



American Aerospace Controls Inc.

Standard Terms & Conditions of Sale

BUYER'S OFFER RESULTING FROM AMERICAN AEROSPACE CONTROLS INC. (AAC) QUOTATION IS EXPRESSLY CONDITIONED UPON BUYER'S ASSENT TO AAC'S STANDARD TERMS AND CONDITIONS OF SALE PRINTED BELOW. ALL ORDERS WILL BE SUBJECT TO THESE STANDARD TERMS AND CONDITIONS OF SALE. ANY MODIFICATIONS TO THESE TERMS AND CONDITIONS OF SALE CONTAINED IN ANY OF BUYER'S SUBSEQUENT DOCUMENTATION, ACCEPTANCE, NEGOTIABLE INSTRUMENT, ACKNOWLEDGEMENT, PURCHASE ORDER, OR ANY OTHER MEANS OF CORRESPONDENCE, ARE HEREBY EXPRESSLY REJECTED. ACCEPTANCE BY BUYER OF ANY GOODS DELIVERED BY AAC HEREUNDER OR PAYMENT TO AAC FOR ANY GOODS SHALL BE CONCLUSIVELY DEEMED ASSENT TO THE TERMS AND CONDITIONS OF SALE AS SET FORTH HEREIN. AAC'S FAILURE TO OBJECT TO PROVISIONS CONTAINED IN ANY COMMUNICATION FROM BUYER WILL NOT BE A WAIVER OF THE PROVISIONS HEREOF.

DEFINITIONS

- 1) "**Agreement**" shall mean a purchase order, supply agreement, quotation, acknowledgements, long term agreements, electronic order, or any other agreement that incorporates or references these Standard Terms and Conditions of Sale.
- 2) "**Affiliate**" means an entity that (i) is controlled directly or indirectly by; (ii) controls directly or indirectly; or (iii) is under common control with AAC. "Control" for this purpose shall mean having a fifty percent (50%) or greater interest in the issued share capital of the other entity.
- 3) "**Buyer**" means the legal entity purchasing Goods pursuant to the Agreement and Standard Terms and Conditions of Sale.
- 4) "**Confidential Information**" shall mean all of AAC's proprietary information, whether disclosed in oral, written, or electronic format, which includes but is not limited to, data, financial information, technical information, business strategies, designs, specifications, tests, reports, sample products or materials, manufacturing information, or any other information which AAC provides to Buyer.
- 5) "**Goods**" shall mean all goods, parts, products, deliverables, items, or services provided by AAC to Buyer pursuant to the Agreement and Standard Terms and Conditions of Sale.
- 6) "**AAC**" means American Aerospace Controls Inc., or Affiliate thereof, and any successor or assignee of AAC.

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GENERAL PROVISIONS

1) **Taxes** Prices do not include any taxes, including importation or customs taxes, now or hereafter enacted, applicable to the Goods sold under any applicable Agreement. Taxes will be added by AAC to the sales price where AAC invoices the same to comply with law, and will be paid by Buyer unless Buyer provides AAC with a proper tax exemption certificate.

2) **Prices, Releases and Set-off** Prices apply only if the quantity ordered hereunder is released for shipment within twelve (12) months (or longer if mutually agreed to in writing) from the date of AAC's receipt of Buyer's order. Otherwise, AAC's standard price in effect at time of release shall apply to quantity shipped and Buyer shall pay the then standard price. Buyer shall not be entitled to set-off any amount owed by AAC, for any reason, at any time, against any amount payable at any time by Buyer in connection with the applicable Agreement, without the prior express written permission of AAC.

3) **Title and Delivery** All shipments of Goods shall be delivered Ex Works (EXW – Incoterms 2016) AAC's plant, unless otherwise provided in an Agreement. Title, risk of loss, and damage to Goods shall pass to Buyer upon AAC's delivery of the Goods to AAC's dock, and any loss or damage thereafter shall not relieve Buyer from any obligation hereunder. Buyer shall be liable for costs of insurance and transportation and for all import duties, taxes and any other expenses incurred or licenses or clearance required at port of entry and destination. AAC may deliver Goods in installments. Shipping dates are approximate only. AAC shall not be liable for any loss or expense, whether by way of contract or tort, (consequential or otherwise) incurred by Buyer if AAC fails to meet the specified estimated delivery schedule because of unavoidable delays in production or any other delays.

4) **Quantities** Any variation in quantities shipped over or under the quantities ordered (not to exceed 10%) shall constitute compliance with Buyer's order and the stated unit price of Goods will continue to apply, subject to the provisions in Paragraph 9.

