

- 1. Offer, Governing Provisions and Cancellation.** This document (a) is an offer or counter-offer by ARI-Armaturen USA, LP ("Seller") to sell the products and/or services (collectively, the "Products") described in the accompanying quotation, proposal, order acknowledgment, invoice or other document provided by Seller to Buyer (the "Seller Document") in accordance with these terms and conditions (these "Terms"), (b) is not an acceptance of any offer made by buyer ("Buyer"), and (c) is expressly conditioned upon Buyer's assent to these Terms. Seller objects to any additional or different terms contained in any request for proposal, purchase order, acknowledgement, e-mail or other communication previously or hereafter provided by Buyer to Seller. No such additional or different terms or conditions will be of any force or effect. These Terms, together with the consistent terms provided by Seller in the Seller Document, shall be referred to herein as the "Agreement" and will be the entire agreement between Seller and Buyer on the subject of the transaction described herein and therein; there are no conditions to the Agreement that are not so contained or incorporated. **THE AGREEMENT AND ANY DISPUTE ARISING HEREFROM WILL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE SUBSTANTIVE AND PROCEDURAL LAWS OF THE STATE OF TEXAS AND THE U.S. (WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS). THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER WILL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF PRODUCTS.** No accepted offer may be cancelled or altered by Buyer except upon terms and conditions of this Agreement or as otherwise expressly accepted by Seller in writing, and no changes to the Agreement will be binding unless set forth in writing and manually signed by Seller. Seller may revoke this offer at any time before it is accepted by Buyer, and will automatically expire 30 calendar days after its date if Buyer has not accepted it before then. Neither Buyer's acceptance of this offer nor any conduct by Seller (including but not limited to shipment of Products) will obligate Seller to sell to Buyer any quantity of Products in excess of the quantity that Buyer has committed to purchase from Seller at the time of such acceptance or conduct. Buyer shall be solely responsible for the type, specifications and quantities of Products or Services ordered by Buyer and shall ensure that the terms of its order and any applicable specifications are accurate and complete.
- 2. Credit Approval; Payment Terms; Storage.** All payment terms set forth in this document or any Seller Document are subject to Seller's approval of Buyer's credit, in Seller's discretion. If such approval is withheld, payment will be due in advance of Seller's performance. Except as otherwise provided in the Seller Document or in the preceding sentence, payment is immediately due in full upon Buyer's receipt of Seller's invoice following shipment. Interest will be charged at the lesser of (i) 18% per year, or (ii) the highest rate permitted by applicable law, on accounts more than 30 calendar days past due. Buyer hereby represents to Seller that Buyer is not insolvent, as defined in the Uniform Commercial Code. Seller has the right to discontinue performance at any time if it, in its sole discretion, determines that Buyer's creditworthiness or ability to perform Buyer's obligations hereunder to be unsatisfactory. If production or shipment of completed Products, or other Seller performance, is delayed by Buyer, Seller may immediately invoice, and Buyer will pay, the percentage of the purchase price corresponding to the percentage of completion. In addition, Buyer will compensate Seller for storage of completed Products or work-in-process during any such delay, whether stored at Seller's facility or an independent storage company's facilities.
- 3. Prices, Taxes and Other Charges.** Unless otherwise provided in the Agreement, prices quoted are subject to change by Seller without notice. All prices listed in Seller's publications (including on Seller's website, price lists, product catalogues and brochures) are intended as a source of general information only and not as an offer to sell, and all prices contained therein are subject to confirmation by formal quotation by Seller. No order shall be binding upon Seller until received and accepted by Seller in its sole discretion. All prices, and amounts payable, under the Agreement are in U.S. Dollars. Any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, value added tax, duty, custom, inspection or testing fee, or any other tax, fee, interest or charge of any nature whatsoever imposed by any governmental authority on or measured by the transaction between Seller and Buyer will be paid by Buyer in addition to the prices quoted or invoiced. In the event Seller is required to pay any such taxes or other charges, Buyer will reimburse Seller therefor on demand.
