



# Standard Terms & Conditions

*Version 1.0*

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## **HIDDEN LEVEL, INC. STANDARD TERMS AND CONDITIONS**

### **PURCHASE ORDERS** – Effective May 4, 2022

**1. Definitions:** The word “Buyer” whenever used herein shall mean HIDDEN LEVEL, INC. The party with which this order is placed is referred to herein as “Seller.” The products, machinery, equipment, supplies and/or labor or services covered by this Purchase Order are referred to herein as “Goods.” The terms “Purchase Order,” herein and “hereto” refer to and include the face of this document, these Standard Terms and Conditions and any other documents specifically made a part of this Purchase Order.

**2. Acceptance:** Entire Agreement. Seller’s (i) full or partial performance under, or indication thereof, or (ii) acknowledgement of the Order, is acceptance of the Order and all terms and conditions contained in the Order and incorporated into the Order, including these Terms and Conditions. Any terms and conditions proposed in Seller's offer, acceptance, acknowledgment, invoice, or other Seller communication that add to, vary from, or conflict with the terms herein are hereby rejected.

**3. Changes to Order and Overage:** Buyer shall have the right to make changes in this Purchase order. Such changes shall include, but not be limited to, changes in any drawings and specifications upon which this Purchase Order is based. Should any change affect any prices (or delivery terms) contained in this Purchase Order, Seller shall, before proceeding, notify Buyer of any price changes (or changes in delivery terms) and receive Buyer’s written agreement thereto. No modification alteration amendment of this Purchase Order shall be effective unless in a written change order signed by Buyer and acknowledged by Seller. No charges for any changes not so authorized will be paid. Any overshipments shall be at Seller’s risk, and Buyer may delay payment therefor without loss of discount. All costs in returning overshipped items, if so desired by the Buyer, will be at Seller’s expense.

**4. Assignment:** Seller shall not assign its rights or delegate or subcontract its performance under this Purchase Order in whole or in part without the prior written consent of Buyer. Any attempted assignment, delegation or subletting without Buyer’s prior written consent shall be void and shall constitute a material breach of this Purchase Order by Seller.

**5. Nonconforming Goods:** All Goods furnished under this Purchase Order are subject to final inspection and approval at destination by Buyer. Any Goods not in compliance with any specifications or other requirements of this Purchase Order are subject to rejection by Buyer, and any or all of such Goods may be returned by Buyer at Seller’s expense. No goods returned as non-confirming shall be replaced unless authorized by Buyer. Any payments for Goods made

prior to inspection shall not constitute an acceptance of said Goods or impair the remedies of Buyer hereunder and as provided by law.

**6. Counterfeit parts prevention:** Seller agrees and shall ensure that only new and non-counterfeit parts, materials and components are used in products required to be delivered to buyer. No other parts, materials or components shall be used unless approved in advance in writing by buyer. To further mitigate the possibility of the inadvertent use of counterfeit parts, materials or components, Seller shall only purchase parts, materials and components directly from the Original Equipment Manufacturers (OEMs), directly through the OEM's authorized distribution chain, or directly from Independent Distributors. If procured from Independent Distributors, Seller shall make available to Buyer upon adequate OEM documentation in Buyer's sole judgment that authenticates the traceability of the parts, materials and components to the applicable OEM. If the required items cannot be procured from the above identified three sources, use of parts, materials or components product without appropriate traceability documentation from independent brokers or any other sources is not authorized unless first approved in writing by Buyer. Seller must present full, complete and compelling support for its request and include in its request all actions to ensure that the parts, materials and components thus procured are legitimate and not counterfeit. Buyer may also request at any time a certification of traceability from the Seller and/or Seller's sources.

**7. Delivery and Default:** Buyer may, at its election, by delivery to Seller of written notice of termination, cancel this Purchase Order or any part hereof (a) if Seller fails to deliver the Goods in accordance with any delivery or performance dates specified herein, of (b) if Seller fails to comply with any other provision of this Purchase Order and does not cure such failure within a period of ten (10) days or such longer period as Buyer may authorize in writing, or (c) upon the occurrence of any of the following: the voluntary or involuntary liquidation or dissolution of Seller, the sale or other disposition of all or substantially all of the assets of Seller, or the marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of Seller, or other similar proceeding affecting Seller or any of its assets, or any action taken by any trustee or receiver or by any court in any such proceeding, or the disaffirmance, rejection or postponement in any such proceeding of any of the Seller's obligations pursuant to this order. In the event of any cancellation for the reasons described in (a) or (b) or (c) above. Buyer may purchase similar Goods and Seller shall be liable to Buyer for all loss or damage suffered or incurred by Buyer arising or resulting from such cancellation including without limitation, any additional cost or expense incurred in purchasing the Goods elsewhere. However, Seller shall not be so liable for failure to deliver the Goods in accordance with delivery or performance dates when such failure is due to causes beyond the control and without the fault or negligence of Seller, and Seller has notified Buyer within forty-eight (48) hours of the commencement of the occurrence that caused such failure. Time is of the essence of this Purchase Order.

