

Advanced Composite Products & Technology, Inc.

15602 Chemical Lane
Huntington Beach, CA 92649

Terms and Conditions Regarding Sales and/or Services

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All sales of goods and/or services ("goods") from ACPT, Inc. ("Seller") to the purchaser of such goods ("Buyer") are made subject to the provisions set forth herein between Seller and Buyer.

- 1. Applicability** – These terms and conditions of sales ("Terms and Conditions") are applicable to all sales of goods between Buyer and Seller. Each order of goods from Buyer, which is accepted by Seller shall constitute a separate agreement for the sale of goods, and is expressly subject to all of the following Terms and Conditions. To the extent that any order from Buyer to Seller is made subject to any terms and conditions contrary to those herein, same shall constitute a rejection and counter-offer with respect to all of Buyer's contradictory terms and conditions. Seller shall rely on Buyer's failure to deliver to Seller a writing specifically rejecting these Terms and Conditions five (5) calendar days following the date of Seller's mailing or other delivery of these Terms and Conditions, as an unconditional acceptance of these Terms and Conditions, and each of them.
- 2. Title and Risk of Loss** – Unless otherwise indicated in writing, title and all risk of loss pertaining to all goods sold hereunder shall pass to Buyer upon delivery ex-works Seller's plant to Buyer, any agent of Buyer or any common carrier hired to ship such goods, notwithstanding any payment or allowance of freight by Seller. Seller's selection of a common carrier shall not change the point of passage of title and/or the risk of loss. Nothing contained herein, nor the time, method, place or medium of payment, method of shipment, the form of any shipping documents, or the place of acceptance of Buyers' orders shall alter any of the foregoing. However, until Seller has received payment in full for goods to which title has passed, Seller reserves a security interest in all such goods, pursuant to any and all applicable authority, including but not limited to, Article 2 of the California Commercial code, to secure any unpaid portion of the purchase price of such goods.
- 3. Shipment** – A) Whenever Seller is to pay freight, Seller shall have the right initially to designate routing and means of transportation. If Buyer requires more expensive routing and/or means of transportation than designated by Seller, Buyer shall reimburse Seller for any and all extra costs incurred. Under no circumstances shall Seller be liable for any delay in transportation, no matter how caused. B) All invoices, weights, volumes, sizes, descriptions of goods and any specifications shall be treated as prima facie correct except that in the case of bulk shipments, the carrier's weights shall be accepted as conclusive.
- 4. Orders** – Buyer's orders are not binding upon Seller until accepted by an authorized employee or agent of Seller.
- 5. Examination and Claims** – Buyer shall examine and test each shipment of goods within ten days of delivery to Buyer, and, in any event before any part of such goods has been changed from its original condition and before any labels have been affixed by Buyer to such goods. Buyer hereby waives any and all claims, for any cause whatsoever, after any part of the goods has been treated, processed, repackaged, relabeled, or changed in any manner. Buyer assumes sole responsibility for determining whether the goods are suitable for their intended purpose, whether or not such intended purpose is known to Seller, and Buyer waives any and all claims whatsoever, which such inspection reveals, or which in the exercise of reasonable diligence, such inspection should have revealed, and of which Seller is not notified in writing within 10 days after delivery of the goods.
- 6. Warranties and Limitations Thereon** – A) Unless otherwise provided in writing, Seller warrants to Buyer that at the time of delivery, the goods sold will conform substantially to the description on the face of any invoice or other written description provided in connection with such sale. Seller's sole liability, and Buyer's sole remedy under this warranty, is limited to Seller's discretion to replace any goods returned to Seller and which are shown to Seller's reasonable satisfaction to have been nonconforming, to refund all or any part of the purchase price of any such goods, or to issue a whole or partial credit for the purchase price of any such goods. Seller shall not accept transportation charges for return of non-conforming goods, or risk of loss thereof, unless such acceptance is in writing signed by an authorized representative of Seller and such goods are returned in accordance with written instructions of Seller. B) Subject to paragraph 7a) below, Seller warrants to Buyer that Seller will convey good title to the goods sold hereunder. Seller's sole exposure and Buyer's sole remedy regarding this warranty of title is limited to removal of any defect of title or, at the sole election of Seller, to replacement of the goods or any part thereof which are defective in title, or the refund of all or a portion of the purchase price, at Seller's option. C) The foregoing warranties are exclusive and are given and accepted in lieu of and in place of all other warranties, express and implied, including, without limitation, warranty of merchantability and the implied warranty of fitness for any particular purpose. The remedies of buyer for any breach of warranty shall be limited to those remedies provided herein and further shall be limited to the purchase price of