

ARKS Enterprises, Inc. ("ARKS")

**QUOTATION:
TERMS AND CONDITIONS OF SALE**

1. PURCHASE ORDERS: These Terms and Conditions of Sale ("Terms") constitute an offer or counteroffer by ARKS to sell products and/or services to Buyer. No additional or different provisions in Buyer's purchase order shall be binding upon ARKS unless expressly and specifically agreed to by ARKS in writing. Buyer's purchase order shall constitute the Buyer's irrevocable commitment and obligation to purchase products and/or services in the quantities set forth in the purchase order and at ARKS' prices set forth in ARKS' Quotation. Buyer's purchase order shall be subject to acceptance or non-acceptance by ARKS, in its sole and absolute discretion, at its office in the Commonwealth of Virginia. No terms, stipulations or conditions set forth in Buyer's purchase order or other document furnished by Buyer shall be binding on ARKS unless expressly and specifically accepted by ARKS in writing. Any terms, stipulations or conditions set forth in a purchase order or other document furnished by Buyer that are different from, or in addition to, any of the terms, stipulations or conditions set forth in these Terms are hereby objected to by ARKS, and all such different or additional terms, stipulations or conditions shall be null, void *ab initio* and of no effect unless expressly and specifically agreed to in writing by ARKS. ARKS' failure to specifically object to any provisions or terms from Buyer, in its purchase order or otherwise, shall not constitute a waiver or amendment of any of these Terms.

2. SHIPPING, INSURANCE AND RISK OF LOSS: Except as otherwise agreed in writing by ARKS, ARKS' quoted prices shall not include: (a) charges for freight, insurance or other costs incurred in connection with shipment of products or (b) any sales, use, value added, excise, gross receipts or similar taxes, all of which shall be paid by Buyer. All risk of loss or damage to ARKS' products shall pass to Buyer upon transfer of ARKS' products to the carrier at the agreed shipping point. If ARKS arranges carriage and/or insurance with respect to any shipment, then all costs and charges associated therewith shall be added to ARKS' price(s) in the invoice(s) to Buyer and shall be payable by Buyer in accordance with these Terms.

3. FORCE MAJEURE: ARKS shall not be responsible or liable for any failure to perform, or any delay in supplying if occasioned in whole or in part by act of God or the public enemy, pandemic, epidemic, fire, explosion, perils of the sea, flood, drought, war, riots, civil insurrection, sabotage, accident, embargo, governmental priority, requisition or allocation or any action of any governmental authority (or any refusal of such governmental authority to provide necessary authorization, including any required export license or authorization), or shortage or failure of supply, materials, fuel, transportation or labor, or strikes or other labor trouble, or any occurrence, act, cause or thing beyond the reasonable control of ARKS, all of which shall excuse any failure or delay on the part of ARKS, and ARKS shall have no obligation or liability whatsoever arising out of or in connection with any such failure or delay.

4. DELIVERY DATE; PARTIAL DELIVERIES: Any delivery date agreed to by ARKS shall be deemed to be an estimated delivery date only. ARKS shall not be liable for any loss or damages allegedly caused by failure to make any delivery of a purchase order (or portion thereof) when due. Without limitation of the foregoing, ARKS is not responsible for any delay in shipment or delivery of its products occurring after such products are transferred to the carrier. Partial deliveries shall be permitted. Buyer shall be in default of its obligations hereunder should Buyer fail to accept a partial delivery and/or fail to accept the balance of the products specified in its purchase order within such reasonable additional period of time as may be designated by ARKS, by written notice to Buyer. Buyer shall comply with any requirements established by ARKS from time to time concerning the minimum or maximum volume of products that may be purchased under any single purchase order.

