



Arku Coil Systems, Inc.
Terms and Conditions for Sale and Services

All Sales of products and services by Arku Coil Systems, Inc. (“ARKU”) are made on the following terms and conditions. The products and services being sold by ARKU are referred to below as the “goods” and the purchaser is referred to as the “Buyer”.

1. Agreement. If Buyer has not otherwise agreed to these Terms and Conditions, then Buyer’s acceptance of delivery of, or payment for, the goods shall constitute Buyer’s agreement to these Terms.

2. Orders. ARKU is not bound by an order until ARKU accepts it in writing. ARKU may elect not to accept an order if, in ARKU’s judgment, ARKU will be unable to meet the requested delivery date or to fill the requested quantity or type of products ordered. ARKU may also elect not to accept an order, or may delay shipment or cancel an accepted order, if Buyer is in default in obligation to ARKU or if the sale or shipment would cause Buyer to exceed Buyer’s credit limit.

3. Payment Terms. The payment terms shall solely be in accordance with the terms of the Purchase Order.

4. Delivery and Risk of Loss. Delivery shall be F.O.B ARKU’s place of business or other point of origin as stated on the Purchase Order. The time and place at which the risk of damage to or loss of the goods shall pass to Buyer shall be ARKU’s place of business or other point of origin from where the goods are released for shipment. Shipping, delivery and performance dates are estimates only, and time is not of the essence. ARKU may ship all the goods at one time or in portions from time to time. ARKU shall have the right to determine the method of shipment and routing for goods, unless otherwise specified by Buyer and Buyer shall be responsible for any insurance, fees and applicable taxes.

5. Unavoidable Delay. If ARKU is unable to finish and ship the goods to Buyer on time because of anything ARKU cannot reasonably control (such as acts of God, casualty, labor trouble, accidents or unavailability of supplies or transportation), the estimated delivery time shall be extended accordingly, and ARKU shall not be liable to Buyer for any damages by the delay.

6. Taxes. ARKU’s price does not include any value-added, sales, excise, use, customs, import/export or other duties or other taxes, and Buyer shall be liable for all such taxes, whether or not invoiced by ARKU

7. Changes. ARKU shall have the right to make design or engineering changes in its parts, equipment processes or methods of manufacturing.



8. Warranty. ARKU expressly warrants to Buyer that ARKU will produce and deliver the goods consistent with Buyer's specifications and use the skill, expertise and professional standards, meaning standards which are generally achieved in the industry by firms providing similar goods. This warranty shall begin upon final buy-off at Buyer's place of business and expire one (1) year thereafter. In the event of a breach of this warranty by ARKU, Buyer's sole remedy against ARKU shall be, at ARKU's option, the repair or replacement by ARKU of any non-conforming goods.

9. Limitations/Exclusion of Liability.

- (a) EXCEPT AS STATED IN PARAGRAPH 8, ARKU MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE GOODS AND IN PARTICULAR, MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND BUYER IS SOLELY RESPONSIBLE FOR DETERMINING THE PROPER APPLICATION AND USE OF GOODS. ARKU SHALL HAVE NO TORT LIABILITY TO BUYER WITH RESPECT TO ANY OF THE GOODS AND SHALL NOT BE LIABLE FOR CONSEQUENTIAL, PUNITIVE, SPECIAL OR INCIDENTAL DAMAGES ARISING FROM ANY PRODUCT DEFECT, DELAY, NON-DELIVERY, RECALL OR OTHER BREACH. BUYER SHALL HAVE NO RIGHT OF REJECTION OR REVOCATION OF ACCEPTANCE OF THE GOODS.
- (b) ARKU SHALL NOT BE LIABLE FOR ANY DAMAGE TO BUYER'S GOODS DURING ARKU'S PERFORMANCE OF SERVICES ON THESE GOODS IF SUCH DAMAGE IS DUE TO THE PHYSICAL CONSTITUTION, DENSITY OF MATERIAL OR OTHER CHARACTERISTICS OF THE GOODS ARKU'S WORK IS PERFORMED ON. TO ILLUSTRATE THIS EXCLUSION OF LIABILITY, IF ARKU IS RETAINED TO LEVEL A PIECE OF METAL WHICH HAS A LOW DENSITY, THERE IS A POTENTIAL, DURING THE LEVELING PROCESS, TO SCRATCH, IMPRESS OR CAUSE TRACES ON THE METAL. BUYER RECOGNIZES THIS POTENTIAL RISK OF DAMAGE AND ACKNOWLEDGES THAT ARKU IS NOT LIABLE THEREFOR.
- (c) ARKU'S LIABILITY FOR ANY CAUSE OF ACTION, OF WHATEVER KIND AND NATURE, SHALL NOT EXCEED, AND BE LIMITED TO, THE AMOUNT OF MONEY PAID BY BUYER UNDER THE PURCHASE ORDER OUT OF WHICH THE LIABILITY AROSE.

