



**AGC Acquisition, LLC**  
**Terms and Conditions of Sale**  
**(“Terms and Conditions”, “Terms” or “T&C’s”)**  
**GENERAL TERMS AND CONDITIONS**

**1. DEFINITIONS**

**1.1** The following defined terms are used in these Terms and Conditions of Sale: **1.1.1** “Agreement” is the collective terms and conditions described in 2.1 (a) and (b) herein.

**1.1.2** “Buyer” is the purchaser of the products provided by Seller

**1.1.3** “Product(s)” are the items that are the subject of a sale by Seller to Buyer.

**2. AGREEMENT**

**2.1** The terms and conditions which apply to and govern the sale of Products by Seller to Buyer include and are expressly limited to those contained in or expressly incorporated (a) as applicable, Seller’s quotation, acknowledgement, invoice, written sales, pricing or similar agreement signed by an authorized representative of Buyer, and (b) these Terms and Conditions of Sale whether or not they are specifically referenced in any of the above documents.

**2.2** This sale is subject to these terms and conditions to the exclusion of all other terms and conditions including those contained in any Buyer document or form. Any term or variations in these Terms and Conditions contained in any Buyer document which add to, vary from, or conflict with the terms herein are hereby expressly rejected and shall not be binding unless agreed to in a writing signed by an authorized representative of Seller. The preceding sentences exclude from the agreement between the parties, among other things, (a) the terms and conditions contained in or referenced in Buyer’s purchase order or similar document, other than the specifics of the transaction (such as part number, price and quantity) as stated in Seller’s quotation, price list or other mutually agreed document, (b) Buyer’s terms and conditions of purchase or similar document, (c) any other Buyer document including quality or other process document, and (d) anything contained in Buyer’s web or e-commerce site even if Seller may be required to click an “accept”, “agree” or similar button to gain access to information related to current or prospective orders or other opportunities. Seller will not be deemed to have waived these Terms and Conditions if it fails to object to provisions submitted by Buyer. Buyer’s silence or acceptance or use of Products or any payment hereunder constitutes its acceptance of these Terms and Conditions. Any modification or addition to these Terms and Conditions must be in writing and signed by an authorized representative of Buyer and Seller. Seller reserves the right to reject any Order submitted for its acceptance.

**2.3** No Waiver of any breach of any term, condition or obligation thereof shall be deemed a waiver of similar terms in the future, nor shall the waiver of any breach be deemed a waiver of subsequent breaches of the same or other nature.

**2.4** In the event of conflict or inconsistency between the conditions of Buyer’s purchase order, other document or form and these Terms and Conditions, these Terms and Conditions shall govern.

**3. BUYER’S ORDERS**

**3.1** Buyer’s Orders may specify: (1) applicable part number; (2) requested delivery dates; (3) applicable price; (4) quantity; (5) location to which the Product is to be shipped; and (6) location to which invoices will be sent for payment. Orders are subject to acceptance by Seller. Seller’s order acknowledgment will not constitute acceptance. Any additional or conflicting terms on purchase orders will not apply unless specifically agreed to in writing by Seller.

**3.2** If Buyer is purchasing the Products for a government contract or sub-contract, Buyer shall promptly notify Seller of that fact and of any contract clauses which Buyer is obligated by law to include in its contracts for acquiring the Products. No government contract clause will be included in the Agreement unless agreed to in writing by an authorized representative of Seller.



#### **4. PRICES AND PAYMENTS**

**4.1** Prices for each Product are set forth in the Purchase Order, stated in United States currency. Seller reserves the right to correct any inaccurate invoices or errors in catalog prices. Payment terms are net 30 calendar days from date of invoice. Payment must be made in United States currency. Seller may without notice modify or withdraw credit terms including, but not limited to, requiring advance payment, guarantees, or other security. If Buyer is delinquent in its payment obligation to Seller, Seller may upon written notice to Buyer withhold future shipments and/or services until all delinquent amounts and late interest, if any, are paid. If delinquent amounts remain unpaid 30 calendar days after such written notice, then Seller may at its option: (1) declare Buyer's performance in breach and terminate any Order; (2) repossess Products for which payment has not been made; (3) withhold performance until all delinquent amounts and late interest, if any, are paid; (4) deliver future shipments on a cash with Order or cash in advance basis; (5) charge interest on delinquent amounts at a rate of 1.5% per month or the maximum rate permitted by law, if lower, for each month or part thereof; (6) charge storage or inventory carrying fees on Products; (7) recover all costs of collection including, without limitation, reasonable attorneys' fees; (8) if Buyer is delinquent on a payment schedule, accelerate all remaining payments and declare the total outstanding balance then due and owing; or (9) combine any of the above rights and remedies as may be permitted by applicable law. The above remedies are in addition to all other remedies available at law or in equity.

