

# STANDARD TERMS & CONDITIONS OF SALE



1. **AGREEMENT.** These Standard Terms and Conditions shall apply to, are deemed a part of, and incorporated by reference into, all quotes, offers, RFP responses, contracts, purchase orders, agreements or arrangements (a "Contract") between Phoenix Defense, LLC (a Delaware Company) and affiliated group companies Phoenix Logistics, LLC; Riptide Software, Inc; Phoenix Defense Ventures, LLC; Phoenix Defense Germany, GmbH; and PLI Manufacturing, LLC, hereafter referred to as ("Company") and any person, firm or entity ("Buyer") for the sale, or offer to sell, products, materials, parts and services ("Products") by Company to Buyer. The Contract and these Standard Terms and Conditions shall constitute the entire agreement between the Company and the Buyer with respect to the sale and delivery of the relevant Products and no variation or waiver or addition to these Standard Terms and Conditions shall be binding unless expressly confirmed by the Company in writing. If there is a conflict between the Contract and these Standard Terms and Conditions, the terms and provisions of these Standard Terms and Conditions will control and any conflicting terms and provisions shall be of no force and effect unless expressly accepted in writing by Company. No person has authority to make any representations on Company's behalf and the Buyer shall not rely on any representation unless made or confirmed in writing by Company.

2. **OFFERS AND ORDERS.** Unless withdrawn prior to acceptance by Buyer, Company's written offer to sell Products is open for acceptance within the period stated therein, or when no period is stated within thirty (30) days from the date thereof. Any purchase order received by Company shall only be binding on Company at such time as Company gives to the Buyer its written acceptance thereof. Once a purchase order has been accepted by Company, any changes to the purchase order requested by Buyer must be approved by Company in writing, are subject to Company's approval, and may result in modifications to the commercial terms of the purchaser order, including changes in price, delivery date, and payment terms. Buyer may not cancel a purchase order without the written consent of Company. The Buyer shall indemnify Company against all costs incurred by Company in connection with any cancelled, withdrawn, or repudiated purchase order. Price lists, brochures and other literature do not constitute an offer.

3. **PRICES.** Prices shall be quoted for delivery of the Products to the agreed location in accordance with the ICC' Incoterms (2000) and exclusive of value added tax. The price shall include Company's standard packing and any special packing shall be charged to the Buyer. Prices quoted relate to the quoted quantity only. Unless otherwise agreed in writing, prices shall be quoted in United States Dollars. The quoted prices are based on the costs of materials and labor prevailing on the date of quotation. Unless otherwise agreed in writing, if before the date of actual delivery Company's costs of materials or labor increase, Company shall be entitled to increase the prices quoted to cover the relevant increase. Prices quoted do not include taxes, levies, duties, tariffs or other governmentally required costs and fees, for which Buyer shall be solely responsible.

4. **PAYMENT.** Unless otherwise agreed in writing, all invoices for product are Pre-Pay, Ex Works. Interest on late payments will be charged to the Buyer at a rate of one and one-half percent (1.5%) a month (or part month) on the amount still outstanding. In addition, all costs and expenses, legal, judicial or otherwise, incurred by Company in recovering the sums due shall be fully borne by the Buyer.

If the Buyer fails to timely pay outstanding amounts, Company reserves the right, in addition to any other legal rights and

remedies available to it, to suspend further deliveries of Products until such time as payment is received from the Buyer or to terminate the Contract and any other outstanding purchase orders or Contracts. Should the Contract be terminated by Company, the Buyer will be liable to Company for the price of all Products actually delivered or completed and ready for delivery, and for all costs incurred for work in progress, including raw materials and labor.

If the Buyer fails to take delivery of the Products under any Contract within eight (8) days of the date of notification that the Products are ready for delivery Company shall have the right to invoice for immediate payment.

Company reserves the right at any time to require that Buyer provide adequate assurances of its ability to perform all of its obligations under any Contract. If Buyer is unable to provide adequate assurances, Company, in addition to any other remedies, may suspend performance, request prepayment, or terminate the Contract and any other outstanding purchase orders or Contracts.

If the event that Buyer makes an assignment for the benefit of creditors, files a petition in bankruptcy, or is adjudicated bankrupt or insolvent, or has a receiver or trustee in bankruptcy appointed to all or part of its assets, or if any action is taken to dissolve, liquidate or wind up the Buyer, Company shall have the right to terminate the Contract upon written notice and with immediate effect, without prejudice to its rights to claim compensation for all costs and damages incurred by Company in connection therewith.

