

# ACUMENT GLOBAL TECHNOLOGIES INC. PURCHASING TERMS AND CONDITIONS

1. **PARTIES.** Acument Global Technologies Inc., its affiliates and subsidiaries, including, but not limited to Avdel LLC, Camcar LLC, Elco Fastening Systems LLC, Flexalloy Inc., Ring Screw LLC, Cherry Aerospace LLC, Burkland Inc., and Wolvener Metal Specialties Inc., may make purchases under these terms and conditions and the purchasing business unit is referred to herein as "Buyer". The supplier of Goods or services under this contract of sale is referred to herein as "Seller"

2. **APPLICABLE TERMS.** The following terms and conditions, together with the applicable Purchase Order and any schedule, exhibit or attachment referenced therein or herein shall constitute the contract of sale between the parties (the "Agreement"). Acceptance of this Agreement by acknowledgment, shipment of all or a portion of the Goods or other performance by Seller shall be unqualified, unconditional and subject to and expressly limited to the terms and conditions of this Agreement. All previous offers by Seller are hereby rejected. Buyer shall not be bound by terms additional to or different from those in this Agreement that may appear in Seller's quotations or bids, acknowledgments, invoices or in any other communications from Seller unless such terms are expressly agreed to in a separate writing signed by Buyer. Any acceptance of any portion of this Agreement shall be deemed an acceptance by Seller of all of these terms as written, without alteration.

3. **PRICES; PAYMENT TERMS.** Seller represents that the price charged to Buyer for Goods is at least as low as the price charged by Seller to other buyers of a class similar to Buyer under conditions similar to those specified in the Purchase Order and that such prices comply with applicable government laws and regulations in effect at time of quotation, sale or delivery. Seller agrees that any price reduction regarding any Goods that is implemented prior to shipment or rendering of such Goods, will be applied to all Purchase Orders for shipments of Goods following such price reduction. Unless otherwise specified thereon, prices quoted on any Purchase Order or Purchase Order Revision include any and all charges for the Goods ordered (including but not limited to, any fees for boxing, packing, cartage, taxes or other added charges). Invoices shall be paid in accordance with the terms stated in the Agreement and due dates for payment of invoices shall be computed from the date of receipt of both the Goods and invoices by Buyer.

4. **DELIVERY; TITLE, RISK OF LOSS.** Seller shall deliver Goods which are in accordance with the specifications provided by Buyer and Seller is not authorized to unilaterally deviate from Buyer's specifications without written approval from Buyer. Time is of the essence for each Purchase Order and deliveries shall be made both in quantities and at times specified by Buyer; failure to do so shall constitute a breach of this Agreement. Seller shall deliver all Goods free and clear of all liens and encumbrances. If requested by Buyer, Seller agrees to furnish to Buyer, as a condition precedent to final payment, a complete release of all liens, together with a certificate by Seller that the release contains the signatures of all those who performed services or furnished materials under this Agreement. With each delivery Seller shall submit a packing list in duplicate. Title and risk of loss and damage to material purchased by Buyer under this Agreement shall vest in Buyer when the material has been delivered at the DDP Incoterms 2000 point specified in Buyer's Purchase Order, unless Buyer and Seller execute a consignment agreement pursuant to which Seller shall maintain title to the Goods following delivery to Buyer's facility until removed from consignment by Buyer, at which time, Buyer shall assume title and risk of loss. Further, title to Goods purchased by Buyer under this Agreement may immediately vest in Buyer at any point where Buyer tenders to Seller both (1) payment for the Goods and (2) written notice of Buyer's desire to take title to the Goods. If this Agreement or a Purchase Order issued pursuant to this Agreement calls for additional services including, but not limited to, unloading, installation, or testing, to be performed after delivery, Seller shall retain title (unless Buyer has paid the invoice) and risk of loss and damage to the material until the additional services have been performed. Notwithstanding the foregoing sentence, if Seller is expressly authorized in writing to invoice Buyer for material upon shipment or prior to the performance of additional services, title to such material shall vest in Buyer upon payment of the invoice, but risk of loss and damage shall not pass to Buyer until completion of the additional services by Seller.

