

Astrodyne Corporation (Seller)

Terms and Conditions of Sale

DEFINITIONS

The term "Buyer" means the company identified on the face of the purchase order. The term "Seller" means Astrodyne Corporation, its subsidiaries, successors, and assigns. The term "Product" means items as listed in the catalog and/or custom items manufactured exclusively for the purchasing company. The term "Nonconformance" means the failure to comply with, or failure to operate due to noncompliance with, applicable Seller drawings or having defects in workmanship or material.

APPLICABILITY

Purchase orders placed by Buyer for Products are governed solely by these Conditions of Sale. Except as provided in the "Purchase Orders" section below, all provisions on Buyer's purchase order and all other documents submitted by Buyer are expressly rejected. Seller will not be deemed to have waived these Conditions of Sale if it fails to object to provisions submitted by Buyer.

PURCHASE ORDERS

Purchase orders may specify: (1) Seller's Product part number; (2) requested delivery dates; (3) applicable price; (4) quantity; (5) location to which the Product is to be shipped; (6) location to which invoices will be sent for payment; and (7) payment terms for all purchases are net 30 calendar days from date of invoice. Purchase orders are subject to acceptance by Seller. Seller's purchase order acknowledgment constitutes acceptance if Buyer accepts these Conditions of Sale as written. Any additional or conflicting terms on purchase orders will not apply unless specifically agreed to in writing by Seller. All products shipped on a Purchase Order are non-cancelable and non-returnable (NCNR) unless otherwise a prior written agreement exists. No reschedule of the PO is allowed within 4 weeks of the dock date and the number of rescheduled shall not exceed 3. Blanket Purchase Orders can be scheduled over a period of one year from the order date. Seller reserves the right to ship the product in its entirety at the end of the term of the Blanket order.

DELIVERY

Delivery terms are EXWORKS (Incoterms 2010), Seller's Facility. Seller will schedule delivery in accordance with its proposed delivery schedule unless: (1) Buyer's purchase order requests a later delivery date; or (2) Seller agrees in writing to a separate delivery date. If Seller prepays transportation charges, Buyer will reimburse Seller upon receipt of an invoice for those charges. Title will pass to Buyer when Seller places Product at the disposal of Buyer at Seller's facility. Seller reserves the right to quote additional charges for any special routing, packing, labeling, handling or insurance requested by Buyer.

ACCEPTANCE

Buyer will inspect both quality and quantity of Products within a reasonable period after delivery not to exceed 10 calendar days including damages in transit arising from poor packaging. Products will be presumed accepted unless Seller receives written notice of rejection explaining the basis for rejection within the same timeframe. Seller will be afforded a reasonable opportunity to repair or replace, at Seller's option, rejected Product.

Following initial delivery, the party initiating the shipment will bear the risk of loss or damage to Products in transit. If Seller reasonably determines that rejection was improper, Buyer will be responsible for all expenses caused by the improper rejection.

PRICES

Prices are stated in U.S. currency. Seller reserves the right to correct any inaccurate invoices or errors in purchase order prices.

PAYMENTS

Payment terms are net 30 calendar days from date of invoice. Payments must be made in U.S. Dollars.

Payments made via ACH or wire transfer must be for the full amount of Invoice. Any bank charges at origin and/or destination for payments made via ACH or wire transfer will be Buyer's responsibility. Seller may re-evaluate Buyer's credit standing at all times. If Seller determines in its sole discretion that Buyer fails to qualify for such payment terms at any time, then Seller may without notice to Buyer modify or withdraw credit terms including, but not limited to, requiring advance payment, guarantees or other security. Buyer agrees to pay any third-party collection expenses, including legal fees incurred by Seller to collect any unpaid amounts.

If Buyer is delinquent in its payment obligation to Seller, Seller may upon written notice to Buyer withhold future shipments until all delinquent amounts and late interest, if any, are paid. If delinquent amounts remain unpaid 30 calendar days after such written notice, then Seller may at its option: (1) Declare Buyer's performance in breach and terminate a purchase order; (2) Repossess Products for which payment has not been made as permitted by law; (3) Withhold future Product shipments until all delinquent amounts and late interest, if any, are paid; (4) Deliver future Product shipments on cash with order or cash in advance basis; (5) Recover all costs of collection including, without limitation, reasonable attorneys' fees; (6) If Buyer is delinquent on a payment schedule, accelerate all remaining payments and declare the total outstanding balance then due and owing; or (7) Combine any of the above rights and remedies as may be permitted by applicable law.

