

Datalogic Mobile Inc. Terms and Conditions of Purchase

UNLESS OTHERWISE EXPRESSLY PROVIDED HEREIN, THIS PURCHASE ORDER ("ORDER") CONSTITUTES THE ENTIRE CONTRACT BETWEEN THE SELLER ("SELLER") NAMED ON THE FACE HEREOF AND DATALOGIC MOBILE, INC. ("BUYER" or "DLM") COVERING THE GOODS ("GOODS") DESCRIBED HEREIN. ANY PROVISIONS IN ANY ACKNOWLEDGEMENT, FORM OR OTHER DOCUMENT PREPARED BY SELLER WHICH VARY FROM THE PROVISIONS OF THIS ORDER SHALL NOT BIND BUYER UNLESS BUYER EXPRESSLY ASSENTS THERETO IN WRITING. SHIPMENT OF ANY OF THE GOODS SHALL BE CONCLUSIVE EVIDENCE OF SELLER'S ACCEPTANCE OF ALL THE PROVISIONS HEREOF, REGARDLESS OF WHETHER SELLER HAS ACKNOWLEDGED THIS ORDER.

1. PRICE

This Order shall not be filled at higher prices than specified herein. If price terms are omitted from the face of this Order, the price of the Goods shall be the lower of: (a) the price last quoted by the Seller; (b) the last price paid by Buyer to Seller for like goods; or (c) the prevailing market price at the time of shipment. Buyer shall pay any Oregon sales or use taxes levied on the goods, and Seller shall pay all other taxes on or related to the Goods and on the shipment thereof to Buyer.

2. PRICE WARRANTY

Seller warrants that the prices specified herein for the Goods are not less favorable than those currently extended by Seller to its other customers buying the same or similar goods in equal or smaller quantities under similar circumstances. If, before delivery of the Goods, Seller reduces the prices for like goods to one or more of its customers in a status comparable to Buyer, the prices specified in this Order shall be likewise reduced.

3. INSPECTION

Buyer may inspect the Goods at Seller's plant, upon receipt or at such other time or place as it shall choose, notwithstanding its having paid for the Goods prior to inspection. Failure to inspect the Goods shall not be deemed to constitute: (a) acceptance of any defective or nonconforming Goods; or (b) waiver of any of Buyer's rights or remedies arising by virtue of any defect or nonconformance. Buyer's failure to specify any defect or nonconformance in rejecting any or all of the Goods shall not prevent Buyer from relying on such defect or nonconformance to establish a failure of Seller's performance hereunder or justify rejection.

4. PAYMENT

Unless otherwise specified in this Order, payment shall be net 60 days after, and applicable early payment discount shall be calculated from, the last day to occur of: (a) receipt of the Goods by Buyer at the point of delivery specified in or pursuant to Section 5 hereof, and (b) receipt by Buyer of Seller's invoice acceptable to Buyer. Any packing, storage, or delivery charges prepaid or payable by Buyer shall be separately stated on Seller's invoice and shall not be subject to Oregon sales or use taxes. Seller shall pay all such charges unless this order specifies otherwise.

5. DELIVERY, TITLE, AND RISK OF LOSS

(a) The terms and routing of shipment shall be as specified on the face of this Order or as the Buyer otherwise directs. Buyer may revise shipping instructions as to any unshipped Goods. Shipment shall be F.O.B. place of destination unless otherwise specified in this order. (b) When shipment is F.O.B. place of destination: title and risk of loss shall remain with Seller until delivery of the Goods to Buyer at its plant; and buyer shall not be required to assert any claims against common carriers. (c) When shipment is F.O.B. place of shipment, title and risk of loss shall pass to Buyer upon delivery of the Goods to the common carrier by Seller but only if the Goods are properly addressed, labeled, and packaged. Unless otherwise specified in the Section 5, Seller shall retain title and assume risk of loss for the Goods until they are delivered to the designated delivery point, regardless of the point of inspection, if any, and Seller shall maintain insurance against loss in transit to such point. (d) Seller shall bear all risk of loss as to properly rejected Goods two days after timely notice of rejection has been mailed by Buyer, except that Buyer shall be responsible for risk of loss as to Goods so rejected if such loss results from Buyer's negligence.