5) **Payment Terms** Terms of payment shall be net thirty (30) days from date of invoice. Where AAC has extended credit to Buyer, AAC reserves the right to modify the amount of credit or terms of payment, or revoke Buyer's credit at any time. If the Goods are delivered in installments, Buyer shall pay separately for each installment. Payment shall be made for the Goods without regard to whether Buyer has made or may make any inspection of the Goods. If shipments are delayed by Buyer beyond the agreed upon delivery date, payments are due thirty (30) days after the previously agreed to delivery date. Any Goods held beyond the agreed to delivery date by AAC at the request of Buyer, shall be held at Buyer's risk of loss and expense.



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6) **Contingencies and Force Majeure** AAC shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any contingency beyond the control either of AAC or AAC's suppliers, including, but not limited to, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot, terrorism, both foreign and domestic, or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof, judicial action, labor dispute, accident, fire, explosion, flood, storm or other act of God, shortage of labor, fuel, raw material or machinery or technical failure where AAC has exercised ordinary care in the prevention thereof. AAC may allocate production and deliveries among AAC's customers.

7) **Substitutions and Modifications of Goods** Unless otherwise expressly agreed to by the parties, AAC may modify the specifications of Goods or designs and substitute Goods manufactured to such original specifications with those modified Goods which substantially conform to the original specifications contained in the relevant Agreement.

8) **Legal Compliance** Buyer, at all times, shall comply with all applicable federal, state and local laws and regulations.

9) **Changes** Any changes or modifications requested by Buyer, to volume, materials, quality, shipping, delivery, scope of work, specifications, etc., must be expressly agreed to in writing by AAC, and AAC hereby reserves the right, under its sole discretion, to adjust the price of such Goods affected by Buyer's change request.

10) **Limited Warranty and Remedies** THE FOLLOWING WARRANTIES ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AAC'S SOLE AND EXCLUSIVE LIABILITY FOR ANY BREACH OF WARRANTY SHALL BE (AT AAC'S OPTION) TO REPAIR OR REPLACE THE GOODS, OR REFUND OF THE PURCHASE PRICE OF GOODS PAID BY BUYER.

AAC warrants to Buyer for the Warranty Periods that Goods shall: 1) be free from defects in workmanship and materials; 2) conform to AAC's written specifications and drawings (subject to Paragraph 7); and (3) that at the time of delivery, AAC has title to the Goods free and clear of any and all liens and encumbrances (the "Warranty"). The foregoing Warranty can only be amended by a written instrument signed by an officer of AAC.

For all Goods, the Warranty Period shall be five (5) years from the date of shipment.

AAC makes no warranty as to samples, Goods or products that are used in HALT applications (Highly Accelerated Life Testing) and/or ESS (Environmental Stress Screening), experimental or developmental goods, or goods not manufactured by AAC,



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provided that as to goods not manufactured by AAC, AAC, to the extent permitted by AAC's contract with its supplier, shall assign to Buyer any rights AAC may have under any warranty of the supplier thereof.

AAC's Warranty and Warranty Period as hereinabove set forth shall not be enlarged, diminished or affected by, and no obligation or liability shall arise or grow out of AAC's rendering of technical advice or service in connection with Buyer's order of the Goods subject to these Standard Terms and Conditions of Sale. If the Goods furnished by AAC fail to conform to the Warranty as set forth above, AAC's sole and exclusive liability shall be (at AAC's option) to repair, replace or credit Buyer's account for any such Goods which are returned by Buyer during the applicable Warranty Period, provided that (i) AAC is promptly notified in writing upon discovery by Buyer that such Goods failed to conform to the Warranty, with a detailed explanation of any alleged nonconformity, (ii) such Goods are returned, at Buyer's expense to AAC's plant, and (iii) AAC's examination of such Goods shall disclose to AAC's satisfaction that such alleged nonconformities actually exist and were not caused by accident, misuse, neglect, alteration, improper installation, unauthorized repair, improper testing or by any other means beyond the control of AAC. If such Goods are determined, in AAC's sole discretion, to be nonconforming, AAC shall reimburse Buyer for the transportation charges paid by Buyer for the return of said Goods. If AAC elects to repair or replace such Goods, AAC shall have a commercially reasonable time to make such repairs or replace such Goods. If AAC, in its sole discretion, determines that the alleged nonconformity does not fall within the Warranty as set forth above, Buyer shall reimburse AAC for all cost associated with AAC's inspection of the Goods.