the goods in respect to which the breach of warranty is claimed, and to the exclusion of any and all other remedies including without limitation, any incidental or consequential damages. No agreement varying or extending the foregoing warranties or this limitation shall be binding upon Seller, nor shall imply any warranty not expressly given herein. D) Buyer waives any and all claims relating to goods unless such claims are received in writing by seller within thirty (30) days after the invoice date for such goods or within thirty (30) days after delivery of such goods, whichever is earlier, except claims for shortages or nonconformance to description of such goods are waived if not received in writing within 10 days after delivery. Buyer may not bring any legal action or proceeding arising from these terms and conditions or related to any goods subject thereto unless in addition to compliance with the notice requirement of this paragraph 6, such legal action or proceeding is brought within 90 days after the invoice date for the affected goods.
- 7. Patent Infringement** - A) Seller makes no warranty regarding and does not agree to defend or indemnify buyer with respect to any claim that any goods sold hereunder infringe any patent, copyright or any other rights, proprietary or otherwise. B) If Seller is subjected to any claim as a consequence of any actual or alleged compliance of Seller with specifications or designs furnished by Buyer, respecting the allegedly infringing goods, Buyer will defend, indemnify and hold harmless Seller from any such claim, including payment of any and all attorneys' fees and expenses. Seller shall have the right to retain its own counsel, and to intervene on its own behalf in such action or proceeding, with or without Buyer's consent. Seller expressly disclaims any and all obligation to indemnify, defend, or hold harmless, Buyer, or any of Buyer's employees, officers, shareholders, directors, agents, parents, successors, predecessors, affiliated persons or entities and assigns, under any circumstance whatsoever. Any and all terms and conditions required, requested or proposed by Buyer involving such obligations are expressly rejected.
- 8. Buyer's Use of Product** – Buyer hereby warrants and represents that all goods sold by Seller to Buyer shall be used only in accordance with the manufacturer's instructions, available technical data and MSDS's. Upon request from Buyer, Seller shall provide Buyer with any such manufacturer's instructions, technical data and MSDS's then in Seller's possession, and upon appropriate request from Buyer, Seller will use reasonable efforts to assist Buyer in obtaining from the manufacturer, any instructions, technical data or MSDS's not then in Seller's possession.
- 9. Confidential Information** – All materials relating to the use and service of the goods that Seller has provided and identified as confidential are proprietary to Seller. Such materials have been developed at Seller's expense and contain Seller's trade secrets. Buyer may not reproduce or distribute such materials to any party without the prior written consent of Seller. Buyer shall receive all such proprietary materials in complete and strict confidence, and shall exercise care to maintain such confidentiality.
- 10. Prices, Payment, Insecurity** – A) Unless otherwise specified in writing, payment of all invoices for goods shall be due in full within 30 days of the date of the invoice. Any partial payments or pro rata payments shall be acceptable only as specified in an invoice or writing signed by Seller. Prices are subject to change without notice. However, on orders accepted for shipment within 30 days, prices at the time of acceptance will apply unless shipment is delayed beyond 30 days, in which case, prices at time of shipment will apply. B) In the event any invoice or part payment is not paid within 30 days of the date invoiced, in addition to the invoiced price, Buyer shall pay to Seller late charges in the amount of one and one-half percent (1.5%) per month, of the unpaid balance of such invoice or part payment for each month that said invoice or part payment is past due. Buyer and Seller agree that such late charges are a reasonable compensation to Seller for the cost of processing and collecting late payments, and are not intended as a penalty or as interest. C) If Buyer shall breach these Terms and Conditions in any respect, including but limited to failure to fulfill any payment terms on any invoice for goods, or if at any time, Buyer shall be insolvent, or subject to an order for relief under Title 11 of the United States Code, or the subject of any involuntary petition in Bankruptcy under Title 11 of the United States Code, which involuntary petition is not dismissed within thirty (30) days of filing, or if Seller shall have any grounds for insecurity as to Buyer's performance of any contract, sale or invoice with Seller, then Seller shall have all rights and remedies set forth in all applicable sections of the California Commercial Code or any other applicable code, and in addition, all other rights and remedies set forth in these Terms and Conditions and any other applicable law. Seller may, without liability of any kind to Buyer, decline to make further shipments or agree to further shipments only on terms to be specified in writing by Seller. Further, Seller may require "adequate assurance of due performance" as that term is used in the California Commercial Code with respect to all outstanding sales, invoices and contracts or any undelivered portion thereof between Buyer and Seller, as a condition of Seller's further performance on any such matter.

