



Terms and Conditions of Sale

1. OFFERS; ENTIRE AGREEMENT. These Terms and Conditions of Sale shall apply to all offers made by ITT Aerospace Controls LLC, Industrial Tube Company LLC, Electrofilm Manufacturing Company LLC or AcousticFab LLC ("Seller"), in any medium, for Seller's offered products or services ("Products"). Any purchase order or similar instrument placed by a Buyer that is accepted by Seller ("Order") is expressly conditioned upon full applicability of these Terms and Conditions of Sale, to the exclusion of any other terms and conditions, including, but not limited to, any standard terms and conditions of Buyer or any terms stated on an Order. Buyer's unconditional acceptance of these Terms and Conditions of Sale shall be inferred by Buyer's issuance of an Order. Issuance of an Order acknowledgement or provision of Products by Seller shall not constitute acceptance of any of Buyer's terms and conditions. Regardless of whether these Terms and Conditions are referenced in an Order, all Orders accepted by Seller shall be governed by these Terms and Conditions of Sale and shall constitute the entire agreement of the parties. These Terms and Conditions of Sale supersede any prior written or oral agreements or understandings and shall not be supplemented by any prior course of dealing, course of performance or usage of trade. No modification hereof shall be valid unless in writing and duly signed by a person authorized by Seller.

2. PRICES. Prices quoted by Seller are for specific quantities stated and are firm for 90 days or until the end of the calendar year, whichever is less. Quoted prices are based on known requirements at the time of offer. All other prices are subject to change without notice. Any adjustments shall be made to Seller's prices in effect at time of Order placement. Prices are exclusive of any taxes and do not include charges for transportation or any special requirements related to transportation, special packaging or marking, testing, reports or inspection.

3. SHIPMENT. Shipping terms are Ex Works-Seller's Facility (INCOTERMS 2010 EXW) unless otherwise specified. Risk of loss and title for Products shall transfer when Products are made available for Buyer to collect. In the absence of specific instructions, Seller will select the carrier. Products held for Buyer, or stored for Buyer, shall be at the sole risk and expense of Buyer.

4. PAYMENT TERMS. Advance payment is required until Buyer has received credit approval from Seller. Upon credit approval, payment terms are net 30 days from date of invoice. Seller reserves the right to require payment in advance or COD or otherwise modify credit terms at any time. No prompt payment discounts shall apply to any Order. Seller reserves the right to refuse shipment or delivery or performance of work except upon receipt of payment or satisfactory credit terms without any liability to Seller. For partial shipments, payments shall become due in accordance with the designated terms of the invoice. Where Buyer requests postponement of any shipment for more than thirty (30) calendar days, payment will become due thirty (30) calendar days after notice to Buyer that Products are ready for shipment. All payments shall be made using wire transfer in United States Dollars (USD).

5. TAXES. Unless prohibited by statute, Buyer agrees to pay Seller the amount of any Federal, State, City, or other tax import or export duty, tariff, or customs charge levied by any jurisdiction either inside or outside the United States which Seller may be required to pay on account of the ownership at the place of installation, or the manufacture, transportation, sale, or use of the material and equipment which is the subject of this contract. If Buyer provides Seller with a tax exemption certificate approved by the applicable taxing authority, Seller agrees to exclude any such exempted taxes from its invoice.

6. DELIVERY; BUYER-CAUSED DELAYS. Delivery dates are approximate and are based on timely receipt of all necessary material and/or information from Buyer, where applicable. Seller will notify Buyer if conditions arise that

would prevent compliance with delivery schedules. Seller shall not be liable for any damages (liquidated or otherwise), re-procurement costs or lost profits for delay in delivery or for failure to give notice of delay. Buyer shall not suspend or cancel any Order, except where in accordance with these terms or where expressly agreed to by Seller. Unless Buyer explicitly prohibits advance delivery, Buyer agrees to accept delivery up to thirty (30) days in advance.

7. FORCE MAJEURE. Without limiting the generality of Seller's limitation of liability for delivery as set forth in Sections 6 and 11, under no circumstances shall Seller be responsible for delays in performance arising from causes that are beyond its control and without Seller's fault or negligence ("Force Majeure Event"). Examples of such Force Majeure Events include, but are not limited to, fires, floods, earthquakes, quarantine restrictions, riots, strikes, freight embargoes, or transportation delays; shortage of labor, failure to obtain export licenses, inability to secure fuel, material, supplies or power or other energy requirements or on account of shortages thereof; acts of God or of the public enemy, acts of Buyer; any existing or future acts of any government affecting the conduct of Seller's business which Seller in its judgment and discretion deems advisable to comply with either as a legal or patriotic duty, or to any other cause beyond Seller's reasonable control. Seller shall advise Buyer of a Force Majeure Event as soon as is possible in light of its type and degree.

