

FATIGUE TECHNOLOGY INC. PURCHASE ORDER TERMS AND CONDITIONS DATED
JANUARY 4, 2006

1. **CONTRACT.** Fatigue Technology Inc.'s, hereinafter called "FTI", purchase order, or change order to a purchase order, collectively called "purchase order", including all of its terms and conditions, together with any documents of FTI, or supplemental terms and conditions of FTI stated or referenced on the face of the purchase order, constitutes the complete, final and exclusive statement of the contract between FTI and Vendor. Acceptance of FTI's purchase order is expressly limited to these terms and conditions. Additional, different or inconsistent terms and conditions proposed by Vendor in its quotation, acknowledgement or acceptance of this purchase order or otherwise, are objected to and rejected. FTI's acceptance of goods or services from Vendor shall not be deemed to be an acceptance of any such conditional, different, or inconsistent terms and conditions. No changes or additions of any kind to the terms and conditions stated herein, or waiver of any kind shall be binding on FTI unless agreed to in writing signed by an authorized representative of FTI. Commencement of performance by Vendor shall be an acceptance of all of FTI's terms and conditions.
2. **SHIPPING AND BILLING.** Vendor agrees to comply fully with all shipping and billing instructions of FTI. Goods are to be prepared for shipment with due care but no charge shall be allowed for cartage, packing or other handling activities unless agreed upon in writing. Packing lists in duplicate and itemized invoices all bearing the purchase order number and their own identification numbers, are to be mailed or delivered to FTI on the day of shipment. A billing of lading or express receipt, bearing the purchase order number after FTI's name, shall be attached to Vendor's invoice. All goods must be shipped in time to meet delivery schedules (time is of the essence) and at the most advantageous rates unless otherwise authorized in writing by FTI. Invoices subject to cash discount shall be mailed on the day they are dated and, if not, the discount period begins on the day received by FTI's purchasing department.

If a billing of lading or express receipt is not attached to the invoice, the discount period shall begin when documents are received by FTI's purchasing department. All expenses incurred by Vendor's failure to furnish necessary documents shall be charged to and paid by Vendor. FTI shall have no liability for goods delivered to it which are in excess of quantities specified in delivery schedules and reserves the right to return at Vendor's risk and expense all goods received by it in advance of the wanted date for subsequent delivery on the wanted date. Vendor shall bear all risk of loss or damages to all goods ordered until they are actually received by FTI.
3. **PRICE.** Vendor warrants that the prices quoted to FTI are the lowest that these or similar goods or services are sold by Vendor to others and that they are complete and that no additional charges of any type shall be added without FTI's express written consent in advance. Vendor agrees that any price reduction for these or similar goods or services after placement of this purchase order but prior to payment will be applicable to this purchase order.
4. **CHANGES.** FTI shall have the right at anytime prior to the complete delivery of the goods or services to make changes therein and changes in packaging, time, place and schedule of delivery, and method of transportation, and Vendor agrees to accept such changes. If any such changes cause an increase or decrease in cost or the time required for performance, and an itemized claim for adjustment is made within thirty (30) days of the notice of change, and equitable adjustment will be made and this agreement modified in writing in accordance with the adjustment.
5. **INSPECTION AND QUALITY ASSURANCE.** All goods and services ordered by FTI shall be subject before delivery to inspection, tests, and audits by FTI at reasonable times and places. Vendor agrees to provide access for representatives of FTI, a customer of FTI, or to any governmental regulatory agency, to all facilities at all reasonable times for such inspection, tests, and audits, and, at no additional cost, to provide all tools, equipment, and assistance reasonably necessary. Inspection, tests, or audits before delivery to FTI do not constitute final acceptance nor do they or any other inspecting, testing, or auditing by FTI, or failure of FTI to do so, relieve Vendor from exclusive responsibility for furnishing goods or services in full conformance with this purchase order. Vendor warrants that it has and will maintain an adequate quality assurance and/or control program for the goods or services purchase ordered and that it makes and maintains adequate authenticated quality control and/or assurance reports, records, certificates, affidavits, and the like relating to the goods or services purchase ordered. Vendor agrees that upon request, and, unless otherwise agreed to in writing, at no additional charge, it will promptly furnish authenticated copies thereof as well as applicable certificates of conformance and/or compliance acceptable to FTI at the time of or after delivery.

