

## **GENERAL TERMS & CONDITIONS OF SALE**

THESE STANDARD TERMS AND CONDITIONS FOR THE SALE OF GOODS (THE "TERMS") ARE APPLICABLE TO ALL QUOTES, BIDS, PROPOSALS AND SALES OF PRODUCTS AND GOODS AND SERVICES (THE "Products") BY FORCE ENGINEERING, INC (the "Seller"). BY SENDING AN ORDER TO FORCE ENGINEERING, INC. THE BUYER/CUSTOMER ACCEPTS OUR GENERAL TERMS AND CONDITIONS OF SALE SET OUT BELOW, NOTWITHSTANDING ANY CONTRARY CLAUSE ON THE CUSTOMER'S PART AT ANY TIME AND IN ANY WHATSOEVER FORM (INCLUDING BUT NOT LIMITED TO CUSTOMER'S GENERAL CONDITIONS OF PURCHASE). IF ANY OF THE PROVISIONS OF THESE GENERAL TERMS AND CONDITIONS OF SALE ARE NOT ACCEPTABLE TO OUR CUSTOMER, WE MUST BE NOTIFIED IMMEDIATELY.

### **1. ORDERS**

Order means any Buyer order, purchase order, work orders, contract, agreement, and modifications and/or amendments thereof, committing the Buyer to the purchase of Products. All orders placed by Buyer are subject to acceptance by us, Force Engineering, Inc. (the "Seller"). Orders may not be cancelled or rescheduled without Seller written consent. To become a valid Order, any Order must be subject to written acceptance by us, the Seller; commitments made verbally by our employees and representatives shall only become final after they have been confirmed in writing by Force Engineering, Inc. All Orders must identify the products, unit quantities, part numbers, applicable prices and requested delivery dates of the Products being purchased. Seller may, in its sole discretion, allocate Product among its Customers. Seller may designate certain Products and Services as Non-Cancelable, Non-Returnable ("NCNR") and the sale of such Products shall be subject to any special terms and conditions contained in Seller's Order Acknowledgement or NCNR Letter, which shall prevail and supersede any inconsistent terms and conditions contained herein or elsewhere. We reserve the right during performance of the Order to make any modifications to our products required by law or compelling circumstances such as a change to technical standards of production methods, inspection methods, legislative provisions or regulations affecting the terms and conditions of execution of the Order.

### **2. PRICES**

The prices of the Products are those prices specified on the front of the invoice. Pricing for undelivered Products may be increased in the event of an increase in Seller's cost, change in market conditions or any other causes beyond the Seller's reasonable control. Price quotations shall automatically expire in thirty (30) days from the date issued unless otherwise stated in Seller's quotation. Unless otherwise agreed to in writing by Seller, all prices quoted are "Ex-Works" (EXW), FOB origin, and exclusive of transportation and insurance costs, duties, and all taxes including federal, state and local sales, excise and value added, goods and services taxes, and any other taxes.

### **3. CHANGES**

The Buyer reserves the right at any time to make changes to the Order or any part thereof upon written notice to the Seller. Buyer may cancel its Order only with the prior written consent of Seller, which Seller may withhold in its sole discretion. All cancellations and/or changes will be subject to payment to Seller of reasonable and proper charges for cancellation and/or changes. No change to or modification of the items, specifications, terms, conditions and prices appearing on the Order shall be binding upon the Buyer unless expressly agreed to in writing by the Seller and the Buyer. Seller reserves the right, in its sole discretion and without incurring any liability, to: (a) alter the specifications for any Product; (b) discontinue the manufacture and/or supply of any Product; (c) withdraw any Product from marketing and/or sale at any time. Seller shall communicate any change in the specifications for any Product in accordance with Seller's product change notification process. Buyer shall be deemed to have accepted such change unless, within thirty (30) days after receipt of notice from Seller, Buyer informs Seller that such change is not acceptable. If Buyer informs Seller that such change is not acceptable, Seller may by notice to Buyer either (i) continue to supply the Product in accordance with the original specifications, or (ii) continue to supply the Product in accordance with the changed specifications, or (iii) terminate the Order with respect to such Product on a date specified by Seller in a notice of termination.

