

# ARIES ENGINEERING COMPANY, INC.

## STANDARD TERMS AND CONDITIONS OF SALE

### 1. ACCEPTANCE

THE TERMS AND CONDITIONS CONTAINED HEREIN APPLY TO SALES OF GOODS OR SERVICES BY ARIES INDUSTRIES, INC., AN OHIO CORPORATION ("ARIES"). ANY ADDITIONAL, DIFFERENT, OR CONFLICTING TERMS OR CONDITIONS ON BUYER'S PURCHASE ORDER, SPECIFICATIONS, OR OTHER DOCUMENTS ISSUED BY BUYER SHALL BE WHOLLY INAPPLICABLE AND SHALL NOT BE BINDING IN ANY WAY ON ARIES. ACCEPTANCE OF BUYER'S OFFER IS EXPRESSLY MADE CONDITIONAL ON BUYER'S ASSENT TO THE TERMS AND CONDITIONS CONTAINED HEREIN. NO WAIVER OR AMENDMENT OF ANY OF THE PROVISIONS CONTAINED IN THESE TERMS AND CONDITIONS SHALL BE BINDING ON ARIES UNLESS MADE IN A WRITING EXPRESSLY STATING THAT IT IS SUCH A WAIVER OR AMENDMENT AND SIGNED BY AN OFFICER OF ARIES.

### 2. PRICES

The prices for products and services covered hereunder shall be those agreed upon between the parties; provided, however, that if such prices are based on the purchase of a particular quantity of products and Buyer fails to purchase such quantity of products, Aries shall have the right (in addition to any other remedies available at law) to collect from Buyer the difference between the price paid by Buyer for the products purchased and the price for such products commensurate with the quantity actually purchased by Buyer. If the price of freight, metals, raw materials, or other production costs increases significantly, then Aries shall have the right and Buyer shall have the obligation to renegotiate prices on all products. Unless otherwise agreed upon between the parties, the prices stated herein do not include any sales, use, gross receipts, or similar taxes or customs duties. Buyer shall pay, in addition to the prices stated, the amount of any such present or future taxes and/or customs duties applicable to the sale of products or performance of services, or in lieu thereof, Buyer shall supply Aries with an appropriate tax exemption certificate.

### 3. TERMS OF PAYMENT

a. All payments are due and payable in full thirty (30) days from the date of invoice. Aries may change its payment terms if Aries deems itself insecure. All amounts past due shall incur interest at the rate of 1.5% per month or the highest rate permitted by law, whichever is less. All payments shall be made to Aries at the address specified on the front of the invoice. If products or services covered by these terms and conditions are not delivered or performed at one time, Aries may invoice for the quantity of products delivered or services performed. Each shipment shall be considered a separate and independent transaction.

b. Aries reserves and Buyer hereby grants Aries a security interest in all products sold to the extent of all invoiced amounts. If Buyer defaults under any obligation hereunder, Buyer agrees to make products available so that Aries can repossess them without a breach of the peace. Aries has the right to file a financing statement evidencing its security interest in such products. Upon Aries' request, Buyer will execute any documents to perfect Aries' security interest in any products.

### 4. TITLE AND DELIVERY

a. All shipments by Aries are FOB Aries' facility. Title and risk of loss or damage to products shall pass to Buyer upon delivery to the common carrier at Aries' facility, or, if applicable, Aries' subcontractor's facility.

b. Buyer shall provide for appropriate lead time on each order. Buyer acknowledges and agrees that the delivery dates are estimates only. Aries will use commercially reasonable efforts to deliver in accordance with the delivery dates, however, Aries will not be liable for failure to deliver as estimated.

c. If Aries' ability to supply products becomes constrained, for any reason whatsoever, then Aries may reduce quantities, delay shipments, or allocate products among its customers at its discretion.

d. Buyer may not cancel, accelerate, or delay any purchase order placed with Aries.

