

ARC COLORADO INC., USA  
7040 WELD COUNTY ROAD #20  
LONGMONT, CO 80504  
**P-FORM053 - TERMS AND CONDITIONS OF SALE**  
1/14/2020 Form date revision

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

**NOTICE TO BUYER. PLEASE READ CAREFULLY. THESE GENERAL TERMS AND CONDITIONS CONTAIN DISCLAIMERS OF WARRANTIES AND STRICT LIMITATIONS OF LIABILITY AND REMEDIES.**

**1) Acceptance**

ACCEPTANCE BY BUYER OF SELLER'S PROPOSAL IS EXPRESSLY LIMITED TO ASSENT TO THE TERMS STATED ON THIS AND THE ATTACHED QUOTE HEREOF, EITHER BY WRITTEN ACKNOWLEDGMENT OR BY CONDUCT BY BUYER THAT RECOGNIZES THE EXISTENCE OF A CONTRACT WITH RESPECT TO THE GOODS DESCRIBED ON THE QUOTE ATTACHED HERETO. PRIOR TO ACCEPTANCE BY BUYER, SELLER MAY RESCIND, WITHDRAW OR MODIFY THE PROPOSAL.

**2) The Agreement**

The agreement between Seller and Buyer (the "Contract") with respect to the sale of goods described on the attached quote hereof (the "Goods") shall consist of the terms appearing hereon and on the attached quote hereof together with any additions or revisions of such terms mutually agreed to in writing by Seller and Buyer. Seller shall not be bound by any additional or different terms, whether printed or otherwise, in Buyer's purchase order or in any other communication from Buyer to Seller unless specifically agreed to by Seller in writing. The Contract shall be for the benefit of Seller and Buyer and not for the benefit of any other person. Prior courses of dealing, trade usage and verbal agreements, not reduced to writing and signed by Seller, to the extent they modify, add to or detract from the Contract, shall not be binding on Seller. The rights and duties of the parties hereunder shall inure to the benefit of and be binding upon their respective successors and assigns. The failure to require strict compliance or performance of any one or more terms of this Contract on one or more occasions shall not be deemed a waiver of that or any other term or condition on that or any other occasion. Any waiver of a right or remedy under this Contract must be contained in writing signed by the waiving party.

**3) Pricing**

The prices shown on the attached quote are subject to adjustment to Seller's shipping costs in effect at the time of shipment. If the applicable freight or haulage rates are increased or decreased prior to shipment, prices on any unshipped portion of the products covered by this quotation shall be increased or decreased accordingly. The terms of delivery are F.O.B. Seller's plant in Longmont, Colorado.

**4) Material Price Escalation**

All production part PO's will be subject to material price escalations at the discretion of the Seller.

**5) Termination or Modification**

The Contract may be modified or terminated only upon Seller's written consent. If all or part of the sales Contract is terminated, Buyer, in the absence of contrary written agreement with Seller, shall pay termination charges equal to expenses and costs incurred in the production of the Goods to the date such termination is accepted by Seller plus ten percent (10%), except that any Goods completed on or prior to Seller's acceptance of such termination shall be accepted and paid for in full by Buyer.

**6) Terms of Payment**

Payment terms are net cash 30 days from date of shipment unless otherwise provided in the Contract. The unpaid balance of any invoice shall bear interest at 1 1/2 % per month after 30 days not to exceed the maximum rate or amount permitted by law. Pro rata payments shall become due as shipments are made. If Seller delays a shipment at request of Buyer, payment therefore shall become due on the date when Seller is prepared to make shipment thereof. Prices are EXW seller's shipping point unless otherwise stated in the Contract. Seller may require full or partial payment in advance whenever in its opinion the financial condition of Buyer so warrants. Seller shall have security interest in all tools, molds, and dies and other property of Buyer, which come into the possession of Seller, as security for all sums owing from Buyer to Seller from time to time. In no event is Buyer authorized to deduct any amounts from the amounts owed to Seller unless specifically authorized in writing by Seller. Buyer agrees not to withhold any amounts due or set-off any amounts due to Seller on any grounds, including the grounds of alleged non-performance by Seller.