### **4. DELIVERY AND ACCEPTANCE**

**4.1 Delivery.** Delivery dates are estimates based on current backlog and are subject to confirmation at the time or Order. Seller's delivery dates are estimates only; Seller is not liable for delays in delivery or for failure to perform

due to causes beyond the reasonable control of the Seller. Seller, in its sole discretion, without liability or penalty, may make partial shipments of Products to Buyer. Each shipment will constitute a separate sale and Buyer shall pay for the Goods shipped, in accordance with Seller's payment terms, whether such shipment is in whole or partial fulfillment of an Order. Unless otherwise specified, Seller shall select the method of shipment of and the carrier for the delivery of Products. The carrier is not (and shall not be deemed) an agent of the Seller. Delay in delivery of any Products shall not relieve the customer of its obligation to accept delivery thereof, and to make payment for Product delivery thereof, and shall not justify a price reduction nor a claim for damages. A delayed delivery of any part of an Order does not entitle Buyer to cancel other deliveries. Seller shall be released from our obligation to deliver in the event of force majeure. Products ready to be delivered at the time of the occurrence of an event of force majeure shall be accepted by Customer.

**4.2 Acceptance.** All deliveries will be made "EX WORKS" place of shipment, FOB Origin. Title and risk of loss pass to the Buyer upon delivery of the Product to the carrier. Unless otherwise agreed, acceptance of our products shall take place at our facilities, or at those of our suppliers or sub-contractors, on the date agreed in the Order. Buyer is responsible to carry out all freight and shipment inspections and checks to assert damage in shipment, to document same, and report claims of damage in shipment to us within three (3) days. Otherwise the delivery will be deemed to have been accepted without reservation. If the product being supplied is to be assembled or installed by ourselves, or by our sub-contractors, the customer shall proceed to acceptance of the product when assembled or installed in the place stipulated in the Order and shall accept the product and issue an acceptance report to us. In any event, the product shall be deemed to have been accepted on the first of the following dates:

- i. the date accepted by the Buyer, or
- ii. the date of first installation or assembly by Seller or subcontractor (as applicable), or
- iii. the date of first use by the Buyer, or
- iv. thirty (30) days following the delivery of the product.

No return or reinstatement will be accepted without our express prior agreement. If Buyer does not take possession of the products directly or through its carrier at the place and on the date agreed with us, Buyer shall still be bound to make the payments as if the products had been delivered and risks shall be transferred to it anyway. In the event of the customer's failure to receive, collect and pay for the products, Seller shall be entitled to store said products Buyer's expense and risk. In such circumstances, Seller shall also be entitled to reimbursement of all expenses incurred in execution of the contract

## **5. PAYMENT**

Payments are to be sent to the address shown on the front of the Seller invoice. Payment may be made by check, money order, credit card, third-party payment service (e.g., PayPal) or wire transfer. If payment is made by credit card, Seller is authorized to charge the credit card presented for the items shown on Seller invoice. All payment fees, such as wire fees, are borne by the Buyer. Unless otherwise agreed, Seller Products are invoiced on delivery and must be paid by the customer prior to delivery. We reserve the right to demand a deposit or payment against Order. Where Seller has extended credit to Buyer, terms of payment shall be net thirty (30) days from date of invoice, without offset or deduction unless otherwise noted. On any past-due invoice, Seller may impose interest at the rate of one-and-one-half-percent (1.5%) per-month. If Buyer fails to make each payment when it is due, Seller reserves the right to change or withdraw credit and thereby to suspend or cancel performance under any or all Orders, purchase orders or agreements in which Seller has extended credit to Buyer. In the event of default by Buyer, Seller shall be entitled to costs, fees, and expenses, including but not limited to recovery of attorney fees, court costs and fees, and collections costs. No payment withholding or set-off of any kind is permitted without our express written approval.

