



## **Purchase Order Terms and Conditions**

The following terms and conditions shall apply to this Purchase Order.

By executing this Purchase Order, the parties acknowledge and agree as follows:

### **Status as an Independent Contractor**

SELLER is an independent contractor and its employees and agents are not employees or agents of WinTec Arrowmaker, Inc. (WinTec) for any purpose. SELLER shall not have any right, power or authority to create any obligation, express or implied, on behalf of WinTec and shall not have any authority to represent itself as an agent of WinTec.

SELLER agrees to maintain general liability insurance at its own expense, including products liability and completed operations liability, that is acceptable to WinTec and, at a minimum, commercially adequate. In addition, SELLER agrees to name WinTec as an additional named insured on such policies. Seller shall provide WinTec with certificates of insurance for all applicable insurance policies upon request.

SELLER shall cover or ensure all of its employees performing services under this Purchase Order are in compliance with the applicable laws relating to Workers' Compensation or Employees' Liability Insurance.

### **Invoicing and Payment**

SELLER invoices must be received by WinTec **NLT than the 5th of each month**. Please email **invoices and required supporting documentation to: [AP@arrowmaker.com](mailto:AP@arrowmaker.com)**. Payments terms are Net 30 days from date of WinTec's receipt from SELLER of an accurate and complete invoice unless otherwise indicated on the Purchase Order.

SELLER shall include on each invoice a statement certifying that the costs billed are complete and accurate, and were incurred solely in the performance of work under this Purchase Order.

**WinTec may withhold payment of any invoice if SELLER has not complied with any material requirement of the Purchase Order. Said payment will be paid only when WinTec's customer approves requirement compliance. Any payment so withheld will not accrue interest.**

### **Compliance With Laws/ Conflict of Interest**

This Purchase Order shall be deemed to have been executed and delivered within the State of Maryland and the rights and obligations of the Parties shall be construed and enforced in accordance with, and governed by, the laws of such State without regard to its conflict of law principles. For all claims and disputes not subject to mandatory arbitration, the Parties agree and consent to exclusive venue and jurisdiction in the state and federal courts located in the State of Maryland for all claims arising under or in any way related to this Agreement. The Parties further agree and consent to accept service of process by certified or registered United States mail, return receipt requested, addressed as provided herein.



**Export Control**

WinTec and SELLER individually represent and affirm that they will not transfer/deliver/convey any export-controlled technical data, equipment or defense services to the other party, to any foreign person, firm or country under this work. WinTec further represents and affirms that SELLER is not required to produce any export-controlled technical data, equipment, or defense services under this work.

**Intellectual Property**

- A. "Intellectual Property" means all of the following: (i) discoveries, improvements, inventions (whether or not patentable); (ii) patents, patent applications, patent disclosures, and any other patentable subject matter; (iii) copyrights, applications to register copyrights, works of authorship and any other copyrightable works; (iv) computer software (including source code, executable code, databases, data and related documentation); (v) trade secrets, proprietary information and know-how; and (vi) all improvements or modifications to any of the foregoing, and/or Proprietary Information.
- B. "Background Intellectual Property" or "BIP" shall mean all intellectual property owned or controlled by one of the Parties prior to this Agreement, or developed contemporaneously with this Agreement, but not arising from the performance of Services. All BIP shall remain the property of the respective Party. Unless explicitly stated, no licenses to any Background Intellectual Property are granted under this Agreement.
- C. "Foreground Intellectual Property" or "FIP" means all Intellectual Property that is developed, created, conceived or reduced to practice by both Parties jointly in the performance of Services. Each Party shall promptly disclose to the other Party any FIP of which it becomes aware. The Parties shall jointly own all FIP, and each Party hereby assigns to the other Party an equal undivided interest in and to such FIP. Each Party shall be free to use and exploit the FIP for any purpose without the consent of the other Party and without any duty to account to or pay royalties to the other Party; provided that nothing in this Section shall be deemed or construed to grant any rights in any BIP or other IP of either Party (other than FIP). The Parties shall mutually determine whether an application(s) for patent(s) shall be filed on any such joint invention, the Party who will prepare and file such application(s), and the countries in which such application(s) is to be filed. The Parties shall bear equally all out-of-pocket expenses incurred by either Party in connection therewith but only to the extent such expenses were incurred with the approval of both Parties. Notwithstanding the foregoing, if any Party elects not to file an application on such joint invention or not to share the expenses thereof, the other Party may file at its own expense and shall have sole control of the prosecution of such application and enjoy exclusive ownership of the invention, application(s), and any patent(s) which may be granted on such application(s) provided that such other Party or Parties notifies the Party electing not to file by registered mail at least fifteen (15) days in advance of such filing, and provided further that the Party electing not to file shall retain a nonexclusive, nontransferable, royalty-free license to make, use, or sell under such invention(s), application(s), and patent(s), without the right of sublicense other than to its parent, subsidiaries and affiliates.
- D. SELLER agrees that any Intellectual Property ("New IP") developed and acquired by SELLER under this MSA or an Order hereto and charged to Buyer including, but not limited to Software, Software Programs, Technical Data and documents, etc., shall be considered "work



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for hire” on behalf of the Buyer. SELLER agrees to assign all rights, title and interests, including but not limited to, copyrights and patents to Buyer. Upon completion, expiration or termination of Orders placed hereunder, SELLER shall deliver all items developed and acquired by SELLER in performance of the Orders to the Buyer.

