

**API TECHNOLOGIES CORP.**  
**SUPPLIER TERMS AND CONDITIONS**

- 1. Definitions:** For purpose of this Supplier Terms and Conditions, “Buyer” shall mean the API Nanotronics Corp. subsidiary executing the signature page of this Supplier Terms and Conditions, and “Seller” shall mean the other individual, firm, corporation or other entity identified on the signature page of this Supplier Terms and Conditions.
  
- 2. Applicable Terms and Conditions:** Buyer hereby offers to purchase the goods, materials and services listed on any purchase order provided by Buyer from time to time and to enter into this Supplier Terms and Conditions. These Supplier Terms and Conditions, together with any information contained on any purchase order accompanying this Supplier Terms and Conditions and all future purchase orders tendered by Buyer to Seller and accepted by Seller, and those terms and conditions that are set forth in any attachments or documents specifically incorporated herein by reference, and any additions or revisions mutually agreed to in accordance with Section 21 (collectively, as updated from time to time by accepted purchase orders and any other amendments hereto, the “Purchase Agreement”) shall constitute the entire understanding between the parties, and all prior or contemporaneous promises, representations, agreements and understandings are expressly merged herein and superseded hereby. Any acknowledgment of a purchase order by Seller or any shipment or delivery of any materials, goods or services referred to in such purchase order shall constitute acceptance by Seller of the Purchase Agreement (including such purchase order) and assent to all of its terms and conditions. Any terms and conditions contained in Seller’s solicitation of proposals, work orders, scope of work, purchase order acknowledgements or any other agreement that are in addition to or inconsistent with terms and conditions contained in this Purchase Agreement are hereby rejected and shall not be effective or binding as to Buyer. Buyer rejects and shall not be bound by any additional, different or conflicting terms, whether printed or otherwise, in Seller’s proposal, invoice or other communication, it being understood that these Supplier Terms And Conditions shall prevail notwithstanding any such additional, different or conflicting terms. Future purchase orders of Buyer tendered to and accepted by Seller shall be governed by these Supplier Terms and Conditions, whether or not they make explicit reference to these Supplier Terms and Conditions.
  
- 3. Shipment; No Extra Charges; Taxes:**
  - A.** A notice of shipment shall be sent to Buyer at the time of shipment which shall state the order number, quantity, part number(s), description of goods or materials shipped, and the route by which the shipment is being made. All goods and materials shall be suitably packed, marked and shipped in accordance with shipping instructions specified in the applicable purchase order and the requirements of common carriers in a manner to secure the lowest transportation cost, or if no instructions are provided, in accordance with Seller’s standard shipping practices. Seller shall be responsible for any difference in shipping charges arising from its failure to follow the shipping instructions specified in the applicable purchase order or to properly describe the shipment. No additional charge shall be made to Buyer for packing, crating, shipping, delivery, freight or other cost unless specifically agreed to by Buyer in writing. Unless otherwise specified in a purchase order, the price stated on the purchase order includes all charges and expenses of Seller, including but not limited to packing, crating, cartage and any and all applicable federal, state and local taxes and duties. No interest charges or other penalties for late payment may be assessed by Seller without the prior written consent of Buyer.
  
  - B.** Seller agrees to accept in lieu of any tax that may be chargeable under a purchase order a tax exemption certificate or other evidence acceptable to the federal, state and/or local taxing authority and to reduce the price stated herein by the amount of such exempt tax. All sales, use, duty, excise or other similar tax or charge, for which Buyer has not furnished or agreed to furnish an exemption certificate, which are specifically the responsibility of Buyer pursuant to this Purchase Agreement, must be stated separately in the invoice as set forth in Section 4 below.

