

Order Acknowledgement



Electrochem Solutions, Inc.
670 Paramount Dr.
Raynham, MA, 02767
Tel: 781-830-5800
FAX: 781-575-1545
www.electrochemsolutions.com

To:

MONTEREY BAY AQUARIUM RESEARCH
INSTITUTE

Bill To:

MONTEREY BAY AQUARIUM RESEARCH
INSTITUTE
MBARI Accts Payable
7700 SANDHOLDT RD.
MOSS LANDING, CA 95039-9644
US

Ship To:

MONTEREY BAY AQUARIUM RESEARCH
INSTITUTE
7700 SANDHOLDT RD
BUILDING A
MOSS LANDING, CA 95039-9644
US

Order Date	Order Number	Revision	Customer PO	Payment Terms
26-MAR-14	1018035	0	1410491	30 NET

No.	Ordered Item and Revision	Description	Scheduled Ship Date	Quantity	Unit Price	Extended Price (USD)
1.1	3PD1489 Rev. 001	ASSEMBLY, BATTERY PACK	25-APR-14	8	1979.00	15,832.00
Order Total						\$15,832.00

Delivery Terms	Shipment Method	Freight Terms
Factory	FedEx Ground	Prepay & Add
Freight Charges, if applicable, are estimated and will be actual at the time of shipment		

Special Instructions:

Taxes:

The price of the Products does not include sales, use, excise, and valorem, property or other taxes now or hereafter imposed, directly or indirectly by and governmental authority or agency with respect to the manufacture, production, sales, delivery, consumption or use of Products covered by this Agreement. BUYER shall pay such taxes directly or reimburse SUPPLIER for any such taxes that it may be required to pay.

Payment:

The specific terms of payment are as specified in writing by SUPPLIER. If BUYER shall fail to make any payments in accordance with the terms and provisions hereof, SUPPLIER, in addition to its other rights and remedies, but not in limitation thereof may at its option, defer shipment or deliveries hereunder, or under any agreement with BUYER, except upon receipt of satisfactory security or of cash before shipment. A late charge of 2% a month shall be payable on any portion of the purchase price of the Products purchased under this Agreement that is not paid when due.

Shipment, Risk of Loss, Title:

The Products shall be shipped f.o.b. SUPPLIER's shipping points with risk of loss passing to BUYER upon delivery to the carrier. Title shall pass to BUYER on delivery to the carrier. BUYER hereby releases SUPPLIER from any and all claims and liability with respect to any such in-transit damages or losses of Products. BUYER shall be responsible for securing insurance coverage to cover shipments and deliveries hereunder.

Deliveries:

The date of delivery provided herein is an approximation based on SUPPLIER's best judgment and prompt receipt from BUYER of all necessary data regarding the Products. Unless otherwise expressly stated, SUPPLIER shall have the right to deliver all of the Products at one time or in portions from time to time within the time of delivery herein provided. The delivery of non-conforming Products or a default of any nature, in relation to one or more installments of this Agreement shall not substantially impair the value of this Agreement as a whole and shall not constitute a total breach of this Agreement as a whole.

Delays in Deliveries:

SUPPLIER shall be excused for delay in delivery, may suspend performance and shall under no circumstances be responsible for failure to fill any order or orders when due to acts of God or of the public enemy, fires, flood, riots, strikes, freight embargoes or transportation delays, shortage of labor, inability to secure fuel, material supplies, or power at current prices or on account of shortages thereof any existing or future laws or acts of the Federal or of any State Government (including, without limitation, any order, rules or regulations issued by any official or agency of any such government) affecting the conduct of the SUPPLIER's business or any cause beyond SUPPLIER's reasonable control).

Special Instructions:

Any special instructions (i.e., drop ship location or additional labeling, packaging) required by BUYER must be specified on the purchase order prior to submission to SUPPLIER and if additional charges apply, SUPPLIER will notify BUYER in advance of shipment.

Product Warranty:

(a) SUPPLIER warrants to BUYER that Products sold by SUPPLIER to BUYER under this Agreement shall be free from defects in materials and workmanship at time of delivery of the Products for a period of one year from date shipped from SUPPLIER'S factory. EXCEPT AS EXPRESSLY SET FORTH IN THE PRECEDING SENTENCE, SUPPLIER MAKES NO OTHER WARRANTIES WITH RESPECT TO THE PRODUCTS, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(b) In cases of suspected defective Products, BUYER shall notify SUPPLIER of such alleged defects and SUPPLIER will, upon substantiation that such Products are defective, authorize BUYER to return such defective Products. Product must be returned to SUPPLIER within 30 days of SUPPLIER's authorization to return such Products.

Repair, Replacement, Credit:

SUPPLIER shall correct promptly by replacement at its sole expense or, at SUPPLIER'S option, issue credit for any defective Products returned before or after acceptance thereof and/or final payment therefore. This shall be BUYER's sole remedy for delivery of defective Products. SUPPLIER shall have no responsibility for damage done to Products as a result of improper use, or installation. BUYER will have to substantiate that the Products have been stored, preserved, and used properly prior to SUPPLIER repairing, replacing or giving credit for such returned Products.