5. **PACKING; TRACEABILITY.** All correspondence must include the Purchase Order number, Release/Line number and Vendor Identification number. All shipments must include packing slips indicating contents, part number or description, Purchase Order number, Release/Line number and Vendor Identification number. When multiple packages comprise a single shipment, the package containing the packing slip must be marked, "Packing Slip Inside." Any transportation charges paid by Buyer to which Seller is entitled to reimbursement, shall be added to Seller's invoice as a separate item and the receipted freight bill shall be attached hereto. All returnable containers for which Buyer is to be invoiced shall be invoiced by Seller and full credit rendered to Buyer upon return, at Seller's expense. If Goods are shipped in returnable containers, Buyer shall take title only to the usable portion of such Goods and Seller shall retain title to any residue remaining in such containers. Buyer shall have no obligation to clean or otherwise restore returnable containers. Seller warrants that Seller's system of production and packaging shall be such as will permit traceability of each lot of Goods, and shall include bar coding if so requested by Buyer. Seller warrants that the packaging of the Goods ordered herein shall be in compliance with all laws relating to packaging of such Goods and shall be adequate for the transit of the Goods undamaged so long as the integrity of the container is maintained.

6. **PREMIUM SHIPMENTS.** If, for any reason, Seller is unable to meet Buyer's delivery requirements Seller shall immediately notify Buyer of its expected duration of the delay and the reasons for such delay. Neither such notification nor an acknowledgment by Buyer shall constitute a waiver of the applicable delivery schedule or any of Buyer's rights under this Agreement. If Buyer requires a more expeditious method of transportation for the Goods other than the transportation method originally specified by Buyer, because of Seller's failure or inability to meet the scheduled delivery schedule, Seller shall, at Buyer's option, (a) promptly accept the transportation charges paid by Buyer to which Seller is entitled to reimbursement, using an expeditious method and the original method, (b) allow Buyer to reduce its payment of Seller's invoices by such difference, or (c) ship the Goods as expeditiously as possible at Seller's expense and invoice Buyer for the amount which Buyer would have paid for normal shipment. Seller shall also be liable for any direct and/or consequential damages incurred by Buyer resulting from any delay caused by Seller. Premium freight must be so noted on shipping documents.

7. **DEFAULT; CANCELLATION.** Buyer, in Buyer's sole discretion, elect to cancel this Agreement or any part thereof at no cost to Buyer in the event of Seller's Default as hereinafter described. Seller's Default shall include, without limitation: (a) Seller's failure to comply with the specifications, delivery requirements or terms and conditions of this Agreement; (b) Seller's failure to deliver Goods ordered herein in accordance with the delivery and timing requirement or in accordance with Buyer's specifications; or (c) Seller's threatened or actual refusal to deliver Goods for any reason ("Seller's Default"). In the event of Seller's Default under (b) above, the parties acknowledge and agree that such default by Seller will cause Buyer irreparable harm and Buyer shall be entitled to any and all legal and equitable rights and remedies available to it against Seller to remedy such default, including, without limitation, injunctive relief prohibiting Seller from refusing to deliver the Goods. If Seller has actually refused to deliver Goods as set forth in (b) above, the parties stipulate that it will be difficult to ascertain the amount of damages resulting from such default and that Seller will pay to Buyer \$50,000.00 per day as liquidated damages for each day that Seller refuses to deliver the Goods. The parties agree that this sum represents a reasonable estimate of damages and does not constitute a penalty. In case of ambiguity in the specifications, drawings or other requirements of the Agreement, before proceeding, it is Seller's obligation to seek clarification from Buyer, whose written interpretation shall be final. Buyer's right to cancel hereunder shall be in addition to all other rights and remedies available to Buyer under this Agreement or otherwise and Buyer shall have no obligation for payment to Seller for work in progress or otherwise incomplete Goods.