- C. Purchase order quantities shall be shipped as a complete quantity in one single shipment unless otherwise indicated within the purchase order. Consolidate multiple purchase order materials whenever possible into a single daily shipment unless otherwise authorized by a Filtran buyer.
  - D. Shipping handling insurance leaving the sellers facility shall not be insured unless otherwise indicated within the PO. Shipments with an FOB Filtran destination may be insured payable by the seller.
4. **Invoices; Assignment of Payment:** Invoices must (a) show the Buyer purchase order number, (b) show the address of the location where the goods or materials were shipped; and (c) be in compliance with the invoicing instructions below. Standard payment terms are net 45 days from receipt of a compliant invoice.

**A. Invoicing Instructions:**

- 1. Send one invoice, duplicate invoices are not acceptable.
  - 2. Handwritten changes or carbon copies of invoices are not acceptable.
  - 3. Clearly show the purchase order number on the invoice. Invoices received without a purchase order number will be returned to the supplier unpaid.
  - 4. Provide your company or division name and indicate your unique invoice number and invoice date. The invoice number must not recycle within a minimum of 36 months.
  - 5. Indicate the unit quantity shipped, unit cost, extended cost. The invoice cost must not exceed 2 decimal places to the right.
  - 6. Indicate applicable taxes as a separate line item.
  - 7. Freight shall be "prepaid and collect" unless otherwise designated on the purchase order.
  - 8. Clearly indicate the "Remit To" address.
  - 9. All invoices must be sent directly to Filtran Limited Account Payable personnel at 360 Terry Fox Drive Ottawa, Ontario, Canada, K2K 2P5. Filtran Limited receives invoices via fax number 613-226-7124 or email at [accounts@filtran.com](mailto:accounts@filtran.com).
5. **Transportation:** All goods and materials subject to this Purchase Agreement shall be transported F.O.B. Destination (D.D.P. Buyer's facility (Incoterms 2000)). Seller shall be responsible for any and all loss or damage to the goods or materials until delivered to Buyer at the F.O.B. Destination (D.D.P. Buyer's facility (Incoterms 2000)) specified in the applicable purchase order.

**6. Delivery:**

- A. Time is of the essence; delivery must be made in accordance with the schedule set forth in the applicable purchase order. If Seller's goods or materials are not going to be ready to ship / deliver to Buyer by the agreed upon promise date, it is the responsibility of Seller to notify, call, e-mail the Purchasing Manager (as set forth on the purchase order or if no Purchasing Manager, the Buyer personnel initiating the purchase order shall be deemed the Purchasing Manager) a minimum of 48 hours before the promise date to come to a mutually agreed upon revised delivery date. In no such case will Buyer incur any additional cost for Seller's delay in meeting a prior agreed upon delivery date because of any cause. Seller shall notify Buyer promptly of any delays and any actual or potential labor disputes or other circumstances that are delaying or threaten to delay the timely performance of the applicable purchase order.
- B. Unless otherwise specified by Buyer, deliveries to Buyer's premises shall be made [Monday through Friday from 8:30AM to 4PM to the first shipping / receiving dock door located at the rear of the building. The driver should call in advance to our Shipping department personnel to ensure someone is available to accept delivery.] At no time is a delivery to be left unattended without Buyer's prior approval. If Seller fails to make the deliveries or perform the services at the times or in quantities specified in the purchase order, Seller shall be responsible for all costs incurred and damages suffered by Buyer, including but not limited to, any excess transportation charges and other costs incurred to meet the specific delivery dates. Buyer shall

have no liability for payment for materials or goods delivered that are in excess of quantities specified in the applicable purchase order and Buyer's count shall be accepted as conclusive on all shipments not accompanied by a packing slip. Delivery shall not be deemed complete until materials or goods have been actually received and accepted by Buyer. Unless otherwise stated herein, title to the goods and / or materials shall remain with Seller until acceptance by Buyer in accordance with Section 9.

