



# TERMS of SALE



These terms of sale (these “**Terms**”) apply to and are incorporated as a part of every invoice, confirmation of sale, quotation, scope of work or similar document, including all exhibits and attachments (each, an “**Invoice**”) issued by The Phoenix Company of Chicago, Inc. or its affiliates, including Mil-Con, Inc., and their successors and assigns (collectively “**Seller**”) for the sale of goods or services (“**Goods**”).

## Table of Contents

1. Definitions	14. Compliance with Laws
2. Applicability	15. Tooling
3. Cancellation; Delivery	16. Termination
4. Non-Delivery	17. Waiver
5. Quantity	18. Confidential Information
6. Shipping Terms	19. Force Majeure
7. Title and Risk of Loss	20. Assignment
8. Amendment and Modification	21. Relationship of the Parties
9. Inspection and Rejection of Nonconforming Goods	22. No Third-Party Beneficiaries
10. Price	23. Governing Law
11. Payment Terms	24. Notices
12. Limited Warranty	25. Severability
13. Limitation of Liability	26. Survival

### 1. Definitions.

- a. “**Buyer**” means the purchaser of the Goods.
- b. “**Days**” means calendar days .
- c. “**Government**” The governmental bodies of the United States of America, acting in their contractual and legal capacity.

### 2. Applicability.

- a. **THESE TERMS ARE THE ONLY TERMS WHICH GOVERN THE SALE OF THE GOODS BY SELLER TO BUYER. The accompanying Invoice and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.**
- b. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

### 3. Cancellation; Delivery.

- a. Buyer may not cancel any order or Invoice. Deliveries of Goods may not be extended beyond the original delivery date. Seller may process in advance all Goods purchased on a deferred delivery basis.
- b. The goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. Seller shall not be liable for any delays, loss or damage in transit.
- c. Seller shall deliver the Goods to Buyer's designated location (the “**Delivery Point**”) using Seller's standard methods for packaging such Goods. All shipments shall be made in accordance with the instructions set forth in Buyer's purchase order. If Buyer changes such instructions, resulting additional shipping or handling charges shall be borne by Buyer. In the absence of shipping instructions, Seller shall use its discretion when routing. Buyer shall be responsible for all unloading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point.

- d. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.
- e. If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

#### 4. Non-Delivery.

- a. The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.
- b. Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within three days of the date when the Goods would in the ordinary course of events have been received.
- c. Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

5. **Quantity.** If Seller delivers to Buyer a quantity of Goods of up to 10% more or less than the quantity set forth in the Invoice, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Invoice adjusted pro rata. The price of the Goods is based on the contemplated delivery of the full quantity ordered. If the quantity is reduced for any reason, Seller may adjust the unit price.

6. **Shipping Terms.** Delivery shall be made FOB destination.

7. **Title and Risk of Loss.** Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Illinois Uniform Commercial Code.

8. **Amendment and Modification.** These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

#### 9. Inspection and Rejection of Nonconforming Goods.

- a. Buyer shall inspect the Goods upon receipt. Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods within three Days of delivery (the "**Inspection Period**") and furnishes such written evidence or other documentation as reasonably required by Seller. "**Nonconforming Goods**" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.
- b. If Buyer timely notifies Seller of Nonconforming Goods, Seller shall, in its sole discretion (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price (as defined below) for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer must obtain a Return Material Authorization (RMA) number from Seller before Nonconforming Goods can be returned. Returned material shipments without an RMA number will be refused by Seller. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility located at the address indicated on the Invoice. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.