**8. Title and Risk of Loss:** All Goods shall be shipped F.O.B. to Buyer's plant, Syracuse, New York (or such other destination as Buyer has expressly stated herein) unless specified to the contrary in the Purchase Order, and title and risk of loss to and with respect to the Goods shall remain with the Seller until the Goods are delivered to Buyer at Buyer's plant, Syracuse, New York (or such other destination). All goods must be suitably packed, marked and shipped in accordance with the requirements of applicable common carriers in a manner to secure the lowest transportation cost. No charge shall be made by Seller for packing, boxing, drayage, or storage unless otherwise stated herein.

**9. Payment:** Unless otherwise expressly stated herein, invoices dated prior to delivery of Goods will not be accepted. Buyer may withhold any payment due hereunder to such extent as may be necessary to protect Buyer from loss because of a reasonable doubt (a) that the Goods will meet the requirements of this Purchase Order, of (b) that the Goods will be delivered on the date or dates specified in this Purchase Order. Upon the submission of proper invoices, Buyer shall be paid the prices stipulated herein for Goods delivered and accepted, or services rendered and accepted, less deductions, if any. Unless otherwise specified, payments will be made on partial deliveries accepted by Buyer if Buyer, in its sole discretion, determines that the amount due is sufficient to warrant such partial payments, in connection with any discount offered, time will be computed from date of delivery at destination or from the date a correct invoice is received, if the latter date is later than the date of delivery.

**10. Warranty:** In addition to any other warranties, Seller warrants that the Goods shall be new unless otherwise specified, will conform to any specifications, drawings, samples or other descriptions furnished or specified by Buyer, will be merchantable and will be free from any defects in design, workmanship and materials for a period of one year from date of initial use. Any replacement or repair of materials or correction to workmanship shall be additionally warranted for a period of one year from the date the defect is remedied. Any replacement parts or other materials provided pursuant to this warranty shall be shipped F.O.B.. Buyer's plant, Syracuse New York (or other destination specified by Buyer). Seller acknowledges that, notwithstanding any drawings, specifications or other descriptions of the Goods set forth or referred to in this Purchase Order, Buyer is relying on Seller's skill and judgment to furnish suitable Goods for the purposes described herein, and Seller warrants that the Goods will be fit and suitable for such purposes. Seller also expressly warrants title to all of the Goods is free and clear of any and all encumbrances of whatsoever nature and kind. All warranties shall survive any inspection, delivery, acceptance or payment.

**11. Compliance with Laws:**

(A) By accepting this Purchase Order, Seller acknowledges and warrants that all Goods furnished hereunder shall comply with all laws and regulations applicable in the State of New York and the United States of America. Seller acknowledges and warrants that their company,

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subcontractors, representatives, designees, et al. are in compliance with all U.S. Department of Labor applicable laws and regulations.

(B) Seller acknowledges that all or some portion of the Goods may constitute “chemical substances” or “mixtures,” “hazardous substances” and/or “hazardous wastes” under the U.S. Toxic Substances Control Act (TSCA),” the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), the Resource Conservation & Recovery Act (“RCRA”), the Hazardous Materials Transportation Act (“HMTA”), or other similar federal, state, or local laws and regulations. By accepting this order Seller agrees and warrants that all goods including services furnished hereunder do and will comply with all applicable laws and regulations including, without limitation, TSCA, CERCLA, RCRA, HMTA, and their implementing regulations.

(C) By accepting this Purchase Order, Seller acknowledges and warrants compliance with prohibitions under Section 889 of the 2019 National Defense Authorization Act. “Covered technology” includes telecommunication equipment or services produced by Huawei, ZTE Corporation, or any subsidiary/affiliate of either of these entities. In addition, “Covered Technology” includes video surveillance and telecommunication equipment and services produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, Dahua Technology Company, or any of their subsidiaries/affiliates. Seller shall notify Buyer immediately if Seller engages in use of or enters into any agreements to purchase “Covered Technology” through these entities.

(D) Seller shall provide to Buyer, upon Buyer's reasonable request, the identity of its suppliers and/or the location of manufacture of the Goods or any subcomponents of the Goods, or provision of Services, as applicable, to confirm compliance with legal and regulatory requirements, the Agreement and/or Order.

