

## ARC Colorado, Inc. Terms and Conditions of Purchase

P-FORM003 1/14/2020

Website Controlled Document: [www.arcw.com](http://www.arcw.com)

1. **Acceptance.** Acceptance of this Purchase Order is expressly limited to the terms of this Purchase Order. This Purchase Order ("Purchase Order" or "Order") becomes a contract when the vendor stated on the face of the Purchase Order ("Seller" or "Contractor") returns a written acknowledgment of this order by original or facsimile to ARC Colorado, Inc., ("ARC" or "Purchaser") or when Seller has begun manufacture or other performance under this Order without ARC's written consent to any modifications of its terms. ARC hereby notifies Seller of its objection to any additional or different terms contained in Seller's acknowledgment, invoice or other written confirmation of this Order.
2. **Packing and Shipping.** (1) Seller shall label and pack goods sold in a commercially reasonable manner adequate to protect the contents unless specified otherwise by ARC, in which case Seller shall be specifically notified of packaging and shipping requirements. (2) No charges will be allowed for transportation, packaging, packing or returnable containers unless stated. (3) Seller shall not produce materials, manufacture in advance of seller's normal flow time or deliver in advance of schedule without ARC's prior written consent. ARC may return, shipping charges collect, all goods received in advance of the schedule set forth herein.
3. **Changes, Cancellation and Adjustments.** ARC may, at any time, at ARC's discretion by written order only and without advance notice, suspend or cancel performance, make changes in the quantities, drawings, design, manufacturing methods, test, specifications, delivery schedule, method of shipment or packaging of the suppliers, or any combination of the foregoing. In the event ARC cancels performance for a reason other than Seller's breach of this Order, Seller's costs and reasonable profit shall be prorated in accordance with accounting based on performance to date of cancellation. If any such change results in an increase or decrease in the cost of, or time required for, performance of this Order, an equitable adjustment shall be made in the Purchase Order price, delivery schedule, or both. Any claim for such adjustment shall be deemed waived by Seller unless asserted by Seller in writing within thirty (30) days of receipt of the change order. Nothing herein shall excuse Seller from proceeding without delay in that performance of this Order as changed. In the event of termination by the Government of all or part of ARC's prime contract or upper tier subcontract, ARC may terminate all or part of this Order. In such case any claims of Seller resulting from such termination shall be submitted to ARC not later than thirty (30) days from the effective date of such termination.
4. **Inspection.** All goods ordered hereunder shall be subject to inspection and tests by ARC, its assigns and customer, including the Government, to the extent practicable, at all times and places, including the period of manufacture or test and prior to acceptance. Seller agrees to permit access to its facilities at all reasonable times for inspection of goods by ARC and its representatives or its customer and will provide all tools, facilities and assistance reasonable necessary for such inspection at no cost to ARC. Such goods shall be subject to final inspection and acceptance by ARC after delivery to ARC. It is expressly agreed that inspections and payments prior to delivery will not constitute final acceptance.
