



Purchase Order Terms and Conditions

- 1. Agreement:** Any purchase order placed by ATC Technology Corporation or one of its subsidiaries (“Buyer”) with you (“Seller”) for the purchase of goods and/or services is expressly subject to, and Buyer’s acceptance is expressly conditioned upon, Seller’s assent to each and every term and condition contained below and on the face of such purchase order (these terms and conditions together with the purchase order are referred to herein as this “Order”). This Order shall constitute a binding contract upon the earlier of Seller’s acceptance or commencement of performance. Buyer objects to all additions, exceptions, or changes to this Order, whether contained in any printed form of Seller or elsewhere, unless such additions, exceptions or changes are agreed to by Buyer in writing. This Order constitutes the entire agreement between the parties with respect to the goods and/or services reflected in this Order, except to the extent that Buyer and Seller execute a written agreement with respect to such goods and/or services. In the event that the terms of this Order are in conflict with the terms of such written agreement, the terms of the written agreement will control. Any written acknowledgement, statement or prior understanding between the parties related to such goods and/or services is superseded by this Order. There may be no substitutes or variations from specifications or instructions or partial shipments, without the prior written approval of Buyer.
- 2. Price and Packaging:** Unless otherwise specified, the prices stated in this Order, if placed with a domestic (U.S.) supplier, are in U.S. dollars F.O.B. destination and, if applicable, include all charges for packing, hauling, storage, insurance and transportation. Unless otherwise specified, the prices stated in this Order, if placed with a foreign (non-U.S.) supplier, are in U.S. dollars F.O.B. origin. Sales and use taxes not subject to exemption shall be separately stated on Seller’s invoice. The goods shall be shipped by Seller in accordance with Buyer’s instructions or, in the absence of such instructions, in accordance with good commercial practice to insure that no damage will result from weather, transportation or handling and that the goods shall be free from pests and contaminants of any sort.
- 3. Competitive Price:** Seller warrants that the prices provided for herein are as low as any net price now given by Seller to any other customer for like goods and/or service in similar quantities and agrees that if, during the term of this Order, lower net prices are quoted by Seller to any third party for a similar quantity of similar goods or services, such lower net price shall be from that time substituted for the prices contained herein. If, during the term of this Order, Buyer is able to purchase goods or services of the quality and in a quantity not more than herein specified and upon like terms and conditions at a price lower than stated herein, Seller, upon receipt of satisfactory written evidence of same, shall, at its option, either meet such lower price or permit Buyer to purchase the undelivered portion hereunder from such vendor at such lower price. The quantity so purchased by Buyer from such other vendor shall be deducted from the quantity covered by this Order. RSW4 All changes to unit pricing should be *prospective (for goods not yet dispatched)* vs. retroactive, to avoid the need for value reconciliation with customs on imported goods.
- 4. Payment:** Unless otherwise provided on the face of the purchase order that constitutes a part of this Order, payment by Buyer of undisputed invoices will be made to Seller in U.S. dollars within 45 days after Buyer’s receipt of such invoice at its address set forth on such purchase order.
- 5. Overshipments and Undershipments:** Overshipments and undershipments of goods not approved by Buyer in writing may be returned by Buyer, at Buyer’s sole discretion. All such returns shall be at Seller’s risk and expense or held by Buyer at Seller’s risk and expense, and Buyer shall not be obligated to pay for such overshipments or undershipments of goods. A shipment will not be considered an overshipment or undershipment if it is within 2% of the total quantity ordered hereunder.
- 6. Warranty:** Seller makes all warranties contained in the Uniform Commercial Code. Further, Seller warrants that the goods delivered or services performed:

 - (a) shall (i) be merchantable, (ii) conform to this Order, to specifications, drawings and other descriptions referenced in this Order, and to any accepted samples, (iii) be free from defects in design and materials unless such design or materials were supplied by Buyer, (iv) be free from defects in workmanship, and (v) be fit and safe for the intended purposes;

- (b) shall comply with all federal, state and local laws and regulations applicable thereto;
- (c) will not infringe on any United States or foreign patent, trademark, copyright or other intellectual property right of any third party; and
- (d) will be free and clear of all liens, encumbrances, security interests and other claims.