**7) Taxes**

Sales, use, occupation, excise, and other taxes upon the production, sale or use of the Goods are not included in the price, and such taxes or any costs in connection therewith, whenever levied and whether imposed before or after payment of invoice, shall be paid by Buyer.

**8) Delivery**

Promises of delivery from stock are subject to prior sale. Delivery dates are not guaranteed but are estimated on the basis of immediate receipt by Seller of all information to be furnished by Buyer and the absence of delays, direct or indirect, resulting from or contributed to by circumstances beyond Seller's reasonable control. Seller shall in good faith endeavor to meet estimated delivery dates. Seller may ship overages of underages to the extent of 10% of quantity ordered. Seller shall not be responsible for claims for error in quantity, weight or number not made within 30 days after Buyer's receipt of Goods.

**9) Risk of Loss**

Buyer assumes all risk or loss of such Goods upon delivery by Seller to carrier.

**10) Limited Warranties**

Seller warrants that the Goods to be delivered hereunder will be of the kind designated on the attached quote hereof and free from defects of material and workmanship. SELLER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN PARTICULAR, BUT WITHOUT LIMITING THE GENERALITY OF THE FOREGOING EXCLUSION, IF THE GOODS ARE MADE ACCORDING TO BUYER'S PLANS OR SPECIFICATIONS, SELLER DOES NOT WARRANT THE ADEQUACY OF SUCH PLANS OR SPECIFICATIONS OR THAT THE GOODS WILL PERFORM IN ACCORDANCE WITH SUCH PLANS OR SPECIFICATIONS. FURTHER, SELLER HAS NO OBLIGATION TO TEST OR VERIFY THE ADEQUACY OF SUCH PLANS OR SPECIFICATIONS FOR THE GOODS. No person is authorized to give any other warranties on Seller's behalf or to assume any other liability for Seller. Any additional representation or warranty made by Buyer shall be solely the responsibility of Buyer. Seller's sole obligation under the foregoing warranties will be limited to either, at Seller's option, replacing or repairing defective Goods or refunding the purchase price for such Goods theretofore paid by Buyer; and Buyer's exclusive remedy for breach at any such warranties will be enforcement of such obligation of Seller. These warranties will not extend to Goods subjected to misuses, neglect, accident or improper installation or maintenance or which have been altered or repaired by anyone other than Seller or its authorized representative. This warranty expires and Seller shall not be liable on any claim for defective Goods, which is not made within 30 days after such Goods have been received by Buyer. Any Goods components furnished by Seller but manufactured by others are warranted only to the extent of the original manufacturer's warranty to Seller.

**11) Remedies and Limitations of Liability**

In the event Buyer claims Seller has breached any of its obligations under the Contract, whether of warranty or otherwise, Seller may request the return of the Goods and tender to Buyer the purchase price theretofore paid by Buyer, and, in such event, Seller shall have no further obligation under the Contract except to refund such purchase price upon redelivery of the Goods. No Goods may be returned without Seller's written request. If Seller request the return of the Goods, the Goods will be redelivered to Seller at Seller's expense by lowest cost mode of transportation unless otherwise authorized in writing by Seller. The remedies contained in this and the preceding paragraph 10. shall constitute all the remedies available to the Buyer under this Agreement, whether under a claim for breach of warranty or otherwise. In no event shall Seller be liable for consequential damages nor shall Seller's liability on any claim for damages arising out of or connected with the Contract or the manufacture, sale, delivery or use of the Goods exceed the purchase price of the Goods. Seller shall not be liable for failure to perform its obligations under the Contract resulting directly or indirectly from circumstance beyond Seller's reasonable control.