8. **TERMINATION FOR CONVENIENCE.** Buyer, in addition to all other rights and remedies it may have under this Agreement or otherwise, shall have the right to terminate this Agreement or any Purchase Order, in whole or in part, without cause, upon notice in writing to Seller. Seller shall thereupon, as directed, cease work and deliver to Buyer all completed and partially completed Goods or materials and work in process, and Buyer shall pay Seller the following, which in no event shall exceed the total price provided for herein: (a) the applicable price provided in the Purchase Order for all Goods which have been completed prior to termination and which are accepted by Buyer, or (b) to the extent commercially reasonable, the actual expenditures on the uncompleted portion of the Purchase Order, including cancellation charges paid by the Seller on account of commercially reasonable commitments made under the terminated Purchase Order. Seller shall be deemed to have taken all steps reasonably calculated to mitigate and minimize the cost to Buyer of such termination.

9. **PROPRIETARY RIGHTS; INFRINGEMENT.** Seller undertakes and agrees to indemnify, hold harmless and, if requested by Buyer, defend, at Seller's own expense all suits, actions or proceedings brought against Buyer, its affiliates and subsidiaries or any of Buyer's directors, officers, employees, agents, dealers, customers, or the users of any of the Goods purchased under this Agreement for actual or alleged infringement of any intellectual property right including, but not limited to, copyright, trademark, trade secret, United States or foreign letters patent or other proprietary rights of any third party on account of the use or sale of any such Good alone or in combination with other Goods or materials and Seller expressly waives any claim against Buyer that such infringement arose out of compliance with Buyer's or its customers' specifications and Seller further agrees to pay and discharge any and all judgments or decrees which may be rendered in any such suit, action or proceeding against any indemnified party.

10. **WARRANTY.** Seller warrants to Buyer and Buyer's customers that Goods furnished pursuant to this Agreement will be new, merchantable, free from defects in design (unless manufactured to a design furnished through Buyer), Material, warning requirements and workmanship and will conform to and perform in accordance with the Buyer's specifications for such Goods and all other agreed upon specifications, drawings and samples. Seller further agrees that it shall be solely liable for all claims of a defect (or alleged defect) in material, merchantability, workmanship, warning requirements and design (unless manufactured to a design furnished through Buyer) of the Good, and from failure to meet any such specifications. These warranties extend to the future performance of the Goods. Seller also warrants to Buyer and its customers that services will be performed in a first class, workmanlike manner. In addition, if Goods furnished contain one or more Seller's warranties, Seller hereby assigns such warranties to Buyer and its customers. All warranties shall survive inspection, acceptance and payment and shall continue, at a minimum, for the longer of thirty-six (36) months or such period as Buyer has warranted such Goods, or other items of which the Goods are a component, to its customer. Goods or services not meeting the warranties will be, at Buyer's option and without limitation of Buyer's other rights and remedies under this Agreement or otherwise, returned for or subject to refund, repaired, replaced or reperfomed by Seller at no cost to Buyer or its customers and with transportation costs and risk of loss and damage in transit borne by Seller. Repaired and replacement Goods shall be warranted as set forth above in this clause.

11. **QUALITY ASSURANCE.** If Seller supplies Goods for use in production under ISO9000, QS9000, AS9000, VDA 6.1, TS16949 or any other quality assurance system specified by Buyer or its customers, Seller shall comply with such quality system standard for such Goods covered by any Purchase Order. Seller agrees to permit Buyer or its customers to review Seller's procedures, practices, processes and related documents to determine such acceptability. This requirement is in addition to any special quality assurance provisions which may be incorporated elsewhere in this Agreement. Records of all inspection work by Seller shall be kept complete and available to Buyer or its customers during the term of this Agreement and for such longer period and in such manner as may be specified by Buyer or required by law.

12. **INSPECTION, REJECTION OF GOODS.** All Goods furnished hereunder and all records to be furnished therewith shall be subject to inspection at destination, notwithstanding any previous inspection, and Seller shall be given notice of any defects other than latent defects within a reasonable time after receipt of the Goods. Buyer may reject or require the prompt correction, in place or otherwise, of any Goods which are defective in material, workmanship, design (unless manufactured to a design furnished through Buyer) or which otherwise fail to meet the requirements of the applicable Purchase Order. Buyer may, in addition to any rights it may have by law, prepare for return shipment and return the Goods to Seller or require Seller to remove them, and the expense of any such action, including, transportation both ways, if any, shall be borne by Seller. If Seller fails promptly to remove such Goods or to proceed promptly to replace or correct them, Buyer may replace or correct such Goods at the expense of Seller, including any excess cost. Payment for any or all of the Goods or services supplied hereunder shall not constitute acceptance by Buyer. Nothing in this paragraph shall in any way limit Buyer's rights under the paragraphs hereof entitled "Warranty" or "Indemnification."

