



TERMS AND CONDITIONS OF SALE

1. **GENERAL/ ACCEPTANCE:** These Terms and Conditions of Sale (“Terms”) constitute the complete and exclusive agreement between the parties for the supply of goods by Spira Manufacturing Corp. (the “Seller”) to you, (the “Buyer”). Seller and Buyer may sometimes be referred to as a “Party” and together as the “Parties” in these Terms. These Terms supersede and replace all prior agreements, representations, discussions or negotiations, regardless of whether those prior events occurred in writing (including email’s), by voice, through testing or samples, or by any other means. These Terms can only be modified in a writing signed by our authorized representative.

2. **PRICES AND PAYMENT:** All prices are in U.S. Dollars. Unless otherwise specified in writing, all prices are firm for thirty (30) days only from the date of offer. Payments are due net thirty (30) days from the date of invoice except for orders from customers outside of the U.S., which must be paid in advance unless otherwise agreed in writing by Seller. Payments shall be made without deduction or set-off. Any amount not paid within 30 days after the due date shall bear interest at the rate of 1.5 percent per month or the maximum rate of interest allowed by law, whichever is less. Credit terms may be suspended or changed at any time in Seller’s sole discretion based upon Buyer’s financial condition. Seller may suspend our performance and refuse to deliver goods or services if Buyer fails to pay any amount when due. SPIRA will charge a 3.5% fee for credit card payments. This fee will be applied to orders \$500.00 and over, paid via credit card. We accept other forms of payment without fees including ACH and Check. Please note the credit card fee will be added to the invoice sub-total or may be charged separately in some cases.

3. **CANCELLATIONS AND CHANGES:** Orders which have been accepted by Seller are not subject to cancellation or change except with Seller’s written agreement and may be subject to a cancellation charge. In most cases changes will not be possible after an order acknowledgement by Seller. Custom manufactured goods are not subject to change or cancellation.

4. **INSPECTION:** Buyer may inspect Seller’s manufacturing location at reasonable times during normal business hours upon no less than 72 hours prior advance notice. For contracts to which AS9100 certification is applicable, Seller will reasonably comply with all requirements therein. Buyer may inspect relevant documents or conduct audits at Seller’s facility provided Buyer pays the then applicable administrative fee for such services, which is currently \$150 per hour. Seller reserves the right to restrict access to certain parts of its facility to protect the confidentiality of its work and the orders of other customers. A confidentiality agreement may be required for access to Seller’s facility.

5. **DELIVERY AND SHIPPING:** Shipments are F.O.B. Seller’s place of manufacture. Risk of loss passes upon delivery to the first shipping company. Dates for the delivery are approximate only, measured from the date the goods leave Seller’s facility, and subject to variation or change. Insurance, packing, unloading and handling are not included unless otherwise specifically agreed to in writing. All installation will be Buyer’s responsibility at its own expense. If a shipment is deferred at Buyer’s request, the invoice will be issued when the goods are shipped provided that no shipment may be deferred more than twelve (12) months from the date it was first available for shipping. If Buyer fails to make payment or furnish shipping instructions, Seller may either extend the time for shipping or cancel the unshipped portion of the order in its discretion. In case of deferred shipment at Buyer’s request, storage and other reasonable expenses attributable to such delay shall be payable by Buyer and Buyer will assume all responsibility and risk for loss of value in or damage to the goods.

6. **OWNERSHIP:** All drawings, designs and specifications supplied by Seller, or created by Seller, are solely Seller’s property and no rights therein are transferred to Buyer. Such drawings, designs and specifications are provided to Buyer on the condition that they shall

not be reproduced or copied in any manner whatsoever, in whole or in part, except for Buyer’s internal use as necessary, and upon the further condition that, as Seller’s sole property, they shall not be transferred to others for any purpose not specifically authorized by Seller’s prior written consent.

7. **CONFIDENTIALITY:** Each Party agrees that it may receive from the other Party certain information which pertains to the disclosing party’s business or operations including, without limitation, proprietary processes, technical information or know how (“Confidential Information”). All Material Certifications provided by Seller shall be considered Confidential Information and subject to this provision except that Buyer may furnish a copy of such certification to another company working on the same project so long as it is subject to confidentiality restrictions at least as stringent as the ones contained herein. The receiving Party agrees to hold in confidence any such Confidential Information for a period of ten years from the date of disclosure. In addition, certain plans, drawings, and designs supplied by a Party or available by duplicating a part or piece of the goods being sold constitute Seller’s valuable property and will remain solely its property and any information derived therefrom shall be regarded by as Confidential Information and shall not be disclosed to any third party without Seller’s prior written consent. Confidential Information will not include information that (i) is in the public domain prior to the disclosure to the receiving party; (ii) is lawfully in the receiving party’s possession prior to the disclosure by the other party; (iii) becomes part of the public domain by publication or otherwise through no unauthorized act or omission on the part of the receiving party; or (iv) is independently developed by an employee(s) of the receiving party with no access to the disclosed Confidential Information.

8. **PATENT INFRINGEMENT:** Each Party agrees to defend, indemnify and hold harmless the other Party against any third party claim that the goods infringe a U.S. patent issued as of the date of Buyer’s order. Seller’s obligations shall be limited to the design of the goods supplied and Buyer’s obligation shall be limited to claims which are based on the use of the goods or the process or combination of the goods with equipment not supplied by Seller. In the event a claim of infringement is actually brought against a Party, or a Party learns that one may be brought, that Party must notify the other Party within 30 days and in the notice state whether it is currently seeking indemnification under this Section. The Party providing indemnification may thereupon assume the defense of the claim at its own expense in which case it will have the sole right to settle or otherwise compromise such third-party claim.