8. INSPECTION AND ACCEPTANCE. Buyer will conduct prompt inspection of all delivered Products and will immediately notify Seller of an identified non-conformance. All Products shall be deemed accepted by Buyer unless Seller receives written notice of rejection within thirty (30) calendar days from date of shipment. Whenever Seller agrees to Buyer-conducted source inspection, Products shall be accepted or rejected by Buyer prior to shipment. Seller shall be given a reasonable amount of time to review any non-conformances identified by Buyer. Payment of any invoice for Products shall be interpreted as acceptance of the Products referred to in the invoice. Buyer will be responsible for all costs incurred by Seller attributed to any rejection that Seller reasonably determines as improper. If Seller confirms the asserted non-conformance, Seller agrees to repair or replace the Products, at Seller's sole discretion. Buyer's remedies under this Section 8 are exclusive and lieu of all other remedies available under these Terms and Conditions or at law related to rejected Products.

9. WARRANTY; DISCLAIMER. (a) Standard Warranty: Seller warrants that at the time of shipment the Products designed and manufactured by Seller will conform to Seller's applicable drawings or specifications (or applicable drawings or specifications approved by Seller in writing) and will be free from defects in material and workmanship for twelve (12) calendar months from the date of shipment. Seller's standard warranty is void for any product subject to misuse, neglect, accident, improper storage, installation or maintenance, repair or alteration other than by Seller, or for Products used in violation of instructions furnished by Seller. Components purchased by Buyer from any supplier other than Seller shall bear only the warranty given by the manufacturer of that product; Seller assumes no responsibility for the interface of its product(s) with any other product.

(b) Disclaimer of Other Warranties: THE FOREGOING WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER EXPRESSED OR IMPLIED WARRANTIES OF MERCHANTABILITY, DESIGN, TITLE, FITNESS FOR A PARTICULAR PURPOSE, CONFORMANCE TO GOVERNMENT SPECIFICATIONS OR PROCUREMENT STANDARDS, WARRANTIES IMPLIED BY USAGE IN TRADE OR COURSE OF DEALING, OR OTHERWISE.



Terms and Conditions of Sale

(c) Warranty Remedies: During the applicable warranty period for a product, Buyer shall promptly provide written notification to Seller of any defect covered by Seller's warranty, and in no event later than thirty (30) days after discovery of any such defect. Buyer's notice must identify the specific product subject to warranty claim and the nature of the discovered defect. No product will be accepted for return or replacement without written acknowledgement and authorization of Seller. Upon such authorization, and in accordance with Seller's packing and shipping instructions, the product will be returned with transportation and insurance fully prepaid by Buyer.

10. CANCELLATION. Buyer may cancel an Order wholly or partially by written notice which must be received by Seller prior to the scheduled delivery date. For any such cancellation, Buyer shall (a) reimburse Seller in full for all direct and indirect costs, settlements with suppliers, and administrative, accounting, and legal costs and fees associated with such cancellation and (b) pay the appropriate cancellation charges set forth in this Section 10. Seller will notify Buyer of the amount owed, which amount shall be immediately due and payable to Seller. Cancellation charges applicable to the specific Products and/or services cancelled are as follows:

(i) **Products Without Non-Recurring Costs.** For cancelled Products whose price does not contain any non-recurring or amortized costs, if notice of cancellation is received from Buyer at least ninety (90) days before the scheduled equipment delivery date, Buyer must pay to Seller a cancellation charge of twenty percent (20%) of the Order price. If written notice of cancellation is received less than ninety (90) days from the scheduled equipment delivery date, Buyer must pay Seller the full Order price.

(ii) **Products and/or Services With Non-Recurring Costs.** For all Products whose price contains non-recurring or amortized costs, or for non-recurring services, Buyer must pay Seller a cancellation charge comprised of (i) above as well as the entire portion of the non-recurring or amortized cost.

