AVNET
Reach Further™

Purchase Order

Number: 3404790828

Date:	05/22/2023	**New/Change:**	New Purchase Order	**Buyer:**	Thania Rios
PO. Type:	Standard/Normal PO	**Terms:**	Within 45 days due net	**Phone:**	1333134-8964
Currency:	USD			**E-Mail:**	Thania.Rios@AVNET.COM
Carrier:		**Shipping Instruction:**			

URL: http://avnet.me/Click_for_Applicable_PO_Flowdowns

Inco Terms: FCA FREE CARRIER

Supplier:

DIVA LABORATORIES LTD

Vendor#: 66502227

Invoice From: DIVA LABORATORIES LTD

Bill-To:

Avnet Inc.
Accounts Payable
3101 East President George Bush Hwy, Suite 250
Richardson, Texas 75082
Other Inquiries: apcustomerservice@avnet.com

Invoice Submission:

By Email: APConfirm@Avnet.com
By Mail: Avnet, Inc.
PO Box 818064
5801 Postal Road
Cleveland, OH 44181

Header Comments:

Please use this PO to cover the expedited fee of PO 3404748770/30 pcs & 3404776457/10 pcs, PN 7004678373/1A1A24235114602.

Line	Part Number/ Description	Qty	UOM	Required Date	Unit Cost	ExtCost
10	**Avnet PN:** 7003798087 **Description:** UNKNRE FEE **Manufacturer PN:** NRE FEE **Line Comments:** **Delivery Address:** Avnet Inc. Morelos Sales & Distribution 6700 W. MORELOS PL SUITE B, CHANDLER, AZ 85226 US	1	EA	05/22/2023	1,540.00000	1,540.00

Total: 1,540.00

Terms & Conditions

The purchase of products or services ("Products") by Avnet, Inc., by and through its Avnet Integrated division ("Avnet") are subject to these terms and conditions (“Agreement”) regardless of other or additional terms or conditions that conflict with or contradict this Agreement in any purchase order, non-negotiated document, quote, acknowledgement, or other communication. Preprinted terms and conditions on any document of supplier (“Supplier”) and/or Avnet’s failure to object to conflicting or additional terms will not change or add to the terms of this Agreement. If the parties have a negotiated agreement for the relevant Products, such terms will govern and supersede these terms and conditions.

