

Coast/ACM

Terms & Conditions

1. ACCEPTANCE

These terms and conditions govern the sale of goods ("Goods") and the provision of services ("Services") by Coast/ACM ("Seller"). These terms and conditions take precedence over Buyer's terms and conditions including any supplemental or conflicting terms and conditions to which notice of objection is hereby given. Acknowledgement of the receipt of any order, including signing and returning to Buyer its acknowledgement copy, if any, shall not constitute acceptance by Seller of any additional or different terms and conditions, nor shall Seller's commencement of effort, in itself, be construed as acceptance of an order containing additional or different terms and conditions. The agreement arising from the acceptance of this order and its attachments, including the Terms & Conditions, are incorporated into and are part of the purchase order. Seller shall have no liability until and unless the orders are accepted.

2. PRICES

(a) Prices and shipping lead times are subject to change without notice for any reason, including without limitation, changes related to the cost of raw materials for the Goods. Any such changes shall not apply to booked and/or acknowledged orders. Partial shipments on quantity orders shall be deemed a separate and independent contract for billing. Freight charges will be "Prepaid and added to the invoice" unless specified otherwise. Prepaid charges will be invoiced using Seller's freight and handling charge rate list.

(b) Prices do not include any sales, use, excise, property, import, export or such taxes that may be levied on the transaction by local, state, federal or foreign governments. Any such taxes shall be the responsibility of Buyer. If Seller is required to pay any such taxes, the cost shall be added to the invoice or billed to Buyer separately.

3. ORDERS

All orders placed by Buyer are subject to written acceptance by Seller. Orders may not be cancelled or rescheduled without Seller's prior written consent. Buyer is responsible for the accuracy of its order and any Buyer's specification and for supplying any relevant information within sufficient time to enable Seller to perform the contract for delivery of Goods/Services. Goods are subject to non-cancelable and non-returnable (NCNR) terms and conditions. Goods may be noted as NCNR for a variety of reasons, including but not limited to, the Seller's disallowance of a return, the special or custom nature of certain Goods, for (the Buyer) when there are no alternative users. Submission of a purchase order is an agreement to the NCNR terms by the Buyer, and agreement that the Goods may not be returned, cancelled, reduced, rescheduled, or modified in any way. Buyer requests to reschedule, change quantity, or modify existing purchase orders in any way are subject to acceptance solely at Seller's discretion (minimum charge of \$150 per line item).

4. DELIVERY

Unless otherwise agreed to by Seller, all shipments are made Ex Works (INCOTERMS 2010) Seller's facility. In no event shall Seller be held liable for any damages or expenses caused by delays in delivery. Buyer acknowledges that delivery dates provided by Seller are estimates only and Seller shall not be liable for delays in delivery or for failure to perform due to events beyond the reasonable control of Seller nor shall the carrier be deemed an agent of Seller. In the event of delay caused by such event, the date of delivery shall be extended for a period equal to the time lost as a consequence of the delay in delivery without subjecting Seller to any liability or penalty. Time for delivery shall not be of the essence. Seller can deliver Goods to Buyer 10 dock days prior to the delivery date on the Purchase Order and still be on-time. If the Goods perish while in the custody of the carrier, the Seller shall be deemed to have performed its obligations in full.

5. PAYMENT

(a) Seller reserves the right to establish or change credit or payment terms when, in Seller's sole opinion, Buyer's financial condition or payment record warrants it. If any of the Buyer's obligations to the Seller are not fulfilled or Buyer fails to pay for Goods/Services supplied, Seller may, without prejudice to other remedies available, cancel, suspend or terminate the contract for the relevant Goods/Services.

(b) Time for payment of invoices is of the essence. All late payments shall be charged interest computed on a daily basis from the due date until paid in full. Seller is entitled to receive interest at the rate of one and a half percent (1.5%) per month or the maximum rate permitted by law plus reimbursement for costs of debt collection (including reasonable legal fees of Seller and court costs) to collect full payment for Goods/Services supplied.

(c) Transportation charges from Seller's facility to Buyer's facility shall be paid by Buyer to Seller, in addition to the purchase price of the Goods, unless otherwise agreed to in writing by Seller. Seller will select the carrier in the absence of specific instructions by Buyer.

6. LIMITED WARRANTY

(a) Seller warrants that the Goods sold are free from defects in material and workmanship for the warranty period of 12 months from the date of shipment. Seller warrants its Good(s) only to the original Buyer and will repair and/or replace defective material. Credit only is not authorized, unless agreed to by Seller. There are no warranties whatsoever on Goods built or acquired, wholly or partially, to a Buyer's designs or specifications.