5. **Warranties and Remedies.** In addition to all other express or implied warranties provided by law, Seller warrants that all goods furnished hereunder will be free of defects in material and workmanship, and will conform to applicable drawings, specifications and other data. If not of ARC's design, such goods shall be merchantable, free of design defects, and fit for the purpose intended. All warranties shall survive acceptance and payment and shall run to ARC and its customer. ARC shall not be required to obtain Seller's permission to return any goods to Seller which, in ARC's reasonable business judgment, are not in conformity with this warranty. Articles not manufactured in conformity herewith, at ARC's option: (1) may be retained with an equitable adjustment in price; (2) may be correct in place; or (3) may be returned for replacement, correction, credit or refund. Seller shall not ship replacement articles or repaired goods to ARC unless expressly requested and authorized by ARC. All returns, replacements or corrections will be at Seller's expense, including all labor, materials, installation, repair, service, transportation and other necessary charges. Seller assumes all risk of loss or damage to articles returned by ARC which such articles are in transit. These provisions are in addition to other remedies provided by law.
6. **Excusable Delays.** Seller shall not be liable for damages or delay in delivery arising out of causes beyond its control and without its fault or negligence. In order to be excused for such delay, Seller shall notify ARC in writing within ten (10) days from the beginning of any such cause.
7. **Termination for Breach or Creditor's Relief.** Time is of the essence in this contract. If Seller fails to comply with any of the provisions of this Order, or if Seller becomes the subject of a proceeding under state or federal law for bankruptcy or other relief of creditors, or if Seller makes an assignment for the benefit of creditors, ARC shall have the right, notwithstanding the provisions of the clause hereof entitles "Excusable Delays", to hold Seller in default and terminate this Order in whole or in part.
8. **Indemnity.** Seller shall, at its own expense, hold harmless and defend ARC, its successors, assigns, customers and users and all persons claiming under ARCT against any claim or act for the infringement of any patent, copyright or trademark, and shall indemnify the aforesaid parties against all damages, costs and expenses arising therefrom by reason of the manufacture, sale or the use of supplies covered by this contract. ARC agrees to give the Seller prompt notice in writing of any such claim or for infringement and full opportunity to conduct the defense thereof.
9. **Confidentiality.** All information specifically identified by ARC and supplied to, or developed by Contractor and Contractor's employees, agents, representatives, assigns or subcontractors for ARC under this Agreement shall be considered to be confidential and proprietary information owned by ARC. All information supplied to or developed by contractor, shall presumably be deemed to be exclusively developed for ARC unless Contractor objects to such presumption of exclusivity within seven days of receipt of this order. If contractor objects to exclusivity, Contractor must specifically identify those objections within the seven day period. If no mutual agreement can be made regarding those objections, ARC may suspend or cancel this order upon written notice. Contractor may also have access to certain other confidential and proprietary information owned by ARC which may be disclosed to Contractor or Contractor's employees, agents, representatives, assigns or subcontractors orally, in writing or by observation during work on ARC projects. All such information shall be maintained in strict confidence, shall not be used except as necessary for the performance of this Agreement and shall not be disclosed to any third party without prior written approval by ARC. All tangible

