



Revision 11/2017

## ARKWIN PURCHASE ORDER TERMS & CONDITIONS

### 1. ACCEPTANCE.

- a. This Purchase Order ("Order") constitutes an offer by Buyer which is accepted by Seller solely in accordance with these terms. Any additions, deletions or differences in the terms and conditions of this Order proposed by either party must be agreed upon in writing. This Order is a complete and exclusive statement of terms and supersedes all prior written and/or oral agreements. Each shipment received by Buyer from Seller shall be deemed to be only upon the terms and conditions contained in this Order notwithstanding any terms and conditions that may be contained in any acknowledgment, invoice, timecard or other form of Seller, and notwithstanding Buyer's act of accepting or paying for any shipment or similar act of Buyer.
- b. Seller acknowledges that it has available to it all specifications, drawings and data incorporated in this Order and that they are adequate to enable Seller to perform the work called for herein in accordance with the delivery schedule.
- c. This Order shall be deemed accepted by Seller upon the earlier of Seller's (i) signing and returning the acknowledgment copy hereof, or (ii) commencement of performance, or (iii) delivery in whole or in part of the Product(s) (defined below).

### 2. DEFINITIONS.

The following terms shall have the meanings set forth below:

- a. "Government" means the United States Government.
- b. "Product" means any goods, supplies or services provided by Seller to Buyer in accordance with the terms herein.
- c. "Purchase Order" means (i) the terms and conditions set forth on any paper or electronic document issued by Buyer entitled Purchase Order; (ii) the terms and conditions set for herein; (iii) any terms and conditions specifically incorporated by reference into (i) and/or (ii); and (iv) all supplemental sheets, schedules, exhibits, specifications, drawings, data or riders which may be annexed hereto or referenced in (i), (ii) or (iii).

### 3. APPLICABLE LAW AND DISPUTES

Any dispute arising under or related to this Order shall be governed by the law of the State of New York. However, if this Order is placed under a government prime or higher tier contract, it shall be construed and interpreted according to the federal law of Government contracts, as enunciate and applied by federal judicial bodies, Boards of Contract Appeals, and quasi-judicial agencies of the federal Government. Pending the resolution of any disputes, Seller shall proceed as directed by Buyer.

### 4. ASSIGNMENT AND SUBCONTRACTING

- a. This Order or any interest hereunder shall not be assigned or transferred by Seller without the prior written consent of Buyer.



- b. Notwithstanding the foregoing, any amounts due or to become due hereunder may be assigned by the Seller, provided that such assignments shall not become binding upon the Buyer unless and until the assignment agreement is received by Buyer.
- c. Seller shall not subcontract more than thirty percent (30%) of this Order without the prior written approval of the Buyer.

#### 5. BUYER FURNISHED PROPERTY

- a. Title to all property (other than Government property as defined at FAR 45.101) furnished to Seller by Buyer, or paid for by Buyer, shall remain with Buyer. Seller shall not alter or use such property for any purpose other than that specified by Buyer without the prior written consent of Buyer. Seller shall keep adequate records, which shall be made available to Buyer upon request, and shall store, protect, preserve, repair, and maintain such property in accordance with sound industrial practice, all at Seller's expense.
- b. Buyer does not provide any warranties with respect to its property, which is to be provided to Seller in "as is" condition, and notwithstanding the actual condition of such property, all items delivered or services performed by Seller shall be in strict accordance with the requirements of this Order; unless otherwise expressly provided for elsewhere within this Order.
- c. In the event that Buyer's property becomes lost or damaged for any reason while in Seller's possession, Seller agrees to replace (if lost or irreparable) or repair (if reparable) such property, at Seller's expense, in accordance with Buyer's request. At the completion of delivery of the goods or services ordered by Buyer in this Order for which Buyer's property was required, or the termination of this Order, Seller shall request disposition instructions for all such Buyer's property, or the remainder thereof, whether in its original form or in semi-processed form. Seller agrees to make such property available to Buyer at Buyer's request, in the manner requested by Buyer, including preparation, packaging, and shipping as directed. Expenses for preparation and for shipment shall be for Seller's account, and shipment shall be made FOB Seller's plant. Buyer may, at its sole discretion and by written notice, divest itself of title in favor of Seller.