**4.2** The price is based on Seller's standard packaging for domestic U.S. shipments. Additional charges will apply for packaging for export or for other special packaging or shipping requirements requested by Buyer.

**4.3** Seller may at any time adjust prices based on or apply a surcharge reflecting changes to energy costs, material costs, labor costs and exchange rates

#### **5. CANCELLATION**

**5.1** This sale is not subject to cancellation, change, reduction in amount, or suspension or deferment of deliveries, except with the written consent of Seller and upon terms which indemnify Seller against loss provided however Buyer may cancel any Order or portion of an Order by giving written notice to Seller specifying the detailed reason for the cancellation if: (1) Seller fails to correct a breach of these Terms and Conditions within 90 calendar days of written notice from Buyer of the breach; or (2) any insolvency or suspension of Seller's operations or any petition filed or proceeding commenced by or against Seller under any state or federal law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors.

**5.2** A 100% Cancellation charge will apply for orders cancelled whereby parts are due for shipment within 120 days of cancellation date.

#### **6. DELIVERY**

**6.1** Delivery dates are quoted in good faith on a best effort basis but are not guaranteed. Delivery terms are EX WORKS Seller's facility. Risk of loss will transfer upon the delivery date. Seller will schedule delivery in accordance with its standard lead time unless: (1) Buyer's Order requests a later delivery date; or (2) Seller agrees in writing to a separate delivery date. If Seller prepays transportation charges, Buyer will reimburse Seller upon receipt of an invoice for those charges. Title will pass to Buyer when Seller places Product at the disposal of Buyer at Seller's facility. Seller reserves the right to quote additional charges for any special routing, packing, labeling, handling or insurance requested by Buyer. Seller's failure to meet an indicated delivery date will not constitute a breach of the Agreement.

**6.2** Seller does not assume any risk or liability for any loss (including loss of revenue or loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in delivery for any reason including, but not limited to: government embargoes or any other government acts that interfere with performance; blockades; seizure or freeze of assets; delays or refusals to grant an export license or the suspension or revocation thereof; fires, floods, severe weather conditions; any other acts of God, quarantines or regional medical crisis; labor strikes or lockouts; riots, strife, insurrection, civil disobedience, armed conflict, terrorism or war, declared or not or impending threat of any of the foregoing, if reasonably expected to cause injury to people or property; and shortages or inability to obtain materials or components.



The due date of any performance affected by such an event will be extended by the period of time that Seller is actually delayed. If the inability to perform continues for longer than 6 months, either party will have the right to terminate the affected Order by providing written notice to the other party.

**6.3** A request for changes in delivery schedule and/or quantity ordered within 120 days of the original scheduled delivery date requires written approval of Seller. Such changes may be subject to equitable price adjustment.

## **7. CHANGES**

**7.1** Buyer may issue a written change order to request changes within the scope of these Terms & Conditions including, without limitation, changes to Statement of Work. Such requests are subject to acceptance by Seller. Within a reasonable period of time after receipt of Buyer's written change order request, Seller will inform Buyer if the change will cause an increase in Seller's costs or time required to perform. The change will become effective, and Seller will commence performance, upon execution of a contract amendment. Unless otherwise agreed in writing, upon performance of the change order Seller will be entitled to invoice Buyer for the costs of the change, even if Seller agreed to proceed with the change prior to execution of a contract amendment.

