



TERMS AND CONDITIONS OF SALE

Sales under these terms and conditions (these "Terms") are by SKS Industries, Inc., a Michigan corporation that operates under the assumed name "Armor Protective Packaging," ("Armor") to the person named as the buyer or purchaser in the documentation to which these Terms are attached or with which they are associated ("Buyer") are conditional upon Buyer's assent to these Terms and only these Terms. If these Terms are first tendered to Buyer before Buyer tenders a purchase order or similar document to Armor, these Terms are in lieu of any terms later submitted by Buyer and Armor rejects all additional or different terms and conditions of Buyer, whether confirmatory or otherwise. If Armor tenders these terms after the tender by Buyer of other terms, whether as part of a purchase order or otherwise, then Armor's acceptance of any offer by Buyer associated with Buyer's terms is expressly conditioned upon Buyer's acceptance of these Terms exclusively and to the exclusion of any proffered Buyer terms or conditions, regardless of whether these Terms contain any terms additional to, or different from, any terms proffered by Buyer. Buyer's performance, or acceptance of, or payment for, any products from Armor will constitute Buyer's acceptance of these Terms. These Terms, together with any associated description of the products and quantity and price terms that are the subject of the purchase and sale transaction under these Terms constitute an "Order." Buyer represents and warrants that any products that it purchases from Armor are for business or commercial use and not for domestic, personal, family, or household use.

1. **Description of Products.** Armor agrees to sell, and Buyer agrees to purchase, the products described as part of the Order.
2. **Prices; Minimum Quantities.** The prices of the products and/or services supplied by Armor are as stated in the Order. Prices may be adjusted to the prices in effect at the time of delivery, whether as a result of fluctuations in commodity prices or otherwise. Except as otherwise stated in an Order, all pricing is FOB (as defined in Uniform Commercial Code Section 2-319) for shipments originating and ending in the United States and EXW (Incoterms 2000) for international shipments, in either case Armor's facility or such other location as Armor specifies in an Order. Buyer acknowledges that the prices for certain products offered by Armor are based on Buyer purchasing a stated minimum order quantity and/or minimum shipment quantity of those products. Where Buyer orders a product that is subject to a minimum order quantity and the quantity ordered does not meet that minimum order quantity, Armor reserves the right to adjust the price or ship the minimum order quantity at its discretion.
3. **Taxes and Fees.** All prices are exclusive of sales, use, excise, customs, export, import, commodity and/or any other taxes. Buyer will pay all such taxes and any license fees or other charges incidental to the sale of products. Buyer will, at Armor's request, provide to Armor reasonable proof of payment by Buyer of such taxes, fees, and assessments. If Armor is required to prepay any taxes on behalf of Buyer, Buyer will reimburse Armor for all such taxes paid. If provision of the products and/or services requires any documentary letter of credit or similar document, instrument, or process, Buyer shall pay all fees and costs associated therewith.
4. **Payment Terms.** Unless provided otherwise in writing in Armor's quotation, payment shall be net 30 days from date of shipment. Unless otherwise expressly stated in an Order, Buyer will pay any invoice issued by Armor in U.S. Dollars without discount, setoff, or reduction. Armor may, at its sole discretion, require payment by bank transfer, cash, certified check, C.O.D., or irrevocable letter of credit. All trading accounts are subject to prior approval of Armor's credit department in accordance with Armor's credit policies and practices in effect from time to time. The amount of credit or terms of payment may be changed by Armor at any time for any reason. If Buyer fails to make payment when due or defaults in any other way, Armor may, at its option, without limiting any of its other rights or remedies available under these Terms or applicable law, and until Buyer's account is current: (1) withdraw credit and suspend or cancel performance under any or all Orders; and/or (2) reschedule shipment. Each shipment will be separately invoiced and paid for without regard for other shipments.
