



ACCU-FIRE FABRICATION, INC.
TERMS AND CONDITIONS OF SALE
Last Revised: May 1, 2009

The following Terms and Conditions of Sale (these “**Terms and Conditions**”) shall apply to all sales between Accu-Fire Fabrication, Inc., a Pennsylvania corporation (“**Accu-Fire**”), and the buyer listed on the Quote Form (“**Buyer**”). The Quote Form together with the Terms and Conditions shall collectively be referred to as the “**Sales Order.**”

1. Agreement. All of Accu-Fire’s sales are subject to these Terms and Conditions. The Quote Form shall constitute no more than Accu-Fire’s offer to sell the goods identified on the Quote Form (the “**Goods**”) to Buyer in accordance with these Terms and Conditions, which, when accepted by Buyer, shall constitute a binding agreement between the parties. Acceptance of this Sales Order shall be deemed to occur upon (a) receipt by Accu-Fire of a purchase order from Buyer; (b) receipt by Accu-Fire of a copy of the Quote Form acknowledged by Buyer without alteration; (c) written acknowledgment from Buyer of Buyer’s acceptance of the terms set forth in the Quote Form; (d) receipt by Buyer of the Goods; or (e) receipt by Accu-Fire of payment in full or in part for the Goods. Any terms and conditions proposed by Buyer in a purchase order or other document from Buyer that are different from, conflict with, or add to the Sales Order shall be deemed to materially alter the Sales Order and are objected to and rejected by Accu-Fire.

2. Prices. Buyer shall pay the price for the Goods as listed on the Quote Form (“**Purchase Price**”). Unless revoked prior to acceptance, such price shall be valid only for the period set forth on the Quote Form. Accu-Fire reserves the right to change its prices at any time without notification; provided, however, the price set forth on an accepted Sales Order shall be binding on the parties. The Purchase Price includes all applicable sales taxes and shipping costs. If Buyer is a tax-exempt entity, Buyer must present all appropriate documentation for any tax exemption to Accu-Fire prior to placing its order. All sales are quoted delivered to Buyer’s door. Additional charges may apply for certain shipments with special requirements. Orders must be placed in writing including, without limitation, by either facsimile or e-mail.

3. Payment. Buyer agrees to pay all invoices within thirty (30) days from the date of invoice. A late charge of one and one-half per cent (1.5%) per month on all invoices over thirty (30) days past due will be charged; this is equivalent to an eighteen per cent (18%) per annum interest charge. Accu-Fire reserves the right to change such terms of payment at any time and on a case-by-case basis.

Notwithstanding the foregoing, Accu-Fire shall have the right in its sole discretion at any

time to demand cash payment of some or all of the Purchase Price at the time the Sales Order is accepted, before shipment or C.O.D.

4. All Sales Final. Buyer agrees that upon acceptance of the Sale Order, ALL SALES ARE FINAL, non-cancelable and, except as provided in Section 8 below, cannot be returned for a refund or exchange thereafter. Prior to shipping Buyer's order, Accu-Fire retains the right to re-quote an order due to any clerical errors or mutual mistake of fact.

5. Security Interest. Buyer grants and Accu-Fire reserves a purchase money security interest in the Goods, and in any proceeds of the Goods, for the amount of the Purchase Price. Upon Accu-Fire's request, Buyer shall sign any and all documents Accu-Fire deems necessary to perfect such security interest. Buyer's full payment of the Purchase Price shall automatically terminate Accu-Fire's security interest.

6. Shipment Terms. A tentative date for shipment is provided on the Quote Form. Accu-Fire's obligation to ship by such date is expressly subject to the terms of the force majeure clause set forth in Section 17 below. While Accu-Fire shall make reasonable efforts to meet any delivery date(s) requested by Buyer, Accu-Fire will not be liable for its failure to meet any such date(s).

7. Risk of Loss. When the Goods are shipped on an Accu-Fire truck, Accu-Fire's responsibility ceases and the risk of loss of the Goods shall pass to Buyer upon delivery to Buyer's door. When the Goods are shipped via a common carrier, Accu-Fire's responsibility ceases and the risk of loss of the Goods shall pass to the Buyer with the acceptance of the Goods by the common carrier. When the Goods are picked up at Accu-Fire's facility by Buyer, risk of loss of the Goods shall pass to Buyer upon receipt of the Goods by Buyer.

8. Returns. If there is any damage, shortage or if the wrong Goods are shipped, Buyer must notify Accu-Fire in writing within ten (10) days of receipt of the product including, without limitation, by e-mail or by facsimile, to the address on the Quote Form to request a return pre-authorization. Accu-Fire shall be given an opportunity to inspect the Goods and may decide in its sole discretion Buyer's remedy as set forth in Section 11 below. Accu-Fire will not be held responsible for any claims made by Buyer after ten (10) days of receipt of the Goods, nor for returns without proper return pre-authorization. In the case of replacement, Accu-Fire will pay the shipping charges to the Buyer's location specified on the Quote Form. In all other cases, Buyer is responsible for paying the cost of shipping and for fully insuring the Goods.

