



## **Chordiant Software Inc.**

# **PURCHASE ORDER TERMS AND CONDITIONS**

1. **TERMS AND CONDITIONS / RELATIONSHIP OF THE PARTIES.** These terms and conditions (collectively, these “Terms”) control the purchase of goods and services listed in this Purchase Order (this “Order”) and constitute the full and complete agreement between Chordiant Software, Inc. (“Buyer”) and you, the provider of goods or services (“Seller”) specified in this Order. Any prior offers regarding such purchase are rejected. In the event of any conflict between any provisions written by Buyer that are part of this Order, including any exhibits attached hereto, and these Terms, such written provisions shall control. The parties agree that if one or more agreements are referenced on the face of this Order, the terms and conditions of those agreements shall supercede any conflicting terms and conditions in this Order and the remaining terms and conditions of this Order shall remain in effect. There are no oral or written collateral representations, agreements or understandings except as referenced herein. Each party acknowledges that it is not entering into this Order on the basis of any representations that are not expressly contained in this Order. These Terms may not be waived or amended except in writing by Buyer and Seller. Seller shall provide goods and perform services as an independent contractor. Nothing in this Order shall be construed to constitute Seller as an agent or employee of Buyer, or imply a joint venture or principal and agent relationship between the parties.
2. **ORDER ACCEPTANCE / CANCELLATION.** Issuance of this Order constitutes an offer expressly limited to these Terms. Seller’s acceptance shall be deemed agreement to these Terms. Any unilateral modification of these Terms by Seller shall be deemed a material alteration and is expressly objected to and rejected by Buyer. Buyer reserves the right to revoke this offer at any time prior to acceptance, which acceptance shall take place only by (a) Seller’s return of an executed unmodified copy of this Order, or (b) Seller’s delivery of conforming goods to Buyer and Buyer’s acceptance thereof. Notwithstanding any provision to the contrary and in addition to any other remedy, Buyer may cancel this Order in whole or in part upon notice in the event: (a) Seller fails to make delivery at the time provided; (b) Seller fails to comply with any other term or condition of this Order or any other Order from Buyer within ten (10) days of the notice; (c) a receiver or other similar officer is appointed over any or all of Seller’s property or assets; (d) Seller files a voluntary petition in bankruptcy, or an involuntary petition in bankruptcy is filed against Seller; (e) Seller merges with or is acquired by a third party; or (f) Seller assigns, delegates or subcontracts this Order or any of its rights or obligations hereunder without prior written consent of Buyer. Buyer shall have no liability to Seller beyond payment of any balance owed for goods or services delivered to and accepted by Buyer prior to Buyer’s sending notice of termination. Buyer may terminate these Terms for any reason upon ten (10) days written notice.
3. **PRICE & PAYMENT.** Seller shall furnish goods or services in accordance with these Terms. Unless otherwise stated, the price terms contained herein include all costs or charges of any kind that will be paid by Buyer, and Buyer shall not be liable for any other costs or charges, including, without limitation, charges for inspection, packaging and shipping; and any customs charges or duties. Seller warrants that the prices to be charged for articles or services ordered herein are not in excess of prices charged to other customers similarly situated, for similar quantities of goods of like quality. Seller shall issue invoices only upon delivery of the goods or completion of services ordered by Buyer hereunder. All invoices shall be submitted to Chordiant Software, Inc. Attn: Accounts Payable, 20400 Stevens Creek Blvd. Suite 400, Cupertino, Ca. 95014. Unless different payment terms are specified on the face hereof, Buyer shall issue payment within thirty (30) days of its receipt of a correct and conforming invoice. Payment is contingent upon delivery by Seller of conforming goods or satisfactory completion of services. In no event shall Buyer be obligated to pay interest or penalties on any amounts. Any attempt by Seller to create a security interest in delivered goods is expressly rejected by Buyer and shall be without effect.
4. **CASH DISCOUNT & SET OFFS.** Discounts, if applicable, shall be calculated from the date the goods or services are received by Buyer at the destination designated in the Order. Buyer may at any time set off any amount owing from Seller to Buyer, or Buyer’s subsidiaries, against any amount due and owing to Seller or any of Seller’s subsidiaries, pursuant to this Order or any other agreement between Buyer and Seller or their respective subsidiaries or affiliates.