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All rights and remedies of Seller shall be cumulative. D) If Seller is prevented from revising prices or from continuing any price already in effect as the result of any action by the federal, state or local governmental entity, or by Seller's compliance with any request of such governmental entity, Seller may cancel any contract, any invoice, or any undelivered portion thereof, without any liability to Buyer whatsoever.

11. **Taxes, Duties and Excises** – In the absence of satisfactory evidence of exemption supplied to Seller by Buyer, in addition to the price of goods, Buyer shall pay the price of all taxes, duties and excises or any other charges of any national, state or local governmental entity for which Seller may be responsible for collection or payment, related to the sale, importation, exportation, production, storage or use of any goods sold from Seller to Buyer.
12. **Force Majeure** – Seller shall not be liable to Buyer or to any other person for failure or delay in the performance of any obligation under any sale of goods due to certain events, including, but not limited to, fire, storm, flood, earthquake, explosion, accident, act of the public enemy, war, riot, public disorder, sabotage, strike, lock out, differences with labor, labor shortages, work slowdown, stoppage or delays, shortage or failure or delay of energy, materials or supplies, equipment, transportation, embargo or delay, act of God, breakdown in machinery or equipment, act or regulation or priority of the federal, state or local governments or any branch or agency thereof, government contract or shipment to purchaser to fulfill one or more government contracts. Buyer shall not be liable for delay or failure to take goods as ordered due to any such events except the Buyer shall be liable for such delay or failure with respect to goods already in transit which are not readily saleable without loss to Seller. When the event(s) operating to excuse performance by either party shall cease, this Agreement shall continue until all deliveries have been completed.
13. **Assignability** – No contract of sale between Buyer and Seller may be transferred or assigned by Buyer without the express written consent of Seller.
14. **Waiver** – Seller's failure to insist upon strict performance of any provision hereof shall not be deemed to be a waiver of any right or remedy of Seller or a waiver of any subsequent default by Buyer in the compliance with any term hereof.
15. **Cancellation** – An order, once placed with and accepted by Seller, can be cancelled only with Seller's written consent and upon terms that will indemnify Seller against loss.
16. **Mandatory Clauses Required Under Government Contracts or Subcontracts** – If a government contract number is shown on an invoice or order, any terms or conditions which the government makes mandatory for a contractor under government contract to include in its subcontracts there under will apply to such order from Buyer to Seller.
17. **Compliance with Laws** – Buyer warrants that in the handling, shipping, use, sale, resale, and disposition of goods subject hereto, Buyer and its officers, agents and employees will fully comply with all applicable laws, statutes, regulations and ordinances of the United States, and of every applicable country, state, and local government entity from time to time in effect, including by not limited to all applicable labor laws, federal procurement laws, regulations and circulars, all laws relating to the import, export, and safety of goods purchased from Seller, all applicable foreign, federal, state and local environmental laws, statutes, ordinances, administrative orders, directives and decisions, all applicable authorities pertaining to hazardous or toxic materials or wastes, and all applicable laws, regulations and ordinances concerning government procurement, contracts and orders of the applicable department of the Federal, State or Municipal government.
18. **Royalties** – The purchase of goods from Seller confers no license express or implied under any patent, copyright, trademark, proprietary or similar rights.
