

APS PARTS USA – TERMS AND CONDITIONS OF SALE

1. Acceptance of Terms

These Terms and Conditions apply to all sales of goods and services by **Advanced Parts & Service LLC (“APS”)**. Any order placed by Buyer constitutes acceptance of these Terms. No additional or conflicting terms proposed by Buyer shall apply unless agreed to in writing by APS. APS's commencement of performance shall not be construed as acceptance of any of Buyer's terms

2. Pricing and Payment Terms

A. Currency and Taxes: All prices are in U.S. Dollars (USD) unless otherwise expressly stated in writing. Buyer is responsible for all sales, use, and excise taxes, as well as all duties, tariffs, and import/export costs.

B. Standard Terms: Unless otherwise agreed in writing, payment terms are Net 30 days from the date of invoice. APS reserves the right to require prepayment, a letter of credit, or a deposit for any order at its sole discretion.

C. Late Payments: All past-due amounts shall be subject to a late payment charge of 1.5% per month (18% per annum), or the maximum rate permitted by law, whichever is less. Buyer shall reimburse APS for all costs incurred in collecting any late payments, including, without limitation, reasonable attorneys' fees and court costs.

D. Credit Modification: APS reserves the right to modify, suspend, or withdraw credit terms at any time if, in APS's sole opinion, Buyer's financial condition or payment history warrants such action.

E. RETENTION OF TITLE (SECURITY INTEREST): > UNTIL FULL PAYMENT FOR THE GOODS HAS BEEN RECEIVED BY APS, APS RETAINS, AND BUYER HEREBY GRANTS TO APS, A PURCHASE MONEY SECURITY INTEREST (PMSI) IN THE GOODS SOLD AND ANY PROCEEDS THEREOF. BUYER AUTHORIZES APS TO FILE ANY FINANCING STATEMENTS (SUCH AS UCC-1 FORMS) OR OTHER DOCUMENTS NECESSARY TO PERFECT THIS SECURITY INTEREST. IN THE EVENT OF DEFAULT IN PAYMENT, APS SHALL HAVE ALL THE RIGHTS AND REMEDIES OF A SECURED PARTY UNDER THE UNIFORM COMMERCIAL CODE, INCLUDING THE RIGHT TO REPOSSESS THE GOODS WITHOUT NOTICE.

3. Delivery, Risk & Incoterms

A. Incoterms: Unless otherwise agreed in writing, all goods are sold EXW (Ex Works) APS's facility or the manufacturer's shipping point (Incoterms 2020). Buyer is responsible for all freight, insurance, and handling costs. If APS arranges shipping at Buyer's request, Buyer shall reimburse APS for all related costs plus a reasonable handling fee.

B. Transfer of Risk and Title: Risk of loss or damage shall pass to the Buyer immediately upon APS making the goods available to the carrier at the shipping point. APS is not responsible for any damage, loss, or theft occurring during transit. Buyer must file any claims for shipping damage directly with the carrier.

C. Delivery Estimates: Delivery dates and lead times provided by APS are estimates only and do not constitute a guarantee of delivery by a specific date. Time shall not be of the essence with respect to delivery.

D. Installments: APS reserves the right to make delivery in installments. Delay in delivery of one installment shall not entitle Buyer to cancel any other installment or the remaining balance of the order.

E. Excusable Delay: APS shall not be liable for any delays in delivery, failure to perform, or "machine downtime" resulting from:

- Carrier or logistics disruptions;
- Delays at the supplier or OEM level;
- Shortages of materials or labor;
- Force Majeure events

4. Inspection & Acceptance

A. Inspection Period: Buyer shall inspect the goods immediately upon receipt at the delivery destination. Any claims for shortages, visible damage, or non-conformity must be submitted to APS in writing within ten (10) calendar days of delivery.

B. Deemed Acceptance: Failure to provide written notice of a claim within the ten-day period shall constitute an unqualified and irrevocable acceptance of the goods and a waiver by Buyer of all claims for shortages, damage, or non-conformity.