6. **REJECTION.** Goods and services of Vendor shall be received subject to inspection and approval by FTI after delivery. FTI may give Vendor notice of rejection or revocation of acceptance (“rejection” herein), notwithstanding any payment, passage of title, approval, prior test or inspection. No inspection, approval, test delay or failure to inspect or test or failure to discover any defect or other nonconformance shall relieve Vendor of any obligations hereunder or impair or waive any right or remedy of FTI. If it is FTI’s judgment that they do not conform with the requirements of the purchase order, FTI shall have the right to reject them and, in addition to its other rights and remedies, FTI shall have, without limitation, all of the following rights: (1) to return them to Vendor for reimbursement, credit, replacement, or corrections as FTI may direct; (2) to correct, rework, and/or replace with the additional cost to be charged to and paid by Vendor; and (3) to hold them at Vendor’s risk and expense for disposal or correction according to Vendor’s instructions. Any goods rejected by FTI that are returned to Vendor shall be at Vendor’s risk and expense with the cost of packaging, handling, inspection, examination, transportation and the like incidental thereto, to be charged to and paid by Vendor. Such goods shall not thereafter be tendered to FTI for acceptance unless the previous rejection and requirement of correction are disclosed to FTI in writing.
7. **TERMINATION.** FTI has the right to terminate this purchase order for convenience, in whole or in part, at any time upon written notice to Vendor. Unless such termination is due to default of Vendor or failure of Vendor to assure adequate performance, FTI shall pay Vendor on a pro rata basis for work completed as of the date of termination and upon such payment all equipment, materials, work-in-progress, finished goods, drawings, information, special tooling, and other things for which FTI has paid shall at FTI’s option become the property of FTI and shall be released by Vendor to FTI upon demand for pick-up and removal. The provisions of this clause are without prejudice to any other rights or remedies of FTI including those resulting from default by Vendor.
8. **CANCELLATION.** FTI shall have the right to cancel this purchase order, in whole or in part, if (1) the goods or services are in FTI’s judgment non-conforming or defective or not delivered as scheduled, or (2) if Vendor fails to comply with or fulfill any of the terms and conditions of the purchase order with FTI’s shipping and billing instructions, or (3) if Vendor’s production shutdown, regardless of reason, at such times as to reasonably cause FTI to feel insecure of Vendor’s meeting quality, quantity or delivery requirements of this purchase order, or (4) if the sale or purchase of Vendor’s business by or to another, the effect of which results in a change of plant location, plant management, or supervision, production scheduling, quality, quantity, or delivery control, or in the reasonable judgment of FTI is likely to do so, or, (5) if in FTI’s opinion the credit or ability of Vendor to perform becomes impaired, whereupon FTI shall have the continuing right to obtain the goods or services ordered from another source with any resulting increase in cost thereof charged to and paid by Vendor, all without prejudice to any other rights or remedies of FTI and in addition thereto.
9. **PAYMENTS.** Payments by FTI of an invoice from Vendor does not constitute acceptance of the goods or services covered by the invoice. If the work covered by this purchase order may give rise to mechanics’ liens or the like, payment shall not be due and the cash discount period shall not commence until Vendor has delivered to FTI a complete release of all liens arising out of the work or receipt in full covering all labor and materials for which a lien could be filled or a bond satisfactory to FTI indemnifying it against any lien.
10. **CONFIDENTIALITY.** Vendor agrees not to publicize the fact that FTI has contracted with Vendor and not to disclose any details or other information about the purchase order without FTI’s written permission. Unless otherwise known to the public, all information disclosed by FTI to Vendor is confidential and proprietary, and, except for the purpose of performing this agreement, Vendor agrees that it shall not be disclosed, use, published or furnish said material to any third party, subcontractors, or others without prior written consent of FTI. All things (such as drawings, documents, etc.) containing such information are the property of FTI and are to be delivered to it upon demand. If Vendor has been given access to FTI’s manufacturing plant to assist in fulfilling this purchase order, to not disclose, reproduce, or publish any confidential methods, processes, or information thereby learned. Vendor agrees that no information disclosed by it to FTI shall be confidential unless due notice thereof is given in advance to and accepted by FTI in writing.
11. **WARRANTIES.** Vendor warrants that all goods and services furnished under the purchase order will conform to applicable specifications, instructions, drawings, data, samples, standards, and regulations, will be merchantable, of best quality, material and workmanship and free from all defects, will be as described and advertised and fit for the intended purposes, and will be free from all liens and encumbrances. These warranties are in addition to all other warranties, expressed, implied or statutory. Vendor shall indemnify,