## **8. INTELLECTUAL PROPERTY**

**8.1** Any intellectual property rights (including, without limitation, patents, designs, trademarks, service marks and copyrights and any applications for any of the preceding) in the Products or in the tools, designs, drawings, or production or design data owned or created by the Seller in the course of the performance of the contract or otherwise used in the manufacture, maintenance or repair of the Products shall remain the Seller's property unless otherwise expressly agreed in writing by the Seller. The Seller grants, on full payment for the Products the non-exclusive right for the Buyer and bona fide purchasers from the Buyer to use, for the operation of the Products for their intended purpose only, (a) any software supplied with, or embedded in, the Products, and (b) technical manuals and instructions relating to the operation and maintenance of the Products. The Buyer hereby grants to Seller a non-assignable non-exclusive, royalty-free license to use any intellectual property rights (including, without limitation, patents, designs, trademarks, service marks and copyrights and any applications for any of the preceding) owned or controlled by the Buyer to the extent necessary for the Seller to supply the Products. Except as expressly stated herein, nothing in the contract shall be deemed to have given the Buyer a license or any other right to use any of the intellectual property rights of the Seller unless otherwise expressly agreed in writing by the Seller.

## **9. RESTRICTIONS ON USE OF SELLER INTELLECTUAL PROPERTY AND PROPRIETARY INFORMATION**

**9.1** Notwithstanding any other provision herein, (i) Buyer may not use Seller's Proprietary Information directly or indirectly to compete with Seller or in any manner to obtain a competitive advantage over Seller; and (ii) Buyer may not sell, reverse engineer or copy any of the Seller product or parts, or assist any third party in the reverse engineering or copying of any of the Seller product or parts, to make a competitive product or parts.

## **10. ERRORS AND OMISSIONS**

**10.1** Seller reserves the right to correct clerical errors and omissions without incurring any liability.

## **11. GOVERNMENT REGULATIONS**

**11.1** Manufacture, shipment and delivery are subject to any prohibition, restriction, priority allocation regulation or condition imposed by or on behalf of the United States Government which may prevent or interfere with fulfillment of this order.

**11.2** Each party agrees to comply with all applicable governmental regulations as they relate to the import, export and re-export of information and/or products. Without limiting the foregoing, the parties shall not disclose or deliver any information or products provided hereunder in any manner contrary to any applicable export laws and regulations.



**11.3** The Seller shall not be liable in any manner for delays or non-delivery arising from or related to refusals by governmental authorities or other authorities to grant licenses or approvals, nor for the suspension or revocation thereof, or for changes in export classification of the information and/or products. If requested by Seller, Buyer shall deliver any information, including end-user information, necessary for export licenses or other approvals to be granted.

## **12. PATENT AND COPYRIGHT INDEMNIFICATION**

**12.1** Seller will defend the Buyer against any suit arising out of any actual or alleged patent or copyright infringement of a valid patent or copyright, to the extent based on the product as delivered by Seller, and indemnify for any final judgment assessed against Buyer resulting from such suit provided that Buyer notifies Seller at such time as it is apprised of the third-party claim, and agrees to give sole and complete authority, information and assistance (at Seller's expense) for the defense and disposition of the claim. Seller will not be responsible for any compromise or settlement made without Seller's consent. Seller will have no obligation or liability with respect to: (a) products provided pursuant to Buyer's designs, drawings or manufacturing specifications; (b) products used other than for their ordinary purpose; (c) claims of infringement resulting from combining any product furnished hereunder with any article not furnished by Seller; or (d) any modification of the product other than a modification by Seller. Further, Buyer agrees to indemnify and defend Seller to the same extent and subject to the same restrictions set forth in Seller's obligations to Buyer as set forth in this "Patent and Copyright Indemnification" section for any suit against Seller based upon a claim of infringement resulting from (a), (b), (c), or (d) of the preceding paragraph. Because Seller has exclusive control of resolving infringement claims hereunder, in no event will Seller be liable for Buyer's attorney fees or costs. If a claim is made or if Seller believes that a claim is likely, Seller may, at its option, and at its expense, (i) procure for Buyer the right to continue using the Product; (ii) replace or modify the Product so that it becomes non-infringing; or (iii) accept return of the Product or terminate Buyer's license to use the infringing Product and grant Buyer a credit for the purchase price or license fee paid for such product, less a reasonable depreciation for use, damage, and obsolescence. Further, seller may cease shipping infringing Products without being in breach of these Conditions of Sale. Any liability of Seller under this "Patent and Copyright Indemnification" section is subject to the provisions of the "Limitation of Liability" section of these Conditions of Sale. This "Patent and Copyright Indemnification" section states the parties' entire liability, sole recourse and their exclusive remedies with respect to infringement. All other warranties against infringement of any intellectual property rights, statutory, express or implied are hereby disclaimed.

