

Terms of Purchase

1. DEFINITIONS

BUYER shall mean ARCO, INC. SELLER shall mean supplier. GOODS mean the articles or service that ARCO, INC. agrees to buy from the supplier, as set out on this order

2. SUPPLIER REQUIREMENTS

All Sellers are expected to: i) implement a quality management system; ii) use customer-designated or approved external providers, including process sources (e.g., special processes); iii) notify the Buyer of nonconforming processes, products, or services and obtain approval for their disposition; iv) prevent the use of suspected unapproved, unapproved, and counterfeit parts (as per AS9120 Rev. B Standard); v) notify the Buyer of changes to processes, products, or services, including changes of their external providers or location of manufacture; vi) flow down to external providers applicable requirements including customer requirements; vii) provide a certificate of conformity, test reports, or authorized release certificate, as applicable; viii) retain documented information, including retention periods and disposition requirements; ix) provide the right of access to the Buyer, their customer, and regulatory authorities to the applicable areas of facilities and to applicable documented information, at any level of the supply chain; x) ensure that their employees are aware of their contribution to product or service conformity; their contribution to product safety; the importance of ethical behavior.

3. ACCEPTANCE

This purchase order is an offer to purchase goods and/or services as set forth on the face hereof. Any of the following acts by Seller shall constitute acceptance of this order; signing and returning a copy of this order, delivery of any of the goods ordered, commencement of performance or informing the Buyer in any manner of performance or returning Seller's own form of acknowledgement expressly acknowledging the terms set forth on the face hereof. Any additional or different terms or conditions on Seller's acknowledgement form, Seller's terms of sale or otherwise communicated by Seller in accepting this order shall be deemed to be a material alteration of this order and is hereby objected to by the Buyer. Any such terms or conditions shall be totally inapplicable to this order unless specifically agreed to in writing. Acceptance of the goods or services covered by this order will not constitute acceptance by Buyer of Seller's terms and conditions. To the extent this order is any way deemed to be an acceptance of a quotation or other offer by Seller, any such acceptance is expressly conditional upon the consent of the Seller to the terms and conditions of this order.

4. PRICE AND DELIVERY

Seller shall furnish the goods covered by this order (the "goods") or the services covered by this order ("the services") in accordance with the prices and delivery schedules stated on the face of this order. The Acceptance of late deliveries shall not be deemed a waiver by Buyer of its right to cancel this order in whole or part to refuse to accept further deliveries. As soon as the Seller determines that a delivery date cannot be met, the Seller shall immediately inform the Buyer, in writing, of Seller's best possible delivery date so that the Buyer can determine its acceptance of Seller's proposed new schedule. The above remedies afforded to Buyer shall not be exclusive and Seller shall indemnify and hold Buyer harmless from and against any and all damages, losses, demands, costs and expenses arising from claims or third parties due to any breach or default of the terms and conditions contained herein. Buyer may return or store at Seller's expense any Goods delivered more than five (5) calendar days in advance of the delivery date specified for such goods. Over-shipments are unauthorized quantity overages at Buyer's facility, whereby the quantity received exceeds the purchase order scheduled quantity. Buyer reserves the right to return the over-shipped quantity, or the entire received lot to the Seller without an RMA#, debiting Seller for the cost of the material and the cost for the incoming and outgoing transportation charges incurred.

5. PACKING AND SHIPPING

No charge shall be made by Seller for insurance, handling, packaging or storage. All goods shall be packaged, marked and otherwise prepared in accordance with good commercial practices to obtain lowest shipping rates. An itemized packing list with Buyer's part number and purchase order number shall accompany every shipment.

6. FREIGHT CHARGES

Freight charges for methods other than those specified on the face of this order and not authorized by the Buyer are borne by the Seller.