defend and hold FTI fully harmless from any breach of these warranties and this shall be without prejudice to any other rights or remedies of FTI. Limitations on FTI's remedy (or disclaimers of warranties) in documents of Vendor, or otherwise, shall not be effective and are rejected. All warranties and all provisions of this clause shall survive inspection or acceptance of payment for, and use of the goods or services ordered and completion, termination, or cancellation of the purchase order, and shall run to FTI, its customers, successors, and assigns, and to users of the goods or services.

12. **FATIGUE TECHNOLOGY INC.'S PROPERTY AND PARTS.** All property of any kind supplied by or paid for by FTI shall be and remain FTI's property and Vendor agrees to be accountable for it and to maintain it in good condition and repair except to the extent that it is integrated into goods furnished by Vendor to FTI under this purchase order. Parts of FTI that have been or are to be processed by Vendor are consigned to Vendor for the work specified and remain FTI's property. Property and parts of FTI shall not be used for any purpose except to satisfy this or other purchase orders of FTI to Vendor. All FTI's property and parts while in Vendor's custody or control shall be held at Vendor's risk, free of all liens, encumbrances, or security interests of Vendor or third parties, and shall be kept insured by Vendor at Vendor's expense in an amount equal to replacement cost with loss payable to FTI. Vendor agrees to hold harmless, defend, and indemnify FTI against all loss or damage to such property or parts against claims of loss or damage arising out of such property or parts while they are in Vendor's custody or control. All property and parts are subject to removal by FTI at any time and to return upon FTI's request.
13. **INDEPENDENT CONTRACTOR.** Vendor is and shall remain an independent contractor. No employee, agent, or representative of Vendor or its subcontractors shall be deemed to be an employee of FTI. Vendor shall provide all safeguards and take all necessary precautions in connection with work and services performed by or for it relating to this purchase order to prevent the occurrence of any accident, injury, death, loss, or damage to any person or property and shall be solely responsible therefore. Vendor warrants that all work and services relating to this purchase order will be done in a safe, proper, and workmanlike manner and in compliance with all applicable codes, regulations, laws, standards and specifications concerning safety, performance, and otherwise and, without limitation, including work and services on or to premises controlled by FTI and to or with property or parts of FTI. Vendor agrees to indemnify, defend and hold FTI harmless from all claims based on injury to or by Vendor's employees, agents, or representatives or those of its subcontractors.
14. **INDEMNIFICATION.** Vendor shall defend, indemnify, and hold harmless FTI, its officers, employees, agents, representatives, customers, and users of Vendor's goods and services from and against all demands, claims, damages, loss, or liabilities of every kind and nature (including attorney fees and recall costs) based upon any allegations of, or resulting from, any defect or non-conformity in the goods or services purchased by FTI, or any default or breach of this purchase order by Vendor, or any act or omission of Vendor, its agents, employees, or representatives, or those of its subcontractors. Vendor agrees to indemnify, hold harmless, protect and defend FTI, its successors and assigns, its customers and the users of its products against all suits and from all claims, demands, judgments, settlements, costs, losses, damages, and attorney fees for actual or alleged infringement of patents, trademarks, copyrights, trade secrets, or other actual or alleged rights of third parties in connection with the goods or services of Vendor, provided that they are used as normally intended and are not made or performed to FTI's own specifications. All obligations of Vendor to indemnify, hold harmless, protect and defend are in addition to warranty obligations and all other rights or remedies of FTI and survive acceptance and use of the goods or services, payment, and completion, termination, or cancellation of the purchase order.
15. **INSURANCE.** Vendor agrees at its own expense to maintain insurance in kinds and amounts deemed reasonable by FTI and to submit adequate certificates of insurance coverage when requested by FTI. Without limitation, Vendor shall maintain public liability insurance, including products liability, completed operations, contractor's liability and protective liability, automobile liability insurance (including non-owned automobile liability), comprehensive general liability, workmens' compensation and employee's liability insurance, that will adequately protect FTI against all demands, claims, damages, loss, liabilities, or expenses (including attorney fees) for which Vendor is obliged to indemnify FTI. If Vendor, either as principal or by agent or employee, enters upon the property of FTI in order to do any work, Vendor agrees to maintain the following types of insurance coverage: (1) worker's compensation insurance or qualification as a self-insurer to satisfy the laws of the state in which the work will be performed; (2) employers' liability insurance for bodily injury per accident with limits of not less than \$500,000 and bodily injury by disease with limits of not less than