11. PATENT INDEMNITY. (a) **Seller's Patent Indemnity to Buyer:** Seller agrees to indemnify and hold harmless the Buyer from and against all legal expenses which may be incurred as well as damages and costs which may be finally assessed against Buyer, in any action for infringement of any United States Letters Patent by the Products delivered to Buyer hereunder. Seller shall indemnify Buyer for such infringement actions provided that (1) Buyer shall give Seller written notice of any action, claim, or threat of patent infringement suite, either oral or written, or of the commencement of any patent infringement suit against Buyer relating to Products sold by Seller to Buyer hereunder; and (2) Buyer shall give Seller opportunity to elect to take over, settle, or defend any such claim, action, suit, or proceeding through counsel of Seller's own choice and under its sole direction, and its sole expense; and (3) Buyer, in the event that Seller elects to take over, defend or settle such claims, action, suit, or proceeding, will make available to Seller all defenses known by or available to Buyer; and (4) Seller shall have the right to substitute for any such Product or any part thereof claiming to infringe the patent rights of other non-infringing Products which will give equally good service. If the use of any such Products or any part thereof should be enjoined, Seller shall have the right, at its own expense, to take any of the following courses of action: (1) to procure for Buyer the right to continue using such Product; or (2) to replace said Product with a non-infringing Product; or (3) to modify the Product so that it becomes non-infringing, or (4) to remove said Product and refund the purchase price and transportation and installation costs.

(b) Patent Indemnity Limitation: The foregoing provisions as to patent protection by Seller to Buyer shall not apply to any of the following: (1) to any Products manufactured to the design or specifications furnished by the Buyer,

(2) to Orders for special non-commercial Products which Seller has not sold or offered for sale to the public on the open commercial market, (3) to any infringement occasioned by modification by Buyer for any Product without Seller's written consent or any infringement arising from the use of an Product with any adjunct or device added by the Buyer.

(c) Patent Indemnity by Buyer to Seller: To the extent that Products delivered hereunder are manufactured pursuant to detailed designs furnished by Buyer, Buyer agrees to indemnify Seller and hold harmless from all legal expenses which may be incurred, as well as all damages and costs which may finally be assessed against Seller, in any action for infringement of any United States Letters Patent by such Products delivered hereunder. Seller agrees promptly to inform the Buyer of any claim for liability made against Seller with respect to such Products, and Seller agrees to cooperate with the Buyer in every way reasonably available to facilitate the defense against any such claim.

11. LIMITATION OF LIABILITY. SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY A DELAY IN PERFORMANCE. SELLER WILL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR FOR LOSSES, DAMAGES, OR EXPENSES DIRECTLY OR INDIRECTLY ARISING FROM THE DESIGN, MANUFACTURE, SALE, USE OR REPAIR OF THE PRODUCTS, OR ANY INABILITY TO USE THEM EITHER SEPARATELY OR IN COMBINATION WITH ANY OTHER EQUIPMENT OR MATERIAL, OR FROM ANY OTHER CAUSE. BUYER AND SELLER AGREE THAT IN NO EVENT WILL SELLER BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE CONTRACT PRICE OF THE PRODUCT GIVING RISE TO THE LIABILITY. THE REMEDIES PROVIDED FOR HEREIN SHALL CONSTITUTE THE SOLE RECOURSE OF BUYER AGAINST SELLER FOR ANY ALLEGED BREACH OF SELLER'S OBLIGATIONS UNDER THE CONTRACT WITH BUYER, WHETHER SUCH CLAIM IS MADE IN TORT OR IN CONTRACT, INCLUDING CLAIMS BASED ON WARRANTY, NEGLIGENCE OR OTHERWISE.

12. DEFAULT. If Buyer breaches a material provision of the Order, including any provision of these Terms and Conditions, then Seller has the right to terminate the Order. Seller will submit a written notice to Buyer advising of the breach and Buyer will have five (5) calendar days from delivery of the notice to cure the breach. If Buyer does not cure the breach within the five (5) day period, Seller may terminate the Order in addition to its other rights or remedies.

13. MODIFICATIONS. Seller reserves the right to modify specifications of Products Ordered by the Buyer herein providing that the modification will not materially affect form, fit, or function.

14. TOOLING. Seller shall retain title to and possession of any models, patterns, dies, molds, jigs, fixtures, tools, and test equipment made for or obtained for the performance of the Order.

15. TERMINATION. In the event of the complete or partial termination or cancellation of the Order for the convenience of the Government, settlement shall be made by negotiations in accordance with Section 52.249-2 of the Federal Acquisition Regulation, "Termination For Convenience of the Government (Fixed Price]" in existence as of the date of Order acceptance, wherein the words "Government" and "Contracting Officer" shall mean Buyer, the word "Contract" shall mean the Order, and the word "Contractor" shall mean Seller. Delete subparagraph (c). In paragraph (e), delete "one year and substitute "six months". In paragraph (l), delete "90 days" and substitute "45 days". In the event Buyer attempts to terminate or cancel its Order, in whole or



Terms and Conditions of Sale

in part, where cancellation is not for the convenience of the Government, this shall constitute a breach of contract unless written consent to such termination or cancellation is obtained by Buyer from Seller. In any event, the prices of all Product(s) delivered and all Product(s) finished but not yet delivered will be adjusted upward to the applicable quantity break, if any, for the lower quantities.

