



# AP/ACSS Terms & Conditions of Sale



## Acceptance of Orders

All orders are subject to acceptance by Buyer. Buyer and Seller (individually "Party" or collectively "Parties").

Orders Shall include, purchase quantity, price, delivery dates and other specific conditions for each Order while taking into account the standard lead-time for Products. Orders shall be governed by the Terms and Conditions set herein and shall contain wording in substantially the following form:

"This Order is subject to the agreement reference number [AGREEMENT NAME/NUMBER] by and between Buyer and Seller."

## Software License (if applicable)

Subject to these terms and conditions, Seller grants to Buyer a limited, personal, non-exclusive license ("License") for use only with the Product. This license may be transferred only upon transfer of the product(s) sold to Buyer by Seller ("Product").

## Changes

Buyer may at any time request changes to the order within the general scope of work called for. If such changes cause an increase or decrease in the price of the items, Buyer shall be notified to this effect, and Seller shall not be obligated to proceed with such changes until it receives a written change order, and agrees in writing to accept such change. Seller shall also be entitled to an extension of the delivery schedule as a result of such change(s).

## Taxes

Prices stated do not include local, state or federal taxes. The amount of any sales, use or similar tax applicable to the sale of the items herein or to the use of such goods by the Buyer shall be paid by the Buyer, or in lieu thereof the Buyer will provide Seller with a tax exemption certificate acceptable to the taxing authorities.

## Title and Risk of Loss

Title to the material shipped and all risks of loss pass to Buyer upon Seller's delivery to common carrier at Seller's plant. Shipping shall be FCA Seller's Plant per the ICC 2010 Incoterms.

## Packing, Packaging and Marking

Seller will provide packing, packaging and marking in accordance with commercial practices at the quoted prices. Seller reserves the right to adjust the quoted price for any unique or special requirements requested by the Buyer.

## Disputes

The Parties agree that all disputes in any way relating to, arising under, connected with, or incident to this contract, and over which the federal courts have subject matter jurisdiction, shall be litigated, if at all, exclusively in the United States District Court of New York, NY, and if necessary, the corresponding appellate courts. The Parties further agree that all disputes in any way relating to, arising under, connected with or incident to this contract, and over which the federal courts do not have subject matter jurisdiction, shall be litigated, if at all, exclusively in the Courts of the State of New York, United States of America, and, if necessary, the corresponding appellate courts. The Parties expressly submit themselves to the personal jurisdiction of the State of New York.

## Delivery

Seller reserves the right to deliver early. In no event shall Seller be in default by reason of any failure or delay in its performance under this order arising from any cause beyond Seller's control and without its fault or negligence, including but not limited to acts or omissions of the Buyer, acts of God or the public enemy, acts of any government agency or authority, fires, floods, epidemics, quarantine restrictions, strikes, labor disturbances, freight embargoes, public disorders, riots or unusually severe weather, or subcontractor delays which are beyond the control of the subcontractor ("Force Majeure").

## Terms of Payment

Payment terms are net thirty (30) days from date of invoice on approved credit, with no discount for earlier payment. Payments shall not be subject to offset or setoff. Acceptance of a partial payment by Seller shall not be a waiver of the right to be paid the remainder due. Any delay in payment may be subject to late payment fees. To the extent Buyer shall fail to make payment as specified herein, or if for any other bona fide reason Seller seems itself to be insecure as to payment, Seller may, at its sole discretion, demand that Buyer make full or partial payment in advance, accept bills of exchange, open for Seller's benefit and at no cost to Seller, documentary letters of credit or obtain bank guarantees, or provide other satisfactory security or guarantees that invoices will be promptly paid when due.

## Cancellation

Orders accepted by Seller are not subject to cancellation by Buyer except with written consent of Seller. In the event Seller consents to cancellation, Buyer will be advised of applicable cancellation charges, which may include charges for raw material, work in process and finished goods applicable to the order, together with applicable overhead and allowance for profit, and minimum cancellation charges shall be as follows:

CANCELLATION DATE: CALENDAR DAYS PRIOR TO SCHEDULED DELIVERY DATE	MINIMUM CANCELLATION CHARGE AS A PERCENTAGE OF PURCHASE ORDER PRICE
91 to 120 days	30%
61 to 90 days	50%
31 to 60 days	80%
0 to 30 days	100%

## Returns

In the event that Seller consents to a return, the Buyer shall be responsible for all applicable freight, refurbishing, retesting and certifying fees. Additionally, the Buyer shall be responsible for the restocking fee as shown in the applicable published catalog. All returns must be accompanied by an APS return authorization number ("RMA") which will be issued by the applicable APS facility.

