



36555 Corporate Drive, Suite 185 Farmington Hills, Michigan 48331-3567

p 248.489.4900 f 248.489.4733 www.aeesinc.com

Sales Order Terms & Conditions

EXCEPT AS OTHERWISE PROVIDED IN WRITING BY AEES LIMITED PARTNERSHIP OR ITS PARENT, SUBSIDIARY(IES) OR AFFILIATE(S), AS APPLICABLE (“AEES”), THE FOLLOWING TERMS AND CONDITIONS WILL APPLY TO THE SUPPLY OF GOODS (“PRODUCT”) BY AEES TO THE PURCHASER OF SUCH PRODUCT (“CUSTOMER”). AEES’ SUPPLY TO CUSTOMER OF PRODUCT IS DONE ON THE EXPRESS UNDERSTANDING THAT THE FOLLOWING TERMS AND CONDITIONS APPLY TO THE SALE OF AEES’ PRODUCTS. AEES’ ACCEPTANCE OF ANY ORDER IS EXPRESSLY MADE CONDITIONAL UPON CUSTOMER’S ACCEPTANCE OF THE TERMS AND CONDITIONS CONTAINED HEREIN, AND AEES OBJECTS TO ANY ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS, WHETHER CONTAINED IN CUSTOMER’S FORMS OR OTHERWISE. AEES WILL NOT BE DEEMED TO HAVE WAIVED THESE TERMS AND CONDITIONS OF SALE IF IT FAILS TO OBJECT TO PROVISIONS CONTAINED IN CUSTOMER’S FORMS OR OTHERWISE. CUSTOMER’S SILENCE OR ITS ACCEPTANCE OF AEES’ PRODUCTS CONSTITUTES ITS ACCEPTANCE OF THESE TERMS AND CONDITIONS OF SALE.

1. Entire Agreement. AEES’ acceptance of Customer’s order (whether accomplished through performance or initially evidenced in writing in a Sales Order Acknowledgment, Sales Order Confirmation, Sales Order Rejection, Invoice or Bill of Lading) including these terms and conditions and any AEES attachments hereto and made a part hereof, sets forth the entire agreement between AEES and Customer and supersedes all previous communications, representations, or agreements, whether oral or written, between the parties with respect to the subject matter hereof. Customer’s agreement will be conclusively established
 - (i) when Customer has received and retained AEES’ Acknowledgment, Confirmation, Rejection, Invoice or Bill of Lading, whichever writing is earliest received by Customer, for ten days without objection, or
 - (ii) by Customer’s acceptance of all or any part of the Products. AEES objects to any terms or conditions which differ from, or are additional to, those stated herein. After acceptance by AEES, this order may only be modified by a writing signed by AEES.
2. Quantities. AEES will ship quantities as requested by Customer and agreed upon in writing by AEES in accordance with AEES’ minimum pack quantity, as applicable
3. Prices. The prices at which AEES will supply products to Customer are based on the design reference and the volume/ ramp up assumptions agreed to in writing by AEES. Customer may request changes in the design, agreed-upon specifications, quantity, or in delivery schedules. Any such changes, including changes in the volumes or ramp-up schedule may result in price adjustments, which the parties agree to negotiate equitably. The prices contained herein do not include any applicable statutory VAT or other similar taxes. AEES reserves the right to modify Product pricing from time to time to cover raw material, copper, resins and other cost increases
4. Delivery. Unless otherwise specifically agreed in writing by AEES, all goods are sold Ex Works the producing AEES plant (Incoterms 2000 “EXW”). Customer will be responsible for arranging for loading, freight and insurance from the AEES plant to its facility. All delivery and shipping dates are estimates only. AEES will use reasonable efforts to fill the order in accordance with the estimated delivery or shipping date, but AEES will not be responsible for any delays in filling the order nor liable for any losses or damages resulting from such delays
5. Payment. Unless set forth to the contrary on AEES’ Sales Order Acknowledgment, Bill of Lading or Invoice, payment terms are net thirty (30) days from date of AEES’ invoice, notwithstanding any customer payment cycles to the contrary. Whenever reasonable grounds for insecurity arise with respect to due payment by Customer, AEES may demand different terms of payment, and may demand assurance of Customer’s due payment. Any such demand may be oral or written and AEES may, upon the mailing of such demand, stop production and suspend shipments hereunder. If, within the period stated in such demand, Customer fails or refuses to agree to such different terms of payment, or fails or refuses to give adequate assurance of due payment, AEES may, at its option, treat such failure as a repudiation of the portion of this order that has not been fully performed or may resume production and may make shipment under reservation of possession or of a security interest and may demand payment against tender of documents of title.
6. Warranty. AEES warrants that the Products will conform to the description and specifications agreed with Customer; that it will convey good title thereto, free from any security interest or other lien or encumbrance unknown to Customer; and that the Products will be free from defects in material and workmanship; provided that such warranty of freedom from defects in material and workmanship extends only for the period for which Customer warrants such to its ultimate customer(s), or for a period of 12 months from the date of shipment of Product by AEES to Customer, whichever is shorter, and that Customer gives AEES notice of any such defect within thirty (30) days after Customer discovers or should have discovered such defect. Customer’s failure to give AEES notice of any defect will constitute a waiver of such defect. Any modification to the Product performed by Customer or its customer shall render void the warranty provided herein. **AEES MAKES NO WARRANTY THAT THE PRODUCTS ARE MERCHANTABILITY OR FIT FOR ANY PARTICULAR PURPOSE. AEES MAKES NO WARRANTY, EXPRESS OR IMPLIED, EXCEPT SUCH AS IS EXPRESSLY SET FORTH HEREIN.**



