

## ATW COMPANIES ("SELLER") TERMS AND CONDITIONS OF SALE

### **1. ACCEPTANCE/CONTRACT FORMATION**

These terms and conditions shall apply to any contract of sale for Seller's materials or performance of conversion services irrespective of whether Seller's accompanying documentation constitutes an offer to Buyer or an acceptance of Buyer's prior offer to Seller. Offers or acceptances by Buyer may be communicated orally, delivered in person or by telephone or in writing. Additional or conflicting terms from those in these terms and conditions in an offer or acceptance by Buyer are expressly objected to and shall not be deemed accepted by Seller unless Seller's acceptance thereof is in writing and specifically refers to each such additional or conflicting term.

### **2. DELIVERY / FORCE MAJEURE**

All shipping and delivery dates are approximate. Seller shall not be responsible for any prohibition, failure, interruption or delay in manufacture or delivery which may be caused by sabotage, fire, flood, explosion, labor dispute, strike, work stoppage, riot, insurrection, war, act of, or priorities granted by request of or for the benefit, directly or indirectly, of any governmental body, authority or agency, shortage of raw materials or supplies, act of God, insufficient capacity, or other cause beyond Seller's control. In the event of any such prohibition, failure, interruption or delay, 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 SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR CLAIMS FOR LABOR RESULTING FROM ANY FAILURE OR DELAY IN DELIVERY.**

### **3. COMPLIANCE WITH LAWS**

Seller intends to comply with all laws or regulations applicable to the performance by Seller of each order, provided; however, that any failure of Seller to so comply shall not be a defense to, or excuse Buyer from, performance by Buyer of any order.

### **4. WARRANTY / CLAIMS / LIMITATIONS OF LIABILITY**

Seller will, as Buyer's sole and exclusive remedy and at Seller's option, replace or, without replacement, render credit for any material which, if properly selected, stored, processed and used by the Buyer shall prove defective within ninety(90) days from the date of shipment. Seller's material shall be deemed defective only to the extent that it materially deviates from the applicable specifications, as agreed to and accepted by Seller, and Seller's standard manufacturing and commercial tolerances, variations and practices. No claim shall be allowed by any party other than the Buyer.

Seller shall not be liable to Buyer or any other person or entity for, and Buyer releases Seller from, any and all liability for negligence by Seller with respect to any activity engaged in by Seller with regard to the goods OR SERVICES sold hereunder and from any and all liability imposed upon manufacturers or Sellers of goods OR SERVICES under ANY product liability THEORY or under any similar legal theory. Seller shall not, under any circumstances including, but not limited to, delay in delivery, breach of contract, breach of warranty, negligence, tort, strict liability, or use of materials sold OR PROCESSED by Seller, be liable to Buyer or any other party for any special, incidental, indirect or consequential damages, or for losses of any kind whatsoever. In no event shall Seller's liability for defective material sold to buyer exceed the purchase price thereof.

### **5. PRICES AND FREIGHT**

All prices are quoted ex works. We reserve the right to increase the agreed price in case of a change in the supply of raw materials or the general economic situation causing production and/or procurement of the products in question to become far more expensive than at the time the prices were agreed upon. Seller is also entitled to increase agreed price if the material or design is modified because the documents and/or instructions received from the Buyer were not in accordance with actual conditions or were incomplete, or if the data needed for the completion of the order is not received by Seller in time.

### **6. TITLE / SECURITY INTEREST**

Failure by Buyer to make any payment due hereunder, 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 material from the total quantity of material to be furnished whether under this or any other contract between Buyer and Seller. Title to materials shall pass immediately upon delivery to a carrier at the point of shipment. Buyer hereby grants to Seller a security interest (which shall be deemed a purchase money security interest) in all goods and materials provided to Buyer by Seller or upon which Seller performs services for Buyer, to secure payment by Seller for all such goods, materials or services. In the event of nonpayment by Buyer of any debt, obligation or liability now or hereafter incurred or owing by Buyer to Seller, Seller shall have all rights of, and all of the remedies available to, an unpaid secured creditor under the applicable state Uniform Commercial Code (UCC), and all other rights and remedies available at law or in equity. Buyer agrees, and, to the extent permitted by law, Seller is authorized to, execute and file whatever documents are necessary, including security agreements or financing statements, to evidence and perfect the security interest granted by this paragraph.

### **7. TAXES**

Any excise, levies or taxes which Seller is required to pay or collect, under any existing or future law or regulation (domestic or foreign), upon or with respect to the

sale, purchase, delivery, storage, processing, use, consumption or transportation of any of the material covered hereby, shall be for the account of the Buyer, and Buyer agrees to pay the amount thereof to Seller upon request.

### **8. DELIVERY / RISK OF LOSS**

Unless otherwise specifically stated on a document of sale furnished by Seller or agreed to in writing and signed by Seller, delivery shall occur, and risk of loss shall pass to Buyer, upon delivery of the material to a carrier at the point of shipment. Transportation shall be at Buyer's sole risk and expense, and any claim for loss or damage in transit shall be against the carrier only.

### **9. CANCELLATION / CHANGE ORDER REQUESTS**

An order cannot be modified or cancelled by Buyer without the written consent of Seller and in no event shall any order be modified or cancelled for any portion thereof already processed, manufactured, or in process of manufacture, processing or performance, at the time the request for modification or cancellation is received by Seller, except upon terms, satisfactory to Seller, which protect and indemnify Seller against all loss.

### **10. QUANTITY**

Seller reserves the right to deliver commercially reasonable overages or underages of weight, length, size and/or quantity, and any reasonable variation shall constitute compliance with Buyer's order, and the unit price will continue to apply. If this order is for Buyer's requirements, Buyer shall, upon Seller's request, provide information sufficient to confirm Buyer's actual requirements.

### **11. PAYMENT TERMS**

Unless otherwise specifically stated on a document of sale furnished by Seller or agreed to in writing and signed by Seller, the terms of payment for each order without setoff shall be net cash (U.S. Dollars) in thirty(30) days from date of invoice. Restrictive endorsements on Buyer's checks will not reduce Buyer's obligations to Seller. The unpaid portion of any amounts due to Seller shall bear interest at the rate of 1.5% per month, or the maximum legal rate if less.

### **12. PATENT INFRINGEMENT INDEMNIFICATION**

Buyer shall indemnify, hold harmless and defend Seller against any liability whatsoever for patent, trademark or trade name infringement in any way arising out of the preparation, manufacture or processing of any material, or performance of services, in accordance with Buyer's order, specifications or instructions.

### **13. TOOLING**

Unless otherwise expressly agreed, all tools, dies, fixtures, jigs, gauges, and related drawings and designs shall be and remain Seller's property and shall be held by Seller at its disposal. Buyer shall be responsible for all costs of maintenance, repair and replacement of any such items, whether owned by Seller or Buyer, if used exclusively for the manufacture or processing of materials by Seller for Buyer. If any such items remain inactive for a period of three (3) years, Seller reserves the right to dispose of such items at its discretion.

### **14. GOVERNMENT CONTRACT TERMS / MANDATORY FLOW DOWNS**

If Buyer's order is for a U.S. government contract, and goods or services ordered from Seller are to be used in the performance of said contract, only those mandatory flow down clauses of applicable U.S. government procurement regulations required by federal statute to be included in U.S. government subcontracts shall be incorporated herein by reference.

### **15. MERGER CLAUSE / ENTIRE AGREEMENT / MODIFICATION OF TERMS**

These terms and conditions and sales documentation constitute the entire contract between Seller and Buyer. To the extent that any terms in the sales documents and these terms and conditions conflict, the terms on the front of Seller's sales documents shall control and prevail. No modification hereof shall be of any force and effect unless in writing and signed by the party claimed to be bound thereby. A waiver of any of the terms or conditions hereof shall not be deemed a continuing waiver, but shall apply solely to the instance to which the waiver is directed. If any portion of these terms and conditions is declared to be unenforceable by a court of competent jurisdiction, all other portions shall be considered to be valid and enforceable to the extent that they are reasonably severable. The headings contained in these terms and conditions are for convenience of reference only and are not intended to have any substantive significance in interpreting this document.

### **16. GOVERNING LAW / JURISDICTION / ARBITRATION**

These terms and conditions and sales documentation of Seller accompanying them shall be governed by, and construed in accordance with the laws of the State of Rhode Island, without application of the conflict of law principles thereof. Any claim, dispute or controversy arising from or relating to any contract for Seller's goods or services, directly or indirectly may be brought only in state and federal courts located in the state of Rhode Island, and the parties hereto consent to be subject to the jurisdiction of such courts.

These commodities, technology, or software, if exported from the United States, will be in accordance with the Export Administration Regulations. Diversion contrary to United States Law is prohibited.