

ORION INDUSTRIES INCORPORATED

Terms and Conditions of Sale

Unless otherwise expressly agreed to in writing by Orion Industries Incorporated and signed by an authorized representative with respect to a particular sale, all sales are made in accordance with and subject to the following terms and conditions:

1. **PRICES.** All prices published by us or quoted by our representatives may be changed at any time without notice. Written quotations expire automatically sixty (60) days from the date issued and are subject to change or termination by notice during that period. All prices are subject to adjustment on account of specifications, quantities, shipment arrangements or other terms and conditions which are not part of the original price quotation. Prices are exclusive of all excise, sales, use and other taxes imposed by any federal, state, municipal or other governmental authority, all of which taxes shall be paid by the purchaser. The purchaser is responsible for obtaining and providing to us any certificate of exemption or similar document required to exempt any sale from sales, use or similar tax liability. All prices shall be as specified by us or, if no price has been specified, shall be our price in effect at the time of delivery.

2. **TERMS OF PAYMENT.** Unless otherwise expressly agreed to by us in writing and signed by an authorized representative, terms are as set forth on the reverse side hereof. We reserve the right at any time to require full or partial payment in advance, or to revoke any credit previously extended, if, in our judgment, the purchaser's financial condition does not warrant proceeding on the terms specified. Overdue payments shall be subject to finance charges computed at a periodic rate (to the extent permitted by law) of 11/2% per month (18% per year), plus all costs and expenses, including reasonable attorneys' fees, incurred by us in collecting such overdue amounts. Amounts owed by the purchaser with respect to which there is no dispute shall be paid without set-off for any amounts which the purchaser may claim are owed by us and regardless of any other controversies which may exist.

3. **DELIVERY.** Unless otherwise specified, all sales are F.O.B. our premises in Ayer, Massachusetts, and the time of delivery shall be the time when the product is ready for pickup at that location by the purchaser or by a carrier for delivery to the purchaser. Without in any way limiting the generality of paragraph 10, we shall not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond our control, including, without limitations, acts of nature, unavailability of supplies or sources of energy, riots, wars, fires, floods, epidemics, lockouts, strikes and slowdowns, delays in delivery by our suppliers, or acts or omissions of the purchaser. In the event of delay due to any such cause, time for delivery shall be extended for a period equal to the duration of the delay and the purchaser shall not be entitled to refuse delivery or otherwise be relieved of any obligations as a result of the delay. If, as a result of any such cause, any scheduled delivery is delayed for a period in excess of three (3) months, we may, at our option, by written notice to the purchaser, cancel that and all future deliveries without further liability or obligation of

any kind. Products on which delivery is delayed due to any cause within the purchaser's control may be placed in storage by us at the purchaser's risk and for its account. The purchaser shall be liable for all costs and expenses incurred by us in holding or storing products for the purchaser or at the purchaser's request.

4. **SHIPMENT.** Unless specific instructions to the contrary are supplied by the purchaser, methods and routes of shipment will be selected by us but we will not assume any liability in connection with shipment nor constitute any carrier as our agent. All shipments will be insured at the purchaser's expense and made at the purchaser's risk, and the purchaser shall be responsible for making all claims with carriers, insurers, warehousemen and others for misdelivery, non-delivery, loss, damage or delay.

5. **TITLE AND RISK OF LOSS.** Subject to paragraph 6 and to our right to stop delivery of products in transit, title to and risk of loss for products shall pass to the purchaser upon the earlier of delivery to the purchaser or to a carrier for shipment to the purchaser.

6. **SECURITY INTEREST.** We reserve and the purchaser grants to us a security interest in all products sold and all proceeds to secure the full payment and performance by the purchaser of its liabilities and obligations to us. The purchaser acknowledges that this document or copies of this document or any other appropriate instrument may be filed with the appropriate authorities as a financing statement and agrees to execute and deliver such other documents as we may request in order to perfect our security interest.

7. **CANCELLATIONS AND RETURNS.** Orders which have been accepted may be cancelled only with our prior written and signed consent and upon terms that will fully indemnify us against loss. Products are not in any event to be returned to us without our prior written and signed authorization.

