



## GENERAL TERMS AND CONDITIONS

Between Buyer and ARKWIN INDUSTRIES, INC. (hereinafter called "Seller").

### CONDITIONS OF SALE:

**TERMS OF SALE:** THIS OFFER/ORDER ACKNOWLEDGMENT IS EXPRESSLY LIMITED TO AND MADE CONDITIONAL UPON THE TERMS AND CONDITIONS CONTAINED HEREIN, AND ANY OF BUYER'S TERMS AND CONDITIONS WHICH ARE IN ADDITION TO OR DIFFERENT FROM THOSE CONTAINED HEREIN WHICH ARE NOT SEPARATELY AGREED TO IN WRITING (EXCEPT ADDITIONAL PROVISIONS SPECIFYING QUANTITY ORDERED AND IN SHIPPING INSTRUCTIONS) ARE HEREBY OBJECTED TO AND SHALL BE OF NO EFFECT. OBJECTION TO ANY TERMS AND CONDITIONS CONTAINED HEREIN SHALL BE DEEMED TO HAVE BEEN WAIVED IF WRITTEN NOTICE OF SUCH OBJECTION IS NOT RECEIVED BY SELLER WITHIN TEN DAYS OF THE DATE OF THIS ACKNOWLEDGMENT. THESE TERMS PREVAIL OVER ANY OF BUYER'S GENERAL TERMS AND CONDITIONS OF PURCHASE REGARDLESS OF WHETHER OR WHEN BUYER SUBMITTED ITS ORDER OR SUCH TERMS. FULFILLMENT OF BUYER'S ORDER DOES NOT CONSTITUTE ACCEPTANCE OF BUYER'S TERMS AND CONDITIONS AND DOES NOT SERVE TO MODIFY OR AMEND THESE TERMS. BUYER WILL IN ANY EVENT BE DEEMED TO HAVE ASSENTED TO ALL TERMS AND CONDITIONS CONTAINED HEREIN IF ANY PART OF THE GOODS DESCRIBED HEREIN IS ACCEPTED. PROVISIONS OF THE FEDERAL ACQUISITION REGULATIONS (FARS) OR SIMILAR REGULATIONS OF OTHER BRANCHES OF THE GOVERNMENT, WHICH ALTER SELLER'S TERMS AND CONDITIONS, SHALL NOT BE BINDING NOR APPLY TO SELLER UNLESS AGREED TO IN WRITING BY SELLER.

**PAYMENT TERMS:** The terms of payment for each order shall be net cash in 20 days from date of invoice if credit has been arranged, otherwise payment must be received before shipment, or at Seller's option the shipment may be shipped C.O.D. FAILURE BY BUYER TO COMPLY WITH SELLER'S SPECIFIED PAYMENT TERMS SHALL RESULT IN A LATE CHARGE OF 1 1/2% PER MONTH BEING ASSESSED AGAINST ANY AND ALL UNPAID PAST DUE BALANCES OUTSTANDING. Prices are subject to increase for the inclusion of any and all taxes which are applicable, and which arise from the sale, delivery or use of Seller's Goods or services and/or the collection of which Seller is or may be responsible to any Governmental Authority, unless acceptable exemption certificates are provided by Buyer in accordance with law.

**DELIVERY:** All Goods are sold EXW point of origin (INCOTERMS 2010), and the point of origin shall be that of Seller's factories. Seller reserves the right to make partial shipments and to determine the method of shipment and delivery. Title shall pass to Buyer upon delivery to carrier, whether Buyer's, Seller's or independent contractor, subject to Seller's rights, including retention of a security interest in the Goods, as an unpaid vendor. Prepayment of freight charges by Seller shall be for Buyer's account and shall be added to the amount of the invoice.

**BUYER'S INSPECTION:** Buyer shall make an examination and test of any Goods delivered hereunder immediately upon receipt at Buyer's plant, and, any course of dealing between the parties to the contrary notwithstanding, failure of Buyer to give notice of any claim within 30 days after receipt of such Goods at its plant shall be an unqualified acceptance of the Goods delivered.

**WARRANTY:** Seller warrants to the original Buyer for a period of 12 months from the date of delivery that at the time of delivery, all Goods and service shall be free from defects in material and workmanship and will conform to applicable specifications and drawings.

Buyer must notify Seller in writing of any warranty claim within twelve (12) months after delivery to Buyer in order to make a warranty claim under this warranty. After the claim has been verified by Seller or its authorized representative, Seller shall, in its sole discretion, undertake to make all necessary repairs, corrections, or modifications, or replacements so that the allegedly defective Goods comply with warranty stated above. This warranty is valid only if the Goods have been properly installed, serviced and maintained in conformity with applicable service manuals, bulletins and instructions and used consistent with Seller's recommendations. Seller's liability for breach of this warranty is expressly limited to repair or replacement of the allegedly defective Goods, at Seller's option, provided that the allegedly defective Goods, at Seller's option, are returned shipping prepaid to Seller or its authorized repair facility. Buyer agrees that this warranty shall be its sole and exclusive remedy against Seller.



Any allegedly defective Good that is repaired, corrected, modified or replaced under the terms of this warranty shall be warranted under the same terms as stated herein for six (6) months, or the unexpired remainder of the warranty as specified herein, whichever is greater. Seller reserves the right to charge Buyer for handling and examination fee of 10% of the original invoice price or \$100.00 per unit, whichever is greater, on Goods returned for warranty service found by Seller upon testing to be non-defective. **THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF AND EXCLUDES ANY OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**LIMITATION OF LIABILITY:** Buyer expressly agrees that in any claim of Buyer against Seller, including third party claims for indemnification and contribution, Seller shall not under any circumstances be liable for any losses, claims or damages greater than the cost of the Goods sold hereunder, whether arising from Seller's breach of contract, breach of express or implied warranty, any law giving rise to a claim of strict liability, or other cause.

**IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOST INCOME OR PROFITS OR FOR ANY GENERAL, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER.**

**DELIVERY/STOP WORK:** Prices stated are expressly for the delivery dates agreed upon. While Seller shall not have an obligation to comply with unilateral directives to change schedules or to temporarily cease work, Seller will endeavor to accommodate Buyer's reasonable request for (a) acceleration of delivery, if made at least 90 days prior to scheduled delivery, (b) request for delay in delivery, if made at least 60 days prior to scheduled delivery, and (c) stop work instructions not exceeding 90 days in duration. Such changes or instructions, if accepted by Seller, shall require an equitable adjustment in the price (not less than \$100.00 per item ordered) or in the delivery schedule, or in both.

**RAW MATERIAL AND SOURCE INSPECTION SURCHARGES:** Notwithstanding any provision herein to the contrary, the price for supplies containing precious metals, nonferrous metals, magnetic minerals and/or any special alloys shall at Seller's discretion be subject to additional charge(s) at the time of shipment, based upon fluctuations in the market value of such raw materials.

Further, an additional charge may be applied on each shipment requiring inspection at Seller's plant(s) by the Government and/or Buyer's own inspection department or other private agency, if Seller agrees to such inspection.

**TERMINATION:** This order shall not be subject to unilateral termination.

**FORCE MAJEURE:** Seller shall not be liable to Buyer, nor be deemed to have defaulted or breached the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond Seller's reasonable control including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage. If, due to any such circumstances, shortages should occur in Seller's supply of any specific Goods, Seller may allocate deliveries to its customers as it determines in its sole discretion.

**EXPORT REGULATIONS:** Goods purchased hereunder which are to be exported shall be subject to applicable United States export laws and regulations, and Buyer accepts full responsibility for and agrees to comply fully with such regulations, including obtaining export licenses and re-export permission. All taxes, licenses, duties and government exactions, by whatever name known, which may be levied or assessed or on account of the Goods sold hereunder, or their documents, shall be paid by the Buyer.

**GOODS SUBSTITUTION:** Seller reserves the right to make material substitution(s) without degrading the quality of the product not affecting the Goods form, fit or function. Seller further reserves the right to discontinue any items without notice and to change or modify specifications at any time without incurring any obligation to incorporate new or modified features in components or products previously sold or shipped.

**PATENT INFRINGEMENT:** Seller shall hold Buyer harmless from all costs actually incurred arising directly from the defense of any suit for infringement of any domestic or foreign patent by a Good manufactured by Seller, provided Seller be given: 1) immediate written notice of such suit, and 2) the opportunity to replace or modify such patent infringing Goods, obtain a license, or defend the suit. No indemnification is offered for any alleged infringement



arising from the use of Seller's Goods in combination with other Goods not supplied by Seller, from compliance with drawings, specifications, or instructions furnished by Buyer, from modification of the Goods following delivery or from use of the Goods for other than their intended purpose. When a FAR Authorization and Consent clause is applicable to this order as a U.S. Government subcontract, Seller accepts such clause and the above patent indemnity provision shall not apply.

**Confidential Information:** All non-public, confidential or proprietary information of Seller, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Agreement is confidential, solely for the use of performing the Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation hereof. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) obtained by Seller on a non-confidential basis from a third party who was not under an obligation of confidentiality.

**PROPERTY OF SELLER:** All designs, inventions (whether or not patented), processes, technical data, drawings and/or confidential information ("Property") related to the Goods and services which are not supplied by Buyer, are the exclusive and confidential Property of Seller. All right, title, and interest in and to such Property shall remain exclusively in Seller, notwithstanding Seller's disclosure of information to Buyer, Buyer's payments to Seller for design, engineering or nonrecurring charges or Seller's use of or reliance on information provided by Buyer. Buyer shall not use or disclose such property without prior written consent of Seller. Seller shall retain title to all tools, test equipment and facilities not furnished by Buyer or specifically paid for by Buyer as a separate line item.

Seller does not agree to provide Buyer as a result of the consideration paid on this order, any information, technical data or drawings which are proprietary to Seller, nor does Seller agree to grant to Buyer any patent rights, title or license in or to any such information, technical data or drawing.

**ARBITRATION, JURISDICTION:** Any controversy or claim arising out of or relating to any of the revisions of this order shall be submitted to binding arbitration in accordance with the rules then obtaining of the American Arbitration Association. Buyer shall pay to Seller reasonable costs of collection of money due and unpaid, including reasonable attorney's fees, and Buyer shall pay Seller reasonable attorney's fees if Seller is successful in any arbitration or suit with Buyer. For all purposes related to any arbitration hereunder or to any award therein, Buyers and Sellers hereby consent to exclusive jurisdiction in state or federal courts located in Nassau County, New York.

**APPLICABLE LAW:** This contract shall be construed in accordance with the law of the State of New York.

**MODIFICATION:** No modification of these terms shall be effective unless in writing signed by an authorized representative of Seller.

**NONWAIVER:** The failure of Seller to enforce, at any time, any of the provisions of this order, shall not constitute a waiver of such provisions, or a waiver of the right of Seller to enforce any and/or all provisions.