11) **Indemnity** Buyer agrees to indemnify and hold AAC, its agents, contractors, consultants, employees, officers, directors, and its insurers harmless from all claims, losses, suits, judgments, awards, costs or expenses whether arising in tort or contract, including Attorney's fees, expenses and costs, arising out of the (i) application of Goods to Buyer's designs and/or products, or AAC's assistance in the application of Goods, (ii) negligent acts or omissions of Buyer or its employees, or (iii) Buyer's breach of this Agreement.

12) **Limitation of Liability** Notwithstanding anything to the contrary contained in the Agreement or any attachments thereto, AAC's total aggregate liability for any and all claims, costs, expenses, penalties, or damages arising under the Agreement, shall in no event exceed the total purchase price of the Goods giving rise to the claim, received by AAC under the applicable Agreement (the "Limitation of Liability"). For the sake of clarity, any claims arising from or relating to the Warranty, shall be excluded from the Limitation of Liability and shall be subject to the terms and remedies set forth in Section 10 hereof. FURTHERMORE, IN NO EVENT SHALL AAC BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, COLLATERAL, EXEMPLARY, INCIDENTAL, LOST PROFITS, LOSS OF REVENUE, ECONOMIC LOSSES, OR CONSEQUENTIAL DAMAGES OR

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LOSSES OF ANY KIND, REGARDLESS OF WHETHER ARISING FROM BREACH OF CONTRACT, WARRANTY, TORT, OR OTHERWISE.

13) Acceptance of Goods Goods shall be deemed accepted by any of the following actions of the Buyer: (1) the absence of a particularized rejection of the Goods after a reasonable opportunity to inspect the Goods; (ii) where Buyer does any act inconsistent with AAC's ownership of the Goods; (iii) where Buyer has expressly accepted or paid for the Goods; or (iv) where Buyer has accepted part of the Goods, the acceptance is an acceptance of all the Goods. In the absence of the foregoing, Goods shall be deemed accepted by Buyer thirty (30) calendar days following delivery of the Goods to Buyer.

14) Intellectual Property The sale of Goods to Buyer under the Agreement shall not grant, convey, or confer upon Buyer or any third party, a license or any right whether express or implied, to AAC owned patents, trademarks, copyrights, know how, trade secrets, work product, proprietary information, or any other AAC owned intellectual property.

AAC shall defend any suit or proceeding brought against Buyer insofar as such suit or proceeding is based on a claim that any Goods directly infringe upon any duly issued United States patent and AAC shall pay all damages and costs finally awarded therein against Buyer, provided that AAC is promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement and is given authority, information and assistance (at AAC's expense) necessary to defend or settle said suit or proceeding. AAC shall not be obligated to defend or be liable for costs and damages if the infringement arises out of compliance with Buyer's specification(s), or from a combination with, in addition to, or a modification of the Goods after delivery by AAC, or from use of the Goods, or any part thereof. AAC's obligations hereunder shall not apply to any continued infringement occurring after Buyer has received notice of such suit or proceeding alleging the infringement, unless AAC has given written permission for such continuing infringement.

If any Goods manufactured and supplied by AAC to Buyer shall be held to infringe any United States patent and Buyer shall be enjoined from using the same, AAC will exert its reasonable efforts, at its option and at its expense, (i) to procure for Buyer the right to use such Goods free of any liability for patent infringement or (ii) to replace such Goods with a non-infringing substitute otherwise complying substantially with all requirements of this contract or (iii) refund the purchase price and the transportation costs of such Goods.

If the infringement by Buyer is alleged prior to completion of delivery of the Goods, AAC may decline to make further shipments without being in breach, and provided AAC has not been enjoined from selling said Goods to Buyer, AAC agrees to supply said Goods to Buyer, at Buyer's option, whereupon the patent indemnity obligation stated under this provision with respect to AAC, shall reciprocally apply to Buyer.

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If any suit or proceeding is brought against AAC based on a claim that the Goods manufactured by AAC in compliance with Buyer's specifications and supplied to Buyer directly infringe any duly issued United States patent, then the patent indemnity obligations herein stated with respect to AAC shall reciprocally apply with respect to Buyer. THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF AAC FOR PATENT INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN REGARD THERETO.

15) Confidential Information Buyer shall not disclose Confidential Information to any third parties unless Buyer receives AAC's express written consent to the contrary. Buyer shall use Confidential Information solely for purposes related to the applicable Agreement and for the mutual benefit of the parties. Buyer may only disclose Confidential Information to those employees, directors, or officers of Buyer who have a need to know the Confidential Information for purposes relating to the applicable Agreement. Such employees of Buyer shall be obligated to execute an agreement that requires such person to treat and protect Confidential Information in a manner that is consistent with this provision. Obligations under this provision shall continue until such Confidential Information is publicly known and available through no act or omission of Buyer. Upon termination or expiration of any Agreement subject to these Standard Terms and Conditions of Sale, or upon request of AAC, Buyer shall destroy or return all Confidential Information to AAC.