## **13. ACCEPTANCE, REJECTIONS AND RETURNS**

**13.1 ACCEPTANCE** Buyer will inspect Product within a reasonable period after delivery not to exceed 10 calendar days. Products will be presumed accepted unless Seller receives written notice of rejection explaining the basis for rejection within the same timeframe. Seller will be afforded a reasonable opportunity to repair or replace, at Seller's option, rejected Product. Following initial delivery, the party initiating the shipment will bear the risk of loss or damage to Products in transit. If Seller reasonably determines that rejection was improper, Buyer will be responsible for all expenses caused by the improper rejection. Seller shall not be liable for any claims for labor, installation, or any incidental, special, consequential or other damages or for loss of revenue, loss of use or loss of profit and material must not be returned except by permission of Seller. The remedies to Buyer hereunder are exclusive and in lieu of any remedy available at law or in equity.

**13.2** Claims for shortage(s) must be made in writing to Seller within ten (10) days after receipt of goods. Seller accepts no responsibility for damage or losses occurring after delivery by Seller to any freight carrier. All claims in such regard will be made directly to freight carrier.

## **14 Warranty**

**14.1** We warrant that all products manufactured and sold by Seller are free from defects in material and workmanship. The extent of Seller's liability for breach of such warranty, and when such defect is verified by Seller, shall be limited, at Seller's option, to the price paid by Buyer to Seller for such product or part thereof, or to the replacement or repair of such product or part thereof, F.O.B Seller's plant. The warranty period will terminate twelve (12) months after delivery to Buyer.



**14.2** Failure to maintain and operate the products in accordance with Seller's instructions, misuse or abuse or the unauthorized modification of the products shall render the above warranty null and void. The use of parts not manufactured by or authorized by the Seller in Seller's products shall also render the above warranty null and void.

THE FOREGOING LIMITED WARRANTY IS IN LIEU OF, AND BUYER DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WARRANTIES OF DESIGN, PERFORMANCE OR PRODUCT LIFE, WARRANTIES OF COMPLIANCE WITH BUYER'S QUALITY MANUALS, QUALITY POLICIES, INSPECTION PROTOCOLS AND OTHER POLICIES AND REQUIREMENTS, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **15. TOOLING AND DATA**

**15.1** Seller owns all rights to all specifications, drawings, engineering instructions, data, material, equipment, software, including machining code/programming, CAD models, and test data that is not a deliverable, processes, facilities and tooling, including, but not limited to, jigs, dies, fixtures, molds, patterns, taps, gages, test equipment, manufacturing aids and replacements items, now existing or hereafter created, except to the extent that title is specifically transferred in writing from Seller to Buyer.

## **16. SHIPPING**

**16.1** Shipping terms are EX WORKS Seller's plant. Unless instructed by Buyer on shipping method, placement of values and freight carrier, Seller will use Seller's discretion for shipping method at Buyer's expense. The risk of loss in products shall pass to the Buyer on delivery to freight carrier as set forth herein.

## **17. TAXES**

**17.1** Seller's pricing excludes all taxes (including, but not limited to, sales, use, excise, value-added or other similar taxes), duties and charges. Buyer is responsible for all such taxes, duties, and charges resulting from an Order or Seller's performance, whether or not hereafter imposed, levied, collected, withheld or assessed. If Seller is required to impose, levy, collect, withhold or assess any such taxes, duties or charges on any transaction under an Order, then in addition to the purchase price, Seller will invoice Buyer for such taxes, duties, and charges unless at the time of order placement Buyer furnishes Seller with an exemption certificate or other documentation sufficient to verify exemption from such taxes, duties or charges.

## **18. NOTICES**

**18.1** Every notice between the Parties relating to an Order will be made in writing, and, if to Buyer, to Buyer's authorized representative or, if to Seller, to Seller's authorized representative. Notices will be deemed received when delivered either: 1. Two (2) calendar days after mailing by certified mail, return receipt requested and postage prepaid; or 2. One (1) business day after deposit for next day delivery with a commercial overnight carrier provided the carrier obtains a written verification of receipt from the receiving party.

## **19. LIMITATION OF LIABILITY**

**19.1** Nothing in this contract shall exclude or limit Seller's liability for death or personal injury caused by the Seller's negligence or for any liability that cannot legally be excluded or limited.

EXCEPT AS STATED ABOVE, THE TOTAL AGGREGATE LIABILITY OF THE SELLER ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE CONTRACT, WHETHER FOR NEGLIGENCE OR OTHERWISE, SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY THE BUYER FOR THE PRODUCT WHICH GIVES RISE TO THE CLAIM.