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7. Exclusive Remedies. AEES' liability and Customer's sole and exclusive remedy for any tender of nonconforming or defective Product or breach of warranty is expressly limited to AEES' choice of

- (i) the repair or replacement of nonconforming or defective Product; or
- (ii) the repayment of that portion of the purchase price represented by nonconforming or defective Product. Such repair, replacement or repayment will be made only upon return of the defective Product, which may be returned at AEES' cost only after inspection by AEES and receipt by Customer of definite shipping instructions from AEES. Under no circumstances will AEES be liable for any other losses or damages of whatsoever kind or nature, including without limitation, consequential damages.

8. Exclusion of Damages. AEES shall not be liable for any incidental, consequential, indirect, special, contingent, or punitive damages for

- (i) any breach of warranty, whether based on theories of breach of warranty, breach of contract, tort, strict liability or otherwise;
- (ii) the tender of defective or nonconforming Product; or
- (iii) otherwise for losses incurred by Customer in connection with this order, including without limitation breach of any other provision of this order. In any event, AEES' liability to Customer shall not exceed the purchase price of the Product on which such liability is based.

9. Recall Responsibility. During any recall or service campaign, AEES agrees to negotiate in good faith with Customer for the possible supply by it of Products necessary for the campaign, provided that any supply of Product under this Section will be subject to the limitations contained in Sections 6,7 and 8 herein.

10. Design Indemnity. Customer hereby agrees to release, hold harmless, indemnify and defend AEES from and against any loss, liability, claims, suits, and costs caused by, arising out of, or relating to the design of Products supplied hereunder or the design of the packages or containers in which they are shipped, if such Products, packages or containers are made in compliance with Customer's design or specifications.

11. Intellectual Property Rights.

11.1 Patents. AEES will indemnify Customer and its successors and assigns, with respect to any Products supplied hereunder, against all judgments, decrees and costs resulting from infringement of any United States Letters Patent covering

(a) standard commercial compositions offered for sale generally by AEES at the time of acceptance by it of Purchaser's order, or

(b) standard commercial forms, shapes or constructions offered for sale generally by AEES at the time of acceptance by it of Purchaser's order. Customer will indemnify AEES, its successors and assigns, against all judgments, decrees and costs resulting from infringement of any United States Letters Patent to the extent that such infringement arises from designs, specifications or instructions furnished or expressly or implicitly required by Customer and different from the matters embraced by (a) and (b) of the preceding sentence. Neither party shall be entitled to indemnification under this clause as to any claim of infringement if it does not give to the other party prompt notice in writing upon learning thereof and full opportunity, at the expense of such other party, to defend and dispose of such claim of infringement.

11.2 No License. The sale of the Products does not convey to Customer any right or license of any kind under any patent owned or controlled by AEES or under which AEES is licensed, but the foregoing shall not be understood to limit in any way the right of Customer to use and sell the Products, in the event that the Products sold hereunder are covered by any such patent.

11.3 Developments. Unless otherwise agreed to in writing by AEES, AEES will own, and will be entitled to apply for patents or other intellectual property protection for, any developments it conceives in the course of supplying Products to Customer notwithstanding any language or provisions in documents of Customer to the contrary. To the extent that the use and sale by Customer of its products incorporating Products supplied by AEES requires the use of such development, AEES hereby grants to Customer a royalty-free, non-exclusive, non-transferable, non-assignable license to use such development.

