

Terms and Conditions

A.R. Thomson Engineered Solutions Inc. ("ARTES") buys and sells, Specialty (or Custom) Seals, Expansion Joints, pipe Fittings and supports, Process and Control valves and accessories, lubricants, flow control devices, steam traps and systems, heat exchangers, hoses, and Pumps. (the **"Third-Party Goods"**).

ARTES manufactures and sells flexible metal hoses, rubber hoses, expansion joints, and Specialty (or custom?) Seals (the **"Manufactured Goods"** together with the **"Third-Party Goods"**, the **"Goods"**).

ARTES repair and assess valves and control instrumentation (the **"Service"** together with the **"Third-Party Goods"**, the **"Goods"**).

By engaging ARTES to purchase any Goods or Service, you, the buyer of any Goods or Service (the **"Buyer"**), agree to be bound by the following terms and conditions (the **"Terms"**). Notwithstanding anything to the contrary, if a written distribution agreement (the **"Distribution Agreement"**) and/or manufacture agreement (the **"Manufacture Agreement"**) is in existence covering the sale of the Goods, the terms, and conditions of the Distribution Agreement and/or Manufacture Agreement will prevail to the extent that they are inconsistent with these Terms.

ARTES's standard form purchase order (the **"Purchase Order"**) and these Terms collectively comprise the entire agreement (the **"Agreement"**) between the parties and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. The Buyer will issue a Purchase Order to ARTES. The Buyer's general terms and conditions of purchase are expressly excluded from this Agreement unless the Buyer's general terms and conditions have been accepted in writing by ARTES. Fulfillment of the Purchase Order does not constitute acceptance of any of the Buyer's terms and conditions and does not serve to modify or amend these Terms or waive any of ARTES's rights under these Terms.

1. ORDER PROCEDURE

- 1.1. ARTES will provide the Goods or Services to the Buyer as identified and listed in the Purchase Order.
- 1.2. If the Buyer wishes to alter the quantities and/ or sizes of the Goods as identified and listed in the Purchase Order, the parties will re-negotiate and agree in writing on the terms of such variation to the Purchase Order.

2. PRICE AND PAYMENT TERMS

- 2.1. The Buyer will purchase the Goods or Services from ARTES at the prices (the **"Prices"**) outlined in the Purchase Order. If the Prices should be increased by ARTES before delivery of the Goods or Services to a carrier for shipment to the Buyer, then these Terms will be construed as if the increased Prices were originally inserted herein, and the Buyer will be billed by ARTES on the basis of such increased Prices.

- 2.2. All Prices are exclusive of all harmonized sales tax, Goods and services tax, provincial sales tax, value added tax, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by the Buyer. The Buyer will be responsible for all such charges, costs, and taxes; provided that, the Buyer will not be responsible for any taxes imposed on, or with respect to, ARTES's income, revenues, gross receipts, personnel, or real or personal property, or other assets.
- 2.3. The Buyer will pay all invoiced amounts due to ARTES within thirty (30) days from the date of receiving ARTES's invoice.
- 2.4. The Buyer will reimburse ARTES for all costs incurred in collecting any late payments, including, without limitation, legal fees on a full solicitor-client basis. In addition to all other remedies available under these Terms or at law (which ARTES does not waive by the exercise of any rights hereunder), ARTES will be entitled to suspend the delivery of any Goods or Services if the Buyer fails to pay any amounts when due hereunder and such failure continues for seven (7) days following written notice thereof.
- 2.5. The Buyer will not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with ARTES, whether relating to ARTES's breach, bankruptcy or otherwise.

3. SHIPMENT AND DELIVERY

- 3.1. Following receipt of the Purchase Order, ARTES will provide the Buyer with an estimated delivery date for the Goods or Services, subject to availability of Goods. ARTES will make reasonable efforts to meet any delivery dates specified in the Purchase Order, however, any such dates will be estimates only.
- 3.2. Unless otherwise agreed in writing by the parties, ARTES will deliver the Goods EXW (Ex-Work) using ARTES's standard packaging and shipping methods. The Buyer will be responsible for all loading costs and provide equipment and labour reasonably suited for receipt of the Goods at the Delivery Point.
- 3.4. ARTES may, in its sole discretion, without liability or penalty, make partial shipments of Goods to the Buyer. Each shipment will constitute a separate sale, and the Buyer will pay for any Goods shipped, whether in whole or partial fulfillment of the buyer's purchase order.
- 3.5. If for any reason whatsoever, the Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to ARTES's notice of shipment that the Goods have been delivered to the Delivery Point, or ARTES is unable to deliver the Goods at the Delivery Point on such date because the Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods will pass to the Buyer; (ii) the Goods will be deemed to have been delivered; and (iii) ARTES, at its option, may store the Goods until the Buyer picks them up, whereupon the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).