1. **ORDERS.** Any order placed by Avnet will be made with Avnet’s standard purchase order form and submitted in writing by fax, or electronic means acceptable to Avnet (“Order”). Supplier shall acknowledge Avnet’s Orders in writing or via EDI within one (1) business day of receipt. Order acknowledgments shall contain Supplier’s promised ship date. All Orders will be deemed accepted by Supplier, per Avnet’s requested ship date, if Supplier does not provide a written notice of rejection within three (3) business days of the receipt of the Order. Any partial fulfillment of an Order will also be deemed accepted by Supplier. Avnet may cancel any Order having a clerical error within five (5) business days of placing such Order. Avnet may change or cancel Orders or reschedule shipment dates for any Products ordered, provided that it notifies Supplier at least ten (10) business days prior to the latest confirmed ship date.
2. **APPOINTMENT.** Supplier authorizes Avnet to distribute or resell Products purchased under this Agreement worldwide through its Affiliates or through third party representatives appointed by Avnet. “Affiliate” shall mean any person, partnership, joint venture, company, corporation or other form of enterprise, domestic or foreign, that directly or indirectly controls or owns, is controlled or owned by, or is under common control or ownership with Avnet.
3. **PRICES.** The price for any Products will be set forth in Avnet’s Order. Avnet shall not be liable for taxes with respect to any Order other than any sales tax which Supplier is required by law to collect from Avnet.
   A. PRICE PROTECTION. In the event that Supplier decreases the price of any Product, Avnet will be entitled to a credit equal to the difference between the net price paid by Avnet, less any prior credits granted by Supplier, and the new decreased price for the Product multiplied by the quantity of such Product in Avnet's inventory or in transit on the effective date of the reduction.
      i. Avnet shall submit to Supplier, not later than sixty (60) business days after receiving notice of such price decrease, a Product inventory report as of the effective date, together with a debit memo reflecting the credit described above.
      ii. Supplier shall be deemed to have verified the Product inventory report and debit memo unless Supplier contests the same in writing within sixty (60) business days after receiving such report and memo.
      iii. Uncontested debit memos shall be credited to Avnet's account as of the effective date of such price decrease.
   B. PRODUCTS SHIPPED AFTER PRICE DECREASE. Products shipped on or after the effective date of any price decrease will be shipped and invoiced at the price in effect at the time of shipment.
   C. PRODUCTS SHIPPED AFTER PRICE INCREASE. Products shipped after the effective date of any price increase will be shipped and invoiced at the price in effect at the time of Order placement.
4. **TERMS OF PAYMENT.** Payment terms for Products purchased in Avnet’s Order shall be net ninety (90) calendar days from date of invoice. Avnet will also receive an additional 2% discount if payments are made within 10 calendar days of the invoice date. Avnet has the right of offset against Supplier for programs, promotions, special pricing, rebates, and for any Avnet returns as described herein.
5. **DELIVERY AND TITLE.** Time is of the essence for delivery of Products. All Products will be delivered DDP Avnet's destination (Incoterms 2010). Supplier agrees to deliver Products ordered by Avnet to the location and within the time specified in Avnet’s Order pursuant to the terms of this Agreement. Supplier may not ship before the promised ship date without Avnet's prior written approval. Supplier agrees to pay premium freight when its delivery will miss the acknowledged ship date. Avnet may designate the carrier to be used, and, in absence of such specification by Avnet, Supplier shall select a carrier in its reasonable discretion. Supplier warrants the title to all Products sold to Avnet and warrants that such Products are not subject to security interests, liens, or other encumbrances. Title and risk of loss shall pass at Avnet’s destination. For the avoidance of any doubt, under no circumstance shall Avnet be the importer of record for this engagement.
6. **ACCEPTANCE AND PRODUCT RETURN.** All Products are subject to inspection and testing before acceptance. Avnet will use reasonable efforts to give Supplier notice of any obvious defects, damage, or discrepancy within thirty (30) business days of delivery. Acceptance will not be deemed a waiver of any warranty hereunder or otherwise provided by law. If Avnet finds that the Products or any part thereof do not conform to the requirements of the Order, Supplier will, at Avnet’s election either: replace such nonconforming Products, accept return for credit at the invoice price, or refund Avnet’s purchase price for such nonconforming Products. Return of Products that are not in conformance with the Order (including DOA), over-shipments, recalled products, and shipments rejected due to early or late delivery will be returned freight collect at Supplier’s risk and expense.
7. **DEFECTIVE PRODUCT.** Notwithstanding any other provision of this Agreement, Avnet may return for full credit of Avnet’s cost of the Product (including, without limitation, cost of assembling, disassembling, transportation, and labor), less any prior credits issued by Supplier, any and all Products found to be defective upon delivery, or within a reasonable time thereafter; provided, however, that any such defective Products are returned to Supplier, freight collect, within ninety (90) business days of Avnet’s discovery of the defect.
8. **END OF LIFE.** If Supplier discontinues Products or makes Products obsolete, Supplier will notify Avnet at least ninety (90) business days prior to the effective date of such change. Avnet will then notify Supplier of the affected Products in its inventory for Supplier’s repurchase. All end of life Products will be subject to the return policy in Section 6 ACCEPTANCE AND PRODUCT RETURN. Furthermore, the Supplier will grant Avnet the right of a life time buy upon request.
9. **WARRANTY**
   A. COMPLIANCE WITH LAW. Supplier guarantees Avnet that the design, construction and quality of the Products shall comply in all respects with all requirements of any statutory regulation, order, contract or any other instrument having the force of law, which may be in operation at the time

when the Products are supplied.

B. SUPPLIER'S MANUFACTURER'S WARRANTY. Supplier warrants the Products in accordance with the greater of the following: (i) the manufacturer's standard warranty, (ii) the warranty that is publicly posted on manufacturer's website, (iii) the warranty that is required by local law, or (iv) 24 months for those purchases originating from Asia or the European Union. Avnet is authorized to pass this warranty through to Avnet's customers and to end users. The warranty period as set forth in this Section 9 WARRANTY shall begin to run with respect to Avnet's customers and any end user upon delivery of the Product to the end user. Any Product to be returned under the terms of the warranty may be shipped to Supplier either from Avnet or directly from Avnet's customers or end users. Supplier shall indemnify Avnet for any liability related to a breach of warranty.