5. **Shipments.** All shipments will be FOB (as defined in Uniform Commercial Code Section 2-319) for shipments originating and ending in the United States and EXW (Incoterms 2000) for international shipments, in either case Armor's facility or such other location as Armor specifies in an Order. Armor shall have the right to select the freight carrier, and Buyer accepts carrier selection by Armor unless Buyer timely specifies an alternative carrier in writing. Delivery of products to the carrier constitutes delivery to Buyer, title to products will pass to Buyer, and Buyer will have all risk of loss or damage at that time. Any claims against Armor for shortages or non-conformance that could, with due diligence, be discovered by inspection upon receipt must be made within 10 days after receipt. Prices include packaging in accordance with Armor's standard practice. Armor may make deliveries in installments with appropriate partial invoicing issued for each such installment. Any shipping date or delivery date stated represents Armor's estimate of when the products will be shipped or delivered. Armor is not liable for losses or added costs due to delivery delays. Without limiting the foregoing, Armor may, but will not be required to, shorten lead times and deliver products more quickly than originally estimated, in accordance with Buyer requests, but reserves the right to increase pricing accordingly, or impose break-in charges, for directly or indirectly affected products or shipments thereof. Each shipment of products to be delivered is to be considered a separate sale and Buyer will pay the agreed price for each shipment without regard for any failure to deliver any subsequent shipment of such products. Armor's breach or default in the delivery of any particular shipment will not give Buyer the right to refuse to receive any other shipment. Any back-ordered products will be considered a separate shipment. Time is not of the essence and Buyer is not entitled to reject an otherwise conforming tender made within a reasonable time. Any failure by Buyer to pay for any shipment within the time stated for payment is an anticipatory material breach with regard to other shipments. Once Armor commences production of products and/or provision of services and/or determines a shipping or delivery date with regard to the same, Armor will be entitled to provide, ship, and/or deliver such products and/or services and receive payment therefor and Buyer may not revise the timing for receipt of such products and/or services.
6. **Security Interest.** Buyer grants to Armor a security interest in the products supplied under these Terms and any proceeds thereof and accessions thereto as security for Buyer's obligations (payment and otherwise) to Armor. Armor may file any financing statement and/or take any other action permitted by applicable law to perfect and enforce such security interest and, if local law requires that a financing statement or similar document be signed or otherwise acknowledged by a debtor party, Buyer appoints Armor its attorney in fact for the purposes of execution and delivery of any such document.
7. **Termination; Default.**
 - (a) **Termination for Default.** Either party may terminate an Order by notice, without prejudice to its other rights or remedies if: (1) the other party files a petition in bankruptcy or assignment generally for the benefit of creditors, becomes insolvent, becomes, or admits that it is, unable to pay its debts generally as they become due, or has a third-party manager or receiver appointed over any of its assets or (2) the other party defaults under these Terms and does not remedy the default within 30 days (10 days in the case of payment defaults) following written notice requiring the default to be remedied.
 - (b) **Termination for Convenience.** Armor may, at Armor's sole discretion, cancel Orders upon receipt of written request from Buyer requesting cancellation, except that Orders or Order line items for products designated non-cancelable or non-returnable ("NCNR" or other designation to that effect), or for custom products cannot be cancelled under any circumstances. Buyer will accept delivery and pay the purchase price of such Order line item(s).
 - (c) **Adequate Assurance of Performance.** In any circumstance where Armor has the right to demand adequate assurance of Buyer's performance (such as under Section 2-609 of the Uniform Commercial Code, where applicable), Buyer will provide such assurance within five days after demand by Armor.
 - (d) **Other Termination by Armor.** If Buyer fails to make payments in accordance with these Terms or any Order or fails to comply with any provision of these Terms or any Order, Armor may terminate any Order as to unshipped portions of the products, terminate any applicable raw materials orders placed with its suppliers, and Buyer will remain liable for shipped products. If Armor elects to continue to make shipments after the Buyer has failed to make payment for the shipment in advance or fails to provide satisfactory security, any action by Armor shall not constitute a waiver of any default by the Buyer or in any way affect Armor's remedies for any such default.
8. **Product Changes.** Armor may, at any time and without notice to the Buyer, change the product(s) in any way that does not adversely affect the form, fit or function of the product(s) in any material respect. If Buyer at any time directs changes or causes Armor to make changes to the product(s), drawings, or specifications of the products(s), or otherwise changes the scope of the work covered by an Order, including, but not limited to, work with respect to such matters as inspection, testing, or quality control, Armor may terminate the Order with respect to the items affected by such change(s) or equitably change the time for performance and/or the price of product(s) to take into account the changes.