5. **DELIVERY, F.O.B. POINT, TITLE, RISK OF LOSS. TIME IS OF THE ESSENCE.** Delays in shipment shall be reported immediately to Buyer. Buyer reserves the right to cancel this Order in whole or in part if Seller fails to make deliveries in accordance with the terms of this Order and any agreement referenced therein. F.O.B. point shall be Buyer’s location unless different shipping terms are specified on the face of this Order. Notwithstanding any prior inspection and F.O.B. point, Seller shall bear all risk of loss until final inspection and acceptance of goods by Buyer. Seller shall also bear all risk of loss with respect to goods rejected by Buyer. Subject to inspection and acceptance, Buyer will be liable for payment only for quantities ordered and delivered. Overshipments shall be held at Seller’s risk and expense for a reasonable time waiting shipping instructions. Shipping charges for returns are at Seller’s expense. If any goods or services are defective in material or workmanship or otherwise not in conformity with the requirements of this Order, Buyer shall have the right to either reject them and to return them at Seller’s risk and expense, including transportation both ways or to require their correction.
6. **INDEMNIFICATION, LIMITATIONS OF LIABILITY.** Seller agrees to indemnify, and save harmless Buyer, its successors, assigns, and its customers from and against any and all expenses, liabilities or other losses (including attorneys’ fees and costs) arising from or by reason of goods and services covered by this Order, Seller’s acts, omissions or negligence, or any actual or claimed infringement of patents, trademarks, or copyrights, and to defend any suits based thereon, with respect to the goods and services furnished by Seller. Without limitation, such obligation to indemnify shall exist with respect to claims and demands relating to: (a) any goods; (b) any part of such goods; or (c) any combination of such goods, other hardware, and/or other software wherein such infringement would not occur but for such goods being a part of such combination, infringes on any patent, trademark, copyright, trade secret or other intellectual property right, foreign or domestic. If, as the result of an action as set forth above, the sale or use of any goods, or part thereof, is enjoined by court order, Seller shall, at its expense: (a) procure for Buyer the right to continue selling and/or using the goods, (b) replace or modify the goods with functionally-equivalent, non-infringing goods (subject to Buyer’s approval and satisfaction), or (c) return the purchase price of each unit of goods or services that Buyer is unable to ship due to the injunction. The indemnity set forth in this paragraph shall apply notwithstanding that the goods sold hereunder may have been produced by Seller in compliance with specifications furnished by

- Buyer. Buyer does not have any obligation to hold Seller harmless from any claim against Seller, its directors, officers, employees or agents, arising out of compliance with Buyer's specifications, except where the claimed infringement arises by reason of the equipment or materials furnished hereunder upon designs or drawings created by Buyer. Such obligation for Seller to indemnify shall also exist with respect to claims and demands, including, without limitation, injuries to persons or property and economic losses by reason of, arising out of, or in any way related to, in whole or in part, the goods and services covered by this Order. Any attempt by Seller to perform the following is expressly rejected and is ineffective: (a) disclaim any theory or grounds upon which Buyer, or successive purchasers of the goods and services covered hereby (collectively "Purchasers"), might recover against Seller; (b) limit its liability by means of a "Force Majeure" or similar term; (c) disclaim any kind or class of damages; (d) establish time limitation periods within which the Purchasers are obligated to assert claims against Seller. Buyer and any successive purchasers of the goods and services covered hereby retain and shall be entitled to assert all rights and claims available to them at law or equity against Seller in respect of the transactions subject to this Order.
7. **WARRANTY.** Seller warrants that: (a) all goods or services will conform to the design specifications and drawings, samples or other descriptions referred to in this Order; (b) Seller has good title to the goods and has conveyed such title to Buyer free and clear of all liens and encumbrances; (c) Seller possesses, and shall maintain insurance with coverage of at least the amount Buyer shall pay Seller for the goods and services; (d) all services performed under this Order are performed in a good and worker like manner that equals or exceeds the applicable industry standards; and (e) the goods are merchantable and fit for their intended purpose and are free from defects in design, material and workmanship. Seller acknowledges and affirms that Buyer has disclosed to Seller the purposes for which the goods are intended, and that Buyer is relying on Seller to furnish suitable goods. Such warranties shall survive any inspection, delivery, acceptance, or payment by Buyer of the goods or services, for a period equal to the longer of the date set forth in the manufacturer's warranty or twelve months following date of shipment, unless otherwise specified herein. Such warranties shall run to Buyer, its successors, assigns, customers or users of its products.