4. TITLE AND RISK OF LOSS

- 4.1. Title and risk of loss passes to the Buyer upon delivery of the Goods to the Delivery Point.

5. INSPECTION AND ACCEPTANCE

- 5.1. The Buyer will have the opportunity to inspect the Goods upon receipt of the Goods at the Delivery Point for a period of seven (7) business days (the "**Inspection Period**"). The Buyer will be deemed to have accepted the Goods unless it notifies ARTES in writing pursuant to Section 16 of any Non-Conforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by ARTES. "Non-conforming goods" means only the following: (i) the product shipped is different than identified in the Purchase Order, or (ii) the product's label or packaging incorrectly identifies its contents.
- 5.2. If during the Inspection Period, the Buyer notifies ARTES of any Non-Conforming Goods, ARTES will, in its sole discretion, repair or replace such Non-Conforming Goods with conforming Goods. If ARTES exercises its option to replace Non-Conforming Goods, ARTES will, at ARTES's expense and risk of loss, deliver the replaced Goods to the Delivery Point.
- 5.3. The Buyer acknowledges and agrees that the remedies set forth in Section 5.2 are the Buyer's exclusive remedies for the delivery of Non-Conforming Goods. Except as provided under Section 5.2, all sales of Goods to the Buyer are made on a one-way basis and the Buyer has no right to return Goods purchased under this Agreement to ARTES.

6. LIMITED WARRANTY

- 6.1. For goods manufactured by ARTES, the Company warrants to the Buyer that, for a period of 12 months from the date of shipment, the products will conform to the specifications outlined in writing and will be free from defects in material and workmanship. Similarly, for OEM products (original equipment manufacturer), ARTES extends the manufacturer's warranty standard period from the date of shipment. During this warranty period, the products will adhere to specified specifications and exhibit excellence in material and workmanship. This warranty underscores ARTES' commitment to delivering high-quality goods that meet or exceed customer expectations, providing peace of mind to Buyers regarding the reliability and performance of their purchases.
- 6.2. ARTES makes no representations, conditions, or warranties with respect to any Goods, including any (i) condition or warranty of merchantability; (ii) condition or warranty of fitness for a particular purpose; (iii) warranty of title; or (iv) 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.
- 6.3. ARTES stands behind the quality and performance of the services delivered based on the specifications and requirements and the conformity agreed upon with the customer. ARTES will address any deficiencies, errors, or failures in their services.
- 6.4. ARTES will not be liable for a breach of the warranty set forth in Section 6.1. unless: (i) the Buyer gives written notice pursuant to Section 16 of the defect, reasonably described, to ARTES within seven (7) business days of the time when the Buyer discovers or ought to have discovered the

defect; (ii) ARTES is given a reasonable opportunity after receiving the notice to examine such Goods and the Buyer (if requested to do so by ARTES) returns such Goods to ARTES's place of business at ARTES's cost for the examination to take place there; and (iii) ARTES reasonably verifies the Buyer's claim that the Goods are defective.

6.5. ARTES will not be liable for a breach of the warranty set forth in Section 6.1. if: (i) the Buyer makes any further use of such Goods after giving written notice pursuant to Section 16; (ii) the defect arises because the Buyer failed to follow ARTES's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) the Buyer and/ or any third-party alters (including but not limited to the creation of gaskets) or repairs such Goods without the prior written consent of ARTES.

6.6. Subject to Section 6.3. and Section 6.4. above, with respect to any such Goods during the Warranty Period, ARTES will, in its sole discretion, either repair or replace such Goods (or the defective part), provided that, if ARTES so requests, the Buyer will, at ARTES's expense, return such Goods to ARTES. The remedies set forth in this Section will be the Buyer's sole and exclusive remedy and ARTES's entire liability for any breach of the limited warranty set forth in Section 6.1.

7. LIMITATION OF LIABILITY

7.1. In no event will ARTES be liable for any consequential, indirect, incidental, special, exemplary, or punitive damages, lost profits or revenues or diminution in value, arising out of or relating to any breach of these terms, whether or not the possibility of such damages has been disclosed in advance by the Buyer or could have been reasonably foreseen by the Buyer, regardless of the legal or equitable theory (contract, tort or otherwise) upon which the claim is based, and notwithstanding the failure of any agreed or other remedy of its essential

7.2. In no event will ARTES'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 amounts paid or payable by the Buyer to ARTES pursuant to this agreement in the six (6) month period preceding the event giving rise to the claim. The foregoing limitations will apply even if the Buyer's remedies under this Agreement fail of their essential purpose.