9. **Technical Assistance.** Except as provided for in a separate signed agreement, Armor will not be liable in any respect to provide technical advice, facilities or service in connection with any Order or the products supplied.
10. **Assignment.** Buyer may not assign any right or obligation under any Order. Armor may freely assign any right or obligation under any Order.
11. **Warranty.** Armor warrants solely to Buyer that each product supplied under these Terms will, for 90 days after shipment by Armor to Buyer or such shorter time as the nature of the product reasonably implies (the "Warranty Period"), conform to Armor's written specifications during normal use and/or operation. Armor's sole and exclusive obligation, and Buyer's sole remedy for failure of any product to conform to the above warranty is, at the option of Armor, repair or replacement of the non-conforming product or a refund of the monies paid by Buyer for the non-conforming product. Buyer must notify Armor in writing during the Warranty Period of any nonconformity. Transportation charges for any product returned by Buyer to Armor in connection with a valid warranty claim will be at Armor's expense and for any product returned from Armor to Buyer will be at Buyer's expense. The warranty will not apply if the product: (1) fails,

- malfunctions or is damaged as a result of improper handling, improper storage conditions (including, but not limited to, where applicable, temperature and humidity), installation, maintenance, removal, modification or repair; (2) is accidentally damaged, subjected to abuse or improper use; (3) is altered or damaged so that Armor is unable to verify the defect with its normal test equipment and/or procedures; or (4) is not returned in the same or equivalent container in which it was shipped or is not returned with the appropriate lot numbers, manufacturing dates, and shipper numbers.
12. **Product Returns.** Buyer may not return any product unless Armor approves in writing the return. Upon Armor's request, Buyer will provide to Armor samples of products alleged by Buyer to be eligible for return. All return documentation must contain Armor's Returned Materials Authorization ("RMA") number. Armor may refuse returned shipments not approved by Armor or not properly identified. The request for return approval must include serial number, part number, lot number, and date code (each as applicable), and full identification of products to be returned. Proper handling procedures must be used in the packing and shipping of all returns. Products must be returned in the same or equivalent container in which they were shipped with the RMA number clearly visible on the package. Buyer retains title and assumes all risk of loss relating to products returned for repair or replacement until Armor completes repair or identifies products as replacements.
 13. **Disclaimers and Limitation of Liability.** EXCEPT AS EXPRESSLY DESCRIBED IN SECTION 11, THE PRODUCTS DELIVERED UNDER THESE TERMS AND/OR ANY ORDER ARE SUPPLIED "AS IS" AND WITH ALL FAULTS. ARMOR MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, INCLUDING WARRANTIES AS TO THEIR QUALITY, PERFORMANCE, MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING ANYTHING IN THESE TERMS OR IN ANY ORDER OR OTHERWISE TO THE CONTRARY, ARMOR WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE OR PROFITS) ARISING FROM OR CAUSED, DIRECTLY OR INDIRECTLY, BY THE USE OR SALE OF ANY PRODUCT BY BUYER OR ANY CUSTOMER OR SUCCESSOR HOLDER OF ANY PRODUCT; BY THE PERFORMANCE OR FAILURE OF ARMOR TO PERFORM UNDER THESE TERMS; BY ANY OTHER ACT OR OMISSION OF ARMOR; OR BY ANY OTHER CAUSE. IN NO EVENT WILL ARMOR'S TOTAL LIABILITY TO BUYER FOR ANY CLAIM EXCEED THE SUM PAID TO ARMOR BY BUYER FOR THE PRODUCTS SUPPLIED UNDER THE ORDER IN CONNECTION WITH WHICH THE CLAIM ARISES. NO ACTION MAY BE BROUGHT BY BUYER FOR ANY BREACH OF THESE TERMS MORE THAN ONE (1) YEAR AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION.