- C. All shipments must include a packing slip. The packing slip must be highly visible and attached to the outside of the package or carton. The following information must be included on all packing slips:
    - Purchase order number (and if applicable the Blanket Release Number)
    - Packing slip reference number
    - Date shipped
    - Part numbers
    - Quantity shipped
    - Vendor ID number (Vendor code number is listed in the Vendor ID section on the PO)
    - Correct "Ship To" address as shown on the purchase order
  - D. Failure to comply with the foregoing provisions may result in a return shipment, delay in payment, and /or administrative charges. For further information please see: Section 28 (Noncompliance of Supplier Requirements).
7. **Change In Specifications:** Buyer, by a writing signed by Buyer and sent to Seller, shall have the right at any time to make changes in the specifications of any goods, materials, and / or services covered by a purchase order, or the method of shipment or packing or the place of inspection, delivery or acceptance. Upon receipt of any such notice, Seller shall proceed promptly to make such changes in accordance with the terms of such notice. Seller shall deliver to Buyer, within ten (10) days of receipt of Buyer's change notice, a statement showing the effect of any such changes in the cost of, and / or the time required due to the changes. If any such changes cause an increase or decrease in the time required for performance or cost, an equitable adjustment shall be made and the order modified in writing accordingly. Buyer's failure to object to provisions contained in any communication from Seller shall not be deemed an acceptance of such provisions or a waiver of the provisions of this Purchase Agreement. Seller shall not make any changes in the design, processing, packing, shipping or place of delivery of the materials, goods or services without Buyer's prior written approval.
8. **Warranties:** Seller expressly represents and warrants that it has good and marketable title to the goods and materials covered by this Purchase Agreement and that such goods and materials will:
- A. Conform to any and all specifications, instructions, samples and other descriptions, whether express or implied, furnished to Seller by Buyer, including, without limitation, any supplement(s) to this Purchase Agreement or purchase orders issued by Buyer hereunder;
  - B. Be fit and sufficient for the purpose(s) for which they were manufactured and sold, and if Seller knows or has reason to know of any other particular purpose(s) for which Buyer intends to use such goods or materials, the goods or materials will be fit for such particular purpose(s);
  - C. Be new and merchantable;
  - D. Be of good material and workmanship and free from defects, whether patent or latent;
  - E. Be free and clear of all liens and encumbrances of any kind whatsoever; and
  - F. Comply with all applicable laws, rules and regulations.

Seller also represents and warrants that all services covered by this Purchase Agreement will (i) conform to any and all specifications, instructions and other descriptions furnished to the Seller by Buyer; (ii) comply with all applicable laws, rules and regulations; and (iii) be performed in a professional and workmanlike manner in accordance with highest industry standards.

These warranties shall survive any inspection, delivery, acceptance or payment by Buyer for any materials, goods or services under this Purchase Agreement and termination of this Purchase Agreement. All warranties express or implied, shall run to Buyer, its successors, and assigns and to all persons who purchase from Buyer or use such goods, materials or services, alone or in combination with other goods, materials or services, and no limitation by Seller of its warranty liability shall be effective. Seller hereby extends any and all warranties received from its suppliers to Buyer.

Upon request of Buyer, Seller agrees promptly to replace or correct defects in any goods, materials or services not conforming to the foregoing warranties without expense to Buyer when so notified. In the event of Seller's failure to replace or correct such defective or nonconforming goods, materials or services, Buyer may, after reasonable notice to Seller, make such correction or replacement at Seller's expense and Seller hereby agrees to promptly reimburse Buyer for all expenses incurred by Buyer by making such corrections or replacement.

The foregoing warranties shall be in addition to any warranties of additional scope made or provided by Seller to Buyer or provided by law. The remedies herein reserved shall be cumulative and additional to any other or further remedies provided by law or equity.

In addition to the foregoing, Seller shall indemnify and hold Buyer, its affiliates and their officers, directors, shareholders, agents, employees, successors, assigns, customers and users of its products harmless from and against any and all damages, claims, liabilities and expenses (including court costs and attorneys fees and expenses) arising out of or relating to or resulting in any way from (i) a breach of warranty, whether express or implied, (ii) any products supplied hereunder or the rendering of any services hereunder failing to comply with relevant federal, state, or local laws, or regulations and orders of the Federal Government and the various departments and agencies thereof or (iii) any act or omission of Seller, its officers, directors, shareholders, partners, agents, employees, subcontractors, successors and permitted assigns.