#### 6. BUYER'S RIGHTS IN SELLER'S DATA AND PATENTS

If at any time during the performance of this Order (a) Seller suspends business operations or becomes bankrupt or insolvent, (b) this Order is terminated for default, or (c) if at any time within five (5) years from the date of this Order Seller for any reason discontinues acceptance of follow-on orders, the Buyer shall have a royalty-free nonexclusive license to use, and right to license others to use, Seller's patents, designs, processes, know how, drawings, and technical data relating to the Products contracted for under this Order for purposes of producing and selling items required to be supplied by Buyer's existing or follow-on contracts with its customers. In order to accomplish an orderly transition to Buyer's new source, Seller further agrees to provide Buyer with necessary technical aid and assistance at agreed-upon rates.

#### 7. CHANGES

Buyer may, at any time by issuing an amended Order signed by an authorized representative of Buyer's Purchasing Department, make changes within the general scope of this Order in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipping packing; (iii) place or time of delivery; and (iv) quantity. Seller shall proceed immediately to perform this Order as changed. If any such changes cause an increase or decrease in the cost of or the time required for the performance of this Order, an equitable adjustment shall be made in the price or delivery schedule, or both.. Any claim for



adjustment under this provision must be submitted in writing within twenty (20) days from the date of the amended Order, together with cost or pricing data sufficient to permit evaluation of such claim. Where the cost of property made obsolete or excess as a result of such change is included in the contractor's claim for adjustment (and supported by inventory schedules to be submitted within three (3) months from the date of the amended Order), the Buyer shall have the right to prescribe the manner of disposition of such property. Failure of the parties to agree upon any adjustment to be made under this Clause 7 shall not excuse Seller from proceeding with the amended Order, or as directed by an authorized representative of Buyer's Purchasing Department.

#### 8. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

Seller has complied with and shall comply with all applicable Federal, State and Local laws and ordinances and all orders, rules and regulations thereunder, including, without limitation, Section 27 of the Office of Federal Procurement Policy Act (the Procurement Integrity Act), (41 U.S.C. 423) and its implementing regulations. In addition, Seller agrees to promptly provide Buyer any and all information and certifications requested by Buyer in this regard. Seller shall defend, indemnify, save and hold harmless Buyer from, and reimburse it for, any and all cost, damages and expenses (including attorney's fees) suffered or occasioned to it through any failure of Seller to comply with any laws, orders, rules, regulations or ordinances.

#### 9. CONFIDENTIAL RELATIONSHIP

Unless the written consent of Buyer is first obtained, Seller shall not in any manner advertise or publish or release for publication any statement mentioning Buyer or the fact that Seller has furnished or contracted to furnish to Buyer Products under this Order, or assert any statement on behalf of Buyer or its employees. Seller shall not disclose any information relating to this Order except to the extent necessary for performance.

#### 10. DELIVERY

Buyer reserves the right to refuse shipments made in advance of the schedule set forth in this order, to return such advance shipments at Seller's expense, and/or to hold any pre-dated Products and pay invoices on such shipments on normal maturity after schedule date. Overshipment allowances, if duly authorized by Buyer by email or amended Order, will be applied to the entire Order. If Buyer agrees to accept deliveries after the date of delivery has passed, Buyer shall have the right to direct the Seller to make shipment to the delivery point set forth in the Order by the most expeditious means. Any additional cost of such expedited shipment and handling shall be borne by the Seller. Acceptance of late deliveries shall not be deemed a waiver of Buyer's right to hold the Seller liable for any loss or damage resulting from such later deliveries, nor shall it act as a modification of the Seller's obligation to make remaining deliveries in accordance with the delivery schedule set forth in this Order. The Seller shall have a 10 day grace period for delivery due dates for orders sent to Seller for items with agreed upon lead times; thereafter the Buyer shall impose liquidated damages equal to 10% of the line value for each line received beyond the grace period. The Buyer shall communicate such damages to the Seller and shall have the right to withhold such damages from payments due to the Seller.