13. **INDEMNIFICATION.** Seller hereby agrees to indemnify, hold harmless and, if requested by Buyer, to defend Buyer and its affiliates and subsidiaries or any of Buyer's directors, officers, employees, agents, dealers, customers, or the users of any of the Goods purchased under the Agreement against and from any and all claims, costs, losses, liabilities and damages (including expenses relating to defense, such as attorney's fees and expenses) arising from a defect or an alleged defect (including, without limitation, failure to warn) in the Goods or other breach of this Agreement, whether such liability arises as a matter of contract (e.g., warranty, repair, replacement, downtime of a customer's assembly line, recall, etc.) or tort (injury to property or person), including, without limitation, all liability for incidental, consequential or special damages. Buyer may, at its option, tender the defense of any claim of liability against Buyer to Seller, in which case Seller shall have the right to settle any such claim provided such settlement is at Seller's expense and involves no action or forbearance by Buyer. Buyer retains the right to defend such claim itself, but subject to indemnification by Seller. Buyer and Seller agree to cooperate reasonably in any such defense.

14. **RIGHT OF INSPECTION.** Buyer shall have the right from time to time to send to Seller's manufacturing facilities its personnel for performing tests upon the material or Goods covered by any Purchase Order to ascertain that specified quality standards are being maintained. Buyer's personnel shall have the privilege of visiting all places within the various facilities where raw materials, components or equipment are stored or where manufacturing is being accomplished incident to fulfilling any Purchase Order. Buyer's personnel shall also have the privilege of using Seller's test equipment for the purpose of performing necessary tests.

15. **SUPPLEMENTARY INFORMATION.** Any specifications, drawings, notes, instructions, engineering notices, technical data, or terms and conditions of Buyer's customer referred to in the Agreement shall be deemed to be incorporated herein by reference as if fully set forth. In case of any discrepancies or questions, refer to Buyer's purchasing department for decision or instruction or for interpretation.

16. **PROPRIETARY PROPERTY OF BUYER.** All specifications, blueprints, technical documents, instructions, molds, models, casts, formulas, sketches, drawings, manufacturing processes, know-how, software and software protocols, electronic commerce system information, inventory management system information, and other business information supplied to Seller under this Agreement or prepared for Buyer under this Agreement shall be referred to as Buyer's "Proprietary Property" and shall remain the sole property of Buyer, except that exclusive designs developed by Seller prior to the placement of a Purchase Order shall remain the property of Seller. Buyer's Proprietary Property shall be confidential, shall not be used by Seller, its agents, representatives or employees for any purpose except in connection with the work to be done by Seller for Buyer under this Agreement, and shall not be used disclosed or made available to any other third party by Seller or its agents, representative or employees. By its acceptance of this Agreement, Seller agrees to take all necessary precautions against theft, destruction, damage, loss, unauthorized duplication or wrongful distribution, or unauthorized use of Buyer's Proprietary Property. Unless otherwise agreed to by Buyer in writing Buyer's Proprietary Property shall be returned to Buyer upon completion of production or processing or earlier, upon Buyer's demand.

17. **INFORMATION DISCLOSED TO BUYER.** Unless specifically provided in this Agreement or expressly agreed to in writing by Buyer, no information or knowledge heretofore or hereafter disclosed to Buyer, in the performance of or in connection with this Agreement, shall be deemed to be confidential or proprietary, and any such information or knowledge shall be free from any restrictions (other than a claim for patent infringement) as part of the consideration for this Purchase Order.

18. **WAIVER.** The failure of either party at any time to enforce any right or remedy available to it under this Agreement or otherwise with respect to any breach or failure by the other party shall not be construed to be a waiver of such right or remedy with respect to any other breach or failure by the other party.

