

# WINTECH

## TERMS AND CONDITIONS OF SALE

1. **ACCEPTANCE OF QUOTATION:** Arcosa Marine Components, LLC d/b/a Wintech ("Seller") shall be bound exclusively and solely to the terms and conditions set forth herein and the general terms and conditions of sale set forth in Seller's Quotation (together referred to herein as the Quotation). Seller's Quotation hereby expressly limits Customer's acceptance to the terms, conditions or instructions stated in the Quotation and any additional or differing terms, conditions or instructions proposed in Customer's acceptance, acknowledgment, confirmation, sales or purchase order (herein collectively referred to as "Customer's Documents") are hereby rejected unless expressly assented to in writing by Seller. No contract shall be formed except upon the terms and conditions of the Quotation. Acceptance of the Quotation is limited to its' terms. Customer's acceptance will be operative but only in accordance herewith. No terms or conditions embodied in any prime or other third party contract that pertain to the goods being sold hereunder ("Goods") shall be applicable to the Seller, the Quotation or the sale of goods hereunder unless expressly agreed to in writing by Seller. These General Terms and Conditions of Sale take precedence over any differing or contrary terms that may appear in Seller's proposal or quotation.
2. **SPECIFICATIONS, CHANGES AND INSPECTION:** In the event that it shall become commercially impractical for Seller to secure materials required for manufacture of the Goods identified in the Quotation in exact accordance with specification requirements by reason of government regulations or by reason of priorities given to defense orders or for any other reason beyond the control of Seller, Seller shall be entitled to make changes in the specifications which do not materially affect the strength or efficiency of the Goods. Specification changes by the Customer subsequent to submission of Seller's Quotation shall be binding on Seller only when set forth in a written agreement signed by both parties specifying the changes and the price adjustment therefor. Customer may inspect the Goods during manufacture at Seller's plant upon Customer's prior notice to Seller and Seller's approval. Upon completion of all or any portion of the Goods, Customer may arrange for final inspection thereof at Seller's plant. If requested by Seller, Customer shall execute a Certificate of Inspection and Acceptance covering all Goods found to be completed in accordance with the specifications and Customer shall deliver the executed Certificates to Seller. Each inspection Certificate, when signed by the Customer and with respect to Goods covered thereby, shall be final and conclusive confirmation that such Goods conform in workmanship, material and construction, and in all other respects, to the requirements and provisions of the Quotation.
3. **DRAWINGS AND SPECIFICATIONS:** No drawings, specifications, or other data submitted to Seller with Customer's bid forms shall be made a part of Seller's Quotation unless specifically referred to in the Quotation and then subject to, and only to the extent of, any restrictions, limitations or other provisions set forth in the Quotation. SELLER SHALL NOT BE RESPONSIBLE FOR THE DESIGN OF ANY FOUNDATION OR MOUNTING SURFACE OF ANY WINCH AND SELLER EXPRESSLY DISCLAIMS ANY SUCH LIABILITY.
4. **DELIVERY:** If a date, period, or time for delivery of the Goods is set forth in the Quotation, it is an estimate only and is subject to and conditioned upon the date of Customer's acceptance without exception of the Quotation, timely receipt by Seller of Customer's deliverables (including, without thereby limiting survey data, dimensions, engineering data and other engineering, shop or detail drawings specifications, and materials), Seller's ability to secure raw materials to enable Seller to meet production requirements for the Goods, as well as any other goods on order which precede the subject Goods in Seller's production schedule and delays due to strikes, shortages in skilled labor, fires, accidents or any other causes or contingencies beyond Seller's control ("Delay Event"). Delay in delivery of all or any portion of the Goods that is not due to Seller's willful act shall not constitute a default under the Quotation, Seller shall not be under any obligation to arrange for shipment and acceptance of any required raw materials in advance of Seller's actual needs as determined in Seller's sole discretion. Customer acknowledges that delivery delays occasioned by a Delay Event may be longer than the Delay Event itself due to Seller's production scheduling for the Goods and other goods on order by third parties. The Goods are sold f.o.b. Seller's manufacturing facility even though transportation costs may be included in the price stipulated. Risk of loss of the Goods shall pass to the Customer upon delivery to the carrier at the Seller's manufacturing facility. Neither the Customer nor the consignee of the Goods shall have the right, without Seller's prior written agreement, to divert or re-consign any shipment to any destination other than as specified by the Seller in the bill of lading covering the Goods.
5. **QUANTITY:** The quantity of Goods set forth in the Quotation will not be exceeded without authority being first obtained from Customer or Customer's authorized agent. Customer reserves the right to return over-shipments.
6. **ACCEPTANCE AND TERMS OF PAYMENT:** Unless otherwise agreed in writing, Customer agrees to accept delivery of all or any portion of the Goods as they are completed and delivered to Customer. Customer shall pay the full amount of the purchase price upon delivery of the Goods, or a portion of the total thereof to the carrier at Seller's manufacturing facility, and upon presentation by Seller of an invoice for the Goods delivered and covered by the Quotation, and a bill of lading showing shipment of the Goods. To secure Customer's fulfillment of its obligations to Seller under the Quotation Customer hereby grants to Seller a security interest in the Goods delivered and the products, proceeds and accessions of and to any of the Goods, together with all right, title and interest of Customer therein and all rights and remedies which Customer might exercise with respect thereto but for the security interest granted. Customer acknowledges that the Quotation, including these terms and conditions shall constitute a security agreement between the parties.
7. **TAXES/TARIFFS:** The quoted purchase price for the Goods does not include any international, federal, state or local sales, use or related taxes, however designated or imposed, and any such sales, use or similar tax arising out of this transaction shall be for Customer's account. The responsibility for payment of all tariffs or other forms of duty imposed on the materials, components, or equipment incorporated into the Goods or imposed on the finished Goods shall be paid by the Customer through an increase in the purchase price of the Goods to the extent of the amount of any such tariff or duty.
8. **CANCELLATION:** Customer may not cancel Customer's purchase order after Customer's acceptance of Seller's Quotation except with Seller's consent and subject to conditions at such time agreed upon which shall include protection of the Seller against any loss, credit or expense incurred or expected to be incurred.

