

# Standard Terms and Conditions of Purchase

## 1. Acceptance

Acceptance of this Purchase Order is limited to the terms and conditions hereof, expressed or implied, and any terms or conditions in such acceptance are proposals which do not become part hereof unless buyer consents thereto in writing. Seller's shipment of conforming or nonconforming goods in lieu of acceptance as herein provided may, at the sole election of buyer, be treated as seller's acceptance and assent to all terms and conditions hereof. If this Purchase Order is issued pursuant to any supply, purchase, services or other similar written agreement between buyer and seller relating to the goods under this Purchase Order ("Supply Agreement"), then in the event of a conflict between a provision in these Purchase Order terms and conditions and a provision in the Supply Agreement, the provision in the Supply Agreement shall prevail.

## 2. Price

(a) Goods and/or Services. The prices payable by buyer for the goods and/or services ordered shall be the prices stated in the Purchase Order. All prices are in United States Dollars (US\$) and, except for any adjustments that may be provided for in the Supply Agreement (if any) or the Purchase Order, are fixed and firm.

(b) Goods. In the case of all goods, prices include and cover all design and engineering work, tooling, dies, equipment, materials, parts and components, testing, certifications, packaging, packing, crating, labeling, handling, storage and services related to such goods.

(c) Services. In the case of all services, buyer shall only be required to pay the fixed fee stated in the Purchase Order for such services or, subject to any cap on amount or time specified in the Purchase Order, the applicable hourly, daily, weekly, monthly, quarterly or yearly rate(s) stated in the Purchase Order for the actual hours, days, weeks, months, quarters or years spent in performing such services, and buyer shall not be responsible for or be required to pay any other costs, expenses or amounts, including, but not limited to, any costs, expenses or amounts in respect of equipment, tools, supplies, meals, lodging, transportation, mileage, telephone, internet, photocopying, travel time, stand-by time (such as weekend or holiday layovers), overtime or holiday rates.

## 3. Warranties, Indemnification and Attorney Fees

In addition to all warranties implied in fact or law, seller expressly warrants that all goods covered by this order (i) shall be of good quality and workmanship and free from all defects; (ii) shall conform to all specifications, drawings, descriptions and samples approved by buyer; (iii) shall be merchantable. Acceptance of or payment for goods shall not constitute a waiver of warranties. Buyer's approval of sample furnished for inspection is to assist seller and does not relieve seller from responsibility to deliver goods conforming to all specifications, drawings, and description.

Seller shall indemnify and hold buyer harmless against any loss and expense buyer may sustain because of any defect in goods and supplies hereunder or of failure of seller to deliver goods as herein specified. Seller agrees to pay reasonable attorneys' fees for buyer in any action or in any proceedings in any court, directly or indirectly involving a defect in goods supplied hereunder or of the failure of seller to deliver said goods. Seller expressly warrants and agrees it will not disclose and will maintain the confidentiality of all matters and designs of buyer that seller has access to or information about, directly or indirectly, as a result of this purchase order.

## 4. Time of Delivery

Delivery dates specified herein are of the essence of this contract. If this order provides for partial shipment, buyer may suspend shipment of the balance upon notice to the seller, such suspended shipments to be shipped on or before last shipping date specified. Seller's failure to deliver as specified permits cancellation by buyer of this order, or any part thereof, without liability to seller.

## 5. Cancellation

In addition to all other rights provided herein and by law, buyer reserves the right to cancel this order in whole or in part if the goods do not conform to any express or implied warranty, if seller fails to make deliveries as directed by buyer or upon seller's insolvency. If this order requires or authorizes the delivery of goods in separate lots to be separately accepted and if any goods or tender do not conform hereto, buyer may reject any or all goods affected or the entire installment and any undelivered installments. Buyer reserves the right to cancel any part of this order with respect to goods which have not actually been shipped by seller if buyer's ability to receive or use the goods is affected by any cause beyond its reasonable control and buyer shall be charged only (i) the contract price for conforming goods when delivered and (ii) seller's actual costs with respect to the undelivered goods under this contract (including sums payable or paid by seller to settle obligations assumed under the authority of this purchase order), such total charge to be in no event greater than the contract price. Upon such payment all goods in process and finished goods shall become the buyers property.

## 6. Compliance with Law

Seller agrees to indemnify and save buyer, its successors, assigns, customers and agents harmless against all costs, damages, claims and demands for actual or alleged direct or contributory infringement of any patents, either in the United States of America or any foreign countries, trademarks in the United States of America or any foreign countries or similar rights because of the sale or use of any of the goods specified herein.