\$500,000 per policy; (3) commercial general liability insurance for personal injury and property damage, including contractual liability insurance, with combined limits of not less than \$1,000,000 per occurrence; and (4) automobile liability insurance for personal injury and property damage with combined limits of not less than \$1,000,000 per occurrence. Vendor's worker's compensation insurer or Vendor, if self-insured, agrees to waive all rights of subrogation against FTI except for claims caused by FTI's sole negligence. Also, Vendor will name FTI as an additional insured on its commercial general liability and automobile liability policies. Vendor's insurance will be primary without right of contribution of any other insurance carried by or on behalf of FTI.

16. **FORCE MAJEURE.** FTI reserves the right to cancel the purchase order in whole or in part or to delay delivery or acceptance for causes beyond its control. At FTI's request, Vendor will hold the goods or services pending FTI's instructions, and FTI shall be liable only for a reasonable increase in Vendor's direct costs due to such holding.
17. **COMPLIANCE WITH LAWS.** Vendor agrees to ascertain and comply with all federal, state and local laws, regulations, and orders applicable to the production, sale, and delivery of the goods and services covered by this purchase order, including, but not limited to, those pertaining to the United States Export Controls. Upon request, Vendor will furnish FTI with certificates of compliance with them. Vendor shall certify that the goods or services covered by its invoices are produced and/or rendered in accordance with the Fair Labor Standards Act of 1938, as amended. Unless exempted, Vendor also certifies that they shall be produced in compliance with all applicable non-discrimination laws, regulations, and orders, including those relating to the provisions of Executive Order 11246, as amended by Executive Order 11375 (Equal Employment Opportunity), 38 USC Chapter 42, 4212 (Vietnam Era Veterans Readjustment Assistance Act), Section 503 of the Rehabilitation Act of 1973 (Handicapped Regulations), and the implementing regulations found at 41 CFR 60-1 & 2, 41 CFR 60-350, and 41 CFR 60-741, respectively, are hereby incorporated by reference. Vendor warrants that the goods or services delivered to FTI comply with all applicable provisions of the Occupational Safety and Health Act and applicable regulation under the act and upon request, agrees to provide FTI with all explanatory and factual information needed by it to verify such compliance and to enable FTI to comply therewith and with any other laws and regulations applicable hereto. Vendor further warrants compliance, where applicable, and without limitation, with all orders, standards, and regulations of the National Highway & Transportation Safety Administration, Federal Aviation Administration, Environmental Protection Administration, Food and Drug Administration, Consumer Product Commission, and Occupational Safety & Health Act Administration.
18. **TOXIC AND HAZARDOUS SUBSTANCES.** Vendor warrants: (1) that any chemical or substance supplied to FTI for this purchase order is on the Toxic Substance Control Act inventory or that the premanufacture notice requirements thereof have been satisfied and the chemical or substance is lawfully available for sale and use; (2) that chemicals or substances supplied by it will be properly packaged and will have all appropriate warning labels, instructions for use, and notices, and if supplied in bulk it will give FTI's supply of such warning labels, instructions, and notices for use in FTI's plant; (3) that it will supply with or before delivery and at any time upon FTI's request, all information known to it with respect to potential hazards involved in the handling, use, storage, disposal, or transportation of the chemicals or substances, and all data on the possible toxic or harmful effects and what precautions should be taken to eliminate or reduce risks to a minimum; (4) that it will ascertain and furnish all information needed by FTI to comply with all safety-related laws and regulations (including, without limitation, those relating to applicable right-to-know laws and occupational safety and health acts), and with laws and regulations regarding composition, ingredients, or otherwise, including upon written request promptly furnishing to FTI a list of all ingredients therein and necessary the amounts thereof and thereafter information concerning and changes in such ingredients. At FTI's request, Vendor agrees that it will accept the return of unused toxic or hazardous chemicals or substances furnished under this purchase order; and (5) that the metal delivered under this purchase does not contain any materials regulated as radioactive materials under Federal or State law or regulations. Supplier agrees to indemnify and hold FTI harmless from any and all claims, demands costs, and expenses (including reasonable attorney's fees), resulting from or arising under, in whole or in part a breach of the foregoing warranty. Vendor agrees to be responsible for proper removal and disposal of any such materials brought to FTI and to pay the costs of any necessary clean up.

