



ADA TECHNOLOGIES INC. PURCHASE AGREEMENT

Ada Technologies Inc., an Ohio corporation having its principal office and place of business at 805 East North Avenue, Ada, Ohio 45810, U.S.A. ("ATI"),

and: _____ a(n)

_____ (insert state or country) corporation/sole proprietorship/partnership/limited liability company (circle appropriate entity) having its principal office and place of business at

_____ ("Seller"), in consideration of the mutual covenants and agreements contained herein, and intending to be legally bound, hereby agree as follows:

1) General.

- A. This purchase Agreement (the "Agreement") , together with the agreements, specifications or other documents noted herein or attached hereto, which are hereby incorporated herein, constitutes the complete and final agreement of ATI and Seller and may not be added to, modified, superseded or altered except by written agreement or modification signed by ATI and Seller, notwithstanding any additional or other proposals or terms and conditions which may now or in the future appear on Seller's invoices, quotations, acknowledgements or other forms (notification of objection thereto being given hereby), and notwithstanding any acceptance of shipments, payments or other similar acts of ATI.
- B. This Agreement shall cover the purchase by ATI from Seller of goods, material, services and/or labor (all, whether or not physical property or goods, shall be referred to herein as the "Goods").

2) Orders.

- A. Each contract for the purchase of Goods shall be entered into by ATI's issuance to Seller of a purchase order for same ("Order"). Acceptance of any Order is expressly limited to the terms of the Order and this Agreement and any additional or different terms are objected to without further notification by ATI. Each Order will be a separate and individual contract and any two or more Orders shall not be deemed to be part of an installment contract but, rather, shall be separate and severable.
- B. Each Order will be delivered to Seller by ATI by mail, facsimile, email, hand (personally) or telephonic means, and will be confirmed upon receipt by Seller. In the absence of express confirmation, any such Order will be deemed to have been accepted by Seller upon Seller's first shipment or other tender thereunder or upon Seller's failure to deliver written objection to ATI within five days after Seller's receipt of the Order, whichever first occurs.
- C. ATI shall have the right at any time to change any Order. If any such change is expected to result in either additional or reduced costs to Seller, Seller shall immediately inform ATI of such fact and ATI and Seller will agree upon an adjustment in the price or other terms of the Order to reflect the change. Seller shall make no change in the Goods without ATI's prior written consent.

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3) Price, Taxes, and Payment.

- A. *ATI and Seller will agree upon the price(s) applicable to the Goods, which price(s) will be subject to increase only with 60 days' prior written notice.*
- B. *Unless otherwise specified, all prices and Orders shall be F.O.B. Buyer's plant and inclusive of all applicable taxes, excises, duties, importation fees and other governmental impositions on or related to the production, sale or transportation of the Goods.*
- C. *ATI and Seller will cooperate upon request in obtaining and furnishing to each other such certificates or other evidences of inapplicability of or exemption from any sales, excise or other taxes to which either may be entitled.*
- D. *Unless otherwise agreed, the payment terms for the Goods shall be net 30 days.*

4) Delivery, Transportation and Inspection.

A. Time and quantity are the essence of this Agreement and any Order. Unless otherwise specified, delivery times specified are the times of delivery of the Goods at ATI's plant. Seller shall prepare the Goods in an appropriate and suitable manner providing protection and preventing damage to the Goods while in transit. Packaging methods and techniques are to be approved by ATI and Seller within a form supplied by ATI for all Mass Production Orders.

Transportation of any and all Orders will be agreed upon by ATI and encompass one of the following methods:

- 1) *ATI will manage the transportation method and ensure that a carrier is present at Seller at an agreed time between Supplier and ATI. ATI will be responsible for the cost of this transportation.*
- 2) *Seller shall pack, label, mail and/or ship all Goods in an appropriate and suitable manner arranged by Seller, and agreed by ATI, which will ensure the lowest transportation costs for which ATI is responsible.*
- 3) *Seller will manage the transportation and be responsible for payment of the Goods to ATI.*

In the absence of specific instructions contained in any Order, the Seller shall consult with ATI for the best method of transportation.

Seller will inform ATI immediately of any occurrence which will or is expected to result in any missed delivery at any time or in any quantity not specified in any Order and of the corrective measures which Seller is taking to minimize the effect of such occurrence. In the event of tendered delivery not in compliance with the times and quantities specified in the Order, unless caused by an excusable delay as defined below,

- 1) *unless ATI has given notice of cancellation as to the late Goods, Seller will ship such Goods at the earliest possible moment and by the fastest practicable and available means, but without any increase in any shipping costs to ATI and*
- 2) *all charges and expenses, including production changes, additional labor, additional transportation charges and cover, of and resulting from Seller's failure to make delivery in compliance with the times and quantities specified in*



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the Order shall be borne and paid by the Seller.