- 9. Inspection And Rejection:** All goods and materials are subject to Buyer's right of inspection and rejection within a reasonable time after arrival at the ultimate destination. When goods or materials are made to Buyer's instructions, specifications or other requirements furnished by Buyer, or prepared by Seller specifically for Buyer, Buyer may inspect such goods and / or materials at Seller's facility of business and or place of manufacture, during and after such production, without waiving its right subsequently to reject or revoke acceptance of such goods and / or materials for undiscovered or latent defects. Seller, at its expense, shall furnish, or cause to be furnished, facilities and assistance reasonably necessary to ensure the safety and convenience of each inspection.

If upon inspection any goods or material are found by Buyer to be unsatisfactory, defective or of inferior quality or workmanship or otherwise fail to meet the warranties provided in this Purchase Agreement, Buyer may, in addition to any other legal or equitable rights provided by law, reject or refuse to accept such goods or materials and may return such goods or materials to Seller at Seller's risk and expense. Payment for goods shall not be construed to be an acceptance thereof. Seller shall promptly reimburse Buyer for all expenses resulting from or associated with Buyer's rejection of goods or materials.

- 10. Cancellation:** Buyer by written notice to Seller, without waiving any other legal rights it may have, reserves the right to cancel the whole or any part of this Purchase Agreement or any purchase order without charge or to postpone delivery of any of the goods or materials, or postpone performance of any services, covered by this Purchase Agreement if:
- A. Seller fails to make any delivery within the time specified in the applicable purchase order.
  - B. Seller fails to perform or breaches any of the terms of this Purchase Agreement or so fails to make progress as to endanger performance of this Purchase Agreement in accordance with its terms;
  - C. Seller becomes insolvent or the subject of a bankruptcy proceeding;

- D. Seller becomes subject of any proceedings under any law relating to bankruptcy or the relief of debtors or the appointment of a receiver or trustee for Seller or the execution by Seller of an assignment for the benefit of creditors, and any such proceedings, appointment or assignment is not vacated or nullified within sixty (60) days.
- E. Goods or materials purchased are not in accordance with approved sample specifications, instructions or requirements or are defective in workmanship or quality, or not otherwise satisfactory to Buyer.

Buyer shall not be responsible for any cost incurred by Seller due to Buyer's cancellation hereunder in accordance with (A)-(E) above, including, but not limited to, Seller's costs for goods or materials processed by Seller but not accepted by Buyer. In the event of any such cancellation, Buyer, without prejudice to any other legal or equitable remedies available to it by law or agreement, shall have the right to:

- A. Refuse to accept delivery of any and all goods and materials covered by this Purchase Agreement and to return such goods or materials to Seller at Seller's risk and expense;
- B. Return to Seller any and all goods already delivered and accepted and to recover from Seller all payments made by Buyer for such returned goods;
- C. Recover any payments made by Buyer to Seller for undelivered or returned goods or materials.
- D. Purchase goods or materials elsewhere and to charge Seller with any resultant losses, including, but not limited to, consequential and incidental damages.

In addition, Buyer may terminate all or part of this Purchase Agreement for its convenience and without cause upon written notice to Seller, provided that Buyer shall pay to Seller the value of any goods or materials delivered and accepted by Buyer and / or services rendered by Seller to Buyer prior to such termination.