SETOFF

Buyer will not set off or recoup invoiced amounts or any portion thereof against sums that are due or may become due from Seller, its parents, affiliates, subsidiaries or other divisions or units.

WARRANTY

Seller warrants that at time of shipment to Buyer its Products will comply with applicable Seller drawings and will be free from defects in workmanship and material. These warranties run to the Buyer, its successors, assigns, and customers. This warranty is valid for 1 year from date of invoice of the Products. Buyer must notify Seller in writing of any defect within 30 days after discovery and return the Product to Seller's designated facility within 10 days after receipt of Seller's issued Return Material Authorization number. Seller's obligation and Buyer's sole remedy under this warranty is repair or replacement at Seller's election, of any Nonconforming Product. All Products repaired or replaced will be warranted only for the unexpired portion of the original warranty period. Seller assumes round trip shipping costs for Nonconforming Products in an amount not to exceed normal surface shipping charges to and from Seller's facility for such Products. The party initiating transportation will bear the risk of loss or damage to Products in transit unless the damage arises from poor packaging. If Seller reasonably determines, after analysis of the returned Product, that a Nonconformance does not exist, then Buyer will pay all expenses related to the improper return including, but not limited to, analysis and shipping charges.

Seller will not be liable under this warranty if the Product has been exposed or subjected to any: (1) maintenance, repair, installation, handling, packaging, transportation, storage, operation or use which is improper or otherwise not in compliance with Seller's instruction; (2) alteration, modification or repair by anyone other than Seller; (3) accident, contamination, foreign object damage, abuse, neglect or negligence after shipment to Buyer; (4) damage caused by failure of a Seller supplied product not under warranty or by any hardware or software not supplied by Seller; (5) is a Product that is a prototype (nonproduction) product including Evaluation Kits, etc.

These warranties are exclusive and in lieu of all other warranties, whether written, express, implied, statutory or otherwise, including, but not limited to, the implied warranties of merchantability and fitness for particular purpose. In no event will Seller be liable for any incidental, consequential, special, or indirect damages, even if informed of the possibility of such damages and notwithstanding the failure of the essential purpose of any limited remedy. No extension of these warranties will be binding upon Seller unless set forth in writing and signed by Seller's authorized representative. In no event will the liability of Seller under this warranty exceed the amount of the order price for the specific product or service that gives rise to the claim.

DELAY, NONPERFORMANCE

Delivery dates specified in orders and quotations are approximate. Seller will not be liable to Buyer for any failure to meet its obligations, including but not limited to loss, damage, delay, non-performance, and non-delivery due to any cause beyond its reasonable control including, but not limited to: government embargoes or any other government acts that interfere with performance; blockades; seizure or freeze of assets; delays or refusals to grant an export license or the suspension or revocation thereof; fires, floods, severe weather conditions; any other acts of God, quarantines or regional medical crisis; labor strikes or lockouts; riots, strife, insurrection, civil disobedience, armed conflict, terrorism or war, declared or not or impending threat of any of the foregoing, if reasonably expected to cause injury to people or property; shortages or inability to obtain materials or components; and breakdown of essential machinery. The due date of any performance affected by such an event will be extended by the period of time that Seller is actually delayed. If the inability to perform continues for longer than 6 months, either party will have the right to terminate the affected purchase order by providing written notice to the other party.

TERMINATION

Either party may terminate any or all unperformed purchase orders by giving written notice to the other party upon the occurrence of any of the following events: a) the other party materially breaches these Conditions of Sale and fails to remedy the breach within 60 calendar days after receipt of written notice that specifies the grounds for the material breach; b) the other party fails to make any payment required to be made under a purchase order when due, and fails to remedy the breach within 3 calendar days after receipt of written notice of non-payment; or c) any insolvency or suspension of the other party's operations or any petition filed or proceeding made by or against the other party under any state, federal or other applicable law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors or other similar proceedings. Termination does not affect any debt, claim or cause of action accruing to any party against the other before the termination. The rights of termination provided in this clause are not exclusive of other remedies that either party may be entitled to under these Conditions of Sale or in law or equity.

