



## **CUSTOMER TERMS AND CONDITIONS**

- Agreement.** Customer and Applied Composites Engineering, Inc. (“ACE”) hereby acknowledge and agree that the agreement between them consists of a Purchase Order submitted by Customer to ACE, ACE’s Sales Order Acknowledgement, ACE’s invoice, and these Terms and Conditions (“Order Documents”). ACE hereby agrees to manufacture or repair and deliver the products or repaired parts and otherwise perform pursuant to the Order Documents. Customer agrees to pay ACE for the product or repair and otherwise perform pursuant to the Order Documents. In the event of any conflict or ambiguity among the Order Documents, Customer and ACE hereby acknowledge and agree that these Terms and Conditions shall take precedent over any other document. ACE’s acceptance of any Purchase Order from Customer is hereby expressly conditioned on Customer’s assent to any additional or different terms herein. ACE’s acknowledgement of the Purchase Order is a counter-offer incorporating the terms set forth in the Terms and Conditions and, in the event Customer objects to any such provision, Customer must object, in writing, prior to ACE’s performance or, in any event, within two (2) business days of the date of ACE’s acknowledgement.
- Pricing and Shipment.** a) All shipments from ACE shall be F.O.B. ACE’s factory; b) all ACE invoices are due for payment by Customer within thirty (30) days after the date of the invoice; c) preparation and delivery of products shall be made on a commercially reasonable effort basis. ACE makes no guarantee or warranty as to delivery dates and shall not be liable if Customer’s desired shipping date is not met; and d) prices listed in the invoice do not include sales, use, excise, or similar taxes. The amount of any tax applicable to Customer’s purchase of product shall be added to the invoice and paid by Customer.
- Limited Warranty and Limitation of Remedies.** ACE warrants the Customer that the product or repair is free from defects in materials and workmanship at the time of delivery. If a product or repair is found to be defective at any time within one (1) year from the date of delivery, ACE will, at Customer’s sole and exclusive remedy, at ACE’s option, either repair or replace the defective product, or refund the Customer’s purchase price of the product, within a reasonable time after written notification of the defect and return of the defective product to ACE. The warranty does not apply to product failures resulting from accident, abuse, alteration, neglect, improper handling or storage, or wear from ordinary use. If ACE defaults on its obligation to Customer under this warranty or otherwise becomes liable in connection with its performance obligations under the Order Documents, ACE’s total liability will be limited to the amount Customer paid for the product. THESE WARRANTIES ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ANY

ADDITIONAL WARRANTY NOT EXPRESSLY SET FORTH IN THESE TERMS IS AN ADDITIONAL TERM NOT ACCEPTABLE TO ACE. ACE HEREBY OBJECTS TO ANY SUCH ADDITIONAL WARRANTY. UNDER NO CIRCUMSTANCES WILL ACE BE LIABLE TO CUSTOMER OR ANYONE ELSE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS), EVEN IF ACE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANY OTHER PROVISION IN THESE TERMS AND CONDITIONS, THE WARRANTY SET FORTH IN THIS SECTION SHALL RUN IN FAVOR OF CUSTOMER ONLY AND SHALL NOT BENEFIT THE HEIRS, SUCCESSORS OR ASSIGNS OF CUSTOMER.

4. **Arbitration/Venue/Applicable Law**. Disputes as to the interpretation, performance or payment under the Order Documents may, at the sole discretion of ACE, be submitted for arbitration in Indianapolis, Indiana under the Commercial Arbitration Rules of the American Arbitration Association. Should ACE not elect to submit the dispute to arbitration, then all legal actions regarding the interpretation, performance or payment under the Order Documents shall be exclusively venued in either the state or federal courts located in Marion County, Indiana. Indiana substantive law shall apply to all disputes whether in arbitration or the courts. Customer hereby consents to the jurisdiction of such courts, venue, and choice of law provisions.
5. **Attorneys' Fees** In the event of a breach of any provision of the Order Documents by Customer, and in addition to any other remedies available to ACE, Customer hereby agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by ACE in enforcing the Order Documents, provided that ACE is the prevailing party in such proceedings.
6. **Waiver/Entire Agreement**. No waiver or modification of the Order Documents, including by course of dealing of performance, shall be effective unless ratified in writing and signed by both parties. Any failure delay by either party in exercising any right or remedy in one or many instances will not prohibit a party from exercising it at a later time or from exercising any other right or remedy. The Order Documents supersede all prior agreements, if any, whether written or oral, between the parties. Each party agrees that it has not relied on any covenant, representation, warranty or provision not explicitly stated in the Order Documents, and that no oral statement has been made to either party that in any way tends to waive any of the terms or conditions of the Order Documents.
7. **Changes to Specifications**. Changes to the specifications requested by Customer are subject to approval by ACE in writing. In the event of any such change, ACE shall be entitled to revise its price and delivery schedules to reflect such change. ACE will promptly inform Customer, in writing, of price and delivery impact. ACE will only make such changes upon receipt of written approval from Customer. Changes in scope, design or function requested by the Customer that impacts ACE's scheduling, will incur a minimum interrupt charge of \$350.00 for scheduling costs to ACE per incident. If ACE requests information from Customer to continue job, the Customer will provide information in a timely manner as not to impact production at ACE. If Customer does not provide the requested information in a timely fashion and this lack of information impacts ACE's production scheduling, the Customer will incur a minimum charge of \$350.00 per incident and resulting delivery impact.

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8. **Specially Manufactured Goods.** Any tooling or other equipment which ACE may use in manufacturing products designed to Customer's specifications is not part of the sale to Customer and shall remain ACE's property, even if the sales price includes a charge for the use of such tooling. Any intellectual property developed by ACE in designing products for Customer shall remain the property of ACE; provided, however, that ACE grants Customer a nonexclusive license to use or sell such products purchased from ACE. Customer will indemnify and hold harmless ACE as to any claims brought or damages suffered because of any claimed unfair competition or patent, trademark or copyright infringement, or any other claim resulting from ACE's manufacture of the products to Customer's specifications.
9. **Solvency and Security Interest.** Customer represents to ACE that Customer is solvent. Customer grants ACE a security interest in all goods to secure Customer's present and future obligations to ACE. At ACE's request, Customer shall give ACE a signed financing statement reflecting the security interest.
10. **Separability.** Each paragraph and provision of these terms and conditions is severable from the entire agreement and if any provision of the terms and conditions is held invalid, the remainder of the terms and conditions will, nevertheless, remain in full force and effect.