- 4. Delivery, Claims and Force Majeure.** Unless otherwise provided in the Seller Document, Products shall be delivered to Buyer F.O.B. Seller's loading dock (as defined in the Texas Uniform Commercial Code) or, for ultimate destinations outside of the U.S., EXW Seller's loading dock (as the latter shipping term is defined in Incoterms 2010). Delivery of Products to the carrier will constitute delivery to Buyer, and regardless of shipping terms or freight payment, Buyer will bear all risk of loss or damage in transit. Seller retains title, for security purposes only, to all Products until paid for in full and Seller may, at Seller's option, repossess the same upon Buyer's default in payment hereunder and charge Buyer with any deficiency. Seller reserves the right to make delivery in installments, unless otherwise expressly stipulated herein; all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment will not relieve Buyer of its obligations to accept remaining deliveries.
- Claims for shortages or other errors in delivery must be made in writing to Seller within 10 calendar days after receipt of shipment, and failure to give such notice will constitute unqualified acceptance and a waiver of all such claims by Buyer. Claims for loss of or damage to Products in transit must be made to the carrier, and not to Seller.
- All shipping and delivery dates are approximate and not guarantees. Seller will not be liable for any losses or damages as a result of any delay or failure to deliver due to any cause beyond Seller's reasonable control, including but not limited to any act of God, act of Buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown, war, act of terrorism, riot, delay of vendors or carriers, or inability to obtain necessary labor, materials or manufacturing facilities. In the event of any such delay, the date of delivery will be extended for a period equal to the time lost because of the delay.
- If Buyer (i) wrongfully rejects or revokes acceptance of items tendered under this Agreement, (ii) fails to make a payment due on or before delivery, or (iii) or repudiates these Terms, Seller shall, at its option, have a right to recover as damages either the price as stated in an order (upon recovery of the price, the items involved shall become the property of the Buyer) or the profit (including reasonable overhead) that Seller would have made from full performance, together with incidental and consequential damages and reasonable costs associated therewith.
- 5. Changes.** Seller may at any time make such changes in design and construction of Products, components or parts as Seller deems appropriate, without notice to Buyer. Seller may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority, or nonavailability of materials from suppliers.
- 6. Intellectual Property.** All intellectual property rights (including, without limitation, patents, trademarks, registered designs and any rights to apply for same, copyright, design rights, database rights, rights in and to confidential information and know-how) and any rights analogous to the same anywhere in the world and existing at any time in Products or arising out of or relating to the design or manufacture of Products or the provision of services (including all drawings, product designs and descriptions, specifications, advertising, illustrations, catalogues, and brochures issued by Seller) shall belong to and remain vested in Seller. Nothing in the Agreement grants to Buyer any right, title or interest in or to Seller's intellectual property.
- 7. No Returns.** Except as otherwise set forth in this Agreement, or as otherwise agreed to in writing by Seller, no Products will be accepted for return.
- 8. Limited Warranties.** Seller warrants Products manufactured by it and supplied hereunder will meet the applicable specifications and work requirements and will be free from defects in materials and workmanship. All claims under this warranty shall be made by Buyer, in writing, immediately upon discovery and, in any event, the earlier of (a) eighteen (18) months from date of shipment or (b) twelve (12) months of the date of installation.