### 5. ACCEPTANCE AND WARRANTY

a. Any product or service sold or provided by Aries shall be deemed accepted by Buyer upon delivery. Effective 07/01/2014, for the Lifetime from the date of invoice, Aries warrants to Buyer that HPS, HPI, HZ, HZS, HPT products delivered hereunder will be in accordance in all material respects with agreed specifications and will be free from defects in material and workmanship under normal use and service. For a period of one (1) year from the date of invoice, Aries warrants to Buyer that HyperPress, HyperPierce, HyperCyl-EMA products delivered hereunder will be in accordance in all material respects with agreed specifications and will be free from defects in material and workmanship under normal use and service. Products NOT manufactured by Aries will be covered under OEM warranty and supersede any warranties offered, expressly or implied, by Aries. Samples, prototypes, and similar non production-level products are sold "AS IS," "WITH ALL FAULTS," and with no warranty whatsoever.

b. If, during the applicable warranty period, (i) Aries is notified promptly in writing upon discovery of any defect in the products, including a detailed description of such defect; (ii) if requested by Aries, such products are returned to Aries, FOB Aries' facility accompanied by Aries' Returned Material Authorization form; and (iii) Aries' examination of such products discloses to Aries' satisfaction that such products are defective and such defects are not caused by accident, abuse, exposure to severe weather conditions, misuse, neglect, alteration, improper installation, improper maintenance or repair, improper or inadequate testing, or use contrary to any instructions issued by Aries, then Aries shall, at its sole option, either repair, replace, or credit Buyer the purchase price of such products. No products may be returned to Aries without Aries' Returned Material Authorization form. Prior to any return of products by Buyer pursuant to this Section 5, Buyer shall afford Aries the opportunity to inspect such products at Buyer's location.

c. The performance of this warranty does not extend the warranty period for any products beyond that period applicable to the products originally delivered.

d. THE FOREGOING WARRANTY CONSTITUTES ARIES'S EXCLUSIVE LIABILITY, AND THE EXCLUSIVE REMEDY OF BUYER, FOR ANY BREACH OF ANY WARRANTY OR OTHER NONCONFORMITY OF THE PRODUCTS COVERED BY THESE TERMS AND CONDITIONS. THIS WARRANTY IS EXCLUSIVE, AND IN LIEU OF ALL OTHER WARRANTIES, ARIES MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. THE SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THIS WARRANTY SHALL BE AS EXPRESSLY PROVIDED IN THIS SECTION 5.

e. IN NO EVENT WILL ARIES BE LIABLE FOR ANY COSTS ASSOCIATED WITH THE REPLACEMENT OR REPAIR OF PRODUCT, INCLUDING LABOR, INSTALLATION, OR OTHER COSTS INCURRED BY BUYER AND, IN PARTICULAR, ANY COSTS RELATING TO THE REMOVAL OR REPLACEMENT OF ANY PRODUCT.

### 6. INTELLECTUAL PROPERTY

a. Aries shall, at its own expense, defend any suit that may be instituted against Buyer for any alleged infringement of any United States patent, trademark, or copyright related to products covered by these terms and conditions (except products covered by Section 6.d. below), provided that, (i) such alleged infringement does not arise from the use of such products as a part of or in combination with any other devices or parts or from Aries' compliance with instructions issued by Buyer; (ii) Buyer gives Aries immediate notice in writing of any such suit and permits Aries, through counsel of Aries' choice, to defend such suit; and (iii) Buyer gives Aries all needed information, assistance and authority, at Aries' expense, to enable Aries to defend such suit. In the case of a final award of damages in any such suit, Aries shall pay such award, but shall not be responsible for any settlement made without its prior written consent.

b. In satisfaction of Section 6.a., Aries, at its sole discretion, may (i) replace or modify products with non-infringing products that are functionally equivalent; (ii) obtain a license for Buyer to continue to use or sell products; or (iii) accept the return of products and refund the amount paid by the Buyer for such returned products.

