



## Sales Terms & Conditions

All sales made by Arcadia Components, LLC ("Arcadia") to its customers ("Purchaser") are subject to these terms and conditions. Purchaser's acceptance of these terms and conditions shall be made by either (i) Purchaser providing a purchase order number to Arcadia or (ii) Purchaser's acceptance of any Product from Arcadia, whichever occurs first. These terms and conditions shall apply to sales of all products and services described on Arcadia's website, Arcadia's packing list, or Arcadia's invoice, except as otherwise specified ("Product").

### 1. ORDERING, MODIFICATION OF AGREEMENT, ENTIRE AGREEMENT.

Prior to placing an order, Purchaser must have an active Arcadia sales account and Purchaser's account must be current and in good standing. Purchaser must provide Arcadia with complete Product order information as required by Arcadia. The Product order information will include without limitation the (i) Product description, (ii) unit quantity, (iii) manufacturer's part number, (iv) current unit price as provided by Arcadia, (v) correct shipping address, and (vi) Purchaser's purchase order number. Purchaser personnel will identify, for each Product order, the ship-to destination as either Purchaser, Purchaser's customer, or to some other specified third party. Arcadia reserves the right to require additional information based on the requirements of the manufacturer or publisher of the Product. Purchaser, on behalf of itself and the party for whom the Product is purchased, consents to the transfer of Purchaser's and said party's email addresses, when such transfer is required to complete a sales transaction. Purchaser shall not disclose any confidential information when ordering from Arcadia. Purchaser may place orders over telephone, via facsimile, and via Arcadia-approved electronic ordering methods only through persons who identify themselves as Purchaser personnel and provide their Arcadia customer number or customer name via a purchase order or similar Purchaser order instructions ("Purchase Order") when placing the order. Arcadia will have no obligation to confirm the validity of any order placed or the authority of the person placing an order in this manner. Purchaser bears all risk of unauthorized purchases by third parties using such method. Arcadia's acceptance of any order from Purchaser is limited to the terms and conditions contained in this Terms & Conditions document, in their entirety without addition, modification, or exception. Any additional or different terms in Purchaser's purchase order or submitted by Purchaser in any form are hereby deemed to be material alterations hereto and notice of objection to them is hereby given. All orders below the applicable minimum order value are subject to additional fees. Orders for direct shipment to Purchaser's customers or Special Order Products may require prepayment and may be subject to additional fees. All Products sold to Purchaser hereunder are for resale only. Additional fees may apply.

All Product pricing, description and availability information ("Information") provided by Arcadia, in any form, is the property of Arcadia. Arcadia hereby grants Purchaser a limited, non-exclusive, non-transferable license to use the Information for Purchaser's internal use only for purposes of Purchaser's sales and purchases of Products sold by Arcadia. If Arcadia provides Information to Purchaser electronically, Purchaser agrees to update such Information regularly to ensure its accuracy. Purchaser agrees to hold in confidence and not to directly or indirectly use, reveal, report, publish, disclose or transfer to any other person or entity any of the Information or utilize the Information for any purpose except as permitted herein.

### 2. CANCELLATIONS

Items ordered by Purchaser, including all Product listed on any Purchase Order, are considered customer/application specific. They would represent no resale or salvage value to Arcadia and are considered non-cancelable / non-returnable ("NCNR"). They may not be returned to Arcadia for any reason other than the failure of the component(s) meeting the manufacturer's published specifications pursuant to the Arcadia Warranty terms below.

### 3. PRICE

All prices are subject to change without notice and will be established at time of order acceptance by Arcadia. Order acceptance and sale by Arcadia occurs at time of shipment. Prices for backordered Products are not guaranteed. Additional fees may apply in accordance with Arcadia's policies in effect on the date of shipment. Unless otherwise stated on Arcadia's quote or invoice, prices are for products or services only, and do not include any taxes, freight, duties, tariffs, or other similar charges ("Additional Fees"). Unless otherwise stated on Arcadia's quote or invoice, Purchaser is solely responsible for any and all Additional Fees. *Any estimates around tariffs or duties, whether written or oral, provided by Arcadia to*

*Purchaser are for information purposes only and are not binding and Arcadia shall not be responsible or liable for their accuracy.*

#### **4. SHIPMENT, INCOTERMS AND DELIVERY**

**A. U.S. Shipments** - All Product shipments will be made FOB origin. For Products owned by Arcadia, title and risk of loss will transfer to Purchaser upon Arcadia tendering the Product for delivery to the carrier. Arcadia will attempt to use Purchaser's specified choice of carrier and service, subject to availability, but will retain the right to ship Products using Arcadia's carrier of choice, in accordance with Arcadia's shipping policies at the time of shipment. Additional fees and charges may also apply. Purchaser shall examine all Products upon receipt and shall notify Arcadia, as specified herein, of all discrepancies and refusal to accept delivery of purchased Product within seven (7) calendar days after receipt. Such notice shall be reasonably detailed and explain the discrepancy or why the purchased Product was refused. If Purchaser does not give Arcadia such notice as stated herein, Purchaser agrees that such Products have been accepted by Purchaser as of the date of shipment.

**B. International Shipments** - Under certain circumstances, Arcadia may choose to ship Product to Purchasers located at an address outside of the United States or the District of Columbia. These shipments will be made EXW (Ex Works), Arcadia's warehouse. Title and risk of loss will transfer to Purchaser upon Arcadia tendering the Product for delivery to the carrier. Purchaser will bear all the costs related to shipment and delivery. Purchaser shall examine all Products promptly upon receipt and shall notify Arcadia of all discrepancies or if rejection is intended within seven (7) calendar days after receipt. Such notice shall be reasonably detailed and shall specify the discrepancy or reason for rejection. Failure to give such notice within such time shall be deemed an acceptance of the Products as of the date of shipment. If the approval of any government or governing organization is required with respect to these terms and conditions or the distribution of the Products including without limitation, giving legal effect to these terms and conditions, protecting intellectual property and other rights in the Products or compliance with exchange regulations, Purchaser will, at its expense, immediately take whatever steps may be necessary to secure such approvals. If any such approval requires or results in the deletion or amendment of any provision of these terms and conditions, then Arcadia will have the right to immediately terminate these terms and conditions.

#### **5. CREDIT AND PAYMENT TERMS**

Purchaser shall furnish to Arcadia all financial information reasonably requested by Arcadia from time to time for the purpose of establishing or continuing Purchaser's credit limit. Purchaser agrees that Arcadia shall have the right to decline to extend credit to Purchaser and to require that the applicable purchase price be paid prior to shipment. Purchaser shall promptly notify Arcadia of all changes to Purchaser's name, address, or of the sale of substantially all of its assets. Arcadia shall have the right from time to time, without notice, to change or revoke Purchaser's credit limit on the basis of changes in Arcadia's credit policies or Purchaser's financial condition and/or payment record. Purchaser shall not deduct any amounts owing from any Arcadia invoice without Arcadia's express written approval, which approval shall be contingent upon Purchaser providing all supporting documentation for such deduction as required by Arcadia. A service charge of the lesser of one and one-half percent (1 ½%) per month or the maximum amount allowed by law will be charged on all past due balances commencing on the date payment is due. Credit cards (MasterCard, VISA and American Express) may be accepted at the time of order. No cash payments will be accepted. Arcadia retains (and Purchaser grants to Arcadia by submitting a purchase order) a security interest in the Products to secure payment in full, and Purchaser agrees to execute any additional documents necessary to perfect such security interest. If Purchaser fails to make timely payment of any amount invoiced hereunder, Arcadia shall have the right, in addition to any and all other rights and remedies available to Arcadia at law or in equity, to immediately revoke any or all credit extended, to delay or cancel future deliveries and/or to reduce or cancel any or all quantity discounts extended to Purchaser. Purchaser shall pay all costs of collection including reasonable attorneys' fees. Any obligation of Arcadia under these terms and conditions to deliver Products on credit terms shall terminate without notice if Purchaser files a voluntary petition under a bankruptcy statute, or makes an assignment for the benefit of creditors, or if an involuntary petition under a bankruptcy statute is filed against Purchaser, or if a receiver or trustee is appointed to take possession of the assets of Purchaser.

#### **6. TAXES**

Purchaser shall bear applicable federal, state, municipal, and other government taxes (such as sales, use, etc.). Unless otherwise specified, prices do not include such taxes. Purchaser agrees that sales of Product from Arcadia to Purchaser are to include only such sales that are exempt from sales tax (i.e. items for resale; wholesale sales). Exemption certificates, valid in the place of delivery, must be presented to Arcadia prior to shipment if they are to be honored; provided however, in the instance of sales of certain services, licenses, or the like, if by law or regulation any jurisdiction does not issue exemption certificates, Purchaser agrees that it shall be responsible for determining such exemption and non-issuance and for notifying Arcadia of such in writing, including any documentation that the jurisdiction may issue in lieu of an exemption certificate. If it is subsequently determined that notwithstanding a representation by Purchaser, Arcadia is liable for such taxes, Purchaser shall defend and indemnify Arcadia from any and all liability associated with such taxes, including any and all interest, penalties and attorneys' fees including non-attorney professional fees associated therewith.

## **7. WARRANTY**

Product warranty expires 30 days after date of Arcadia invoice; such warranty covers electrical failure, provided that Purchaser furnishes Arcadia with written test reports from a reputable independent, STD-883 or ISO17025 certified testing facility of Arcadia's choosing, documenting a substantive electrical failure substantially greater than the manufacturer's specifications for form, fit or function ("30-Day Warranty"). For customer orders requiring the application of AS6081, a) the foregoing warranty is extended to one (1) year after the date of Arcadia invoice, and b) the warranty covers the transaction such that parts are reliable and free from known defects ("AS6081 Warranty"). Purchaser warranty claims must be made in writing to Arcadia prior to the afore-mentioned expiration of the 30-day Warranty or AS6081 Warranty. Other than the afore-mentioned 30-day Warranty and AS6081 Warranty, ARCADIA MAKES NO WARRANTIES, EITHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE WHATSOEVER. ALL INFORMATION AND PRODUCT IS PROVIDED TO PURCHASER "AS IS."

## **8. PRODUCT RETURNS**

**A. Requirements** - Purchaser must obtain a valid Return Material Authorization ("RMA") number from Arcadia for all returns. RMAs will be issued, at Arcadia's sole discretion, in accordance with these terms and conditions. Purchaser must provide its account name or number and all other information as required by Arcadia for all returns. RMAs are valid for fourteen (14) calendar days from the date of issuance. Purchaser must allow for in-transit time for Products to be returned to Arcadia, as Arcadia must physically receive Products within the fourteen (14) calendar days. RMAs will be issued for authorized returns under one of the following categories: (i) defective Products, or (ii) billing or shipping discrepancies. Purchaser is responsible for ensuring that the RMA number is clearly visible on the address label of the Product packaging when it is returned to Arcadia. Arcadia will refuse delivery of any boxes without a valid, clearly visible RMA number as noted above. Unapproved Goods are unauthorized returns. Any Products received by Arcadia (i) without a valid RMA number, including Product shipments refused by Purchaser or Purchaser's customer, (ii) later than fourteen (14) calendar days from the RMA date, or (iii) in a condition materially inferior to that condition in which Arcadia originally shipped the original Products to Purchaser, will be considered Unapproved Goods. Arcadia will return Unapproved Goods to Purchaser or Purchaser's customer, and will charge Purchaser related freight charges. If Purchaser refuses the shipment of Unapproved Goods from Arcadia or returns the Unapproved Goods to Arcadia a second time without Arcadia's prior authorization, Purchaser agrees to relinquish all right and title to and waives all claims against Arcadia for credit related to such Products.

**B. Defective Product Returns** - Defective returns are only for AS6081 Warranty items and for Products purchased from Arcadia that fail electrically, provided that Purchaser furnishes Arcadia with written test reports from a reputable independent, STD-883 or ISO17025 certified testing facility of Arcadia's choosing, documenting a substantive electrical failure substantially greater than the manufacturer's specifications for form, fit or function. Purchaser may request an RMA for the return of defective Products, within thirty (30) calendar days of invoice date, in the case of AS6081 Warranty returns, within one (1) calendar year of the invoice date. Upon receipt of the defective Product for which the RMA was issued, Arcadia may test the Products and may return to Purchaser, at Purchaser's expense, any Products found not to be defective. Upon verification that the returned Product is defective, Arcadia may, at Arcadia's sole discretion, either (i) ship Purchaser a replacement Product, or (ii) provide Purchaser a credit, or in the case of a paid invoice, a refund, equal to the Product's extended invoice price. Arcadia shall not be obligated to repair, replace, or

issue credit to Purchaser for Products rendered defective, in whole or in part, by causes external to the Products, including, but not limited to, catastrophe, power failure or transients, overvoltage on interface, environment extremes, improper use, maintenance or application of the Products or use of unauthorized parts. Purchaser shall bear all risks of loss when returning defective Products.

#### **9. SHIPPING DISCREPANCIES**

Billing and shipping discrepancies are for Products purchased from Arcadia that were shipped or documented in or on the package (via an enclosed packing slip or invoice) incorrectly. These include lost shipments, short shipments, wrong sales, wrong shipments and pricing/quantity/packingslip/invoice errors. Purchaser may request an RMA for verified shipping discrepancies within seven (7) calendar days after receipt. In addition, Purchaser must notify Arcadia of any billing discrepancies related to Purchaser's authorized returns within sixty (60) calendar days of RMA date. Such notice shall be reasonably detailed and shall specify the discrepancy. Failure to give such notice within the time specified herein shall be deemed a waiver of Purchaser's rights to claim such discrepancy.

