

# Argon ST

## Terms and Conditions

The terms and conditions set forth herein, together with those appearing on the face hereof, referenced herein or attached hereto, shall constitute the complete and exclusive statement of all terms of the agreement (hereafter referred to as "Contract")

- 1. DEFINITIONS.** As used herein, the following terms shall have the meanings set forth below: Order shall mean a Argon Engineering Associates, Inc. (hereafter "Argon" or "Buyer") Purchase Order under which Goods are to be supplied and/or Services performed. The "Seller" shall mean the person, firm or company stated on the face of Order form. The "Goods" shall mean all the parts, goods, and articles, whether raw material or finished products, covered by the Order. "Services" shall mean all work and/or services to be performed by the Seller pursuant to the Order.

Buyer may not enforce against Seller any affirmation, promise, or warranty concerning the Goods or Services covered by the Contract unless contained herein. The Contract shall not be varied, supplemented, qualified, or interpreted by any prior course of dealing between the parties or by any usage of trade.

- 2. ACCEPTANCE OF THIS PURCHASE ORDER.**

This Purchase Order is not binding upon Buyer until accepted by Seller. Acceptance of all terms and conditions of this Order shall take place at the election of Seller (1) by execution and return by Seller of the acknowledgment copy accompanying Buyer's Order, (2) by signing and returning a copy of the Buyer's Order (3) by verbally acknowledging receipt of the Buyer's Order (4) by sending an acknowledgment copy of the Order generated by the Sender to the Buyer or (5) by execution of a subcontract by duly *authorized* representatives of Seller and Buyer. None of the terms and conditions contained in this Purchase Order may be added to, modified, or superseded, or otherwise altered, except by a written instrument signed by a duly authorized representative of the Buyer and delivered by Buyer to Seller. SELLER IS HEREBY URGED TO ONLY ACCEPT THIS ORDER AFTER READING IT IN FULL AND AGREEING TO ITS TERMS. IF SELLER DOES NOT AGREE TO ANY OF THE TERMS CONTAINED HEREIN, OR BELIEVES ANY TO BE UNREASONABLE, SELLER SHOULD DECLINE THE ORDER AND PROVIDE SUGGESTED REVISIONS TO BUYER.

No amendments or variations to the Terms and Conditions of this Order shall be valid unless agreed to in writing by the parties, such agreement being evidenced on an Official Purchase Order.

- 3. PRICES.** Unless specifically agreed in writing otherwise all prices shall be firm fixed price and not subject to any form of surcharge or variation. Except as may be otherwise stated on the face of this Order, the prices stated herein should include, to the extent allocable hereto, all Federal, state, and local taxes applicable to the Goods or Services furnished by the Seller. No extra charges of any kind shall apply to this

Order, including without limitation (1) charges for boxing or cartage, and (2) any permits, fees, or licenses required for the proper execution and completion of the work unless otherwise specifically authorized by Buyer in writing.

- 4. TOOLS, MATERIALS, AND INFORMATION.**

Unless *otherwise* provided herein, any items, tools, materials, data, or other technical information developed or created by Seller in the performance of this Order shall become and shall be identified by Seller as the proprietary property of Buyer. On completion of the Order or its earlier termination all items supplied under this clause must be held in safe custody and maintained in good condition until such time as disposal instructions are received from the Buyer.

- 5. SOFTWARE.**

The Seller warrants where software is to be supplied hereunder that the Buyer has been provided with any condition of use or license terms relating to such software prior to the date of this Order. In the event that such conditions or license terms have not been provided, the Seller agrees to waive their application and the Seller fully indemnifies the Buyer against all losses, claims, liabilities, damages, cost and expenses arising from the Buyer's use or sale of the software. The Seller warrants that the Seller is the owner of the copyright and other intellectual property in such software to be supplied or has a valid license from the owner of the copyright or intellectual property to sell or sub-license the software to the Buyer.

- 6. PROPERTY.**

The rights and obligations of Seller with respect to any property furnished by Buyer shall be the same as those which Seller has with respect to Government Furnished Property or to the Seller's personal property. The care of property furnished by the Buyer shall in no event be less than reasonable care. These rights and obligations extend to risk of loss for any Buyer-furnished property at all times. Upon Order completion, Seller shall return all such property to Buyer in the same condition in which it was received, allowing for reasonable wear and tear, except to the extent that the property has been incorporated into Goods delivered under this Order or consumed in the normal performance of work.

- 7. PROGRESS REPORT.**

The Seller may be required to submit a Progress Report outlining progress towards completion of the Order. The contents and frequency of said Progress Report should be as specified on the face of the Order or as otherwise agreed upon between the Buyer and the Seller.