5) Excusable Delays.

Either ATI or Seller may suspend performance during the occurrence of an excusable delay, which shall mean and include any delay not occasioned by the fault or negligence of the delayed party and which results from acts of God or public enemy, restrictions, prohibitions, priorities or allocations imposed by governmental authority, embargoes, floods, fires, typhoons, earthquakes, epidemics, unusually severe weather, delays of similar nature or governmental causes, and strikes or labor disputes. An excusable delay does not include lockout, shortage of labor, lack of or inability to obtain Goods or raw materials, fuel or supplies, or any other industrial disturbance.

6) Seller's Warranties.

A. Seller warrants that the Goods will be in compliance with all accepted models and samples and all written affirmations of fact, promises, descriptions or specifications agreed upon by Seller and ATI; will comply with all applicable federal, state and local laws, regulations, rules, ordinances, orders and the like, including but not limited to those relating to the protection of the environment and/or the handling, use, labeling, transportation and disposal of the Goods; will be free from defects in manufacture, shipping, handling and packaging; and will be free of lawful claims of all other persons.

B. In the event that any Goods are not in compliance with the foregoing warranties ATI may (without limitation or exclusion of any other right) return the defective Goods to Seller, who will refund and return to ATI its costs plus freight or (at ATI's option) repair, correct or replace the defective Goods at Seller's costs and expense.

7) Indemnity and Insurance.

A. In the event that any claims, demands or lawsuits are made or brought against ATI relating to the Goods or to Seller's performance hereunder, Seller shall hold ATI free and harmless, respond to and defend all claims and actions against ATI, pay all costs of response to and defense against any claims, demands, proceedings or lawsuits, including any attorney's fees, and indemnify and hold harmless ATI from and against any costs incurred by ATI in connection therewith.



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B. *To the extent that, in connection with the Goods or otherwise, Seller's employees, agents or other representatives ("Seller's Agents") are on or present at any premises of ATI, Seller shall be and is responsible for the acts and omissions of Seller's Agents within or about ATI's premises and agrees to indemnify and hold ATI harmless from liability for any claims or damages to property or injuries or death to persons arising out of acts or omissions of Seller's Agents and performance under any order or other actions at ATI's premises, including without limitation.*

- 1) the failure of any of Seller's Agents to comply with all applicable rules and regulations governing security, maintenance and safety at or about ATI's premises,*
- 2) any claim against ATI by or on behalf of any of Seller's Agents for injury or otherwise, or*
- 3) any claim against ATI resulting from Seller's failure to maintain worker's compensation or other public or private insurance with respect to any of Seller's Agents.*

In furtherance of the foregoing, Seller hereby expressly waives any and all statutory and/or constitutional immunity to which, but for this waiver, it might be entitled.

- 1) as an employer in compliance with the State of Ohio's worker's compensation laws or*
- 2) under any other employee benefit statutes or similar laws of any jurisdiction.*

C. *In the event of any claim, threatened claim or notification of either which may be the subject of indemnification provided by this paragraph, ATI will give Seller prompt notification thereof and provide Seller such reasonable assistance in the response and prosecution of any defense as Seller may request, at Seller's expense.*

D. *Seller shall procure and maintain insurance in amounts and coverage reasonable in the circumstances and acceptable to ATI, at Seller's sole expense, insuring against public liability, including injuries or death to persons and damage to property, arising out of or relating to the Goods or Seller's performance hereunder and shall furnish to ATI certificates of such insurance and renewals thereof upon request by ATI. Such policies shall provide for cancellation only subsequent to 30 days' prior written notice to ATI. ATI's examination of, or failure to request or demand, any evidence of insurance hereunder shall not constitute a waiver of any requirement of this paragraph. If the furnishing of the Goods involves the performance of work by Seller's Agents at property owned or leased by ATI, Seller shall furnish such additional insurance as ATI may request, but in any event, workers' compensation insurance and unemployment insurance as required by applicable law and public and automotive liability and property damage insurance.*

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8) ATI's Property.

A. *Unless otherwise specified in a separate written agreement between ATI and Seller, all tools, tooling, equipment, dies, jigs, molds, drawings, specifications and other material of every description furnished to Seller or paid for by ATI shall be and remain the sole property of ATI, shall be plainly marked and clearly identified by Seller as "Property of Ada Technologies Inc.", shall be stored separate and apart from Seller's property, shall be treated as confidential and used so as to prevent disclosure inconsistent herewith, shall not be used except pursuant to this Agreement and any Order, shall be subject to ATI's inspection at any time during business hours and immediate possession on demand (and Seller specifically waives, as consideration for this agreement, any lien or other possessory right with respect thereto) and shall be returned to ATI simultaneously with the termination of this Agreement. In furtherance of the foregoing, Seller will promptly cooperate with ATI in executing and/or filing any document which ATI deems necessary or appropriate to protect ATI's interest in any of ATI's property.*

Such property shall be insured in amounts equal to its full insurable replacement value at Seller's cost with loss payable to ATI and Seller. Except only reasonable wear and use, such property in the possession of Seller shall be kept at Seller's risk and Seller shall be responsible for all maintenance thereof.