C. Use Constitutes Acceptance: Notwithstanding the inspection period, any use, installation, or alteration of the goods by the Buyer, its employees, or agents shall constitute immediate and final acceptance of the goods.

D. Evidence of Claim: In the event of a claim for damage or non-conformity, Buyer must:

- Retain all original packaging and shipping materials;
- Provide APS with photographic evidence and a detailed description of the defect;
- Allow APS or its agent a reasonable opportunity to inspect the goods in the condition they were received.

5. Warranty

A. Limited Part Warranty: APS warrants that parts sold hereunder will be free from defects in material and workmanship for a period of ninety (90) days from the date of shipment, unless a different period is stated on the invoice or quote. This warranty applies only to the repair or replacement of the defective part and does not cover labor for removal or reinstallation.

B. Limited Service Warranty: APS warrants that its services will be performed in a professional and workmanlike manner. Any claim for breach of this service warranty must be made within thirty (30) days of the date the services were performed.

C. Warranty Exclusions: The warranties provided in this Section do not apply to:

- Any part that has been subjected to misuse, neglect, or accident;
- Damage caused by improper installation, storage, or maintenance by the Buyer or third parties;
- Normal wear and tear;
- Consumable items (e.g., seals, filters, fuses).

D. Third-Party / OEM Products: PRODUCTS MANUFACTURED BY THIRD PARTIES ("OEM GOODS") ARE SOLD "AS IS." APS MAKES NO SEPARATE REPRESENTATIONS OR WARRANTIES WITH RESPECT TO OEM GOODS. TO THE EXTENT PERMITTED BY THE MANUFACTURER, APS WILL PASS THROUGH ANY APPLICABLE MANUFACTURER WARRANTIES TO THE BUYER.

E. CONSPICUOUS DISCLAIMER OF ALL OTHER WARRANTIES: EXCEPT FOR THE EXPRESS LIMITED WARRANTIES STATED ABOVE, APS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND HEREBY SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO: (I) THE IMPLIED WARRANTY OF MERCHANTABILITY; (II) THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; AND (III) ANY WARRANTY AGAINST INFRINGEMENT.

F. Exclusive Remedy: Buyer's sole and exclusive remedy for any valid warranty claim is limited to the repair or replacement of the part, or a refund of the purchase price, at APS's sole option, subject to the limitations set forth in Section 7.

6. Returns (Parts Only)

A. Authorization Required: No returns will be accepted without prior written authorization from APS in the form of a Return Merchandise Authorization (RMA) number. Items returned without an RMA number will be refused and returned to the Buyer at Buyer's expense.

B. Condition of Goods: To be eligible for a return, parts must be:

- Unused and in "as-new" condition;
- In the original, unopened manufacturer's packaging;
- Accompanied by the original invoice and RMA documentation.

C. Non-Returnable Items: The following items are FINAL SALE and cannot be returned under any circumstances:

- Electrical or Electronic components (due to the risk of internal damage during installation/testing);
- Special Order, Custom-made, or Modified items;
- Seal kits, gaskets, or opened software/manuals.

D. Return Schedule & Restocking Fees: Returns are subject to the following schedule based on the date of original delivery:

- 0–15 Days: No restocking fee (Applies to U.S. stock items only).

- 15–30 Days: 25% restocking fee (Applies to non-stock, imported, or factory-direct items).
- 30–45 Days: 50% restocking fee.
- After 45 Days: Returns are generally not accepted. Any exception is at the sole and absolute discretion of APS and may be subject to higher fees.

E. Shipping and Inspection: Buyer is responsible for all return freight, insurance, and duties. All returns are subject to a final inspection by APS or the OEM upon receipt. If the part is found to be used, damaged, or altered, the return will be denied, and no credit will be issued.

