

**ACME CRYOGENICS, INC. (“Acme”)
TERMS AND CONDITIONS OF SALE**

1. **PRICES AND TERMS OF SHIPMENT:** All prices quoted in Acme’s current pricing catalog or in discussions with Buyer (neither of which are valid for more than thirty (30) days) supersede all prior quotations and are subject to change from time to time as Acme’s business dictates. Buyer further agrees and acknowledges that it will be billed at prices in effect in Acme’s then-current pricing catalog at time of shipment for goods and products. All shipments are FOB Place of Shipment which shall be Acme’s place of business unless otherwise expressly agreed by Acme in writing. All shipments of goods shall be insured at Buyer’s expense and shall be made at Buyer’s expense.

2. **TERMS:** Upon extension of credit by Acme, and unless otherwise agreed by Acme in writing, Buyer shall remit payment to Acme in immediately available U.S. currency no later than 30 days from the date of Acme’s invoice for goods and / or services contemplated in Buyer’s purchase order or provided hereunder (“Order”). Past due payments shall bear interest at one and a half (1-1/2%) percent per month and Buyer shall be liable for any and all costs and expenses of Acme, including, without limitation, reasonable attorneys’ fees incurred by Acme as a result of any past due payments hereunder.

3. **TAXES:** Buyer shall and hereby covenants to be liable for and pay all taxes, impositions, charges and exactions (hereinafter collectively referred to as “Taxes”) imposed upon any goods and / or services provided by Acme under Buyer’s Order, regardless of the actual party upon whom any such Taxes are legally imposed. To the extent that Buyer claims any available exemption from any Taxes, Buyer shall and hereby covenants to furnish Acme a valid exemption certificate or other legal evidence of exemption prior to Acme making any performance under the terms of the proposed Order. Buyer hereby releases, remises, quitclaims and discharges Acme of, from and against any and all liability and/or claims arising out of or in any way related to Acme’s refusal to perform as a result of Buyer’s failure to provide a valid exemption certificate of other legal evidence of exemption from applicable Taxes.

4. **TITLE AND RISK OF LOSS:** Acme’s responsibility shall cease upon delivery of the goods to the appropriate transportation companies. Acme’s performance hereunder shall be subject to delays resulting from governmental requirements, strikes, or other concerted acts of workmen, fires, floods, explosions, riots, war or armed conflict (declared or undeclared), accidents, acts of God, acts of terrorism, and other causes reasonably beyond Acme’s control. Risk of loss shall pass to and be borne by the Buyer upon delivery of the goods to the first carrier of any shipper utilized to deliver any goods contemplated by Buyer’s Order. To the extent that Buyer’s Order relates to services to be provided by Acme, the parties hereby agree and acknowledge that the risk of loss in connection with any work performed by Acme hereunder shall pass to Buyer proportionately as Acme completes its services pursuant to Buyer’s Order. The parties further agree and acknowledge that title to any finished goods delivered and / or products installed resulting from any services performed by Acme hereunder shall not pass to Buyer until such time as Acme has been paid all sums due pursuant to the terms of Buyer’s Order. Acme shall not, under any circumstances, be responsible for any damage to any products or goods, which shall occur during shipment or installation of products or goods if such installation is not performed by Acme, and no such damage shall relieve Buyer of any obligations to Acme hereunder. Acme assumes no responsibility for any and all material, inventory, products and the like (“Buyer Furnished Items”) supplied or to be supplied by Buyer to Acme or stored at Acme on behalf of Buyer. If Buyer Furnished Items are not delivered to Acme in sufficient time to enable Acme to meet the terms of Buyer’s Order, Acme shall make equitable adjustments in the terms of Buyer’s Order and shall notify Buyer of such adjustment.

5. **SECURITY INTEREST:** In order to protect Acme’s interest in any goods, products and / or services provided pursuant to Buyer’s Order, Buyer hereby grants Acme a security interest in any and all such goods, products and / or services and hereby warrants to Acme that no such goods, products or services are subject to any security interest or lien, legal or equitable, superior to that of Acme. Buyer shall and hereby covenants to execute and deliver such documents and perform such acts as Acme may require to evidence, establish and protect the security interest granted herein to Acme including, without limitation, any financing statements required by applicable law. Buyer nonetheless agrees and acknowledges that to the extent Buyer fails or in any way refuses to execute and deliver any such documents to Acme, Buyer grants to Acme an irrevocable power of attorney to execute and deliver any and all such documents on Buyer’s behalf for the purpose of evidencing, establishing and protecting any security interest granted pursuant to this Section 5.

6. **WARRANTY / REJECTION OF NON-CONFORMING GOODS:** Acme warrants to Buyer that the products and/or goods of Acme’s own manufacture supplied hereunder will, for a period of 12 months from the date of shipment to Buyer, be free from defects in material and workmanship under normal and proper installation, operating conditions and service. The obligation of Acme, and Buyer’s sole and exclusive remedy, pursuant to this warranty shall be for Acme (at its option) to repair or replace any defective product or part, individual component or spool thereof which is returned to Acme’s principal place of business, with transportation charges prepaid and thereafter determined by Acme to not comply with the terms of Acme’s warranty above.