c. THIS SECTION 6 STATES ARIES'S TOTAL RESPONSIBILITY AND LIABILITY AND BUYER'S SOLE REMEDY, FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, TRADEMARK, OR COPYRIGHT BY ANY PRODUCTS OR SERVICES DELIVERED HEREUNDER, OR ANY PART THEREOF. THIS SECTION 6 IS IN LIEU OF AND REPLACES ANY OTHER EXPRESSED, IMPLIED OR STATUTORY WARRANTY AGAINST INFRINGEMENT. IN NO EVENT SHALL ARIES BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR OTHER DAMAGES RESULTING FROM ANY SUCH INFRINGEMENT.

d. Buyer shall, at its own expense, indemnify and hold Aries harmless from and against any liabilities, costs, damages, or losses resulting from any alleged infringement of any patent, trademark, copyright, or other intellectual property right arising as a result of Aries' compliance with any of Buyer's designs, specifications, or instructions, and shall defend at its own expense, including attorneys' fees, any suit brought against Aries alleging any such infringement, including infringement arising out of the use of such products as part of or in combination with another device provided that Aries (i) gives Buyer immediate notice of any such suit and permits Buyer, through counsel of its choice, to defend such suit; and (ii) gives Buyer all needed information, assistance and authority, at Buyer's expense, necessary for Buyer to defend any such suit.

### 7. BREACH

Any one of the following acts by Buyer shall constitute a material breach of Buyer's obligations hereunder:

- a. Buyer fails to make payment for any products or services in full when due;
- b. Buyer fails to accept conforming products or services supplied hereunder; or

c. filing of a voluntary or involuntary petition in bankruptcy against Buyer, the institution of any proceeding in insolvency or bankruptcy (including reorganization) against Buyer, or an assignment for the benefit of creditors of Buyer.

In the event of Buyer's material breach, Aries may (in addition to any other rights or remedies provided herein or at law or in equity), by written notice to Buyer, terminate its obligations or any part thereof, without any liability to Aries. Buyer shall pay all costs, including reasonable attorneys' fees, incurred by Aries in any action brought by Aries to collect payments owing or otherwise enforce its rights.

#### **8. FORCE MAJEURE**

Aries shall not be liable hereunder due to any cause beyond its control, including but not limited to acts of God, acts of civil or military authority, fires, epidemics, floods, riots, wars, sabotage, terrorism, labor disputes, governmental actions, or inability to obtain materials, components, energy, manufacturing facilities, or transportation. In the event of any such delay, the date of delivery or performance hereunder shall be extended by a reasonable period of time.

#### **9. LIMITATION OF LIABILITY**

a. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, ARIES SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO BUYER OR ANY THIRD PARTIES FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR OTHER DAMAGES WHETHER IN AN ACTION BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, ARISING OUT OF OR RELATED TO THE TRANSACTION CONTEMPLATED HEREUNDER, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, EVEN IF ARIES IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

b. UNDER NO CIRCUMSTANCES SHALL ARIES'S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO ANY TRANSACTION CONTEMPLATED HEREUNDER (INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR INDEMNITY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY BUYER TO ARIES HEREUNDER FOR THE PRODUCTS OR SERVICES ACTUALLY GIVING RISE TO SUCH LIABILITY (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN SUCH ACTION). NO CLAIM, SUIT OR ACTION SHALL BE BROUGHT AGAINST ARIES IF MORE THAN ONE YEAR AFTER THE RELATED CAUSE OF ACTION HAS TRANSPIRED.

#### **10. GENERAL**

a. Aries shall retain title to and possession of all tooling of any kind used in the manufacture or testing of products furnished hereunder.

b. Buyer acknowledges that all or part of the products may be developed, manufactured, assembled or otherwise worked on, or delivered from any of Aries' or its subcontractors' facilities, domestic and foreign.

c. Each party's confidential or proprietary information may, if required by the parties, be further defined and protected by separate Non-Disclosure Agreement and each party's sole and exclusive obligations with regard to such confidential or proprietary information shall be as set forth in such agreement.

d. Aries and Buyer agree that they shall comply with all applicable laws, regulations, and administrative rules.