8. **INSTALLATION.** Unless otherwise specified, we assume no obligation to install any products sold or to place them in working order at the purchaser's premises.

9. **SPECIFICATIONS.** All products are subject to our standard tolerances for specifications. We reserve the right to make substitutions and modifications in the specifications of any products provided that such substitutions or modifications do not materially affect the performance of the products or the purpose for which they can be used.

10. **WARRANTY AND CLAIMS.** We warrant solely to the purchaser that the products will be free from defects in materials and workmanship, when given normal, proper and intended usage, for a period of 30 days from the date of delivery. All claims for nonconforming or defective products must be made in writing within the 30-day warranty period and any claims not made within that period shall be deemed waived and released. Our sole responsibility with respect to such claims shall be, at our option, to repair or replace any product or component which we determine to be defective. **IN NO EVENT SHALL WE BE LIABLE FOR ANY SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES DUE TO ANY CAUSE WHATSOEVER. OUR MAXIMUM LIABILITY ARISING OUT OF THE SALE OF THE PRODUCTS OR THEIR USE, WHETHER BASED UPON WARRANTY, CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE ACTUAL PAYMENTS RECEIVED BY US IN CONNECTION WITH SUCH DEFECTIVE PRODUCTS. OUR MAXIMUM LIABILITY FOR ANY LOSS OF OR DAMAGE TO ANY CUSTOMER SUPPLIED MATERIALS SHALL NOT EXCEED THE ACTUAL PAYMENTS RECEIVED BY US IN CONNECTION WITH THE PRODUCTS INTENDED TO BE PRODUCED USING SUCH MATERIALS.** No suit or action shall be brought against us more than one year after the related cause of action has accrued. **THE FOREGOING CONSTITUTES OUR SOLE LIABILITY AND THE PURCHASER'S SOLE REMEDY WITH RESPECT TO PRODUCTS SOLD BY US. EXCEPT AS THUS PROVIDED HEREIN, WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

11. **PATENTS.** We assume no obligation or liability of any kind with respect to infringements or alleged infringements of United States or foreign patents, copyrights, trademarks or other proprietary rights arising out of the purchaser's purchase, use, possession, sale or delivery of any products sold hereunder. The purchaser shall indemnify and hold us harmless from any and all claims, liabilities, damages or expenses resulting from infringements or alleged infringements of United States or foreign patents, copyrights, trademarks or other proprietary rights arising from compliance by us with any designs or specifications provided by the purchaser. No sale of any product shall be construed as granting to the purchaser any license or other right in or to any patent, copyright, trademark or other proprietary right applicable to the product.

12. **ASSIGNMENT.** The purchaser shall not delegate any duties nor assign any rights or claims under this document without our prior written and signed consent, and any such attempted delegation or assignment shall be void.

13. **EXPORT COMPLIANCE.** The Purchaser understands that exports and re-exports of our products and any related software, technical data, service, or technical assistance (individually, a "Item" and, collectively, the "Items") are subject to U.S. and local export control, economic sanctions, and customs laws, regulations, rules, and orders (individually, a "Trade Control Law", and, collectively, "Trade Control Laws"). The Purchaser agrees to comply, and will ensure that its subsidiaries comply, with all applicable Trade Control Laws, and to obtain all required U.S. and local authorizations, permits, or licenses in connection with the purchase, installation, sale, shipment, export or use of any of the Items its expense. The Purchaser will give notice of the need to comply with the Trade Control Laws to any

person or entity which it has reason to believe is obtaining a Item from the purchaser with the intention of exportation.

13.2 The Purchaser shall not use, export, re-export, import, or otherwise transfer or provide any Item, or any item incorporating the Item, in contravention of any Trade Control Law or any end-user certificate provided by the purchaser, including (a) to any destination embargoed or sanctioned by the U.S., including Iran, where that act would be in breach of the applicable embargo or sanction, (b) to anyone listed on the Specially Designated Nationals List, the Entity List, or on any other prohibited persons list published by the U.S. Departments of Commerce, Treasury, or State (a "Denied Person"), or (c) for a prohibited end-use (such as research on or development or fabrication of chemical, biological, or nuclear weapons, unmanned air vehicles or missiles; or nuclear explosive or fuel cycle activities or unsafeguarded nuclear activity) without prior authorization from the applicable U.S. export control agency. The Purchaser certifies that it is not a Denied Person and that it is not owned, directly or indirectly, 50% or more by one or more persons barred by the U.S. Department of the Treasury. The Purchaser further agrees that it will not import or otherwise transfer to the United States on our behalf or for our benefit any Items, directly or indirectly, from any embargoed country or from any Denied Person without prior authorization from the applicable U.S. export control agency.

