



# TERMS & CONDITIONS FOR SPARE PARTS

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**PLEASE READ THESE TERMS AND CONDITIONS OF SALES VERY CAREFULLY.**

## **1. SCOPE:**

The Terms and Conditions of Sales are limited to those contained herein. Any additional or different terms in any forms delivered by you ("Buyer") are hereby deemed to be material alterations and notice of objection to them and rejection of them is hereby given.

The Terms and Conditions ("Terms") contained herein shall apply to all quotations and offers made by and purchase orders accepted by S3 AeroDefense, LLC ("Seller"). By accepting delivery of products described in Seller's invoice or other Seller documentation, Buyer agrees to be bound by and accepts these terms and conditions of sales unless Buyer and Seller have signed a separate agreement, in which case the separate agreement will govern any conflicts between the documents.

These Terms apply in lieu of any clearly established course of dealing between the parties or any clearly established usage of trade in the industry. These Terms may in some instances conflict with some of the terms and conditions affixed to the purchase order or other procurement document issued by the Buyer. In such case, the Terms contained herein shall govern, and acceptance of Buyer's order is conditioned upon Buyer's acceptance of the terms and conditions herein, irrespective of whether the Buyer accepts these conditions by a written acknowledgement, by implication, or acceptance and payment of products ordered hereunder. Buyer's acceptance of the terms and conditions herein shall be conclusively presumed from failure to object within a week (7 days) of delivery of goods or from Buyer's acceptance of all or part of the purchase order. Seller's failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of the provisions herein.

## **2. GOVERNING LAW:**

The Terms and Conditions of sale and any sale of products hereunder will be governed by the laws of the State of Wisconsin, without regard to conflicts of laws rules. Any dispute arising under or related to transactions between Seller and Buyer shall be resolved fully and finally by binding arbitration in Milwaukee, Wisconsin, by a single arbitrator of the American Arbitration Association, who shall be agreed upon by Seller and Buyer. If the parties cannot agree on an arbitrator, the American Arbitration Association shall appoint the arbitrator. Such arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The substantive laws of Wisconsin shall apply in the arbitration. The parties shall split the arbitrator's fees and other direct costs of the arbitration but each party shall pay its own attorneys' fees and the other costs of presenting their case. Any decision provided by the arbitrator in accordance with this provision shall be final and binding on the parties and judgment upon award by the arbitrator may be entered in any court having jurisdiction. With regard to any matter which cannot be determined by arbitration, the parties hereto consent to jurisdiction in the Wisconsin courts to hear any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement. The parties further agree that venue for any such suit, action or proceeding shall be proper in Milwaukee County,

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Wisconsin with regard to a suit, action or proceeding brought in a state court and the United States District Court for the Eastern District of Wisconsin with regard to a suit, action or proceeding brought in a federal court.

If any terms herein are determined to be invalid under applicable law, these will not apply; but the remaining terms shall remain in effect.

### 3. PAYMENT TERMS; INTEREST; TAXES:

Unless otherwise agreed in writing, payment must be received by Seller on the earlier of the time period specified in the invoice or thirty (30) days from the date of the invoice. Unless otherwise agreed between Buyer and Seller, all payments are to be in United States dollars. For contracts overseas, Seller may require payment to be secured by an irrevocable letter of credit or a bank guarantee acceptable to Seller. Where payment is made by letter of credit, all costs of collection shall be for Buyer's account.

Upon failure of the Buyer to pay any invoiced amount, Buyer hereby grants the Seller the right to come onto the premises of the Buyer, or Buyer's purchaser, and to reclaim all of the goods under this agreement. Buyer agrees to pay a finance charge of one and one half percent (1.5%) per month on the unpaid balance from the date when such payment was due until paid. In the event that Seller is required to bring legal action to collect delinquent accounts, Buyer agrees to pay reasonable attorneys fees and costs of suit.

Buyer is solely responsible for, and will indemnify and hold Seller harmless from, any applicable sales, use, transaction, excise or similar taxes (but not taxes imposed or measured by Seller's net income), and from any federal, state or local fees or charges (including, but not limited to, environmental or similar fees), imposed on, in respect of, or otherwise associated with the order. Buyer must claim any exemption from such taxes, fees or charges at the time of purchase and provide Seller with the necessary supporting documentation.