## **6. TAXES**

Unless otherwise agreed to in writing by Seller, all prices quoted are exclusive of transportation and insurance costs, duties, and all taxes including federal, state and local sales, excise and value added, goods and services taxes, and any other taxes. Buyer agrees to indemnify and hold Seller harmless for any liability for tax in connection with the sale, as well as the collection or withholding thereof, including penalties and interest thereon. When applicable, transportation and taxes shall appear as separate items on Seller's invoice.

## **7. LIMITED WARRANTY**

Seller warrants that all Products sold are new and, upon payment in full by Buyer of the Product, free and clear of any security interests or liens. THIS WARRANTY IS THE EXCLUSIVE WARRANTY. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION IN THIS PARAGRAPH. SELLER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, BY OPERATION OF LAW OR OTHERWISE, OR AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND SPECIFICALLY DISCLAIMS ANY AND ALL SUCH WARRANTIES. Solely as a convenience to Buyer, if Buyer believes any Product is initially defective as non-conforming to the Order description of the Product or was shipped to Buyer in error, then Buyer shall give Seller written notice of the alleged non-conformance or error within five (5) business days of receipt of the Product. Seller's sole obligation under the foregoing events, and Buyer's exclusive remedies, will be limited, at Seller's election, to either: (i) replacement of non-conforming Product, or (ii) refunding the purchase price for such Product paid by Buyer and, at Seller's election, either return the Product to Seller (at Seller's expense), make the Product available for inspection and/or procurement by Seller or its agents at Buyer's place of business. In no event shall Seller's liability for non-conforming Product exceed the lesser of the price of the Product or the amount paid by Buyer. Seller shall not be responsible for any defect in Product that is created or originates after the Product is shipped from Seller, including Product subjected to combination, modification, adulteration, misuse, neglect, accident, improper handling or storage, or which has been altered or misbranded by anyone other than Seller or its authorized representative or modifications to or adaptations of the Product made by Buyer or others. Seller shall not be liable on any notice of claim for non-conforming Product which is not issued to Seller within thirty (30) days after such Product has been received by Buyer. Upon acceptance of Product by Buyer, Buyer irrevocably waives any right to revoke such acceptance for any reason, whether known or unknown to Buyer at the time of acceptance. SELLER DISCLAIMS ANY AND ALL WARRANTIES AND/OR INDEMNIFICATION AGAINST INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY NATURE. SELLER SHALL, IF GIVEN PROMPT NOTICE BY BUYER OF ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT WITH RESPECT TO ANY PRODUCT SOLD HEREUNDER, REQUEST THE MANUFACTURER TO GRANT FOR THE BUYER SUCH WARRANTY OR INDEMNITY RIGHTS AS THE MANUFACTURER MAY CUSTOMARILY PROVIDE WITH RESPECT TO SUCH PRODUCT. Seller does not warrant that the use of, or the subsequent sale of, the Product delivered hereunder will not infringe the claims of any United States or other patents covering the Product itself or the use thereof in combination with other products or other goods or as a part of another product or good.

