

STANDARD TERMS AND CONDITIONS

Last update: 4/1/2008

1. **Acceptance.** The purchasing party, pinta acoustic, inc., shall be hereinafter known as the "buyer". The "seller" shall be the party named on this Purchase Order, or to whom the order is given, and/or who is providing materials, products or services to the buyer. Therefore, this Purchase Order constitutes the buyer's offer to seller, and becomes a binding contract on the terms and conditions set forth herein, including those on the reverse side hereof, when it is accepted by the seller either by acknowledgement or commencement of performance. None of the terms and conditions contained in the buyer's Purchase Order may be added to, modified, superseded or otherwise altered except by written instrument signed by an authorized representative of the buyer and each shipment received by the buyer from seller shall be subject to the terms and conditions as set forth in this Purchase Order, except as any may be added to, modified, superseded or otherwise altered in accordance with the terms of this paragraph, notwithstanding any terms or conditions that may be contained in any acknowledgment, invoice or other form of seller and notwithstanding buyer's act of accepting or paying for any shipment or similar act of buyer.
2. **Packaging and Shipping.** Seller shall pack or otherwise prepare all articles for shipment so as to secure the lowest transportation rate, meet carrier's requirements and safeguard against damage from weather and transportation. The buyer reserves the right to charge seller for any transportation or replacement costs resulting from seller's failure to comply with shipping instructions. No charge will be allowed for packaging, crating or carriage, unless stated in this Purchase Order. Each container must be labeled showing the Purchase Order Number and a packing sheet showing Purchase Order Number and Part Numbers must be included in at least one package marked "Packing Slip Enclosed."
3. **Taxes.** Any federal, state or local, sales, use or similar tax MUST be separately stated and itemized. It is understood that unless such taxes are separately stated and itemized, no such taxes are included in the amount billed. Tax exemption certificates acceptable to the taxing agency or other evidence of exemption will be furnished in lieu of payment of any such taxes so invoiced.
4. **Risk of Loss.** All risks whatsoever to the goods to be delivered pursuant to this Purchase Order shall be assumed and borne by the seller until the goods are actually received at buyer's plant.
5. **Inspection.** All goods and material shall be received subject to buyer's inspection and rejection. Defective goods or goods not in accordance with buyer's specifications will be held for seller's instruction and at seller's risk and, if seller requests their return, will be returned at seller's expense. No goods returned as defective shall be replaced without a new Purchase Order. Payment prior to inspection shall not constitute an acceptance of goods under this Purchase Order, nor will acceptance remove seller's responsibility for latent defects.
6. **Excusable Delays.** Except with respect to default of subcontractors, seller shall not be liable for delays or defaults in deliveries due to causes beyond its control and without its fault or negligence. If at any time seller has reason to believe that deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay shall be given immediately to buyer. Any delay due to default of a subcontractor will be excusable if beyond the control and without default or negligence of both seller and its subcontractor and if seller establishes that it could not obtain supplies or services from any other source

in time to meet the delivery schedule.

7. **Warranty.** Seller warrants that materials and goods will conform to drawings, samples or other description furnished to or by the buyer, or, if not ordered to specifications, will be fit and sufficient for the purpose intended, and that all materials and goods will be merchantable, of good material and workmanship, and free from defects. Such warranties, together with seller's service warranties and guarantees, shall survive inspection, test, acceptance of, and payment for the materials and goods and shall run to pinta acoustic, inc., its subsidiaries, successors, assigns and customers. Acceptance of this order shall constitute seller's agreement to indemnify and hold the buyer harmless from all claims, liability, loss, damage and expense incurred or sustained by the buyer by reason of any breach of any warranty hereunder. Except for latent defects, fraud or such gross mistakes of seller as amount to fraud, notice of any defect or nonconformity will, where possible, be given by buyer to seller within one (1) year after delivery, or one (1) year after receipt of satisfactory qualification test reports, if required hereunder, whichever is later. The buyer may, at its option, either return for refund or require prompt correction or replacement of the defective or nonconforming goods or part thereof. Return to seller of any defective or nonconforming goods and delivery to the buyer of any corrected or replaced articles shall be at seller's expense. Defective or nonconforming goods shall not be corrected or replaced unless specified on buyer's written order. Goods required to be corrected or replaced shall be subject to the provisions of this clause and the clause hereof entitled "Inspection" in the manner and to the same extent as goods originally delivered under this Purchase Order, but only as to the corrected or replaced part or parts thereof. Seller warrants that the prices of the items set forth herein do not exceed those charged by the seller to any other customers purchasing the same or like items in like or smaller quantities. In the event seller makes a price reduction prior to shipment, the reduced price shall apply to this order. The foregoing warranties are in addition to any warranty implied by fact or law.
8. **Trademark, Patent and Copyright Indemnity.** To the extent the goods covered by this Purchase Order are not manufactured pursuant to design originated by the buyer, seller agrees to indemnify buyer and hold it harmless from and against all liability, loss, damage and expense, including reasonable counsel fees, resulting from any actual or claimed trademark, patent or copyright infringement, or any litigation based thereon, with respect to any part of the goods covered by this Purchase Order, and such obligation shall survive acceptance of the goods and payment therefore by the buyer.
9. **Compliance with Applicable Laws.** Seller warrants and agrees to observe and comply with all local, state and federal laws and regulations affecting the price, production, sale or delivery of the material or services under the Purchase Order, including but not limited to, the Robinson-Patman Act, Fair Labor Standards Act and the Occupational Safety and Health Act, and seller shall indemnify and save buyer harmless from and against any liability, expense or loss resulting from seller's failure to do so.
10. **Notice of Labor Dispute.** Whenever an actual or potential labor dispute is delaying or threatens to delay seller's timely performance of this Purchase Order, seller shall immediately give notice thereof, including all relevant information with respect thereto, to buyer.
11. **Responsibility for Property.** Machinery, equipment, tools, jigs, dies, molds, patterns, drawings, specifications and samples furnished to seller by buyer shall be held by seller as upon consignment, and such similar items prepared by seller and paid for by buyer shall be the property of the buyer, and upon completion of the Purchase Order shall be delivered to the buyer or otherwise satisfactorily accounted for. Unless otherwise agreed, seller, at its expense, shall insure all such items for the reasonable value thereof against