Indemnity:

BUYER shall defend, indemnify and hold harmless SUPPLIER, its subsidiaries, parents, affiliates, and their respective directors, agents, employees, officers, successors, and assigns from and against any and all claims, cause of action, suits, liabilities, damages, losses, costs and expenses alleging damages (including, without limitation, bodily injury or property damage) (collectively, "Claims") arising from or relating to BUYER's sale, use or value-added assembly of the Products, except to the extent that such Claims arise solely and directly out of SUPPLIER's gross negligence or willful misconduct.

Laws, Codes, Regulations, Safety Devices:

Compliance with laws, codes and regulations relating to the Products and their use is the sole responsibility of BUYER and SUPPLIER makes no warranty or representation with respect thereto.

Intellectual Property:

All technology, know-how, intellectual property rights and trade secrets comprising or relating to any of the Products are and shall at all times remain the exclusive property of SUPPLIER. Inasmuch as all articles or materials supplied hereunder are being specially manufactured for BUYER in accordance with detailed drawing, designs, or specifications supplied by BUYER, BUYER shall defend, indemnify and hold harmless, SUPPLIER, its subsidiaries, parents, affiliates, and their respective directors, agents, employees, officers, successors, and assigns from and against any and all Claims arising involving the alleged infringement or infringement of any patent or other proprietary rights in the manufacture, delivery, use of disposition of any such article or material supplied hereunder, provided SUPPLIER shall inform BUYER of any claim, demand or suit asserted or instituted against it.

Liability:

In no event shall SUPPLIER's obligation and liability under this Agreement extend to direct, indirect, punitive, special, incidental or consequential damages or losses BUYER may suffer or incur therewith including, without limitation, loss of revenue of profits, damages, or losses as a result of BUYER's inability to fulfill contracts with third parties, injury to good will, claims of customers and like, nor shall it extend to damages or losses BUYER may suffer or incur as a result of claims, suits or other proceedings made or instituted against BUYER by third parties, whether public or private in nature.

BUYER's Default:

BUYER shall be liable to SUPPLIER for all damages or losses, including, without limitation, loss of reasonable profits, and for costs and expenses, including, without limitation, attorney's fees, sustained by SUPPLIER and arising from BUYER's default under, or breach of, any of the terms and conditions of this Agreement.

Order Cancellation, Modification:

A purchase order accepted by SUPPLIER may not be canceled by BUYER. Should extraordinary circumstances arise, minor modifications may be made to scheduled delivery dates, with SUPPLIER'S prior written approval.

Assignment:

No right or interest in this Agreement shall be assigned by BUYER without prior written agreement by SUPPLIER. No delegation of any obligation by BUYER shall be made without prior written agreement by SUPPLIER.

Law Governing:

The interpretation and performance of this Agreement shall be in accordance with and shall be controlled by the laws of the State of New York. Any claim or dispute arising under this Agreement may only be brought in a federal, state or local court located in Buffalo, New York. EACH PARTY WAIVES ITS RIGHT TO TRIAL OF ANY ISSUE BY JURY.

Modifications, Waivers:

No waiver, alteration or modification of any of the provisions hereof shall be binding on SUPPLIER unless made in writing and agreed to by a duly authorized official of SUPPLIER. No waiver by SUPPLIER of any one or more defaults by BUYER in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default or defaults whether of a like or a different character.

Independent Contractors:

The Parties are, and shall at all times be, independent contractors pursuant to this Agreement. Each Party, and each employee and other agent of such Party, is not an agent of the other Party for any purpose and may not act for the other Party or incur on behalf of the other Party any indebtedness, liability or obligation.

Import/Export Compliance:

The Arms Export Control Act or the Export Control Act of 1979 may control and restrict export of SUPPLIER'S products, technical data and other information. It is therefore the responsibility of the BUYER to ensure that all United States laws and regulations are fully complied with and those procedures are in place to segregate and identify such information. It shall be the responsibility of the BUYER to identify and inform SUPPLIER of any such restrictions, and BUYER shall defend, indemnify and hold harmless SUPPLIER, its subsidiaries, parents, affiliates, and their respective directors, agents, employees, officers, successors, and assigns from and against any and all claims arising from or relating to any and all violations of such laws or regulations by BUYER. Further, BUYER agrees to hold all such information provided by SUPPLIER in strict confidence and that any such information, technical data, or product will not be used for any purpose that violates or may violate the Arms Export Control Act or the Export Control Act of 1979. BUYER shall also provide SUPPLIER written notice of any disclosure and the name of the end user of such product. If any disclosure of information, as determined by BUYER or SUPPLIER is required, BUYER shall ensure that disclosure is in accordance with Federal Acquisition Regulations (FARS), the Arms Export Control Act, and the Export Control Act of 1979. The restriction as imposed upon SUPPLIER by United States Government regulations, FAR, the Arms Export Control Act, and the Export Control Act of 1979 shall be passed on to and clearly identified to all potential users.

These Terms and Conditions supersede terms and conditions previously made by SUPPLIER or BUYER, unless otherwise mutually agreed upon in writing.