## Intellectual Property

All rights and interest to the inventions, information, technical data or drawings, copyrights rights, patent rights, trademark rights, know-how, trade secrets, related intellectual property, intangible and proprietary rights throughout the world, relating

to the Product or Software or disclosed to Buyer in connection with any order or proposal, are the exclusive property of Seller ("Owned Assets"). Buyer shall not (a) Decompile, reverse engineer, disassemble, trace or otherwise analyze the Product or Software, their content, operation, or functionality; (b) Modify, adapt, or translate the Product or Software, nor create derivative works based on the Product or Software; or (c) Disclose any proprietary information regarding the Owned Assets to any other persons or companies without Seller's prior written approval.

## Inspection and Acceptance

Acceptance shall occur upon delivery to the FCA point and will be presumed unless Buyer demonstrates within fourteen (14) days thereafter that the Product does not conform to the Warranty set forth herein. Buyer agrees to make inspection of the Products delivered hereunder immediately upon receipt thereof.

## Buyer Property

Seller shall not be liable for loss or destruction or damage to Buyer property, including property which is the subject of this order, whether owned by Buyer, the US Government, or others, except to the extent that Seller is reimbursed or compensated for any loss of or destruction of or damage to such Buyer property or which results from willful misconduct or lack of good faith on the part of Seller managerial personnel.

## Export Control

(a) Export Control. This order is subject to all applicable US and Canada Laws and regulations relating to the export of the Product. Buyer shall not ship, transfer, export, or use the Product in violation of applicable export laws, regulations or restrictions. Upon request Buyer shall submit the Seller's End User Statement ("EUS") completed and signed. Delay in providing a signed EUS for each Order may result in delay of acceptance by Seller.

(b) Buyer represents and agrees that it will deal with all items purchased hereunder and all technical data and technology relating thereto in conformity with all applicable laws and regulations of the U.S., including the U.S. Foreign Corrupt Practices Act and all U.S. export licensing laws. Buyer agrees that it shall not trans-ship, divert, re-export or otherwise dispose of any U.S.-origin goods or technology obtained from Seller except as said laws and regulations may expressly permit.

## Indemnity

Buyer shall defend, indemnify, and hold harmless Seller, its parents, subsidiaries and affiliates, and their respective directors, officers and employees and representatives, from

and against any and all claims, suits, losses, obligations, causes of action, damages, and expenses (including attorney's fees) relating to or arising out of any use of the Product by Buyer to its Customers.

### Limitation of Liability

In no event shall seller be liable for indirect, special, consequential, multiple or punitive damages, or any damage deemed to be of an indirect or consequential nature arising out of or related to its performance under this order, whether based upon breach of contract, warranty, negligence and whether grounded in tort, contract, civil law or other theories of liability, including strict liability. To the extent that this limitation of liability conflicts with any other provision(s) of this order, said provision(s) shall be regarded as amended to whatever extent required to make such provision(s) consistent with this provision. In no event shall the total cumulative liability of seller or its subcontractors or suppliers of any tier whether in contract, warranty, tort (including negligence or strict liability) or otherwise for the performance or breach of the order or anything done in connection therewith exceed the order price. Notwithstanding anything else in the contract to the contrary, the stated monetary limitation hereinabove is the maximum liability seller has to the buyer.

### Liquidated Damages

The damages that Buyer would suffer as a result of delayed deliveries would be difficult and impractical to determine or anticipate. In lieu of actual damages, in the event of a delayed delivery for reasons other than Force Majeure, Seller shall pay Buyer, as liquidated damages and not as a penalty, an amount corresponding to half of one percent (0.5%) calculated on the contractual price of the delayed item for each day of delay after a grace period of ten (10) calendar days up to a maximum liquidated damages amount of five percent (5%) of the delayed Product price, as a reasonable approximation of damages resulting therefrom. These liquidated damages shall be the sole and exclusive remedy available to Buyer for Seller's late deliveries.

### Applicable Law

This order shall be governed by the Laws of the State of New York, United States of America.