#### 11. DESIGN AND INVENTION RIGHTS



If this Order has, as one of its purposes, design, experimental, developmental or research work, Seller agrees to communicate promptly to Buyer full details of any ideas, improvements, designs or inventions (whether or not patentable) conceived of, developed or first reduced to practice by Seller or any of its employees in connection with the performance of this Order. Seller hereby assigns to Buyer all right, title and interest of the Seller or its employees in each such ideas, improvements, designs or inventions, and shall perform all acts (at Buyer's expense) and execute all papers necessary to vest in Buyer full right, title and interest therein, including the patenting thereof.

#### 12. DRAWINGS, SPECIFICATIONS AND TECHNICAL INFORMATION

- a. Drawings, data, designs, inventions and other technical information supplied by Buyer to Seller in connection herewith (hereinafter called "Data"), shall remain Buyer's property and shall be proprietary and held in confidence by Seller. Such Data shall not be reproduced, used or disclosed to others by Seller without Buyer's prior written consent. Upon completion of work by Seller under this Order, Seller shall promptly return all Data to Buyer together with all copies or reprints thereof then in Seller's possession or control, and Seller shall thereafter make no further use, either directly or indirectly, of any such Data or any information derived therefrom without Buyer's prior written consent. Any information which Seller may disclose to Buyer with respect to the design, manufacture, sale or use of the items covered by this Order shall be deemed to have been disclosed as part of the consideration for this Order, and Seller shall not assert any claim (other than a claim for patent infringement) against Buyer by reason of Buyer's use thereof.
- b. U.S. Government Contracts – Notwithstanding anything in this or any other clause to the contrary, and subject to the prior condition that Buyer's scheduled performance will not be hindered, Seller, with the U.S. Government's authorization, may use on other contracts all Buyer-furnished designs, drawings, special tooling, equipment, material, engineering data or other technical or proprietary information, etc., which the U.S. Government owns, or has the right to authorize the use thereof. Seller is only required to inform Buyer of use of such material.

#### 13. FALSE CLAIMS AND INDEMNITY

The Seller shall defend, indemnify and hold harmless the Buyer for any cost incurred and any payments made by Buyer resulting from or in connection with false claims submitted by the Seller under this Order or as a result of any misrepresentation of fact or fraud by Seller relating to any claims or disputes arising under or related to this Order.

#### 14. INDEMNIFICATION AND INSURANCE

If, in the course of the performance of this Order, Seller, its agents, employees, or subcontractors enter upon premises occupied by or under control of Buyer or any of its customers or suppliers, Seller shall take all necessary precautions to prevent occurrence of any injury, including death, to any person or any damage to any property arising out of any acts or omissions of Seller, its agents, employees, or subcontractors. Seller shall defend and indemnify Buyer for, and hold Buyer harmless from, any liability, losses, damages, claims, suits, costs and/or expenses (including attorney's fees) arising out of or connected with the work to be performed hereunder, any act or omission of Seller, its agents, employees or subcontractors, except for injury or damage due solely to Buyer's negligence. Seller shall maintain such public liability, property damage, Workmen's Compensation, employer's liability, professional liability,



aviation liability insurance, automobile liability insurance or such other insurance as will protect Buyer from any risks arising in connection with this Agreement in an amount not less than \$5,000,000 combined single limit coverage. Seller shall provide certifications of insurance naming Buyer as an additional insured.

#### 15. INDEPENDENT CONTRACTOR

It is understood and agreed that the Seller shall be deemed to be an independent contractor in all its operations and activities hereunder; that the employees furnished by Seller to perform work hereunder shall be deemed to be Seller's employees exclusively, without any relation whatever to Buyer as employees of an independent contractor; that said employees shall be paid in accordance with applicable laws by Seller for all services in this connection; and that Seller shall be responsible for all obligations and reports covering social security, unemployment insurance, workers' compensation, income tax, and other reports and deductions required by state or federal law.

