



REV 2-18-2013

## TERMS AND CONDITIONS OF SALE

**ACCEPTANCE OF DOCUMENT.** The terms of the contract between ACS Manufacturing, Inc. ("Seller") and the purchaser of the goods ("Buyer") specified in the accompanying purchase order (the "Goods") are exclusively the terms contained herein and in the purchase order. No other terms, whether written or oral, make up the parties' contract, and no documents are incorporated by reference into the contract unless expressly identified in the purchase order. No modifications or additions to the terms and conditions are accepted unless acknowledged by Seller in writing.

**DELIVERY.** Title to and risk of loss of all Goods sold hereunder by Seller shall pass to Buyer upon their delivery F.O.B. Seller's factory to a representative of Buyer, including a common carrier. Any claim by Buyer of loss or damage to the Goods in transit shall be the responsibility of the carrier and not of Seller.

**INSPECTION.** Buyer must inspect all Goods upon receipt at Seller's factory (if Buyer takes immediate receipt) or upon delivery by a carrier. Buyer must notify the Seller within three (3) days of receipt if there are any defects or shortages in the Goods. Notice that Goods are not in conformance with these Terms and Conditions must set forth in reasonable detail the manner of nonconformance. If Buyer retains the Goods after their delivery without giving such timely notice, such failure shall constitute an irrevocable acceptance of the Goods by Buyer, except for defects not reasonably discoverable by a visual inspection. Buyer's sole remedy for any defects or nonconformance shall be in accordance with the warranty terms below.

**WARRANTY.** Subject to the terms, conditions, and limitations herein, Seller warrants, to the original Buyer only, that the Goods will be free from defects in material and workmanship. If the Goods do not conform to this warranty, Seller's exclusive obligation and liability, and Buyer's exclusive remedy, under the contract is limited to repairing or replacing (at Seller's option), the Goods (or portions thereof) at no cost to Buyer. If Seller elects to provide a conforming replacement Good (or component part), the item shall be provided F.O.B. at Seller's factory, and Buyer is responsible for the costs of shipping and installing the replacement item. Seller's warranty obligations are expressly conditioned upon Buyer having paid in full for the Goods. The duration of this express warranty is (a) 12 months from delivery for new Goods and (b) 90 days from delivery for any replacement items. This warranty only covers defects in materials and workmanship originating with Seller, so it does not cover other losses, including (but not limited to) those caused in whole or in part by (1) improper installation or maintenance; (2) improper use or application; (3) corrosion; (4) normal wear and tear; (5) operation beyond rated capacities; (6) the use of replacement parts or improper lubricants/sealants; or (7) improper repairs. If the Goods include equipment manufactured by others and which are provided with a manufacturer's warranty on the equipment, that manufacturer's warranty shall replace Seller's warranty and shall be the exclusive warranty on the equipment.

In order to preserve a remedy under this contract, Buyer must provide written notice to Seller of the non-conformity within 5 days of discovery of the non-conformity. Seller must arrange at its cost to return the non-conforming Goods (or component parts) to Seller for repair or replacement. THIS EXPRESS WARRANTY IS THE EXCLUSIVE WARRANTY FOR THE GOODS, AND IT IS PROVIDED IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING WITHOUT LIMITATION ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY DISCLAIMED. SELLER'S LIABILITY FOR ANY CLAIMS RELATING TO THE GOODS IS LIMITED TO THE REMEDIES IDENTIFIED HEREIN. BUYER AND SELLER MUTUALLY WAIVE ALL CLAIMS AGAINST EACH OTHER FOR LOSS OF USE, LOSS OF PROFITS OR ANY OTHER DIRECT OR INDIRECT INCIDENTAL OR CONSEQUENTIAL DAMAGES CAUSED BY THE GOODS, ANY DEFECT IN THE GOODS, OR ANY CLAIMS FOR BREACH OF CONTRACT, TORT, OR OTHER LEGAL CLAIM RELATING TO OR ARISING FROM THE PARTIES' CONTRACT. IN THE EVENT OF ANY DISPUTE BETWEEN THE PARTIES ABOUT THE GOODS OR THE PERFORMANCE OF SELLER, SELLER'S MAXIMUM MONETARY LIABILITY TO BUYER, REGARDLESS OF THE LEGAL THEORY CLAIMED OR THE DAMAGE OR LOSS ASSERTED OR INCURRED BY BUYER, SHALL BE A REFUND OF THE AMOUNTS PAID BY BUYER UNDER THE PARTIES' CONTRACT.