## **8. LIMITATION OF LIABILITIES**

TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER'S TOTAL LIABILITY TO BUYER, BUYER'S CUSTOMERS, OR TO ANY OTHER PERSON, RELATING TO ANY PURCHASES AND/OR PRODUCT GOVERNED BY THIS AGREEMENT, FROM THE USE OF THE PRODUCT FURNISHED, OR FROM ANY ADVICE, INFORMATION OR ASSISTANCE PROVIDED BY SELLER (BY ANY METHOD, INCLUDING A WEBSITE), IS LIMITED TO THE LESSER OF THE PRICE OF THE PRODUCT GIVING RISE TO THE CLAIM OR THE AMOUNT PAID BY BUYER TO SELLER. SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, DIRECT, CONSEQUENTIAL, GENERAL, PUNITIVE, OR PENAL DAMAGES (INCLUDING, WITHOUT LIMITATION, BACK-CHARGES, LABOR COSTS, COSTS OF REMOVAL, REPLACEMENT, TESTING, LOSS OF BUSINESS, LOSS OF PROFITS OR REVENUES, LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED GOODS, DAMAGE TO ASSOCIATED GOODS, LATENESS OR DELAYS IN DELIVERY, UNAVAILABILITY OF PRODUCT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCT, FACILITIES OR SERVICES, DOWNTIME, OR CLAIMS FROM BUYER'S CUSTOMERS OR OTHER PARTIES). IF SELLER FURNISHES BUYER WITH ADVICE OR OTHER ASSISTANCE WHICH CONCERNS ANY PRODUCT SUPPLIED HEREUNDER, OR ANY OTHER PRODUCT OR GOOD IN WHICH ANY SUCH PRODUCT MAY BE PLACED OR TO WHICH SUCH PRODUCT MAY BE COMBINED, AND WHICH IS NOT REQUIRED PURSUANT TO THIS AGREEMENT, THE FURNISHING OF SUCH ADVICE OR ASSISTANCE WILL NOT SUBJECT SELLER TO ANY LIABILITY, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHER GROUNDS. SELLER MAKES NO WARRANTY OR REPRESENTATION REGARDING THE ABSENCE OF FOREIGN MATERIALS OR SUBSTANCES IN THE PURCHASED PRODUCT(S). BUYER IS ADVISED AND ACKNOWLEDGES THAT IT SHOULD, AT ALL TIMES, EXERCISE ITS OWN DUE DILIGENCE AND SHOULD IMPLEMENT ALL REASONABLE AND NECESSARY SAFEGUARDS AND MEASURES TO INSURE THAT NO UNDESIRABLE FOREIGN MATERIALS OR SUBSTANCES ARE CONTAINED IN THE

PURCHASED PRODUCT(S) AFTER FINAL PROCESSING AND PRIOR TO BUYER'S SALE OR USE OF ANY INGREDIENT(S)/PRODUCT(S) OBTAINED BY OR THROUGH SELLER. WHEN BUYER HAS EXAMINED THE PRODUCT AS FULLY AS IT DESIRED OR HAS REFUSED TO EXAMINE THE PRODUCT, THERE IS NO WARRANTY WITH REGARD TO ANY DEFECTS WHICH AN EXAMINATION OUGHT IN THE CIRCUMSTANCES TO HAVE REVEALED TO BUYER.

## **9. RETURNS, REFUNDS AND EXCHANGES**

**9.1 Returns:** Only products originally shipped from Force Engineering, Inc. or from an authorized supplier (e.g., drop-shipment) will be considered for return. By requesting return of Products to Force Engineering, the Buyer certifies that (a) the Products were purchased from Force Engineering and there has been no substitution of the product from another supplier, distributor or other source of the product, (b) there have been no modifications made to Product, and (c) Product is essentially in the same condition as when delivered to Buyer. Any return and all returns must be in the original packaging and in unused condition except if authorized by Seller for Product analysis and/or warranty evaluation by Seller as demonstrated by the Seller's issuance of a Return Material Authorization (RMA).

**9.2 Exchanges:** Any item for exchange must be in new condition and in the Product's original packaging. Exchanges must be requested within thirty (30) days of Product original ship date. Defective item(s) may be exchanged or returned for the same item. Product(s) that have been used or altered and any items that have been sold or designated as NCNR will not be accepted for exchange.

**9.3 Non-Cancelable and Non-Returnable (NCNR) Items.** Products designated as NCNR (Non-Cancelable and Non-Returnable) as identified on Seller's quotation, sales and marketing promotions, website (e.g. the Cart Page for web orders) and via Seller Order Acknowledgement for all other Orders.