loss or damage of any kind.

12. **Technical Information.** Seller shall not use or disclose any data, designs, or other information belonging to or supplied by or on behalf of the buyer, except in the performance of this or other orders for the buyer. Where buyer's data, design, or other information is furnished to seller's suppliers for procurement of supplies by seller for use in the performance of buyer's orders, seller shall insert the substance of this provision in its orders.
13. **Changes.** The buyer may at any time, by a written notice, make changes in the specifications, designs, or drawings, samples or other descriptions to which the goods are to conform, in method of shipment and packaging or place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Purchase Order, an equitable adjustment shall be made in the price or delivery schedule or both, and this Purchase Order modified in writing accordingly. Any claim by seller for an adjustment must be made to buyer in writing within thirty (30) days of the receipt of any such notice; provided, however, that illbruck may, in its discretion, receive and act upon any such claims so made at any time prior to final payment under this Purchase Order. Nothing in this clause shall excuse the seller from proceeding without delay to perform this Purchase Order as changed.
14. **Termination.** (1) The buyer reserves the right to terminate this Purchase Order or any part thereof, and to cancel all or any part of the undelivered portion of this Purchase Order if (i) the seller does not make deliveries as provided, (ii) the seller breaches any of the terms hereof, or (iii) any proceeding is commenced by or against seller in bankruptcy or insolvency or for appointment of a receiver or trustee or any assignment is made for the benefit of creditors. The buyer shall have no obligation to seller in respect to the cancelled portion of this Purchase Order, and buyer's liability shall be limited to payment for the delivered and accepted portion of this Purchase Order, at the rate specified on the face hereof. If, as a result of default in performance by seller, this contract is terminated in whole or in part and it is necessary to procure the material or services elsewhere, seller shall be liable for any charges which exceed the amount which would have been due seller if it had satisfactorily completed this Purchase Order. (2) buyer may terminate work under this Purchase Order, in whole or in part, at any time by notice to seller in writing. Seller thereupon immediately shall stop work on this Purchase Order or the terminated portion thereof, and notify its subcontractors to do likewise. Except where such a termination is caused by default or delay of seller, seller shall be entitled to reimbursement for its actual costs incurred up to and including the date of termination, applicable to the termination in accordance with recognized accounting principles. Termination claims shall be subject to inspection, audit and approval by buyer.
15. **Excess Goods.** Except for customary quantity variations recognized by trade practice, goods in excess of those specified will not be accepted, and such goods will be held at seller's risk. The buyer may, and at seller's direction shall, return such goods at seller's risk; and all transportation charges, both to and from the original destination, shall be paid by seller.
16. **Assignment.** Seller shall not assign or delegate to another the performance required by the acceptance of this Purchase Order without the written consent of the buyer.
17. **Waiver.** Failure of the buyer in any one or more instance to insist upon performance of any of the terms and conditions of this Purchase Order without the written consent of the buyer.

18. **Governing Law.** This Purchase Order shall be governed by the laws of the State of Minnesota and constitutes the entire agreement between buyer and seller.
19. **Remedies.** The rights and remedies of the buyer specified in this Purchase Order are cumulative and in addition to any other rights or remedies provided by law.
20. **English Language.** The seller agrees that the negotiation and agreement of the parties shall be in the English language and that all communications and notices pursuant to this purchase order shall be in the English language.
21. **Nondiscrimination in Employment.** In connection with the performance of work under this order, seller agrees not to discriminate against any employee or applicant for employment because of race, religion, color, handicap, national origin, age or sex.
22. **Entire Agreement.** This agreement sets forth the entire, exclusive and complete agreement between the parties and supersedes and replaces any and all prior agreements, understandings, promises and representations, oral or written, not specifically described herein and on pinta company documents.