(E) Seller recognizes, consistent with the public policy underlying enactment of the Conflict Minerals provision (Section 1502) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”), the significant legal and non-legal risks associated with sourcing tin, tantalum, tungsten, and gold (the “Conflict Minerals”) from the Democratic Republic of the Congo and adjoining countries (“DRC Countries”). Accordingly, Seller commits to comply with Section 1502 of the Act and its implementing regulations; to the extent Seller is not a “Registrant” as defined in the Act, Seller shall comply with Section 1502 of the Act and its implementation regulations except for the filing requirements. In particular, Seller commits to have in place a supply chain policy and processes to undertake (i) a reasonable inquiry into the country of origin of Conflict Minerals incorporated into Goods it provides Buyer; (ii) due diligence of its supply chain, following a nationally or internationally recognized due diligence framework, as necessary, to determine if Conflict Minerals sourced from the DRC Countries directly or indirectly support unlawful conflict there; and (iii) risk assessment and mitigation actions necessary to implement the country of origin inquiry and due diligence procedures. Upon written request, Seller will promptly provide Buyer with commercially reasonable information regarding the foregoing requirements in order to support Buyer’s obligations under the Act.

(F) “Global Trade Compliance (GTC) Laws” mean the customs, export control, sanctions and U.S. anti-boycott laws, regulations, and orders applicable at the time of the import, export, re-

export, transfer, disclosure, or provision of Technical Data, Goods or Services including, without limitation, the (i) Export Administration Regulations (“EAR”), 15 Code of Federal Regulations (C.F.R.) Parts 730-774; (ii) International Traffic in Arms Regulations (“ITAR”), 22 C.F.R. Parts 120-130; (iii) Foreign Assets Control Regulations, 31 C.F.R. Parts 500-598 (“Sanctions Laws”); (iv) Internal Revenue Code, 26 U.S.C. § 999; (v) regulations administered by the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) found in 27 CFR Chapter II; (vi) Customs regulations, 19 United States Code (U.S.C.) and Title 19 C.F.R.; and (vii) applicable customs and export laws and regulations of other countries, except to the extent they are inconsistent with the U.S. laws.

(G) Seller hereby certifies that, in connection with the performance of the Agreement and/or Order, it will comply with all applicable GTC Laws. Seller agrees that no hardware, software, Technical Data, and/or services (collectively referred to as “items”) controlled under any U.S. or other applicable non-U.S. export and import laws and regulations and provided by Buyer in connection with the Order shall be provided to any person or entity, including non-U.S. person employees, subsidiaries, or affiliates, unless the transfer is expressly permitted by a U.S. or non-U.S. Government license or other authorization, or is otherwise in accordance with applicable laws and regulations.

(H) Seller further certifies that, neither Seller nor any of its subsidiaries or, any director, officer, manager, or employee of Seller is a person who (a) is on the Specially Designated Nationals and Blocked Persons List or the Consolidated Sanctions List maintained by the U.S. Department of the Treasury, Office of Foreign Assets Control (“OFAC”) or other similar list maintained by any governmental entity (collectively, “Sanctions Lists”); (b) is directly or indirectly owned or controlled 50% or more by any person currently included on any Sanctions Lists), or (c) is directly or indirectly owned or controlled 50% or more by any person who is located, organized, or resident in a country or territory that is, or whose government is, the target of sanctions imposed by OFAC or any other governmental entity.

(I) Seller shall promptly notify Buyer when it or any of its subsidiaries, or any of its or its subsidiaries' directors, officers, managers, employees, or agents become directly, or become directly or indirectly owned or controlled 50% or more by any person (a) included on the then-current Sanctions Lists, or (b) located, organized, or resident in a country or territory that is, or whose government is, the target of sanctions imposed by OFAC or any other governmental entity.

(J) Seller shall indemnify buyer and hold buyer harmless from and against all fines, response and remedial costs, and other damages or injuries assessed against or costs incurred by Buyer resulting from noncompliance by Seller with applicable laws and regulations.

## **12. Cancellation by Buyer:**

(A) Cancellation due to causes beyond Buyer’s control. Buyer may cancel this order in whole or in part or defer acceptance of any Goods purchased hereunder in the event of a shutdown of its plant or a substantial reduction in the operation of said plant due to strikes, floods, riots, accidents, acts or failures to act of any governmental entity or of Seller, major equipment breakdowns, or any other causes whatsoever, whether similar or dissimilar to those set forth above, provided that any such cause was beyond the reasonable control of Buyer. In the event of such a cancellation or deferral, Buyer shall pay to Seller, as Seller’s sole and exclusive

remedy, a reasonable cancellation or deferral charge, which charge shall in no event exceed the actual damages incurred by Seller as a direct result of the cancellation or deferral.

(B) Cancellation for convenience of Buyer. Buyer also reserves the right to cancel this order in whole or in part at any time, for its convenience, by written notice to Seller. Immediately upon receipt of notice of such cancellation, Seller shall stop all performance hereunder except as otherwise directed by Buyer. If Seller is not in default of any of its obligations hereunder at the time of such termination, Buyer shall pay to Seller as its sole and exclusive remedy, an amount equal to those reasonable and documented costs incurred by Seller prior to termination. Provided, however, that the above amount plus any prior payments shall in no event exceed the purchase price of the Goods. All Goods completed or partially completed prior to termination shall become the property of Buyer, or at Buyer's option, the salvage value of the Goods may be deducted from the amount due Seller by reason of the termination.

**13. Patent Infringement:** Seller hereby agrees to indemnify and hold harmless Buyer and its successors, assigns and customers and the users of its products against all costs whatsoever involved in any and all claims and suits for infringement or patent and patent rights arising from the purchase or use of the Goods. Buyer shall give Seller reasonable notice of any such claim or suit, and Seller agrees to undertake at its own expense the defense of any and all such claims or suits. In addition, upon notification by Buyer of an infringement claim, Seller shall do one of the following: (a) procure for Buyer the right to continue using the Goods on a permanent basis, without cost to Buyer and without any restrictions on the right of Buyer to use the Goods for the purpose for which they are intended, or (b) replace the same with non-infringing Goods satisfactory to Buyer, or (c) modify the goods in a manner satisfactory to Buyer so that they become non-infringing.

**14. Nonwaiver of Remedies:** The remedies of Buyer provided for herein shall be cumulative and shall be in addition to any other or further remedies provided in law or equity. No delay in the exercise of, or failure to exercise any right, remedy or power of Buyer shall be construed to be a waiver thereof, and such right, remedy or power may be exercised from time to time as often as may be deemed expedient by Buyer.

**15. Indemnity:** Seller shall indemnify and hold harmless Buyer and its agents, officers, directors, employees and assigns from and against any and all liabilities, claims, losses, damages, penalties, costs or expenses, (including, but not limited to court costs and reasonable attorneys' fees) for damage to property of Buyer or others of whatsoever kind or nature or injury to persons (including, without limitation, death) arising from the delivery, use or operation of the Goods and due to the negligent or willful and wanton acts or omissions of Seller, its agents, independent contractors, subcontractors, officers or employees and whether or not caused or contributed to, in whole or in part, by the negligent acts or omissions of Buyer or any of its agents, officers, directors, employees and assigns or any other person or entity.

**16. Inspection and Acceptance:** If this Purchase Order involves manufacture of the Goods, Seller shall provide all shop inspection required and corresponding quality inspection reports to ensure compliance with this order, and Buyer shall have the right at all reasonable times to inspect and test all work in process. Neither the presence nor the absence of an inspector or

other personnel of Buyer in Seller's facility shall relieve Seller of any requirements of this Purchase Order. Seller may request from Buyer, at the Seller's discretion, to submit monthly (or more frequently if delivery requirements make it necessary) status reports and engineering production status reports if Buyer so specifies herein. Notwithstanding any prior inspection, the passage of title or any payments hereunder, all Goods furnished hereunder are subject to final inspection and acceptance by Buyer upon delivery.

**17. Controlling Law and Severability:** The terms and conditions of this Purchase Order shall be construed and interpreted under, and all respect rights and duties of the parties shall be governed by, the laws of the State of New York and United States of America Federal law to the extent the same may apply. If any provision or requirement of this Purchase Order is declared or found to be unenforceable, the balance of this Purchase Order shall be interpreted and enforced as if the unenforceable provision or requirement had never been a part hereof.

**18. News releases, publicity and other disclosures:** Seller shall not make or authorize any news release, advertisement, or other disclosure that relates to the Agreement or Order or the relationship between Buyer and Seller, deny or confirm the existence of the Agreement or Order, or make use of Buyer's name or logo without the prior written consent of Buyer.

**19. Seller Requirements:**

(A) Seller shall notify Buyer immediately of any changes to Seller's processes, products or services including change of address or location of manufacture for Buyer's approval.

(B) Without limiting Seller's duty to hold harmless and indemnify hereunder, Seller agrees to secure, maintain, and require its subcontractors to maintain, as a minimum the insurance noted in the Order or, if none are specified, the following minimum insurance coverages and limits: (i) Workers' Compensation Insurance, inclusive of an alternate employer endorsement, in an amount sufficient by virtue of the laws of the U.S., foreign country, state, or other governmental subdivision in which the work or any portion of the work is performed and Employer's Liability Insurance in the minimum amount of \$1,000,000 for any one occurrence; and (ii) Commercial General Liability Insurance and Umbrella Liability Insurance, including Premises Liability and Contractual Liability, in which the limit of liability for property damage and bodily injuries, including accidental death, shall be at a minimum, a combined single limit of \$5,000,000 for any one occurrence.

(C) Seller shall retain all documented information for a minimum of seven (7) years.