

## Terms and Conditions of Sale

All goods and/or services that **CBS ArcSafe, LLC** and/or any of its affiliated companies (individually or collectively, "Seller") may provide to you ("Buyer") are subject to the general terms and conditions listed below ("Seller's Terms"). Any accompanying or applicable quotation, confirmation of sale, and/or invoice of Seller (individually or collectively, the "Sales Confirmation" and, together with Seller's Terms the "Sales Agreement") comprise the entire agreement between Seller and Buyer, and supersede all prior or contemporaneous communications, understandings, agreements, negotiations, representations and warranties, both written and oral. For good and valuable consideration, Buyer agrees as follows:

**1. ORDER TERMS:** Terms and conditions hereof shall apply to all orders placed by Buyer in lieu of any terms and conditions in Buyer's purchase orders. SELLER'S TERMS SHALL PREVAIL OVER ANY TERMS AND CONDITIONS, GENERAL OR SPECIFIC, WRITTEN OR ORAL, THAT BUYER MAY SET FORTH AS PART OF ITS PURCHASE OF ANY GOODS AND/OR SERVICES FROM SELLER EITHER IN A PURCHASE ORDER OR OTHERWISE. IF BUYER'S PURCHASE ORDER SETS FORTH ANY TERMS AND CONDITIONS THAT DIFFER FROM, OR ARE IN ADDITION TO, SELLER'S TERMS; SUCH DIFFERING OR ADDITIONAL TERMS AND CONDITIONS IN BUYER'S PURCHASE ORDER ARE EXPRESSLY REJECTED.

**2. PAYMENT:** Unless otherwise specified by Seller in writing, terms of payment are in United States Dollars due in full within thirty (30) days from the date of invoice. All past-due accounts are subject to finance charges not to exceed the maximum rate allowed by law. Buyer shall indemnify and reimburse Seller for all costs incurred in connection with collecting late payments or prosecuting any other breach by Buyer of this Sales Agreement, including, without limitation, Seller's reasonable attorneys' fees and costs. In addition to all other remedies available under this Sales Agreement or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend, cancel, or otherwise terminate the delivery of any goods and/or performance of any services if Buyer fails to pay any amounts when due hereunder.

### 3. PRICES AND TAXES:

**3.1.** Prices quoted are predicated on payment made by check, ACH, or wire transfer and are exclusive of taxes, freight, and merchant fees (if applicable and allowed under applicable law) and are valid for thirty (30) days from date of quote issuance unless otherwise published on Seller's quote. Prices do not include any federal, state, local, use, sales, excise, value-added or other taxes. Buyer is responsible for all taxes associated with any order and agrees to indemnify Seller from such expenses. Prices are considered firm at the time Seller issues a written order acceptance to Buyer.

**3.2. Payments by Credit Card.** Due to additional third-party processing costs charged to Seller, (a) Seller in its sole discretion may refuse to accept payment by credit card or debit card, and (b) where permitted by applicable law, payments made to Seller by credit card will incur a merchant fee of three percent (3%) of the total amount of the payment to be made by credit card.

### 4. DELIVERY; RISK OF LOSS:

**4.1.** All purchase orders are subject to credit application and approval and will be deemed accepted by the issuance of the Sales Confirmation. Buyer may not cancel or otherwise terminate a previously accepted purchase order unless Buyer (i) provides written notification of same to Seller prior to shipment of the goods and/or performance of the services affected thereby, and (ii) obtains written consent to same from Seller. If Seller agrees to any cancellation of the purchase order, such purchase order is subject to payment of Seller's duly substantiated costs and the applicable administrative cancellation fee per the following table:

Goods (Non-Engineered)	Percentage of Total Order Amount
At least 90 days' prior to scheduled delivery date	15%
Goods (Engineered)	Percentage of Total Order Amount
Prior to Seller's submission of drawings	5%
After Seller's submission of drawings	20%
After Seller's final release of drawings	70%
After production commences (or within 1 business day of planned site visit in the case of field services)	100%
Services	Percentage of Total Order Amount
Within 7 days prior to onsite schedule	15%
Within 48 hours prior to onsite schedule	25%
Within 24 hours prior to onsite schedule	50%

**4.2.** Unless Seller agrees otherwise in writing, Seller shall deliver the goods and risk of loss shall pass EXW Seller's facility (Incoterms 2020). Shipping dates are approximate and are dependent on prompt receipt of all necessary information from Buyer.