6. PACKING, MARKING AND SHIPPING

Seller shall pack, mark and ship all Goods in compliance with all applicable transportation regulations and with good commercial practice unless procurement specification(s) or other documentation that are part of this order specifically references DLM's packaging specification R68-0001. When specifically referenced in these instances, compliance with DLM's packaging specification R68-0001 shall be required. Unless expressly noted on the face hereof, no separate or additional charges shall be payable by Buyer for containers, crating, boxing, bundling, dunnage, storage or similar procedures. Any expense incurred by Buyer as a result of improper preservation, packing, packaging, marking or method of shipment shall be reimbursed by Seller. A packing list showing this Order number shall be included with each shipment, and each container shall be marked to show the Order number. Packing list number shall also be referenced on Seller's invoice.

7. PROMPT DELIVERY OF CONFORMING GOODS

Unless expressly noted on the face of this Order, timely delivery of conforming Goods in the full quantities specified herein is critical to Buyer. For this reason, Seller agrees to exert every reasonable effort, including overtime and premium shipment at Seller's expense, to meet the promised delivery date, provided,

however that failure of such efforts to achieve prompt delivery of conforming Goods shall not relieve Seller of liability for such failure. Seller agrees to notify Buyer immediately if at any time it appears that the delivery schedule set forth herein may not be met. Because timely delivery of conforming Goods is of the essence to Buyer, Buyer may elect to be excused from part or full performance hereunder in the event of delays in delivery of conforming Goods in the quantities specified, regardless of whether such delay or failure is actually or proximately caused by Seller, common carriers, other parties, acts of God, strikes, boycotts, other labor troubles, production delays, scarcity of resources, laws including changes therein, government orders, riots, war, fire, weather or actual or proximate causes of any other type whatsoever. In addition, Seller shall be liable for all delays or other failures to timely deliver conforming Goods in the quantities specified herein regardless of whether such delays or failures arise or result from actions or inactions of Seller, third parties or from any other actual or proximate cause, whatever its nature. Such liability shall include, without limitation, all consequential, special and contingent damages including losses sustained or anticipated to be sustained by Buyer as a result of Buyer's inability to meet its contractual obligations to third parties or to enter into contracts with third parties. If conforming Goods fail to arrive at the destination and within the time specified in this Order, Buyer may, but need not, immediately purchase substitutes therefore and Seller shall be liable for all damages and expenses resulting from such failure. Seller further agrees, at Buyer's election, to repair or replace any non-conforming Goods, said repairs and replacements to be made without cost to Buyer within a reasonable time after written notice by Buyer to Seller.

8. EXCUSE OF BUYER'S PERFORMANCE

Buyer's performance hereunder shall be excused if rendered impossible or impractical by the occurrence of a contingency, the non-occurrence of which was a basic assumption on which Buyer relied in entering into this agreement.

9. LOSS OR DAMAGE CAUSED BY SELLER

In the event that Seller, its employees, agents or subcontractors at any time enter premises occupied by or under the control of Buyer, Seller shall indemnify and hold harmless Buyer, its officers and employees from any loss, cost, damage, expense or liability resulting from property damage, personal injury or death arising out of or in connection with the actions or omissions of Seller, its employees, agents, or subcontractors maintain, and shall require its subcontractors at all times to maintain, public liability and property damage insurance in reasonable amounts in order to cover the obligations set forth in this Section 9 and shall maintain proper worker's compensation insurance covering all employees performing obligations under this Order. Upon the request of Buyer, Seller shall furnish to Buyer certificates of insurance and any other documents for the purpose of verifying Seller's compliance with this Section 9.