(b) Written notice of claimed defects shall have been given to Seller within the warranty period, and within thirty (30) days from the date any such defect is first discovered. The Goods claimed to be defective must be returned to Seller, accompanied by a Return Material Authorization (RMA) issued by Seller's facility responsible for supplying Goods, with transportation prepaid by Buyer, with written specifications of the claimed defect. If a warranty claim is valid, Seller shall pay reasonable one-way costs of transportation of the defective Goods from either the original destination or the location where defect occurred, whichever is closest to Seller's facility. Under no circumstances shall Seller be liable for removal of Seller's Goods from Buyer's equipment or re-installation into Buyer's equipment. No person including any agent,

distributor, or representative of Seller is authorized to make any representation or warranty on behalf of Seller concerning any Goods manufactured by Seller.

7. LIMITATION OF LIABILITY

(a) NOTWITHSTANDING ANYTHING TO THE CONTRARY, SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOST PROFITS ARISING OUT OF THE PERFORMANCE, DELAYED PERFORMANCE OR BREACH OF PERFORMANCE OF THIS ORDER REGARDLESS WHETHER SUCH LIABILITY BE CLAIMED IN CONTRACT, EQUITY, TORT OR OTHERWISE. SELLER'S OBLIGATION IS LIMITED SOLELY TO REPAIRING OR REPLACING (AT SELLER'S OPTION), AT ITS APPROVED REPAIR FACILITY, ANY GOODS OR PARTS WHICH PROVE TO SELLER'S SATISFACTION TO BE DEFECTIVE AS A RESULT OF DEFECTIVE MATERIALS OR WORKMANSHIP, IN ACCORDANCE WITH SELLER'S STATED WARRANTY. IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE PURCHASE PRICE OF THE PRODUCT THAT GAVE RISE TO SUCH LIABILITY.

(b) Buyer agrees to hold Seller harmless from any and all liability, and to pay all costs and attorney's fees, for injury or damage to persons or property caused in any manner by Goods covered by the order while in possession or under the control of Buyer or Buyer's successor in interest.

(c) Seller shall have no liability for infringement of any patents, trademarks, copyrights, trade dress, trade secrets or similar rights except as specifically provided in this section. Seller will defend and indemnify Buyer against allegations of infringement of U.S. patents, U.S. trademarks, copyrights, trade dress and trade secrets as (hereinafter collectively referred to as the "Intellectual Property Rights") subject to the limitations and conditions set forth in this section. Seller will defend at its expense and will pay the cost of any settlement or damages awarded in any action brought against Buyer based on an allegation that an item sold to Buyer ("Item") infringes the Intellectual Property Rights of a third party. Seller's obligation to defend and indemnify Buyer is contingent on Buyer notifying Seller within ten (10) days after Buyer becomes aware of such allegations of infringement, and Seller having sole control over the defense of any allegations or actions including all negotiations for settlement or compromise. If an Item is subject to a claim that it infringes the Intellectual Property Rights of a third party, Seller may, in its sole discretion, procure for Buyer the right to continue using the Item, replace or modify the Item so as to make it non-infringing, or offer to accept return of the Item and return the purchase price less a reasonable allowance for depreciation. Notwithstanding the foregoing, Seller shall have no liability for claims of infringement based on information provided by Buyer, or directed to Items for which the designs are specified in whole or in part by Buyer, or infringements resulting from the modification, combination or use in a system of the Items. The foregoing provisions of this section shall constitute Seller's sole and exclusive liability and Buyer's sole and exclusive remedy for infringement of Intellectual Property Rights. If a claim is based on information provided by Buyer or if the design for an Item is specified in whole or in part by Buyer, Buyer shall defend and indemnify Seller for all costs, expenses or judgments resulting from any claim that such Item infringes any patent, trademark, copyright, trade dress, trade secret or any similar right.

(d) Except where otherwise expressly agreed, all patterns, tools, fixtures, drawings, designs, software and other materials and data developed, fabricated or otherwise required in the performance of this order, notwithstanding any charges, shall be and remain Seller's property and in Seller's possession and control.

(e) Except as specifically provided for in this order, Buyer shall have no right in any technical data, Intellectual Property Rights, and computer software associated with this order. In the event Seller agrees to provide Buyer with proprietary information, drawings, designs or data in conjunction with this order, Buyer agrees that such information, drawings or data will not be disclosed to a third party, or used by Buyer, without the written permission of an authorized official of Seller.

8. RESTRICTIONS ON EXPORT

Buyer acknowledges that the Goods and any technical data related to the Goods may be controlled for export by the U.S. Department of Commerce or Department of State and that such items may require authorization prior to export from the United States or re-export. Buyer agrees that it will not export, re-export, or otherwise distribute the Goods or any technical data related thereto, in violation of any export control laws or regulations of the United States.