- 8. DELIVERY.**

Any time or period for delivery or completion by the Seller shall be of the essence. Without limitation, the Buyer shall be entitled to cancel the Order and/or claim reimbursement for all losses, costs, and expenses suffered in the event: The Seller fails to deliver the Goods or provide Services in accordance with the terms of the Order or the Seller

## Argon ST Terms and Conditions

fails to make progress with the Order so as to jeopardize the purpose of the Order. The Seller undertakes to notify the Buyer in writing without delay of any changes in circumstances, which may delay delivery and/or performance.

**9. TRANSPORTATION.** Except as otherwise provided on the face of this Purchase Order, transportation charges on Goods sold F.O.B shipping point must be *prepaid* and invoiced to Buyer. Transportation charges on Goods sold F.O.B. destination must be prepaid in all cases. No insurance or premium transportation costs will be allowed unless authorized by Buyer in writing. Risk of loss from any casualty to Goods ordered hereunder, regardless of cause, shall be Seller's responsibility until Goods have been delivered in compliance with the terms of transportation agreed upon herein. If Seller does not comply with Buyer's delivery schedule, Buyer may, in addition to any other rights which Buyer may have under this Order, require delivery by best way. Charges resulting from premium transportation must be fully prepaid and absorbed by Seller. Unless otherwise provided. Orders that are designated to ship via "Best Way" should be shipped by the best way possible to comply with the delivery schedule.

**10. INSPECTION.** Buyer may reject Goods within a reasonable time (not less than 30 days business days) after delivery. Acceptance may be revoked if it was made with the reasonable assumption that any non-conformity would be cured, the non-conformity was difficult to discover before acceptance, or is otherwise permitted by law or equity. Upon rejection the Buyer may, at its option, and in addition to any other available recourse, return at Seller's cost the Goods (a) for a complete credit (b) repair and return at no increase in price and on Buyer's schedule, or (c) an exchange on Buyer's schedule.

**11. WARRANTY.** The Seller will, at the Buyer's request and option remedy, repair or replace any defective items free of charge. If Seller does not promptly repair or replace items when required, Buyer may have the items repaired or replaced and Seller shall reimburse Buyer for all reasonable expenses incurred thereby. The Seller shall keep the Buyer indemnified in respect of all losses, injury, liability, cost and expense, which result during proper use directly or indirectly in whole from defective Goods and/or Services. The Seller shall also keep the Buyer indemnified against any damages to the Buyer's (including without limitation any materials, tools or patterns sent to the Seller for any purpose against any claims for loss or injury to any person or death of any person or to the property of to the extent caused by the Seller's negligence or any act or omission on the part of the Seller's employees, sub-contractors or agents arising out of the performance of the Order.

**12. INVOICE AND PACKING.** Seller shall include an itemized packing list bearing the Buyer Purchase Order number, part number, Seller part number,

description of the items shipped, and any other information called for in the Order. A copy of the packing list shall be placed in the shipping package. Invoices shall be submitted to the address shown on the face of the Order to the attention of the Accounts Payable Department. The invoice must contain the same Purchase Order number, description of Goods/Services, quantity, and price as the Purchase Order. Any Seller invoice discount period or net payment period shall begin when both the invoice and the Goods/Services (conforming to technical requirements) have been received and the Goods have been accepted and the Services have been performed.

**13. PAYMENT.** Payment terms are net, forty five (45) days, after the date of the Seller's invoice, unless Seller notifies Buyer that payment terms will be otherwise.

**14. DEFAULT.** Seller is in default upon the occurrence of any one or more of the following: (1) Seller fails to make delivery of supplies or services within the time specified in this Order; (2) Seller fails to perform in accordance with the provisions of this Order; or (3) Seller so fails to make progress as to endanger performance of this Order in accordance with its terms. In these cases, Buyer may, at its option and only in writing, provide a period within which Seller may cure its default prior to Buyer's terminating the Order for default.

**15. REMEDIES FOR DEFAULT.** Buyer, by written notice to Seller, may terminate this Order, in whole or in part, if Seller is in default. Upon such termination, Buyer may procure, upon such terms, as it shall deem appropriate, Goods similar to those so terminated, in which case Seller shall continue performance of this Order to the extent not terminated and shall be liable to Buyer for any excess cost for such similar Goods. As an alternate remedy, and in lieu of termination for default, Buyer, at its sole discretion, may elect (1) to extend the delivery schedule, and/or (2) to waive other deficiencies in Seller's performance, in which case an equitable reduction in the Purchase Order price, shall be negotiated. If the failure to perform is caused by the *default* of a Subcontractor at any tier and if such default arises out of causes beyond the control of both Seller and Subcontractor and without the fault or negligence of either of them, Seller shall not be liable for any excess costs for the failure to perform, unless the Goods or Services to be furnished by Subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule. The rights and remedies of the Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by this Order or by law or equity. Failure of Buyer to insist on strict performance shall not constitute a waiver of any of the provisions of this Order or waiver of any other default of Seller.