5. **RESERVATION OF TITLE.** Title to Products sold under any Contract shall not pass to the Buyer until Company has received payment in full of all sums invoiced together with any interest accrued thereon and other charges. Until payment in full, Company shall remain the full legal and beneficial owner of the Products and the Buyer shall hold any proceeds of sale of the Products as trustee or as bail for Company free from any charge, lien or other encumbrance. The Buyer agrees that it will assign to Company upon Company's request all of its rights under a contract of sale against any subsequent buyer of the Products or any of them or of the equipment in which the Products have been incorporated. Until such time as title to the Products passes to the Buyer or until such time as the Products are sold, the Buyer shall keep the Products fully insured with a reputable insurer and shall store them in such a way as they can be readily marshaled and identified as Company's property. If Buyer fails to timely pay for Products, Company may repossess all or any of the Products or seize any of the Products at any time and is entitled to enter upon any of the premises of the Buyer for the purpose of doing so. If the Buyer makes an assignment for the benefit of creditors, is adjudicated bankrupt or insolvent, has any proceedings commenced against it for reorganization, readjustment of debt, dissolution or liquidation, or has its business wound up, Company shall be entitled to claim back as its property any Products delivered but not yet paid for or not paid for in full, without prejudice to its rights to demand compensation for any losses or damage resulting thereof.

6. **DELIVERY.** Unless otherwise agreed in writing, all deliveries of Products shall be made Ex Works of Company's factory in accordance with ICC's Incoterms (2010). All risks of loss or damage to the Products shall pass from Company to the Buyer when the Products are delivered to the Buyer in accordance with the agreed trade term as defined in ICC's Incoterms (2010).

Company may make deliveries in installments, which will be invoiced individually. The Buyer will make payment in accordance with clause 4 of these Standard Terms and Conditions.

Times specified for delivery of the Products are given and intended as estimates only unless otherwise agreed in writing. Where a firm time for delivery has been expressly agreed upon, no delivery shall be considered overdue until the Buyer has made a written request for delivery and given Company a reasonable opportunity to comply therewith. If Company fails to deliver the Products on or before the

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extended or postponed delivery time due to circumstances for which it is fully responsible and Buyer has stated in writing when agreeing to the new delivery time that it will refuse to take delivery if the new delivery date is not met, Buyer shall have the right to cancel the Contract by serving written notice to Company.

The Buyer shall inspect or have inspected the Products delivered and shall notify Company in writing of any nonconformance regarding the quantity, specification or quality of the Products to the order within fourteen (14) days of receipt of the Products. If Buyer does not report a nonconformance with the 14-day period the Buyer shall be deemed to have accepted the Products. During the 14-day period, at Buyer's request, Company will repair or replace nonconforming Products. The Buyer shall not return any Products without the prior written permission of Company. Submitting a claim shall at no time release the Buyer from its obligations under the Contract.

COMPANY'S OBLIGATION TO REPAIR OR REPLACE NONCONFORMING PRODUCTS IS BUYER'S SOLE REMEDY FOR NONCONFORMANCE.

7. WARRANTY. Company warrants that any product supplied under purchase orders issued by Buyer and accepted by Company, where properly used, stored and maintained, and if properly assembled and installed, shall be free from

defects in workmanship and material for a period of 12 months after delivery of the products.

Buyer shall give Company, within ten (10) days of the discovery of any warranty claim, written notice of the claimed defect and satisfactory proof thereof. Company shall, within ten (10) days of the receipt of the returned Product, provide Buyer with written notice of the results of investigation and, if subject to repair or replacement under the warranty, the scheduled reworked or replaced product delivery schedule.

Company's warranty does not extend to (i) any damage or loss due to misuse, accident, disaster, abuse, neglect, normal wear, or damage or loss due to work not performed by Company or its contractors, (ii) damage or loss caused by a Product that has been repaired or altered by Buyer or a third party without Company's prior written approval, or (iii) defects arising out of data, drawings, specifications or instructions furnished by Buyer.

COMPANY'S OBLIGATION AND BUYER'S EXCLUSIVE REMEDY UNDER THIS WARRANTY SHALL BE LIMITED TO REPAIR OR REPLACEMENT BY COMPANY AT ITS COST OF THE PRODUCTS THAT PROVE DEFECTIVE WITHIN THE APPLICABLE WARRANTY PERIOD OR, AT COMPANY'S DISCRETION, A REFUND OF THE PURCHASE PRICE OF SUCH DEFECTIVE PRODUCTS. REPLACEMENT PRODUCTS ARE WARRANTED ONLY FOR THE REMAINING WARRANTY PERIOD OF THE ORIGINAL PRODUCT.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER MATTER WITH RESPECT TO THE PRODUCTS.