16. COMPLIANCE WITH LAWS. Seller shall comply with all federal, state, and local laws and regulations applicable to performance of its obligations hereunder including [to the extent applicable and without limits on]: Fair Labor Standards Act of 1938, as amended, Williams Seiger Occupational Safety and Health Act of 1970, as amended, Walsh-Healey Public Contracts Act of 1970, as amended, and the equal employment opportunity and affirmative action clauses prescribed by statute (Public Laws 90-202, 93-112, 92-540, 95-507), executive Orders (1124B, 11375, 11825, 11701, 11758), and regulations regarding race, color, religion, sex, age, national origin, physical or mental handicap, veteran status, small business, small disadvantaged business, and women-owned business concerns.

17. EXPORT COMPLIANCE. (a) **Proof of Export:** Any items provided by Seller are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. Government or as otherwise authorized by U.S. law and regulations.

(b) **License and Permit Requirements:** Seller will execute all export licenses and permits required by the United States Government, and Buyer will furnish reasonable cooperation in acquiring such licenses and permits. If such licenses and permits are not paid for by Buyer, such payments will be added to the contract price. Buyer will secure all licenses and permits required by any foreign government, and Seller will furnish reasonable cooperation in acquiring such licenses and permits. The delivery schedule is contingent upon securing all necessary licenses and permits. Failure to obtain a required license or permit in sufficient time to permit delivery within the time set forth in the contract, and without fault or negligence of the contracting parties, shall occasion an equitable adjustment in the delivery schedule.

18. QUALITY ASSURANCE. Seller's Quality Assurance System complies with ISO9001:2008 and AS9100 standards.

19. DISPUTES. Any dispute arising out of or relating to this Agreement shall be resolved in accordance with the following:

(a) **Negotiation Between Executives.** The parties shall first attempt to resolve any dispute arising out of this Order by prompt negotiation between executives who have authority to settle the matter.

(b) **Binding Arbitration.** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

The place of arbitration shall be Los Angeles, CA, USA. Hearings will take place pursuant to the standard procedures of the Commercial Arbitration Rules that contemplate in person hearings. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual

damages, except as may be required by statute. The arbitrator(s) shall not award consequential damages in any arbitration initiated under this section. The standard provisions of the Commercial Rules shall apply. Arbitrators will have the authority to allocate the costs of the arbitration process among the parties, but will only have the authority to allocate attorneys' fees if a particular law permits them to do so.

(c) **Interim Relief.** Nothing herein shall affect either party's right to apply to a court of appropriate jurisdiction for interim relief.

(d) **Service.** The parties hereto irrevocably agree to accept service of process by registered mail, postage prepaid, or by personal service, on an officer or registered agent of the party, within or without the State of California, or in any other manner permitted by law.

20. ETHICS AND VALUES. Seller is committed to performing with the highest level of ethical standards and knows that how we perform is just as important as what we accomplish. This is reflected in our Code of Conduct, available at <http://www.itt.com/Citizenship/Code-of-Conduct/>.

21. CONFIDENTIALITY. Buyer and Seller agree to keep confidential and protect from unauthorized use and disclosure all confidential, proprietary and trade secret information, all tangible items containing or conveying this information, and all information derived from this information, including, but not limited to, cost and pricing data ("Proprietary Information"), obtained, directly or indirectly, from the other in connection with any offer or Order. Buyer may use Proprietary Information only as absolutely necessary as required to evaluate, install, use, maintain and support the Products delivered by Seller. Buyer may disclose Proprietary Information to its employees only as necessary for these purposes. In no event may Buyer disclose Proprietary Information to any third party. Buyer must also keep confidential and not disclose to any other entity the terms of any offer or Order.

22. ASSIGNMENT. Neither Buyer nor Seller shall assign this Agreement or any of its rights, benefits, duties or obligations under this Agreement to a third party without the written consent of Seller.

23. NON-WAIVER. No failure or delay by Seller to enforce any provision of this Order shall not constitute a waiver of such provision or prejudice the right of Seller to enforce such provisions at any subsequent time.

24. GOVERNING LAWS. The terms of this Agreement and all rights and obligations hereunder shall be governed in accordance with the laws of the State of New York, U.S.A., without giving effect to any rules governing conflicts of law. Buyer hereby consents and submits to the jurisdiction of the appropriate courts in the State of New York for adjudication of any question of law or fact arising hereunder.

25. STATUTE OF LIMITATIONS. Buyer agrees that any action for an alleged breach of this Agreement must be commenced within one (1) year after the cause of action has accrued, without regard to the date the breach is discovered. Any action not brought within this one (1) year time period shall be barred, without regard to any other limitations period set forth by law or statute.