DISPUTES

Any dispute arising out of or relating to a purchase order, including the breach, termination or validity thereof will be finally resolved by arbitration. If Buyer is incorporated in the United States any dispute will be finally resolved by a sole arbitrator in accordance with the CPR Institute for Dispute Resolution Rules for Non-Administered Arbitration then currently in effect. Either party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under this purchase order, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the arbitrator's determination of the merits of the controversy. If any dispute, or response to any dispute, includes an allegation that potentially concerns whether any intellectual property right owned, controlled or licensable by either party is invalid, unenforceable or infringed or misappropriated, or is otherwise limited in scope or application, then either party may, in its sole discretion, elect to have such dispute adjudicated before a court of competent jurisdiction and this section will not be binding on either party with respect to such dispute in its entirety or any related dispute, including any portions of such dispute that do not concern intellectual property rights.

APPLICABLE LAW

These Terms and Conditions of Sale will be governed by the laws of the Commonwealth of Massachusetts, U.S.A. without regard to conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor there to, will not apply. Any suit must be brought in a state or federal court in the Commonwealth of Massachusetts, U.S.A., and Buyer and Seller irrevocably consent to personal and exclusive jurisdiction and forum of, and agree to be bound by any judgment and orders rendered by, these courts.

LIMITATION OF LIABILITY

Seller's liability for damages arising out of or relating to this purchase order is limited to the contract price for the specific Product that gives rise to the claim. In no event will Seller be liable for any incidental damages, consequential damages, special damages, indirect damages, loss of profits, loss of revenues, or loss of use, even if informed of the possibility of such damages. To the extent permitted by applicable law, these limitations and exclusions will apply regardless of whether liability arises from breach of contract, tort (including but not limited to negligence), by operation of law, or otherwise.

NONDISCLOSURE AND NON-USE OF SELLER'S DATA AND INFORMATION

These Conditions of Sale do not supersede any confidentiality agreement executed by Buyer and Seller that otherwise applies to Products, Services, technical data or other information delivered in connection with a purchase order. In the absence of such an agreement, Buyer may use Seller's confidential information only in the normal operation of Seller's Products. Further, Buyer may disclose information only on a need-to-know basis, will protect against inadvertent disclosure, and will not disclose information to any third party without Seller's prior written consent.

INDEMNITY AGAINST PATENT AND COPYRIGHT INFRINGEMENT

Seller will have no obligation or liability with respect to: (1) Products provided pursuant to Buyer's designs, drawings or manufacturing specifications; (2) Products used other than for their ordinary purpose; (3) claims of infringement resulting from combining any Product furnished here under with any article not furnished by Seller; or (4) any modification of the Product other than a modification by Seller.

Further, Buyer agrees to indemnify and defend Seller to the same extent and subject to the same restrictions set forth in Seller's obligations to Buyer as set forth in this "Indemnity Against Patent and Copyright Infringement" section for any suit against Seller based upon a claim of infringement resulting from (1), (2), (3), or (4) of the preceding paragraph.

Because Seller has exclusive control of resolving infringement claims here under, in no event will Seller be liable for Buyer's attorney fees or costs. If a claim is made or if Seller believes that a claim is likely, Seller may, at its option, and at its expense, (i) procure for Buyer the right to continue using the Product; (ii) replace or modify the Product so that it becomes non-infringing; or (iii) accept return of the Product or terminate Buyer's license to use the infringing Product and grant Buyer a credit for the purchase price or license fee paid for such product, less a reasonable depreciation for use, damage, and obsolescence. Further, Seller may cease shipping infringing Products without being in breach of this purchase order. Any liability of Seller under this "Indemnity Against Patent and Copyright Infringement" is subject to the provisions of the "Limitation of Liability" section of these Conditions of Sale. This "Indemnity Against Patent and Copyright Infringement" section states the parties' entire liability, sole recourse and their exclusive remedies with respect to infringement. All other warranties against infringement of any intellectual property rights, statutory, express or implied are hereby disclaimed.