# WINTECH

## TERMS AND CONDITIONS OF SALE

9. **MODIFICATIONS:** The Quotation, including these terms and conditions, shall not be modified unless such modification is written and signed by both parties.

10. **NON-DISCLOSURE:** Customer agrees not to disclose to any third party (other than Customer's legal counsel, financing entity or Prime Contractor) any of the terms or prices set forth in the Quotation, including these terms and conditions, Customer's Documents, or the information received from Seller in either negotiating for a sale of the Goods or in the performance of the Quotation. This obligation shall survive delivery of the Goods. The obligations set forth in this provision shall not apply to any information, data, or designs, which Customer can show it possessed prior to its disclosure by Seller, was or has become available to the public domain, or is subsequently provided to it by another party having the right to possess and disclose the information, data or designs.

11. **NON-WAIVER:** Neither party's failure to require performance of any term, condition or instruction, or to exercise any right or privilege set forth in the Quotation, including these terms and conditions, shall be nor act as a waiver of any term, condition, instruction, and/or any right or privilege under the Quotation including these terms and conditions, nor shall forbearance or failure of either party to enforce any right hereunder affect, impair or waive any rights in case a default by the other party continues, or in case any subsequent default by such party occurs.

12. **ASSIGNMENT:** Neither party shall assign any right, obligation or interest in the Goods or the Quotation without the express written consent of the other party.

13. **PATENTS:** WITH RESPECT TO GOODS MANUFACTURED BY SELLER IN ACCORDANCE WITH SELLER'S SPECIFICATIONS WHICH ARE UNMODIFIED IN ANY WAY BY CUSTOMER, SELLER SHALL DEFEND AT ITS OWN EXPENSE ANY SUIT OR PROCEEDING BROUGHT AGAINST CUSTOMER BASED ON A CLAIM THAT THE GOODS CONSTITUTE AN INFRINGEMENT OF ANY APPARATUS CLAIM OF ANY PATENT OF THE UNITED STATES GRANTED PRIOR TO THE EFFECTIVE DATE OF THE QUOTATION, IF SELLER IS NOTIFIED PROMPTLY IN WRITING AND IS GIVEN AUTHORITY, INFORMATION AND ASSISTANCE BY CUSTOMER FOR THE DEFENSE OF SAME. SELLER SHALL PAY ALL DAMAGES AND COSTS AWARDED THEREIN AGAINST CUSTOMER. IN THE EVENT THE GOODS ARE HELD IN SUCH SUIT TO CONSTITUTE INFRINGEMENT AND THEIR USE ENJOINED, SELLER SHALL AT ITS' OWN EXPENSE AND AT ITS' OPTION, EITHER: (i) PROCURE FOR CUSTOMER THE RIGHT TO CONTINUE USING THE GOODS, (ii) REPLACE THE GOODS WITH NON--INFRINGING GOODS, (iii) MODIFY THE GOODS SO AS TO BECOME NONINFRINGING OR (iv) REFUND THE PURCHASE PRICE OF THE GOODS FOUND TO BE INFRINGING. THE FOREGOING SETS FORTH THE ENTIRE LIABILITY OF SELLER BY WAY OF INFRINGEMENT, WHETHER PATENT OR TRADEMARK OR THE LIKE, WITH RESPECT TO THE GOODS. SELLER SHALL HAVE NO LIABILITY FOR INFRINGEMENT, WHETHER PATENT OR TRADEMARK OR THE LIKE, WITH RESPECT TO THE GOODS, OR ANY PART OR PORTION THEREOF, WHICH ARE MANUFACTURED, SUPPLIED OR OBTAINED ACCORDING TO CUSTOMER'S DESIGN OR SPECIFICATION; AND AS TO SUCH GOODS, OR ANY PART OR PORTION THEREOF, SELLER ASSUMES NO LIABILITY WHATSOEVER FOR INFRINGEMENT, WHETHER PATENT OR TRADEMARK OR THE LIKE. FURTHER, TO THE EXTENT OF GOODS WHICH ARE MANUFACTURED, SUPPLIED OR OBTAINED ACCORDING TO CUSTOMER'S DESIGN, SPECIFICATION, OR SPECIFICATION MODIFICATIONS, CUSTOMER AGREES TO HOLD HARMLESS, DEFEND, AND INDEMNIFY SELLER AGAINST ANY CLAIMS BY WAY OF INFRINGEMENT OR OF INFRINGEMENT OF PATENT OR TRADEMARK OR THE LIKE, THAT ARISE OUT OF COMPLIANCE WITH THE SPECIFICATIONS.