### 4. REMEDIES TO SELLER:

Buyer agrees that any of the following shall constitute an event of default which shall enable Seller, at its option, to cancel any unexecuted portion of this order and/or to exercise any right or remedy which it may have by law: (a) the failure of Buyer to perform any term or condition contained herein; (b) any failure of Buyer to give required notice; (c) the insolvency of Buyer or its failure to pay debts as they mature, the filing of any petition to adjudicate Buyer bankrupt; (d) the death, incompetence, dissolution or termination of existence of Buyer; (e) a failure by Buyer to provide adequate assurance of performance within ten (10) days after a justified demand by Seller or (f) if Seller, in good faith, believes that Buyer's prospect of performance under this Agreement is impaired. Upon default by Buyer, Buyer agrees to reimburse Seller all attorney fees and court costs incurred by Seller in connection therewith. All rights and remedies of Seller herein are in addition to, and shall not exclude, any rights or remedies that Seller may have by law. In the event it becomes necessary to incur any expense for collection of any overdue

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account, reasonable collection charges, including reasonable attorneys' fees, will be added to the balance due and Buyer shall pay all such charges.

## 5. CREDIT:

Seller reserves the right to revoke any credit extended to the Buyer if Buyer fails to pay invoiced amount when due, or for any other reason based on Seller's discretion.

## 6. DELIVERY; SHIPMENT:

Seller will make a good faith effort to complete delivery of the products as indicated by Seller in writing, but Seller assumes no responsibility or liability and will accept no back-charge for loss or damage due to delay or inability to deliver, whether or not such loss or damage was made known to Seller, including, but not limited to, liability for Seller's non-performance caused by acts of God, war, labor difficulties, accidents, inability to obtain materials, delays of carriers, contractors or suppliers or any other causes of any kind whatever beyond the control of Seller. Such events shall not subject Seller to any liability to Buyer.

Unless otherwise agreed in writing, all deliveries shall be made FCA Seller's Milwaukee, WI, USA facility (Incoterms 2010). The cost of any special packing or special handling caused by Buyer's requirements or requests shall be added to the amount of the order. If Buyer causes or requests a shipment delay, or if Seller ships or delivers the products erroneously as a result of inaccurate, incomplete or misleading information supplied by Buyer or its agents or employees, storage and all other additional costs and risks shall be borne solely by Buyer. Claims for products damaged or lost in transit should be made by Buyer to the carrier.

## 7. INDEMNIFICATION:

Seller shall not be responsible for any losses or damages sustained by the Buyer or any other person as a result of improper installation or use or misapplication of the products. Buyer shall defend, indemnify and hold harmless Seller and its agents and employees against any loss, damage, claim, suit, liability, judgment or expense (including, without limitation, attorney's fees) arising out of or in connection with any injury, disease or death of persons (including, without limitation, Buyer's employees and agents) or damage to or loss of any property or the environment, or violation of any applicable laws or regulations resulting from or in connection with the sale, transportation, installation, use, or repair of the products by Buyer or of the information, services or other work supplied to Buyer, whether caused by the concurrent and/or contributory negligence of Buyer, Seller, or any of their agents, employees or suppliers. The obligations, indemnities and covenants contained in this paragraph shall survive the consummation or termination of this transaction.

The Buyer shall at its own expense apply for and obtain any permits and inspections required for the installation and/or use of the products. Seller makes no promise or representation that the products or services will conform to any federal, state or local laws ordinances, regulations, codes or standards, except as particularly specified and agreed upon in writing by an authorized

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representative of Seller.

## 8. CLAIMS; RETURNS:

All sales are final. Buyer may return a product only if Seller approves in writing and if: (i) it is suitable for resale in its undamaged original packaging and with all its original parts and (ii) it has not been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged. Buyer may be subject to restocking fees.

Buyer shall inform Seller, in writing, within seven (7) days after the occurrence upon which a claim is founded. Buyer shall offer Seller the opportunity to inspect the products and make appropriate replacement or repair. Defective products discovered upon inspection by Seller shall be given remedies listed under LIMITED WARRANTY section. Buyer shall not delay payment due for any part of the order due to pending inspection by Seller.

## 9. ORDER CANCELLATION:

An order may be cancelled upon written request by Buyer and approval by Seller, unless specified otherwise within order. For standard products, Buyer may cancel or reschedule a product without penalty if the cancellation is more than thirty (30) days from the Confirmed Shipping Date (as specified in Seller 's Order Acknowledgement or other document); cancellations within thirty (30) days of a Confirmed Shipping Date must be approved in writing by Seller. For nonstandard parts or custom products, Buyer may cancel or reschedule more than ninety (90) days from the Confirmed Shipping Date, except that Buyer shall accept delivery of all such products which are completed at the time of cancellation or rescheduling. Those nonstandard products which are in the work-in-process inventory at the time of cancellation or rescheduling shall be paid for by Buyer. Buyer also shall pay promptly to Seller the costs of settling and paying claims arising out of the termination of work under Seller's subcontracts or vendors and any accounting, legal, and clerical costs arising out of the cancellation. These charges may be equal to the value of products cancelled, and will be determined by Seller.

