

ATS - Purchase Order Terms and Conditions

1. **ACCEPTANCE.** This order is Buyer's offer to Seller. When Seller accepts this order, either by signing and returning the acknowledgement copy or other form of acknowledgement or by substantial commencement of performance, or by delivery of any items ordered it shall become a binding agreement. Buyer may at any time prior to such occurrence, cancel this Order without liability or obligation of, or cost to, Buyer.
2. **COMPLETE AGREEMENT.** This order is a complete and exclusive statement of the terms of the agreement between Seller and Buyer.
3. **MODIFICATION.** No modification of this order (including any additional or different terms in Seller's acceptance) shall be binding on Buyer unless agreed to in writing by Buyer.
4. **SHIPMENT/DELIVERY.** Time is of the essence. Shipments or deliveries (any specified in this order) shall be strictly in accordance with quantities and schedules specified in this order. No partial shipments shall be made unless previously authorized by Buyer. If at anytime it appears that Seller will not meet such schedule, Seller shall promptly notify Buyer and, if requested by Buyer, ship by expedited routing to avoid delay to the maximum extent possible, the added cost to be borne by Seller. Deliveries received by Buyer more than five (5) working days prior to the scheduled delivery date on this order will not be accepted unless previously authorized by Buyer and will be subject to return to Seller, the added cost to be borne by Seller, This is in addition to Buyer's other remedies provided by law.
5. **PACKING/MARKING.** All good shall be prepared for shipment and packaged to prevent damage or deterioration, secure lowest transportation rates and comply with Buyers packaging specifications and all applicable laws and regulation the Department of Transportation Hazardous Materials Regulation.
6. **PRICING AND INVOICE/PAYMENTS.** The prices specified herein shall, unless otherwise expressly stated, include all charges for preparation, packing, and loading. A separate invoice and bill of lading shall be issued for each shipment. Unless otherwise specified, no invoice shall be issued prior to shipment of goods and no payment shall be made prior to receipt of goods and a correct invoice. Invoice will be paid within the terms specified after receipt of material by ATS. ATS reserves the right to take all discount offered for payment with a shorter period.
7. **WARRANTIES.** Seller warrants that:
 - a) All goods delivered will conform to the specification, drawings, samples or other description specified by the Buyer or if none are so specified, to the Seller's standard specifications for such material, workmanship, design, liens, encumbrances and will be fit for the intended purposes.
 - b) Materials and work performed will comply with the Occupational Safety and Health Act of 1970 and regulation implementing it.
 - c) Seller's warranties (and any more favorable warranties, service policies or similar undertaking of Seller) shall be enforceable by Buyer's customers and any subsequent owner or operator of the goods, as well as by Buyer.
 - d) Seller will indemnify and hold Buyer and its customers harmless against all liability; and expenses including counsel fees arising from any such breach of warranty.
 - e) The Seller warrants that the prices for the articles sold to the Buyer under this order are not less favorable than those currently extended to any other customer for the same or like articles in equal or less quantities. In the event Seller reduces its price for such article during the term of the order, Seller agrees to reduce to correspondingly.
8. **INSPECTION.** All goods are subject to final inspection and acceptance by Buyer at destination not withstanding any payment or prior inspection at source. Final inspection will be made within a reasonable time after receipt of goods. Seller agrees to permit the Buyer's inspectors to have access to the Seller's plant at all reasonable times for the purposes of inspecting the items set forth in this order or work in the process for production of such items.
9. **REJECTION.** Unless agreed to in writing by Buyer, Seller shall have no right to replace or correct non-conforming goods which have been rejected by Buyer. Buyer may return goods rejected and goods supplied in excess of quantities called for herein to the Seller at the Seller's expense. In the event Buyer receives goods whose defects or non-conformity is not apparent on examination, resulting in deterioration of this finished product, Buyer reserves the right to require replacement of such goods as well as payment of damages.
10. **CANCELLATION/TERMINATION.** In addition to Buyer's other remedies provided by law. Buyer may (a) cancel this order in whole or in part, without further obligation in the event of Sellers failure to deliver product to Buyer as scheduled or if product is defective or if Seller fails to comply with any of the terms or conditions of this agreement. Acceptance of part of the order shall not oblige Buyer to accept later shipment or affect its right to return goods already accepted; (b) terminate this order at any time in whole or in part for its convenience upon written notice to Seller if causes beyond the reasonable control of Buyer make receipt or use of the ordered goods impracticable. In the event of termination, Buyer shall be liable for Seller's actual incurred costs to termination date but in no event shall Buyer be liable for loss of profits on the order or portion thereof so terminated. Upon such settlement all materials, special tools and work in-process will become the property of the Buyer.
11. **PATENT INDEMNITY.** Seller shall defend Buyer, Buyer's customers, and any subsequent seller or user of the goods against all claims and proceedings alleging infringement of any United States or foreign patent by any goods delivered under the order and Seller shall hold them harmless from any resulting liabilities, losses and expenses (including reasonable attorneys fees), provided Seller is reasonably notified of such claims and proceeding. Seller's obligation shall not apply to goods manufactured pursuant to detailed designs developed and furnished by Buyer nor to any infringement arising from the use or sale of goods in combination with items not delivered by Seller if such infringement would not have occurred from the use or sale of such goods solely for the purpose for which they were designed or sold to Buyer.
12. **ASSIGNMENT.** No assignment of rights of delegation of duties under this order shall be binding upon Buyer, without its prior written consent. No invoices may be rendered by other than the named Seller without the written consent of the Buyer. All claims for moneys due or to become due from the Buyer shall be subject to deduction by the Buyer for any setoff or counterclaim arising out of this or any other purchase orders with the Seller, whether such setoff or counterclaim arose before or after such assignment by the Seller.
13. **CONFIDENTIAL DISCLOSURE.** Seller shall keep confidential all proprietary information including but not limited to designs, processes, specification, reports, data and other technical business information and the features of all parts, equipment, tools, gauges, patterns and other items furnished or disclosed to Seller by Buyer. Unless otherwise provided herein, or authorized by Buyer in writing. Seller shall use such information and items and the features thereof, only in the performance of this order. Upon completion, cancellation or termination of this order, Seller shall at Seller's expense, dispose of all such information and items as directed by Buyer. In all subcontracts for performance of work related to this order, Seller shall include provision which provide Buyer the same protection as provided by this paragraph. Unless otherwise agreed in writing, no commercial or technical information disclosed by Seller to Buyer shall be deemed confidential.
14. **CHANGES.** Buyer may at any time, by written order, make changes within the general scope of this order. If any change causes an increase or decrease in the cost of time required in the performance of this order, an equitable adjustment shall be made in the price of delivery schedule or both. Any claim by Seller to adjustment under this paragraph shall be asserted within 30 days of the date of receipt by Seller or Buyer's written order. Buyer shall have the right to examine any of the Seller's pertinent books and records for the purpose of verifying Seller's claim. Nothing in this paragraph shall excuse Seller from proceeding with this order as changed, including failure of the parties to agree upon any adjustment to be made.
15. **BUYER'S PROPERTY.** The Seller agrees that the information, tools, jigs, dies, etc., drawings, patterns and specifications supplied or paid for by the Buyer, shall be and remains Buyer's property and shall be held by the Seller for Buyer unless directed otherwise. The Seller will account for such items and keep them in good working condition and fully covered by insurance at all times without expense to Buyer.
16. **SUBCONTRACTING.** No goods to be delivered under this order shall be procured by Seller from a third party in completed or substantially completed form without Buyer's prior written consent. Any changes in the Seller's use of the subcontractor previously authorized by Buyer will require the Buyer's prior written consent.
17. **NON WAIVER.** Failure of Buyer to enforce any provision of this order shall not constitute a waiver of the provision.
18. **APPLICABLE LAW.** This order and acceptance hereof, shall be governed by the laws of the State of Washington.
19. **COMPLIANCE WITH LAWS.** Seller warrants that all goods and services sold hereunder shall have been produced, sold, delivered and furnished strict compliance. All laws and regulation required in agreements of this character are hereby incorporated by this reference, including provision of 39 U.S. CODE 2012. EXECUTIVE ORDERS 11246, 11375, 11758, 11701, AND 12086, amended and any subsequent executive orders relating to equal opportunity for employment on government contracts. If Seller is required by this purchase order to employ workers on Buyer's premises, conditions of such employment shall be consistent with Buyer's labor agreements, or personnel policies and practices, and shall not interfere with Buyer's operations.
20. **INSURANCE.** The following applies if this order involves assembly, repair or services in or upon the Buyer's premises. The Seller shall maintain such insurance as will cover and include the entire obligation assumed in the order as well as insurance as will protect him from claims and liability under the Workmanship Compensation Act and from any other claims of liability for damages including bodily injury and for damages to property which may arise from operations under this order. Certification of such insurance shall be submitted to the Buyer prior to commencement of work. To satisfy the provisions outlined above, the Seller must submit a certificate of insurance signed by the insurer.
21. **CONTINGENCY.** Seller shall not be held responsible for any delay or failure in performance hereunder caused by acts of God or other causes beyond Seller's control and without Seller's fault or negligence. If such contingency occurs, Applied Technical Services Corporation may elect to: (a) Terminate this Purchase Order or any part hereunder as to Products not shipped; (b) Suspend this Purchase Order in whole or in part for the duration of the delaying clause; or (c) Resume performance hereunder once the delaying cause ceases with the option to extend the time for performance hereunder up to the length of time the contingency endured. Unless Applied Technical Services Corporation gives written notice within thirty (30) days after notice of the contingency, "b" shall be deemed selected.