5. INSPECTIONS; ACCEPTANCE: Buyer may reject and return products for nonconformity with its purchase order only by (a) giving written notice and reasonable proof of the nonconformity to ARKS within ten (10) days after ARKS' delivery of the products to Buyer's site in the case of a discrepancy in the type or quantity of products, or within thirty (30) days after such delivery in the case of a damage or defect, and (b) affording ARKS or its agent reasonable access to the products and a sufficient opportunity to verify the claimed nonconformity. If Buyer fails to reject any products in accordance with the preceding sentence, then Buyer may not return such products without ARKS' prior written authorization. With respect to authorized returns, Buyer shall bear all risk of loss or damage to the returned products until such products are received by ARKS.

6. PAYMENT: Except as otherwise agreed in writing by ARKS, all payments by Buyer to ARKS shall be made, without setoff or other reduction, by the due date or dates specified by ARKS in the Quotation and/or ARKS' invoice. If payment is not received when due, interest shall accrue from the invoice date on the unpaid amount(s) at the monthly rate of one and one-half percent (1.5%) until paid. Buyer agrees not to make any deductions of any kind from the purchase price unless Buyer shall have received an official credit memorandum from ARKS authorizing such deduction.

7. CANCELLED ORDERED: ARKS reserves the right to cancel any purchase order at any time if Buyer becomes insolvent or is in breach of these Terms. Buyer's purchase order placed in respect of this Quotation shall be non-cancellable by Buyer upon acceptance by ARKS except as otherwise agreed in writing by ARKS. If ARKS, in its sole discretion, consents to the cancellation of any purchase order, or cancels any purchase order due to Buyer's insolvency or breach of these Terms, then Buyer shall be liable for the payment of a cancellation charge. Such cancellation charge shall equal all costs and expenses incurred by ARKS in its performance under such purchase order up to the date of cancellation, plus ARKS' anticipated profit margin.

8. SPECIFICATIONS: All drawings, capacities, technical characteristics, schematics, configurations, weights, measurements and other specifications of products or services provided by ARKS to Buyer ("Specifications") are only approximate and are provided solely for reference. Deviations from ARKS' Specifications within customary industry tolerances do not constitute a non-conformity or breach of warranty. Buyer represents and warrants that any drawing, design, structure or specifications given to ARKS by or on behalf of Buyer ("Buyer's Specifications") shall not infringe on any intellectual property rights of any third party. Buyer's Specifications shall not be binding upon ARKS unless expressly and specifically accepted in writing by ARKS. Buyer shall be solely responsible for insuring the accuracy of Buyer's Specifications. Buyer shall indemnify and hold ARKS harmless from and against any and all liabilities, losses, damages, suits, arbitrations, judgments, settlements, costs or expenses (including reasonable attorneys' fees and expert witness fees) incurred by ARKS arising out of or resulting from any claim of infringement of intellectual property rights brought by a third party relating to any products supplied by ARKS based, in whole or in part, on any Buyer Specifications. In the event Buyer requests changes to ARKS' Specifications or Buyer's Specifications for any products after ARKS has accepted Buyer's purchase order (a "Change Order"), such Change Order shall become part of the purchase order only upon ARKS' written acceptance of the Change Order. If any Change Order causes an increase in the cost of and/or the time required for ARKS' performance under the purchase order, then (a) ARKS shall be compensated for all costs incurred in connection with the Change Order, (b) ARKS' delivery date shall be extended, and (c) ARKS' prices shall be adjusted to maintain ARKS' anticipated profit margin.

9. DISCLAIMER OF WARRANTY: EXCEPT AS SET FORTH IN ANY WRITTEN EXPRESS LIMITED WARRANTY ISSUED BY ARKS IN RESPECT OF ANY PARTICULAR PRODUCT(S), ARKS MAKES NO WARRANTIES WITH REGARD TO ITS PRODUCTS, EXPRESS OR IMPLIED, INCLUDING

WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE, OR ANY WARRANTY AGAINST INFRINGEMENT SUCH AS PROVIDED IN ARTICLE 2-312(3) OF THE UNIFORM COMMERCIAL CODE AND/OR ANY COMPARABLE STATUTE OR LAW THAT MAY GOVERN THE SALE OF GOODS.