SPECIAL TOOLING AND DATA

Seller owns all rights to all specifications, drawings, engineering instructions, data, material, equipment, software, processes, facilities and tooling, including, but not limited, to jigs, dies, fixtures, molds, patterns, taps, gages, test equipment, manufacturing aids and replacements items, now existing or hereafter created, except to the extent that title is specifically transferred in writing from Seller to Buyer.

EXPORT

Buyer is responsible for compliance with all import and export control laws and regulations. Buyer will obtain import, export, re-export approvals and licenses required for goods, transfers, services and technical data delivered and will retain documentation to support compliance with those laws and regulations. Seller will not be liable to Buyer for any failure to provide goods, services, transfers, or technical data as a result of government actions which impact Seller's ability to perform, including: (1) the failure to provide or the cancellation of export or re-export licenses; (2) any subsequent interpretation of any applicable import, transfer or export law or regulation, after the date of a purchase order or commitment, that has a material adverse effect on Seller's performance; or (3) delays due to Buyer's failure to follow applicable import, export, transfer, or re-export laws and regulations.

TAXES

Seller's pricing excludes all taxes (including, but not limited to, sales, use, excise, value-added or other similar taxes), duties and charges. Buyer is responsible for all such taxes, duties, and charges resulting from a purchase order or Seller's performance, whether or not here after imposed, levied, collected, withheld or assessed. If Seller is required to impose, levy, collect, withhold or assess any such taxes, duties or charges on any transaction under a purchase order, then in addition to the purchase price, Seller will invoice Buyer for such taxes, duties, and charges unless at the time of order placement Buyer furnishes Seller with an exemption certificate or other documentation sufficient to verify exemption from such taxes, duties or charges.

NOTICES

Every notice between the Parties relating to a purchase order will be made in writing and, if to Buyer, to Buyer's authorized representative or, if to Seller, to Seller's authorized representative. Notices will be deemed received when delivered either:

1. Two (2) calendar days after mailing by certified mail, return receipt requested and postage prepaid; or
2. One (1) business day after deposit for next day delivery with a commercial overnight carrier provided the carrier obtains a written verification of receipt from the receiving party.

GENERAL PROVISIONS

Assignment

Buyer will not assign any rights nor delegate any obligations under a purchase order or any portion thereof without the advance, written consent of Seller which consent will not be unreasonably withheld. Seller may assign a purchase order in connection with the sale or transfer of all or substantially all of the assets of the business to which it pertains. Any attempt to assign or delegate in violation of this section will be void.

Waiver

Failure of Seller to enforce at any time any of the provisions of these Conditions of Sale will not be construed to be a continuing waiver of any provisions here under nor will any such failure prejudice the right of Seller to take any action in the future to enforce any provisions here under.

Severability

If any provision of these Conditions of Sale is determined to be illegal, invalid, or unenforceable by an arbitrator appointed in accordance with the Disputes section of these Conditions of Sales or court of competent jurisdiction, then the validity and enforceability of the remaining provisions hereunder will not be affected and, in lieu of such illegal, invalid, or unenforceable provision, there will be added as part of these Conditions of Sale one or more provisions as similar in terms as may be legal, valid and enforceable under applicable law.

Commercial Use

Buyer represents and warrants that all Products purchased here under will not be used in the performance of a contract, or subcontract, with any government in a manner so as to affect Seller rights to data, technology, or other intellectual property supplied by Seller.

Survival

All rights, duties and obligations which by nature should apply beyond the term of this purchase order including, but not limited to, "PRICES", "PAYMENTS", "APPLICABLE LAW", "LIMITATION OF LIABILITY,"

"NONDISCLOSURE AND NON-USE OF SELLER'S DATA AND INFORMATION", "INDEMNITY

AGAINST PATENT AND COPYRIGHT INFRINGEMENT", "SPECIAL TOOLING AND DATA", and "NOTICES" sections will remain in force after the acceptance and complete performance of a purchase order.

Entire Agreement

The provisions contained in these Conditions of Sale contain the entire agreement between the Buyer and Seller with respect to a purchase order and supersedes any prior agreements and representations, oral or written, and all other communications between Buyer and Seller relating to a purchase order here under. These Conditions of Sale will not be varied except by an instrument in writing subsequently executed by an authorized representative of each party.