- c. The remedies set forth in Section 9.b are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 9.b, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

### 10. Price.

- a. Buyer shall purchase the Goods from Seller at the prices (the "**Prices**") set forth in Seller's unexpired quotation.
- b. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Government authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

### 11. Payment Terms.

- a. Buyer shall pay all invoiced amounts due to Seller within 30 days from the date of Seller's invoice. Buyer shall make all payments hereunder by wire transfer or check and in US dollars. Seller may require payment in advance of shipment or to ship C.O.D.
- b. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including but not limited to reasonable attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for 60 days following written notice thereof.
- c. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

### 12. Limited Warranty.

- a. Seller warrants to Buyer that for a period of 12 months from the date of shipment of the Goods ("**Warranty Period**"), that such Goods will materially conform to Seller's published specifications in effect as of the date of manufacture and will be free from material defects in material and workmanship.
- b. **EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 12.a, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**
- c. Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section 12.a. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY WARRANTY OF MERCHANTABILITY; WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WARRANTY OF TITLE; OR WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**
- d. Seller shall not be liable for a breach of the warranty set forth in Section 12.a unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within 10 days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.
- e. Seller shall not be liable for a breach of the warranty set forth in Section 12.a if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral

or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.

- f. Subject to Section 12.d and Section 12.e above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.
- g. **THE REMEDIES SET FORTH IN SECTION 12.f SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 12.a.**

### 13. Limitation of Liability.

- a. **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**
- b. **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.**
- c. The limitation of liability set forth in Section 13.b above shall not apply to liability resulting from Seller's gross negligence or willful misconduct.

**14. Compliance with Laws.** Buyer shall comply with all export and import laws of all countries involved in the sale of, movement of and access to the Goods and any related deliverables (collectively, "**Deliverables**") under this Agreement or any resale or movement of the Deliverables by Buyer. Buyer assumes all responsibility for shipments of Deliverables requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on the Deliverables. Without limiting the foregoing:

- a. Buyer shall comply the Arms Export Control Act, 22 U.S.C. 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations (EAR), 15 C.F.R. 730-774, as applicable.
- b. Buyer shall not transfer any export controlled item, data or services, to include transfer to foreign persons employed by or associated with, or under contract to Buyer, without authority of an export license, agreement or applicable exemption or exception.
- c. Buyer shall notify Seller of the export classification of any Goods that are restricted by export control laws or regulations. Seller shall identify to Buyer, the export classification of technical information provided to Buyer.
- d. Buyer shall notify Seller in the event of any violation or potential violation of the EAR or ITAR, and the initiation or existence of a U.S. Government investigation, that could affect Buyer's performance under this Agreement.
- e. Buyer shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including reasonable attorneys' fees, costs and costs of settlement, arising from any act or omission of Buyer, its officers, employees, vendors, agents or subcontractors at any tier in the performance of any of its obligations under this Section.

### 15. Tooling.

- a. One-third of the net tooling charge must accompany any tooling order. One-third shall be due and payable upon completion of the tooling, and the final one-third shall be due and payable upon Buyer's approval of samples.
- b. If tooling is removed from Seller's premises, Buyer shall pay a tool-in production charge equal to 40% of the initial tooling charge, to compensate for engineering or design changes made in the course of manufacturing. All prototype tooling shall be the property of Seller.
- c. If specified in an order or the Invoice, tooling charges and Make Ready charges may not cover the entire cost, and therefore title or the right to possession may not be conveyed to Buyer. However, there will be no charge for repairs, renewals or maintenance as long as the tools are in active use, provided that Seller may dispose of such tools after a lapse of two years without an order.

**16. Termination.** In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

**17. Waiver.** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**18. Confidential Information.** All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

**19. Force Majeure.** No party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("**Impacted Party**") reasonable control, including but not limited to the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns or other industrial disturbances; (h) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; (i) epidemic/pandemic and related Government actions; and (j) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within 10 days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 60 consecutive days following written notice given by it under this Section, Seller may thereafter terminate this Agreement upon 30 days' written notice.

**20. Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.



## TERMS of SALE



- 21. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- 22. No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.
- 23. Governing Law.** All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Illinois without giving effect to any choice or conflict of law provision or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Illinois.
- 24. Notices.** All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Invoice or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.
- 25. Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 26. Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, and Survival.

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