**DELAYS, DAMAGE OR LOSS.** Seller is not responsible for and shall not be liable for delays in shipment of delivery of Goods, detention thereof, loss or damage thereto, regardless of the cause. Factory shipping dates given in advance of actual shipment and dates that the Goods may be ready for delivery are estimates and are not guarantees of such dates. Seller shall not be liable for a delay in manufacturing, completion, or delivery, regardless of cause.

**SALES AND TAXES.** Unless otherwise indicated, prices are F.O.B. Seller's factory and do not include Federal, state or municipal sales, use, excise or similar taxes. If any such tax is stated on the invoice, Buyer will promptly remit same to Seller. All other sales or use taxes upon goods shall be paid by the Buyer to the appropriate taxing authority.

**PAYMENT.** Unless otherwise indicated, payment terms are net 30 days from date of invoice.

**DELINQUENT PAYMENTS.** All amounts not paid when due according to the terms herein, including interest, shall bear interest at the highest rate allowed by law from the date of default until paid in full.

**SECURITY INTEREST.** Buyer hereby grants Seller a security interest in the Goods until all of the payments are made and all of the conditions herein contained are fully satisfied, at which time Seller's security interest shall expire. At the request of Seller, Buyer will execute and deliver to Seller for filing wherever it may be required a financing statement evidencing Seller's security interest in the goods.

**DEFAULT.** Buyer shall be in default if it fails to perform any of its obligations under this contract, or (i) if bankruptcy or insolvency proceedings are instituted by or against Buyer, (ii) if Buyer makes any assignment for the benefit of creditors, or (iii) if Buyer shall grant or permit any other lien, security interest or other claim to the Goods. Upon Buyer's default all amounts owing Seller hereunder shall, at Seller's option, become immediately due and payable, and Seller shall have all the rights and remedies of a secured party under the Uniform Commercial Code and any other applicable laws, and may enter upon Buyer's premises and take possession of the Goods. Buyer expressly waives any and all rights to notice or hearing prior to Seller taking possession of the Goods, whether such possession shall be taken by Seller, its agents or representatives, or pursuant to legal process. Unless otherwise provided by law, any requirement of notice of sale or disposition of the Goods shall be met if such notice is mailed postage prepaid to Buyer at least 10 days before the time of sale or disposition of the Goods by Seller. Buyer shall pay for expenses of Seller in retaking, holding and selling the Goods and in enforcement of other remedies of Seller including reasonable attorney's fees and other legal expenses.

**INDEMNITY.** BECAUSE SELLER HAS NO CUSTODY OR CONTROL OVER THE GOODS ONCE DELIVERED, IF SELLER IS SUED BY A THIRD PARTY FOR DAMAGES ALLEGEDLY CAUSED BY THE GOODS OR SELLER'S CONDUCT UNDER THIS CONTRACT, BUYER SHALL DEFEND SELLER IN SUCH LAWSUIT. FURTHER, BUYER WILL INDEMNIFY AND HOLD SELLER HARMLESS FROM ALL AMOUNTS AWARDED TO A THIRD PARTY FROM SAID LAWSUITS (WHETHER AS DAMAGES, FINES, COSTS, LEGAL FEES, EQUITABLE RELIEF, OR OTHERWISE), BUT ONLY TO THE EXTENT THAT THE AWARDED AMOUNTS WERE CAUSED BY THE ACTS OR OMISSIONS OF BUYER, INCLUDING ITS AGENTS, SERVANTS, EMPLOYEES, REPRESENTATIVES, INVITEES, AND SUBCONTRACTORS. SHOULD BUYER FAIL TO COMPLY WITH ITS OBLIGATIONS, BUYER WILL ALSO BE LIABLE FOR LEGAL FEES, COSTS, AND DAMAGES THAT SELLER INCURS IN DEFENDING SUCH CLAIMS BY THIRD PARTIES.

**GOVERNING LAW.** This contract shall be governed by the laws of the State of Texas, including its conflicts of laws principles. This contract is made and is performable in Grayson County, Texas. Buyer and Seller agree that the exclusive venue for any suits brought to enforce or interpret or relating to this contract shall be in the state courts or United States district courts sitting in Grayson County, Texas. Buyer and each surety, guarantor, endorser and other party ever liable for payment of any sums of money payable under this contract waive the right to be sued elsewhere. All sums of money due and payable under this contract shall be paid to Seller at 1601 Commerce Blvd., Denison, Grayson County, Texas 75020.

**MODIFICATIONS.** No modification or waiver of any of these terms and conditions shall be binding on Seller unless made in writing and signed by an authorized representative of Seller. No representation, affirmation of fact, course of dealing, promise or condition in connection therewith or usage of trade shall be binding upon Seller. The written terms herein and the purchase order contain the parties' complete agreement, and Seller has made no promises, warranties, or representations (whether written, oral, or otherwise) regarding performance of the Goods or otherwise.