19. **FATIGUE TECHNOLOGY INC.'S WASTE MATERIAL.** If the purchase order is for removal, transportation, treatment, storage, and/or disposal of waste material of FTI (including hazardous waste), Vendor acknowledges that it is an independent contractor and warrants that it has the proper knowledge, skill, equipment, and facilities required for the lawful, safe and proper handling thereof, that it will be handled in a lawful, safe and proper manner, and that all government laws, regulations, and orders as well as reasonable safety precautions relating thereto will be ascertained and complied with and that in addition to any other remedies to which FTI is entitled to by law or otherwise it will indemnify, defend, and hold FTI harmless from all liabilities, claims, penalties, settlements, consequences, and damages, including attorney fees, arising out of Vendor's non-compliance with this warranty. Unless otherwise specified by FTI, or prohibited by law, all right and title to such waste material and interest therein shall automatically pass to and vest in Vendor and it shall become the property of Vendors as soon as picked up or received by Vendor. Vendor absolves, releases, and discharges FTI from all claims and liability to Vendor arising in any way out of the waste material except for liability based on breach by FTI of the terms and conditions of the purchase order.
20. **ASSIGNMENTS AND SUBCONTRACTING.** No part of this purchase order or payments to be made by FTI may be assigned or subcontracted without prior written approval of FTI. Such approval shall not relieve Vendor of any of its obligations under this purchase order, or otherwise, and it shall remain fully responsible for compliance with all the terms and conditions.
21. **NOTIFICATIONS.** Vendor agrees to immediately notify FTI of any actual or possible safety problems with goods or services furnished by it Vendor also agrees to give FTI reasonable advance notice of potential material shortages, labor disputes, insolvency or other matters that might delay or interfere with its performance.
22. **LIMITATION ON FATIGUE TECHNOLOGY INC.'S LIABILITY.** In no event shall FTI be liable for consequential, incidental, or special damages of any kind or for damages in excess of the price allowable to the portion of the goods or services on which the claim is based. Action on any claim against FTI must commence within one year after the cause of action has accrued.
23. **LITIGATION.** In the event of any litigation resulting from alleged failure to perform any term or condition of this purchase order, all costs and expenses, including but not necessarily limited to, attorney's fees and arbitration costs both before and after commencement of litigation, will be awarded to the prevailing party by the court. The purchase order shall be governed by and construed in accordance with the laws of the state of Washington. Vendor consents to venue of any such action to be in King County, Washington.
24. **OTHER PROVISIONS.** The provisions of this purchase order set forth the entire agreement between FTI and Vendor. Provisions of the State of Washington Uniform Commercial Code apply to the entire agreement and to both goods and services of Vendor. FTI's failure to assert any right is not a waiver of it or any other right. Time is of the essence. All money due to Vendor is subject to deduction or set-off by FTI to cover any counterclaim arising out of this or any other transaction with Vendor. If the development of goods or the services performed by Vendor and paid for by FTI under this purchase order result in patentable, copyrightable, or proprietary property, all rights, title, and interest thereto shall belong to and be assigned to FTI, unless otherwise specified in writing. The remedies provided herein for Fatigue Technology Inc. are cumulative and in addition to any other remedies provided in law or equity or by statute.

Revision date: **January 4, 2006**