7. RETURNED GOODS

Upon request by representative of Buyer, Seller agrees to issue a Return Material Authorization (RMA#) for goods which are defective, early, non-conforming to any of the quality, packaging, date code, shipping requirements or special instructions on the face of this order, regardless of any NCNR agreement executed with this order. Seller agrees to provide this RMA# within one week of the initial request by the Buyer. If such RMA# is not provided within two weeks of the initial request, Seller agrees to accept return of such goods without an RMA# and to credit Buyer for such goods plus incoming and outgoing transportation charges (if applicable).

8. TITLE AND RISK OF LOSS OR DAMAGE

Except as otherwise agreed upon by the Buyer and the Seller, by the means of indicating trade terms on the face of this order or otherwise, upon delivery of the goods, title and risk of loss or damage thereto shall pass to the Buyer free and clear of all liens, claims, security interests or encumbrances, and no goods shall be subject to any agreement under which any lien, claim, security interest or encumbrance therein or thereon is retained by any third party.

9. INVOICING

After each shipment made or service provided under this order, Seller shall send a separate invoice, including part number, purchase order number, and method of shipment. Payment of invoice shall not constitute acceptance of the goods or services and shall be subject to appropriate adjustment for failure of Seller to meet the requirements of this order. Buyer may offset any amount owed by Seller or any of its affiliated companies to Buyer against any amount owed by Buyer to Seller under this order.

10. INSPECTION

All goods may be inspected and tested by Buyer, its customers and higher tier contractors at all reasonable times and places. The Seller agrees to permit access to the Seller's facilities at all reasonable times for inspection of the goods by the Buyer's agents or employees and shall provide all tools, facilities and assistance reasonably necessary for such inspection at no additional cost to the Buyer. In its internal inspection and testing of the goods, Seller shall, if required by the Buyer, use an inspections system accepted by the Buyer in writing. All inspection records relating to the goods shall be available to Buyer during the performance of this order, and for a period of ten (10) years from the ship date. Final inspection and acceptance by Buyer shall be at destination. Such inspection shall be in accordance with the customary established inspection procedures of Buyer. If rejection of a shipment would result from Buyer's normal inspection level under such procedures, Buyer may, at its option, conduct an above normal level of inspection up to 100% inspection, and charge the Seller, the reasonable costs thereof. No inspection (including source inspection), tests, approval (including design approval), or acceptance of the goods shall

relieve Seller from the responsibility for any defects, fraud, such gross mistakes as to amount to fraud, or Seller's warranty obligations. If the goods are defective, or otherwise not in conformity with the requirements of this order, Buyer may, by written notice to the Seller (i) rescind this order as to such goods, (ii) accept such goods at an equitable reduction in price, or (iii) reject such goods and require the delivery of replacements. Deliveries of replacements shall be accompanied by a written notice specifying that such goods are replacements. If Seller fails to deliver required replacements promptly, Buyer may (i) replace or correct such goods and charge Seller the costs thereof (including recovery of any direct, indirect, incidental or consequential costs/damages), or (ii) terminate this order for cause as provided in Section 22(b) hereof. Rights granted to the Buyer under this Section 9 are in addition to any other rights or remedies provided elsewhere in this order or in law.

11. WARRANTIES

In addition to all other express or implied warranties, Seller warrants that the goods will be (i) free from defects in workmanship and materials, (ii) free from defects in design except to the extent comply with the detailed designs provided by Buyer, (iii) suitable for the purposes, if any, which are stated on the face of this order and, (iv) in conformity with all the other requirements of this order. These warranties, and all other warranties, express or implied, shall survive delivery, inspection, acceptance and payment. In addition to any other rights Buyer may have, if goods are found not to be as warranted within a period of one (1) year after acceptance by Buyer, Buyer may return such goods to Seller, at Seller's expense, for correction, replacement or credit, as Buyer may direct. Any goods corrected or furnished in replacement shall, from date of delivery of such corrected or replaced goods, be subject to the provisions of this section 10 for the same period and to the same extent as goods initially furnished pursuant to this order. Seller warrants the goods will be produced in accordance with and will comply in all aspects with, any requirement of applicable laws and regulations and with industry standards. Buyer's review and approval of any samples, drawings, specifications or other description received from or developed by Seller in conjunction with this order will not limit Seller's responsibility for warranties contained herein. As to services, in addition to any express or implied warranties, Seller warrants that it possesses the requisite expertise, facilities and equipment necessary and appropriate to perform the services, and that such services shall be performed in a safe and workmanlike manner. In addition to any other rights Buyer may have, if the services are found not be performed as warranted within a one (1) year period after the conclusion of the performance of the services by the Seller, Seller shall, at Buyer's option, either refund the Buyer the amount paid for the services, or perform the services again in a proper manner to provide Buyer with the result originally specified by Buyer.