  8. **COMPLIANCE WITH LAWS.** Seller shall comply with all applicable laws and regulations.
  9. **BUYER'S PROPERTY / PRESS RELEASES.** All materials including tools, furnished or paid for by Buyer unless otherwise specified herein, shall be the property of the Buyer, shall be subject to removal at any time without additional cost upon demand by the Buyer, shall be used only in filling orders from the Buyer, shall be kept separate from other materials or tools, and shall be clearly identified as the property of the Buyer. Seller assumes all liability for loss or damage, with the exception of normal wear and tear, and agrees to supply detailed statements of inventory promptly upon request. Seller may not issue press releases, endorsements or other public documents that reference Buyer or include statements by Buyer without the prior written consent of Buyer.
  10. **TAXES.** Except as may be otherwise provided in this Order, the contract price shall include all applicable Federal, State and local taxes of any kind in effect on the contract date.
  11. **ASSIGNMENT OF RIGHTS.** Seller shall not delegate any duties nor assign any rights under this contract without the written consent of Buyer and no such attempted delegation or assignment shall be binding on Buyer. Seller hereby transfers and assigns to Buyer any and all intellectual property rights created as a result of performing Services for Buyer.
  12. **CHANGES.** Buyer may at any time make changes in delivery schedules, drawings, quantities, designs and specifications but no change will be allowed unless authorized by the Buyer in writing. Buyer may also make changes in the method of shipping, packing and place of delivery by any means of communication. If such change affects cost or delivery schedules of this Order, an equitable adjustment shall be made, provided Seller makes a written claim therefore within 15 days from the date of Buyer's notification.
  13. **INSOLVENCY.** In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, including any proceeding under the applicable Federal or State Bankruptcy law currently in effect, or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of creditors or of a receiver, Buyer shall be entitled to elect to cancel any unfilled part of this Order without any liability whatsoever.
  14. **TITLE SPECIFICATION.** Buyer shall at all times have title to all drawings and specifications furnished by Buyer to Seller and intended for use in connection with this Order. Seller shall not disclose such drawings and specifications to any person, firm or corporation other than Buyer's or Seller's employees or subcontractors. Seller shall, upon Buyer's request, promptly return all drawings and specifications to Buyer.
  15. **OBJECTIVE QUALITY EVIDENCE.** Seller agrees to maintain objective quality evidence for Goods in accordance with ISO 9002 quality assurance testing standards if applicable. Seller shall supply this evidence to Buyer upon request.
  16. **POTENTIAL DELAYS.** Seller shall notify Buyer immediately if Seller obtains knowledge of any material shortage, governmental regulation, labor dispute or other event or impediment that could result in delay in delivery.
  17. **O.S.H.A.** Seller warrants that all materials or services delivered hereunder shall comply with all provisions of the Williams-Steiger Occupational Safety and Health Act including all current rules and regulations.
  18. **REMEDIES.** The rights and remedies provided by Buyer herein shall be cumulative and in addition to any other rights and remedies provided by law or equity (or provided under the Uniform Commercial Code).
  19. **WAIVER.** All waivers must be in writing. Waiver of breach of any provision of this Order shall not constitute waiver of full compliance with such provision nor shall it be a continuing waiver or a waiver of any other breach.
  20. **GOVERNING LAW / VENUE / CONSENT TO JURISDICTION.** This Order shall be interpreted and governed in all respects according to the laws of the State of California without regard to its conflicts of laws principles. The parties submit to the exclusive jurisdiction of the Superior Court of Santa Clara County and the United States District Court for the Northern District of California. Seller consents to the personal jurisdiction of such courts over Seller for all purposes.
  21. **ETHICAL PRACTICES.** Seller understands that Buyer maintains policies stating that its employees and their immediate families may not give or accept a gift (including discounts) that might indicate the intent to improperly influence the business relationship between Buyer and any supplier, customer, partner, distributor or other third party. Seller understands that Buyer's employees should never accept a gift (including any discount) that is given to create a sense of obligation on the employee's part with the intention of changing their behavior, and that Buyer's employees may never receive any gift from a competitor of Buyer. To the extent the policies are described above, Seller agrees to take no action that would violate these policies. If Seller has any questions regarding these policies, it should contact: Chordiant VP and General Counsel Derek Witte at [Derek.Witte@chordiant.com](mailto:Derek.Witte@chordiant.com).