#### 16. INSPECTION & ACCEPTANCE

All Product shall be subject to inspection and test at all times and places, including the period of manufacture, by Buyer and/or its customers. If any inspection or test is made on Seller's premises, Seller, without additional charge shall: (1) provide all reasonable facilities and assistance for the safety and convenience of Buyer and its customer's inspectors; (ii) make available to the inspectors copies of all drawings, specifications, and processes applicable to the Product ordered; and (iii) promptly furnish Buyer with any and all resulting inspection certificates. All articles are subject to final inspection and acceptance at Buyer's plant notwithstanding any payment or prior inspections. Buyer may reject and hold at Seller's expense, subject to Seller's disposal, all Products not conforming to applicable specifications, drawings, samples, or descriptions (discrepancy). Additionally, Buyer may deem the Product to have a discrepancy due to lack of or improper certifications, packing lists, and other required paperwork delivered with Products. Without limiting any other rights or remedies it may have as provided herein or at law or equity, Buyer, at its option, may (i) require Seller to repair or replace at Seller's expense any Product which fails to meet this Order's requirements; (ii) require Seller to refund the price of any such Product; (iii) elect to retain and repair any such Product and offset Buyer's costs in effecting correction from the price of the Product; and/or (iv) offset from the price of the Product any and all damages and expenses incurred by Buyer as a result of such rejection. Additionally, any discrepancy, as described above, will be deemed a "Quality Event." Buyer may charge the Supplier a \$750 Quality Event fee to cover the operational and administrative costs to remedy the Quality Event. Neither final inspection, payment, nor any limitations contained in Clause 31 Warranty shall relieve Seller's responsibility for correcting or replacing defective Products arising due to fraud, gross mistakes amounting to fraud, or for latent defects. Seller shall maintain an inspection system suitable to buyer.

#### 17. INVOICING AND PAYMENT

A separate invoice shall be issued to Accounting for each shipment made by Seller. Unless otherwise specified in the Order, an invoice shall not be issued prior to shipment of items and payment will not be made prior to receipt of items and correct invoice. Standard payment terms are "30EOM15", meaning payments will be net (30) days after the end of the calendar month in which either (a) the date



performance is requested by the Buyer or (b) the invoice date occurs, whichever is later, paid the fifteenth (15th) day of the following calendar month.

Credit and discount periods will be computed from the date of receipt of the correct invoice to the date Buyer's check is mailed. Payments to the Seller or its authorized assignee of any claim under this Order shall be subject to reduction or set-off for any present or future claim(s) which Buyer may have against Seller.

**18. LIMITATIONS OF LIABILITY**

Notwithstanding any other provision of the Order, Buyer's maximum liability to Seller shall not exceed the purchase price of this Order. Any action against Buyer under this Order or related to its subject matter must be brought within one year after the date the cause of action accrues. Seller shall not be entitled to any incidental, special or consequential damages or lost profit damages if Buyer breaches or otherwise fails to perform any obligations under this Order.

**19. NOTICE OF DELAY**

Whenever any event, including an actual or potential labor dispute, is delaying or threatens to delay the timely performance of this Order, Seller shall immediately give notice thereof including all relevant information with respect thereto, to Buyer. Seller shall insert the substance of this Clause 20 Notice of Delay, including this sentence, in any subcontract hereunder.

**20. NO WAIVER OF CONDITIONS**

Buyer's failure to insist upon strict compliance shall not be deemed to be a waiver of any right or condition, and any waiver of a right or condition under this Order shall not constitute a waiver of any other right, condition or default under this Order.

**21. ORDER OF PRECEDENCE**

In the event of an inconsistency between the clauses of any documents constituting this Order, the inconsistency shall be resolved by giving precedence in the following order:

- a. the terms and conditions set forth on any paper or electronic document issued by Buyer entitled Purchase Order;
- b. these Terms and Conditions;
- c. other provisions of other documents contained in the Order, whether attached or incorporated by reference; and
- d. the Specifications.

**22. PACKING, MARKING AND SHIPPING**

- a. Seller shall pack, mark, and ship all Products in accordance with the requirements of this Order so as to be in compliance with transportation regulations and good commercial practice for protection and shipment, and shall secure the most advantageous transportation service and rates consistent therewith.
- b. No separate or additional charge is payable by Buyer for containers, crating, boxing, bundling, dunnage, drayage or storage unless specifically stated in this Order. Any expense incurred by Buyer as



a result of improper preservation packaging, packing, marking or method of shipment shall be reimbursed by Seller.

- c. A packing list showing the order number, release number (if applicable) and any transportation charges shall be included with each shipment.
- d. Seller shall mail the original bill of lading to Arkwin with each shipment.
- e. Any transportation charges paid by Seller for which Seller is entitled to reimbursement under this Order shall be shown on Seller's invoices as a separate line item with the receipted freight bill attached to the invoice.