- 11. Utilization and Subcontracting:** Seller shall not transfer, retain, subcontract or allow any other provider to service this Purchase Agreement without Buyer's prior written consent. Should this occur, Seller shall remain fully accountable for the quality of goods and materials including delivery schedule and Seller shall remain fully liable for the performance of any services by its subcontractors or other providers and their acts and omissions.
- 12. Drawings and Specifications:** If requested, Seller shall submit drawings or specifications to Buyer for approval. Seller shall not use or permit others to use such drawings and specifications for any other work.
- 13. Compliance With Laws:** In the performance of this Purchase Agreement, Seller shall comply with all applicable federal, state and local laws, rules, regulations and executive orders, including, but not limited to, those that prohibit discrimination in employment.
- 14. Buyer's Premises:** If Seller enters Buyer's premises, Seller shall:
  - A. Abide by all of Buyer's site policies, practices and rules;
  - B. Indemnify and hold harmless Buyer, its affiliates and their officers, directors, shareholders, agents, employees, and successors and assigns from and against all liabilities and losses of any kind, including costs, expenses and attorneys fees, due to injuries (including death) or damage to persons or property occurring to or caused by Seller, its officers, directors, shareholders, partners agents, employees, subcontractors, successors or permitted assigns. This indemnity includes such injuries or damages caused by the sole gross negligence or willful misconduct of Seller.
  - C. MAINTAIN THE FOLLOWING MINIMUM INSURANCE:
    - I. Workers Compensation- \$1,000,000, each occurrence.
    - II. Employers Liability- \$ 1,000,000 each occurrence;

- III. Comprehensive General Liability, including contractual, liability coverage, (Bodily Injury and Property Damage) - \$ 1,000,000 each occurrence combined single limit;
- IV. Comprehensive Automobile (Bodily Injury and Property Damage) \$ 1,000,000 each occurrence, combined single limit. Seller shall furnish Buyer certificates confirming such coverage immediately upon request.

- 15. Price Competitiveness:** Seller warrants that prices specified under this Purchase Agreement are not higher than those charged to other customers for the same type of goods or materials in similar or lesser quantities or the same type of services. Seller further agrees that the prices charged for the goods, materials or services covered by this Purchase Agreement are not in violation of any government price regulation. Buyer may inform Seller if it can purchase goods or materials of like quality at a lower delivered cost or similar services at a lower cost than under this Purchase Agreement. Seller shall have fifteen (15) days to inform Buyer if it will meet such lower cost for an equal quantity of goods, materials or services. If it does not, Buyer may purchase such goods, materials or services from the other source and such quantity of goods or materials or such services shall be deducted from Buyer's obligation hereunder, but this Purchase Agreement otherwise shall remain unaffected.
- 16. Quantity Ordered/Forecast:** Quantities shown within purchase order(s) are estimated quantities based only on the Buyer's best known forecast. Quantities are subject to change without notice. The Buyer accepts liability for only the quantities clearly stated in the purchase order as the released quantities.
- 17. Noninfringement:** It is understood and agreed that by accepting this Purchase Agreement, Seller represents and warrants that the goods, services or materials, or use of the goods or materials, delivered hereunder do not and will not infringe or contribute to infringement of any patent or other proprietary right of others, and Seller agrees, at its sole cost and expense, to indemnify, defend, protect and save harmless Buyer, its affiliates and their officers, directors, shareholders, agents, employees, successors, assigns customers and users of its products against all actions and suits for any alleged infringement pertaining thereto except where such infringement or alleged infringement arises by reason of designs for such materials or articles originally furnished to Seller by Buyer.
- 18. Ownership:** When this Purchase Agreement covers engineering and / or designing of devices or methods or systems or other work products to be manufactured or provided pursuant to Buyer's instructions, specifications or requirements, Seller agrees, by accepting this Purchase Agreement, that all designs and inventions made in the performance of the work done pursuant to such instructions, specifications or requirements shall become the property of Buyer. Seller will promptly disclose any such designs and inventions to Buyer. Seller hereby assigns and agrees to assign any such designs and inventions, and further agrees with respect to said designs and inventions, at Buyer's cost and expense, to execute, or obtain the execution of such papers, including assignments, and to perform such acts as may be necessary to perfect ownership thereof in Buyer. Seller waives all claims against Buyer and its customers for liability with respect to rights, patent or otherwise, which Seller may have obtain, by reason of any use which may be made of the designs, machines and processes furnished or developed hereunder.
- 19. Assignability:** This Purchase Agreement shall not be assigned or transferred by Seller in whole or in part without the prior written consent of Buyer. Any such assignments or transfer by Seller without such consent shall be void. Buyer may assign this Purchase Agreement.
- 20. Setoff:** 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 under this Purchase Agreement.
- 21. Waiver:** The failure of Buyer at any time or from time to time to promptly enforce any of the provisions of this Purchase Agreement shall not be construed as a waiver of such provisions with respect to Seller's acts or failure to act to which such failure to enforce related, or to any subsequent act or failure to act, and Buyer shall have a right to enforce each and every such provision at any time.