12. DISCONTINUED PRODUCTS/PRODUCT OBSOLESCENCE

Supplier may discontinue the manufacture and/or sales of any goods. In the event of any such discontinuance, or in the event that engineering changes render any goods obsolete, Seller shall give Buyer at least ninety (90) days written notice thereof. Buyer may, in its sole discretion, within sixty (60) days after receipt of such notice, notify Seller in writing of Buyer's intention to return any or all goods in its inventory that have been so discontinued. Buyer shall receive full credit for all such goods so returned. Any such credit shall be in the amount of the actual net invoice price paid by Buyer for the discontinued goods less any prior credits. Seller shall pay all freight charges. Furthermore, Seller grants Buyer the right of a Last Time Buy (LTB, adequate amount of goods) upon request.

13. MATERIALS AND TOOLS

If Buyer furnishes Seller material or equipment (such as special fixtures, tools, test equipment, masks, etc.) or pays for such material or equipment, title thereto shall remain or vest in Buyer, and Seller shall label, identify, maintain and preserve such material and equipment and shall dispose of it (including scrap) only in accordance with Buyer's written direction. Unless otherwise authorized in writing by Buyer, Seller shall

use such material/equipment exclusively in the performance of orders for Buyer. Seller shall be responsible for any loss, damage or destruction to such material/equipment. Seller shall not include any insurance cost in the process charges under this order.

14. CONFIDENTIALITY

The Seller shall keep confidential all information, drawings, specifications or data furnished by the Buyer or prepared by the Seller specifically in connection with the performance of this order, and shall not divulge or use such information, drawings, specifications or data for the benefit of any other party. Except as required for the efficient performance of this order, the Seller shall not make copies or permit copies to be made without the prior written consent of the Buyer. The Seller shall not use, either directly or indirectly, any such information, drawings, specifications or data for any purpose other than to perform this order without obtaining the Buyer's prior written consent.

15. USE OF INFORMATION:

The Seller agrees that all information heretofore or hereafter furnished or disclosed to the Buyer by the Seller in connection with the placing or filling of this order is furnished or disclosed as a part of the consideration for this order, that such information is not, unless otherwise agreed to by the Buyer in writing, to be treated as confidential or proprietary, and the Seller shall assert no claims (other than for patent infringement) by reason of the use of the disclosure of such information by the Buyer, its assigns or its customers.

16. COMPLIANCE WITH LAWS

The Seller agrees to fully observe and comply with all applicable national, federal, state and local laws, rules and regulations and orders pertaining to the production and sales of the goods, and, upon request, the Seller shall furnish the Buyer certificates or evidence of the compliance with such laws, rules, regulations and orders. Without prejudice to the generality of the foregoing, the Seller agrees to furnish only the goods (and package therefore) which comply with all national, federal, state and local laws, rules, regulations and orders pertaining to safety and health standards and to environmental compliance including, but not limited to those related to chemical, biological and radioactive substances or matters. In addition, the Seller shall not export/import the goods without first obtaining all required licenses from the appropriate authorities of the country(ies) of the Seller or/and the Buyer, if any.

17. LIEN WAIVERS

Seller shall furnish, upon Buyer's request, waivers by Seller and all other persons entitled to assert any lien rights in connection with the performance of this order and shall indemnify Buyer against all costs, loss or liability incurred by Buyer as a result of any failure by Seller or any other person to comply with the provisions of this section 16.

