

## TERMS AND CONDITIONS OF SALE

ISO Process Document Z-1012

Revised September 14, 2012



For purposes of these Terms and Conditions of Sale, the term “contract” shall mean the agreement between All Weather, Inc., (hereinafter referred to as “AWI”) and Buyer arising as a result of Buyer’s submission of an order for AWI products, as hereinafter defined, for delivery and AWI’s acceptance of said order. Any such contract shall be deemed to incorporate and be governed by these Terms and Conditions. These Terms and Conditions shall take precedence over any terms and conditions that appear in Buyer’s order or in any documents incorporated by reference in Buyer’s order. No term or condition of Buyer’s order additional to or different from these Terms and Conditions shall become part of the contract unless explicitly referenced and agreed to in writing by an authorized officer of AWI. Retention by Buyer of any products delivered by AWI, or payment by Buyer of any invoice rendered hereunder shall be conclusively deemed acceptance of these Terms and Conditions. AWI’s failure to object to any provision contained in any communication from Buyer shall not be construed as a waiver or modification of these Terms and Conditions nor as an acceptance of any such provision.

1. *Orders:* By submitting an order to AWI, Buyer agrees to be subject to these Terms and Conditions of Sale in their entirety. All orders must be bona fide commitments showing mutually agreed to prices, quantities and shipping dates. If an order is submitted to AWI in response to a written AWI quotation, the order must contain the AWI Quotation number. No order or other commitment, whether or not submitted in response to a quotation by AWI, shall be binding upon AWI until such order or other commitment is accepted in writing by AWI.

2. *Prices and Taxes:* Prices do not include federal, state or local taxes, including, without limitations, sales, use or excise taxes, now or hereafter enacted, applicable to the products sold in this transaction, which taxes may, in AWI’s discretion, be added by AWI to the sales price or may be billed separately and which taxes will, in any event, be paid by Buyer unless Buyer provides AWI with a proper tax exemption certificate.

3. *Delivery and Shipment:* All products will be tendered and shipped F.O.B. Ex Works in California, and may be so tendered in several lots. In the absence of specific instructions, AWI may select the carrier and ship, but shall not be deemed thereby to assume any liability in connection with the shipment nor shall the carrier be construed to be the agent of AWI. Buyer must provide its own insurance. Title and risk of loss or damage to all products sold hereunder shall pass from AWI to Buyer upon delivery by AWI to the possession of the carrier, provided that AWI reserves a purchase money security interest in the products. Any claims for loss, damage or miss delivery thereafter shall be filed with the carrier.

4. *Terms of Payment:* Unless otherwise stated on AWI’s invoice, all payments shall be net thirty (30) days from date of invoice and all transactions will be in US Dollars.

Buyer shall furnish to AWI all financial information reasonably requested by AWI from time to time for the purpose of establishing or continuing Buyer’s credit limit. Buyer agrees that AWI shall have the right to decline to extend credit to Buyer and to require that the applicable purchase price be paid prior to shipment. AWI shall have the right from time to time, without notice, to change or revoke Buyer’s

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credit limit on the basis of changes in AWI's credit policies or Buyer's financial condition and /or payment record. Unless otherwise stated in AWI's proposal, payment terms are:

- a. Components, sub-assemblies and repairs for hire (including separate spares orders):
  - i. All orders totaling less than \$1,000:
    - 100% at order placement using Check, Wire, or Credit Card (VISA, MasterCard, or Discover).
  - ii. Upon credit approval and within 30 days from invoice date
    - 100% of total price of shipment
  - iii. Without credit approval
    - 100% at order placement using Check, Wire, or Credit Card (VISA, MasterCard, or Discover)
- b. Systems installed within the United States of America:
  - i. Upon credit approval and within 30 days from invoice date
    - 100% of total price of equipment shipped;
    - 100% of total price of installation, maintenance, training, site preparations, factory acceptance testing, site acceptance testing, FCC licensing etc., as applicable, at time of completion of said items
    - If retention has been agreed upon by both parties, 5% of the total price may be withheld until system has been commissioned. The 5% withhold will be due within 30 days of system commissioning.
    - In the case of commissioning extending beyond 120 days from shipment with no fault by AWI, final payment is due at 120 days
    - If Buyer's credit account is delinquent at any point AWI may withhold its services and equipment until Buyers account is current
  - ii. Without credit approval:
    - 30% of total price when order is placed
    - 70% of total price prior to shipment of equipment
- c. Systems sold outside the United States of America:

Option 1:

  - Buyer will present an Irrevocable & Confirmed Letter of Credit, for 100% of the order, on a US Bank when placing the order.
  - AWI will not begin production and fulfillment of Buyer's order until a confirmed letter of credit is issued and found acceptable by AWI.
  - Minimum of 100% payable upon presentation of shipping documents, invoices, and other supporting documents to the Bank; for:
    - Equipment shipped including spares, and calibration equipment. Shipping will be Incoterms Ex Works, unless other arrangements/agreement is made.
    - All associated Services (Install, training, FAT, etc.), as applicable, at time of completion of said items
  - All charges and fees associated with the establishment and administration of a Letter of Credit will be borne by the Buyer.

Option 2:

  - A Letter of Credit is not required for advanced payment of at least 90% of the order value at time of order placement to AWI. Remaining 10% is due prior to shipment.
  - For 100% payment via wire transfer on accepted order, AWI offers an additional 2% discount on order value.
  - All bank fees associated with foreign currency conversions to U.S. Dollars or fees associated with wire transfer fees shall be borne by the Buyer.
  - No credit on account will be given for orders shipped outside the U.S.
- d. Forfeit of Rights

- i. If the Seller is not given an opportunity to complete follow-on work (such as installation or training) within 12 months from shipment, the Seller can decline to perform the work and the Buyer forfeits any amounts already paid to the Seller.

Buyer shall not deduct any amount from any AWI invoice without AWI's express written approval, which approval shall be contingent upon Buyer providing all supporting documentation for such deduction as required by AWI. If Buyer fails to pay the price or any other payment due hereunder when due, AWI may recover, in addition to the price or payment, interest thereon at the rate of not less than 1.5% per month where lawful, but subject to the maximum allowable lawful monthly interest rate, and reasonable attorney's fees. Terms of payment hereunder may be changed by AWI at any time.

5. *Security Interest:* Buyer hereby grants to AWI a security interest in all AWI products sold to Buyer as security for the due and punctual performance by Buyer of all of its obligations hereunder. Buyer agrees to execute such documents to evidence and perfect said security interest as AWI may require. Buyer hereby appoints an officer of AWI as its duly authorized agent for the purpose of executing all such documents on Buyer's behalf, including, without limitation, financing statements on Form UCC-1, and for the purpose of taking any and all other action deemed necessary by AWI, in its sole discretion, for the perfection and enforcement of the security interest granted hereby.

6. *Contingencies:* AWI shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any contingency beyond the control of AWI, including, by way of illustration but not limited to, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof, judicial action, labor dispute, accident, fire, explosion, floods, storm or other act of God, shortage of labor, fuel, raw material or machinery or technical failure where AWI has exercised ordinary care in the prevention thereof.

7. *Equipment:* Equipment furnished under the contract (the "equipment") will be newly manufactured or assembled by AWI from new parts unless prior written permission is obtained from Buyer. Where allowed by law, AWI may modify specifications of equipment designed by AWI, provided the modifications do not adversely affect the performance of the equipment. In addition, AWI may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by government authority, or non-availability of materials from suppliers.

8. *Software:* AWI shall at all times have and retain title and full ownership of all software, firmware programming routines, and documentation thereof supplied by AWI for use with the equipment, and of all copies thereof made by Buyer (collectively "software"). AWI grants Buyer a non-exclusive and non-transferable license to use such software solely for use with the equipment. Buyer shall take all reasonable steps to protect AWI's proprietary interest in the software and shall not transfer or otherwise provide the software to any third party without prior written consent.

9. *Warranties:*

- i. *Components/Spares and Systems:* The term of warranty for Components/Spares is one (1) year from the date of shipment. The term of warranty for Systems is (18) months from the date of shipment or (1) year from the date of commissioning, whichever is shorter. If any equipment covered by this warranty shall be returned to the original shipping point, transportation charges prepaid, and upon examination AWI determines to its satisfaction that such equipment is defective in material or workmanship and such defect was not caused by accident, misuse, neglect, alteration, improper installation, improper adjustment, improper repair, or improper testing, AWI shall at its option repair or replace the equipment, with shipment to Buyer prepaid. AWI shall have reasonable time to make such repairs or to replace such equipment.