C. NEW/UNUSED PRODUCT. Supplier warrants that the Products provided to Avnet by the Supplier are new and unused.

D. PRODUCT CONFORMANCE TO MANUFACTURER'S SPECIFICATIONS. Delivery of any Product by Supplier to Avnet shall constitute a warranty by Supplier that the Product conforms to the manufacturer's specifications.

E. CONFLICT MINERALS. Supplier represents and warrants that any gold, tantalum, tin or tungsten included in the Products provided to Avnet by Supplier either (i) came from recycled or scrap sources or (ii) did not originate in the Democratic Republic of the Congo or an adjoining country. Supplier will provide information and supporting documents to this effect as reasonably requested by Avnet.

10. **ORIGINAL MANUFACTURE PARTS.** Supplier represents and warrants that it is either the original equipment manufacturer ("OEM"), original component manufacturer ("OCM"), or a franchised or authorized distributor of the OEM/OCM for the Products; or if Supplier is not the OEM/OCM or a franchised or authorized distributor of the OEM/OCM, then Supplier confirms by acceptance of orders hereunder that the Products have been procured from the OEM/OCM or a franchised or authorized distributor of the OEM/OCM.

11. **SERVICES PERFORMED ON SITE.** Where applicable, any Supplier's equipment located on Avnet's site remains at all times the risk of the Supplier, which shall insure such equipment against all risk of loss or damage. Avnet accepts no liability for any loss of or damage to Supplier's equipment, however caused, including through Avnet's negligence.

12. **INTELLECTUAL PROPERTY**

A. **SUPPLIER INTELLECTUAL PROPERTY WARRANTY.** Supplier warrants that any and all Product purchased hereunder, and the manufacture, sale, or use thereof, do not and will not violate or infringe upon any patent, copyright, trademark, trade secret, or other intellectual property right of any third party.

B. **INDEMNIFICATION.** Supplier will indemnify, defend, and hold Avnet, its successors, assigns, customers and end-users harmless against all losses, damages, costs and expenses (including reasonable attorneys' fees and costs of establishing rights to indemnification and any settlement) based on any claims, demands, suits, proceedings and actions ("Claim") in connection with any alleged infringement of any patent, copyright, trademark, trade secret or other intellectual property right of a third party, including any Claims that the Product, or the process, design, or methodology used to manufacture the Product, infringes any third party patent, copyright, trademark, trade secret or other intellectual property rights.

C. **AVNET'S OBLIGATION WITH RESPECT TO SUPPLIER'S IP INDEMNITY.** Avnet will provide Supplier with written notice of any such Claims, grant full authority to Supplier to defend and settle such Claims, and upon Supplier's request, provide reasonable assistance and information, at Supplier's cost and expense.

D. **SUPPLIER'S OBLIGATION IN EVENT OF IP CLAIM.** If a Product becomes the subject of a Claim or Avnet is enjoined from selling or using a Product, Supplier will:

i. procure for Avnet the right to sell and use the Product;

ii. provide Avnet with replacement or modified Product that is non-infringing; or

iii. if Supplier is unable to provide the remedies above, refund the full purchase price for such Product.

E. **Intellectual Property Rights.**

i. Intellectual Property Rights (IPR) of either party or any third party used in performance of this Agreement shall remain the property of such party, and except as set forth in this section, nothing in this Agreement shall transfer or be deemed to transfer the intellectual property rights of either party or any third party.

ii. All documents, drawings, specifications, information, patents, patent applications, inventions, developments or processes or any copyrightable material originated and developed by Supplier specifically for Avnet under this Agreement ("Work Product"), except for any Supplier IPR contained within such Work Product, shall be owned by Avnet. Supplier hereby grants Avnet a worldwide, non-exclusive, royalty-free, perpetual, without the right of sublicense, license to use Supplier's IPR, which is used in performing under this Agreement.

iii. All specifications provided by Avnet, and all IPR in or arising out of them and from the Work Product, shall vest in and remain at all times the property of Avnet. Such specifications may only be used by Supplier as necessary to perform under this Agreement.

iv. At the request of and at no additional cost to Avnet, Supplier shall promptly do all such things and sign all documents necessary in the opinion of Avnet (a) to vest all IPR in or arising out of any Work Product in Avnet, absolutely and (b) to enable Avnet to defend and enforce its IPR.

