

TERMS AND CONDITIONS OF SALE

**1. ACCEPTANCE OF TERMS AND CONDITIONS**

Your order is accepted but acceptance is expressly conditioned upon acceptance by you ("Buyer") of the terms and conditions contained herein. Seller is not bound by any terms on Buyer's order which attempt to impose any condition at variance with Seller's terms herein. Seller's failure to object to provisions contained in any Buyer's forms shall not be deemed an acceptance of any of Buyer's terms or a waiver of the provisions of Seller's terms and conditions which shall constitute the entire, final and exclusive statement of the agreement between the parties ("Sales Contract").

The Sales Contract for the goods or services herein consists of the terms contained herein together with any additions or revisions of such terms mutually agreed to in a writing which expressly references this document and indicates the parties agreement to modify this document, otherwise, Seller shall not be bound by any additional or different terms whether printed or otherwise in Buyer's purchase order or in any other communication from Buyer to Seller. Except as otherwise provided in the last sentence of Section 2 hereof, the Sales Contract shall be for the benefit of Seller and Buyer and not for the benefit of any other person. Prior courses of dealing and verbal agreements not reduced to writing signed by Seller to the extent they modify, add to or detract from the Sales Contract shall not be binding on Seller.

**2. TERMS OF PAYMENT**

Buyer shall pay the purchase price within thirty (30) days from date of shipment unless otherwise stated in writing by Seller. Price is F.O.B. first point of shipment unless otherwise stated on the front hereof. Risk of loss of the goods pass to Buyer upon delivery to carrier. In the event Buyer fails to pay the total purchase price within the 30-day period, Seller shall be entitled to collect an interest charge of the lesser of 1.5% of the unpaid purchase price per month or the maximum amount allowed by applicable laws. Seller shall also be entitled, in addition to all other remedies available at law or in equity, to recover reasonable attorney's fees and/or other expenses in collecting the purchase price or otherwise enforcing or successfully defending itself with respect to this Sales Contract.

Should Seller request a LETTER OF CREDIT from Buyer, it will be CONFIRMED and IRREVOCABLE, drawn on a prime U.S. BANK and PAYABLE AT SIGHT.

Failure by Buyer to make any payment due or on request to give proper shipping instructions, or to accept delivery at times stated, or to comply with all terms of any contract between Buyer and Seller shall give Seller, in addition to all other available remedies, the right at its option to deduct any undelivered quantities of goods from the total quantity of goods to be furnished whether under this or any other contract between Buyer and Seller. Seller retains title to all goods as security until payment has been received.

Seller may, at any time or times, suspend performance of any order or require payment in cash, security or other adequate assurances satisfactory to Seller when, in Seller's opinion, the financial condition of Buyer or other grounds for insecurity warrant such action. Seller may, at its election, set off amounts it owes to Buyer or Buyer's affiliates with respect to any obligation against amounts owed by Buyer or Buyer's affiliates to Seller or Seller's affiliates with respect to the goods or services herein or with respect to any other order or obligation.

**3. FREIGHT TERMS**

Seller reserves the right of carrier selection. Delivery to the initial carrier shall constitute delivery in good order. All goods are shipped at Buyer's risk. Buyer is required to examine all shipments upon arrival to ascertain condition. If any shortages or damages are found, full details shall be written by Buyer on the carrier's delivery receipt and acknowledged by driver. Buyer shall cause carrier to make a written inspection of the loss or damage and Buyer shall file a claim with the carrier within 9 months. No deductions from the purchase price are allowed for loss or damage.

Upon request, Seller will give Buyer a reasonable opportunity to inspect the goods at Seller's plant prior to shipment. If no packaging, loading or bracing requirements are stated on the front side hereof, Seller will comply with minimum specifications for the method of transportation specified. If no method of transportation is specified on the front side hereof, shipment will be by a reasonable method of transportation.

Unless otherwise specified on the front side hereof, quantities are subject to normal manufacturers' allowances which in the case of wire and cable are +10/-5%. The purchase price will be equal the unit price multiplied by the quantity shipped. The shipping date is only an estimate and may be subject to delays.

**4. PRICE**

All prices, extra charges, and freight or transportation rates are subject to change without notice to reflect Seller's prices, extra charges, and freight or transportation rates in effect as of the date of shipment. Unless otherwise agreed, freight will be charged from the point of original manufacture.

**5. INVOICE MINIMUM**

All orders, including repair parts, which are less than \$25 net will be billed at \$25.

**6. ACCEPTANCE OF ORDERS**

Orders are accepted only by Seller's standard order acknowledgment form containing the terms and conditions herein.

**7. CREDIT APPROVAL.**

Buyer's orders are accepted subject to credit investigation. Approval and delivery may be withheld or shipment stopped in transit on accepted orders without any liability on the Seller's part if, in Seller's opinion, Buyer's ability or intention to pay for the goods or services is in jeopardy.

**8. CREDIT FOR RETURNED GOODS**

Any claims or requests to return goods must be made within 30 days from date of shipment. Only saleable goods of standard manufacture are eligible to be returned. Goods may not be returned for credit unless Buyer has obtained written authorization in advance from Seller. Authorized returns are subject to a restocking charge of the greater of 25% or \$25. All transportation costs for returned goods must be paid by the Buyer.