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items or materials developed by or made available to Contractor or Contractor's employees, agents, representative, assigns or subcontractors shall be returned to ARC promptly upon the cancellation, termination or completion of this Agreement. Contractor shall not issue or release for publication or otherwise, any information, advertising or publicity matter that relates to this Agreement or that mentions or implies the name of ARC, its subsidiary or affiliate companies or their respective employees, agents, representatives, assigns and subcontractors performing work under this Agreement shall at ARC's request execute and agreement which provides that the employee will not use or disclose confidential or proprietary information obtained in connection with this Agreement. The obligations and duties of this clause shall survive the termination or expiration of this Agreement except to the extent that such information is or comes into the public domain through no fault of Contractor, its employees, agents, representatives, assigns or subcontractors.

10. **Patent Rights and Use of Technical Information.** ALL INFORMATION PROVIDED BY ARC TO SELLER IS THE SOLE AND EXCLUSIVE PROPERTY OF ARC. The parties agree that ARC has a proprietary interest in all such information and will be used by Seller only to fulfill its obligations under this agreement. All property rights in any product, process, or design derived from the use of this information provided by ARC to Seller, shall be the sole and exclusive property of ARC and ARC shall have the exclusive right to apply for patents, copyrights, or other protections of such property interest.
11. **Special Equipment.** If the price as stated on the face of this Order includes jigs, dies, fixtures, tools, patterns, drawings, specifications or other special equipment and manufacturing aids used in the manufacture of the supplies herein, such item or items shall become the property of ARC upon acquisition or completion by Seller. Such items shall not be used in the production, manufacture or design of any goods for any customer of Seller other than ARC, except with ARC's written permission.
12. **Choice of Law and Venue.** This Order shall be governed by, subject to and construed under the laws of the State of Colorado and when applicable, Federal Procurement Law. Seller acknowledges that by selling such goods to ARC, it is doing business within the State of Colorado. Seller will comply with all federal, state and local laws applicable to the performance of this order. Any injunctive action pertaining to this Agreement shall be commenced and prosecuted in the courts of Weld County Colorado.
13. **Arbitration.** Any disputes arising under this agreement which cannot be resolved by the parties or by injunctive relief from the Weld County District Court shall be submitted to arbitration in Firestone, Colorado, pursuant to the American Arbitration Association rules for commercial disputes. The parties agree to abide by the decision of the arbitrators. The prevailing party may file such award with the Clerk of the District Court of Weld County who shall enter judgment thereon, and if such award requires the payment of money, execution shall issue on such judgment.
14. **Nondiscrimination in Employment.** Seller warrants that labor and materials supplied under this agreement have been made and supplied in complete compliance with all applicable State and Federal laws concerning nondiscrimination in hiring and employment. Seller shall indemnify and hold harmless ARC, its assigns and representatives from all actions brought against ARC, its assigned and representatives for noncompliance with applicable State and Federal laws. Seller shall provide upon request, such certificates as are required under applicable State and Federal law which evidence compliance.
15. **Assignment.** Seller shall not assign this Order or any rights hereunder, including moneys due or become due, without the prior written approval of ARC.
16. **Risk of Loss.** All risk of loss of supplies or items furnished under this Order shall follow the custody thereof, except that Seller shall bear the risk on rejected supplies after receipt of notice from ARC of such rejection.
17. **Subcontractors.** No subcontracts shall be made by the Seller with any other party for furnishing any of the supplies hereunder in completed or substantially completed form without the prior written approval of ARC.
18. **Waiver.** No waiver, alteration or modification of any of the provisions of this Order shall be binding on ARC unless evidenced by a change order or written amendment duly signed by ARC.
19. **Taxes.** No charges will be made for taxes, unless stated. All sales, use, excise or similar taxes are to be paid by ARC must be itemized separately hereon and on invoices.
20. **Gratuities.** Seller warrants that neither it nor any of its employees, agents or representative have offered or given any gratuities to ARC, its employees, agents or representatives with a view toward securing this Order or securing favorable treatment with respect thereto. Seller shall comply with the following Code of Conduct: (1) Personal discounts or other benefits including but not limited to gifts, loans, bribe, kickback and entertainment not available to the public or all employees of Buyer shall not be offered to any employees of Buyer by Seller. (2) Doing business with Seller owned by or managed by family members or close friends of any employees of Buyer is strictly prohibited unless disclosed the relationship in advance to those involved in making the decision. (3) If Seller deals with foreign countries or foreign suppliers, Seller must make sure Seller understands and follows all laws and regulations regarding import and export compliance, boycotts and embargoes. (4) Using any material information learned about Buyer or other companies before it is made public and it would reasonably be expected to affect the price of a security or would influence a reasonable person's decision to buy or sell a security if disclosed and conveying this information to others violates the insider trading law. (5) If Seller becomes aware of any unethical behavior of Buyer, Seller must promptly disclose the situation in writing to a purchasing manager, human resource manager, plant or general manager of Buyer.
21. **Orders under a Government Prime Contract.** If this Order indicates that it is placed under a Government contract, all federal laws and regulations applicable to ARC's Government contract shall be in effect, including the provisions of the Federal Acquisition Regulation (FAR) and, if applicable, Department or Agency supplements and other provisions that may be specific to ARC's customer's contract. These provisions are contained in the FAR and the Department Appendix to this Order, solicitation or agreement.
22. **Entire Agreement.** These terms and conditions together with any other terms stated in this agreement constitute the entire agreement for this transaction.
23. **Warranty – OSHA.** By accepting this Purchase Order, Seller hereby warrants that all materials/goods/equipment supplied by Seller on this Order meet or exceed current OSHA specifications and regulations as applicable to the material/goods/equipment supplied

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without exception or limitation. Seller hereby assumes full responsibility and assumes any liability that may arise resulting from failure to abide by this warranty, specifically or in general.