10. WARRANTIES & SELLER'S LIABILITY

(a) By accepting this Order Seller warrants that the items to be furnished hereunder will be (i) in full compliance with Buyer's specifications, blueprints, drawings and data or Seller's samples, if any; (ii) fit for the use intended by Buyer (iii) free from any actual or claimed patent, copyright or trademark infringement; and free from defects in design, material, workmanship and any other defect and/or fault and/or error. Seller also warrants title to the items. (b) Seller agrees that the warranties herein contained shall (i) be in addition to any warranties (A) implied by law (B) expressly made by Seller other than hereunder; and (ii) survive acceptance and payment by Buyer. (c) Seller shall be liable to Buyer for all consequential and incidental damages and expenses (including reasonable attorneys' fees) actually or proximately arising from any breach of Seller's warranties and representations, and Seller hereby agrees to indemnify and hold Buyer harmless from and against any and all claims by third parties for property damage, personal injury, death, expenses (including reasonable attorneys' fees), economic loss, foregone profits and losses or damages of any kind whatsoever actually or proximately resulting from the failure of the Goods to conform to said

warranties and representations. (d) The Goods, including all parts and components thereof, are neither used nor reconditioned. (e) The Seller shall be liable for all damages and expenses incurred by Buyer in connection with an epidemic failure of the Goods, including the costs to repair and/or modify or replace the Goods.

11. PATENT INFRINGEMENT

If litigation is brought or threatened against Buyer for infringement of any patent, trademark, trade name, copyright or like right with regard to the Goods or any component thereof, Seller and, at its expense, shall defend such suit and shall indemnify hold Buyer harmless against all claims, damages, losses, demands and expenses (including reasonable attorneys' fees) in connection with such suit or threatened suit.

12. CONFIDENTIAL INFORMATION

This Order and any material transmitted in connection with this order may contain information that is confidential and proprietary to Buyer and such information is not to be used by Seller for any purpose other than the purpose for which it was transmitted. The information shall be maintained in confidence and not disclosed to third parties without the written consent of the Buyer. Seller will execute a confidentiality and nondisclosure agreement as required by Buyer.

13. DESIGNS, TOOLS AND MATERIALS SUPPLIED BY BUYER

If the Goods are to be produced by Seller in accordance with designs, drawings or blueprints furnished by Buyer, or with the assistance of tools, machinery, or equipment furnished by Buyer, or are to incorporate or utilize parts and materials supplied to Seller by Buyer, Seller shall return the same to Buyer at the earlier of completion of this Order or cancellation of this Order. In addition, Seller shall not use the same in the production of materials for any third party or for itself without Buyer's prior written authorization. All such designs, drawings, blueprints, tools, machinery and equipment shall remain Buyer's property. Seller shall use such property at its own risk and shall be responsible for all losses of or damage to said property while in Seller's custody. Seller shall maintain all such property in good condition and repair, and Buyer makes no warranties or representations of any nature with respect to such property. Buyer retains title to said parts and materials, and Seller agrees to pay Buyer for all such parts and materials lost, damaged or destroyed while not in Buyer's immediate custody. If Seller requires additional parts or materials to complete performance of this Order, Seller shall purchase the same from Buyer at their then current prices or at Buyer's direction. Seller, at its own expense, will: separately account for all parts and materials supplied by Buyer; maintain current and accurate inventory records thereof; and take accurate physical inventory thereof as required by Buyer.

14. ASSIGNMENT

Neither this Order nor any interest therein, except the right to receive payment from Buyer, may be assigned by Seller without the prior written consent of Buyer. No assignment of the right to receive payment shall affect Buyer's right of setoff against Seller nor shall such assignment be binding on Buyer unless and until Buyer receives an executed copy of the assignment and each invoice to be paid to the assignee is clearly marked to show such assignment. This Order shall bind and inure to the benefit of Buyer's assigns and successors including, without limitation, any entity with which or into which Buyer shall merge or consolidate.

15. WAIVER AND MODIFICATION

The waiver of any term, condition or provision of this Order by Buyer shall not be construed as a waiver of any other such term, condition or provision, nor shall such waiver be deemed a waiver of a subsequent breach of the same term, condition or provision. In order to be binding upon Buyer, any modification of this Order must be in writing and signed by Buyer's authorized representative.