#### **10. PATENT AND TRADEMARK INDEMNITY**

ARCADIA SHALL HAVE NO DUTY TO DEFEND, INDEMNIFY, OR HOLD HARMLESS PURCHASER FROM AND AGAINST ANY OR ALL DAMAGES AND COST INCURRED BY PURCHASER ARISING FROM THE INFRINGEMENT OF PATENTS OR TRADEMARKS OR THE VIOLATION OF COPYRIGHTS BY PRODUCTS. ARCADIA WILL BEAR NO LIABILITY TO PURCHASER OR ANY THIRD PARTY RELATED TO, AND PURCHASER WILL INDEMNIFY AND DEFEND ARCADIA AND ITS SUPPLIERS AGAINST, ANY CLAIM BASED UPON THE COMPLIANCE BY ARCADIA OR ARCADIA'S SUPPLIER WITH DESIGNS, SPECIFICATIONS, OR INSTRUCTIONS PROVIDED BY PURCHASER.

#### **11. LIMITATION OF LIABILITY**

PURCHASER AGREES THAT THE LIABILITY OF ARCADIA FOR DIRECT DAMAGES RELATED TO ANY PRODUCT ARISING UNDER THESE TERMS AND CONDITIONS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED THE NET AMOUNT PAID TO ARCADIA BY PURCHASER FOR THAT PRODUCT WHICH IS THE SUBJECT OF THE CLAIM. IN NO EVENT WILL ARCADIA BE LIABLE TO PURCHASER OR ANY OTHER PARTY FOR INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS OF GOOD WILL, LOSS OF ANTICIPATED PROFITS, OR OTHER ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH ARCADIA'S BREACH OF, OR FAILURE TO PERFORM IN ACCORDANCE WITH ANY OF THESE TERMS, OR THE FURNISHING, INSTALLATION, SERVICING, USE OR PERFORMANCE OF ANY PRODUCTS OR INFORMATION ARCADIA MAY PROVIDE, EVEN IF NOTIFICATION HAS BEEN GIVEN AS TO THE POSSIBILITY OF THOSE DAMAGES AND PURCHASER EXPRESSLY WAIVES ANY AND ALL CLAIMS FOR THOSE DAMAGES.

#### **12. COMPLIANCE WITH U.S. EXPORT LAWS**

If Purchaser delivers the Products to its customer who may use the Products outside the United States, Purchaser acknowledges and shall advise its customer that the Products are controlled for export by the U.S. Export Administration and that the Products may require authorization prior to export from the United States or re-export. Purchaser agrees that it will not export, re-export, or otherwise distribute Products, or direct products thereof, in violation of any export control laws or regulations of the United States. Purchaser warrants that it will not export or re-export any Products with knowledge that they will be used in the design, development, production, or use of chemical, biological, nuclear, or ballistic weapons, or in a facility engaged in such activities, unless Purchaser has obtained prior approval from the Department of Commerce, Department of State, and/or any other entity with legal jurisdiction over such export or re-export. Purchaser further warrants that it will not export or re-export, directly or indirectly, any Products to embargoed countries or sell Products to companies or individuals listed on the Denied Persons List published by the Department of Commerce, Department of State and/or any other entity with legal jurisdiction over such export or re-export.

#### **13. RELATIONSHIP OF THE PARTIES**

Purchaser's relationship with Arcadia will be that of an independent contractor. Purchaser will not have, and will not represent that it has, any power, right or authority to bind Arcadia, or to assume or create any obligation or responsibility, express, implied or by appearances, on behalf of Arcadia or in Arcadia's name, except as herein expressly provided. Nothing stated in these terms and conditions will be construed as constituting Purchaser and Arcadia as partners or as creating the relationships of employer/employee,

franchisor/franchisee, or principal/agent between the parties. Purchaser will make no warranty, guarantee or representation, whether written or oral, on Arcadia's behalf.

#### **14. LEGAL COMPLIANCE AND ANTI – CORRUPTION**

Arcadia and Purchaser agree to abide by all laws and regulations applicable to the performance of their respective obligations under these terms and conditions. Purchaser has not made, and will not make, any direct or indirect payment, offer to pay, or authorization to pay, any money, gift, promise to give, or authorization of the giving, of anything of value to any government official, or the immediate family of any such official, for the purpose of influencing an act or decision of the government or such individual in order to assist, directly or indirectly, Purchaser in obtaining or retaining business, or securing an improper advantage.