7. Inspections; Testing; Rejection: All goods and services purchased under this Order are subject to Buyer's inspection, testing and acceptance at Buyer's destinations. Buyer reserves the right to reject, refuse acceptance of, or revoke acceptance of any nonconforming goods or services. Buyer shall be allowed a reasonable period of time (but not less than thirty (30) days) to inspect the goods or services and to notify Seller of any non-conformance with this Order. Payment for any goods or services under this Order shall not be deemed acceptance of such goods or services. Rejected goods may be returned to Seller or held by Buyer for replacement of such rejected or returned goods, in either event, at Seller's risk and expense. No rejected or returned goods shall be replaced without Buyer's written approval. Upon Buyer's request, if Seller fails to promptly replace or correct any returned or rejected goods or services to Buyer's satisfaction, Buyer may purchase such goods or services from another source and Seller shall be liable to Buyer for any additional costs thereby incurred by Buyer.

8. Recall: In the event that a recall of the goods or other corrective action with respect to goods or services is necessitated by a defect, a failure to conform to the specifications, applicable laws, or any other reason within Seller's control and not due to Buyer's negligent act or omission, Seller shall bear all costs and expenses of such recall or corrective action including, without limitation, costs of notifying customers, customer refunds, costs of returning goods, and other third party expenses.

9. Compliance with Laws: Seller certifies, represents and warrants that it shall:

- (a) comply with all international, federal, state and local laws and regulations applicable to its operations including, but not limited to, (i) those dealing with employee health and safety, employment opportunity and affirmative action, (ii) those relating to the use, storage, handling and disposal of hazardous substances and the protection of the environment, (iii) those prohibiting any form of child labor or other exploitation of children, and (iv) the Foreign Corrupt Practices Act;
- (b) comply with all terms of 48 C.F.R §52.244-6 (Subcontract for Commercial Items and Commercial Components) (including the requirement of including this provision in subcontracts awarded under this contract), and 15 U.S.C. §637 (d)(2) and (3) (Utilization of Small Business Concerns), and such provision is hereby incorporated into this Order as fully set forth herein;
- (c) in accordance with the provisions of 48 C.F.R §52.209-6, certify that neither it nor its principals was or is debarred or suspended, or is the subject of proposed debarment by the federal government;
- (d) not employ forced, slave, or convict labor or other exploitive forced labor practices; and
- (e) comply with the export/import laws and restrictions of the United States and all applicable foreign jurisdictions.

10. Indemnification: Seller shall defend, indemnify and hold Buyer and its affiliates and their respective successors, assigns, officers, directors and employees harmless with respect to all claims, liabilities, damages, losses and expenses (including reasonable attorney's fees) related to, caused by, or arising from (a) the goods' or services' actual or alleged patent, copyright or trademark infringement or violation of other third party proprietary rights, (b) the purchase or sales or use of the goods or services covered by this Order, (c) Seller's breach of any provision of this Order including breach of warranty or failure to deliver the goods or services on a timely basis, or (d) Seller's actual or alleged negligent or willful acts or omissions; except to the extent such claims, liabilities, damages, losses or expenses are actually attributable to the negligent or willful acts or omissions of Buyer. If Buyer is enjoined from the use of goods, Seller shall, at Buyer's option, either procure for Buyer the right to continue using the goods, replace the goods with substantially equivalent goods, modify the goods so as to be usable by Buyer, or repurchase the goods at the price set forth in this Order. This provision shall survive termination of this Order.

11. Risk of Loss: Risk of loss or damage to the goods shall be, if for a domestic (U.S.) order, on Seller until the goods have been delivered to and accepted by Buyer. Risk of loss or damage to the goods shall be, if for a foreign (non-U.S.) order, on Buyer from the place of origin.

12. Property Furnished to Seller/Confidentiality: Seller shall not use, reproduce, appropriate for or disclose to anyone other than Buyer, any goods, equipment, tooling, dies, drawings, processes, know-how, concepts, ideas, data, designs, or other proprietary information furnished by Buyer or for which Seller has been reimbursed by Buyer ("Material"), nor shall Seller use the same to manufacture goods or provide services other than as required hereunder without Buyer's prior written approval. Title to all Material shall remain with Buyer at all times and where practicable, Material in tangible form shall be clearly marked or tagged to indicate Buyer's ownership. Seller shall bear the risk of loss or damage to the Material until it is returned to Buyer. All Material in tangible form shall be returned to Buyer upon termination or completion of this Order unless directed by Buyer. Seller shall maintain Material in at least the same condition as it was in at the time that it came into Seller's possession, ordinary wear and tear excepted. Material will be kept free and clear of all liens, encumbrances, security interests and other claims (except any created through Buyer) and will be deemed to be subject to a bailment. This provision shall survive termination of this Order.

13. Notice of Labor Dispute: Whenever an actual or potential labor dispute delays or threatens to delay the timely performance of this Order, Seller shall immediately give notice thereof, including all relevant information with respect thereto, to Buyer.

14. Termination: In addition to any other remedy provided for hereunder or at law or in equity, Buyer may terminate this Order, in whole or in part, without liability to Buyer,

- (a) if Seller breaches or threatens to breach any term or condition of this Order and Seller does not cure such breach or provide adequate assurance of its performance within ten days of Buyer's request,
- (b) upon written notice to Seller if (i) deliveries are not made at the time or in the quantities specified in this Order or (ii) Buyer receives notice from Seller of its inability to perform hereunder due to a force majeure event (see Section 24), or
- (c) at any time for its convenience on 30 days' written notice to Seller.

Upon receipt of such notice Seller shall, to the extent specified in such notice, stop work under this Order (by itself and permitted subcontractors). Seller's sole compensation for such termination shall be payment by Buyer for all goods and services delivered to Buyer pursuant to this Order prior to the effective date of the termination and accepted by Buyer pursuant to this Order.

15. Limitation of Liability: In no event shall either party be liable to the other party for any special, incidental, consequential or punitive damages arising out of this Order, except to the extent such damages are sought by a third party and are the subject of indemnification pursuant to Section 10.

16. Set-Off: Without limiting Buyer's rights under the law or in equity, Buyer may exercise a right of set-off against Seller for any and all amounts due to Seller by Buyer including, but not limited to, amounts under this Order or a subsequent Order.

17. Assignment, Subcontracting: Seller shall not delegate any duties, assign this Order (including, without limitation, the right to receive payment) or subcontract any portion of this Order without Buyer's prior written consent (which may be withheld in Buyer's sole discretion). This Order shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

18. Controlling Law: The validity and interpretation of this Order shall be governed by the law of the state shown in Buyer's address on the face of this Order, excluding its conflicts of law provisions. The application of the United Nations Convention on Contracts for the International Sales of Goods (1980) is excluded.

19. General:

- (a) No modification to, or change in, or departure from, or waiver of, the provisions of this Order shall be valid or binding unless approved in writing by a proper representative of Buyer.
- (b) No waiver of breach of any provision of this Order shall constitute a waiver of any subsequent breach of such provision or any breach of any other provision hereof.
- (c) If any provisions of this Order, or portion of any provision, is declared or found to be unenforceable, the balance of this Order and such provision or portion thereof shall be interpreted and enforced to the greatest extent possible.
- (d) The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. Neither party hereto, nor its respective counsel, shall be deemed the drafter of this Order, and all provisions of this Order shall be construed in accordance with their fair meaning, and not strictly for or against either party.
- (e) The rights, remedies, powers and privileges provided in this Order are cumulative and not exclusive of any rights, remedies, powers and privileges provided by applicable law.
- (f) If any legal proceeding is necessary to enforce or interpret the terms of this Order, or to recover damages or seek equitable relief for breach thereof, the prevailing party shall be entitled to reasonable attorney's fees, as well as costs and disbursements, in addition to any other relief to which such party may be entitled.

20. Import Control: Seller shall provide necessary import documents in the manner required by United States Customs and Border Protection ("Customs") and by Buyer for classification, valuation, recording and compliance. In addition to all of the Customs requirements that must be met,

- (a) invoices must be in English; quantities stated must be accurate; the value of goods stated in the invoice must be complete and accurate; the amount invoiced must be final with no adjustments after shipment and must equal the true "demand for payment" amount (excluding assist values, for Customs purposes only);
- (b) all goods must be marked with the country of origin (e.g., "Made in France"), immediate packaging must be marked with the same country of origin, and the invoice must state the country of origin for each line item and must match the marking on the goods; and
- (c) the packing list must be placed in an envelope attached to each container.

21. Export Control: Seller shall control the disclosures of and access to technical data, information and other items received under this Order in accordance with United States export control laws and regulations including, but not limited to, the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulation (EAR).

22. C-TPAT Requirements: Seller acknowledges that Buyer is participating in the Customs Trade Partnership Against Terrorism program (C-TPAT") with Customs. For Seller's goods to be imported in the United States, Seller shall accept, implement, and comply with all applications, recommendations or requirements of C-TPAT (for information go to http://www.cbp.gov/xp/cgov/import/commercial_enforcement/ctpat/). At Buyer's or the Customs Service's request, Seller shall certify in writing its acceptance, implementation, and compliance with C-TPAT and any corresponding recommendations and guidelines. Seller grants Buyer a right of on-site inspection at the factory or other facilities used to produce or otherwise prepare goods as necessary in order to comply with the provisions of C-TPAT.

23. Product and Chemical Compliance:

- (a) Buyer reserves the right to request 100% disclosure of material and chemical composition as necessary to meet customer and regulatory reporting requirements.

- (b) Seller is required to provide product material content reports through the International Material Data System (IMDS) or other means identified by Buyer for all goods sold to Buyer.
- (c) Seller is required to provide Buyer with Material Safety Data Sheets (MSDS) for all supplied hazardous substances or products containing hazardous substances, as defined under 29 CFR §1910.1200 and other applicable regulations.
- (d) Seller is required to meet any International Standards for Phytosanitary Measures (ISPM) No. 15 requirements as to any packaging used in any phase of shipment of the products.

24. Force Majeure: Neither party shall be liable for failure to perform any of its obligations hereunder to the extent that such failure is due to causes beyond such party's reasonable control (and not due to labor problems or such party's negligence or financial difficulties) including, without limitation, acts of God, fire, flood, storm, national emergency or war, provided that the effected party gives the other party prompt notice of the commencement of the occurrence that caused the failure and shall use commercially reasonable efforts to correct the failure if possible.

26. Insurance: Seller shall obtain and keep in force a policy of commercial general liability insurance protecting Buyer and Seller against claims for bodily injury, personal injury and property damage. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence and not less than \$1,000,000 in the aggregate. Seller shall also obtain and keep in force workers compensation insurance in the amount required by applicable statutory law. Upon request, Seller shall cause to be delivered to Buyer certificates evidencing the existence and amount of such insurance and naming Buyer as an additional insured under the liability insurance. All insurance shall be primary to and not contributory with any similar insurance carried by Buyer, whose insurance shall be considered excess insurance only. All insurance shall be with reputable, financial sound companies. Providing the required insurance shall in no way relieve Seller of its obligation to indemnify Buyer pursuant to Section 10.

27. Relationship of the Parties: Seller is an independent contractor and this Order shall not be construed to constitute Seller the partner, agent or legal representative of Buyer for any purpose whatsoever. Seller is not granted any right or authority to assume or create any obligation or liability, express or implied, on behalf of or in the name of Buyer or to bind Buyer in any manner whatsoever.

28. Buyer's Name and Trademark: Seller, without Buyer's prior written consent (which may be withheld in Buyer's sole discretion), will not in any manner (a) publish or disclose the fact that Seller has furnished or contracted to furnish goods and/or services to Buyer or (b) use Buyer's name or trademarks in any publication, advertisement or other public forum, except where such use publication or disclosure is required by applicable law.

29. Work Made for Hire: All data, materials, documentation, computer programs, inventions (whether or not patentable), pictures, audio, video, artistic works, and all works of authorship (including all worldwide rights therein under patent, copyright, trade secret confidential information, or other proprietary rights) created or developed by Seller in connection with providing goods or services to Buyer shall be considered work made for hire by Seller and shall be owned by Buyer. Seller will take any action reasonably necessary to transfer to Buyer, and perfect Buyer's ownership of, the foregoing. Notwithstanding the foregoing, to the extent that Seller uses any Seller or third party routines, code or development tools that are not a substitute or replacement of the actual goods or services provided to Buyer (collectively, the "Tools"), then Seller or Seller's third party licensors shall retain ownership of such Tools. In addition, Seller or such third party licensors shall retain ownership of any preexisting materials that are contained in any such goods or services and that are specifically identified in writing by Seller prior to delivery to Buyer ("Preexisting Materials"). With respect to the Tools and the Preexisting Materials contained in any goods or services provided to Buyer, Seller grants to Buyer an irrevocable, nonexclusive, worldwide, fully paid, royalty free license to (i) use and distribute (internally or externally) copies of, and prepare derivative works based upon, the Tools and Preexisting Materials and derivative works thereof, and (ii) authorize others to do any of the foregoing.