19. **PROPERTY FURNISHED BY BUYER.** Except as specified below, all patterns, dies, molds, tools, models, jigs, core boxes, piece parts, samples, materials, drawings, specifications, test reports, technical material, advertising material, and any other personal property furnished to Seller by Buyer, or specifically paid for by Buyer for use in performance of a Purchase Order, shall be and remain the property of Buyer, shall be subject to disposition according to Buyer's instruction and shall be used only in doing orders from Buyer. Any such property furnished by Buyer to Seller shall be appropriately maintained or by destroyed in order to preserve the condition of such property to the greatest extent possible, reasonable wear and tear excepted. Any waste materials or byproducts generated by or resulting from operations on, use of, or processing of materials furnished to Seller by Buyer, or materials specifically paid for by Buyer for use in performance of a Purchase Order, shall be and remain the property of Seller and shall not be subject to disposition to Buyer's instruction, unless Buyer has specifically requested, in writing, return of such waste materials or byproducts, which in such case will be the property of Buyer.

20. **INSURANCE.** Seller agrees that it will maintain primary, worldwide (when appropriate) insurance in an amount not less than \$1 million per occurrence, combined single limit for death, bodily injury and property damage against all liability arising out of the manufacture, sale and use of Goods sold by Buyer, regardless of the date of the occurrence creating such liability. Buyer shall be named as an additional insured under a broad form vendors endorsement to such policy. Seller will provide Buyer with a certificate of such insurance. At least seven (7) days prior to the start of work on Buyer's premises, Seller shall submit copies of certificates of insurance and policies from insurance companies acceptable to Buyer, for the following types of coverage and minimum limits: (1) Worker's Compensation and Occupational Disease Insurance, and U.S. Longshoremen & Harbor Workers' Compensation Insurance (where required), in statutory limits in accordance with applicable local and federal laws. (2) Employer's Liability Insurance in a minimum limit per person of \$1,000,000. (3) Automobile Liability Insurance with a minimum Combined Single Limit of \$ 1,000,000 covering all owned, non-owned and hired vehicles used by Seller in the performance of services hereunder. (4) Commercial General Liability Insurance for Bodily Injury and Property Damage covering premises, operations, contractual liability, products, completed operations, and personal injury (false arrest, false imprisonment, malicious prosecution, defamation of character, libel, or slander) in minimum limits of \$ 1,000,000 General Aggregate, \$1,000,000 Products - Completed/Operations Aggregate, and \$1,000,000 Each Occurrence. All certificates of policies furnished must include provisions that no material change or cancellation of the policy will be made without thirty (30) days prior written notice to Buyer. It is Seller's responsibility to determine the adequacy of any subcontractors' insurance and indemnification obligations.

21. **WORK ON BUYER'S PREMISES.** In addition to other terms contained herein, if this Purchase Order requires Seller to perform any services upon property (real or personal) owned or controlled by Buyer, the following shall apply:

(a) Seller agrees to furnish to Buyer, as a condition precedent to final payment, a complete release of all liens, together with a certificate by Seller that the release contains the signatures of all those who performed services or furnished materials under this Purchase Order.

(b) Seller agrees to indemnify, defend and hold harmless Buyer, and its directors, officers, employees and agents, from and against any and all claims and demands (including costs, litigation expenses and counsel fees incurred in connection therewith) arising out of injury to, or death of, any person whatsoever by injury or damage to property of any kind by whomsoever owned, or the environment, arising out of the performance by Seller, Seller's subcontractors or Seller's agents of any work which is the subject of the Purchase Order.

22. **U.S. FASTENER QUALITY ACT; TREAD ACT.** In the event that the U.S. Fastener Quality Act (FOA) or the Transportation Recall Enhancement, Accountability, and Documentation (TREAD ACT) applies to any Goods furnished under this Agreement, Seller shall comply with all requirements of the FOA and TREAD ACT and applicable regulations, including without limitation, regulations pertaining to manufacturer's insignia, manufacturer's record of conformance, and record keeping. Seller represents and agrees that all fasteners furnished under this order which are covered by the FOA will have been manufactured in accordance with the FOA. Seller agrees to furnish to Buyer (or Buyer's customers if requested by Buyer) a manufacturer's record of conformance as necessary in support of compliance with the FOA and the TREAD ACT. Seller agrees that any such record (or copies thereof) may be furnished by Buyer to its customers or other parties requiring such documents.