**12) Safety and Environmental Standards**

Seller shall not be responsible for the compliance of the Goods with any federal, state, or local safety regulations or environmental standards. Seller agrees to comply with all laws applicable to the manufacture and delivery of the Goods.

**13) Patents**

Seller shall not be liable to Buyer for any loss, damage or expense incurred by Buyer as a result of any infringement or alleged infringement of any patent, trademark, trade name or any other intellectual property claim by any third party related to any Goods manufactured or sold hereunder, or for the design of the package or container in which such products are shipped if such Goods, packages or containers are made in compliance with the Buyer's designs, engineering or specifications or with the Buyer's materials or provided equipment. Buyer agrees to indemnify, insure, defend and hold harmless Seller from and against any and all loss, damage, cost or expense incurred by Seller as a result of any infringement or claim for infringement of any patent, trademark, trade name or any other intellectual property for the Goods sold hereunder or any equipment, materials, process, designs or specifications used in the process of their production. If any claim or suit for infringement by the Goods sold hereunder is made or begun against the Buyer, Buyer shall promptly notify Seller in writing. Seller shall have the right to intervene and defend itself to any degree it deems advisable, from said claim or suit. Buyer shall cooperate fully with Seller in such defense. If any claim or suit for infringement is made or begun against Seller, Seller shall have the right to require Buyer to intervene and defend, to any degree the Seller deems advisable. Seller's immunity from liability to Buyer and Seller's right to indemnification from Buyer hereunder shall not be affected by such intervention of Seller or Buyer in any suit.

**14) Tooling**

Buyer's tools, molds and dies ("tooling") in the possession of Seller are at the risk of Buyer, and Seller does not undertake to insure such property. Seller may dispose of any tooling at any time after one year after completion of the most recent production order requiring the use of such tooling. If Buyer requests Seller to deliver tooling to Buyer, Buyer will pay Seller an engineering charge of 40% of the cost of such tooling except that if, in the judgment of Seller, such tooling includes proprietary ideas or devices, Seller may refund to Buyer any price of the tooling paid by Buyer rather than surrender same.

**15) Material Supplied by Buyer**

When material, equipment, designs, plans or specifications of any type are supplied to Seller by Buyer in connection with the performance of labor or services, or the provision of Goods, whether or not such material, equipment, designs, plans or specifications are listed as a part of the Goods to be produced for, or sold to, the Buyer by Seller, the following additional and supplementary terms and conditions shall apply and supersede the foregoing terms and conditions to the extent of any conflict:

a. Seller shall not, under any circumstances, be liable for any direct or consequential damages which may result from use of such materials, equipment, designs, plans or specifications provided to Seller by Buyer. Buyer agrees to indemnify, insure, defend and hold harmless Seller from and against any and all loss, damage, cost or expense incurred by Seller as a result of any claim or suit made or filed against Seller for any defect in the process or product which is caused by a defect in the material supplied, equipment used or by error in the designs, plans or specifications furnished by the Buyer, Seller shall, nevertheless be entitled to full payment of the costs of processing the Goods. Defective material and equipment will be returned to Buyer.

b. Any equipment (including jigs, dies and tools) which Seller constructs or acquires for use, exclusively in the production of products for Buyer, shall be and will remain Buyer's property and Seller shall invoice Buyer for the cost of construction or acquiring such equipment. Seller will use such equipment exclusively for the manufacture of products for Buyer. Seller will maintain such equipment in usable condition and will pay for the cost of the same; provided, however, that Seller may charge Buyer for such maintenance if Buyer's orders for products to be made with such equipment, are substantially less than the initial expectations of the parties. If for two (2) consecutive years, no orders acceptable to the Seller are received from Buyer for products to be made with any such equipment, then Seller may make such use or disposition thereof as Seller sees fit without any liability to Buyer. Buyer will be liable to Seller for the cost of changes made to any such equipment caused by specification changes submitted to Seller by Buyer. Buyer shall pay to Seller a service charge for any tools or other equipment returned to Buyer at its request in an amount equal to thirty-five percent (35%) of the original charge made by Seller to Buyer for such equipment. Tools and equipment (including jigs, dies and tools) purchased by Seller and not billed to Buyer will remain property of the Seller and may be used or disposed of at Seller's discretion.