### Warranty

(a) Seller warrants its products to be free from defects in material and workmanship for the period stated in Seller's proposal effective from the date of shipment. For software Products, Seller warrants that Seller's software, as first delivered by Seller, shall conform substantially to the documentation supplied with such Seller's software, provided that Seller's software is installed, implemented and operated in accordance with said documentation and the magnetic media is free from defects in material and workmanship under normal use. For Products supplied to Seller by third party suppliers, Seller shall only transfer to Buyer the warranty terms, period, remedies and obligations as granted to Seller by such suppliers. Any warranty period extension is valid and enforceable for Products manufactured by Seller and it is expressly excluded for Products supplied by third party suppliers. Seller's liability shall be limited to the repair or replacement of the defective item, at the Seller's sole option, provided: (1) Seller is promptly notified in writing upon the discovery of any defect; (2) Buyer assumes payment of all transportation charges; and (3) Any part/item alleged to be defective shall be returned to Seller for inspection, properly packed and all expenses prepaid by Buyer. Seller will not assume any expense or liability for modifications or repairs made by other than Seller, or their authorized agents. This warranty shall not apply to any part which has been damaged, subjected to misuse, or installed or operated not in accordance with any Seller instructions which may have been provided.

(b) To the maximum extent permitted by applicable law, buyer's sole and exclusive remedy under this warranty will be limited to the repair or replacement, at seller's option of the defective parts. This warranty is in lieu of all other warranties, whether statutory, express, or implied, including but not limited to, warranties of merchantability, fitness for a particular purpose and warranties arising from course of dealing performance or custom and usage in the trade. Seller shall have no other liability under any theory at law, in equity, or otherwise, including, but not limited to, contract, tort, (including intellectual property infringement and negligence), and strict liability, for any loss or damages including, but not limited to, special, exemplary, punitive, incidental, indirect, or consequential damages (even if seller has been advised of same) including without limitation, lost profits or revenues. Any action against seller must be brought within one (1) year after the claim arose.

(c) In the event Seller repairs or replaces a defective item under the foregoing warranty, the warranty period for the repaired or replacement item shall extend for the remaining warranty period of the original product. However, the

original warranty period shall be extended by the number of calendar days required to repair or replace the defective item, calculated from the date of receipt of the defective item by the Seller until return of the repaired or replacement item to the Buyer.

(d) Defects or failures attributable to misuse, negligence, unauthorized modification or repair by the Product's Buyer or any third party user, or malfunction or failure resulting from nonconformance or non-compliance by Buyer or third party user with Seller's Line Maintenance and Pilot Guides, Component Maintenance Manuals or other familiarization instructions furnished by Seller, are excluded from this warranty. Should Buyer or a third party break the seal on a Product identified as a Line Replaceable Unit or Test Equipment without Seller's prior written authorization, this warranty shall be void for such Product. Inspection or repair of Products under warranty shall not interrupt or extend the warranty term herein.

### Obsolescence of Parts

While Seller intends to provide parts in accordance with original design requirements, Seller reserves the right to make part substitutions provided the substituted part has the same form, fit and function as the item it replaces.

### General

The provisions of this order are severable and the invalidity, illegality or unenforceability of any one or more of its provisions shall not affect the validity and enforceability of any other provisions. If any provision of this order is declared to be invalid, illegal, or unenforceable the Parties agree that the court of competent jurisdiction should substitute a valid and

enforceable provision that, to the maximum extent possible in accordance with all applicable law, preserves the legal and economic positions of each party as intended in this order. Headings used in this order are for reference purposes only and shall not be deemed a part of this order. Buyer shall not assign or otherwise transfer, whether by contract, operation of law or otherwise, this order or any of the rights or duties set forth herein without the prior written consent of Seller, which consent may be withheld by Seller in its sole discretion. A waiver of Seller of any default by Buyer or of any of the terms and conditions shall not be deemed to be a continuing waiver or a waiver of any other default or of any other of these terms and conditions. This order constitutes the entire agreement between the Parties with respect to the subject matter hereof and supercedes and merges all prior or contemporaneous proposals, negotiations, understandings and agreement, whether oral or written, relating to the subject matter hereof. This order shall not be released, discharged, waived, abandoned or modified, in whole or in part, except by a written instrument duly executed by both Parties.

### Amendments of These Terms

These terms can only be changed by mutual written agreement of the Parties.

### Non-Disclosure

Buyer shall not disclose to any third party these terms and conditions and the other terms of Seller's proposal without the prior express written consent from Seller.