12. Cancellation. If Customer gives AEES notice of its intent to cancel this order for its convenience, AEES will immediately cease work. In the case of such a termination, AEES and Customer will negotiate a termination payment to AEES based on AEES' actual costs incurred (including any unbilled design or engineering services, all good inventory and work-in-process, plus the unamortized portion of any equipment or tooling included in the piece prices for Products), plus a reasonable profit for the work completed as of the termination date and for the portion of work cancelled. AEES may cancel this order for its convenience upon thirty (30) days written notice. AEES may immediately cancel this order if Customer becomes insolvent, admits in writing its inability to pay its debts, or bankruptcy proceedings are instituted by or against it.



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13. **Service Parts.** AEES understands that Customer will require service parts for 1 year following the final model year of production unless otherwise agreed to by the parties. During series production of the Products, AEES will supply any necessary spare or service parts at the prices specified in this order. At least 2 years prior to the end of series production, AEES and Customer will agree on a spare parts production plan, which will include details of Customer's anticipated spare parts requirements and the prices at which AEES is willing to supply such, including any necessary set up and run charges, costs for assembly (if any), and the costs of any replacement tooling required for the production of service parts.
14. **Force Majeure.** AEES will not be liable for any delays in filling this order caused by
(a) accidents to machinery, differences with workmen, strikes, labor shortages, fires, floods, priorities required or requested by any governmental entity or agency thereof, delays in transportation or lack of transportation facilities not attributable to AEES, restrictions imposed by Federal or State legislation or rules or regulations thereunder, or
(b) any other cause beyond the control of AEES.
15. **Ownership and Disposal of Equipment & Tooling.**
(a) Any equipment or tooling that AEES constructs or acquires at AEES' expense for use exclusively in the production of Product for Customer is and will remain AEES' property and in AEES' possession and control. In addition, any supply of Products by AEES that requires capital outlays in support of the supply is subject to final review and approval by AEES' executive committee.
(b) Any equipment, materials or tooling owned, furnished or paid for by Customer will be carefully handled and stored by AEES while in AEES' possession. Following the end of series production, or, if AEES is to supply service parts, the end of such supply, AEES may, by written notice to Customer, request Customer to make disposition of such at Customer's expense. If Customer fails to do so within sixty (60) days of written notice from AEES, AEES may make such use or disposition of said equipment or materials as it desires without liability to Customer.
16. **Assignment.** This Agreement may be performed, and all rights hereunder may be enforced against Customer, by AEES or any subsidiary, parent or affiliate of AEES. Neither party may assign this order to any unaffiliated third party without the prior written consent of the other.
17. **Export.** For shipments outside of the United States, Customer will be responsible for obtaining the appropriate export license(s) necessary to permit shipment of the Product. AEES will have no liability in the event that an export license is not approved or is later withdrawn.
18. **Modification/Waiver.** Any modification of this Agreement or any term or condition herein shall be unenforceable unless it is evidenced by a writing signed by an authorized representative of the party against whom such modification is asserted. The waiver or indulgence of any failure to meet the requirements of any term or condition of this Agreement shall not operate as a waiver of any subsequent failure to meet the requirements of such term or condition or as a waiver of any other rights herein.
19. **Choice of Law.** Michigan law, not including its choice of law rules but including its statutes of limitations, governs all questions related to the validity, interpretation or performance of this Agreement as well as all questions concerning any rights or obligations of the parties hereto. The parties hereby agree to exclude the application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement.
20. **Indemnity/Insurance/Confidentiality.** To the extent Customer's employees, agents or representatives will be present at AEES' facilities, the following additional provisions will also apply.
20.1 **Indemnity.** CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS AEES, ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, REPRESENTATIVES, SUBSIDIARIES AND AFFILIATED COMPANIES, (COLLECTIVELY, "INDEMNITEES") FROM AND AGAINST ALL LIABILITIES, COSTS, CLAIMS, PENALTIES, FORFEITURES, CAUSES OF ACTION, SUITS AND THE COSTS AND EXPENSES INCIDENT THERETO (INCLUDING COSTS OF DEFENSE, SETTLEMENT AND ATTORNEYS' FEES, INCLUDING THE COSTS OF ATTORNEYS IN THE EMPLOY OF INDEMNITEES) WHICH INDEMNITEES MAY SUFFER, INCUR, BECOME RESPONSIBLE FOR OR PAY OUT AS A RESULT OF DEATH OR BODILY INJURY TO ANY PERSON, DESTRUCTION, LOSS OR DAMAGE TO ANY PROPERTY, REAL OR PERSONAL, CONTAMINATION OF OR ADVERSE EFFECT ON THE ENVIRONMENT, OR VIOLATION OR ALLEGED VIOLATION OF FEDERAL, STATE, LOCAL OR FOREIGN LAW, RULE, REGULATION, ORDINANCE, ORDER, DECREE, DECISION, RESTRICTION, PERMIT OR LICENSE, CAUSED BY OR RESULTING FROM THE NEGLIGENCE OR ACTS OR OMISSIONS OF CUSTOMER, ITS REPRESENTATIVES, AGENTS, EMPLOYEES OR INVEEES OF ANY OF THEM, AS A CONSEQUENCE OF OR IN ANY MANNER CONNECTED WITH THEIR PRESENCE AT AEES' FACILITIES. WITH RESPECT TO CLAIMS AGAINST AEES BY CUSTOMER'S EMPLOYEES, CUSTOMER AGREES TO AND HEREIN DOES EXPRESSLY WAIVE ITS IMMUNITY, AS A COMPLYING EMPLOYER UNDER



