



## ARKALUMEN TERMS AND CONDITIONS OF SALE

Arkalumen Inc ("Arkalumen") offers to sell and deliver proprietary Arkalumen products ("Ark Products") and third party components identified in a purchase order (together "Deliverables") solely in accordance with these terms and conditions ("Terms"). Any offer or order by Buyer is expressly limited to these terms and Arkalumen hereby rejects any additional or different terms proposed by Buyer, including those contained in Buyer's purchase order, unless Arkalumen expressly agrees to such terms in writing. To the extent of any inconsistency between the terms of an order and these Terms, these Terms shall control and take precedence. Unless Arkalumen and the Buyer enter into a separate written agreement, formally executed by Arkalumen and specifically waiving the terms herein, the purchase and/or use of any products by Buyer shall be deemed acceptance of these Terms.

Orders. An order shall be deemed to have been placed as of the date of receipt by Arkalumen of an order signed by Buyer within any specified time extended for such order. Arkalumen shall confirm the receipt of an order either electronically or by facsimile transmission. If agreed in an order, Arkalumen will use its commercially reasonable efforts to deliver the Deliverables to Buyer within the lead time indicated in the order. If Arkalumen becomes aware that it will not meet any lead time for a particular order delivery, Arkalumen shall provide Buyer with prompt written notice that it will not be able to deliver within the lead time or that only a portion of the order will be available for delivery within the lead time for such order. In its orders, Buyer may require delivery to Buyer's facilities in Canada or request delivery to facilities located in other jurisdictions and Arkalumen will indicate to Buyer the related cost of delivery to the specified location.

Shipping Costs; Risk and Title. Buyer shall be responsible for all shipping costs, handling costs, service costs, insurance costs, delivery charges for all deliveries of Deliverables to Buyer. The risk of loss of or damage to the units of the Deliverables ordered by Buyer shall transfer to Buyer upon delivery of such units either i) to Buyer's carrier; or ii) to Buyer's premises (as applicable). Title to the units of the Deliverables ordered by Buyer shall pass to Buyer after delivery of such units to Buyer and payment in full of the charges for the applicable Deliverables specified in the Order. Buyer shall comply with all relevant export and import laws and regulations as they apply to Deliverables and related materials provided by Arkalumen to Buyer pursuant to these Terms.

RMA Procedure. No Ark Product units may be returned to Arkalumen without a Return Merchandize Authorization (an “RMA”) number. Prior to return of any Ark Product units to Arkalumen for any reason, Buyer or its affected customers shall first request an RMA number from Arkalumen (which may be requested through Arkalumen’s support telephone number or any other support telephone numbers provided by Arkalumen to Buyer) and Buyer or its affected customer shall advise Arkalumen of the quantity, serial numbers (if applicable) and original Order number for the Ark Product units being returned and shall provide a detailed reason for the return. Arkalumen shall accept returns only after an RMA number is issued by authorized Arkalumen personnel for the return of such Ark Product units. Buyer or its affected customers shall ship all authorized returns to Arkalumen or to an Arkalumen-designated location, freight prepaid by Buyer or its affected customers. At its discretion, Buyer or its affected customers may consolidate multiple returns in a single shipment that may contain Product units returned under warranty or for non-acceptance from different orders, as the case may be. All return shipments must be in appropriate packages and must display the RMA number on the containers in which the returned Product units are shipped. Unauthorized returns, or returns that fail to display the appropriate RMA number, may be subject to reshipment to Buyer or its affected customers, freight collect. Within thirty (30) days of receiving Ark Product units returned under warranty or for non-acceptance, Arkalumen shall assess the returned product units and provide a response regarding its warranty or non-acceptance assessment. Notwithstanding the obligation of Buyer or its affected customers to return the affected Ark Products to Arkalumen, Arkalumen may, as soon as practicable after receipt of notice of defective Products ship replacement Ark Product units to Buyer or its affected customers. Arkalumen shall notify Buyer or its affected customers of such shipment. Where a warranty or non-acceptance claim is valid, Arkalumen shall be responsible for all shipping and handling costs for any replacement Ark Product units it ships to Buyer or its affected customers. However, if Arkalumen does not receive the damaged or defective Product units from Buyer or its affected customers or if the same are received by Arkalumen but the returned Products do not qualify for replacement due to an invalid warranty or non-acceptance claim, Arkalumen may charge Buyer or the affected customers the cost of the replacement Product and the related shipping costs incurred to sending the same to Buyer or its affected customers.