#### 23. INTELLECTUAL PROPERTY INFRINGEMENT INDEMNITY

- a. Seller shall defend, indemnify and hold harmless Buyer, its customers and those for whom Buyer may act as agent, from all loss or damage by reason of any and all actions or proceedings charging infringement or wrongful use of any patent, trademark, trade secret or copyright by reasons of sale or use of any Product furnished hereunder, except where the articles specified herein are made entirely to the design supplied by Buyer. In such case, Buyer will defend, at its own cost and expense, every claim or action which may be brought against Seller alleging infringement of any patent, trademark or copyright by the Product and Buyer agrees to pay all costs and damages if recoverable in any such claim or action against the Seller. Each party shall promptly notify the other of all charges of infringement and shall provide all reasonable assistance to the other party in defense of an infringement.
- b. If the use or sale of any Product, in respect to which Seller indemnifies Buyer, is enjoined as a result of any action or proceeding, Seller, at no expense to Buyer, shall obtain for Buyer and its customers, the right to use and sell said Product or shall substitute an equivalent item acceptable to Buyer and extend this patent indemnity with respect to such equivalent item. In the event that Seller is unable to secure such right of use for Buyer or its customer or to secure an equivalent item as a substitute, Seller shall indemnify Buyer and its customer for any and all losses or damages sustained by reason of such injunction.

#### 24. PRICES

Unless otherwise stated on the face hereof, Seller represents that the price of this Order; (i) includes all federal, state or local taxes, fees, excises, and/or charges which are now or may be hereafter imposed with respect to the manufacture and/or sale of the Products; and (ii) includes all charges or costs associated with the suitable packing, packaging, preparation for shipment, crating or cartage of the Products ordered. Seller further represents that the price or prices specified in this Order are based on current, complete and accurate pricing data and do not exceed the last price or prices quoted or charged or currently being quoted for the same or substantially similar Products whether to the Government or to any other Buyer, taking into account quantity and schedule considerations. Seller hereby agrees to indemnify and hold Buyer harmless from any costs Buyer may incur resulting from a breach of the foregoing obligations under this Paragraph 24 and any claims suits, actions, judgments, or liabilities assessed against Buyer as a result of such a breach.

#### 25. SEPARABILITY



If any provision of this Order is determined to be invalid or unenforceable, such determination shall not affect the validity of the remaining provisions. In such case, the Order shall be deemed to have been executed without the invalid or unenforceable provision.

## 26. SPECIAL EQUIPMENT

- a. Title to all tools, dies, jigs, and fixtures used in the manufacture of the Products required hereby (hereinafter referred to as "Special Equipment") shall vest in Buyer immediately upon Seller's manufacture or acquisition thereof, Seller agreeing that the purchase price stated in this Order includes the cost of any such Special Equipment manufactured or acquired in pursuance hereof. Similarly, Special Equipment used by Seller that is owned, furnished, or paid for by Buyer under the terms of this or any other of Buyer's Purchase Orders shall remain the property of Buyer or Buyer's customer, as applicable, and shall not be altered or modified without Buyer's written consent.
- b. Unless otherwise approved by Buyer, such Special Equipment shall be used only in the performance of this Order, except that Seller may use such Special Equipment for the manufacture of supplies or furnishing of services to the Government to the extent the Government has the right under its prime contract with Buyer to authorize such use, and further provided that such use will not interfere with Seller's performance of this Order or other purchase orders of Buyer.
- c. At no additional cost to Buyer, Seller shall (i) follow normal industrial practices in the identification, maintenance, preservation, and segregation of Special Equipment; (ii) establish and maintain property control records available for inspection by Buyer or its customer at all reasonable times; and (iii) if title to such Special Equipment vests in the Government, will maintain and control such Special Equipment in accordance with FAR Part 45 in effect as the date hereof, which is incorporated herein by reference.
- d. When this Order indicates that the Government is to acquire title to Special Tooling (as such term is defined in FAR 52.245.17), then title to such Special Tooling shall immediately vest in the Government upon Seller's acquisition or manufacture thereof provided the full cost is charged to this Order. When this Order indicates that the Government is to acquire title to Special Test Equipment (as such terms is defined in FAR 52.245.18), but does not specify the items to be acquired, then title to any Special Test Equipment shall immediately vest in the Government upon Seller's manufacture or acquisition thereof provided the full cost is charged to this Order. Seller shall give Buyer forty (40) days advance written notice of its intention to acquire any Special Test Equipment or components thereof having an item acquisition cost of \$1,000.00 or more. Buyer may then elect to furnish any such Special Test Equipment or any component thereof to Seller within said (40) day period. In the event Seller has not received such notice within the aforementioned period, Seller may proceed to acquire such Special Test Equipment or components. If Buyer furnishes any such Special Test Equipment or components as a result of the above, this Order shall be equitably adjusted in accordance with Clause 7 Changes to reflect an appropriate reduction in price resulting from Buyer's furnishing Seller any such Special Test Equipment or components thereof.
- e. Upon delivery to Seller, of any Special Equipment, Special Tooling or Special Test Equipment, title to which is in Buyer or its customer, Seller assumes the risk and shall be responsible for any loss thereof or damage thereto while in its possession. Unless otherwise directed by Buyer, upon completion or termination of this Order Seller shall hold and preserve such Special Equipment, Special Tooling or Special Test Equipment. Seller shall promptly furnish in suitable form, a list thereof with a request for