Notwithstanding the foregoing, Acme shall have no warranty obligation hereunder if all payments due from Buyer have not been made, or the product or part becomes defective in whole or in part as the result of installation or repairs not made by Acme or as the result of removal, improper use or storage, operation above rated capacities or misapplication thereof after it has been delivered to the Buyer. If Buyer in whole or in part, directly or indirectly, supplies or directs the product or system design, Acme does not warrant that the product design or any individual spool or component derived from the product design will meet the form, fit and function of Buyer and Acme accepts no responsibility for the design of the product or system.

Acme shall be responsible for the replacement of non-conforming goods rejected by Buyer, provided that Buyer reports said non-conformance (including, without limitation, errors in quantity or weight) to Acme in writing within ten (10) days of receipt of such goods. If Buyer fails to notify Acme of any non-conformance within ten (10) days of Buyer’s receipt of any goods, Buyer shall be deemed to have accepted all goods delivered subject to Acme’s warranty obligations hereunder. Products and parts made by other manufacturers are not warranted by Acme and Buyer hereby expressly agrees and acknowledges that Buyer shall only have such warranty with respect to products and parts made by manufacturers and/or persons other than Acme as provided by such other manufacturers and/or persons provided to Acme. No repair or replacement under Acme’s warranty obligations will extend or enlarge the warranty period.

EXCEPT AS SET FORTH HEREIN, ACME MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND BUYER ACKNOWLEDGES THAT IT IS NOT RELYING UPON ACME’S SKILL OR JUDGMENT TO SELECT OR FURNISH GOODS SUITABLE FOR ANY PARTICULAR PURPOSE OR UPON ANY AFFIRMATIONS OF FACT OR PROMISES OF ACME WHICH EXTEND BEYOND SPECIFICATIONS MUTUALLY AGREED UPON IN WRITING BY ACME AND BUYER. IN THAT REGARD, AND EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, BUYER AGREES AND ACKNOWLEDGES THAT IT IS ACCEPTING ANY GOODS, SERVICES AND / OR PRODUCTS HEREUNDER ON AN “AS-IS” AND “WITH ALL FAULTS” BASIS. FURTHERMORE, BUYER HEREBY EXPRESSLY AGREES AND ACKNOWLEDGES THAT ACME SHALL HAVE NO LIABILITY OF ANY NATURE HEREUNDER BEYOND REPLACEMENT OR REPAIR OF ANY DEFECTIVE GOODS AND / OR SERVICES, OR PART, INDIVIDUAL COMPONENT OR SPOOL THEREOF EXCEPT AS EXPRESSLY SET FORTH HEREIN, AND ACME SHALL FURTHER HAVE NO LIABILITY OR OBLIGATION OF ANY NATURE FOR ANY SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR PROFITS) ARISING OUT OF OR IN ANY WAY

RELATED TO THIS ORDER REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED IN TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL AND / OR EQUITABLE THEORY, AND EVEN IF ACME HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES, BUYER HEREBY EXPRESSLY RELEASING, REMISING, QUITCLAIMING AND FOREVER DISCHARGING ACME FROM ANY AND ALL SUCH LIABILITY. NOTWITHSTANDING ANY OTHER PROVISION HEREIN TO THE CONTRARY, IN NO EVENT SHALL ACME'S TOTAL LIABILITY EXCEED THE PRICE ACTUALLY PAID BY BUYER FOR THE GOODS AND / OR SERVICES CONTEMPLATED BY THIS ORDER.

7. **RETURN GOODS:** All goods purchased hereunder can only be returned with Acme's written permission and instructions. When not covered by Acme's warranty above, such returns will be subject to a deduction for a restocking charge of up to thirty (30%) percent of the purchase price, and all transportation charges, including freight and cartage, will be paid by Buyer. Material made on special order shall not be returned under any circumstances. No waiver, alteration or modification of these terms and conditions shall be binding on Acme unless made in writing and agreed to by a duly authorized officer of Acme.

8. **ACCEPTANCE.** If Buyer has submitted an Order containing provisions contrary to these terms and conditions, Buyer hereby expressly agrees and acknowledges that these terms and conditions shall control. Buyer hereby agrees and acknowledges that Acme's sales agents shall not have the authority to bind or in any way alter the terms and provisions of these terms and conditions of Buyer's Order. Buyer's use of any goods and / or services hereunder shall be deemed conclusively that all such goods and / or services are conforming and satisfactory to Buyer hereunder.