**9. SHORTAGES, VARIANCES, CLAIMS**

No claims for variances or shortages will be considered or allowed unless presented within 30 days after receipt of goods. No claims for price variances, errors, discounts, rebates, volume incentives, or any other price adjustment shall be considered or allowed unless presented within 15 months after date of invoice.

**10. CANCELLATION OF ORDERS**

The Sales Contract may not be modified or rescinded except by a writing signed by Seller and Buyer. If all or part of the Sales Contract is terminated by such modification or revision, Buyer in the absence of contrary written agreement between Seller and Buyer, shall pay termination charges based upon Seller's cost of manufacture determined by generally accepted accounting principles, plus a reasonable profit on the entire quantity ordered. Cost shall include any amount Seller must pay suppliers for termination of purchase orders for goods intended for Buyer.

**11. LIMITED WARRANTY**

Seller warrants that the goods hereunder are of the kind and quality quoted on and are free from defects in materials and workmanship. Seller will repair or replace at its option any goods or part thereof without charge in case of a defect, malfunction or failure to conform to this warranty within:

- (a) twelve (12) months after delivery for goods purchased from ACS Industries, Inc.;
- (b) the shorter of eighteen (18) months after delivery of goods or twelve (12) months after first commercial use for goods purchased from ACS Industries, LP.

After the applicable warranty period set forth above, all material, labor and expenses shall be for the account of Buyer. Seller will not accept any claims for labor cost incurred by Buyer in removing or reinstalling a good and/or part thereof. This warranty does not apply if the defect is due to failure to use the good for its intended purpose, the result of accident, abuse, misuse or unauthorized alteration, or because the good was not installed and maintained in accordance with instructions. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.

THIS WARRANTY SHALL BE IN LIEU OF ALL OTHER WARRANTIES, AND SELLER SPECIFICALLY DISCLAIMS LIABILITY FOR ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WHETHER EXPRESS OR IMPLIED EXCEPT AS HEREIN PROVIDED.

**12. CONSEQUENTIAL DAMAGES**

Each order shall be subject to, and Seller shall be excused from, any prohibition, failure, interruption or delay in manufacture or delivery which may be occasioned by sabotage, fire, flood, explosion, labor dispute, strike, work stoppage, riot, insurrection, war, act of God, shortage of raw materials or supplies, or priorities granted by request of or for the benefit, directly or indirectly, of any governmental body, authority, or agency or other cause beyond Seller's control. In the event of any of the foregoing, Seller may, at its option, extend the delivery time or cancel the order, in whole or in part. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LABOR RESULTING FROM FAILURE OR DELAY IN DELIVERY.

**13. PRODUCT AND PACKAGING CHANGES**

Factors beyond the control of Seller and product improvements may result in changes in goods and packaging. Buyer reserves the right to make changes of any kind to goods and packaging without notice and to fill orders with such revised goods and packaging unless this right is expressly waived on the front of this form.

Seller has no responsibility whatsoever with respect to changes in goods or packaging made by any third party supplier with respect to goods resold by Seller.

**14. TAXES**

Any tax or other governmental charge upon the production, sale, shipment or use of goods which Seller is required to pay or collect from Buyer shall be paid by Buyer to Seller, unless Buyer furnishes Seller with appropriate exemption certificates acceptable to taxing authorities. Such amount shall be due whether or not included on the invoice and shall be collectible by Seller at any time within six (6) years after the sale has transpired.

**15. SAMPLES**

Samples supplied herewith are solely for the purpose of evaluating the suitability of goods for potential use and are not intended to, and shall not form the basis of, any warranty either express or implied.

**16. INSTALLATION AND FINAL INSPECTION**

Installation shall be by the Buyer, unless otherwise stated in writing. Final inspection of goods prior to installation is the obligation of Buyer.

**17. PATENT INFRINGEMENT**

Buyer hereby indemnifies Seller against any liability for patent, trademark or trade name infringement arising out of the preparation, manufacture, or use of the goods in accordance with Buyer's specifications.

**18. CONTROLLING LAW**

This Sales Contract shall be governed and interpreted under the laws of the State of Rhode Island without regard to conflict of law principles of Rhode Island.

**19. TITLE**

Title shall not pass to Buyer with delivery of the goods but shall remain vested in Seller until the entire purchase price is paid.

**20. WAIVER – INDEMNIFICATION**

Buyer hereby (1) waives, releases and discharges any and all claims (with the exception of claims for breach of this Sales Contract) of every kind (including, but not limited to, injury or death of any person or damage to property), which it may have at any time against Seller, its agents or employees, by reason of or arising out of any condition of or defect in the goods and (2) covenants to indemnify and hold harmless Seller, its agents and employees, from and against any and all loss, damage, expense, claims, suits, costs of defense, including attorneys' fees which Seller or any of its agents or employees may sustain or incur at any time for or by reason of any injury to or death of any person or persons or damage to any property, arising out of or defect in the goods or any claimed inadequate or insufficient safeguards or safety devices or warnings.