disposition instructions. Pending receipt of such instructions, Seller shall store Special Equipment, Special Tooling, or Special Test Equipment free of charge for a period of six months. All Special Equipment, Special Tooling, or Special Test Equipment furnished to Seller by Buyer shall be returned to Buyer in the same condition as received, normal wear and tear expected.

**27. STOP WORK**

Buyer may at any time, by written order to Seller require Seller to stop all or any portion of the work called for by this order in accordance with the terms of FAR 52.212-15. In the context of this Clause 27 Stop Work, "Contracting Officer" and "Government" mean Buyer and "Contractor" means Seller.

**28. TERMINATION**

**a. For Convenience:**

Buyer may terminate this Order for its convenience, in whole or in part, from time to time, (i) upon thirty (30) days' written notice, or (ii) as applicable, in accordance with FAR 52.249-2 in effect on the date of this Order in which case the terms "Government" and "Contracting Officer" mean Buyer and the term "Contractor" means Seller, except that if this Order is terminated as a result of a termination for convenience issued by the Government, the term "Government" does not change in Paragraphs b(4), (6), (8) and (m). If this Order is terminated for convenience solely by Buyer, audits and examination of records, as required by Buyer shall be performed by Buyer and/or a mutually acceptable independent audit agency, the expense of which shall be shared equally by Buyer and Seller. In FAR 52.249-2 (d), delete "1 year" and substitute "3 months" therefore. Notwithstanding anything to the contrary, Buyer shall not be liable for any incidental, special or consequential damages or lost profits arising out of any termination for convenience under this Order. The provisions of this Clause 28 (a) shall not limit or affect the right of Buyer to terminate this order for default.

**b. For Default:**

(i) This Order may be terminated (i) in whole or in part for cause upon Buyer's written notice providing 10 days' opportunity to cure, or (ii) as applicable, for default pursuant to FAR 52.249-8, incorporated herein by reference, it being understood that time is of the essence. Any reference to the "Disputes clause" is hereby deleted. In the context of this clause "Contracting Officer" and "Government" mean Buyer and "Contractor" means Seller.

(ii) This Order may be terminated immediately for default if Seller becomes insolvent or is subject to proceedings under any law relating to bankruptcy, or in the event of an appointment of a receiver or trustee, or the assignment by Seller for the benefit of creditors.

**29. TITLE AND RISK OF LOSS**

Title to and all risk of loss of or damage to products to be delivered hereunder shall remain in Seller until such products are delivered to Buyer at the destination specified on the face of this Order. Seller shall bear all risk of loss or damage to products rejected by Buyer, after notice of rejection until such products are redelivered to Buyer, except to the extent or loss, destruction or other damage to such rejected supplies resulting from the gross negligence of officers, agents, or employees of Buyer acting within the scope of their employment. Passing of title upon delivery shall not constitute acceptance of the items by



Buyer. All items to be delivered hereunder and all property to be returned to Buyer shall be free and clear of any and all liens and encumbrances whatsoever.