16. CHANGES

Buyer, through its authorized representative, may at any time by written change order or modified purchase order, make changes with respect to the purchase orders and/or the Goods including, without limitation, changes in (a) the drawings, designs and specifications applicable to the goods; (b) the method of shipping and packing; or (c) the quantity ordered and the place and time of delivery. If a change to the specification of the Goods affects the time for or cost of Seller's performance hereunder, an equitable adjustment shall be made in the delivery schedule and/or the purchase price, but only if Seller submits its written claim for adjustment within twenty (20) days after receipt of Buyer's written change order. Nothing in this Section 16 shall excuse Seller from performing its obligations under this Order as changed. Changes are deemed to be accepted by the Seller unless rejected by the Seller in writing within five (5) days of receipt of the Order's change.

17. GOVERNING LAW

This Order, and the contract between the parties evidenced hereby, shall in all respects be construed and governed by the laws of the State of Oregon to the extent not preempted by federal law.

18. GOVERNMENT CONTRACTS AND COMPLIANCE WITH LAW

(a) Seller will comply with all laws applicable to its performance of its obligations hereunder, including, to the extent applicable and without limitation, the Fair Labor Standards Act of 1938, as amended, the Equal Employment Opportunity clause prescribed by Executive Order 11246 dated September 24, 1965, as amended, and all rules, regulations and orders issued or promulgated under said Act or Order. Seller agrees to indemnify and hold Buyer harmless from and against any and all losses which Buyer may suffer in the event that Seller fails to comply with said Act, Order or any other applicable law. If a United States Government contract is noted on the face of this Order, this Order is subject to the terms and conditions which may be imposed by said contract. (b) For subcontracts over \$10,000, seller will utilize small business, small disadvantaged business, women-owned business, and labor surplus area concerns to the fullest extent consistent with the efficient performance of this contract.

19. REMEDIES

If Seller breaches this Order, Buyer may exercise, singly or in any combination and in any order, the rights and remedies available to Buyer at law or in equity, including, without limitation, the right to: (a) Require Seller to repair or replace goods or any component thereof and upon Seller's failure to or refusal to do so,

to repair or replace the same at Seller's expense, as set forth in Section 7. (b) To reject any shipment or delivery or part thereof containing defective or nonconforming goods; or (c) Cancel any outstanding deliveries under this Order and treat the breach by Seller as Seller's repudiation of this Order. IF BUYER IS IN BREACH OF THIS ORDER, SELLER'S EXCLUSIVE REMEDY SHALL BE TO RECOVER THE GOODS OR, IN THE EVENT SAID GOODS HAVE BEEN SOLD BY SELLER OR BUYER TO A THIRD PARTY, TO RECOVER THE PURCHASE PRICE FOR THE GOODS PROVIDED HEREIN LESS THE NET PROCEEDS, IF ANY, RECEIVED BY SELLER FROM SUCH THIRD PARTY.

20. BANKRUPTCY OR INSOLVENCY

In the event of the institution of any proceedings by or against either party hereto, whether voluntary or involuntary, under bankruptcy, reorganization or insolvency laws, or in the event of the appointment of a receiver or trustee or a general assignment for the benefit of creditors of either party hereto, Buyer shall be entitled to terminate this Order without incurring any costs or liability to Seller.

21. GENERAL

(a) Seller shall not, without Buyer's prior written consent, make any news release or public announcement concerning this Order or the Goods which directly or indirectly identifies buyer. (b) Except as expressly provided herein to the contrary, including, without limitation, the provisions hereof respecting Seller's warranties and representations, all proposals, negotiations, representations and communications regarding the transaction contemplated hereby and made prior to the date of this Order are merged herein. (c) If any of the terms or provisions provided herein are declared invalid or unenforceable by any court or other body, the remaining terms and provisions hereof shall be deemed valid and enforceable to the extent possible.

22. CERTIFICATION

If certification of materials or conformance are required with the receipt of goods or services pertaining to this order that requirement will be noted on the face of this order or in the procurement specifications, drawings, or other documentation that are a part of this order.

23. CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM ACT

Buyer participates in the U.S. Customs and Border Protection (CBP) Customs-Trade Partnership Against Terrorism (C-TPAT) program. Seller agrees to take such reasonable measures as are required by Buyer and/or CBP to ensure physical integrity and security of all shipments to Buyer. Buyer reserves the right to audit Seller's security procedures and facilities concerning C-TPAT compliance. Information about C-TPAT is available at www.cbp.gov.

The Supplier's Signature

Date: _____