**16) Inserts**

Prices are based on Buyer supplying all inserts unless otherwise stated in the contract. Practical production loss of inserts may be redetermined after first production run. If requested, scrap inserts will be returned or salvaged at Buyer's expense.

**17) Force Majeure**

Seller shall not be liable for any delay in or impairment of performance resulting in whole or in part from fire, floods, or other catastrophes, acts of God, strikes, lockouts or labor disruption, wars, riots or embargo delays, government allocations or priorities, raw material market conditions, shortages of transportation equipment, fuel, labor or materials, inability to procure supplies or raw materials, severe weather conditions, acts of terrorism, or any other circumstance or cause beyond the reasonable control of Seller.

**18) Waiver**

Waiver by Seller of any breach of any of the terms and conditions set forth herein shall not be construed as a waiver of any other breach, and the failure of Seller to exercise any right arising from any default of Buyer hereafter shall not be deemed to be a waiver of such right, which may be exercised at any subsequent time.

**19) Assignment**

Buyer shall not assign any order or interest therein without the prior written consent of Seller. Any such actual or attempted assignment without Seller's prior written consent shall entitle Seller to cancel such order upon written notice to Buyer.

**20) Complete Agreement**

These terms and conditions, together with Buyer's purchase and sales contract or agreement, if any, constitute the sole and entire agreement between Buyer and Seller with respect to any order. No addition to or variations from these Terms and Conditions of Sale, whether contained in Buyer's purchase order, any shipping release or elsewhere, shall be binding upon Seller unless expressly agreed to in writing by Seller.

**21) Governing Law**

The formation and performance of the Contract shall be governed by the laws of the jurisdiction in which Seller manufactures or assembles the goods. Any action for breach of the Contract, including any breach of warranty, must be commenced within one year after the cause of action has accrued.

**22) Cancellation**

Buyer may only cancel an order with Seller's written consent. If Seller consents in writing to the cancellation of an order, then Buyer shall pay the full purchase price for any and all Goods completed by Seller for Buyer under such order. With respect to the Goods that are not completed, a charge will be made for material and labor costs incurred by Seller together with Seller's material handling, manufacturing, sale, engineering and administrative overhead, plus the same percentage of profit as carried on the original order. Buyer shall also pay in full, the cost of all special dies, powders, tools, patterns and fixtures, and equipment used or to be used in connection with the good(s) to be produced hereunder, all of which will remain at all times in possession and title of the Seller, unless otherwise expressly agreed to by Seller and Buyer in writing. Seller may, at its option, accept cancellation on a no-charge basis, retaining in its possession an production material acquired for processing the cancelled order.

**23) Export Control**

The items that are sold and shipped to you pursuant to this order/invoice are subject to the export laws of the United States and perhaps other countries as well. AFT is committed to compliance with all relevant export control laws. If you are not the end-user of the items being sold to you, you agree to notify AFT immediately as to the end-user, location of the end user, and the end use of the product(s). You also agree to cooperate with any U.S. and foreign regulatory requirement or any government inquiry, audit, investigation or other inquiry, upon notice to you by AFT or any relevant government. If you intend to resell or export these products to another country(ies), please be aware that these products are sold and/or exported by AFT in accordance with U.S. export control laws. Compliance with these laws is mandatory on all parties anywhere in the world under U.S. law and diversion of products or acts contrary to U.S. and relevant foreign export laws is prohibited and may subject you to significant penalties and other sanctions. AFT is committed to complying with U.S. export control laws. If this order is being exported to you, or may be reexported, the following applies: "These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited."