



FOXGUARD SOLUTIONS, INC. d/b/a FOXGUARD ("Seller")
TERMS AND CONDITIONS

The following terms and conditions govern goods or services provided by Buyer from Seller. Buyer's receipt of any goods or services from Seller constitute assent to these terms and conditions.

1. **PAYMENT; DELIVERY.** Unless otherwise agreed, payment is due in U.S. Dollars within 30 days of the date of invoice. Credit card payments may be accepted when prior approval was granted as part of quotation process. Buyer must report any dispute with an invoice within 10 business days of the date of the invoice. Buyer must pay any undisputed portion within the time set forth above. A finance charge of 1.5% (or the maximum amount permitted by law) will be charged on any past due amounts and billed monthly. Buyer shall reimburse Seller for all costs and expenses incurred in the collection of amounts past due, including attorneys' fees. The prices quoted are for the delivery dates provided on the Seller's sales contract form or proposal. While the Seller shall have no obligation to comply with unilateral directives to change schedules or temporarily cease work, Seller will endeavor to accommodate Buyer's reasonable written request for acceleration or deceleration made at least sixty/thirty (60/30) days respectively prior to scheduled delivery. Such changes may or may not be accepted by Seller at its sole discretion. In the event Seller accepts such changes, Seller shall be under no obligation to comply therewith until a price adjustment acceptable to Seller is negotiated between the parties and evidenced by an amendment to this order. Seller may require payment in advance if it believes the financial condition of Buyer does not justify shipment, or subsequent deliveries, on the payment terms originally specified. If the Buyer becomes bankrupt or insolvent, or a proceeding is brought by or against Buyer under such laws, Seller may cancel any outstanding order, and Buyer shall reimburse Seller for its cancellation charges. Seller reserves the right to ship and to make collection by sight draft. If this order is accepted under a U.S. government contract it may be terminated only for the convenience of the U.S. Government in accordance with applicable federal procurement laws and regulations which shall govern the rights and obligations of the parties in any such termination.

2. **RISK OF LOSS; TITLE.** Unless otherwise agreed, the risk of loss passes to Buyer when the goods are delivered to the carrier, as described in INCOTERMS 2010. Where the risk of loss has passed to Buyer, Buyer must obtain redress for freight losses, shortages or damages from the carrier or its insurer. Seller is not responsible for any such losses. Notwithstanding any provision of INCOTERMS 2010 or contained herein, equitable title and accession to the goods shall, where permitted by law, remain with Seller until Buyer is paid in full. This shall be the case even if legal title to the goods shall be deemed by law to have passed to Buyer at the time of delivery and prior to performance of all of Buyer's obligations. Buyer shall grant, and by acceptance of the goods is deemed to have granted, to Seller a first security interest in all goods to secure payment of amounts owed by Buyer. Buyer agrees to execute a financing statement at Seller's request. Seller may reclaim any goods delivered or in transit if Buyer fails to make payment when due.

3. **SHIPMENT.** Unless otherwise agreed, prices are FCA 2285 Prospect Drive NE., Christiansburg, VA 24073 (INCOTERMS 2010). Carriage shall be arranged by Seller on Buyer's behalf at Buyer's risk and expense. Any charges Seller may be required to pay or collect on the sale, purchase, delivery, storage, use or transportation of the goods which are not Seller's obligations under FCA 2285 Prospect Drive NE., Christiansburg, VA 24073 (INCOTERMS 2010) shall be paid by Buyer, or if Seller has paid, reimbursed by Buyer.

4. **TAXES; EXPORT.** Buyer acknowledges that if the items purchased hereunder are to be exported, they are subject to the U.S. Commerce and/or State Department Export Regulations. If the items purchased hereunder are to be exported, Seller shall deliver the items to the carrier at Seller's premises cleared for export. All government taxes, fees, duties or charges on the sale, purchase, delivery or use of the goods and/or services sold hereunder which are not Seller's obligations under FCA 2285 Prospect Drive NE., Christiansburg, VA 24073 (INCOTERMS 2010) shall be paid by Buyer in addition to the purchase price. All responsibilities and obligations under all export laws and regulations which are not Seller's responsibilities and obligations and Buyer agrees to comply fully with all such laws and regulations.

5. **LIMITATION OF WARRANTY AND LIABILITY.** Seller warrants the goods sold hereunder, under normal use and service, shall be free from defects in workmanship and material and shall substantially conform to the written specifications applicable to such goods for (12) months from the date of shipment to the Buyer. This warranty period is inclusive of any manufacturer's warranty. This limited warranty is subject to the following exclusions:

- a. Parts repaired or replaced as a result of repair services are warranted to be free from defects in workmanship and material, under normal use, for 90 days from the date of shipment.
- b. Seller does not provide any warranty on finished goods manufactured by others or on any consumable materials. Only the original manufacturer's warranty applies to such goods and materials.
- c. Unless specifically authorized in a separate writing by Seller, Seller makes no warranty with respect to, and shall have no liability in connection with, damages caused by shipment of the goods, goods or software which are incorporated into other products or equipment, or goods which are altered or modified by any person other than Seller.

The foregoing warranty is IN LIEU OF all other warranties and is subject to the LIMITATIONS stated herein. **NO OTHER EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE.**

For purposes of this paragraph, the term "Buyer" shall include the end user of the goods if the end user is an entity other than the Buyer (e.g. original Buyer re-sells the goods to end user). If Buyer returns goods to Seller for repair, alteration or any other reason which requires Seller to later ship such goods back to Buyer, Buyer shall be responsible for all shipping charges, duties, taxes and other charges in connection with the return shipment to Seller. Buyer shall be solely responsible for compliance with all export procedures and documentation requirements of the country that the return shipment to Seller originates from and shall provide copies of such documents to Seller concurrently with the return of goods. Buyer, if buyer is an end user other than the original buyer, shall also provide proof of payment of duties, taxes and other charges in connection with the shipment of such goods from the original buyer to the end user. After repair or alteration, Seller shall pay all shipping charges, duties, taxes and other charges to return the goods to Buyer if (i) the goods are covered by Seller's or manufacturer's warranty, (ii) Buyer has complied with Seller's return material authorization (RMA) procedures, and (iii) Buyer has provided to Seller all of the documents required of Buyer in this paragraph. If Buyer has shipped the goods to another country after the original purchase and shipment by Seller to Buyer, Seller shall have the right to ship the goods back to Buyer at the destination set forth on the original purchase order and, in such event, Seller shall not be responsible for further shipment to any other destination. If the goods are no longer covered under Seller's or manufacturer's warranty, if Buyer fails to comply with Seller's RMA procedures or if Buyer fails to provide to Seller all of the documents required of Buyer in this paragraph, Buyer shall be responsible for all shipping charges, duties, taxes and other charges in connection with the return shipment to Buyer. Buyer shall, at Seller's option, either pay such charges prior to the return of goods by Seller or reimburse Seller on demand for all such amounts.

TO THE EXTENT PERMITTED BY LAW, THE EXCLUSIVE REMEDY OF THE USER OR BUYER, AND THE LIMIT OF SELLER'S LIABILITY FOR ANY AND ALL LOSSES, INJURIES, OR DAMAGES CONCERNING THE GOODS (INCLUDING CLAIMS BASED ON CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHERWISE) SHALL BE THE RETURN OF GOODS TO SELLER AND THE REFUND OF THE PURCHASE PRICE, OR, AT THE OPTION OF SELLER, THE REPAIR OR REPLACEMENT OF THE GOODS. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES. SELLER SHALL NOT BE RESPONSIBLE FOR INSTALLATION, DISMANTLING OR REINSTALLATION COSTS OR CHARGES. No action, regardless of form, may be brought against Seller more than 12 months after a cause of action has accrued. The goods returned under warranty to Seller's factory shall be at Buyer's risk of loss, and will be returned, if at all, in accordance with paragraph 3 above.

Buyer and all users are deemed to have accepted this LIMITATION OF WARRANTY AND LIABILITY, which contains the complete and exclusive limited warranty of Seller. This LIMITATION OF WARRANTY AND LIABILITY may not be amended, modified or its terms waived, except by writing signed by an Officer of Seller.

6. **INSPECTION; ACCEPTANCE.** Buyer shall inspect goods delivered or repairs performed within 10 business days from the date of receipt of the goods or completion of the repairs. Within that time Buyer shall send Seller a written notice specifying any respects in which the goods or repairs are nonconforming. Failure to send a written notice shall constitute a waiver of Buyer's claims for any nonconformity that an inspection, whether or not in fact carried out, should have discovered. Buyer is deemed to have accepted delivered goods on terms set forth herein, unless within 10 business days of receipt of the goods Buyer sends a written notice of rejection that provides detailed grounds for rejection. No order may be canceled or altered by Buyer except on terms and conditions accepted in writing by the Seller. A cancellation charge of 15% shall be payable by Buyer. Goods may not be returned unless pre-approved in writing by Seller. Buyer agrees to follow the procedures set forth in Seller's General Terms and Conditions of Purchase Order as posted at www.foxguardsolutions.com, as amended from time to time. A return charge of 15% will be applied.

7. **CAUSES BEYOND SELLER'S CONTROL.** Seller shall not be liable for any damage, loss or expense suffered by Buyer as a result of any delay or nonperformance, when the delay or nonperformance is, directly or indirectly, caused by or arises from fires, floods, accidents, riots, acts of God, war, governmental interference, embargoes, strikes, labor difficulties, shortage of labor or materials, transportation delays, acts by third parties, acts by Buyer, delay by Seller's suppliers or contractors or any other causes beyond the reasonable control of the Seller.

8. **BUYER'S SPECIFICATIONS.** To the extent that the items ordered are manufactured to designs, drawings, specifications or instructions furnished by Buyer, Buyer guarantees that the manufacture and sale or use of such items will not infringe upon any U.S. or foreign patents. Buyer further agrees to indemnify and hold harmless the Seller from any expense, loss, cost damage or liability of any kind which may be incurred because of any such infringement or alleged infringement of patent rights with respect to such items and to defend, at its own cost and expense, any action or claim in which such infringement is alleged. Buyer shall promptly notify Seller of any such action and shall provide Seller an opportunity, at Seller's option, to participate in any defense of such action or claim at Seller's own expense. Seller shall hold Buyer harmless from costs actually incurred arising directly from the defense of any suit for infringement of any domestic or foreign patent by a Seller-manufactured item, provided Seller shall be given timely written notice of such suit and the option to replace the same, obtain a license, make other arrangements to avoid litigation or to defend the suit. No indemnification is offered for alleged infringement arising out from the use of Seller's items in combination with other items supplied by Buyer or

from compliance with drawings, specifications or instructions furnished by Buyer as described above. Further, no indemnification by Seller applies if this order is accepted under a U.S. government contract containing an Authorization and Consent Clause applicable hereto as prescribed by federal procurement laws and regulations.

Further, Buyer shall contact Seller for instructions before submitting Covered Defense Information (CDI), including Controlled Unclassified Information (CUI) to Seller. CDI and/or CUI shall be clearly marked and submitted to Seller through special channels to ensure compliance with DFARS 252.204-7012, DFARS 252.204-7019, DFARS 252.204-7020 and DFARS 252.204-7021.

9. **SAFETY AND EXPRESS INDEMNIFICATION.** During the life of goods sold, Buyer agrees to use its best efforts to ensure that all safety information provided by Seller is provided to all users (employees and independent contractors.) This may include warning labels, instruction manuals, and training users in the safe installation, use and maintenance of the goods. Buyer agrees to defend, protect, indemnify and hold Seller harmless from and against all claims, losses, expenses, damages and liabilities to the extent caused by Buyer's negligence, including Buyer's failure to comply with the aforementioned safety obligations.

10. **DESIGN OR MANUFACTURE CHANGES.** If the purchase order does not specify the revision level of applicable drawings and specifications, then "NRS" (No Revision Specified) shall be indicated next to the part number(s) on this acknowledgement. NRS shall be interpreted "same as last build" or latest revision in Seller Engineering files, whichever is the most recent revision. Seller reserves the right to make substitution of materials without degrading the quality of product. Buyer approval will be solicited when changes affect form, fit or function. Seller further reserves the right to discontinue any items without notice and to change or modify specifications at any time without incurring any obligation to incorporate new or modified features in components or products previously sold or shipped.

11. **SOFTWARE.** If the goods sold incorporate software or firmware containing software, Buyer is granted only a nonexclusive and nontransferable license to use one copy of the appropriate software originally installed in or supplied with the goods on a single computer. The Buyer is allowed to transfer licenses to another machine in the case that the current machine is to be decommissioned. All software must be uninstalled from the decommissioned machine and the Buyer should notify Foxguard of the license transfer. Buyer acknowledges and agrees that the software is proprietary and constitutes a trade secret, copyright or patent of Seller. The Buyer shall acquire no title or rights of ownership in the software nor have the right to copy (except for backup), modify, reverse engineer or compile, license others, transfer, disassemble or disclose to any third party, all or part of the software. The Buyer agrees to follow all additional terms stated in the software license including, but not limited to, warranty provisions, customer remedies, and damages.

12. **SOLE AND EXCLUSIVE TERMS OF SALE.** Except as otherwise agreed to in writing by Seller, Buyer agrees that this document contains the sole and exclusive terms and conditions which shall apply to the sale of the goods and/or services sold hereunder. Any additional or different terms in documents provided by Buyer shall not apply and are hereby expressly objected to by Seller.

13. **TRIAL; JURISDICTION.** The parties each agree that any court proceedings commenced by or against either party shall be resolved by a court without a jury, and each party waives its right to a jury as to any dispute or claims arising under or relating to this agreement, whether for breach or enforcement of contract, tort or otherwise. The sole and exclusive jurisdiction for any action arising out of or related to these terms and conditions shall be the General District Court or Circuit Court for Montgomery County, Virginia or the United States District Court of the Western District of Virginia, Roanoke Division.

14. **GOVERNING LAW.** This document, the transactions evidenced hereby and any dispute that arises shall be **governed by the laws of the Commonwealth of Virginia, U.S.A.**, without regard to principles of conflicts of laws. Notwithstanding the foregoing, the provisions of the Uniform Computer Information Transactions Act at Va. Code § 59.1-501.1 *et. seq.* do not apply to any transaction to which these terms and conditions apply. The rights and obligations of the parties hereunder shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. To the extent referenced herein, certain terms and conditions are governed by INCOTERMS 2010.

15. **NON-WAIVER:** The failure of Seller to enforce at any time any of the provisions of this order shall not constitute a waiver of such provisions or a waiver of the right of Seller to enforce any or all provisions. If any term or provision of this order is held invalid or unenforceable by any court of competent jurisdiction, the remainder of this order shall continue to be valid and binding upon the parties unless performance thereof is rendered legally impractical and no longer fulfills the intention of the parties under this order.

16. **ASSIGNMENT.** Except as otherwise expressly provided herein, no assignment of this order or Buyer's rights under this order shall be made by Buyer without the prior written agreement of the Seller. However, Seller may assign this order and its rights and obligations to any of its affiliates or subsidiaries in its sole discretion at any time and without additional consideration.

17. **MISCELLANEOUS.** This document is not an acceptance of any offer. All orders are subject to acceptance by Seller. Any action arising hereunder, or concerning the transactions evidenced hereby, in contract, in tort, or otherwise, other than an action for failure to pay, must be commenced within 12 months of the date the cause of action accrues.