19. **Entire Contract, Choice of Law and Forum** – A) These Terms and Conditions, and any additional terms and conditions set forth in Seller's invoice for goods, constitute the entire contract between Buyer and Seller with respect to the goods identified on the invoice, and supersede all previous communications, representations, and agreements, whether written, oral, implied by conduct or implied by course of dealing or usage in trade. These Terms and Conditions may not be amended, modified or canceled, except by a writing signed by Seller and Buyer. Any such amendment or modification of these Terms and Conditions shall be interpreted narrowly to affect only those matters specifically mentioned in such writing. B) These Terms and Conditions shall be interpreted in all respects in accordance with the laws of the State of California and, as applicable, federal law. These Terms and Conditions and all transactions governed hereby, are to be performed in Orange County, California and venue for enforcement or interpretation of these Terms and Conditions, and for any legal action, arbitration or proceeding concerning sale of any goods governed hereby, shall be proper only in Orange County, California.
20. **Severability** – Each provision hereof is separate and severable from every other provision hereof. In the event any provision of these Terms and Conditions is determined by a court of competent jurisdiction to be void or unenforceable, any such void or unenforceable provision or provisions shall be separated and severed from all other provisions hereof, and shall not affect the validity or enforceability of the rest of these Terms and Conditions, all of which shall remain in full force and effect.
21. **Attorneys' Fees** – In the event it is necessary for Seller to hire counsel to enforce or interpret any of these Terms and Conditions, or any invoice subject hereto, in any arbitration, administrative proceeding, lawsuit, appellate proceeding or other legal or equitable proceeding concerning such enforcement or interpretation, the prevailing party shall be entitled to collect from the losing party, any and all costs, any and all attorneys' fees and expenses, in addition to all other rights and remedies contained herein and according to law.
22. **Address** – All notices and other writings required to be sent to the Seller pursuant to those Terms and Conditions shall be delivered to the Seller at the following address: Advanced Composite Products and Technology, Inc., 15602 Chemical Lane, Huntington Beach, CA 92649, Attention: President.
23. **Headings, Gender and Number** – The headings contained herein are for convenience only and shall not affect the meaning or interpretation of the terms hereof. Whenever the context so requires, the masculine, neuter and female gender each shall refer to and include each other applicable gender and the singular and plural number each shall include the other.
24. **Arbitration** – Any and all disputes, of any nature, whether contractual or tort based, shall be resolved pursuant to the then existing rules of the American Arbitration Association. The parties shall select a competent arbitrator from Seller's trade, who will decide all issues respecting the dispute. To the extent the parties cannot mutually agree upon an arbitrator, either party shall have the right to file an action in a competent Orange County Court for the sole purpose of having an arbitrator appointed. The arbitrator's decision shall be final, and binding upon all parties, and enforceable as a judgment in any court of competent jurisdiction. All costs, including the arbitrator's fees, shall be initially be borne equally by the parties. However, the arbitrator shall have the right to allocate said costs upon one or both of the parties, as deemed necessary. The prevailing party shall be entitled to recover all attorneys' fees and costs associated with the dispute from the losing party.
25. **Operating Procedures** – A) Work will not begin at ACPT until a hard copy of the purchase order has been received either by Fax or US mail, which includes all statements of work, drawings and specifications. B) If any changes are made after the job is quoted, including changes to the drawing, statement of work or specifications, ACPT reserves the right to review pricing and delivery terms, and insist upon change. C) A small order charge of up to \$500.00 will be applied to all orders that total less than \$2,500.00. D) Material cannot be returned without a Returned Material Authorization number. E) If not otherwise stated on the Purchase Order, ACPT, at its sole discretion, will ship product via UPS ground prepaid or Yellow Freight collect (depending on size of freight). F) FOB point is 15602 Chemical Lane, Huntington Beach, CA 92649. G) First article parts and development contracts are on a "best effort" basis. H) All liability resulting from the use of any product produced by ACPT, including, but not limited to, materials, fabricated parts, data and reports is accepted by purchasing agency. ACPT's liability for customer's hardware, or product of any kind, shall not exceed the cost of work done by ACPT on that hardware. I) If payment is delinquent by more than 90 days, then shipment shall be sent COD, freight collect until account is brought current.