13.3 The Purchaser agrees to provide to us in a timely manner such information and assistance, including end user certificates, as we may request in connection with securing any required licenses and authorizations. Any delivery schedules delineated in our offer and/or the purchaser's order are calculated from the date of receipt of any requested export license(s). In addition to any other remedy we may have, we may suspend and/or cancel the export, delivery, installation, and/or any maintenance or repair service of any Item and otherwise be excused from performing any obligations we may have under this contract, if (a) we have not received all export-related documentation that we requested, including end-user certificates, (b) we have not received the governmental approvals that we deem to be required, (c) we believe that such activity may violate any Trade Control Laws or our own compliance policies, or (d) the purchaser violates any of its obligations and commitments hereunder or any Trade Control Law. The Purchaser must notify us in writing before providing to us any technical data that is controlled under any Trade Control Law ("Controlled Technical Data"). Such notification shall include the applicable Export Control Classification Number, U.S. Munitions List category and subcategory, or equivalent foreign export control classification of such Controlled Technical Data. Customer shall appropriately mark each page of Controlled Technical Data as export controlled before providing it to us.

13.4 We will not be liable to the purchaser for any loss or expense if the purchaser fails to comply with any Trade Control Law or with the provisions set forth herein. The Purchaser will fully indemnify us and our representatives against any damages, costs, losses, liabilities, and/or expenses (including attorneys' fees and expenses) arising out of the purchaser's non-compliance with Section 13, including the purchaser's violation or alleged violation of any Trade Control Law. Section 13 will survive the expiration or termination of this contract.

14. **LAW; CHOICE OF JURISDICTION.** Any contract made shall be governed by and interpreted, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, without taking into account any choice of law provisions. The U.N. Convention on Contracts for the International Sale of Goods does not apply. The purchaser hereby (a) irrevocably and unconditionally submits for itself and its property, in any legal action or proceeding relating to or arising out of this Purchase Order, to the exclusive jurisdiction and venue of the courts of the Commonwealth of Massachusetts, the courts of the United States of America in Massachusetts and the appellate courts from any thereof, and (b) agrees that any such action or proceeding may be brought in such courts.

15. **FORCE MAJEURE,** In the event that we are prevented from performing, or are unable to perform, any of our obligations hereunder due to any act of nature, act of God, fire, casualty, flood, war, strike, lockout, failure of public utilities, injunction or any act, exercise, assertion or requirement of any governmental authority, epidemic, destruction or production facilities, riot, insurrection, sabotage, inability to procure materials, labor, equipment, transportation or energy sufficient to meet our needs, delay in delivery, or any other cause beyond our reasonable control, our failure to perform shall be excused and the time for performance shall be extended for the period of delay or inability to perform due to such occurrence.

16. **SEVERABILITY; REMEDIES AND WAIVER.** In the event that any one or more provisions contained herein (other than the provisions obligating the purchaser to pay us for the products) shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The remedies contained herein are cumulative and in addition to any other remedies at law or equity. Our failure to enforce, or waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision.

17. **ADDITIONAL OR INCONSISTENT TERMS.** Terms and conditions set forth in any document provided by the purchaser which differ from, conflict with or are not included in the terms and conditions set forth in this document shall not become a part of any agreement between us and the purchaser unless such terms and conditions are specifically accepted by us in writing and signed by an authorized representative. Our failure to object to terms contained in any communication from the purchaser will not be a waiver of the terms set forth herein. To the extent that this document may constitute an acceptance, such acceptance is expressly conditioned on the purchaser's assent to any additional or inconsistent terms and conditions set forth in this document.

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