



CRENLO ENGINEERED CABS
TERMS AND CONDITIONS OF PURCHASE

**CRENLO ENGINEERED CABS TERMS AND
CONDITIONS OF PURCHASE (Form 12140.08.12)**

1. **GOVERNING PROVISIONS.** This document is an offer by Crenlo Cab Products, LLC (d/ b/a Crenlo Engineered Cabs) (“Purchaser”) to purchase the goods and/or services herein described, not a confirmation or acceptance of any offer to sell; and acceptance of this offer is expressly made conditional on assent to these terms and conditions and the other provisions contained in this document. Purchaser hereby objects to any additional or different terms contained in any of seller’s quotation, acknowledgment, invoice or other forms, or in any other correspondence from seller. These terms and conditions and this document shall constitute the entire agreement between the parties on the subject of the purchase by Purchaser from seller described herein (hereinafter, the “Agreement”), superseding all prior written and oral communications and negotiations. This offer expires 30 calendar days after its date or upon earlier written notification thereof to seller.

THE SALE BY THE SELLER TO THE PURCHASER SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MINNESOTA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE PROVISIONS OF THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.

2. **CHANGES IN ORDERS.** Purchaser reserves the right at any time to make changes in any one or more of the following: (a) specifications, drawings and data incorporated in this document where the items to be furnished are to be specially manufactured for the Purchaser, (b) methods of shipment or packing, (c) place of delivery, and (d) time of delivery. If any such change causes an increase or decrease in the cost of or the time required for performance of an order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, or Purchaser may, at its option, cancel the order pursuant to Section 15 (Cancellation by Purchaser) if agreement on an equitable adjustment cannot be reached. Any claim by the seller for adjustment under this Section 2 shall be deemed waived unless asserted in writing within twenty (20) days from receipt by the seller of the change order. Price increases or extensions of time for delivery shall not be binding on Purchaser unless evidenced by a purchase order change notice issued and signed by Purchaser. No substitutions, changes or modifications of the ordered item shall be made except upon Purchaser’s written authority.
3. **DELIVERY, DELAY, ANTICIPATION AND ALLOCATION OF LIMITED CAPACITY.**
 - a. The seller shall deliver the goods in the quantities, and shall deliver the goods and/or provide the services within the time, which is of the essence, in accordance with the specifications, drawings or approved samples, and at the prices agreed. Failure of the seller to comply with such requirements shall entitle Purchaser, in addition to any other

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rights or remedies, including, without limitation, any Late Delivery Penalty (as defined below) or expedited delivery costs or charges due hereunder, to cancel any order and be relieved of all liability for any undelivered portion. In the event that, for reasons which are unforeseeable and beyond Purchaser's reasonable control, shipment is delayed beyond the last date on which shipment by the method contemplated herein would result in delivery guaranteed on or before the required delivery date herein, the seller shall make shipment by the most expeditious available method of transportation. Any additional cost of such method of shipment shall be borne by the seller. If shipment is delayed for any cause, the seller must report the same to Purchaser promptly, and if seller's capacity to perform is limited for any reason seller must allocate its available capacity to performance of its responsibilities to Purchaser before satisfying seller's own needs or performing its responsibilities to any other customer. Failure of Purchaser to insist upon strict performance shall not constitute a waiver of any of the provisions of any order or waiver of any default. Any failure by Purchaser to exercise its remedies with respect to any installment shall not be deemed to constitute a waiver with respect to subsequent installments. The seller shall not unreasonably anticipate delivery by purchasing materials or manufacturing quantities in excess of what is reasonably required to meet Purchaser's delivery schedule. Items received in advance of Purchaser's delivery schedule may, at Purchaser's option, be returned at the seller's expense or be accepted and payment withheld until the scheduled delivery date.

- b. Without limiting any other rights or remedies available to Purchaser, in case of a late delivery (or any delivery that would be late absent expedited delivery), seller shall pay to Purchaser (i) for each day of delay, a late delivery penalty ("Late Delivery Penalty") equal to 2% of the total value of the goods whose delivery has been delayed and (ii) any expedited delivery costs or charges incurred by Purchaser in connection therewith. The total amount of a Late Delivery Penalty shall not, however, exceed 15% of the total value of the goods involved in the late delivery. Late Delivery Penalties and expedited delivery costs or charges may be set off by Purchaser in accordance with Section 22.

