

# Azmark Aero Systems, LLC - Conditions of Sale

## 1. Agreement

**A.** These Terms and Conditions shall apply to all offers made by Azmark Aero Systems, LLC ("**Azmark**"), and all purchase orders and other contracts for the sale or goods or performance of services (each, a "**PO**") made between Azmark and any person, firm or entity ("**Buyer**") purchasing products, material, parts and services ("**Products**") from Azmark. In the event of any conflict between the terms and conditions constituting a PO, the following order of precedence shall apply: (i) these Conditions of Sale, and (ii) the terms specified on a PO that has been accepted by Azmark in writing. Unless specifically agreed to in writing by Azmark, Azmark objects to, and is not bound by, any term or condition that differs from or adds to these Conditions of Sale. Buyer's submission of a PO shall conclusively evidence acceptance of the Conditions of Sale as written.

**B.** All POs should specify: (1) PO number; (2) applicable part number; (3) requested delivery dates; (4) price; (5) quantity; (6) location to which the Product is to be shipped; (7) location to which invoices will be sent for payment; and (8) quote reference number (if applicable). Azmark's PO acknowledgment will not constitute acceptance of Buyer's terms and conditions.

**C.** POs will not be deemed accepted by Azmark until Azmark has provided written notice of its acceptance, which may be provided electronically, from its authorized agent. Once a PO has been accepted, it will be deemed a firm order and may not be cancelled unless mutually agreed by Buyer and Azmark.

**D.** The terms and conditions of a PO may only be amended or modified in writing, acknowledged and signed by an authorized Azmark representative.

**E.** The term "**Products**" as used herein may refer to goods, products, services rendered in connection with Products, reports, data and other personal or intellectual property ordered or deliverable hereunder as the context so requires. Any provision of a PO or of the law pertaining to goods, products, supplies, or services shall apply to all things so defined, including, without limitation the Arizona Uniform Commercial Code, to the extent applicable.

**F.** The terms "**Conforming**" or "**Conforming Products**" means Products that conform in all material respects with the specifications as set forth in an accepted PO. The terms "**Non-Conforming**" or "**Non-Conforming Products**" means Products which fail in any material respect to conform with the specifications as set forth in an accepted PO.

## 2. Delivery; Inspection

**A.** Azmark will use commercially reasonable efforts to adhere to the shipment or delivery schedules specified in a PO. In the event of any anticipated or actual delay, including but not limited to delays attributed to labor disputes, Azmark shall: (i) promptly notify Buyer of the reasons for the delay and the actions being taken to overcome or minimize the delay; and (ii) if requested by Buyer, at Buyer's cost ship via air or other expedited routing to avoid or minimize delay to the maximum extent possible, unless Azmark is excused from prompt performance as provided in the "Force Majeure" Section.

**B.** Azmark may deliver Products prior to the scheduled delivery dates unless expressly directed otherwise by Buyer.

**C.** Due dates shown are on dock at Azmark's facilities, unless otherwise stated in the body of an accepted PO.

**D.** Delivery terms are ExWorks (Incoterms 2000), Azmark's facility. Title and risk of loss for the Products will pass to Buyer

at the time Buyer's carrier takes possession of the Products at Azmark's facility docks.

**E.** Title to all Products delivered hereunder shall be delivered free and clear of all liens, charges or encumbrances, and Azmark warrants that the title conveyed shall be good and marketable, and the transfer rightful.

**F.** Buyer must promptly inspect all deliveries and notify Azmark of any claimed non-conformance within ten (10) days of the date of delivery where such non-conformance is based on delivery date, quantity, or Product actually delivered (a "**Delivery Non-Conformance**"). Buyer waives any claim of a Delivery Non-Conformance if Buyer does not notify Azmark within the 10-day period.

## 3. Packaging/Shipping

**A.** Azmark shall pack the Products to prevent damage and deterioration. Unless expressly agreed by Azmark in writing, the price excludes shipping charges.

**B.** Unless a PO specifies otherwise, Azmark will ship the Products in accordance with the following instructions:

(i) Shipments will include packing sheets containing Azmark's PO number, line item number, description and quantity of Products shipped, part number or size, if applicable, and evidence of inspections.

(ii) Unless otherwise agreed by the parties, Azmark will arrange for shipment of the Products and invoice Buyer for the total cost of shipment.

**4. On-site Inspection.** At Buyer's written request, Azmark will permit Buyer to access Azmark's facilities to inspect Azmark's manufacturing process. These inspection rights shall extend to customers of Buyer that are departments, agencies or instrumentalities of the United States Government. Buyer shall perform inspections so as not to unduly delay or interfere with Azmark's operation of its facilities. If Buyer performs an inspection on the premises of Azmark, Buyer will be subject to, and must strictly comply with, all Azmark onsite policies and procedures and Buyer will indemnify Azmark from and against any and all claims, losses or damages, cause by Buyer, or any of its employees, officers, directors, owners, agents or representatives while onsite at Azmark's facilities.