30. WARRANTY

- a. Seller warrants that Products offered to Buyer's specifications shall conform thereto and to any drawings, samples, or other descriptions furnished by Buyer, and if ordered to Seller's design or descriptive literature, will be fit and sufficient for the purpose intended. In any event, all Products shall be merchantable, of good material and workmanship, and free from defects. Such warranties, together with Seller's service warranties and guarantees, if any, shall survive inspection and acceptance of, and payment for the articles and shall run to Buyer, its successors, assigns and customers. Buyer may, at its option, either return for credit or require prompt correction or replacement of the defective or nonconforming Product or part thereof. Return to Seller of such Product and delivery to Buyer of any corrected or replaced Products shall be at Seller's expense. Products required to be corrected or replaced shall be subject to the provisions of this Clause 30 and Clause 16 Inspection in a manner and to the same extent as Products originally delivered under this Order. Except for latent defects, fraud or such gross mistakes as amounts to fraud, Sellers' obligations under this Clause 30 Warranty shall apply to such defects and nonconformance as occur within two (2) years from date of delivery, or redelivery, or the articles to Buyer or to Buyer's customer. All warranties, both express and implied, shall be construed as conditions as well as promises, and shall not be deemed to be exclusive. No warranties are waived by Buyer supplying, reviewing, commenting on, or approving plans, specifications or data, or inspecting or accepting the Products.
- b. When Buyer furnishes specifications to Seller, Seller shall immediately notify Buyer of any infringement claim, and Buyer may defend or negotiate the disposition of such claims. In the event Seller is required to replace or correct any component of any item as a result of a breach of any foregoing warranty, the running of the warranty period for the items of which the defective component is a part shall be suspended from the date Seller receives notice of the breach of warranty until the date the component is replaced or corrected, and this warranty shall apply to such replacement or corrected items furnished for the unexpired portion of the warranty period.
- c. Seller agrees to indemnify, defend, protect, and hold harmless Buyer for all liabilities, loss, costs, damages, and expense (including reasonable attorney fees) resulting from any breach of any, or all, of Seller's warranties, express, or implied. In the event of Seller's breach of warranty, Buyer may, at its election and in addition to any other rights or remedies it may have at law or equity or under this order, recover from Seller any cost of removing such items from property, equipment, or products in which such items have been incorporated, and any additional costs of disassembly, fault isolation, failure analysis, reinstallation, re-inspection, and retesting. Further, Buyer may, at its election, (a) return the items at Seller's risk and expense and recover from Seller the price paid therefor and, if elected by Buyer, purchase or manufacture similar items and recover from Seller the excess costs and expenses thereof; (b) retain the items and equitably reduce their price; or (c) require Seller, at Seller's expense, to promptly replace or correct the items and, if Seller fails to promptly replace or correct such items as directed by Buyer, Buyer may repair them or have them repaired at Seller's expense or elect any of the remedies available to it under this order or at law or in equity.



- d. Seller shall be responsible for any and all costs Buyer is responsible to pay Customer, including but not limited to damages, liquidated damages and/or penalties, resulting from Supplier's delay or non-conformance.
- e. The supplier's quality system is responsible to comply with and shall also flow down this paragraph's requirements for delivered nonconforming product and notification of escape. If after particular shipment(s) and /or particular service (s) per our purchase order, a supplier identifies delivered nonconformance(s) to the specified Arkwin design requirements, either associated with their process(es) or its sub tier supplier process(es), the supplier shall fully comply with the following:  
Report to Arkwin's Buyer within 48 hours, by email, details of the escape including:
  - a) Description of the nonconformance
  - b) Part number with revision level,
  - c) Part description
  - d) Quantity of affected or suspect parts with lot number/ serial number(s) as applicable
  - e) Containment actions at supplier and / or suppliers sub tierA follow on root cause and corrective action, as necessary, is to be submitted on an appropriate corrective action form, at the earliest possible timeframe, after notification of the escape.