10. Permits and Compliance. ARKU is not responsible for obtaining any permits, inspections or licenses required for installation or operation of the goods. ARKU makes no promise or representation that the goods will conform to any federal, state, local, foreign or other laws, ordinances, regulations, codes or standards unless specifically stated in the Purchase Order.



11. Components of Another Product. If any of the goods constitute parts or components to be incorporated or installed in a product manufactured or assembled by or for Buyer, then (i) Buyer shall obtain, or cause the end-user of the product to obtain, all permits, inspections and licenses required for installation or operation of the product, (ii) Buyer shall cause the product to conform to all applicable laws, ordinances, regulations, codes and standards and (iii) Buyer shall place on the product all safety devices and warnings, and shall furnish to its buyer all operating instructions, that shall be necessary or desirable to prevent any death, personal injury or property damage from being caused by any use or operation of the product.

12. Safety Features. Buyer shall itself, or cause the end-user, to install and operate the goods properly and in accordance with any written instructions that ARKU provides, and Buyer shall not, and shall cause the end-user to not, remove or change any safety devices, warnings or operating instructions placed on the goods by ARKU.

13. Indemnity. Buyer shall indemnify and hold ARKU harmless with respect to all damages, losses, claims and expenses, including attorney fees, the ARKU incurs as a result of any breach by Buyer of any of its obligations under these Terms and Conditions or any claimed patent, trademark or copyright infringement or any other claim resulting from ARKU's manufacture of the goods to Buyer's specifications.

14. Grant of Security Interest. (i) Buyer, as security for payment of all amounts now owing or which may hereafter be owing to ARKU by the Buyer and for the observation and performance of all other obligations of the Buyer to ARKU, hereby grants to ARKU a security interest, including, without limitation, a purchase money security interest in all goods sold to Buyer by ARKU, including without limitation, all goods intended to be sold hereunder, now or in the future, together with all parts, accessories, attachments thereto and substitutions therefor, and (all proceeds in whatever form, or any sale, transfer of or other disposition of the goods sold to Buyer and without limiting the generality of the foregoing, all debts, accounts, claims and money or property that the Buyer received in respect of such goods, including insurance monies of any and all of which shall be received and held by Buyer in trust for ARKU and paid over to ARKU promptly upon receipt. ARKU is authorized without prior notice to Buyer, to file UCC financing statements with the proper authorities or take such other actions ARKU deems necessary to perfect its security interest hereunder. (ii) Buyer further acknowledges that all goods, without limitation, intended to be sold by ARKU to Buyer and which are sold by it to Buyer after the coming into effect of these Terms and Conditions are sold pursuant to these Terms and Conditions and subject to the security interest granted herein. (iii) Buyer may not pledge or assign as security the goods delivered by ARKU. Buyer shall notify ARKU immediately in the event of attachment, confiscation or other acquisition of the goods by a third party.

15. Intellectual Property and Confidentiality. All inventions (whether or not patentable), devices, technologies, ideas, improvements, processes, systems, software and other works and



matters that ARKU creates or develops in the course of ARKU's design, development or manufacture of the goods or performance of the services and all drawings and specifications that ARKU provides to Buyer ("Intellectual Property") shall be ARKU's sole property, and Buyer assigns, and agrees to assign, to ARKU all right, title and interest that Buyer now has or in the future acquires in the Intellectual Property. Buyer shall not disclose or use any of the Intellectual Property or any information about ARKU's business, operations or activities, except to the extent necessary for Buyer to use the goods or services. Buyer agrees that such information is confidential and proprietary, and that Buyer's subcontractors must be bound by a corresponding undertaking. Buyer shall not use or incorporate into any other product any of ARKU's logos, trademarks, trade names or part numbers. Buyer will not advertise, publish or disclose to third parties (other than to Buyer's professional advisors on a need-to-know bases) in any manner the fact that ARKU has contracted to furnish Buyer the goods or use any trademarks or trade names of ARKU in any press release, advertising or promotional materials, without first obtaining ARKU's written consent.

16. ARKU's Rights. ARKU has all the rights and remedies given to ARKU by applicable law and ARKU's rights and remedies are cumulative and may be exercised from time to time. No waiver by ARKU of any right on one occasion shall be a waiver of any future exercise of that right.

17. Time for Bringing Action. Any action by Buyer against ARKU for breach of any obligation of ARKU to Buyer or for any other claim arising out of or relating to the goods of their design, manufacture, sale or delivery must be brought within one (1) year after the cause of action accrues.

18. Applicable Law. This agreement between ARKU and Buyer shall be considered to have been made in the State of Ohio, and it shall be governed by and interpreted according to Ohio law, without reference to its conflicts of law rules. Any action arising out of or relating to this agreement shall be brought in any state court in Hamilton County, Ohio and Buyer irrevocably consents that any such court shall have personal jurisdiction over Buyer and waives any objection that the court is an inconvenient forum.

19. Complete Agreement; Amendment. The terms on the face of the Purchase Order and these Terms and Conditions contain the entire agreement between Buyer and ARKU. Any change in this agreement must be by written instrument signed by authorized ARKU officer.