10. MISUSE: ARKS SHALL HAVE NO LIABILITY OR OBLIGATION TO BUYER WITH RESPECT TO ANY OF ARKS' PRODUCTS WHICH HAVE BEEN SUBJECT TO ABUSE, MISUSE, IMPROPER USE, NEGLIGENCE, ACCIDENT, MODIFICATION, ALTERATION, TAMPERING, FAILURE TO FOLLOW NORMAL OPERATING PROCEDURES, ATTEMPT TO REPAIR BY UNQUALIFIED PERSONNEL, ANY SALE, USE OR OPERATION SUCH PRODUCTS OUTSIDE THEIR NORMAL ENVIRONMENT, OR ANY ALTERATION OF ANY LITERATURE WITH RESPECT TO SUCH PRODUCTS.

11. EXCLUSIVE REMEDY: THE SOLE AND EXCLUSIVE REMEDY AGAINST ARKS FOR ANY DEFECTIVE PRODUCT DELIVERED TO BUYER IN BREACH OF ARKS' EXPRESS LIMITED WARRANTY (IF ANY) SHALL BE, IN ARKS' SOLE AND ABSOLUTE DISCRETION, EITHER REPAIR OF THE NONCONFORMING PRODUCT, REPLACEMENT OF THE NONCONFORMING PRODUCT, OR RETURN OF SAME FOR REPAYMENT OF THE PURCHASE PRICE. EVEN IF BUYER OTHERWISE HAS A VALID WARRANTY CLAIM WITH RESPECT TO A DEFECTIVE PRODUCT, ARKS SHALL NOT HAVE ANY WARRANTY LIABILITY OR OTHER OBLIGATION IN RESPECT OF SUCH DEFECTIVE PRODUCT UNLESS BUYER DELIVERS WRITTEN NOTICE THEREOF TO ARKS PRIOR TO THE END OF THE WARRANTY PERIOD SET FORTH IN ARKS' EXPRESS LIMITED WARRANTY.

12. RETURN OF DEFECTIVE PRODUCTS: IF BUYER CLAIMS THAT ANY PRODUCTS DELIVERED BY ARKS ARE DEFECTIVE, BUYER MAY (AT BUYER'S EXPENSE) RETURN SUCH DEFECTIVE PRODUCTS TO ARKS WITH (AND ONLY WITH) PRIOR WRITTEN AUTHORIZATION FROM ARKS. BUYER SHALL BEAR THE RISK OF LOSS OR DAMAGE TO THE RETURNED PRODUCTS UNTIL THEY ARE RECEIVED BY ARKS.

13. LIMITATION OF LIABILITY: THE DAMAGES RECOVERABLE BY BUYER AGAINST ARKS FOR ANY CLAIM OF ANY KIND WHATSOEVER ARISING FROM OR IN ANY WAY CONNECTED TO ANY ARKS PRODUCTS OR SERVICES, OR THE PURCHASE, SALE OR USE THEREOF, REGARDLESS OF THE LEGAL THEORY, SHALL NOT BE GREATER THAN THE ACTUAL PURCHASE PRICE OF THE PRODUCTS OR SERVICES PAID BY BUYER WITH RESPECT TO WHICH SUCH CLAIM IS MADE. IN NO EVENT SHALL ARKS BE LIABLE FOR ANY SPECIAL, INDIRECT, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY DAMAGES WITH RESPECT TO LOSS OF INCOME, LOSS OF EXPECTED OR PROSPECTIVE PROFITS, ANY LOSS CAUSED BY DELAY, ANY LOSS WITH RESPECT TO BUYER'S BUSINESS REPUTATION OR GOODWILL, ANY LOSS INCURRED BY BUYER IN OBTAINING SUBSTITUTE PRODUCTS, OR ANY LIABILITY, LOSS OR EXPENSE OF BUYER ARISING FROM THE CLAIMS OF THIRD PARTIES SUCH AS, BUT NOT LIMITED TO, CUSTOMERS OF BUYER.