14. **WARRANTY:** Seller agrees to manufacture the goods in accordance with the applicable specifications (except as to items manufactured or supplied to the Customer's design and specifications), and that the goods will be free of defects in material and workmanship for one (1) year after delivery; provided, however, that Seller's obligation hereunder shall not cover or apply to any part of or attachment to the Goods not manufactured by Seller. To the extent available, and in accordance with the terms thereof, Seller will make available to Customer, upon Customer's written request, any warranty from the manufacturer of any such part or attachment not manufactured by Seller that is a part of the Goods. Seller's obligation under this warranty with respect to Goods it manufactures shall be limited to repairing or replacing, at a shop selected by Seller, any of the Goods, or part or parts thereof, which shall, within the one year period after delivery, be returned to Seller by Customer with transportation charges prepaid and which Seller's examination shall disclose to its satisfaction to have been thus defective. **SELLER HAS MADE NO AFFIRMATION OF FACT OR PROMISE, OTHER THAN AS SPECIFICALLY SET FORTH IN THE QUOTATION, RELATING TO THE GOODS, THAT HAS BECOME ANY BASIS OF THIS BARGAIN. FURTHER, SELLER HAS MADE NO AFFIRMATION OF FACT OR PROMISE RELATING TO THE GOODS THAT HAS CREATED OR AMOUNTED TO AN EXPRESS WARRANTY THAT THE GOODS WOULD CONFORM TO ANY SUCH AFFIRMATION OR PROMISE. NO SAMPLE OR MODEL HAS BEEN MADE PART OF THE BASIS OF THE QUOTATION OR HAS CREATED OR AMOUNTED TO AN EXPRESS WARRANTY THAT THE ALL OF THE GOODS WOULD CONFORM TO ANY SAMPLE OR MODEL EXHIBITED BY SELLER. THE WARRANTY SET FORTH HEREIN IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED. SELLER DISCLAIMS ALL OTHER WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE WHATSOEVER AND CUSTOMER AGREES TO ACCEPT THE GOODS WITHOUT ANY WARRANTY EXCEPT AS SPECIFICALLY SET FORTH IN THE QUOTATION, INCLUDING THESE TERMS AND CONDITIONS.**

15. **INDEMNITY** - CUSTOMER AGREES TO DEFEND, HOLD HARMLESS AND INDEMNIFY SELLER AND ITS AFFILIATES, SUBSIDIARIES, RELATED ENTITIES, OFFICERS, DIRECTORS, SHAREHOLDERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO AS THE "INDEMNITEES"), FROM AND AGAINST ANY AND ALL CAUSES OF ACTION, SUITS, DEBTS, CLAIMS, LIABILITIES, LOSSES, DAMAGES, COSTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS'

## WINTECH TERMS AND CONDITIONS OF SALE

FEES, COURT COSTS AND EXPENSES OF WHATEVER NATURE OR KIND, IN LAW OR IN EQUITY (COLLECTIVELY REFERRED TO AS THE "LOSS"), INCURRED IN THE DEFENSE OF THE INDEMNITEES OR OTHERWISE, ARISING OUT OF, OR RESULTING FROM ANY ACT, ERROR OR OMISSION OF CUSTOMER, CUSTOMER'S EMPLOYEES, AGENTS OR SUBCONTRACTORS, OR ANY RESPECTIVE EMPLOYEE OF ANY SUCH AGENT OR SUBCONTRACTOR, ATTRIBUTABLE TO ANY BODILY OR PERSONAL INJURY, DEATH, DESTRUCTION OF OR DAMAGE TO REAL OR PERSONAL PROPERTY, INCLUDING THE LOSS OF USE THEREOF.

**16. CONSEQUENTIAL DAMAGES: REGARDLESS OF FAULT OR NEGLIGENCE, SELLER SHALL NOT BE LIABLE TO CUSTOMER FOR ANY AND/OR ALL INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE GOODS.**

17. ENTIRE AGREEMENT: The Quotation, including these terms and conditions contain the entire agreement of the parties. The parties shall not be bound by or be liable for any statement, presentation, promise, inducement or understanding of any kind of nature not set forth herein. Any reference to Customer's purchase order or other order does not imply acceptance of any term, condition or instruction contained in such purchase order or order.

18. APPLICABLE LAW: THE QUOTATION, INCLUDING THESE TERMS AND CONDITIONS, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.