8. COMPLIANCE WITH LAW

8.1. The Buyer will comply with all applicable laws, regulations, and ordinances. The Buyer will maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. The Buyer will comply with all export and import laws of all countries involved in the sale of the Goods or Services under this Agreement or any resale of the Goods by the Buyer. The Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. ARTES may terminate this Agreement if any governmental authority imposes antidumping, countervailing duties, or any other penalties on Goods.

9. TERMINATION

9.1. ARTES may terminate this Agreement:

(a) at any time by providing the Buyer with thirty (30) days written notice; or

- (b) with immediate effect upon written notice to the Buyer, if the Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of the terms set forth in this Agreement, 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.
- 9.2. If after payment of the Prices by the Buyer, ARTES exercises its right to terminate this Agreement pursuant to Section 9.1. (a), ARTES reserves the right to either refund the Prices to the Buyer or deliver the Goods to the Delivery Point.
- 9.3. The rights and obligations of the parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

10. WAIVER

- 10.1. No waiver by ARTES of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by ARTES. 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.

11. CONFIDENTIAL INFORMATION

- 11.1. All non-public, confidential or proprietary information of ARTES, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by ARTES to the 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 ARTES in writing. Upon ARTES's request, the Buyer will promptly return all documents and other materials received from ARTES. ARTES will 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 the Buyer at the time of disclosure; or (c) rightfully obtained by the Buyer on a non-confidential basis from a third party.

12. FORCE MAJEURE

- 12.1. No party will be liable or responsible to the other party, nor 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 the Buyer to make payments to ARTES hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("**Impacted Party**") control, including, without limitation, the following force majeure events ("**Force Majeure Event(s)**"): (i) acts of God; (ii) flood, tsunami, fire, earthquake, explosion; (iii) epidemics, pandemics, including the 2019 novel coronavirus pandemic (COVID-19), and other potential disaster(s) or catastrophe(s); (iv) war, invasion, hostilities (whether war is declared or

not), terrorist threats or acts, riot, or other civil unrest; (v) government order, law or actions; (vi) embargoes or blockades in effect on or after the date of this Agreement; (vii) national or regional emergency; (viii) strikes, lockouts, labour stoppages or slowdowns, labour disputes, or other industrial disturbances; (ix) shortage of adequate power or telecommunications or transportation facilities; (x) failure of any governmental or public authority to grant a necessary license or consent; and (xi) other events beyond the control of the Impacted Party. The Impacted Party will give notice within seven (7) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party will use diligent efforts to end the failure or delay and ensure the effects of such a Force Majeure Event are minimized. The Impacted Party will 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 thirty (30) consecutive days following written notice given by it under this Section, the other party may thereafter terminate this Agreement upon seven (7) days written notice.

13. **ASSIGNMENT**

- 13.1. The Buyer will not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of ARTES. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the Buyer of any of its obligations under this Agreement.

14. **GOVERNING LAW**

- 14.1. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the laws of the Province of British Columbia and the applicable Canadian laws and will be treated in all respects as a British Columbia contract and the parties will, except as otherwise set out herein, submit to the jurisdiction of the courts of Vancouver, British Columbia.

15. **CHOICE OF FORUM**

- 15.1. Any legal suit, action, litigation or proceeding of any kind whatsoever in any way arising out of, from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, and all contemplated transactions, will be instituted in the courts of the Province of British Columbia and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, litigation or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein will be effective service of process for any suit, action, litigation, or other proceeding brought in any such court. Each party agrees that a final judgment in any such suit, action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

16. **NOTICES**

- 16.1. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") will be in writing and addressed to the parties at the addresses set forth on the face of the Purchase Order or to such other address that may be designated by the receiving party in writing. Notices sent in accordance with this Section will be deemed effectively given: (i) when received, if delivered by hand, with signed confirmation of receipt; (ii) when received, if sent by a

nationally recognized overnight courier, signature required; (iii) when sent, if by facsimile or email, in each case, with confirmation of transmission, if sent during the addressee's normal business hours, and on the next business day if sent after the addressee's normal business hours; and (iv) on the 5th day after the date mailed by certified or registered mail by the Canada Post Corporation, return receipt requested, postage prepaid.

17. FURTHER ASSURANCES

- 17.1. Each of the parties hereto will from time to time furnish the other parties such further information or assurances, execute and deliver such additional documents, instruments, and conveyances, and take such other actions and do such other things, as may be necessary to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.

18. SEVERABILITY

- 18.1. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.