

Application Tooling Solutions (ATS)

CUSTOMER ORDER TERMS & CONDITIONS

(3/00)

1. NOTWITHSTANDING ANY DIFFERENT OR ADDITIONAL TERMS THAT MAY BE EMBODIED IN CUSTOMER'S ORDER, ACCEPTANCE OF CUSTOMER'S ORDER IS EXPRESSLY MADE CONDITIONAL ON CUSTOMER'S ASSENT TO THE TERMS AND CONDITIONS SET FORTH BELOW AND ON ANY ATTACHMENT(S) HERETO, WHICH SHALL CONSTITUTE THE COMPLETE AGREEMENT BETWEEN THE PARTIES. These terms and conditions may not be varied or Customer's order terminated in any manner, unless by a written agreement with legal consideration subsequently signed by an officer of Application Tooling Solutions (also referred to herein as "the COMPANY"). Other representatives of the COMPANY are not authorized to vary the conditions herein set forth. Failure to specifically dissent to these terms and conditions within a reasonable time or Customer's acceptance of any goods covered by this acknowledgement shall constitute acceptance of these terms and conditions, which shall be controlling in every case.
2. Unless stated to the contrary on the face hereof, all goods furnished hereunder will be shipped "Ex-Works (EX-W)", and title in, risk of loss, and the right of possession to such goods shall pass to the Customer upon the COMPANY'S delivery to carrier at COMPANY'S shipping facility. Charges for shipping may not reflect net transportation costs paid by the COMPANY.
3. Prices on the goods covered by this acknowledgement are firm for thirty (30) days from date of this acknowledgement. Any goods which the Customer requires to be shipped subsequent to thirty days from said date are subject to price changes made from date of acknowledgement to date of shipment.
4. Tooling, set-up, fitting-up, drawings, design information and partial preparation charges, when invoiced, cover only part of the cost thereof to the COMPANY. The Customer does not acquire any right, title or interest in any tooling, set-up, fitting-up, drawing, design information, or invention resulting therefrom.
5. All shipping dates are tentative. The COMPANY will not be responsible for delays or non-performance directly or indirectly caused by government regulations or requirements, acts of God, unavailability of energy and/or materials or supplies, work stoppages, slow downs, boycotts, and other causes (whether or not similar in nature to any of these hereinbefore specified) beyond the COMPANY'S reasonable control.
6. The COMPANY'S extensive line of products requires close coordination of the Customer's requirements with the COMPANY'S production schedules to avoid possible delays in shipment. Accordingly, the COMPANY reserves the right to ship approximately forty (40) days in advance of shipping date. Unless otherwise stated on the face hereof, COMPANY may ship all the goods furnished hereunder at one time, or in separate parts or lots from time to time within the shipping period herein provided. Failure of Customer to submit a claim that COMPANY did not ship the total quantity of goods shown on the face hereof within 90 days of shipment shall be an admission by Customer and conclusive proof that such goods were shipped in the appropriate quantities.
7. THERE IS NO WARRANTY BY THE COMPANY THAT THE GOODS SHALL BE DELIVERED FREE FROM ANY CLAIM OF ANY THIRD PERSON BY WAY OF INFRINGEMENT. There is no undertaking by the COMPANY with respect to patent or trade-mark infringement.
8. **The COMPANY warrants that the articles delivered hereunder shall be free from defects in material, workmanship and fabrication. This WARRANTY shall extend for the period set forth below following the date of delivery of such articles to Customer. THE COMPANY MAKES NO REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED (INCLUDING BUT NOT LIMITED TO WARRANTIES OF INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSES), OR STATUTORY OTHER THAN THE FOREGOING EXPRESS WARRANTY. Failure of Customer to submit any claim hereunder within ten (10) days following expiration of the warranty period applicable to such articles shall be an admission by Customer and conclusive proof that such articles are in every respect as warranted and shall release the COMPANY from any and all claims for damage or loss sustained by Customer. In the event Customer timely submits a claim for breach of WARRANTY, the parties agree that Customer's sole and exclusive remedies shall be the repair or replacement of the defective article or a refund of the price of the defective article. IN NO EVENT SHALL THE COMPANY BE LIABLE FOR PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES.**
9. The COMPANY shall have the right to suspend or cancel this Agreement or terminate the term of loaned application equipment or applicator(s) at any time upon Customer making an assignment for the benefit of creditors or becoming bankrupt or insolvent, or upon a petition being filed in a court of competent jurisdiction proposing the appointment of a receiver or that the Customer be adjudicated bankrupt or insolvent or reorganized under the provisions of any applicable bankruptcy or insolvency act.
10. Orders accepted by the COMPANY cannot be countermanded or shipments deferred or goods returned except with consent of the COMPANY and upon terms that will indemnify it against all loss, including the profit on any part of the order that is cancelled. When return of material is authorized by the COMPANY, shipping charges on said returned material are to be prepaid unless otherwise noted by the COMPANY in its authorization to return. COMPANY reserves the right to reject partial cancellations.