 14. **Indemnification.** Buyer shall defend, indemnify, and hold harmless Armor and its employees, officers, directors, agents, affiliates, successors and assigns (each an "Indemnified Party") from and against any and all claims, suits, actions, demands, damages, losses, liabilities, penalties, fines, costs and expenses (including, without limitation, attorneys' fees) whatsoever that are incurred by or made against any Indemnified Party that arise out of or result from (i) the acts, omissions, negligence or misconduct of Buyer; (ii) any breach of these Terms by Buyer; or (iii) any claim by Buyer, any of its customers or any successor holder of any of the products, or any other person or entity, related to the products sold by Armor, or the purchase, installation, or use of such products, or any undertakings, acts or omissions relating to such products, to the extent such claim is not based upon a breach of warranty of Armor caused solely by Armor's negligence.
 15. **Fail-Safe or Critical Operations.** Armor's products are not designed, intended, authorized, or warranted to be suitable for use or resale as control equipment in, or for other applications related to, hazardous or critical environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, life support, weapons systems, or other application in which the failure of a product could lead to death, personal injury, or severe physical or environmental damage. Buyer will not use or permit to be used the purchased products for such fail-safe or critical applications, and further agrees to indemnify Armor and each other Indemnified Party against all actions, suits, proceedings, costs, expenses, damages, and liabilities, including attorneys' fees, arising out of any breach of Buyer's obligations in this Section 15.
 16. **Confidentiality.** Buyer will, notwithstanding that any Order may have terminated, keep in confidence and prevent the disclosure to any person all information and data disclosed to it by Armor that is marked confidential or by its nature ought to be considered confidential, including, but not limited to, quotes, business plans, technological techniques, prints, inventions, and research and development. Notwithstanding the foregoing, Buyer will not be liable for disclosure of any confidential information if the same: (i) is or becomes readily ascertainable by the public by proper means without breach by Buyer of any obligation to Armor of confidentiality; (ii) is disclosed with the prior written approval of Armor; or (iii) becomes known to Buyer from a source other than Armor without breach of these Terms by Buyer or breach by the source of any obligation of confidentiality.
 17. **Armor's Intellectual Property.** Except as expressly and particularly set forth in a separate written agreement signed by both parties, Buyer will obtain no right whatsoever in any copyright, patent, trademark, trade secret, mask work, or other intellectual property right of Armor, whether in consequence of these Terms, any Order, any transaction or dealing between Armor and Buyer, or otherwise. Armor reserves all such rights to itself.
 18. **Export Controls.** Unless an appropriate license, exemption or similar authorization has been duly obtained, Buyer shall not, nor shall Buyer authorize or permit its employees, agents, successors or assigns to, export or re-export any products to any country identified as a prohibited destination by any applicable laws or regulations. Furthermore, Buyer hereby agrees to undertake and perform all "denied party screening" or similar obligations imposed by or arising under applicable laws or regulations. Buyer agrees and acknowledges that, to the extent applicable, these commodities, technology and/or software will be/were exported from the United States or other country of origin solely in accordance with the United States Export Administration Regulations or other export regulations applicable in the jurisdiction of origin. Any diversion contrary to U.S. or other applicable law is prohibited. Buyer agrees to indemnify and hold harmless Armor from and against any and all claims, losses, expenses, suits, damages, costs, penalties and/or fines, including, but not limited to, attorneys' fees, known or unknown, arising from Buyer's acts or omissions under these Terms or any Order, including Buyer's breach of the terms set forth herein governing export or re-export activities.
 19. **Governing Law; Jurisdiction; Venue; Severability.** These Terms and all Orders will be governed by and construed in accordance with the laws of the State of Michigan, USA and the federal laws of the United States of America without regard for their conflict of law rules. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms or any Order. Any action or claim arising out of or related to these Terms or any Order may be brought only in the state courts of Michigan or in the United States District Court for the Eastern District of Michigan and Armor and Buyer each irrevocably consent to the jurisdiction of, and venue in, such courts. If any provision of these Terms is illegal or unenforceable such provision will be reformed to, insofar as is possible, permit it to confirm with applicable law and, in any case, the remaining provisions will continue in full force and effect.