9. **WARRANTY AND REMEDIES:** Seller warrants to the original purchaser only that new goods will be free from defects in material and workmanship for a period of six months from the date of shipment (the “Warranty Period”). In the event Buyer delays shipment the Warranty Period will begin on the date the goods are shipped. These warranties will not apply to: (i) damage caused by accident or neglect; (ii) damage caused by a failure to follow instructions or manuals or to provide normal maintenance; (iii) damage caused by unauthorized or improper installation or repairs or modifications; (iv) damage caused by ordinary wear and tear; (v) damage caused by repackaging or return shipping; or (vi) any other abuse or misuse. If a covered defect occurs for which Buyer believes it may be entitled to warranty service, Buyer will give Seller notice during the Warranty Period. Seller will then issue a return merchandise authorization. Within a reasonable time following delivery to Seller’s location it will repair or replace the defective product unless it determines the goods are not subject to warranty repair in which case Seller will advise Buyer. All removal and transportation in connection with warranty claims and service will be at Buyer’s expense. In the event Seller is unable to repair or replace any defective goods subject to warranty service, Seller will refund the price paid. These remedies are Buyer’s exclusive remedies for breach of warranty.



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EXCEPT FOR THE WARRANTIES DESCRIBED IN THESE TERMS, SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

10. EXCLUSIVE REMEDIES; EXCLUSION OF DAMAGES: The remedies herein are the exclusive remedies available to Buyer and in lieu of all others available at law or in equity. In no event shall Seller be liable, and Buyer hereby waives any claims against Seller and releases Seller from liability for any direct, indirect, special, punitive, incidental, or consequential damages regardless of the theory on which the claim is based, including breach of warranty, breach of contract, negligence, strict tort, or any other legal theory. These excluded damages include, but are not limited to, loss of profits, loss of savings or revenue, loss of use of the goods or services provided or any associated goods or services, cost of capital, cost of any substitute goods and services, facilities, downtime, the claims of third parties including customers, or injury to property. This limitation does not apply to claims for personal injury arising from Seller's negligence or strict liability.

11. LIMITATION OF LIABILITY: Except for claims that arise from Seller's gross negligence, Seller's liability to Buyer is limited to an amount equal to the price Buyer has have paid the goods giving rise to the claim.

12. FORCE MAJEURE: Seller will be excused from performing its obligations if it is unable to do so as a result of fire, flood, storm, accident, or other acts of God (referred to as a "Force Majeure Event" in this document). A Force Majeure Event will include any delay caused by any event beyond the reasonable control of the Seller. A Force Majeure Event that causes a delay greater than ninety days will entitle the Buyer to cancel the order.

13. CHOICE OF LAW: These Terms and all sales shall be governed and construed according to the laws of the state of California without regard to its conflict of laws principles. Any dispute arising under this purchase order which is not settled by agreement of the parties will be litigated in the state or federal courts of the state of California. The United Nations Convention on the International Sale of Goods shall not apply.

GOVERNMENT SUBCONTRACT PROVISIONS: When the goods furnished are for use in connection with a United States Government subcontract (as indicated on the face of the purchase order), the following additional provisions set forth in Section 14 shall apply, in addition to the above provisions.

14. Seller shall comply with the Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation (DFAR) clauses below, which are incorporated in this contract by reference, and which are in effect as of the date of these Terms. The clauses shall be considered as being set forth in full herein. Seller agrees to flow down all applicable clauses to lower-tier entities. In the following clauses, the terms "Government" and "Contracting Officer" will mean Buyer; the term "Agreement" will mean these Terms and the term "Contractor" will mean Seller.

Federal Acquisition Regulations (FAR)*

- 52.203-13 Contractor Code of Business Ethics and Conduct
- 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009
- 52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements
- 52.204-21 Basic Safeguarding of Covered Contractor

- Information Systems
- 52.204-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities
- 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment
- 52.219-8 Utilization of Small Business Concerns
- 52.222-21 Prohibition of Segregated Facilities
- 52.222-26 Equal Opportunity
- 52.222-35 Equal Opportunity for Veterans
- 52.222-36 Equal Opportunity for Workers with Disabilities
- 52.222-37 Employment Reports on Veterans
- 52.222-40 Notification of Employee Rights Under the National Labor Relations Act
- 52.222-50 Combating Trafficking in Persons
- 52.222-54 Employment Eligibility Verification
- 52.222-55 Minimum Wages Under Executive Order 13658
- 52.222-62 Paid Sick Leave Under Executive Order 13706
- 52.224-3 Privacy Training
- 52.225-26 Contractors Performing Private Security Functions Outside the United States
- 52.232-40 Providing Accelerated Payments to Small Business Subcontractors
- 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels

Defense Federal Acquisition Regulations (DFAR)**

- 252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting
- 252.204-7014 Limitations on the Use or Disclosure of Information by Litigation Support Contractors
- 252.204-7015 Notice of Authorized Disclosure of Information for Litigation Support
- 252.204-7018 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services
- 252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals
- 252.225-7052 Restriction on the Acquisition of Certain Magnets and Tungsten
- 252.227-7015 Technical Data--Commercial Items
- 252.227-7037 Validation of Restrictive Markings on Technical Data
- 252.236-7013 Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers
- 252.244-7000 Subcontracts for Commercial Items
- 252.246-7003 Notification of Potential Safety Issues

*Full text of the FAR clauses can be found at <https://www.acquisition.gov/browse/index/far>

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