**5. PURCHASE ORDER CANCELLATION.** Cancellation of an order, for any reason except those contained in these Conditions of Sale, will be allowed only upon written approval by Azmark. In the event Buyer cancels an order, Azmark reserves the right to invoice Buyer for costs incurred due to the cancellation up to the price of cancelled part. An order may be canceled only upon receipt of written acceptance of the cancellation fees from Buyer in the form of a purchase order in the amount of assessed cancellation fees. The cancellation fee for an order will be subject to the actual cost incurred by Azmark up to the point of cancellation including profit and all associated termination costs.

## 6. Payments/Invoices.

**A.** Azmark shall issue a separate original invoice for each delivery that shall include Buyer's PO number and line item number. Azmark shall forward its invoice to the address specified in a PO. Payment is due **thirty [30]** days from the payment due date unless otherwise agreed to in writing by both Buyer and Seller. The payment due date, including discount periods, shall be computed from the earlier of the scheduled delivery date, the actual delivery date or the date of

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receipt of an invoice. Payment shall be deemed made on the date Buyer's check is received by Azmark.

**B.** Azmark may without notice to Buyer, modify or withdraw credit terms including, but not limited to, requiring advance payment, guarantees, or other security. If Buyer is delinquent in its payment to Azmark, then until all delinquent amounts are paid: (1) Azmark will be relieved of its obligations with respect to guarantees, including without limitation, turnaround times, spares support and delivery lead times; (2) refuse to process any credit to which Buyer may be entitled; (3) set off any credit or sum owed by Azmark to Buyer against any undisputed amount owed by Buyer to Azmark; (4) withhold future shipments to Buyer; (5) declare Buyer's performance in breach and terminate any PO; (6) repossess Products for which payment has not been made; (7) deliver future shipments on a cash-with-order or cash-in-advance basis; (8) charge and apply interest on delinquent amounts at a rate of 1.5% per month or the maximum rate permitted by law, if lower, for each month or part thereof; (9) charge storage or inventory carrying fees on Products; (10) recover all costs of collection including, without limitation, reasonable attorneys' fees; (11) if Buyer is delinquent on a payment schedule, accelerate all remaining payments and declare the total outstanding balance then due and owing; or (12) combine any of the above rights and remedies as may be permitted by applicable law. The above remedies are in addition to all other remedies available at law or in equity.

**C. No Right of Setoff.** Buyer may not setoff or recoup invoiced amounts or any portion thereof against sums that are due or may become due from Azmark, its parents, affiliates, subsidiaries or other divisions or units.

**7. TAXES.** Azmark's pricing excludes all taxes (including, but not limited to, sales, use, excise, value-added or other similar taxes), duties and charges (collectively, "**Taxes**"). Buyer will pay all Taxes resulting from an Order or Azmark's performance, whether imposed, levied, collected, withheld or assessed now or later. If Azmark is required to impose, levy, collect, withhold or assess any Taxes on any transaction under a PO, then in addition to the purchase price, Azmark will invoice Buyer for the Taxes unless, at the time of acceptance of the PO, Buyer furnishes Azmark with an exemption certificate or other documentation sufficient to verify exemption from the Taxes. If any Taxes are required to be withheld from amounts paid or payable to Azmark under a PO: (i) such withholding amount will not be deducted from the amounts due Azmark as originally priced; (ii) Buyer will pay the Taxes on behalf of Azmark to the relevant taxing authority in accordance with applicable law, and (iii) Buyer will forward to Azmark within 60 days of payment proof of Taxes paid sufficient to establish the withholding amount and the recipient.

## **8. Warranty.**

**A.** Azmark warrants that all Products furnished under a PO shall conform to all specifications and requirements of a PO and shall be free from defects in materials, workmanship, design and specification for a period of time equal to six (6) months following first use of the Product, or twelve (12) months from the date of delivery, whichever period is shorter (the "**Warranty Period**").

**B.** Buyer must notify Azmark in writing within 10 calendar days of discovery of a Non-Conforming Product. Azmark's obligation and Buyer's sole remedy under this warranty is repair or replacement, at Azmark's election, of any Non-Conforming

Product. All Non-Conforming Products repaired or replaced are warranted only for the unexpired portion of the original Warranty Period. Unless expressly directed otherwise, Buyer must ship all Non-Conforming Products to Azmark for its inspection and confirmation of non-conformance. Azmark will pay for, or reimburse Buyer for, round trip shipping costs, with Azmark's pre-approval in writing, in an amount not to exceed actual reasonable direct freight charges to and from Azmark. Buyer will provide copies of freight invoices to Azmark upon request. Round trip shipping costs expressly exclude freight forwarding charges, taxes, duties and tariffs. The party initiating transportation bears the risk of loss or damage to Products in transit.