Seller shall have the right to cancel any unfilled order without notice to Buyer in the event that Buyer becomes insolvent, adjudicated bankrupt, petitions for or consents to any relief under any bankruptcy reorganization statute, or becomes unable to meet its financial obligations in the normal course of business.

## 10. LIMITED WARRANTY:

Except as specified below, products sold hereunder shall be free from defects in materials and workmanship and shall conform to Seller's published specifications (NE, NS, OH, SV, RP, AI) or other specifications, such as manufacturer, authorized repair facility, or US Government specifications for a period of:

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- NE – twelve (12) months from the shipment date or 1,000 operating hours whichever shall occur first.
- NS - all new surplus items are sold on an “as is” basis and are subject to the Buyer’s inspection & acceptance at receipt. New surplus items are “non returnable after acceptance by the Buyer or after five (5) days whichever shall occur first.
- OH – six (6) months from the shipment date or 600 operating hours whichever shall occur first.
- SV – three (3) months from the shipment date or 300 operating hours whichever shall occur first.
- RP – all repairable items are sold on an “as is” basis and are subject to the Buyer’s inspection & acceptance at receipt. Repairable items are “non returnable after acceptance by the Buyer or after five (5) days whichever shall occur first.
- AI – all “as is” items are subject to the Buyer’s inspection & acceptance at receipt. As is items are “non returnable after acceptance by the Buyer or after five (5) days whichever shall occur first.

## Code Definition

- NE: New product from an OEM or authorized distributor/manufacturer
- NS: New, unused product but without manufacture trace
- OH: Product that has been overhauled by an authorized agency or airline
- SV: Product that has been repaired by an authorized agency or airline
- RP: Used, as removed, not certified but economically repairable
- AI: No certification, no guarantees, no returns

The foregoing warranty does not apply to any products which have not been operated, maintained, overhauled, or stored in accordance with the manufacturers' instruction, have been subject to misuse, neglect, accident or modification, or which have been mishandled, mistreated, improperly installed, soldered or altered such that they are not capable of being tested under normal test conditions.

Buyer shall provide in writing detailed information regarding the alleged defect and claim to Seller within thirty (30) days after discovery thereof. Seller shall make the final determination as to whether its products are defective. Seller’s sole obligation for products failing to comply with this warranty shall be, at its option, to either repair, replace or issue credit for the nonconforming product.

THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR LOSSES, COSTS, OR CONSEQUENTIAL DAMAGES, DIRECT OR INDIRECT, OF ANY KIND OR NATURE, WHATSOEVER.

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TO THE MAXIMUM EXTENT PERMITTED BY LAW, SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF BUSINESS PROFIT, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE PRODUCTS SOLD HEREUNDER, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Seller's entire liability is limited to the amount paid to Seller by Buyer for the particular products which are in questions. Buyer's exclusive remedy in the event of a claim against Seller is, at Seller's option, for Seller to replace the particular goods in question or return to Buyer the amount actually paid for them. In no case will Seller's liability exceed the amount of money Buyer paid to Seller for the particular goods in question.

## 12. EXPORT REGULATIONS:

Buyer agrees to comply fully with all United States (US) laws and regulations concerning the purchase and sale of products. Buyer acknowledges that parts and/or technology subject to International Traffic in Arms Regulations (I.T.A.R) cannot be exported without a license unless an exemption is available. Further, parts and/or technology subject to Export Administration Regulations (E.A.R.) have strict export compliance regulations and a license may be required. The Buyer assumes all responsibility for obtaining the necessary approval from the proper US governing agency for all parts and/or technology subject to I.T.A.R and/or E.A.R.

Buyer indemnifies and holds Seller harmless from and against any and all losses, damages and expenses (including, without limitation, reasonable attorneys' fees) resulting from or arising out of noncompliance with applicable laws, including import/export laws and regulations, relating to Seller's sale and delivery of products to Buyer.

Commodities, technology or software exported by Seller from the US are exported in accordance with US export regulations. Diversion contrary to US law is prohibited.

## 13. ASSIGNMENT:

Seller shall be entitled at all times to assign its rights under the contract (in whole or in part) or to subcontract any part of the work or services to be provided under the contract as it deems necessary or desirable.

## 14. NOTICES:

Any notice or communication to be given shall be in writing and shall either be hand delivered, sent by overnight delivery services, faxed or sent via electronic mail to the party to receive the

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same. Any notice shall not be effective unless and until it has verifiably been received by the party to whom it has been sent.

### 15. FORCE MAJEURE:

Seller shall not be liable for any damage or penalty for delay in delivery or for failure to give notice of delay when such delay is due to the elements, acts of God, acts of the Buyer, act of civil or military authority, war, riots, concerted labor action, shortages of materials, or any other causes beyond the reasonable control of Seller. The anticipated delivery date shall be deemed extended for a period of time equal to the time lost due to any delay excusable under this provision.

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