4. **SHIPPING, PACKING AND RISK OF LOSS**. The shipping terms for all goods purchased hereunder are FOB origin for domestic shipments and DDP destination, as that term is defined in *Incoterms 2010*, for international shipments unless otherwise noted on the purchase order. Purchaser shall have the right to route all shipments. All goods shall be suitably packed, marked with Purchaser's purchase order number and shipped in accordance with shipping instructions specified herein and otherwise in accordance with the requirements of common carriers. Packing slips must be included with all shipments showing order number, part number and quantity; and the last copy must state "Order Completed". The order number must be shown on each item, packing slip and invoice. No charge shall be made to Purchaser for boxing, packing, crating or carting unless separately itemized on the face hereof. Regardless of shipping terms, all risk that the ordered goods may be lost, damaged or delayed in transit shall be upon the seller until conforming goods have been actually received, inspected and accepted by Purchaser. The seller shall be liable to Purchaser for any loss or damage resulting from the seller's failure to act so as to provide adequate protection during shipment. Additional expenses, charges or claims incurred as a result of deviation from the specified route,

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noncompliance with other shipping instructions, or improper description of the shipment in shipping documents shall be assumed by the seller.

5. **INSPECTION, ACCEPTANCE AND REJECTION.** All goods purchased hereunder (and work-in-progress relating thereto) shall be subject to inspection and testing by Purchaser at any reasonable time and from time to time before, during or after manufacture and delivery. If any inspection or test is to be made on the premises of the seller, the seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties.

Notwithstanding prior inspections, all goods are subject to final inspection and approval at Purchaser's plant or other place designated by Purchaser and, notwithstanding any payment that may be made, no goods are deemed accepted until such final inspection and approval. Purchaser's inspection before, during or after manufacture and delivery shall not constitute a waiver of the right of subsequent rejection by reason of any undiscovered or latent defect. Purchaser may return rejected goods at the seller's expense. The seller shall not replace goods returned as defective unless so directed by Purchaser in writing.

6. **PRICING.** This order must not be filled at prices higher than last quoted by seller unless Purchaser consents in writing. Prices charged for goods listed on an order are not subject to increase, including specifically any increase based upon currency fluctuations, changes in raw material or component pricing, labor or overhead, unless specifically agreed to by Purchaser in writing. Seller represents that the prices to be paid or otherwise charged to Purchaser are not any higher than the lowest price for such goods or services offered by seller to any other of its customers who purchase in similar volumes. Unless prohibited by law, seller shall pay all federal, state, or local tax, transportation tax, or other tax, including but not limited to customs, duties and tariffs, which is required to be imposed upon the goods ordered, or by reason of their sale or delivery. All order prices shall be deemed to have included all such taxes. Seller agrees to indemnify Purchaser against any loss, liability or expense (including reasonable attorneys' fees) resulting from seller's failure to pay such taxes, fees, duties, assessments, charges or conditions.

7. **WARRANTIES, REMEDIES.** The seller warrants that the goods to be furnished hereunder shall (a) be free and clear of all liens and encumbrances, good and merchantable title thereto being in the seller; (b) be free from any defects in design, material or workmanship (latent or otherwise) and of good and merchantable quality; (c) be new, not used, refurbished or reconstituted; (d) conform to Purchaser's specifications or the sample approved by Purchaser, and with representations with respect thereto previously made by the seller, to the extent any of the foregoing are applicable, as the case may be, and be fit for the use intended by Purchaser; and (e) comply and have been produced, processed, packaged, labeled, delivered and sold in conformity with all applicable European Union, federal, state or other laws, administrative regulations and orders, including without limitation (i) the Occupational Safety and Health Act of 1971 as amended from time to time, and (ii) the Directive on the Restrictions on use of Hazardous Substances in Electrical and Electronic Equipment. The foregoing warranties shall survive inspection, delivery and payment, and shall run in favor of Purchaser, its successors and assigns and its customers, whether direct

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or indirect. The seller shall determine the particular purposes for which all goods/services purchased by Purchaser are required, and shall utilize its skill and judgment to select and furnish suitable goods/services; the seller acknowledges that Purchaser is relying on the seller to do so. If any such goods shall be found to be unsatisfactory, defective or inferior in quality, or not to conform to Purchaser's specifications or any other requirements hereof (including the seller's warranties), Purchaser may, at its option and in addition to its other remedies, retain such goods at an adjusted price, hold such goods at the seller's risk and expense pending the seller's specific instructions, or return them to the seller for replacement, credit or refund, as Purchaser shall direct. Purchaser shall also have the right to cancel any unshipped portions of any order. Purchaser shall be reimbursed by the seller for all of its costs and expenses in connection with the storage, handling, packing and/or transporting of any such defective or otherwise nonconforming goods, and the seller shall assume all risk of loss or damage in transit to goods returned by Purchaser pursuant hereto.

8. QUALITY; NON-CONFORMANCE.

- a. In addition to any requirements imposed by applicable law, seller shall, without limiting seller's warranties under Section 7, meet all quality requirements of Purchaser, including, without limitation, all requirements, processes, and procedures set forth in Purchaser's supplier quality manual, as such manual may be updated from time to time and furnished or otherwise made available to seller. In addition, seller must comply with all quality assurance procedures specified by Purchaser. In the event the goods fail to meet the quality requirements of Purchaser or otherwise fail to conform with seller's warranties under Section 7 (including, without limitation, with respect to timeliness), Purchaser may issue a Supplier Corrective Action Request ("SCAR") to seller. Seller shall promptly complete and return the SCAR to Purchaser, which shall include, among other things required by Purchaser, a detailed description of the root cause of the quality issue or nonconformance and seller's short- and long-term corrective action plan with respect thereto. Seller acknowledges it has analyzed and reviewed Purchaser's specifications for the goods and that the specifications are sufficient and adequate to manufacture the goods in compliance with this Agreement.

- b. Seller agrees it is solely responsible for maintaining all required quality processes to meet the foregoing specifications and quality requirements. Without limiting any rights or remedies of Purchaser hereunder, all costs, expenses, and other losses incurred by Purchaser and all fees and charges payable by seller relating to quality issues in or nonconformance of the goods, whether issued under a SCAR or otherwise (including, without limitation, an administrative charge, processing fees, a sort charge, labor/contractor/agent fees, overtime expenses, scrap and scrap disposal fees, rework/repair costs, material handling fees, lost line time and downtime, late delivery or shipment fees or penalties, stock-out fees, expedited freight costs, original shipping charges, etc.) are the responsibility of seller, will be charged by Purchaser to seller, and may be set off by Purchaser in accordance with Section 22.

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9. **LIMITATION ON PURCHASER'S LIABILITY.** In no event shall Purchaser be liable to seller for any lost profits or for any incidental, consequential, special, exemplary or punitive damages. Without limiting the foregoing, the parties further agree that: (i) with respect to a claim arising out of or in connection with the termination of an order, seller's damages, if any, shall be limited to the damages set forth in Section 15 (Cancellation by Purchaser); and (ii) with respect to all other claims, seller's damages shall be limited to the value of the products purchased by Purchaser from seller in the three months immediately preceding the alleged breach.

10. **INDEMNIFICATION BY THE SELLER.** The seller shall indemnify Purchaser, its successors, assigns, and customers (whether direct or indirect) against any and all losses, damages and expenses (including attorneys' fees and other costs of defending any action) which they, or any of them, may sustain or incur as a result of any claim of negligence, breach of warranty, personal injury or death, patent or trademark infringement, strict liability in tort or based on any other theory of law in connection with the goods/services furnished by the seller hereunder, or as a result of any claim that the goods furnished by the seller fail to conform to or comply with any federal, state or local laws, regulations or standards, or based upon or arising out of any construction, installation, services or facilities furnished by the seller under or in connection with any order.

11. **PURCHASER'S DAMAGES.** The seller shall be responsible for any and all losses, liabilities, damages and expenses, including incidental and consequential damages, and including attorneys' fees and other costs of prosecuting an action for breach, which Purchaser may sustain or incur as a result of any breach of contract.

12. **PATENTS, TRADEMARKS AND COPYRIGHTS.** The seller warrants that the sale or use of goods furnished hereunder will not infringe or contribute to infringement of any patent, copyright, trademark, trade secret or other proprietary right or subject Purchaser or its customers (direct or indirect) to royalties in the United States or elsewhere, and shall indemnify and save harmless Purchaser, its successors and assigns and its customers (whether direct or indirect), against any and all losses, damages and expenses (including attorneys' fees and other costs of defending any infringement action) which they, or any of them, may sustain or incur as the result of a breach of this warranty.

13. **FAIR LABOR STANDARDS CERTIFICATE.** The seller hereby certifies that all goods furnished hereunder shall have been produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act of 1938, as amended, and of regulations and orders of the Administrator of the Wage and Hour Division issued under Section 14 thereof, and in accordance with all applicable state and federal laws and regulations governing general conditions for labor employed in the production of such goods.

14. **NON-ASSIGNABILITY.** The seller shall not assign or sublet the work to be done hereunder without the prior written consent of Purchaser, but this provision shall not restrict the seller in the procurement of component parts or materials. If any order shall be terminated for Purchaser's convenience, Purchaser's liability to the seller with respect to such parts or materials shall not exceed the amount for which the seller would be liable to its supplier or

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suppliers if such liability were determined on the basis of Section 15 (Cancellation by Purchaser).

15. **CANCELLATION BY PURCHASER.** Purchaser shall have the right to cancel any order without cause, and Purchaser's liability for such cancellation shall be limited to the seller's out-of-pocket cost for work and materials applicable solely to the cancelled order which shall have been expended when notice of cancellation shall be received by the seller, reduced by the fair market resale value of such work-in-process. Payment is conditioned upon Purchaser's receipt of a cancellation claim within sixty (60) days after the effective date of cancellation. Purchaser may, at its option, cancel any order without liability to the seller (except for conforming shipments previously accepted by Purchaser) in the event the seller shall cease to exist or become insolvent or the subject of bankruptcy, receivership or insolvency proceedings or shall commit a material breach in the performance of any part of its obligation hereunder.
16. **INGREDIENTS/COMPONENTS DISCLOSURE AND SPECIAL WARNINGS AND INSTRUCTIONS.** If requested by Purchaser, the seller shall promptly furnish the Purchaser in such form and detail as Purchaser may direct: (a) a list of all ingredients and/or components in the goods purchased hereunder; (b) the amount of one or more ingredients; and (c) information concerning any changes in or additions to such ingredients. Prior to and with the shipment of goods purchased hereunder, the seller agrees to furnish to Purchaser sufficient warning and notice in writing, including appropriate labels on goods, containers and packaging of any hazardous material which is an ingredient or a part of any of the goods, together with such special handling instructions as may be necessary to advise carriers, Purchaser and their respective employees of how to exercise that measure of care and precaution which will best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the goods, containers and packaging shipped to Purchaser.
17. **PURCHASER'S PROPERTY; TOOLS, DESIGN WORK, DRAWINGS, SPECIFICATIONS AND TECHNICAL INFORMATION.** Purchaser shall have no obligation to furnish or pay for any design work, drawings, tools or other equipment required for the performance of any order; provided, however, that Purchaser may, at its option, purchase any such items especially required by the seller for any order at the current value thereof on the seller's books for income tax purposes and any item so purchased shall be deemed furnished to Purchaser hereunder. Any design, drawing, specification, photograph, tool or other equipment or material or part or engineering and manufacturing information heretofore or hereafter furnished to the seller by Purchaser, or the cost of which shall have been paid by Purchaser or included in the aggregate price of any order, whether or not separately itemized hereon, shall be and remain Purchaser's property, shall be conspicuously identified as such in the seller's records and by physical marking thereon, shall be promptly delivered to Purchaser upon request, shall be treated as confidential information, shall not be used in processing or manufacturing goods for anyone other than Purchaser and, while in the possession of the seller, shall be the seller's responsibility and shall be adequately insured at the seller's expense for the benefit of Purchaser against loss or damage by fire or other hazard. Any information which the seller may disclose to Purchaser with respect to the design, manufacture or sale or use of the items covered by any order shall be deemed to

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have been disclosed as part of the consideration for that order, and the seller shall not assert any claim (other than a claim for patent infringement) against Purchaser by reason of Purchaser's use thereof.

- 18. **FORCE MAJEURE**. Purchaser shall not be liable for any damage as a result of any delay or failure to accept delivery due to any act of God, act of the seller, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown or other labor difficulties, war, riot, delay in transportation, defaults of common carriers, inability to obtain necessary labor, materials, or manufacturing facilities or, without limiting the foregoing, any other delays beyond the Purchaser's control which shall affect the Purchaser's ability to receive and use the goods or services. In the event of such delay, the date of delivery shall be extended for a period equal to the time lost because of the delay.

- 19. **CERTIFICATION OF ROHS DIRECTIVE COMPLIANCE**. Seller acknowledges that the goods to be furnished hereunder are intended for integration into electrical or electronic equipment products which may be destined for ultimate shipment into one or more member states of the European Union. Seller hereby certifies and declares that all goods furnished hereunder shall have been produced in compliance with the requirements of the RoHS Directive and any and all legislation adopted by any member state of the European Union to implement the same. Without limiting the foregoing, seller hereby specifically certifies and declares that the goods to be supplied by seller to Purchaser hereunder shall not contain any of the following substances: lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls ("PBB"), or polybrominated diphenyl ethers ("PBDE"). Seller shall defend, indemnify and hold harmless Purchaser and its affiliates and distributors, and its and their respective directors, officers, employees, agents, and representatives, from and against any and all liabilities, claims, demands, actions, damages, fees, penalties, fines, costs, and expenses (including without limitation attorneys' fees and the cost of defending any action) resulting from or relating to the falsity or inaccuracy of any certification or declaration made pursuant to this Section 19. If at any time seller knows or believes any of the certifications or declarations made hereunder to be false or inaccurate, seller shall immediately notify Purchaser thereof in writing.

- 20. **REMEDIES CUMULATIVE**. The rights and remedies of the Purchaser set forth herein shall be in addition to any rights or remedies which Purchaser may otherwise have.

- 21. **CONSENT TO JURISDICTION**. All actions or suits arising out of these Terms and Conditions shall be brought, heard and determined exclusively in either the Olmsted County District Court or the United States District Court for the District of Minnesota. Seller consents to personal and subject matter jurisdiction and venue in such courts and waives and relinquishes all right to attack the suitability or convenience of such venue or forum. Seller waives personal service of all process upon it in any such action or suit and consents to all such service of process made by mail or by messenger directed to it at the address specified on the face of this purchase order. All directions issued by the forum court, including all injunctions and other decrees, shall be binding and enforceable in all jurisdictions and countries.

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22. **RIGHT OF OFFSET.** Upon written notice, any sum payable to seller by Purchaser under this Order may be set off by Purchaser against any sum payable to Purchaser by seller under (i) these Terms and Conditions, including, without limitation, Section 7 and Section 8 (ii) any claim by Purchaser pursuant to these Terms and Conditions, or (iii) any other agreements between Purchaser and seller.
23. **COMPENSATION TO PURCHASER’S AGENTS.** No employee or other agent of Purchaser is permitted to solicit or accept any compensation or payment, however characterized, from any supplier in connection with the placement of any order; and any rebate, discount or other amount offered in that connection shall be separately itemized in seller’s invoice.
24. **COMPLIANCE WITH LAWS.** Seller shall comply with all applicable international, federal, state, county, and municipal statutes, laws, regulations, codes, standards, ordinances and orders in its performance hereunder and shall be responsible for all fees associated with such compliance, licenses, permits, certifications, bonds, taxes, duties, tariffs and other applicable fees. Without limiting the foregoing, seller will comply with all customs and export and re-export control laws and regulations and requirements of the U.S. (including specifically the U.S. Export Administration Regulations (“EAR”) maintained by the U.S. Department of Commerce, the International Traffic in Arms Regulations (“ITAR”) maintained by the Department of State and the trade and economic sanctions regulations maintained by the Department of Treasury’s Office of Foreign Assets Control (“OFAC”)) and of each country in which the goods are made or likely to transit with respect to (a) the labeling of the goods and their packaging, (b) the export and import of the goods and the subsequent distribution of the goods to Purchaser and/or directly to Purchaser’s customers, including the completion and submission of all required documentation, and the payment of all taxes, duties, tariffs and similar expenses. In addition, seller hereby acknowledges, represents and warrants (i) that seller WILL NOT provide any goods that in whole or in part have been transferred, exported or imported, directly or indirectly, from a country or national thereof, subject to restrictions under applicable laws and regulations, including but not limited to inclusion on the EAR’s Denied Party List or any similar list published by a United States or foreign agency; (ii) seller is not located in, under the control of, or a national resident of any such restricted country; (iii) the goods have not been produced, in whole or in part, by prison labor, sweatshop labor, abusive forms of child labor, slave labor, or by other labor practices in violation of applicable law; and (iv) unless otherwise agreed to in writing by Purchaser and seller, seller shall serve as the Importer of Record for the goods and shall comply with all applicable laws, be responsible for all applicable fees, and assume all obligations incurred as the Importer of Record.

Seller shall be responsible for obtaining any license required under the EAR, ITAR, OFAC regulations, or other export control regime. Seller will identify in writing to Purchaser those items, technology, and software for which an export license is required and provide export classification and licensing information necessary for export documents, including but not limited to, the classification of items under the applicable export control regimes (e.g., Export Control Classification Numbers under the Commerce Control List or Categories under the U.S. MunitionsList), the applicability of license exceptions, and licenses obtained by seller. Seller agrees to indemnify Purchaser for any fines, penalties, claims, losses, damages,

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costs (including legal costs), expenses and liabilities that may arise as a result of seller's non-compliance with the provisions of this Section 24.

25. **FEDERAL ACQUISITION REGULATION FLOW DOWN.** If an order is issued in support of a U.S. Government prime contract or subcontract, the flow down Federal Acquisition Regulation ("FAR") clauses and any applicable agency supplements thereto in effect on the date of this Order and set forth in Appendix A (available on Purchaser's website at www.crenlo.com) are incorporated herein by reference.

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