**9.4 Return Freight/Restocking Fee:** Seller reserves the right to charge cancellation and restocking fees, at a minimum rate of 15% of the price of the Product to be deducted from the Customer refund. Force Engineering does not refund the original shipping and handling costs. Customer is responsible for all return freight charges. Force Engineering does not accept COD shipments.

**9.5 Refunds:** Upon receipt and inspection of returned item(s), Force Engineering will advise Buyer of the refund status. In the case of warranty or RMA analysis, Force Engineering will issue applicable credit(s) pending confirmation of warranty/return eligibility. Force Engineering issues credits via the original method of payment within 48-hours of Seller refund approval. Refunds via credit card can take up to 10 business days to post to Buyer accounts.

## **10. OWNERSHIP**

Ownership of our products shall pass to the Buyer only on the date on which the payment for price payable and/or invoice for the product or service has been paid in full and payment has been received by us.

## **11. EXPORT**

Buyer agrees to comply with all applicable export laws, assurances, codes and license requirements, and controls of the United States and other jurisdictions as well as all other applicable laws, codes, and government regulations, standards, rules, guidelines, and requirements in connection with the Buyer's use, manufacturing, distribution, marketing, and resale of Products including Buyer's acceptance of responsibility for the payment of any applicable taxes or duties. Buyer acknowledges that Products are items whose export may be restricted by the Arms Export Control Act (Title 22, USC 2751 et seq.), the Export Administration Act of 1979 (Title 50, USC, App. 2401, et seq.), the U.S. Foreign Assets Control Regulations ("OFAC"), the International Traffic in Arms Regulations ("ITAR") at 22 CFR 120-130, and Export Administration Regulations ("EAR") set forth at 15 C.F.R. Parts 730-774, and that export is prohibited without written authorization.

Buyer certifies that it will be the recipient of the Products to be delivered by Seller. Buyer acknowledges that Product may not be resold, transferred, exported, re-exported, or otherwise disposed of, to any other country or to any other person other than the authorized ultimate consignee or end-user(s) either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations. Seller will not transfer any export-controlled products to a "non-U.S. Person" without the proper authority of the United States Government, and the Buyer's written authorization that includes the applicable export authorization and/or license.

## **12. TOOLING**

A Non-recurring set-up charge may be imposed for any special tooling, including without limitation, dies, fixtures, molds and patterns acquired to manufacture items sold subsequent Buyer's order. All drawings, models, analysis, tools, jigs, dies, fixtures, materials, and other property, including non-recurring and set-up work product, that is created, devised or used in the performance of Buyer's Order shall remain the sole and exclusive property of Seller. Payment of charges in connection with set-up (e.g., non-recurring or tooling or apparatus charges) does not constitute or convey ownership of tooling.

## **13. CONFIDENTIALITY**

Any specifications, samples, designs, formulations, trade secrets, copyrights, trademarks, patents, intellectual property, pricing, customer, vendor, manufacturer, distributor, supplier, packager, and shipper information, financial data, or other information that Buyer or Seller (the "Disclosing Party") identifies as or otherwise deems confidential (the "Confidential Information") and discloses to the other Party (the "Receiving Party") in connection with this Agreement or any Order shall remain the exclusive property of the Disclosing Party and shall, along with any information derived from the same, be kept confidential by the Receiving Party and its employees and agents and shall not, without the Disclosing Party's prior written consent, be disclosed to any third party or used except for purposes of the Order. The Receiving Party agrees not to chemically analyze, test, evaluate, formulate, dissect, anatomize, or reverse engineer any sample, ingredient, or product, or to assist and/or allow any third party to do so without the express written consent of and license from the Disclosing Party. Receiving Party also agrees not to use Confidential Information to infringe upon or invade Disclosing Party's rights secured by patents, copyrights, trademarks, trade secrets, and other intellectual property laws or assist or allow any third party to infringe upon or invade such rights. 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) rightfully obtained by Buyer on a non-confidential basis from a third party.