If within such warranty period any Product shall be proven, to Seller's satisfaction, to be defective, Seller may, at its option either repair or replace the Product at the original F.O.B. location or at the site of the installation. Such repair or replacement shall be Seller's sole obligation and Buyer's exclusive remedy hereunder and shall be conditioned upon Seller's receiving written notice of any alleged defect within 10 days after its discovery and, at Seller's option, return of such Products to Seller at Buyer's expense, F.O.B. Seller's factory. Alternatively, Seller may, at its sole option, discharge in full all of its obligations with respect to the Products sold hereunder by reimbursing Buyer for such portion of the purchase price of the Products proven to be defective which the Buyer has paid.

This warranty does not cover the following items: (a) equipment, accessories, or other goods manufactured and separately warranted by others; (b) used equipment regardless of manufacturer, which is delivered "as is"; and (c) goods delivered hereunder which, after delivery, have been repaired or altered (i) by anyone other than Seller or (ii) without Seller's prior written approval.

This warranty shall be void if (a) the goods delivered hereunder are used for any purpose other than the intended use disclosed to Seller, (b) such goods are subjected to impact or strain in excess of customary and reasonable usage, willful damage, negligence, inappropriate storage, abnormal working conditions, unsuitable operating materials or chemical and electronic effects not foreseen by Seller's order acknowledgement, (c) Buyer fails to follow the Seller's instructions, improper cleaning, alteration or default of some person other than Seller and its employees, agents or sub-contractors; (d) there are defects in goods manufactured to Buyer's own specifications or requirements, if not approved by Seller in advance and in writing.

Any description of the Products, whether in writing or made orally by Seller or Seller's agents, specifications, samples, models, bulletins, drawings, diagrams, engineering sheets or similar materials used in connection with Buyer's order are for the sole purpose of identifying the Products and shall not be construed as an express warranty. Any suggestions by Seller or Seller's agents regarding use, application or suitability of the Products shall not be construed as an express warranty unless confirmed to be such in writing by Seller.

The foregoing warranty is subject to all of the limitations and disclaimers contained therein. **THIS LIMITED WARRANTY IS THE ONLY WARRANTY THAT SELLER MAKES WITH RESPECT TO ITS PRODUCTS, AND IS MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, IN LAW OR IN FACT. SELLER SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES RELATING TO ITS PRODUCTS, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY IMPLIED WARRANTY ARISING OUT OF A COURSE OF DEALING, OR OF PERFORMANCE, OR USAGE OF TRADE.**

- 9. LIMITATION OF LIABILITY.** SELLER SHALL NOT BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING LOSS OF PROFITS, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, AND (B) WHETHER OR NOT SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Without limiting the generality of the foregoing, Seller specifically disclaims any liability for property damage, penalties, special or punitive damages, damages for lost profits or revenues, down-time, lost good will, cost of capital, cost of substitute Products, or for any other types of economic loss, or for claims of Buyer's customers or any third party for any such damages, costs or losses. Seller shall not be liable to Buyer for any amount with respect to any order of Products that, in combination with all claims by Buyer against Seller related to such order of Products, exceeds the total price paid by Buyer to Seller for such order of Products. **SELLER WILL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR UNDER OTHER THEORIES OF LAW OR EQUITY, WITH RESPECT TO PRODUCTS OR SERVICES SOLD BY SELLER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO.** The liability of Seller to Buyer, whether in contract, tort (including negligence or strict liability) or otherwise, is exclusively limited to the remedies expressly provided under the terms of the Agreement, in lieu of any and all other remedies at law or in equity.
- 10. BUYER'S INDEMNITY.** Buyer shall indemnify and hold harmless Seller and its officers, agents, and employees from and against any and all losses, damages, liabilities, costs and expenses (including damages arising from personal injury or death) that may arise out of Buyer's acts or omissions, including, but not limited to: (a) any breach by Buyer of the Agreement; (b) any violation by Buyer of any law, rule or regulation; (c) any use or resale of the Products by Buyer; (d) any negligence or willful misconduct of Buyer; or (e) any claim of patent, trademark, copyright or trade secret infringement, or infringement or any other proprietary rights of third parties to the extent that any Products are manufactured in accordance with drawings, designs or specifications proposed or furnished by Buyer.
- 11. Insurance.** At Buyer's expense, Buyer agrees to carry, with reputable insurance companies, insurance coverage of the types and in the amounts reasonably requested by Seller from time to time. Buyer shall ensure that Seller is named as an additional insured on such insurance policies, and Buyer shall provide Seller with certificates of such insurance upon request.
- 12. Designs and Tools.** Any design work performed by Seller, and any dies, molds, or other tools that Seller manufactures or acquires, in connection with its performance hereunder will be and remain the sole property of Seller, notwithstanding any charges to Buyer therefor. Any such charges convey to Buyer the right to have the designs, dies, molds, and/or other tools used by Seller for performance hereunder, but do not convey title or right of possession or any other right.
- 13. Government Contracts.** If the provision of Products by Seller under accepted orders is subject to mandatory provisions of U.S. law concerning contracts or subcontracts with or for the benefit of the U.S. or any state government, Buyer shall so notify Seller in advance of order acceptance specifying the mandatory provisions of U.S. or state law that apply.
- 14. Security Interest.** If the Products are sold on credit terms, Buyer acknowledges that Seller retains a purchase money security interest in the Products. To secure Buyer's obligations to Seller under the Agreement or any other agreement, Buyer hereby grants to Seller a security interest in all the Products sold under the Agreement, whether now owned or hereafter acquired, and all products and proceeds thereof. Seller may file any financing statements and send any notices necessary or appropriate to perfect or protect such security interest.
- 15. Cumulative Remedies.** Seller's rights and remedies under the Agreement are cumulative and in addition to all other rights and remedies available to Seller at law or in equity.
- 16. No Assignment.** Buyer shall not assign its rights or delegate its duties under the Agreement. Any such attempted assignment or delegation shall be null and void.
- 17. Buyer's Cancellation or Delay of Orders.** Buyer shall have no right to cancel an order for Equipment (or a part of the order) unless Seller, at its sole discretion, agrees in writing that the specific order (or the part of the order) may be cancelled and Buyer pays cancellation charges. The cancellation charges may include, among other things, loss of profit, costs (including the cost of all labor and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation and work done to the date of cancellation. If Buyer wishes to delay the delivery of Products beyond the delivery dates set forth in an Order, Buyer shall notify Seller. Seller shall notify Buyer whether delay is acceptable and, if so, under what conditions, including, the amount of any required partial payment.

