable attorneys' fees (collectively, "Claims"), arising out of any such act or omission by Seller. Seller shall further indemnify, defend and hold Buyer, its officers, employees, and agents, harmless from any and all Claims (a) alleging that the goods and/or services supplied under this PO (or the use thereof by Buyer) infringe any third party's intellectual property rights, or (b) arising from any violation by Seller of any applicable laws, regulations, safety standards or directives. Seller shall maintain (A) public liability, property damage, professional liability (or errors and omissions), and commercial general liability (including coverage of intellectual property infringement liability) insurance, including contractual liability (both general and vehicle), in amounts satisfactory to Buyer, to cover the obligations set forth above, and (B) worker's compensation and employer's liability insurance covering all employees engaged in the performance of this PO.
18. PROPRIETARY DATA.
  - (a) "Proprietary Data," as used in (b) below, means recorded information, regardless of form or characteristic of a scientific, technical or business nature, which is received by Seller from, under or in connection with the PO. The data may be graphic or pictorial delineations in media, such as drawings or photographs; text in specifications or other documents; or in other format; further the data may be in tangible form or stored in electronic format. The data may, for example, describe research, development or engineering work; or define a design or process or be usable or used to procure, support, or maintain material. It includes research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information. It also includes financial, administrative, cost, pricing, and management data, and other information related to contract administration.
  - (b) Seller shall treat as proprietary and confidential, all Proprietary Data, samples and models supplied by Buyer. Unless the written consent of Buyer is first obtained, Seller shall not in any manner, advertise or publish or release for publication, any statement mentioning Buyer or the fact that Buyer has purchased or contracted to purchase from Seller, goods or services, or quote the opinion of any employees of Buyer. Seller shall not disclose any information relating to this PO to any person not authorized by Buyer to receive it. Seller shall only use the information supplied by Buyer to administer work covered by this PO and for no other purpose. Upon completion of this PO, Buyer reserves the right to require, upon fifteen (15) days prior written notice, return of all or part of the items furnished to Seller.
19. HEADINGS. Section headings are for reference purposes and for ease of reading only and shall not affect in any way the meaning or interpretation of these terms and conditions of purchase.
20. WAIVER. The failure of either party to enforce at any time any of the provisions hereunder shall not be construed to be a waiver of such provisions or the right of such party thereafter to enforce any such provisions.
21. MODIFICATION. No renewal or termination of this PO, or modification or waiver of any of the provisions herein contained, or any future representations, promise, or condition in connection with the subject matter hereof shall be binding upon Buyer unless made in writing and signed by Buyer's authorized purchasing representative. A mere acknowledgment or acceptance of any order inconsistent with the terms of this PO, or the making of deliveries pursuant thereto, shall not be deemed an acceptance or approval of such inconsistent provisions. Buyer reserves the right to change or modify any of the terms and conditions contained in this PO, at any time, by posting the PO terms at <http://www.pivotalcommware.com/poterns.pdf> or such URL as Buyer may provide. Seller is responsible for regularly reviewing any updates to this PO. Any changes or modifications to this PO will become binding (i) by Seller's online acceptance of updated PO terms, or (ii) after Seller's continued transaction of business with Buyer after such terms have been updated by Buyer.
22. CONSTRUCTION; SURVIVAL. This PO contains the entire agreement between the parties. There are merged herein all prior and collateral representations, promises, and conditions in connection with the subject matter hereof. Any representation, promise or condition not incorporated herein shall not be binding upon either party. This PO supersedes and is in lieu of all existing agreements or arrangements between the parties relating to the goods and/or services purchased herein. Any provision of this PO that contemplates performance or observance subsequent to termination or expiration shall survive any such termination or expiration, and shall continue in full force and effect.
23. NOTICES. All notices, reports, requests, acceptances or other communications required or permitted under this PO will be in writing. They will be deemed given (a) when delivered personally; (b) when sent by email; (c) one (1) day after having been sent by commercial overnight courier with written confirmation of receipt; or (d) five days after having been sent by certified mail, return receipt requested, postage prepaid, or upon actual receipt thereof, whichever first occurs. Legal notices to Buyer shall be addressed to Legal, Pivotal Commware, Inc., 10801 120th Ave NE, Suite 200, Kirkland, WA 98033, USA.
24. ATTORNEY FEES. In any action by Buyer to enforce any of the terms of this PO against Seller or of any other contract relating to this PO, if Buyer is the prevailing party, Buyer shall be entitled to recover expenses, including any or all reasonable attorneys' fees.
25. INDEPENDENT CONTRACTOR. Seller is a legitimate independent job contractor and has substantial capital, tools, equipment and investment necessary to carry out its obligations under this PO and is without authority to bind Buyer by contract or otherwise. Seller shall undertake the delivery of services on its own account and under its own responsibility and shall be free to use any means and methods not contrary to law and regulations, which it believes, will best enable it to perform the services. Neither party shall act as an agent for the other party, nor shall either party sign any binding agreements on behalf of the other party without the other party's express prior written consent. Nothing contained in this PO shall be deemed to constitute a partnership, joint venture or any other relationship except as specified by the terms of this PO. Nothing in this PO shall be construed as creating any agency or employment relationship between Buyer and Seller or as reserving to Buyer any right to exercise any control over or to direct in any respect the conduct or management of business or operations of Seller. The entire control or direction of such business and operations shall be and shall remain in Seller.
26. SEVERABILITY. If any provision or part of a provision of this PO shall be, or be found by any court of competent jurisdiction to be, invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or parts of such provisions of this PO, all of which shall remain in full force and effect.
27. CUMULATIVE REMEDIES. Seller acknowledges and agrees that the rights and remedies of Buyer under this PO are cumulative and not alternative and are without prejudice to the rights and remedies of Buyer available under law or equity.