**16. TERMINATION FOR CONVENIENCE.** Buyer reserves the right to terminate this Order, in whole or

## Argon ST Terms and Conditions

in part, by written notice of termination for convenience to Seller. If the contract is so terminated, the parties, duties and obligations, including Seller's compensation, shall be equitably negotiated between Buyer and Seller. If the terminated Order is solely for Services, Buyer shall be liable only for payment of Services performed before the effective date of termination.

- 17. WAIVER.** Failure of either party to enforce its rights under this Order shall not constitute a waiver of such rights or any other rights. No claim or right arising out of a breach of this Order can be discharged in whole or in part by a waiver or renunciation is supported by consideration and is in writing signed by both parties.
- 18. NON-ASSIGNMENT.** Neither this Order nor any expressed interest in this order may be assigned, in whole or in part, by Seller without the prior written consent of the Buyer. Notwithstanding the above, Seller may assign any monies due or to become due to him hereunder, provide that such assignment shall not be binding upon Buyer until receipt of a copy of the assignment is acknowledged and approved by the Buyer.
- 19. NON-DISCLOSURE.** The Seller shall not disclose any interest of any kind arising as a result of the Order by way of advertisement, publicity or purpose of trade without the prior written consent of the Buyer. Technical information, drawings, design and other data supplied by the Buyer are confidential and shall not without consent of the Buyer be disclosed to any third party and shall be used solely for the purpose of the Order. Where drawings or other data are issued, the Seller shall exercise proper custody of such in accordance with Buyer's instruction.
- 20. INSOLVENCY.** If Seller ceases to conduct its operations in the normal course of business (including without limitation the inability to meet its obligations as they mature), or if any proceeding under bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed or applied for, or an assignment for the benefit of creditors is made by Seller, Buyer may terminate this Order without liability, except for deliveries previously made or for Goods covered by this Order then completed and subsequently delivered in accordance with the terms of the Order, and Buyer shall have the right to produce and/or procure the balance of this Order without liability. Should this Order be terminated pursuant to this clause, Seller grants to Buyer a fully paid up license to copy any delivered copyrighted material (other than computer software) for any legitimate business purpose.
- 21. DISPUTES.** Any dispute arising under this Order that is not settled by arrangement between the parties may be settled by appropriate legal proceedings. Pending any appeal, decision, or judgement in such proceedings or the settlement of any disputes arising

from this Order, Seller shall proceed diligently with the performance of this Order in accordance with the instructions of the Buyer.

- 22. INDEMNIFICATION.** The Seller shall indemnify the Buyer in respect of any claim of infringement of intellectual property rights by the use or sale of any Goods or Services supplied under the Order and against all losses, expenses, costs and damages for which the Buyer may become liable or may incur in connection with any such claim. Where development forms part of the Order the ownership of any intellectual property rights including but not limited to patents, registered designs, unregistered design rights and copyright arising from such development shall be transferred to the Buyer and the Seller shall assist in any measures necessary to make such transfer effective as any such right arises.
- 23. CONTROLLING LAW.** This Order shall be governed and construed in accordance with the laws of the Commonwealth of Virginia.
- 24. NOTICES.** Except for acceptance hereof, any notices required to be given hereunder shall be given in writing at the address of each party herein set forth or at such other address as either party may substitute by notice to the other.
- 25. EQUAL EMPLOYMENT COMPLIANCE.** The seller represents to the best of its knowledge and belief, that no written notice such as a show cause letter, a letter indicating probable cause, or any other formal written notifications citing specific deficiencies has been received by the seller from any Federal Government agency or representative thereof, that the seller or any of its divisions or affiliates or known lower tier subcontractors is in violation of any of the provisions of Executive Order No. 11246, September 24, 1965, and any Executive order amending or superseding this order or rules or regulations of the Secretary of Labor (41 CFR 60) and specifically as to not having an acceptable Affirmative Action Program or being in noncompliance with any aspect of the Equal Opportunity Program. It is agreed that seller shall promptly notify Argon Engineering Associates, Inc., of any changes to status or circumstances and hold harmless Argon Engineering Associates, Inc., from loss, cost, damage, or liability, including any fines, penalties, attorney's fees, any other costs arising out of or resulting from any failure to so comply.
- 26. COPYRIGHT.** The Seller shall grant the Buyer copyright privilege of all documentation and manuals to be furnished under this Order for continuous long-term training and documentation purposes across all Argon programs and internally.