18. INFRINGEMENT AND INDEMNIFICATION

The Seller shall indemnify, hold harmless and defend Buyer and Buyer's customers, sellers and users of goods or services provided by the Seller hereunder from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorney's fees incident to any infringement or claimed infringement of any patent, trademark, design, copyright or any other intellectual property rights now existing or hereunder issued by the United States or any foreign country, which infringement or claimed infringement results in the results the normal use and/or resale of such goods or services, and Seller shall defend or settle at its own expense any suits, action or proceeding in which Buyer, any of Buyer's distributors, Seller or users of any such goods or services are made defendant for such

infringement. Seller further agrees to pay and discharge any and all judgments and decrees which may be rendered in any such suit, action or proceeding against such defendants.

19. INDEMNIFICATION AND NO IMPLAID

The Seller agrees to indemnify and hold harmless, the Buyer, its affiliates and their directors, officers, employees, successors, and assigns and customers and users of their products against all suits at law or in equity and from all damages, claims and demands arising out of the death of or any injury to any person or damage to any property alleged to have resulted from the items, and, upon the tendering of any suit or claim to the Seller, The Buyer or any other party, to defend the same at the Seller's expense to all costs, fees and damages. The foregoing indemnification shall apply whether the Seller, the Buyer or any other party defends such suit or claim and whether the death, injury or property damage is caused by the sole or concurrent fault, intent or negligence of the Seller or otherwise. The Seller shall not implead or bring an action against the Buyer or its employees based on any claim by any person for death or injury to an employee of the Buyer occurring in the course of the scope of employment and that arises out of items furnished under this order.

20. SUBCONTRACTS/ASSIGNMENTS

Seller shall not subcontract/assign this order or any rights under this order, without the prior written consent of Buyer, and no purported subcontract/assignment by Seller shall be binding on Buyer without such written consent.

21. ADVERTISEMENTS AND IDENTIFICATION

The Seller shall not in any manner advertise or publish the fact that it has furnished, or contracted to furnish, the Buyer the goods without prior written consent of the Buyer. The Seller shall not disclose any details in connection with this order to any party except as may be otherwise provided. The Seller shall make no use of any identification of the Buyer or its affiliates in the Seller's advertising or promotional efforts in reference to activities undertaken by the Seller under this order without the Buyer's prior written consent. The term "identification" includes, but is not limited to, any trade name, trademark, service mark, insignia, symbol or simulation thereof. The Seller agrees to remove any such identification prior to sale, use or disposition of the goods rejected, not purchased or returned by the Buyer, and shall indemnify the Buyer and its affiliates against any claim arising out of Seller's failure to do so.

22. CHANGES

Buyer, at any time, by written notice to Seller (and without written notice to sureties or assignees) may make changes to this order or suspend performance of this order. If any such change increases or decreases the cost or the time required for Seller's performance, an equitable adjustment will be made and this order will be modified in writing accordingly. Any claim by Seller for any adjustment hereunder must be submitted in writing to Buyer within ten (10) days from the date Seller is first notified of the change. Buyer will have the right to verify all claims hereunder by auditing relevant records, facilities, work or materials of Seller. Pending the resolution of any dispute regarding such adjustment, Seller agrees to proceed with its performance under the order as changed.

23. TERMINATION

a. Without Cause: Buyer may terminate, for its convenience, all or any part of this order at any time by written notice to Seller. Upon such termination, Buyer shall be relieved of all obligations to purchase any unpaid quantities unless a NCNR Non-Cancellable, Non-Returnable) Agreement has been signed by an official of the Buyer or his/her designee. Cancellation of NCNR materials shall have settlement made in

accordance with the principals contained in the Uniform Commercial Code as in effect of the date of this order, except that Seller must submit a written claim for equitable adjustment or termination to Buyer within forty-five (45) days after the effective date of termination, or such claim shall be absolutely and unconditionally waived. A NCNR order may be cancelled by the Buyer if the product has not been built.

b. With Cause: Buyer, upon written notice, may terminate and cancel this order in whole or part, without any penalty, fees or similar charges, upon any failure of Seller to perform or to comply with any of the terms or conditions of this order, or in the event of Seller's failure to give Buyer, upon request, reasonable assurances of Seller's future performance, or upon the occurrence of any event which causes reasonable doubt as to the Seller's ability to render the performance hereunder. The remedies here served by Buyer shall be cumulative and in addition.