9. Installation. Buyer agrees to follow any and all installation instructions and maintenance guidelines from Accu-Fire or the manufacturer of the Goods before or after installation. Accu-Fire disclaims all liability for defects arising from improper installation.

10. Warranties. ACCU-FIRE WARRANTS ONLY THAT, FOR A PERIOD OF THIRTY (30) DAYS FROM THE DATE OF SHIPMENT, THE GOODS WILL BE FREE FROM DEFECTS IN MATERIAL OR WORKMANSHIP. ACCU-FIRE WARRANTS PRODUCTS MANUFACTURED BY THIRD

PARTIES ONLY TO THE EXTENT OF THE ORIGINAL MANUFACTURER'S WARRANTY WHICH UPON DELIVERY OF THE GOODS IS DEEMED AUTOMATICALLY ASSIGNED TO BUYER. ACCU-FIRE MAKES NO OTHER WARRANTIES, AND SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES WHETHER EXPRESSED OR IMPLIED, ORAL OR IN WRITING, IN FACT OR ARISING BY OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE, OR OTHERWISE FOR ANY OF ITS PRODUCTS, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE.

11. Remedies of Buyer. BUYER'S EXCLUSIVE REMEDIES, AND ACCU-FIRE'S SOLE LIABILITIES, FOR SHIPMENT OF NONCONFORMING OR DEFECTIVE GOODS OR ANY BREACH OF WARRANTY OR BREACH OF THE SALES ORDER OR ANY CLAIM OF BUYER AGAINST ACCU-FIRE RELATED TO THE GOODS OR THE SALES ORDER, DIRECTLY OR INDIRECTLY, IS EXPRESSLY LIMITED TO, AT ACCU-FIRE'S OPTION, EITHER REPLACEMENT OF THE NONCONFORMING GOODS, A REFUND OF THE PURCHASE PRICE PAID BY BUYER, OR A REFUND OF THE ACTUAL DIRECT DAMAGES SUFFERED BY BUYER, WHICHEVER ACCU-FIRE DEEMS APPROPRIATE.

12. Limitation of Liability. ACCU-FIRE DISCLAIMS ALL LIABILITY FOR AND IS NOT RESPONSIBLE FOR ANY PROBLEMS OR DEFECTS ARISING FROM IMPROPER INSTALLATION, MAINTENANCE, OR USE OF THE GOODS. ACCU-FIRE IS NOT BOUND BY AND DISCLAIMS ALL LIABILITY FROM ANY REPRESENTATIONS OR UNDERTAKINGS MADE BY ANY OF ITS AGENTS OR EMPLOYEES, INCLUDING BUT NOT LIMITED TO THE SPECIFICATIONS, QUALITY, PACKAGING, PRICE, CONDITIONS, OR DELIVERY OF THE GOODS, EXCEPT AS EXPRESSLY SET FORTH IN THE QUOTE FORM. ACCU-FIRE SHALL HAVE NO RESPONSIBILITY FOR BUYER'S LABOR COSTS, DELAY DAMAGES OR SIMILAR CONSEQUENTIAL DAMAGES INCURRED DUE TO THE SHIPMENT OF DEFECTIVE GOODS, OR DELAY IN SHIPMENT OF GOODS.

Buyer assumes all risk and liability resulting from the use of the Goods, whether used singly or in combination with other goods. ACCU-FIRE SHALL NOT IN ANY CASE BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING FROM BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY. Such damages include, but are not limited to, loss of profits or revenue; loss of use of the Goods; cost of capital; cost of any substitute goods, facilities or services; cost of any recall; any loss, cost, expense or damage to property due to the use of the products or personal injury; any claim or demand of customers, employees or agents of Buyer for any such damages; or any claim or demand against Buyer by a third party.

13. Indemnification. Buyer assumes the entire responsibility and liability for and agrees to indemnify, defend and hold harmless Accu-Fire, its officers, directors, shareholders, agents, employees, successors and assigns from and against any and all losses, expenses (including without limitation, attorneys' and other professionals' fees and costs), costs, damages (including special, consequential, punitive and incidental damages), demands,

liabilities, suits and claims, in connection with or arising out of any actual or alleged personal injury (including death), or damage or destruction to property (including loss of use), or any other claim made by a third party by reason of (a) any act, error or omission, whether negligent or not, of Buyer or its agents, employees, suppliers, contractors, subcontractors or consultants, provided that such injury, death, damage or destruction is not occasioned by the sole gross negligence of Accu-Fire; (b) Buyer's use or misuse of the Goods (including but not limited to faulty installation, alterations or maintenance); or (c) Buyer's breach of this Sales Order, or violation of any applicable law or the rights of a third party. The provisions of this paragraph shall continue in effect notwithstanding the fact that Buyer has accepted and paid for the Goods. Buyer further understands that Accu-Fire is relying upon this limitation in determining the cost of the Goods and services provided to Buyer.