**4.3.** Seller may, in its sole discretion, without liability or penalty, make partial shipment of goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's Purchase Order.

**4.4.** Seller shall use reasonable efforts to meet any performance dates to render the services Seller provides to Buyer under this Sales Agreement, and any such dates shall be estimates only. With respect to such services, Buyer shall (i) cooperate with Seller in all matters relating to the services and provide such access to Buyer's premises, and such office accommodation and other facilities as may reasonably be requested by Seller, for the purposes of performing the services; (ii) respond promptly to any request from Seller to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Seller to perform the services in accordance with the requirements of this Sales Agreement; (iii) provide such materials or information as Seller may reasonably request and Buyer considers reasonably necessary to carry out the services in a timely manner and ensure that such materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the services before the date on which performance of the services are to start.

**5. FORCE MAJEURE:** Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Sales Agreement, for any failure or delay in fulfilling or performing this Sales Agreement, in whole or in part, when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, changes in rules, regulations, applicable laws, standards or requirements of governmental authorities existing at the time this Sales Agreement was made, tariffs, ICC regulations, accidents, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockdowns, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage. In the event delay in performance is caused thereby, the time of performance shall be extended by a period of time equal to the period of the delay and its consequences. Seller will use its commercially reasonable efforts to give Buyer notice within a reasonable time after Seller becomes aware of any such delay.

**6. BUYER'S ACTS OR OMISSIONS.** Seller shall not be deemed in breach of this Sales Agreement for any failure or delay in fulfilling or performing this Sales Agreement, in whole or in part, or otherwise liable for any costs, charges or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay if Seller's performance of its obligations hereunder is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants or employees, including but not limited to Buyer's failure or delay in supplying all necessary instructions, documents, licenses, authorizations, or other information as and when requested or specified by Seller. In the event delay in performance is caused thereby, the time of performance shall be extended by a period of time equal to the period of the delay and its consequences. Seller will use its commercially reasonable efforts to give Buyer notice within a reasonable time after Seller becomes aware of any such delay.

**7. TERMINATION.** In addition to any remedies that may be provided under this Sales Agreement, Seller may terminate this Sales Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amounts when due hereunder and such failure continues for five (5) days following written notice thereof; (ii) has not otherwise performed or complied, in whole or in part, with this Sales Agreement and Seller's Terms; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors

**8. PRODUCT ACCEPTANCE AND RETURNS:** Goods are deemed accepted by Buyer ten (10) days after delivery. Subject to a minimum 25% restocking fee, Buyer may return non-defective, non-customized goods to Seller's facility within such 10-day period. Notwithstanding the foregoing, non-defective goods that were produced specifically for Buyer ("customized") are not eligible for return.

**9. CONDITION OF GOODS:** All goods are sold according to one of the following classifications:

**9.1. "AS-IS"** - Such goods are sold "as is" and "with all faults." Products sold "As-Is" are not tested or inspected and may be damaged or missing parts. Buyer hereby acknowledges that no warranties apply or are otherwise implied on these items.

**9.2. "E-OK"** - Such goods are sold in a used condition. Goods in "Electrically - OK" or "E-OK" condition have been cleaned and passed reasonable electrical tests customary for such goods, including performance of the electrical insulation system. Buyer hereby acknowledges that no warranties apply or are otherwise implied on these items.

**9.3. "RECONDITIONED"** - Goods that are processed to return them to safe operating condition in accord with instructions from the original manufacturer or reasonable industry standards and having passed reasonable industry tests customary for such particular goods.

**9.4. "REMANUFACTURED":** Goods that are sold remanufactured with components that have been disassembled, remanufactured, and tested in accord with specifications (as available) from the original manufacturer, and having passed reasonable industry tests customary for those particular goods (such as ANSI C37, NETA, NEMA, and OEM).

**9.5. "SURPLUS UNUSED":** Goods sold in surplus-unused condition are goods that have never been used but cannot be sold as new from OEM-approved channels. Surplus-unused equipment is commonly a utility or industry spare that was never placed into service or was excess OEM inventory that was never sold.