**C.** If Azmark reasonably determines that the Product was not a Non-Conforming Product, then Buyer will pay all expenses related to the improper return including, but not limited to, diagnostic and shipping charges.

**D.** Azmark will not be liable under this warranty if the Product has been exposed or subjected to any: (1) maintenance, repair, installation, handling, packaging, transportation, storage, operation or use that is improper or otherwise not in compliance with Azmark's instruction; (2) Product alteration, modification or repair by anyone other than Azmark or those specifically authorized by Azmark; (3) accident, contamination, foreign object damage, abuse, neglect or negligence after shipment to Buyer; or (4) damage caused by failure of a Azmark-supplied product not under warranty or by any hardware or software not supplied by Azmark.

**E.** Azmark has no obligation under this warranty unless Buyer maintains records that accurately document operating time, maintenance performed and the nature of the unsatisfactory condition of Azmark's Product. Upon Azmark's request, Buyer will give Azmark access to these records for substantiating warranty claims.

**F.** THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR PARTICULAR PURPOSE.

## **9. RETURNED MATERIAL AUTHORIZATION (RMA).**

Except for standard repairs (including warranty), warranty claims of Non-Conforming Products under Section 7, and timely Delivery Non-Conformance claims, returned Products will not be accepted. Buyer must obtain prior approval from Azmark for any return of Products. Requests for returns must be submitted within 30 days after the delivery date of the Product. Return shipments to Azmark without proper authorization and documentation may be returned at Buyer's expense. For approved RMA's Azmark must receive the Product within 30 days of the RMA issue date (the "**Return Period**"). Azmark reserves the right to return any Product received after the Return Period at Buyer's sole cost and expense.

**10. LIMITATION OF LIABILITY.** IN NO EVENT WILL AZMARK BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR INDIRECT DAMAGES, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## **11. Changes.**

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**A.** Buyer may, by giving written notice, direct changes within the general scope of a PO in any of the following: (i) technical requirements and descriptions, specifications, statement of work, drawings or designs; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) amount of Buyer-furnished property; and, if a PO includes services, (1) description of services to be performed; (2) time of performance (e.g., hours of the day, days of the week); (3) place of performance, and (4) terms and conditions of a PO required to meet Buyer's obligations under Government prime contracts or subcontracts.

**B.** If such change increases or decreases the cost or time required to perform a PO, Buyer and Azmark shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. Failure of the parties to agree upon any adjustment will excuse Azmark from performing in accordance with Buyer's direction.

**C.** If Azmark considers that Buyer's conduct constitutes a change, Azmark shall notify Buyer promptly in writing as to the nature of such conduct and its effect upon Azmark's performance. Pending direction from Buyer, Azmark shall take no action to implement any such change.

**12. Assignment, Delegation and Subcontracting.** Azmark may assign any of its rights or interest in a PO or delegate any of its duties or obligations under a PO without Buyer's prior written consent. Azmark may assign its right to monies due or to become due. Notwithstanding, no assignment, delegation or subcontracting by Azmark, with or without Buyer's consent, shall relieve Azmark of any of its obligations under this contract or prejudice any of Buyer's rights against Azmark whether arising before or after the date of any assignment. This Section does not limit Azmark's ability to purchase standard commercial supplies or raw materials.

**13. Publicity.** Buyer shall not, and shall require that its subcontractors shall not, release any publicity, advertisement, news release or denial or confirmation of same regarding a PO or the Products or program to which it pertains without Azmark's prior written approval.

**14. Confidential, Proprietary and Trade Secret Information and Materials.** Buyer and Azmark shall each keep confidential and protect from unauthorized use and disclosure all (i) confidential, proprietary and/or trade secret information; (ii) tangible items and software containing, conveying or embodying such information; and (iii) tooling identified as being subject to this Section and obtained, directly or indirectly, from the other in connection with a PO or other agreement referencing a PO (collectively referred to as "**Proprietary Information and Materials**").

**A.** Buyer and Azmark shall each use Proprietary Information and Materials of the other only in the performance of and for the purpose of a PO and/or any other agreement referencing a PO.

**B.** Upon Buyer's request at any time, and in any event upon the completion, termination or cancellation of a PO, Azmark shall return to Buyer all of Buyer's Proprietary Information and Materials and all materials derived therefrom, unless specifically directed otherwise in writing by Buyer.

**C.** Azmark may disclose Proprietary Information and Materials of Buyer to its subcontractors as required for the performance of a PO, provided that each such subcontractor first agrees in

writing to the same obligations imposed upon Azmark under this Section relating to Proprietary Information and Material.