13. **GENERAL INDEMNIFICATION.** Supplier will indemnify, defend and hold Avnet harmless of and from any and all liabilities, losses and damages (including costs, expenses and attorneys' fees, and costs of establishing rights to indemnification) resulting from any claim of any Avnet's customers or any third party (including employees of Avnet or Supplier), for any claim including: (a) death or personal injury; (b) breach by Supplier of any warranty, representation, or covenant under this Agreement; (c) breach of contract; (d) non-compliance with requirements hereunder or applicable laws, regulations, directives, or ordinances; or (e) damage to property arising out of, or in any way connected with, the Products or the sales, distribution, use or operation thereof.

14. **LIMITATION OF LIABILITY. AVNET WILL NOT BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE ARISING OUT OF OR RELATED TO THE ORDERS OR ANY TERMINATION, REJECTION, OR REVOCATION OF ACCEPTANCE**

OF THE ORDERS, INCLUDING WITHOUT LIMITATION, BUSINESS INTERRUPTION COSTS, REPROCUREMENT COSTS, LOSS OF PROFIT OR REVENUE, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEAD, INJURY TO THE REPUTATION OF SUPPLIER, OR LOSS OF CUSTOMERS, EVEN IF AVNET HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL AVNET'S LIABIITY EXCEED THE PRICE SET FORTH IN THE ORDER.