Payment Terms. Buyer shall pay to Arkalumen the fees set out in the applicable order for Deliverables ordered by Buyer. All fees are payable within thirty (30) days of the date on which the corresponding Arkalumen invoice has been received by Buyer, provided, that all invoices shall be issued pursuant to, and within the amount of, a Purchase Order issued by Buyer and all invoices refer to the corresponding order number. If any payment, or any other sum due to Arkalumen under these Terms, becomes past due for more than thirty (30) days, Arkalumen may, without declaring Buyer to be in default, charge Buyer a late payment charge of one percent (1.5%) per month or the maximum rate legally permitted, whichever is less. All fees exclude taxes (including any applicable federal, state, provincial, use, value-added, goods and services, and local taxes), customs duties and shipping costs. Buyer shall pay to Arkalumen the amount of all such taxes (excluding taxes based on Arkalumen’s net income), customs duties and shipping costs. All fees are in Canadian currency unless specified otherwise in the applicable order.

Products, Deliverables, and IP. Arkalumen or its licensors are the owners of all intellectual property in the core technology comprised within the Deliverables and no title in the intellectual property shall transfer to Buyer or its customers. Any third party components required or requested with the Ark Products as part of the Deliverables, will be licensed or sold to Buyer (as applicable) on the manufacturer's terms. Such terms will be provided to Buyer and Buyer will be solely responsible for compliance with the same. Buyer shall not (and shall require its customers and their end users to contractually commit not to) reverse engineer or disassemble the Deliverables or any software contained therein. For the avoidance of doubt, any software or firmware included in the Deliverables is licensed and not sold on a perpetual, royalty-free non-exclusive license basis for use solely within any permitted combined product. Buyer shall not use a trademark or trade-name of Arkalumen without Arkalumen's prior written consent. The Deliverables shall retain any proprietary markings (including copyright and patent) provided there or required by Arkalumen or its third party licensors. Buyer may embed the Deliverables into the Buyer's own products for sale to customers as "Combined Products". Such right shall not include the right of Buyer to sublicense to resellers or any distributors except where the Deliverables are integrated with and sold as part of Combined Products through Buyer's distribution and support channels. For greater clarity, Buyer shall not sell the Deliverables as standalone products or bundled with Buyer's products unless forming part of a Combined Product. The rights and licenses granted under these Terms are only as expressly set forth herein. No other license or right is or shall be deemed to be granted, whether by implication, estoppel, inference or otherwise, by or as a result of these Terms or any conduct of either Party under these Terms.

Limited Warranties. Arkalumen warrants that all Deliverables purchased by Buyer and delivered by Arkalumen hereunder shall be new and shall be free and clear of all liens and encumbrances. Third party components are sold with the benefit of the original equipment manufacturer's warranty, if applicable, as indicated on the relevant purchase order or as attached to these Terms (the "OEM Warranty"). Apart from the OEM Warranty, third party products are provided 'as is'. In respect of Ark Products purchased pursuant to these Terms, Arkalumen warrants that they will operate for a period of 5 years substantially in conformance with their specifications from the date of delivery to Buyer (the "Ark Warranty"). Notwithstanding the generality of the foregoing, the Ark Warranty will not apply if the relevant Ark Products have been tampered with or modified in any way by anyone other than Arkalumen or its agents. Furthermore, improper use of the Ark Products will void the Ark Warranty. For greater certainty, Arkalumen does not control the heat sinking of Ark Products and Buyer and/or its customers are responsible for ensuring that the Ark Products are operated with proper heat sinking at a temperature of 75C. Failure to maintain the correct heat sinking may result in reduced light output and/or reduced life of the Ark Product. For clarity, Buyer's customers may contact Arkalumen directly (without involvement of the Buyer) in relation to warranty claims relating to the Deliverables.

DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS, NEITHER PARTY MAKES ANY REPRESENTATIONS OR GIVE ANY WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Product Liability. Arkalumen shall indemnify, defend, and hold Buyer harmless from any claim, action or demand in respect to any defect in the Ark Products, any claim that an Ark Product unit was negligently manufactured, provided that: Buyer (1) provides prompt written notice of any such claim, action or demand; (2) allows Arkalumen to control the defense and related settlement negotiations, subject to Buyer having the right to participate in such defense with counsel of its own choosing at its own expense; (3) provides Arkalumen, at Arkalumen's request, with reasonable assistance in the defense of such claim, action or demand, so long as Arkalumen reimburses Buyer for Buyer's reasonable out-of-pocket expenses associated therewith.

**LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL ARKALUMEN BE LIABLE TO BUYER (INCLUDING BUYER'S AGENTS, END- USERS, SUCCESSORS AND ASSIGNS) FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES WHATSOEVER ARISING OUT OF OR RELATED TO THE USE OR INABILITY TO USE THE DELIVERABLES, EVEN IF ARKALUMEN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BUYER HEREBY WAIVES ANY RIGHT TO RECOVER FROM ARKALUMEN AND SHALL HOLD ARKALUMEN HARMLESS FOR ANY LIABILITY AND FROM ANY AND ALL CLAIMS, DAMAGES, ACTIONS, CAUSES OF ACTION OR SUITS OF ANY KIND ARISING OUT OF OR RELATING TO ANY MATTERS WHICH ARE OR COULD BEEN RAISED OR OTHERWISE ARISE FROM THE USE OF THE PRODUCTS, INCLUDING BUT NOT LIMITED TO DEATH, DISABILITY, PHYSICAL INJURY, LOSS OF PROFIT, ANCILLARY COSTS OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOSS OF PROFIT, LOSS OF USE OR OTHER SIMILAR LOSSES. IN NO EVENT SHALL ARKALUMEN'S AGGREGATE LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THESE TERMS, THE DELIVERABLES OR ANY OTHER CAUSE EXCEED THE FEES PAID BY BUYER FOR THE DELIVERABLES GIVING RISE TO THE CLAIM. No suit or action shall be brought against Arkalumen more than one year after the related cause of action has occurred.

Buyer understands and agreed that the foregoing limitations on liability and indemnification terms are essential elements of these Terms and that in the absence of such terms, the material and economic terms of this contract would be substantially different.

Choice of Law. These Terms shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein without regard to its conflict of laws provisions. Buyer and Arkalumen submit to the non-exclusive jurisdiction of the courts of the Province of Ontario.

Contingencies. Dates and times by which Arkalumen is required to render performance under these Terms shall be automatically postponed to the extent and for the period that Arkalumen is prevented from meeting them by reason of any cause beyond its reasonable control. Arkalumen shall notify Buyer of the commencement and nature of such cause and uses its reasonable efforts to render performance in a timely manner. For greater certainty, Arkalumen shall not be liable for any failure to perform its obligations under these Terms if prevented from doing so by a cause or causes beyond its control, including without limitation, acts of God or public enemy, failure of suppliers to perform, fire, floods, storms, earthquakes, riots, strikes, war, and restraints of government.

Severability; Amendments; Waivers. Whenever possible, each provision of these Terms shall be interpreted in such manner as to be effective and valid under applicable law. If the application of any provision of these Terms to any particular facts or circumstances is held to be invalid or unenforceable by an arbitrator or court of competent jurisdiction, then such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable. These Terms may only be amended in a writing signed by authorized signatories of each of the parties. No failure to exercise, and no delay in exercising, any right, remedy or power under these Terms will operate as a waiver thereof.

Successors; Assignment. Neither party may assign these Terms, any interest herein or any rights hereunder without the prior written consent of the other party, except that Arkalumen may assign these Terms to any entity that acquires all or substantially all of its related business by merger, sale of stock or assets. Subject to the foregoing limits on assignment, these Terms shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.

Entire Agreement. These Terms and the quotation or purchase order(s) to which they relate constitute the entire agreement between the parties on the subject matter hereof and supersede all prior agreements, communications and understandings of any nature whatsoever, oral or written.