8. TOOLING. All tools, moulds and fixtures that are developed by Company under the Contract or made by Company under any purchase order from the Buyer shall be and remain at all times the exclusive property of Company.

9. CONFIDENTIALITY. Company and Buyer shall each maintain in strict confidence and shall not, without the other party's prior written authorization, disclose to third parties any confidential information of the other party, or use such confidential information for any other purpose than the performance of the Contract. "Confidential information" includes any information designated in writing as confidential by the party, and any information regarding a party's property, operations, financial information, sales and marketing, business models, employees, agents, representatives, suppliers, vendors, professional service providers, clients, pricing, services (current and contemplated), capitalization, agreements with third parties, affiliates, shareholders, trade names, trademarks, trade secrets, patents, patent applications, know-how, technology, or other information of any kind. Confidential information does not include information that: (a) is or becomes available to the public generally (other than as a result of a disclosure by the receiving party or one of its representatives); (b) becomes available to the receiving party on a non-confidential basis from a source other than the disclosing party or one of its representatives, provided that such source is not bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the disclosing party or any other person with respect to such information; or (c) has been independently acquired or developed by the receiving party without violating any of its obligations under this provision.

Upon termination of the Contract each party shall return to the other party all confidential information that is in its possession. The Buyer shall not make any advertisement, publicity or communication regarding the Contract or Company's relationship with the Buyer without Company's prior written consent.

The parties' obligations under this Clause shall survive the termination of the Contract.

10. FORCE MAJEURE. Company shall not be liable for the non-performance or delayed performance of any of its obligations under the Contract, if such performance is hindered or delayed by an event beyond Company's reasonable control, including, without limitation, acts of God, war, acts of terrorism, civil unrest, embargos, natural disasters, fire, explosions, accidents, strike, lock-out and other general labor disputes, exceptional weather conditions, breakdown or general unavailability of transport facilities, general shortages of energy and materials. Company shall promptly notify the Buyer of the occurrence of the Force Majeure event with indication of the scope and effect of such event on the performance of its obligation. The performance of Company's obligations shall be suspended for the term of the Force Majeure event. Should the Force Majeure event last for more than sixty (60) days from the date on which the excused performance was originally due, the Buyer shall be entitled to terminate the Contract on fifteen (15) days prior written notice. The Buyer shall pay the price for all Products delivered up to the date of termination.

11. EXCLUSION OF CERTAIN DAMAGES. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, IN NO EVENT SHALL COMPANY, ITS AFFILIATES OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, SHAREHOLDERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS BE LIABLE TO BUYER FOR LOST PROFITS, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, REGARDLESS OF THE BASIS OF THE CLAIM, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. INDEMNITY. The Buyer shall indemnify and hold Company harmless from any liabilities, claims, costs (including reasonable attorney's fees), expenses and damages in connection with the infringement by Company of a third party's patent, copyright or other intellectual property right that arises from Company's compliance

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with the Buyer's design, specifications, or any instructions or information provided by Buyer.

13. ASSIGNMENT. The Buyer shall not assign the Contract in whole or in part to any third party without Company's prior written consent.

14. APPLICABLE LAW. The Contract shall be governed by and construed in accordance with the laws of the State of Arizona. The U.N. Convention on Contracts for the International Sale of Goods shall not apply. Any dispute arising, under, out of, or in connection with this Contract, which could not be settled amicably, shall be settled in accordance with the Rules of the American Arbitration Association by one or more arbitrators appointed in accordance with said Rules. The arbitration proceedings shall take place in Phoenix, Arizona. The arbitration award shall be final and binding and shall be enforceable in any court of competent jurisdiction.

15. MISCELLANEOUS PROVISIONS. If any of the provisions hereof is determined to be invalid, illegal or otherwise unenforceable, the remaining provisions shall remain in full force and effect. Any delay or failure of Company to enforce at any time any provision hereof shall not constitute a waiver of the right thereafter to enforce each and every provision hereof. If either party institutes an action or proceeding to enforce any rights arising under a Contract, the party prevailing in such action or proceeding will be paid all reasonable attorneys' fees and costs to enforce such rights by the other party, such fees and costs to be set by the court, not by a jury, and to be included in the judgment entered in such proceeding. In the event any term or provision a Contract is declared to be invalid or illegal for any reason, the Contract will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of the Contract. The remaining provisions will be construed to preserve the intent and purpose of the Contract and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits. Each party, and the person or persons executing any Contract on behalf of the parties, have the power and authority to execute, deliver and perform the Contract and to consummate the transactions contemplated hereby. The parties to any Contract are independent contractors, and have no other legal relationship under or in connection with the Contract.