9. **SEVERABILITY.** In the event that any provision of this Order shall be invalid, illegal or otherwise unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

10. **GOVERNING LAW / CHOICE OF FORUM.** This Order is made in the Commonwealth of Pennsylvania and it (along with all rights, duties and obligations arising hereunder) shall be construed, interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania. The parties further agree that any claim or action relating in any way to Buyer's Order (with the exception of actions in which Acme seeks equitable relief) shall be brought in the Court of Common Pleas of Lehigh County, Pennsylvania, or if based solely upon federal law, in the United States District Court for the Eastern District of Pennsylvania. Buyer submits to the exclusive jurisdiction of said Courts. Furthermore, Buyer agrees that venue in said Courts shall be proper in all respects and covenants not to assert any defense or objection to the venue of said Courts.

11. **SUCCESSORS AND ASSIGNS.** Buyer may not transfer or assign any of its rights or delegate any of its obligations hereunder without the express prior written consent of Acme. This Order shall be binding upon, and inure to the benefit of, Acme and its respective successors and assigns, including any corporation with which, or into which, Acme may be merged or which may succeed to its assets or business.

12. **TERMINATION:** In the event of Buyer's Bankruptcy, Acme, without any prejudice to any other right or remedy available hereunder or pursuant to applicable law, shall be entitled to cancel and terminate this Order or suspend any further deliveries under Buyer's Order without any liability of any nature to Buyer, and to the extent of goods, products or services delivered but not paid for, the total amount due for said goods, products or services shall immediately become due and payable notwithstanding any previous agreement or arrangement to the contrary. For purposes of this Section 12, Buyer's Bankruptcy shall mean any event in which Buyer shall become insolvent, shall request its creditors for a moratorium, shall enter into an assignment for the benefit of creditors, or shall suffer the appointment of a temporary or permanent receiver, trustee or custodian for all or a substantial part of its assets which shall not be discharged within thirty (30) days, or shall file a voluntary petition for relief under the United States Bankruptcy Code, as amended from time to time or similar foreign law, or in the event an order for relief under the Bankruptcy Code shall be entered concerning Buyer or if a petition or an answer shall be filed proposing the entry of an order for relief against Buyer under the Bankruptcy Code, which is not discharged or denied within thirty (30) days after the filing thereof. Acme shall otherwise be entitled to terminate this Order upon five (5) days prior notice to Buyer in the event Buyer breaches any of the terms and/or provisions contained herein. Notwithstanding any other provision herein to the contrary, in the event that Buyer fails to remit payment in accordance with the terms herein, Acme may suspend any and all performance hereunder until such time as Buyer becomes fully current on any and all payments due to Acme hereunder. The parties agree that Acme's remedies hereunder shall be fully cumulative and the exercise of one or more remedies shall not prejudice or prevent Acme from exercising any and all remedies provided hereunder or pursuant to applicable law.

13. **NO GRANT OF LICENSE.** The parties hereby expressly agree and covenant that except as otherwise expressly provided in a separate written agreement executed by the parties, this Order shall not be construed as granting any right, license, interest or claim of any nature in any trademark, service mark, patent, trade secret, invention, intellectual property right, or confidential information of the parties.

14. **EXPORT TERMS.** Buyer shall be responsible for complying with any and all laws and/or regulations governing the exportation of any goods or products delivered hereunder from the United States and the importation of any such goods or products in the country of destination, including, without limitation, the payment of any taxes and/or duties thereof.

15. **NO WAIVER.** The waiver by a party of any term, covenant, agreement or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, agreement or condition herein contained. No covenant, term, agreement or condition of this Order shall be deemed to have been waived by a party unless such waiver is in writing by such party.

16. **ENTIRE AGREEMENT.** Buyer's Order (which includes all writings signed by a duly authorized officer of Acme, and Buyer's purchase order except for any terms inconsistent with the terms hereof) contains the entire understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understanding, inducements or conditions, express or implied, oral or written, among the parties with respect to such subject matter, except as herein contained. Buyer's Order may only be amended by a writing signed by all of the parties hereto.

17. **INDEMNITY.** Buyer shall and hereby covenants to protect, defend, indemnify and hold harmless Acme (which for the purpose of this Sections 17 shall include Acme's parent, affiliates, subsidiaries, associates, directors, officers, employees, and agents) of, from and against and from any and all losses or damages, including (without limitation) any judgments, civil penalties, interest, expenses and costs (including, without limitation, attorneys' fees), claims, lawsuits, actions, proceedings or investigations ("Claims") which are made or brought against Acme by any person, government or entity arising out of or in any way related to (a) the death of or injury to any person or damage to any property that resulted or is alleged to have resulted from the negligence or willful misconduct of Buyer, its employees, subcontractors, and agents, in the performance of their obligations hereunder, or from the Buyer's use of the goods sold hereunder; (b) in connection with any drawings, schematics, promotional or advertising matter, guarantees, warranties, labels, or instructions furnished by Buyer or submitted to Acme by Buyer; (c) out of any infringement of any patent, design, trade name, trademark, copyright, trade secret, or any other intellectual property right or entitlement of any third party; or (d) out of any environmental, property or toxic tort claim, lawsuit, judgment, loss, civil penalty or action.