- E. Joint Copyrights: In the event that personnel employees of the Parties jointly produce copyrightable material, it shall be jointly owned and copyrighted with rights reserved for both Parties and both Parties shall share the costs, if the copyright is registered.

**Liability**

SELLER is and will be an independent contractor in the performance of work under this agreement, and shall be responsible for the negligent acts and omissions of its agents and employees acting within the scope of their employment for work under this Agreement.

IN NO EVENT SHALL EITHER PARTY OR THEIR AFFILIATES, OR ITS OR THEIR DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, VENDORS, SUBCONTRACTORS, REPRESENTATIVES AND AGENTS, BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL OR OTHER SPECIAL DAMAGES OF ANY KIND ARISING UNDER OR IN RELATION TO THIS AGREEMENT, HOWEVER CAUSED, INCLUDING LOSS OF PROFITS OR REVENUE, LOSS OF DATA, WORK INTERRUPTION, INCREASED COST OF WORK, OR ANY CLAIMS OR DEMANDS AGAINST IT BY ANY OTHER ENTITY, REGARDLESS OF WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND REGARDLESS OF WHETHER SUCH PARTY KNEW, HAD REASON TO KNOW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THIS ARTICLE BE DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, AND NEITHER PARTY SHALL ALLEGE OR CLAIM THE FOREGOING.

IN NO EVENT SHALL EITHER PARTY’S AGGREGATE LIABILITY (INCLUDING ANY LIABILITY OF ITS OR THEIR AFFILIATES, OR ITS OR THEIR DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, VENDORS, SUBCONTRACTORS, REPRESENTATIVES AND AGENTS) FOR DAMAGES ARISING UNDER OR IN RELATION TO THIS AGREEMENT EXCEED THE AMOUNT ACTUALLY PAID BY WINTec TO SELLER UNDER THIS AGREEMENT, HOWEVER CAUSED, REGARDLESS OF WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND REGARDLESS OF WHETHER SUCH PARTY KNEW, HAD REASON TO KNOW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

In no event shall this Article be deemed to have failed of its essential purpose, and neither party shall allege or claim the foregoing.

**Delivery Terms**

See Purchase Order for delivery instructions.

**Delivery Terms – Time of Delivery**

Time is of the essence in the performance of this purchase order by SUBCONTRACTOR. Delivery is to be made both in quantities and at times specified herein. If SELLER anticipates a delay in delivery, SELLER shall notify WinTec immediately. If SELLER fails to meet the delivery schedule, WinTec, without limiting its other rights or remedies, may direct expedited routing, and any excess cost incurred thereby shall be paid for by SUBCONTRACTOR.



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**Non-Conforming Goods**

If the goods ordered herein fail to meet the specifications or otherwise do not conform to the requirements of this purchase order, WinTec shall have the right to reject such goods. WinTec shall clearly state in writing the reasons for any rejection. Within five (5) business days of any proper notice of rejection, SELLER shall present a corrective plan of action to WinTec. SELLER, at no additional expense to WinTec, shall then make the corrections. Where applicable, SELLER shall resubmit the corrected Service or Deliverable to WinTec.

Packaging and handling expense incidental thereto and applicable transportation cost shall be paid for by SELLER. Unless otherwise expressly granted in writing by WinTec, no relief in the established delivery schedule shall accrue by virtue of SELLER having notified WinTec of the non-conformance.

**Termination**

In no event shall termination, in whole or in part, of the contract work to be performed by SELLER hereunder occur for the convenience of WinTec, unless (1) WinTec's prime contract will have first been terminated, in whole or in part, for convenience and only if the portion terminated by the Government corresponds with the SELLER's share of contract work or (2) the parties mutually agree to terminate for convenience. In such event, WinTec shall pay SELLER for all outstanding invoices and for any services not previously invoiced but that were performed in accordance with this Agreement and or Purchase Order up to the effective date of termination, including any reasonable termination costs of Subcontractor's suppliers and any other unavoidable costs or other commitments made by SELLER associated with this Agreement or active Purchase Order. If compensation is based on hourly rates; WinTec shall pay SELLER in accordance with the rates for work performed up to the effective date of the stoppage of work under the termination notice. If compensation is pursuant to fixed price or lump sum rates, WinTec shall pay the pro rata portion of such sum that is represented by the portion of the allotted hours expended or tasks performed prior to the effective date of such termination notice.

**Warranties**

SELLER shall provide standard warranties as they apply to commercial items purchased for the Government. Commercial warranties will not be applicable to any commercial item that is modified or incorporated into a system or subsystems. Commercial warranties are intended for stand-alone commercially available items.

**Audit**

Seller agrees to the right of access by the Buyer, their customer, and regulatory authorities to the applicable areas facilities and to applicable documented information at any level of the supply chain.

**Professional Standards**

SELLER agrees to:

- (1) Use customer-designated or approved external providers, including process sources (e.g. special processes)
- (2) Notify the Buyer of nonconforming processes, products, or services and obtain approval for their disposition
- (3) Prevent the use of counterfeit parts
- (4) Notify the Buyer of changes to applicable processes, products, or services, including changes to their external providers or location of manufacture, and obtain Buyer's approval
- (5) Flow down to external providers applicable requirements, including customer requirements

SELLER agrees to ensure that persons are aware of:

- (1) Their contribution product or service conformity



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- (2) Their contribution to product safety
- (3) The importance of ethical behavior

<b>Revision</b>	<b>Change Order Number</b>	<b>Date Approved</b>	<b>Authorized By</b>
Initial	N/A	4/19/2021	M. Zonfrelli