11. Unless specifically noted hereon, qualification tests and any test data are not included in the selling price. Qualification tests may be performed by the COMPANY and test data supplied at the specific request and expense of the Customer.
12. Customer is required to install, set-up, and perform all maintenance and repair on the application equipment. Upon request, and subject to the then-current charges, Field Engineering Services will be available to assist the customer in proper installation, and set-up, to perform required maintenance and repair and to train customer personnel in the proper use, maintenance, and set-up procedures of such application equipment. It is the customer's responsibility to contact the COMPANY for such services, by calling 1-877-237-5365.
13. If the application equipment delivered hereunder is for demonstration only:
 - a. The application equipment is to be returned at the end of ninety (90) days, unless otherwise agreed in writing.
 - b. Customer shall have the right at all times during Customer's business hours to inspect the application equipment to observe its use, to repair or replace any defective parts, and to remove it upon termination of this Agreement.
 - c. Customer shall bear the entire risk of said application equipment until Customer returns said application equipment in good order and condition, reasonable wear and tear only excepted, freight prepaid to the COMPANY, in accordance with the instructions Customer has received for such return from the COMPANY. It is the Customer's responsibility to contact the COMPANY for such instructions by calling 1877-671-2955. Returned equipment will be promptly evaluated by COMPANY. COMPANY shall invoice Customer at the then-current prices for any application equipment, or parts thereof, that are missing, damaged, or excessively worn.
 - d. Customer will not remove, obliterate, or deface the COMPANY'S name tag and may not in any way modify or alter any application equipment furnished hereunder without the prior written consent of the COMPANY. Further, Customer may not misuse or abuse the application equipment. In the event of Customer's breach of this provision or if reasonable grounds for insecurity arise with respect to Customer's continued adherence to the requirements of this provision, the COMPANY shall have the right to immediately recover possession of all loaned application equipment then in Customer's possession.
 - e. Customer agrees to sign, alone or with COMPANY, a financing statement or similar document evidencing COMPANY'S ownership of the application equipment for filing by COMPANY with the appropriate governmental authorities.
14. COMPANY represents that all application equipment delivered hereunder will, at the time of delivery, comply with applicable OSHA requirements. Customer shall be solely responsible for, and shall indemnify and hold COMPANY harmless against, any and all claims (whether asserted by Customer's employees or others) asserted against COMPANY for personal injury or property damage alleged to have been caused by, result from, or relate to: (i) the misuse or abuse or modification of such application equipment; or (ii) the operation of such application equipment without the safety devices or guards that COMPANY has provided to Customer for such application equipment; or (iii) failure to adhere to the instructions furnished by COMPANY to Customer for such application equipment.
15. Customer shall be solely responsible for any damage to the application equipment resulting from Customer's use or replacement parts not meeting A.T.S.'s specifications.
16. The COMPANY represents that with respect to the production of the articles and/or the performance of the services stated herein, it has fully complied with all of the applicable provisions of the Fair Labor Standards Act of 1938, as amended, including sections 6, 7, and 12, regulations under section 14, and all other applicable Administrative Regulations.
17. In connection with performance of work hereunder, the COMPANY agrees to comply with all provisions, including specifically paragraphs (1) through (7), Sec. 202, of Executive Order No. 11246 of September 24, 1965, as amended, and rules, regulations and order pertaining thereto.
18. In addition to the rights and remedies reserved herein, the COMPANY shall have all rights, and remedies conferred by law and shall not be required to proceed with performance of the contract arising herefrom if Customer is in default to the COMPANY under this or any other contract. This Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, U.S.A.

Product	Duration of Warranty
Application equipment, including machinery, applicators, and all original parts thereof, except for expendable parts	6 months
Hand tools and expendable parts (i.e., those parts designed by the COMPANY as spare parts, spare tooling, recommended spares, perishable tooling, wearable tooling, and the like)	90 days
Replacement Parts	Applicable period for replaced part
All other products and/or services	90 days

Application equipment may be reconditioned and may contain used parts. Hand tools and spare parts may be reconditioned.