- ii. Repairs: Components/Spares and Systems repaired after the expiration date of the new product warranty, the warranty is limited to the repaired portion and is valid for ninety days from the date of its reshipment.
- iii. Buyer must obtain a valid Return Material Authorization (“RMA”) number from AWI for all returns. RMAs will be issued at AWI’s sole discretion, in accordance with these terms and conditions. RMA are valid for thirty calendar days from the date of issuance. AWI must physically receive the return within the thirty (30) calendar day window.
- iv. If Buyer shall fail to pay when due any portion of the purchase price or any other payment required from Buyer to AWI under this contract or otherwise, all warranties and remedies granted under this Section 8 and 9 and all warranties and obligations of AWI to service, repair, replace, correct or otherwise remedy defects, errors of failures under any other contract between Buyer and AWI may, at AWI’s option, be terminated.
- v. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES AND COVENANTS, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS AND ANY DEFECTS THEREIN OF ANY NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. AWI’S SOLE AND EXCLUSIVE LIABILITY, AND BUYER’S SOLE AND EXCLUSIVE REMEDY, FOR ANY NONCONFORMITY OR DEFECT IN THE PRODUCTS, IN TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE, SHALL BE AS SET FORTH IN SECTION 9i AND 9ii HEREOF AS LIMITED BY SUBSECTION 9iv HEREOF.
- vi. AWI MAKES NO WARRANTIES (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE) WITHOUT RESPECT TO EQUIPMENT SOLD TO BUYER BY AWI AND NOT MANUFACTURED BY AWI. AWI shall assign the manufacturer’s warranty, to the extent permitted, to Buyer upon Buyer’s timely written request.

10. *Patents:* AWI shall defend any suit or proceeding brought against Buyer to the extent that it is based on a claim that any equipment manufactured by AWI (hereinafter “warranted equipment”) infringes in construction or design a United States patent, and shall indemnify Buyer against all costs, damages and expenses finally awarded against Buyer provided that Buyer notifies AWI promptly in writing of any such claim and gives AWI full and complete authority, information and assistance for the defense of such claim and provided further that AWI shall have sole control of the defense and of the negotiations for settlement, if any, of such claim. If any warranted equipment is held in construction or design directly to infringe any United States patent and the use of said warranted equipment is enjoined, or in case any warranted equipment may, in the opinion of AWI, be held to constitute such infringement, AWI may, at its expense and option either (a) procure for Buyer the right to continue using said warranted equipment, (b) replace said warranted equipment with a suitable non-infringing product, (c) suitably modify said warranted equipment, or (d) refund the purchase price of said warranted equipment, less depreciation at twenty percent (20%) per year and accept its return. AWI shall not be liable for any infringement arising from the combination of any warranted equipment with any system or product other than warranted equipment or from the modification of any warranted equipment unless such modification was made by AWI. AWI shall not be liable for any cost or expense incurred without AWI’s written authorization. THE FOREGOING STATES THE ENTIRE LIABILITY OF AWI, AND THE EXCLUSIVE REMEDY OF BUYER, WITH RESPECT TO ANY ALLEGED PATENT INFRINGEMENT BY THE WARRANTED EQUIPMENT.

11. *Limitation of Liability:* UNDER NO CIRCUMSTANCES SHALL AWI’S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE CONTRACT OR AWI’S PERFORMANCE OR ASSERTED FAILURE TO PERFORM THEREUNDER, IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE PURCHASE PRICE OF THE PRODUCTS, EXCEPT AS PROVIDED SPECIFICALLY IN SECTION 10 HEREOF PERTAINING TO PATENTS; AND IN NO EVENT SHALL AWI BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL

OR TORT DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF USE, LOSS OF PROFITS, LOSS OF BUSINESS, OR LOSS OF GOODWILL.

12. *Proprietary Information:* Buyer represents that it has adopted reasonable procedures to protect Proprietary Information, as defined hereafter, including binding agreements with employees and consultants to prevent unauthorized publication, disclosure or use of Proprietary Information during or after the term of their employment or retention by or services for Buyer. Buyer shall not use Proprietary Information except as expressly permitted hereunder, shall not disclose Proprietary Information of AWI to any third party, and shall not transmit any documents or copies thereof containing Proprietary Information to any third party, except as may be authorized in writing by AWI.