15. **USE OF TRADEMARKS/TRADENAMES.** Avnet is authorized to use Supplier's trademarks, trade names and logos in connection with Avnet's sale of Products. Avnet will have the right to pass on this right of usage to its reseller customers.
16. **CONFIDENTIALITY.** If either party receives from the other party written information marked "Confidential" and/or "Proprietary", the receiving party agrees not to use such information except in the performance of this Agreement, and to treat such information in the same manner as it treats its own confidential information. The obligation to keep information confidential shall not apply to any such information that has been disclosed in publicly available sources; is, through no fault of the party receiving the confidential information, disclosed in a publicly available source; is in the rightful possession of the party receiving the confidential information without an obligation of confidentiality; or is required to be disclosed by operation of law. Except as otherwise provided herein, the obligation not to disclose shall be for a period of one (1) year after the disclosure of the Confidential Information.
17. **QUALITY.** Supplier shall use reasonable efforts to attain the goals established in the Avnet Global Supplier Quality Handbook, which may be found at: **www.avnet.com**.
18. **EXPORT.** Supplier acknowledges and agrees that Avnet may export Products as allowed by the export control laws, regulations and orders of the United States and other countries to which it may ship Products. The parties shall observe and comply with all applicable laws, rules and regulations applicable to the performance of their respective obligations under this Agreement including, but not limited to, anti-corruption laws (such as the U.S. Foreign Corrupt Practices Act) and regulations in respect of import or export of Products.
19. **GLOBAL SUPPLY CHAIN SECURITY COMPLIANCE.** Supplier warrants and represents to Avnet as follows: (1) if eligible for Customs-Trade Partnership Against Terrorism ("C-TPAT"), or other comparable customs certification programs, Supplier will be certified and validated and Supplier will provide Avnet with its Status Verification Interface ("SVI") number(s), or other program identification information, to confirm the foregoing representation prior to shipment; (2) if not eligible for C-TPAT, or other comparable customs certification programs, Supplier fully understands the requirements for C-TPAT certification and will make all commercially reasonable efforts to comply to this certification program and assist Avnet with maintaining its certification with this compliance request. Supplier will provide evidence of such compliance, including security certifications and results of internal security audits as Avnet may reasonably require; (3) if Supplier's status under this Subsection changes, Supplier will give prompt written notice to Avnet; and (4) Supplier will comply with any pre-arranged visit Avnet's auditors may make to verify if Supplier's procedures are in accordance with the criteria set forth by C-TPAT or other comparable customs compliance program.
20. **GOVERNMENT CONTRACTS.** If Avnet's customers elect to sell Supplier's Products (including supplies, software, documentations or services) to the U.S. Government or to a prime contractor selling to the U.S. Government, the Products are "commercial items" as that term is defined at 48 C.F.R. 2.101. Supplier will comply with provisions of FAR 52.244-6, Subcontracts for Commercial Items and Commercial Components. Should U.S. Government end users acquire Products that consist of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212, their rights will be consistent with those rights set forth in 48 C.F.R. 12.212 which generally limits their rights to the licenses customarily provided by Supplier to the public. Supplier will also comply with the provisions of DFARS 252.211.7003. Supplier will also provide the information necessary to assist Avnet with analysis of DFARS 252.225-7014 (Alt 1), Preference for Domestic Specialty Metals (Berry Amendment) and other applicable federal statutes. Supplier will make a good faith effort to determine whether forced or indentured child labor was used to mine, produce or manufacture any Products furnished under this Agreement. Supplier may be required to certify that it is not aware of any such use of child labor.
21. **STATUTORY CONFORMANCE.** With respect to the Products ordered under this Agreement, Supplier warrants and agrees that it has complied with all applicable federal, state and local laws, codes and requirements. Supplier especially warrants that all Products supplied to Avnet comply with all applicable laws in the EU and transposed directives into national laws in the member states, e.g. environmental legislation such as substance regulation RoHS / REACH, technical conformity CE and waste management. Supplier shall undertake to comply and bear all costs for the compliance with the current and applicable EU legislation. Supplier agrees to indemnify and hold harmless Avnet, its successors and assigns, and the customers of any of them, from all loss, damages, costs and expenses (including reasonable attorneys' fees and costs of establishing rights to indemnification) which may be incurred by non-compliance of Supplier with this paragraph. Avnet reserves the right to return any non-compliant Product at the expense of Supplier.
22. **OZONE DEPLETING SUBSTANCES.** Avnet reserves the right to reject any Products containing or manufactured with substances identified as a Class I or Class II ozone depleting substances by the U.S. Environmental Protection Agency pursuant to Title VI of the Clean Air Act Amendments of 1990, and any amendments thereto, whether or not such Products shall be required to bear labeling.
23. **GENERAL**
    A. This Agreement shall be governed, construed, and enforced in accordance with the laws of the country where the Avnet entity that placed the Order ("Governing Country") is located. The courts of the Governing Country shall have jurisdiction and venue over all controversies arising out of, or relating to, this Agreement. If the Governing Country is the United States of America, the laws and courts of the State of Arizona will apply without reference to Arizona's conflict of laws principles; and the state or federal courts of Arizona shall have jurisdiction and venue over all controversies arising out of, or relating to, this Agreement. The United Nations Convention for the International Sale of Goods shall not apply.
    B. Supplier may not assign this Agreement without the prior written consent of Avnet, and Avnet's affiliates may perform Avnet's obligations under this Agreement. This Agreement is binding on successors and assigns.
    C. This Agreement can only be modified in writing signed by authorized representatives of both Avnet and Supplier.
    D. Avnet and Supplier are independent contractors and agree that this Agreement does not establish a joint venture, agency relationship, or

partnership.

E. Avnet's failure to object to any document, communication, or act of Supplier will not be deemed a waiver of any of these terms and conditions. Notwithstanding any other remedies provided in this Agreement, Avnet retains all rights existing at law or equity, and Avnet's failure to affect cover does not bar it from any other remedy.

F. The unenforceability of any of these terms or conditions will not affect the remainder of the terms or conditions.

G. Avnet is not liable for failure to fulfill its obligations under this Agreement due to causes beyond its reasonable control (for example: acts of nature, acts or omissions of the Supplier, operational disruptions, man-made or natural disasters, epidemic medical crises, strikes, criminal acts, delays in delivery or transportation, or inability to obtain labor or materials through its regular sources).

H. Products, including software or other intellectual property, are subject to any applicable rights of third parties, such as patents, copyrights and/or user licenses, and Supplier will comply with such rights.

I. Supplier and Avnet will comply with applicable laws and regulations. Supplier shall collect, process, and transfer all personal data in connection with this Agreement in accordance with the applicable privacy laws and regulations.