IN NO EVENT SHALL THE SELLER BE LIABLE FOR LOSS OF PROFIT, LOSS OF USE, LOSS OF BUSINESS, LOSS OF REVENUE OR FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, HOWSOEVER CAUSED.

These clauses set out the entire liability of the Seller (including any liability for the acts or omissions of its sub-contractors) in respect of any breach of this contract or orders placed under it and any representation, statement or tortuous act or omission including negligence arising under or in connection with the contract.



All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the contract.

## **20. LAW AND JURISDICTION**

**20.1** These Terms and Conditions and any order placed hereunder will be governed by the laws of the State of Delaware, U.S.A. without regard to conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto, will not apply. Any suit must be brought in a state or federal court sitting in Wilmington, Delaware, U.S.A., and Buyer and Seller irrevocably consent to personal and exclusive jurisdiction and forum of and agree to be bound by any judgment and orders rendered by, these courts. The Contract shall in all respects be construed according to and governed by the laws of the state of Delaware. All disputes shall be referred to and resolved by the court of appropriate jurisdiction in the state of Delaware.

## **21. Disputes**

**21.1** The parties agree that prior to commencing any proceeding under this clause, the parties will hold a meeting between their senior managers to discuss resolution of the dispute.

If no resolution is achieved by senior managers, the dispute will be referred to mediation under the rules of Judicial Arbitration and Mediation Services Inc. (JAMS), USA.

If no resolution is achieved by negotiation or mediation, all disputes or claims arising out of or in connection with this Agreement shall be finally settled by arbitration under the Rules of the Judicial Arbitration and Mediation Services Inc. (JAMS) by one arbitrator appointed in accordance with such Rules. Such arbitration shall take place in the English language in New York, New York, USA.

Either party may elect to commence the arbitration. Each party shall pay its own costs of the arbitration including costs of the forum, but the arbitrator may award costs to a party against the other. Separate arbitrations between the parties regarding disputes under this Agreement shall be consolidated to the extent practicable. The award may be enforced as a judgment in a court of competent jurisdiction.

Notwithstanding the foregoing clause above, either party may take proceedings or seek remedies before the courts or any competent authority of any country for interim or injunctive remedies in relation to any breach or threatened breach of this Agreement or infringement of Intellectual Property rights.

## **22. GENERAL PROVISIONS**

**22.1** Assignment. Buyer will not assign any rights nor delegate any obligations under an Order or any portion thereof without the advance, written consent of Seller which consent will not be unreasonably withheld. Seller may assign an Order in connection with the sale or transfer of all or substantially all of the assets of the business to which it pertains. Any attempt to assign or delegate in violation of this section will be void.

**22.2** Waiver. Failure of Seller to enforce at any time any of the provisions of these Terms and Conditions will not be construed to be a continuing waiver of any provisions hereunder nor will any such failure prejudice the right of Seller to take any action in the future to enforce any provisions hereunder.

**22.3** Severability. If any provision of these Terms and Conditions is determined to be illegal, invalid, or unenforceable by an arbitrator appointed in accordance with the Disputes section of these Terms and Conditions or court of competent jurisdiction, then the validity and enforceability of the remaining provisions hereunder will not be affected and, in lieu of such illegal, invalid, or unenforceable provision, there will be added as part of these Terms and Conditions one or more provisions as similar in terms as may be legal, valid and enforceable under applicable law.

**22.4** Commercial Use. Buyer represents and warrants that all product purchases hereunder will not be used in the performance of a contract, or subcontract, with any government in a manner so as to affect Seller rights to data, technology, or other intellectual property supplied by Seller.

**22.5** Survival. All rights, duties, and obligations which by nature should apply beyond the term of the Purchase Order including, but not limited to, Sections 3, 8, 16, 18, 19, and 20 of these Terms and Conditions will remain in force after the acceptance and complete performance of any Order.





### **23 Export Compliance**

*23.1 The items that are being quoted to you pursuant to this proposal are subject to the export laws of the United States including those administered by the U.S. Department of State and the U.S. Department of Commerce. AGC Acquisition LLC ("AGC") 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 AGC 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 AGC or any relevant government. If you intend to resell or re-export these products to another country(ies), please be aware that these products are sold and/or exported by AGC 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.*