By acceptance hereof seller warrants that in its performance hereunder it will comply with all applicable federal, state and local laws, rules, regulations and administrative and executive orders, including but not limited to those pertaining to discrimination, contract renegotiation, maximum ceiling prices, fees for solicitation of contracts, security and inspection of records. Seller further warrants to comply with applicable provisions of Executive Orders No. 10210, 10925, and 11246 the Buy America Act, the Walsh Healy Act and Fair Labor Standards Act of 1938, as amended. Each invoice for goods must certify that the goods invoiced were produced in accordance with the Fair Labor Standards Act of 1938, as amended. "The Equal Employment Opportunity Clause in Section 202 of Executive Order 11246, as amended, relative to equal employment Opportunity and the implementing rules and regulations of the Office of Federal Contract Compliance are incorporated herein, by specific reference." Seller represents and certifies that the prices of the articles listed in this order do not discriminate against any other purchaser unless in the nature of price differentials permitted under Section 2(a) of the Clayton Antitrust Act as amended by the Robinson-Patman Act. Seller shall indemnify and hold buyer harmless against any loss sustained and expense incurred by reason of seller's failure to comply with the foregoing.

## **7. Repairs and Service**

Buyer reserves the right to make repairs on defective material and to charge the seller with buyer's actual cost making repairs when seller is behind in deliveries, or when repairs can be made by buyer at less cost than by returning material to seller.

## **8. Insurance and Indemnification**

If seller is to perform any services for buyer on any premises owned or controlled by buyer or elsewhere, seller agrees to: (i) keep the premises and work free and clear of all mechanic's liens, and furnish to buyer proper affidavits and/or waivers certifying thereto; (ii) perform the work at seller's sole risk prior to its written acceptance by buyer and replace at seller's sole expense all work damaged or destroyed by any cause whatsoever, (iii) indemnify and save buyer harmless against any and all loss, damage and expense, direct or indirect, caused by or arising from any damage or injury to property or person, including, without limitation, damage or injury in seller's or buyer's employees or property, caused by or arising from as in connection with the performance of work hereunder; (iv) carry workman's compensation insurance covering all employees to be used by seller in connection with such work and public liability insurance covering seller's liability hereunder; (v) prior to commencing work hereunder furnish to buyer certificates of its insurance carrier showing that such workman's compensation and liability and property damage insurance is in force; (vi) indemnify, and save buyer harmless against any and all liability arising hereunder by reason of any applicable unemployment insurance laws.

## **9. Disclosure of Information:**

Any unpatented knowledge or information concerning seller's products, methods or manufacturing processes which seller may disclose to buyer shall, unless otherwise specifically agreed in writing signed by the parties hereto, be deemed to have been disclosed as part of the consideration for this order, and seller shall not assert any claim against buyer as the result of buyer's use thereof. All drawings, specifications or samples loaned to seller for rendering or production purposes, must be considered strictly confidential and shall be preserved in good order, to be returned promptly upon completion of work or termination of order.

## **10. Changes in Specifications**

The buyer reserves the right to make such changes in specifications and designs as may be necessary or desirable after this order is accepted. Any difference in contract price resulting there from shall be agreed upon in writing and signed by the parties hereto.

## **11. Dies, Tools, Jigs**

Unless otherwise herein agreed, die equipment, tools, jigs, fixtures and patterns used in the manufacture of goods to be furnished hereunder shall be supplied by and at the expense of the seller and shall be kept in good condition, and shall be replaced when necessary by seller without expense to buyer. Buyer has the option at any time to reimburse the seller for the whole or any part of said dies, tools and patterns and replacements, and become the owner and entitled to the possession of same. Seller shall be responsible for the proper maintenance and safe delivery to buyer of all die equipment, tools, jigs, fixtures and patterns paid for or supplied by buyer and the same shall be subject to removal from seller's plant on buyer's written notice.

## **12. Inspection**

Material shall be deemed accepted until after final inspection. The making or failure to make any inspection of, or payment for or acceptance of the goods, shall in no way impair buyer's right to reject nonconforming goods. Defective material will be returned at the seller's expense including all transportation charges. Replacement of defective material is subject to the option of the buyer.

## **13. Packaging**

Materials must be packed and marked in such manner as to permit securing lowest transportation rates. No additional charge for crating, packing, etc. will be allowed unless specifically authorized.

## **14. Suspension**

The seller shall upon buyer's request suspend shipment and delivery of material or equipment, and all work and operations hereunder, for such period as buyer may request.

## **15. Overshipments**

Overshipments against this order may be returned freight collect and billed back at selling prices.

## **16. Patents**

Seller guarantees that materials or supplies specified herein and their sale or use, alone or in combination, will not infringe on any United States or Foreign Patents and agrees to indemnify the buyer against all judgments, decrees, costs, and expenses resulting from any such alleged infringement.

## **17. Miscellaneous**

Buyer as used herein means ADS LLC, its successors and assigns.

In addition to all other rights of inspection herein expressed or implied by law, buyer reserves the right to inspect any work being performed by sellers and inspect seller's equipment and facilities, at any time during business hours.

Whenever buyer has the right to demand of seller adequate assurance of due performance, buyer shall be the sole judge of the adequacy of assurance given by seller.

No course or prior dealings between the buyer and seller inconsistent with the terms of this agreement and no usage of the trade shall be relevant to supplement or explain this contract.

No delay or omission by buyer in exercising any right or remedy hereunder shall operate as a waiver thereof.