18. Confidential Information. Any and all designs, sketches, models, or samples, drawings, bills of materials, blueprints, plans, devices, machinery, specifications, processes, techniques, expertise, business and financial records, part numbers, plans and projections, and other similar information, items, documents and materials made available by Seller or its affiliates to Buyer or its affiliates, or otherwise acquired, obtained or developed by Buyer under or in connection with this Agreement (collectively, the "**Confidential Information**") are and at all times shall remain the exclusive property of Seller. "Confidential Information" shall not include any item of information that Buyer can demonstrate by documentary evidence: (a) is or has become public knowledge, whether by publication or otherwise, through no act, omission or fault of Buyer or any of its employees, officers, directors, agents or affiliates, or (b) is disclosed to Buyer by a third party who is in lawful, rightful possession of the information and who has the legal right to make disclosure thereof without confidentiality restrictions. During the Confidentiality Period, Buyer agrees that it shall not (i) make any use whatsoever of the Confidential Information except for the purpose(s) specified in these Terms; or (ii) disclose the Confidential Information to any third party. The "**Confidentiality Period**" shall mean, for all Confidential Information that constitutes a 'trade secret' under applicable law, the period beginning on the date of disclosure to Buyer and ending on the later of (x) the date such Confidential Information is no longer a trade secret under applicable law, or (y) the date that is 3 years after the date that Seller accepts the last purchase order submitted by Buyer; and shall mean, for all other Confidential Information, the period beginning on the date of disclosure to Buyer and ending 3 years after the date that Seller accepts the last purchase order submitted by Buyer. Buyer acknowledges and agrees that money damages for any and all breaches of Buyer's obligations under this Section 18 are both incalculable and insufficient and that any such breach would irreparably harm Seller. Therefore, in the event of an actual or prospective breach of any such obligation, Seller shall be entitled to seek a permanent and/or preliminary injunction to prevent or remedy such breach and shall have the right to specific enforcement of this Section 18 against Buyer in addition to any other remedies to which Seller may be entitled at law or in equity.

19. Relationship of Parties. Buyer and Seller are independent contractors, and nothing herein shall be construed to create a partnership, joint venture, agency, or employment relationship. Neither party has nor will have any power to bind the other, or to assume or create any obligation or responsibility, express or implied, on behalf of the other party.

UPDATES. THESE STANDARD TERMS MAY BE MODIFIED, AMENDED AND UPDATED FROM TIME TO TIME AT THE DISCRETION OF SELLER UPON WRITTEN NOTICE TO BUYER.