B. *Any patented or unpatented knowledge or information concerning either ATI's or Seller's products, production or other methods, processes, scheduling, sources of supply, customers, marketing, or otherwise which ATI or Seller may disclose to the other attendant or incident to this Agreement shall be deemed to have been disclosed as part of the consideration hereunder and shall not be given other use and shall be retained in confidence by the party to which disclosed. To the extent such information or knowledge is represented through samples, writings, drawings or other tangibles, such items shall be returned to the disclosing party simultaneously with the termination or completion of this Agreement or at any time upon demand. Seller will give ATI specific written notice of the confidential nature of any such knowledge or information (and of any license or other agreement relating to the use or dissemination thereof) embodied in the Goods prior to delivery thereof.*

C. *In the absence of written agreement to the contrary, all inventions, products, processes, apparatus or designs, patentable or unpatentable, conceived, invented or originated by either ATI or Seller prior to the date hereof shall remain the property of the conceiving, inventing or originating party.*

9) Service Parts.

Whether or not this Agreement remains in effect, for a period of ten years, or such lesser period as to which ATI shall in writing agree, after ATI's termination of production of any item or line of the products which it manufactures, which production incorporates, uses or installs the Goods, Seller will provide ATI or ATI's nominee(s) with all necessary service and replacement parts for the Goods.

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10) Supplies.

- A. *From time to time hereunder, with Seller's concurrence, ATI may provide Seller, directly or indirectly, with material, work in process or component parts of the Goods ("Supplies"). The consideration to be furnished for the Supplies shall be established by agreement of the Parties.*

- B. *All Supplies received by Seller from any person, including ATI, will be inspected by Seller for defects and nonconformity prior to use thereof. Seller will give ATI prompt notice of any nonconformity of the Supplies or the delivery thereof to Seller which has a high rate of recurrence, impairs or may impair Seller's ability to meet its delivery schedules or comply with the Specifications, affects product safety or is otherwise serious in the opinion of Seller. If the Supplies are furnished by person(s) under agreement with ATI, Seller will follow ATI's instructions concerning the Supplies subsequent to such notice.*

- C. *Seller will not substitute any other property for the Supplies and will not sell, use or permit use of the Supplies for any purpose except the furnishing of Goods to ATI.*

- D. *Seller will store, inspect and process (and keep records thereof) the Supplies in such manner as may be requested by ATI in order for ATI to take full advantage of any provisions of any customs or duty laws or regulations under which ATI may be entitled to drawbacks, refunds or other benefits.*

11) Term and Cancellation, Additional Remedies.

- A. *ATI may terminate this Agreement or any Order or other contract hereunder in the event that the quality of any Goods does not meet ATI's requirements and remains unsatisfactory in any replacement or other similar Goods furnished for 30 days subsequent to notice by ATI of the reason(s) such Goods have been unsatisfactory.*

- B. *Either of the Parties may terminate this Agreement in the event that:*
 - 1) *The other is in default of any performance, warranty or representation hereunder and such default continues uncured for 30 days subsequent to written notice thereof; or*
 - 2) *The other is in or does default under any two consecutive Orders; or*
 - 3) *The other is subject to any administrative or governmental action or measure which suspends or terminates its business; or*
 - 4) *The other should make a general assignment for the benefit of creditors, should suspend business or commit any act amounting to business failure, or should make a voluntary assignment or transfer of all or substantially all of its property;*
or