16) Termination and Cancellation AAC may at any time and upon written notice to Buyer, terminate all or part of the Agreement for its convenience, without any liability whatsoever to AAC. Buyer shall be liable for all Goods delivered to Buyer prior to the termination of the Agreement.

17) Non-Waiver of Default and Collection Rights In the event of any default by Buyer, AAC may invoke any remedy provided by law or by the terms herein stated, and may decline to make further shipments. If AAC elects to continue to make shipments, AAC's actions shall not constitute a waiver of any default by Buyer or in any way affect AAC's legal remedies for any such default. In the event AAC resorts to a third party or to litigation in order to collect amounts due AAC, Buyer agrees to pay costs of collection for amount owed to AAC, including, but not limited to, attorney's fees, court costs, and interest in the amount of 1% per month (12% per annum) or the maximum amount allowed by applicable law, whichever is greater, from the date the amount is due.

18) Applicable Law and Forum The validity, performance and construction of these Standard Terms and Conditions of Sale, as well as all applicable Agreements, shall be governed by the laws of the State of New York excluding its conflict of laws provision and excluding the United Nations Convention on Contracts for the International Sale of Goods, and such State shall be the only jurisdiction in which any suit may be brought against



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AAC regarding any dispute arising under any Agreement subject to these Standard Terms and Conditions of Sale.

19) **Export Control** Both parties agree to obtain any necessary export license or other documentation prior to the exportation or re-exportation of any product, technical data, software or software source code covered under these Standard Terms and Conditions of Sale and any applicable Agreement, or any direct product of such technical data, software or software source. Accordingly, neither party shall sell, export, re-export, transfer, divert or otherwise dispose of any such product, technical data, software or software source code directly or indirectly to any person, firm, entity, country or countries prohibited by U.S. or applicable non-U.S. laws. Each party shall secure, at its own expense, such licenses and export and import documents as are necessary for each respective party to fulfill its obligations under these Standard Terms and Conditions of Sale and any applicable Agreement.

20) **Assignment** The rights and obligations under these Standard Terms and Conditions of Sale or under any applicable Agreement shall not be assigned or transferred by the Buyer without the prior written consent of AAC. Any assignment or attempted assignment, whether by voluntary act or operation of law, shall be null and void, unless it is approved in writing by AAC.

21) **Tools and Dies** All tools and dies, including, without limitation, fixtures, gauges and assembly equipment manufactured or purchased by AAC under any applicable Agreement will be AAC's property unless otherwise agreed to in writing by AAC.

Any tools or dies funded by Buyer and held by AAC are Buyer's property and shall be held at Buyer's sole risk and expense. AAC shall not be liable for loss, damage, maintenance, repair or replacement, regardless of cause. If Buyer desires to withdraw such tools and dies from AAC's plant, and if AAC consents to Buyer's withdrawal, Buyer will compensate AAC for any cost owed or incurred with respect to such items, including, without limitation, design and development costs.

22) **Severability of Terms** A finding that any phrase, clause or provision of these Standard Terms and Conditions of Sale or any applicable Agreement is invalid or unenforceable in any jurisdiction will not affect the validity or enforceability of any other phrase, clause or provision of these Standard Terms and Conditions of Sale.

23) **Release of Information** Buyer shall in no event, without the prior written consent of AAC, publicly announce or otherwise disclose the existence of any Agreement or any relationship between Buyer and AAC, or release any publicity regarding the same. This provision shall survive the expiration, termination or cancellation of any applicable Agreement.

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24) **Modification** NO ADDITION TO, OR MODIFICATION OF ANY PROVISION HEREIN SHALL BE BINDING UPON AAC UNLESS MADE IN WRITING AND SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF AAC LOCATED AT AAC'S APPROPRIATE ORDER ENTRY LOCATION.

25) **Order of Precedence** If there are any inconsistencies or conflicts between the Standard Terms and Conditions of Sale and the terms on any applicable Agreement, precedence shall be given to the Standard Terms and Conditions of Sale unless the parties agree in writing to the contrary.

26) **Validity** Any failure of AAC to enforce at any time, or for any period of time, any of the provisions set forth herein, shall not constitute a waiver of such provisions or in any way affect the validity of these Standard Terms and Conditions of Sale.