24. **Toxic Substances.** By accepting this Purchase Order, Seller hereby warrants that all chemicals and/or allied products supplied by Seller are listed in the List of Chemical Substances under the Toxic Substances Control Act, P.L. 94-469. Exceptions to, or reservations from this warrant by Seller shall be identified by separate written notification to ARC, signed by an authorized officer of Seller. Seller hereby assumes full responsibility and any liability that may arise resulting from failure to abide by this warranty, specifically or in general.
25. **Payment.** Except for prompt payment discounts that are expressly stated in the Agreement, or other payment terms expressly stated on the face of the purchase order, payment shall be made by ARC within seventy-five (75) days after acceptable receipt of goods and presentation of a true and correct invoice.
26. **Independent Contractor.** The parties expressly understand and agree that Contractor is acting as an independent contractor unrelated to ARC and its parent, subsidiary and affiliated companies and their respective officers, agents, representatives and employees. Unless otherwise provided in this Agreement, Contractor shall be solely responsible for the supervision, control, and direction of its employees, servants, agents, or subcontractors performing work under this agreement Contractor shall be responsible for paying its employees, agents, servants or subcontractors; for withholding and all required filings and payments to income taxes, unemployment taxes and social security taxes; and for all benefit payments and programs. Nothing in this Agreement is intended to create a relationship, express or implied, or employer-employee, or principal-agent, or master-servant, between ARCT and the Contractor, or between ARC and any of the Contractor's employees, agents, servants, or subcontractors. Contractor shall not incur any expenses or obligations nor make any representations or warranties to third parties binding upon or in the name of ARC or any of ARC's affiliates.
27. **Indemnifications.** In this paragraph, ARCT shall mean ARC and its parent, subsidiary and affiliated companies and their respective officers, agents, representatives and employees. Contractor shall mean Contractor and its subsidiary and affiliated companies and their respective officers, agents, representatives and employees. Contractor agrees to and shall indemnify ARC against and hold ARC harmless from any and all claims, loss, cost, damage, injury (whether direct, indirect or consequential), interest or causes of action, suits and liabilities of every kind (including attorney's fees and expenses incurred in the investigation, defense and settlement of any claim or suit for the prosecution of omission of any work or obligation undertaken by Contractor or required of Contractor by this Agreement or for breach of this Agreement, except to the extent, but only to the extent, that such injuries, death or damages are caused by ARC's sole negligence. Contractor shall defend ARC against any claim or litigation in connection with any injury, death or damage covered by Contractor's indemnity at Contractor's expense with counsel reasonable acceptable to ARC or at the election of ARC, shall reimburse ARC for legal fees and other costs incurred in ARC's defense of such claims or litigation. ARC shall have the right to participate in the defense of any claims of litigation and shall have the right to approve any settlement.
28. **Insurance.** Contractor shall secure before commencing, and maintain during the performance of its obligations under this Agreement, adequate errors and omissions insurance or professional liability insurance and at least the following types of insurance and minimum coverages: (1) Comprehensive General Liability Insurance with minimum bodily injury limits of \$1,000,000 each occurrence/offense and minimum property damage limits of \$1,000,000 each occurrence including X, C & U coverages; (2) Automobile Liability Insurance with minimum bodily injury limits of \$1,000,000 each occurrence and minimum property damage limits of \$1,000,000 each occurrence; (3) Statutory Workmen's Compensation and Occupational Disease Disability Insurance with policy endorsed to waive insurance company's right to subrogation; (4) Employer's Liability Insurance with limits of \$1,000,000 each occurrence. (5) Professional liability with minimum limits of \$1,000,000; (6) Property Insurance with deductibles paid by Contractor/Seller to full replacement value of any of any work at ARC's site until completion and acceptance by ARC including all contractors and covering all perils, extended coverage and "all risk" including differences in condition insurance for physical loss. Contractor shall furnish to ARC evidence of such insurance coverage in the form of Certificates of Insurance, together with evidence that the insurance carrier has assumed the liability of Contractor hereunder either under a properly executed Assumption of Contractual Liability endorsement or by a Certificate of Contractual liability Insurance. ARC shall be named as an additional insured on all insurance policies required of Contractor hereunder. All Certificates of Insurance shall provide that ARC shall be given 30 days written notice prior to any change, substitution or cancellation prior to the stated expiration date. All insurance policies secured by Contractor pursuant to this Agreement shall be "occurrence" policies rather than "claims made" policies.
29. **Services Non-Exclusive.** Contractor acknowledged and agrees that this Agreement, pursuant to which it will perform services to ARC is non-exclusive and that ARC may without notice to Contractor, engage other persons or firms to perform services of the same or similar nature in connection with projects or specified assignment upon which Contractor is working.
30. **Safety and Environmental.** Contractor and its employees, agents, affiliates, suppliers, consultants, contractors and subcontractors are hereby required (1) to have an understanding of ARC's safety policies and procedures and potential safety hazards prior to signing this Agreement and commencing work under this Agreement, and (2) to comply with all applicable ARC safety policies and procedures, and all applicable federal, state, local, or agency laws and regulations, including but not limited to OSHA and EPA, during the term of the Agreement, including the safety and environmental policies and procedures outlined in Exhibit C. Contractor hereby acknowledges having reviewed the ARC safety and environmental policies and procedures prior to consummating this Agreement.
31. **Trade Compliance.** Contractor and its employees, agents, affiliates, suppliers, consultants, contractors and subcontractors are hereby required to comply with all United States laws and regulations including, but not limited to, those codified under titles 15 and 19 of the code of Federal Regulations governing the importation and exportation of goods.