 20. **Use of Products.** Buyer shall use, and require its employees, contractors, and agents to use, all available safety precautions, in addition to any specifically set forth in any manuals, material safety data sheets, technical data sheets, instruction sheets, if any, furnished by Armor (or available from raw material suppliers) relating to Armor's products. If Buyer does not receive material safety data sheets for any product from Armor, Buyer will request them from Armor. If Buyer fails to strictly observe each and every one of the obligations set forth in this Section 20 or if Buyer's use of any of Armor's products is in violation of any standard or rule of the American National Standards Institute or Occupational Health and Safety Act, or other workplace law, regulation, or standard, Buyer will indemnify, defend, and hold harmless each Indemnified Party from and against any and all claims, demands, damages, actions, and causes of action, as well as any and all liability, loss, or expense of any kind, including reasonable attorneys' fees arising from, connected with or in any way pertaining to any such failure by Buyer.
 21. **Notification.** Buyer shall notify Armor promptly, and in any event within 30 days, after any accident or failure involving Armor's products that results in personal injury or damage to property and shall cooperate fully with Armor in investigating and determining causes of such accident or failure.
 22. **Attorneys' Fees and Costs.** Buyer will pay Armor's reasonable attorneys' fees and other costs and expenses for any legal or equitable action undertaken by Armor to enforce these Terms or the provisions of any Order.
 23. **Errors.** Any and all typographical errors or other clerical errors made by Armor in these Terms, in Armor's quotations or communications, or any Order are subject to correction by Armor.
 24. **Force Majeure.** Armor will not be liable for failure to deliver, or for delay in delivery of, the products to the extent arising out of or related to causes beyond its reasonable control, including, without limitation, acts of God or of the public enemy, acts of any governmental authority, fires, floods, other casualties, severe weather, epidemics, quarantine restrictions, strikes, labor disputes or shortages of labor (whether involving employees of Armor or employees of others and regardless of responsibility or fault on part of any employer), embargoes, wars, riots, civil commotion, shortage of rail cars or semi-tractors and trailers, delays in transit or inability to secure necessary parts or materials (whether at all or at commercially reasonable prices). In no event will Armor be liable for any loss or damage, including in particular, direct, incidental, indirect, special, punitive or consequential damages (including loss of profits) due to any failure to deliver or delay in delivery. If Armor is wholly or partially unable to perform because of any cause beyond its reasonable control, Armor may allocate production and deliveries among Armor's customers or may terminate the Order without any further liability to Buyer.
 25. **Remedies Cumulative.** All rights and remedies of Armor under these Terms and any Order are cumulative. No pursuit or receipt by Armor of any particular remedy will constitute an exclusive election of remedies and Armor will have the benefit of all remedies available at law, in equity, or otherwise.
 26. **Cross-Default.** Any default by Buyer under any other agreement to which Armor or any Armor affiliate is a party will be a default by Buyer under these Terms and of each Order. Such other agreements may, where applicable, be (but are not limited to), distributor or similar agreements.
 27. **Third Parties.** Except for the Indemnified Parties other than Armor (who are all express third-party beneficiaries of Buyer's indemnification obligations), there are no third-party beneficiaries of any right or obligation under these Terms or any Order.
 28. **Third-Party Terms.** Under no circumstances will Armor be obliged or liable to Buyer or to any third party with respect to any representation, warranty, covenant,

duty, or liability to any third party, whether as part of a “directed sourcing” arrangement or otherwise. Without limiting the foregoing, Armor expressly disclaims and rejects any obligation of any kind to comply with any terms or conditions of Buyer’s direct or indirect customer(s), regardless of any obligation to such persons taken on by, and/or imposed upon, Buyer and regardless of whether Armor is aware of any such requirement upon Buyer. Armor will be liable to any third party, if at all, solely according to such separately negotiated, written, and signed agreement, if any, as Armor actually negotiates and executes with such third party.

29. **Entire Agreement.** These Terms, together with any specific terms contained in any Order, any separate written and signed distributor agreement, and any separate written confidentiality agreement between the parties, embody the entire agreement between the parties with regard to the subject matter hereof and thereof and supersede all other prior agreements between the parties with regard to such subject matter. Neither these Terms nor any Order may be modified, except in writing and signed by the party against whom enforcement is sought.