**9.6. "NEW":** Goods are sold "NEW" from OEM or OEM-approved sales channels.

**10. SERVICES:** On a case-by-case basis, Buyer may provide Seller certain services that may include:

**10.1. Field Testing:**

- Maintenance Testing:** Field tests and inspections to assess the suitability for continued service, condition of maintenance, and reliability of electrical power distribution equipment and systems; and/or
- Acceptance Testing:** Field testing and inspections to assess the suitability for initial energization and final acceptance of electrical power equipment and systems.

**10.2. Engineering Services:** Power Studies to assist in the evaluation of the initial and future system performance, system reliability, safety, and the ability to grow with production and/or operating requirements. These studies may include load flow studies, cable ampacity studies, short-circuit studies, coordination studies, incident energy analysis, and routine motor-starting studies. Additional studies, for example, relating to switching transients, reliability, grounding, harmonics, and special motor-starting considerations may also be included.

**10.3. Commissioning Services:** The systematic process of documenting and placing into service newly installed or retrofitted electrical power equipment and systems.

**11. LIMITED WARRANTY:**

**11.1.** Seller warrants to Buyer that services performed hereunder will be performed in a professional and workmanlike manner by trained and qualified personnel in accordance with industry standards. No other warranties, express or implied, related to services are provided.

**11.2.** Seller warrants to Buyer that the goods provided hereunder will perform in accordance with Seller's use parameters under competent supervision and maintenance and under industry normal load and use conditions for the applicable period set forth in the table below subject to the provisions contained in this Section 11:

Condition of Goods	Standard Warranty
AS-IS	No warranty, express or implied
E-OK	No warranty, express or implied
Reconditioned	1 Year from invoice date
Remanufactured	1 Year from invoice date
Surplus Unused	1 Year from invoice date
New	1 Year from invoice date
Goods manufactured by ArcSafe	2 Years from invoice date

**11.3.** All warranty terms will be considered null and void if (i) goods or services are not paid for in a timely manner; (ii) defects arise which result from Buyer's accident, negligence, abuse, misuse, alterations, improper storage, improper maintenance, improper installation, and/or (iii) repairs are performed without Seller's prior written consent.

**11.4.** All warranty claims must be submitted to Seller in writing within 90 days of Buyer's discovery of alleged defect. Claims submitted more than 90 days after the applicable period expiration will not be considered.

**11.5.** If directed by Seller, Buyer shall remove and ship to Seller any such nonconforming items. Otherwise, Buyer shall grant Seller access to the goods at all reasonable times for Seller to determine any nonconformity of the goods. Notwithstanding if items are considered chargeable or covered under warranty, Buyer shall be solely responsible at its cost to install and reinstall repaired/replaced items.

**11.6.** In the case of a warranty repair, Buyer shall coordinate shipment in advance with Seller, and Seller will pay standard freight associated with repairing or replacing the defective item.

**11.7.** Seller's Standard Warranty is separate from any warranty offered by a third party, and to the extent that any Seller supplied goods are subject to any third-party warranty, Buyer shall look only to such third party for coverage or enforcement of such warranty. Subject to this Section 11 and Section 13, the inclusion of any third-party component, which is subject to a third-party warranty, shall not be deemed to extend the term or otherwise affect the coverage of any warranty provided by Seller.

**11.8.** Buyer's sole remedy for non-conforming goods is the repair or replacement (at Seller's option) of the nonconforming item and any affected part of the goods.

**11.9.** Buyer's sole remedy for non-conforming services is to require Seller to re-perform the services to an industry-standard within a reasonable timeframe.

**12. EXTENDED WARRANTY:** Buyer may purchase an Extended Warranty, if offered by Seller, at a price set forth in Seller's quote at the time of original purchase of goods. The Extended Warranty period begins on the day after the Limited Warranty period expires and continues for a period of twelve (12) months. The Extended Warranty inherits all other terms and conditions of the Limited Warranty set forth in Section 11 and the Exclusions and Limitations of Liability set forth in Section 13. The Extended Warranty is considered null and void if Buyer fails to timely pay for goods or the extended warranty premium. Only goods that are eligible for a Limited Warranty are eligible for the Extended Warranty; "As Is" goods, "E-OK" goods, and services are expressly excluded.