31. CONDITIONS APPLICABLE TO ORDERS PLACED UNDER UNITED STATES GOVERNMENT CONTRACTS

If this order is placed under a United States Government contract, or a subcontract under any United States Government contract, the following are applicable:

- a. The following clauses of the Federal Acquisition regulation (FAR) and of the Department of Defense FAR Supplement (DFARSUP), as applicable, are hereby incorporated by reference. However, whenever any clause includes a requirement for the settlement of disputes between the parties in accordance with the "Disputes" clause, the dispute shall be disposed of in accordance with Clause 3, Applicable Law and Disputes. Clauses referenced below shall be those in effect on the effective date of this order. If there is a conflict or addition to a clause in effect on the effective date of this order and a clause of the Prime Contract, the Prime Contract clause shall govern. Wherever necessary to make the context of the clauses set forth below applicable to this order, the term "Contractor" shall mean Seller, the term "Contract" shall mean this order, and the terms "Government," "Contracting Officer" and equivalent phrases shall mean Buyer, except the terms "Government" and "Contracting Officer" do not change: (1) in the phrases "Government Property", "Government Owned Property", "Government Equipment" and "Government Owned Equipment", (2) When a right act, authorization, or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or his duly authorize representative, (3) When the title to property is to be transferred directly to the Government, (4) Where specifically modified as set forth below and (5) in FAR's: 52.214-26, 52.215-1, 52.215-2, 52.227-1, 52.227-2, 52.230-3, 52.230-4, 52.246-23.

- 32. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41, C.F.R. § 60-300.5(a)ii and 41 C.F.R. § 60-741.5(a), if applicable.

This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans. This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires



affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

33. Conflict Minerals- Per Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), requires companies to publicly disclose their use of conflict minerals that originated in the Democratic Republic of the Congo (“DRC”) or an adjoining country (together with the DRC, “Covered Countries”). The new rule takes effect on November 13, 2012. When confirming acceptance of a new purchase order, you are required to disclose if your product contains Conflict Minerals. Please use the guidelines per <http://www.conflictreesourcing.org>.
34. REACH regulation - REACH is a regulation of the European Union, adopted to improve the protection of human health and the environment from the risks that can be posed by chemicals, while enhancing the competitiveness of the EU chemicals industry. It also promotes alternative methods for the hazard assessment of substances in order to reduce the number of tests on animals. When confirming acceptance of a new purchase order, you are required to disclose if your product contains any of the chemicals specified on the substance list. The Substance list and additional information about REACH is located <http://echa.europa.eu/web/guest/addressing-chemicals-of-concern/restrictions/substances-restricted-under-reach>.
35. Small business Act PL 112-239 – In conjunction with FAR Section 52.219-9: Small Business Subcontracting Plan, Arkwin is required to disclose the amount of business we award to small businesses. Therefore we require suppliers to disclose their Small Business status per the guidelines at <https://www.sba.gov>. If you are an active Arkwin supplier (provided production in the last two years) we required you to submit form AKP-820(located on our website under support/supplier diversity) every January to maintain your status as an active supplier.
36. Quality system – In addition to the requirements per Arkwin’s QSR, requiring Suppliers to maintain quality system commensurate with the product they produce, it is also required that they control directly or indirectly their sub-tiers. For suppliers under ISO 9001/AS9100, they are required to manage their sub-tiers per their certification. For suppliers with basic quality systems, they are required to only use Arkwin approved sources.
37. Diminishing Manufacturing Sources and Material Shortages (DMSMS) – It is incumbent on the Seller to notify the Buyer of a known situation where the supplier will no longer support manufacture of a part or material that is currently on order or has been previously been ordered from the supplier. In addition, the Seller must support a request for a lifetime buy in order to mitigate any production disruption to our customer.
38. Electronic Parts Management
  - a. All Suppliers delivering Products containing EEE components shall develop and implement a Counterfeit Parts Control Plan (CPCP) that conforms to the current revision of SAE AS 5553.
  - b. All Suppliers delivering Products containing EEE components shall develop and



Implement an Electronic Component Management Plan (ECMP) that conforms to the current revision of SAE EIA-STD-4899.

39. Counterfeit Parts Prevention

- a. Supplier must ensure that proper procedures are in place to prevent the use of counterfeit parts as per AS5553 and AS6174.

ARKWIN