**D.** Unless otherwise agreed upon by both parties in writing, Azmark owns all rights to all Azmark developed specifications, drawings, engineering instructions, data, material, equipment, software, programs, processes, facilities and tooling, including, but not limited, to jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, manufacturing aids and replacements items, now existing or hereafter created, except to the extent that title is specifically transferred in writing from Azmark to Buyer

**E.** The provisions of this Section are effective in lieu of any restrictive legends or notices applied to Proprietary Information and Materials. The provisions of this Section shall survive the performance, completion, termination or cancellation of a PO. .

## 15. Indemnity.

**A.** Buyer will indemnify, defend and hold harmless Azmark, its directors, officers, employees, and its customers from all Losses arising from or related to the actual or alleged infringement of any United States patent, copyright, trademark, or trade secret property right and arising out of. (i) Buyer's designs, drawings or manufacturing specifications; or (ii) claims of infringement resulting from combining any Product furnished hereunder with any material, part, item or component not furnished by Azmark.

**B.** Azmark will have no obligation under this Section with regard to any infringement arising from (i) Azmark's compliance with formal specifications issued by Buyer where infringement could not be avoided in complying with such specifications or (ii) use or sale of Products by Buyer in combination with other items when such infringement would not have occurred from the use or sale of those Products solely for the purpose for which they were designed or sold by Azmark.

**16. Gratuities.** Azmark warrants that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to Buyer's employees, agents or representatives for the purpose of securing a PO or securing favorable treatment under a PO.

**17. Waiver.** Any failures, delays or forbearances of either party in insisting upon or enforcing any provisions of a PO, or in exercising any rights or remedies under a PO, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect.

**18. Force Majeure.** Azmark will not be liable for any loss, damage or costs incurred by Buyer as a result of any failure to perform a PO under its terms if the failure arises from causes beyond the control and without the fault or negligence of Azmark. Examples of these causes are acts of God or of the public enemy, acts of the Government in its sovereign or contractual capacity, performance of subcontractors, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather.

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## 19. Disputes.

**A.** Any dispute arising out of or relating to these Conditions of Sale, including the breach, termination or validity thereof ("**Dispute**"), will be finally resolved by arbitration. The arbitration will be conducted in English. A single arbitrator will apply the Center for Public Resources Institute for Dispute Resolution Rules for Non-Administered Arbitration then currently in effect to finally resolve the Dispute. The arbitration will be governed by the Federal Arbitration Act, 9 U.S.C. Secs. 1-16, and judgment upon on the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The place of arbitration will be Phoenix, Arizona, unless otherwise agreed upon in writing by both parties.

**B.** All awards will be payable in U.S. dollars, and judgment on the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. Either party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved.

**C.** If any dispute, or response to any dispute, includes an allegation that potentially concerns whether any intellectual property right owned, controlled or licensable by either party is invalid, unenforceable or infringed or misappropriated, or is otherwise limited in scope or application, then either party may, in its sole discretion, elect to have that dispute adjudicated before a court of competent jurisdiction and this section will not be binding on either party with respect to that dispute in its entirety or any related dispute, including any portions of a dispute that do not concern intellectual property rights.

**20. Compliance with Law.** Each party shall comply with all applicable statutes and government rules, regulations and orders, including those pertaining to United States Export Controls.

**21. Export Controls.** Buyer will comply with all applicable export and import control laws and regulations, including the

United States Export Administration Regulation ("EAR") and the United States International Traffic in Arms Regulations ("ITAR"), and will retain documentation evidencing such compliance. Buyer is aware that U.S. export law may impose restrictions on Buyer's use of the goods, services, or technical data, or on their transfer to third parties. Buyer will immediately notify Azmark and cease distribution activities with regard to the transaction in question if Buyer knows or has a reasonable suspicion that the products, technical data, plans, or specifications may be redirected to other countries in violation of export control laws.

**22. Code of Conduct.** Azmark is committed to conducting its business fairly, impartially, and in an ethical and proper manner. Azmark's expectation is that Buyer also will conduct its business fairly, impartially, and in an ethical and proper manner. Buyer shall comply with all the rules and regulations established by Azmark for access to and activities in and around premises controlled by Azmark or Azmark's customer. If Azmark has cause to believe that Buyer or any employee or agent of Buyer has behaved improperly or unethically under this PO, Azmark shall report such behavior to Buyer.

**23. Governing Law.** This PO shall be governed by and construed in accordance with the laws of the state of Arizona, without regard to its conflict of laws rules. This PO excludes the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods.

**24. Entire Agreement.** This PO contains the entire agreement of the parties and supersedes any and all prior agreements, understandings and communications between Buyer and Azmark related to the subject matter of a PO. No amendment or modification of a PO shall bind either party unless it is in writing and is signed by an authorized representative of the parties.