24. SURVIVAL OF OBLIGATIONS

The Seller's obligation under this order, which by nature would continue beyond termination or cancellation of this order, shall survive the cancellation or termination.

25. NONWAIVER, PARTIAL INVALIDITY AND REMEDIES

Any and all failure, delay or forbearance of Buyer insisting upon or enforcing at any time or times any of the provisions of the order or to exercise any rights or remedies under the order, shall not be construed as a waiver or a relinquishment of any such provisions, rights or remedies in those or any other instances, rather the same shall be and remain in full force and effect. Further, if any provision of the order is or becomes void or unenforceable by law, the remainder shall be valid and enforceable. The remedies herein reserved unto the Buyer shall be cumulative and additional to any other remedies in law or equity.

26. FORCE MAJURE

Neither party shall be liable for defaults or delays due to Acts of God, acts of public enemy, acts or demands of any government or governmental agency, strikes, fire, floods, accidents or other unforeseeable causes beyond its control and not due to its fault, intent or negligence. Each party shall notify the other in writing of the cause of such delays within five (5) days of the beginning thereof. The Buyer reserves the right, by written notice to the Seller, to cancel this order, without any liability to the Seller, in the event of the continuation of such cause for thirty (30) days or more.

27. APPLICABLE LAW, DISPUTE RESOLUTION AND VENUE

The validity, performance and construction of this order shall be governed by the laws of the state of New Jersey. Any controversy or claim arising out of or related to this order, or breach thereof shall be resolved arbitration in accordance with the rules of the American Arbitration Association and the venue for any such arbitration shall be Hackensack, Bergen County New Jersey. Judgment upon the award rendered by the arbitrator(s) shall be entered by a court, either state or federal of appropriate jurisdiction in Hackensack, Bergen County New Jersey. Seller hereby submits to the personal jurisdiction thereof. In the event of any action at law or in equity is brought to enforce or interpret the provision hereof, the prevailing party shall be entitled to its reasonable attorneys' fees.

28. COMPLETE AGREEMENT

This order, and any supplemental sheets and riders annexed hereto by Buyer, contains the complete and entire agreement between the parties as to the subject matter hereof, and replaces and supersedes any prior or contemporaneous communications, representations or agreements, whether oral or written with respect to such matter.

29. EXPORT CONTROL COMPLIANCE

U.S. export law as contained in the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR) may be applicable to any technical information submitted with this order. This technical information is not to be placed in the public domain, exported from the U.S., or given to any foreign person in the U.S., without the prior, specific written authorization of ARCO, INC. and the U.S. Department of State or the U.S. Department of Commerce as applicable. Access to certain technology ("Controlled Technology") by Foreign Persons (working legally in the U.S.), as defined below, may require an export license if the Controlled Technology would require prior a license prior to delivery to the Foreign Person's country of origin. Seller is bound by the U.S. Export statutes and regulations and shall comply with all U.S. export laws. Seller shall have full responsibility for obtaining any export licenses or authorization required to fulfill its obligation under this Subcontract.

30. REMEDIES

Subject to any specific provisions in the Agreement, the order or herein the Supplier shall be liable for any damages incurred by the Buyer as a result of Supplier's failure to perform its obligations in the manner required by this Agreement. Seller shall also be liable to Buyer for all damage, loss, cost and expense (direct, indirect, incidental or consequential) attributable to such defect. The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies provided in law or equity.