14. Termination for Convenience. Accu-Fire shall have the right to terminate the Sales Order for convenience, in whole or in part, at any time, upon delivery of written notice to Buyer. In the event of such termination, Accu-Fire's sole liability shall be limited to (a) delivery of Goods completed and available for shipment; and (b) the return of any payments made by Buyer for Goods not delivered. In no event shall Accu-Fire be liable to Buyer for loss of any anticipated profits, indirect damages or overhead expenses.

15. Cancellation. Accu-Fire shall have the right to cancel this Sales Order, in whole or in part, at any time, with or without notice to Buyer, upon the occurrence of any of the following events ("**Events of Default**"):

- (a) Buyer fails to fully perform or breaches any of its obligations under this Sales Order;
- (b) The commencement of an involuntary case or the filing of a petition against Buyer (i) seeking reorganization of, arrangement or adjustment of, or in respect of Buyer under the Federal Bankruptcy Code as now or hereafter constituted, or under any other applicable federal or state bankruptcy, insolvency, reorganization, or other similar law; (ii) seeking the appointment of a receiver, liquidator, assignee, custodian, trustee, or similar official of Buyer for any part of its property; or (iii) seeking the winding up or liquidation of its affairs, and such involuntary case or petition is not dismissed within thirty (30) calendar days after its filing;
- (c) The commencement against Buyer of a voluntary case, the institution by Buyer of proceedings to be adjudicated as bankrupt or insolvent, or the consent by Buyer to the institution of bankruptcy or insolvency proceedings against it under the Federal Bankruptcy Code as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency, or other similar law;
- (d) The consent by Buyer to the appointment of or taking possession of Buyer or any substantial part of its property by a receiver, liquidator, assignee, trustee, custodian, or other similar official;
- (e) The making by Buyer of any assignment for the benefit of creditors;
- (f) The admission by Buyer in writing of its inability to pay its debts generally as they

become due, or the failure of Buyer to generally pay its debts as such become due;

(g) The taking of any corporate action by Buyer, its shareholders, Board of Directors, or any committee of the Board in furtherance of any of the provisions of this paragraph; or

(h) Accu-Fire in its reasonable opinion believes that Buyer's ability to perform this Sales Order is in danger or impaired.

In the event of cancellation of this Sales Order by Accu-Fire under this Section 15, Accu-Fire shall have the rights and remedies set forth in Section 16, and Accu-Fire's sole liability to Buyer shall be to return any payments made by Buyer and delivered to Accu-Fire for cancelled Goods.

16. Rights and Remedies. If an Event of Default occurs, Accu-Fire shall, in addition to the right of cancellation, be entitled to all remedies for a breach of contract set forth in the UCC and all other remedies available at law or in equity. Additionally, Accu-Fire may, at its option:

(a) Make a full or partial delivery of Goods and demand immediate cash payment for such Goods;

(b) Demand immediate cash payment for Goods already delivered;

(c) Recover Goods shipped but not yet paid for; or

(d) Resell the Goods and charge Buyer for the amount by which the resale price is less than the Purchase Price.

The remedies provided in these Terms and Conditions in favor of Accu-Fire shall not be deemed to be exclusive, but shall be cumulative and in addition to all other remedies in Accu-Fire's favor existing at law or in equity. Accu-Fire may exercise all remedies, whether or not expressed, successively or concurrently, and any such action shall not operate to release Buyer until the full amount of all sums due and to become due under this Sales Order have been paid. NONE OF THE REMEDIES AVAILABLE TO ACCU-FIRE MAY BE LIMITED EXCEPT TO THE EXTENT AND IN THE MANNER AGREED UPON BY ACCU-FIRE IN A SEPARATE WRITTEN AGREEMENT SPECIFICALLY DESIGNATING SUCH LIMITATION AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF ACCU-FIRE.

17. Force Majeure. Accu-Fire will be excused from any delay or failure to perform under this Sales Order due, in whole or in part, directly or indirectly, to acts of God, floods, fires, explosions, civil disorder, acts of terrorism, weather or war, casualty or accidents, transportation difficulties, shortage of fuel, strikes, lockouts, or other labor or industrial disturbances; any law rule, order, or action of any court, agency or other instrumentality of the federal, state or local governments; or exhaustion, reduction, unavailability or delay in receipt of any parts, product or material necessary in the manufacture of the Goods to be sold (regardless of whether or not such exhaustion, reduction, unavailability, or delay is beyond such party's control, provided only that the same is not willfully done or brought about for the purpose of excusing performance under this Sales Order).