e. Government procurement requirements and regulations (including but not limited to, certified cost or pricing data, Cost Accounting Standards, Defective Pricing, and Audit requirements) shall not be binding upon Aries unless specifically agreed to by Aries in writing.

f. Buyer may not assign its rights or delegate its obligations hereunder without the prior written consent of Aries and any purported assignment or delegation without such consent shall be of no force or effect. Any merger involving Buyer or the transfer or sale of all or substantially all of Buyer's assets or stock shall be deemed an assignment. Aries may assign its rights and/or obligations hereunder upon written notice to Buyer.

g. Any waiver by Aries of any default by Buyer shall not be deemed to be a continuing waiver of such default or a waiver of any other default or of any of the terms and conditions hereunder.

h. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, it shall be deemed amended the minimum amount necessary to permit its enforcement.

i. These terms and conditions, which include the documents incorporated by reference on the face hereof (but expressly does not include any of the terms and conditions of Buyer's purchase order, specifications or any similar document issued by Buyer) shall constitute (except for any Non-Disclosure Agreement) the entire agreement between Buyer and Aries with regard to the products or services sold hereunder, and expressly supersedes and replaces any prior or contemporaneous agreements, written or oral, relating to such products or services.

j. The validity, performance and construction of these terms and conditions, and any disputes arising from or relating thereto any transaction governed by these terms and conditions, shall be governed by Michigan law, without reference to conflict of law principles. All disputes shall be subject to the exclusive jurisdiction of the state courts of Monroe County, Michigan (or, if there is exclusive federal jurisdiction, the United States District Court for the Eastern District of Michigan), and Buyer consents to the personal and exclusive jurisdiction and venue of these courts. The United Nations Convention on the Sale of Goods, Uniform Commercial Code, and Uniform Computer Information Transaction Act shall not apply to these terms and conditions.

IF THE SCOPE OF WORK CONTAINS DESIGN OR DEVELOPMENT, THE FOLLOWING SECTIONS 11, 12 AND 13 ALSO APPLY.

#### **11. ARIES RESPONSIBILITIES**

Aries shall use commercially reasonable efforts to design and/or develop the product set forth herein, and shall use commercially reasonable efforts to meet the schedule for each milestone of the design and development. Except as agreed to by the parties, Aries shall provide all technology, labor, material, tooling, and facilities necessary for such design and development effort. Buyer shall provide the specifications and other related information for such product. Buyer must approve each design level before Aries begins fabrication of any prototypes or production volume products based on such design level. Buyer's submission of a purchase order specifying a particular design level constitutes approval of such design level.

#### **12. DESIGN TERMINATION**

During performance of the design and/or development, either party may terminate the design at its convenience upon written notice to the other party. If the design is terminated, Buyer shall be liable to Aries for full payment for the milestone during which such termination occurs, regardless of the amount of work actually performed by Aries for such milestone. THE PROVISIONS OF THIS SECTION 12 CONSTITUTE THE SOLE LIABILITY AND RESPONSIBILITY OF EACH PARTY, AND THE SOLE AND EXCLUSIVE REMEDY OF EACH PARTY, WITH RESPECT TO THE DESIGN AND/OR DEVELOPMENT OF PRODUCTS.

#### **13. INTELLECTUAL PROPERTY RIGHTS**

a. Aries shall retain all patent, copyright, trade secrets, and other intellectual property rights it possesses with regard to any and all design, process, or manufacturing technologies. The design, development or production of product hereunder shall not be deemed to be a "work made for hire," and nothing herein shall be construed to grant to Buyer any right or license in any patent, copyright, trade secret, mask right, or any other intellectual property right.

b. All drawings, documentation, and other data generated by Aries in the performance hereunder shall remain the sole and exclusive property of Aries. All patents, copyrights, or other intellectual property rights related solely to the specifications generated by Buyer shall remain the sole and exclusive property of Buyer.

c. Any designs, devices, or processes that are developed by Aries concurrently with the work performed hereunder shall be the sole and exclusive property of Aries, and Aries reserves the right to use such designs or processes for other customers, or license the use thereof to others.