## **14. INTELLECTUAL PROPERTY**

**14.1 NO LICENSE GRANTED.** Buyer recognizes and agrees that nothing contained in this Agreement shall be construed as granting to Buyer any rights to or under any patent, copyright, trademark, trade secret or mask work of the Seller. Nothing in this Order creates any employment, joint venture, partnership or agency between Buyer and Seller.

**14.2 NOT WORK MADE FOR HIRE.** Any intellectual property developed or conceived during the performance of the Order remain the sole and exclusive property of Seller.

## **15. FORCE MAJEURE**

Seller shall not be liable for any failure or delay in performing an obligation due to any of the following causes, to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic, quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, generalized lack of availability of raw materials or energy. For the avoidance of doubt, Force Majeure shall not include (a) financial distress nor the inability of either party to make a profit or avoid a financial loss, (b) changes in market prices or conditions, or (c) a party's financial inability to perform its obligations hereunder.

## **16. APPLICABLE LAW**

Unless otherwise agreed by Seller, any dispute relating to the Order, including its existence, validity and/or termination, shall be subject to the laws and to the jurisdiction of the State of Arizona in the United States of America. Buyer hereby consents to exclusive jurisdiction and exclusive venue in such state courts, hereby waiving any forum non conveniens claim, and regardless of the party's present or future domicile.

## **17. AMENDMENT AND MODIFICATION**

These Terms and Conditions may only be amended or modified in a writing which specifically states that it amends these Terms and Conditions and is signed by an authorized representative of each party.

## **18. MISCELLANEOUS**

Failure of Seller to insist upon strict performance of any provisions of this Agreement or to exercise any rights hereunder shall not be construed as a waiver or relinquishment of such rights or the waiver of future performance

of any such term or condition or the future exercise of such right. All rights and remedies under this Agreement are cumulative and are in addition to any other rights and remedies Seller may have at law or in equity. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto, and their respective heirs, personal representatives, and successors in interest. In the event any term, provision, undertaking or restriction contained in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable (in whole or in part), the remainder of the terms, provisions, undertakings and restrictions will remain in full force and effect and will in no way be affected, impaired or invalidated. Any notice or request required or permitted to be given in connection with this Agreement shall be sent by mail, prepaid, return receipt requested, by fax or email, with receipt confirmed, or by express delivery service to the address set forth on the PO or invoice or to any other business address furnished in writing by the intended recipient to the sender. The date of notice shall be deemed to be the date on which such notice has been sent received by fax or email to the party's registered agent, received by mail, or received by express delivery service.

#### **19. COVENANTS**

For a period of three (3) years after the last date that Seller supplies any Product to Buyer, Buyer hereby agrees and covenants that neither Buyer, nor any affiliate, representative, agent of Buyer, nor any party to which Buyer discloses Confidential Information, will solicit, directly or indirectly, any employee, customer, contractor, vendor, manufacturer, distributor, packager, shipper, supplier or sub-supplier Seller discloses to Buyer. Buyer acknowledges that irreparable damage would occur to Seller in the event that Seller's employees, customers, contractors, vendors, manufacturers, distributors, packagers, shippers, suppliers and sub-suppliers ceased to work or have a business relationship with Seller due to Buyer's breach of this covenant. Accordingly, Seller will be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement, in addition to seeking compensation for damages, and will be entitled to enforce specifically the terms and provisions hereof, in addition to any other remedy to which that party may be entitled at law or in equity. Information supplied by the Seller including, without limitation, product specifications, certificates of analysis, quality statements, questionnaires, and manufacturing flow charts, is based on manufacturer-supplied information. Seller is not and shall not be responsible for false or misleading information given by manufacturers and other third parties. Seller makes no warranties, express or implied, for the information provided by Seller, and Buyer assumes all responsibilities and liability for loss or damage arising from the use of any such information.