“Proprietary Information” shall mean information or data of AWI or of a third person to whom AWI owes obligations of confidentiality, and which is furnished or to be furnished to Buyer in written, graphic or machine-readable form and is marked proprietary or confidential. Where copies or alternative forms of information or data are received from AWI, such information or data shall be considered Proprietary Information so long as at least one of said copies or alternative forms is marked proprietary or confidential.

This Section 12 shall not apply to information which Buyer demonstrates was in Buyer’s possession prior to receipt from AWI or information which Buyer demonstrates is or has become available to the public or general knowledge in the industry otherwise than through the fault of Buyer.

13. *Cancellation and Rescheduling:* Orders accepted by AWI may be canceled or rescheduled by Buyer only with the written consent of AWI (which consent AWI may withhold for any reason) and upon payment of any cancellation fees, or rescheduling charges. Restocking fee for canceled orders will equal 10% of the equipment value of restocked items. AWI shall have the right without penalty or payment to cancel any order accepted, or to refuse or delay the shipment thereof, (i) if Buyer fails to make promptly any payment due AWI or to meet any other reasonable requirements established by AWI, (ii) if any act or omission on the part of Buyer delays AWI’s performance, or (iii) if Buyer’s credit becomes impaired. In any such event AWI shall be entitled to receive reimbursement for its reasonable and proper cancellation charges.

14. *Non-Waiver of Default; Remedies:* In the event of any default by Buyer under this or any other contract between AWI and Buyer, AWI may decline to make further shipments. If AWI elects to continue to make shipments, AWI’s action shall not constitute a waiver of any default by Buyer or in any way affect AWI’s legal remedies for any such default. All AWI’s rights and remedies, whether evidenced hereby or by any other contract or document, shall be cumulative and nonexclusive and may be exercised singularly or concurrently.

15. *Applicable Law:* The validity, performance and construction of the contract shall be governed by the laws of the State of California in the United States of America.

16. *U.S. Government Contracts:* If the products to be furnished under the contract are to be used in the performance of a U.S. Government contract or subcontract, the Government contract number and a statement to that effect shall appear on Buyer’s purchase order. If Buyer’s purchase order includes all of said information and if said order is accepted in writing by an authorized officer of AWI with knowledge of said information, then those clauses of the applicable Government procurement regulations which are mandatorily required by Federal statute or regulation to be included in this contract (and only such mandatory clauses) shall be incorporated herein by reference provided, however, that in the case of items to be delivered hereunder that constitute “Commercial Items” as defined in Section 2.101 of the Federal Acquisition Regulation (“FAR”), no such clauses set forth in the Government procurement regulations other than FAR 52.232-33, FAR 52.232.34, and those set forth in Paragraph (e) of the clause set forth at FAR 52.212-5 shall be incorporated in and apply to this contract, and provided, further, that in no event shall this contract be deemed to incorporate by reference any clause set forth in the Government procurement regulations that would in any way impair or diminish AWI’s rights and prerogatives under Paragraphs 8, 9, 11 or 12 hereof.

17. *Export:* Regardless of any disclosure made by Buyer to AWI of an ultimate destination of AWI products, Buyer will not export either directly or indirectly any AWI product, or any system incorporating said product, without first obtaining all required licenses and permits from the United States Department of Commerce and any other relevant agencies or departments of the United States government.

18. *Assignment:* The contract shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns. The contract is personal to Buyer, and Buyer may not assign any of its rights or delegate any of its obligations, in whole or in part, without the prior written consent of AWI which may be withheld for any reason.

19. *Complete Agreement; Modifications:* This contract constitutes the entire agreement between the parties relating to the sale of the products described on the face hereof and no addition to or modification of any provision of said agreement shall be binding upon AWI unless made in writing and signed by an authorized officer of AWI.

20. *Notices:* All notices given under the contract shall be in writing, mailed by first class mail, certified or registered, delivered by overnight courier service or delivered by hand to the address of the other party set forth in the quotation or to such other address as such party may designate from time to time by such notice, and shall take effect (a) when mailed, (b) when delivered to the courier service or (c) when received if delivered by hand.