**13. EXCLUSIONS AND LIMITATIONS OF LIABILITY:**

THE WARRANTIES SET FORTH IN SECTIONS 11 AND 12 ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES (EXPRESS OR IMPLIED), INCLUDING BUT NOT LIMITED TO WARRANTY OF MERCHANTABILITY, WARRANTY OF NON-INFRINGEMENT OF INTELLECTUAL PROPERTY, AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. SELLER SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES (EXPRESS OR IMPLIED) NOT OTHERWISE SET FORTH HEREIN.

IN NO EVENT SHALL SELLER (OR, AS APPLICABLE, ITS SUPPLIERS) BE LIABLE TO BUYER OR ANY THIRD PARTY, INCLUDING BUYER'S CUSTOMERS, FOR ANY COSTS OF CAPITAL, LOSS OF USE, REVENUE, OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, COLLATERAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT (INCLUDING WARRANTY AND INDEMNITY), TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR ANY OTHER LEGAL THEORY, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. SELLER SHALL NOT BE RESPONSIBLE FOR ANY, AND BUYER ASSUMES ALL, LIABILITY FOR PERSONAL INJURY AND PROPERTY DAMAGE RESULTING FROM BUYER'S NEGLIGENCE, ABUSE, OR MISUSE AND THE STORAGE, INSTALLATION, OPERATION, USE OR MAINTENANCE OF ANY GOODS SELLER PROVIDES TO BUYER UNDER THIS SALES AGREEMENT.

IN NO EVENT SHALL THE AGGREGATE LIABILITY OF SELLER (OR, AS APPLICABLE, ITS SUPPLIERS) ARISING OUT OF OR RELATED TO THIS SALES AGREEMENT EXCEED ONE (1) TIMES THE TOTAL OF THE AMOUNTS BUYER PAID TO SELLER FOR THE GOODS AND/OR SERVICES SOLD HEREUNDER WITH RESPECT TO WHICH DAMAGES OR LIABILITY IS CLAIMED.

**14. INDEMNIFICATION.** Unless otherwise specified in writing and signed by Seller's duly authorized representative, Buyer shall indemnify Seller from, and defend and hold Seller harmless from and against, any claims, liabilities and/or losses, including monetary damages, expenses, costs (including reasonable attorneys' fees), suffered, incurred or sustained by Seller or to which Seller becomes subject, resulting from, arising out of or relating to any claim (i) that the goods/services Seller provides to Buyer under this Sales Agreement, as such goods/services are used or combined with other goods by Buyer, infringe upon the proprietary or other rights of any third party, (ii) that the goods/services Seller provides to Buyer under this Sales Agreement that are customized pursuant to Buyer's requests, infringe upon the proprietary or other rights of any third party, (iii) of loss or damage resulting from such goods and/or services and the use thereof, and (iv) Buyer's acts or omissions.

**15. GOVERNING LAW; VENUE:** The provisions of this agreement shall be governed by the laws of the State of Texas, regardless of any conflicts of choice of laws or legal principles. The venue for all actions is Dallas County, Texas. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

**16. ASSIGNMENT:** Seller may assign this agreement without Buyer's consent. Buyer shall not assign any of its rights, including warranties, or delegate any of its obligations under this Sales Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void.

**17. WAIVER:** No waiver of Seller's rights or remedies hereunder shall be effective unless in writing and signed Seller; a waiver on one occasion shall not be construed as waiver of any right or remedy on a further occasion.

**18. SEVERABILITY:** If any provision, or portion thereof, of this agreement is held invalid or unenforceable under applicable statute or rule of law, only that provision shall be deemed omitted from this agreement, and only to the extent to which it is held invalid, and the remainder of the Agreement shall remain in full force and effect.

**19. NOTICES:** All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and addressed to the parties at the addresses set forth on the face of the applicable order, quote, or to such other address that may be designated by the receiving party in writing. A notice shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). In addition to and not in lieu of delivery of a notice by one of foregoing methods, a courtesy copy of said notice may also be delivered by electronic mail. A notice is effective only (i) upon receipt by the receiving party, and (ii) if the party giving the notice has complied with the requirements of this Section.