If any of the events or contingencies referred to in this Section 17 occur, Accu-Fire shall have the right to curtail deliveries or allocate its supply of goods for sale among all of its customers in any manner which Accu-Fire deems, in its sole discretion, fair and reasonable

in the circumstances, and Buyer shall not hold Accu-Fire responsible in any manner for losses or damages (including consequential damages) which Buyer may incur as a result of such failure, curtailment or allocation by Accu-Fire.

18. Waiver. No claim or right arising out of a breach of this Sales Order may be discharged in whole or in part by a waiver of the claim or right, unless the waiver is in writing signed by the waiving party. The waiver or acceptance of any breach by either party of any provision of this Sales Order shall not constitute a waiver of or an excuse for non-performance as to any other provision of this Sales Order, nor as to any prior or subsequent breach of the same provision.

19. Attorneys' Fees. In the event of litigation between the parties with regard to this Sales Order or the Goods, the losing party shall pay the expenses including, without limitation reasonable attorneys' fees, professionals' fees and costs, of the prevailing party, which includes any appeals and costs of collection, and which may be added to any judgment entered in such litigation.

Buyer also agrees to pay Accu-Fire's costs of collection, if applicable, including costs for a collection agency or legal counsel to collect past due payment.

20. Assignment. Buyer agrees that this Sales Order may be assigned by Accu-Fire at any time in its sole discretion. Buyer shall not assign, delegate or subcontract any of its rights or obligations under this Sales Order without the prior written approval of Accu-Fire. Any such assignment, delegation or subcontracting by Buyer without Accu-Fire's prior written consent shall be void and shall not release Buyer from any liability or obligation thereunder.

21. Severability. In case one or more of the provisions of this Sales Order shall, for any reason, be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such provision shall be modified or amended to the extent necessary to remove the invalidity, illegality or unenforceability. Should the amendment or modification of such provision be impossible, this Sales Order shall be construed as if it never contained the invalid, illegal or unenforceable provision and such provision shall not affect any other provision of this Sales Order.

22. Governing Law. The Sales Order shall be construed and enforced in accordance with the substantive and procedural laws of the Commonwealth of Pennsylvania, excepting conflicts of laws, and without regard to rules of construction or interpretation relating to which party drafted the Sales Order.

23. Jurisdiction. The parties confer jurisdiction to enforce this Sales Order upon the courts of the Commonwealth of Pennsylvania, Bucks County or the United States District Court for the Eastern District of Pennsylvania, and waive any objections to such jurisdiction and venue, including objection as to an inconvenient forum.

24. Changes. No change to a Sales Order shall be undertaken except upon written authorization of Accu-Fire. Accu-Fire may at any time by written notice make changes within the general scope of this Sales Order in the specifications, designs, packaging, methods of shipment, quantities, place of delivery, or delivery schedule(s). If any such change causes an increase or decrease in the costs of or the time required for Buyer's performance, an equitable adjustment may be made, agreed upon by Buyer and Accu-Fire, in the price or delivery schedule, or both, provided that a written request for such an adjustment shall be made to Accu-Fire within five (5) days from the date of Buyer's receipt of Accu-Fire's written notice making the change. This Sales Order may then be modified and Buyer's request for an equitable adjustment accepted only by written change order from Accu-Fire. Nothing contained in this Sales Order shall relieve Buyer from proceeding without delay to perform this Sales Order, as changed. Buyer is responsible for reading and following the terms set forth and for checking Accu-Fire's website for any updates.

25. Notices. All notices, requests, demands and other communications required or permitted under this Sales Order shall be in writing and shall be deemed to have been duly given, made and received when personally delivered, or upon actual receipt by overnight delivery, signature required or certified mail, postage prepaid, return receipt requested, to the respective addresses of the parties listed on the Quote Form, or upon sending to the email address or facsimile number of the parties listed on the Quote Form, if any such email address or facsimile number is listed. Any party may alter the address to which communications or copies are sent by giving notice of such change of address in conformity with the provisions of this paragraph.

26. Entire Agreement. These Terms and Conditions, together with the Quote Form, constitute the entire agreement between the parties with respect to the Goods. The agents, employees, and representatives of Accu-Fire are not authorized to make modifications to these Terms and Conditions or the Quote Form, or to make additional warranties binding on Accu-Fire. Any such additional statements, whether oral or written, do not constitute warranties and should not be relied upon by Buyer.