23. **COMPLIANCE WITH LAWS.** Seller represents that the Goods covered by this Agreement, together with their containers and other packaging, have been manufactured in accordance with the requirements of all applicable federal, state, local and foreign laws, ordinances, regulations and codes ("laws and regulations") and safety constraints on restricted, toxic and hazardous materials, as well as environmental, electrical, and electromagnetic considerations applicable to the country of manufacture and sale. Seller further agrees to furnish Buyer, upon request, a certificate attesting to such compliance in such form as Buyer may require. Seller and all persons furnished by Seller shall comply at their own expense with all such applicable laws and regulations from which liability may accrue to Buyer for any violation thereof by Seller, and including the identification and procurement of required permits, certificates, licenses, insurance, approvals and inspections in performance under this Agreement. Seller agrees to indemnify, defend (at Buyer's request) and save harmless Buyer, its affiliates, its and their customers and each of their officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorney's fees) that arise out of or result from any failure to do so.

24. **NAFTA; CERTIFICATION OF ORIGIN; DUTY DRAWBACK.** With respect to all Goods delivered from any point within the NAFTA territory (Canada, Mexico and the United States of America), Seller shall provide, with its invoice, a North American Free Trade Agreement Certificate of Origin on U.S. Customs Form 434 or the corresponding Canadian or Mexican form. Seller agrees to transfer to Buyer all customs duty and import drawback rights, if any (including rights developed by substitution and rights which may be acquired from Seller's suppliers), related to the Goods and which Seller can transfer to Buyer. Seller agrees to inform Buyer promptly of any such rights and to supply all documents which Buyer may request or which may be required to enable Buyer to obtain such customs duty and import drawback rights. Seller shall indemnify and hold harmless Buyer, its subsidiaries and affiliates, its and their customers and each of their officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorney's fees) that arise out of Seller's non-compliance with U.S. or foreign customs laws or regulations.

25. **EQUAL OPPORTUNITY.** This Agreement shall be deemed to include, to the extent applicable hereto: (a) the Equal Employment Opportunity Clause referred to in Executive Order 11246, as amended; (b) all provisions of 41 CFR 60-250, as amended, pertaining to Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era where the value of Goods or services furnished hereunder exceeds \$10,000; (c) all provisions of 41 CFR 60-741, as amended, pertaining to Affirmative Action for Handicapped Workers where the value of the Goods and services furnished hereunder exceeds \$2,500; and (d) similar applicable requirements of any state or local law.

26. **CHANGES.** Buyer may at any time, by written order, make changes or additions within the general scope of this Agreement. If any such change causes any increase or decrease in the cost of, or the time required for, performance of this Agreement, Seller shall notify Buyer in writing, and an appropriate equitable adjustment will be made in the price or time of performance, or both, by written modification of this Agreement. Any claims by Seller for upward adjustment of price or time requirements must be asserted within (30) days after Seller's receipt of notice of the change from Buyer. Nothing herein shall excuse Seller from proceeding with the Agreement as changed.

27. **PUBLICITY, PROMOTION OR ADVERTISING.** Seller shall not, without Buyer's prior written consent, issue any news release, advertisement, publicity or promotional material regarding this Agreement, including denial or confirmation thereof.

28. **INSOLVENCY.** If Seller ceases to conduct its operations in the normal course of business, including inability to meet its obligations as they mature, or if an proceeding under the bankruptcy or insolvency laws is brought against Seller or commenced by Seller on its own behalf, or if a receiver for Seller is appointed or applied for, or if an assignment for the benefit of creditors is made by Seller, Buyer may terminate this Agreement without liability, except for deliveries previously made by or Goods covered by this Agreement then completed and subsequently delivered in accordance with the terms of this Agreement.

29. **DRAFTS.** Drafts against Buyer will not be honored and C.O.D. shipments will not be accepted unless expressly agreed to in writing by Buyer.

30. **GOVERNING LAW.** The contract resulting from this Agreement is to be construed according to the laws of the state of the United States from which this Agreement issues, as shown by the address of Buyer printed on the face of this Agreement. The parties agree that any controversy arising under this Agreement shall be determined by the courts of said state, and Seller hereby submits and consents to the jurisdiction of said courts.