- 22. Modification:** Except as otherwise provided in this Purchase Agreement, this Purchase Agreement shall NOT BE MODIFIED or AMENDED except in writing signed by Seller and Buyer.
- 23. Authorized Signatures:** The signature of the individual signing documents related to this Purchase Agreement on behalf of Seller is considered to be a certification that the signatory is an owner or officer of Seller or an employee who has been authorized, in writing to act as agent, on behalf of Seller. Only the Purchasing Manager or an officer of Buyer shall be authorized to sign this Purchase Agreement and any change orders or amendments or modifications on behalf of Buyer.
- 24. Governing Law:** This Purchase Agreement and the transactions contemplated hereby shall be governed by, and construed and enforced in accordance with, the laws of the State of New York without regard to its conflicts of law rules. Any controversies or claims arising from or relating to this Agreement shall be adjudicated exclusively by a federal or state court whose territorial jurisdiction encompasses the State of New York and the parties hereto consent to the jurisdiction of such courts. **THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY.** The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable to this Purchase Agreement or any purchase made hereunder.
- 25. Severability:** If any provision of this Purchase Agreement is held to be invalid, illegal or unenforceable in any respect, that provision shall be limited or eliminated to the minimum extent necessary so that this Purchase Agreement otherwise remains in full force and effect and enforceable.
- 26. Property Supplied By Buyer:** Seller will keep all property furnished by Buyer segregated and clearly marked, and Seller will maintain a complete inventory thereof. Seller assumes all risk of loss, destruction or damage to such property while in Seller's custody or control, and agrees to immediately notify Buyer of any loss, destruction or damage. Upon termination or completion of this Purchase Agreement, Seller will deliver such property as directed by Buyer, in good condition subject to ordinary wear and tear.
- 27. Proprietary Information:** All information obtained by Seller from Buyer or learned by Seller in connection with this Purchase Agreement or performance hereunder or relating in any way to Buyer's business shall be received in confidence and remain the property of Buyer, and shall be used and disclosed by Seller only to the extent necessary for the performance hereunder.
- 28. Relationship of the Parties.** The parties hereto shall each be independent contractors in the performance of their obligations under this Purchase Agreement, and nothing contained herein shall be deemed to constitute either party as the agent or representative of the other party, or both parties as joint venturers or partners for any purpose.
- 28. Noncompliance Of Supplier Requirements:** Buyer provides this detailed Purchasing Agreement to its suppliers by which Buyer conducts its purchasing and payable operations. The requirements specified herein are necessary in order for Buyer to operate in the most efficient and effective manner, and at the same time provide excellent customer service. As noted throughout this Purchasing Agreement failure to comply with one or more of the requirements may result in non-reversing administrative fees, and / or delay of payment, and / or returning the invoice to the supplier unpaid.
- 29. Credit Memos / Reimbursements:** Buyer requires 45 day reimbursement from non-routine suppliers, and credit memos from active routine suppliers for returned goods that have been invoiced. The reimbursement by check or credit memos are to be sent directly to
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- All reimbursements / credits must clearly show the entire Buyer purchase order number, and blanket release number if applicable.

**Signatures of authorized representatives of the Buyer and Seller constitute the agreement of the parties to this Purchase Agreement to be legally bound by this Purchase Agreement.**

**Seller:** \_\_\_\_\_

**Buyer:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_