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- 5) *The other discontinues its corporate existence or merges or consolidates with any other entity without the prior written consent (as to this Agreement) of the party entitled to terminate; or*
 - 6) *An excusable delay as described in paragraph 5 hereof suspends or substantially or materially impairs the performance hereunder of the other for longer than four months.*
- C. *In addition to its other rights and remedies hereunder, ATI may*
- 1) *terminate an Order for Goods or portion thereof if Seller is in default hereunder or under an Order for Goods and such default continues uncorrected for 15 days subsequent to notice thereof by ATI; or*
 - 2) *terminate this Agreement if a voluntary petition under any provision of Title 11, U.S.C., as amended, or any successor statute (the "Bankruptcy Code") is filed by Seller; or any involuntary petition to obtain an order for relief against Seller is filed provided it is not vacated within 45 days from the date of filing, or a receiver or custodian (as defined in the Bankruptcy Code) is appointed for Seller provided such appointment is not vacated with 45 days from the date of such appointment.*
- D. *Without reference to any cause, including causes set forth in paragraphs 11.A through 11.C., ATI may terminate any Order or other contract hereunder as follows:*
- 1) *Performance of work under any Order or other contract may be terminated by ATI at its option, in whole or in part, at any time by giving notice of termination to Seller. ATI shall have such right of termination notwithstanding the existence with respect to Seller of any of the causes or events specified in paragraph 5.*
 - 2) *After notice of termination Seller shall, unless otherwise directed by ATI, immediately terminate all work under the Order and shall, unless otherwise directed by ATI,*
 - a) *terminate all orders and subcontracts relating to the performance of the work terminated by the notice of termination;*
 - b) *settle all claims arising out of such termination of orders and subcontracts;*
 - c) *transfer title and deliver to ATI (i) all completed work which conforms to the requirements of any Order and does not exceed in quantity the amount authorized for production by ATI, and (ii) all reasonable quantities (but not in excess of amount authorized by ATI) of work in process and materials produced or acquired in respect of the performance of the work terminated which are of a type and quality suitable for producing supplies which conform to the requirements of any Order and which cannot reasonably be used by Seller in producing supplies for itself or for its other customers;*
 - d) *take all action necessary to protect property in Seller's possession in which ATI has or may acquire an interest; and*
 - e) *submit to ATI promptly, but not later than three months from the effective date of termination its termination claim.*

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- 3) Upon termination by ATI under this paragraph, ATI shall pay to Seller the following amounts without duplication:
- a) the purchase order price for all Goods which have been completed in accordance with any Order and not previously paid for;
 - b) the actual costs incurred by Seller in accordance with any Order to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting practices to the terminated portion of the Order, including the actual cost of work in process and materials delivered to ATI in accordance with subparagraph (2) of this paragraph, and including the actual costs of discharging liabilities which are so allocable or apportionable; and
 - c) the reasonable costs incurred by Seller in protecting property in its possession in which ATI has or may acquire an interest. Payments made under this subparagraph (3), exclusive of payments under this subdivision (c) shall not exceed the aggregate price specified in or with reference to any Order, less payments otherwise made or to be made.
- 4) ATI shall have access to Seller's premises and records, prior or subsequent to payment, to verify charges supporting any termination claim;
- 5) The provision of this paragraph shall not apply if any Order is cancelled or terminated by ATI as a result of causes set forth in paragraphs 11.A through 11.C

E. Unless otherwise agreed in writing, the obligations, liabilities, warranties, representations, right and remedies of each of the Parties accrued, made or incurred prior to or at the time of any termination or expiration of this Agreement shall survive such termination or expiration.

12) Miscellaneous.

- A. All covenants and agreements contained in this Agreement by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the Parties hereto whether so expressed or not, except that Seller shall have no right to assign its rights hereunder or any interests herein without the prior written consent of ATI.
- B. No amendment, modification, termination or waiver of any provision of this Agreement given pursuant or attendant hereto, and no consent to any departure by either party therefrom, shall in any event be effective unless the same shall be in writing and signed by both parties, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.
- C. The titles of the various sections of this Agreement are solely for convenience and are not part of the Agreement for purposes of interpreting the provisions hereof.



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- D. *This Agreement and any other document or instrument delivered or to be delivered hereunder are being executed and delivered in and are intended to be performed under the laws of the State of Ohio. If any provision hereof is or becomes invalid or unenforceable under any law of mandatory application, it is the intent of the parties hereto that such provision will be deemed severed and omitted herefrom, the remaining portions hereof to remain in full force and effect as written. Any provision hereof which becomes unenforceable by reason of the commencement of a case under the Bankruptcy code shall again be valid and enforceable no later than the termination of said case.*
- E. *This Agreement may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, constitute a single document.*

13) Notices.

Any notice required or permitted to be given hereunder shall be deemed to be effective when received by the party to whom delivered if delivered personally, by confirmed facsimile transmission, by prepaid overnight courier or by postage prepaid certified mail, return receipt requested, as follows:

*If to ATI: Ada Technologies Inc.
805 East North Ave.
Ada, Ohio 45810
Fax Number: (419)-634-7146
Attention: President*

If to Seller: _____

Fax Number: () _____
Attention: _____

IN WITNESS WHEREOF, the Parties hereto have caused the Agreement to be executed by their duly authorized officers or other agents as of the _____ day of _____, 20_____.

*Ada Technologies Inc.
("ATI")*

("Seller")

By _____

By _____

Its _____

Its _____