#### **15. RESTRICTIONS**

All Products delivered to Purchaser hereunder may have additional restrictions on their use, including those specified by the manufacturer or publisher. Purchaser is solely responsible for ensuring its adherence to any and all such restrictions and requirements and agrees to hold Arcadia harmless from all costs, fees, expenses, and liability arising from Purchaser's direct or indirect violation of same.

#### **16. CHOICE OF LAW/CHOICE OF FORUM**

These terms and conditions (and any agreement into which they are incorporated) shall be construed, interpreted and enforced under and in accordance with the internal laws of the State of Utah, excluding its conflicts or choice of law rule or principles which might refer to the law of another jurisdiction. Purchaser agrees to exercise any right or remedy in connection with these terms and conditions exclusively in, and hereby submits to the jurisdiction of the State of Utah, Courts of Salt Lake County, Utah, or the United States District Court, District of Utah. The state and federal courts situated in Salt Lake County, Utah will have non-exclusive jurisdiction and venue over any dispute or controversy that arises out of these terms and conditions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these terms and conditions.

#### **17. NOTICES**

All notices, requests, demands, and other communications that either party may desire to give the other party must be in writing and may be given by (i) personal delivery to an officer of the party, (ii) mailing the same by registered or certified mail, return receipt requested, or via nationally recognized courier services to the party at the address of such party as set forth herein, at the official corporate address of such party, or such other address as the parties may hereinafter designate, or (iii) facsimile subsequently to be confirmed in writing pursuant to item (ii) above. Notices to Arcadia shall be sent to: Arcadia Components, LLC, 455 White Pine Drive, Salt Lake City, UT 84123, Attn: Legal Department.

#### **18. GENERAL**

**A. Publicity.** Except for any announcement intended solely for internal distribution by either party or any disclosure required by legal, accounting, or regulatory requirements, all media releases, public announcements, or public disclosures, including but not limited to promotional or marketing material, by either party or its employees or agents relating to these terms and conditions, the relationship between Arcadia and Purchaser, or including the marks of the other party or any affiliate of that party, must be approved in writing by the other party prior to release.

**B. Force Majeure.** Arcadia will not be liable for any delay or for failure to perform any obligation under these terms and conditions resulting from any cause beyond Arcadia's or its subcontractor's reasonable control, including but not limited to: Purchaser's or Purchaser's customers' failure to timely supply necessary data, information or specifications; any changes in data, information or specifications made by Purchaser or Purchaser's customer; third party equipment manufacturer design defects, flaws or errors; acts of God; Internet blackouts or brownouts; severe weather; fire; explosions; floods; strikes; work stoppages; slowdowns or other industrial disputes; accidents; riots or civil disturbances; acts of war, sabotage or terrorism; dangerous conditions which present a threat to the safety or health of Arcadia or its subcontractor's personnel; acts of government; inability to obtain any license or consent necessary in respect of any third party software; and delays by suppliers or material shortages. Scheduled performance dates shall be extended for these causes.

**C. Attorney's Fees.** If there is any dispute concerning these terms and conditions or the performance of either party pursuant to these terms and conditions, and either party retains counsel for the purpose of enforcing any of these terms and conditions or asserting these terms and conditions in defense of any suit filed against it, each party will be solely responsible for its own costs and attorney's fees incurred in connection with the dispute irrespective of whether or not a lawsuit is actually commenced or prosecuted to conclusion.

**D. Assignment.** Neither party may assign its rights and/or duties under these terms and conditions without the prior written consent of the other party given at the other party's sole option. Any attempted assignment without that consent will be void. Notwithstanding the foregoing, Arcadia may assign any purchase order received from Purchaser to an Arcadia subsidiary or affiliate upon notice to Purchaser.

**E. Interpretation.** If any provision of these terms and conditions is held to be invalid, illegal or unenforceable, that provision will be enforced to the fullest extent permitted by applicable law and the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired. Failure or delay of Arcadia to exercise a right or power under these terms and conditions will not operate as a waiver, nor will any single or partial exercise of a right preclude any other future exercise of that right. The captions used in these terms and conditions are for reference purposes only and will have no effect upon the construction or interpretation of any provisions. These terms and conditions, as published on Arcadia's Web site located at [www.arcadiacomp.com](http://www.arcadiacomp.com) at the time of sale, are the official terms and conditions of sale between Arcadia and Purchaser and may be amended from time to time without notice at Arcadia's sole discretion.