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WORKERS' COMPENSATION LAW, FOR ANY AND ALL ACTS OF NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, BUT ONLY TO THE EXTENT THAT SUCH IMMUNITY WOULD BAR OR AFFECT RECOVERY UNDER OR ENFORCEMENT OF THIS INDEMNIFICATION OBLIGATION. THIS WAIVER SHALL APPLY TO ANY IMMUNITY CONFERRED UPON AN EMPLOYER BY ANY STATE'S CONSTITUTION OR WORKERS' COMPENSATION LAWS WITH RESPECT TO LIABILITY FOR CLAIMS ASSERTED AGAINST A THIRD PARTY BY A CUSTOMER'S EMPLOYEE. IN PARTICULAR, BUT WITHOUT ALTERING OR IN ANY WAY LIMITING THE GENERAL APPLICATION OF SUCH WAIVER AS SET FORTH IN THE PREVIOUS SENTENCE, CUSTOMER EXPRESSLY WAIVES APPLICATION OF SECTION 35, ARTICLE II OF THE OHIO CONSTITUTION AND OHIO REVISED CODE SECTION 4123.74, AS MAY BE AMENDED FROM TIME TO TIME. THIS INDEMNIFICATION PROVISION IS IN ADDITION TO AND CUMULATIVE WITH ANY OTHER RIGHT OF INDEMNIFICATION OR CONTRIBUTION WHICH ANY OF THE INDEMNITEES MAY HAVE AT LAW, IN EQUITY, OR OTHERWISE, AND WILL SURVIVE COMPLETION OF THIS AGREEMENT.

20.2 Insurance.

20.2(A) Unless otherwise specified in this Agreement, Customer will maintain the following types of insurance coverage:

- (1) Workers' Compensation Insurance or qualification as a self-insurer to satisfy the laws of the State in which AEES' facility being visited is situated. Customer's Workers' Compensation Insurer or Customer, if self-insured, agrees to waive rights of subrogation against AEES except for claims caused by AEES' sole negligence;
- (2) Employer's Liability Insurance for Bodily injury per accident with limits of not less than \$100,000 and Bodily Injury by Disease with limits of not less than \$100,000 per policy;
- (3) Commercial General Liability Insurance for personal injury and property damage, including contractual liability insurance, with combined limits of not less than \$1,000,000 per occurrence; and
- (4) Automobile Liability Insurance for personal injury and property damage, with combined limits of not less than \$1,000,000 per occurrence.

20.2(B) Customer agrees that during the term of the Agreement AEES will be an additional insured on Customer's Commercial General Liability and Automobile Liability policies and that all of Customer's insurance identified in Section 20.2(A) above will specifically indicate that coverage with respect to AEES will be primary, without right of contribution of any other insurance carried by or on behalf of AEES. All of the above mentioned Customer insurance will be occurrence-based coverages.

20.2(C) Upon AEES' request, Customer will provide AEES with written certification, reasonably acceptable to AEES, of Customer's compliance with the requirements listed in Sections 20.2(A) and 20.2(B) above.

20.3 Confidentiality. Customer, its employees, agents and representatives will preserve in strict confidence all confidential, sensitive or proprietary information of AEES, including information of a technical, engineering, operational or economic nature ("Confidential Information"), whether or not marked "Proprietary" or "Confidential", and whether oral or written, using the same degree of care as it takes to preserve and safeguard its own confidential or proprietary information (but in no event less than a reasonable degree of care). Confidential Information shall not include information that Customer can demonstrate by written evidence was publicly available at the time of disclosure or was independently developed by Customer without reference to Confidential Information. Customer will not

- (i) disclose or cause to be disclosed at any time any Confidential Information obtained from AEES, or
- (ii) use or cause to be used any of such Confidential Information for any purpose, except as required in the performance of the Agreement. Customer's obligations under this paragraph will survive any completion or termination of this Agreement.