14. LIMITATION PERIOD: Buyer must give ARKS written notice of any claim or cause of action related to the sale, purchase, use or condition of any ARKS products within twelve (12) months from the date when such claim or cause of action accrues. The failure by Buyer to give written notice of such claim or cause of action in accordance with the preceding sentence shall constitute an absolute bar to such claim or cause of action.

15. PROTECTION OF INTELLECTUAL PROPERTY: ARKS retains all right, title, interest, claim and ownership in and to any and all samples, drawings, models, technical data, documents or Specifications furnished by ARKS to Buyer. Buyer shall not reproduce, modify or distribute any documents furnished by ARKS regarding its products without ARKS' prior written consent. Buyer shall not reverse engineer, decompile or otherwise attempt to replicate ARKS' know-how in the design or production of its products.

16. ATTORNEYS' FEES AND INDEMNIFICATION: Buyer shall pay, reimburse, indemnify and hold ARKS harmless from and against any and all liabilities, losses, damages, penalties, costs or expenses (including but not limited to reasonable attorneys' fees, expert witness fees, court costs and arbitral fees) incurred by ARKS arising out of relating to (a) any breach of these Terms by Buyer, (b) ARKS' cost of collection incurred with respect to any sums payable by Buyer, (c) any acts or omissions of Buyer, its agents or employees resulting in any claim or suit against ARKS, including without limitation claims relating to warranties given by Buyer on resale of ARKS' products which have not been expressly authorized in writing by ARKS, (d) any action, claim or suit brought by Buyer against ARKS that is inconsistent or in conflict with the provisions of these Terms, or (e) ARKS' enforcement of its rights and remedies, whether or not arising under these Terms, and whether such enforcement action is necessitated by (i) the Buyer's breach or nonfulfillment of any of the provisions of these Terms or (ii) the Buyer bringing any suit, action, demand or claim against ARKS that is inconsistent or in conflict with the provisions of these Terms.

17. DISPUTE RESOLUTION: The parties hereby irrevocably submit to the exclusive jurisdiction and venue of the federal and state courts of Norfolk and Virginia Beach, Virginia, with respect to any claim, cause of action, suit or other legal proceeding arising out of or relating to (a) ARKS' products or services or (b) Buyer's purchase order or the contract between ARKS and Buyer. The party substantially prevailing in any such litigation shall be entitled to recover its reasonable attorneys' fees and other expenses incurred in the enforcement or defense of its rights and remedies.

18. GOVERNING LAW: These Terms, together with the sale, purchase, use and condition of ARKS' products, and all other aspects of the relationship between ARKS and Buyer, shall be governed by and construed in accordance with the internal laws of the Commonwealth of Virginia, U.S.A. without giving effect to any choice of law rules that could result in the application of the laws of any other jurisdiction.

19. EXPORT CONTROLS: Buyer shall comply fully with all United States export controls applicable to the export or deemed export of ARKS' products, or any technical data or software related thereto, including but not limited to the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and the sanctions, embargoes and controls administered by the U.S. Treasury Department Office of Foreign Assets Controls.

20. EXCLUSIVE AGREEMENT: ARKS' Quotation and these Terms supersede all prior communications, written and oral, between ARKS and Buyer with respect to the terms and conditions governing the sale and purchase of ARKS' products (the quantities of which shall be set forth in purchase orders accepted by ARKS). Except as otherwise agreed in writing by ARKS, ARKS' Quotation and these Terms constitute the entire agreement between ARKS and Buyer concerning the terms and conditions governing the sale and purchase of ARKS' products (the quantities of which shall be set forth in purchase orders accepted by ARKS). **ARKS will not be bound by any modification of these Terms unless set forth in a writing signed by ARKS.**