7. Limitation of Liability

A. MAXIMUM AGGREGATE LIABILITY: IN NO EVENT SHALL APS'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THE SALE OF GOODS OR SERVICES, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO APS BY BUYER FOR THE SPECIFIC PRODUCTS OR SERVICES GIVING RISE TO THE CLAIM.

B. SPECIFIC EXCLUSION OF DAMAGES: UNDER NO CIRCUMSTANCES SHALL APS BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY:

- LOSS OF PRODUCTION, LOSS OF USE, OR MACHINE DOWNTIME;
- LOSS OF REVENUE, ANTICIPATED PROFITS, OR BUSINESS OPPORTUNITIES;
- COST OF REPROCUREMENT OR "COVER" (PURCHASING SUBSTITUTE PARTS ELSEWHERE);
- SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES.

C. APPLICATION OF EXCLUSIONS: THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE BUYER'S EXCLUSIVE REMEDY (REPAIR, REPLACEMENT, OR REFUND) FAILS OF ITS ESSENTIAL PURPOSE, AND REGARDLESS OF WHETHER APS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES WERE FORESEEABLE.

8. Intellectual Property Rights

A. Ownership: All intellectual property rights, including but not limited to patents, trademarks, copyrights, trade secrets, designs, drawings, and software associated with the goods or services provided by APS, are and shall remain the sole and exclusive property of APS or the original equipment manufacturer (OEM).

B. Limited License: The sale of goods or services to Buyer does not grant or transfer any ownership interest in APS's or any OEM's intellectual property. Buyer is granted a non-exclusive, non-transferable, limited license to use any provided documentation or software solely for the operation and maintenance of the specific equipment purchased.

C. Restrictions: Buyer shall not:

- Reverse engineer, decompile, or disassemble any parts or equipment provided by APS;
- Copy, distribute, or modify any proprietary manuals, drawings, or software provided by APS;
- Remove or obscure any trademark, copyright, or proprietary markings on the goods.

9. Export Compliance and Sanctions

A. Compliance with Laws: Buyer acknowledges that the goods, software, and technology ("Items") purchased from APS are subject to the export control and economic sanctions laws and regulations of the United States, including but not limited to the Export Administration Regulations (EAR) and regulations administered by the Department of the Treasury's Office of Foreign Assets Control (OFAC).

B. Restrictions: Buyer represents and warrants that it shall not, directly or indirectly, export, re-export, or transfer any Items:

- To any country or territory subject to a U.S. government embargo (currently including, but not limited to, Cuba, Iran, North Korea, Syria, and the Crimea, Donetsk, and Luhansk regions);
- To any party listed on a U.S. government "Prohibited" or "Restricted" party list (such as the Specially Designated Nationals List);
- For any end-use prohibited by U.S. law, including the design, development, or production of nuclear, chemical, or biological weapons.

C. Cooperation: Buyer shall provide APS with all information and documentation necessary for APS to comply with export and import regulations. APS reserves the right to cancel any order if it determines, in its sole discretion, that the transaction may violate applicable export laws.

10. Safety and Proper Use

A. Professional Installation: Buyer acknowledges that the goods sold by APS are industrial in nature and may be hazardous if handled or installed improperly. Buyer represents that all Items will be installed, maintained, and operated only by qualified, trained professionals in accordance with industry standards and the manufacturer's specifications.

B. Compliance with Safety Standards: Buyer is solely responsible for ensuring that the use and operation of the Items comply with all applicable local, state, and federal safety regulations, including but not limited to Occupational Safety and Health Administration (OSHA) standards and American National Standards Institute (ANSI) guidelines.

C. No Safety Consulting: APS is a supplier of parts and services only. Any technical advice or assistance provided by APS is given as a courtesy and does not relieve Buyer of its responsibility for the safe integration and operation of the equipment.

D. Alterations: APS shall have no liability for any Item that has been modified, altered, or repaired by any party other than APS or an authorized service provider.

11. Termination for Cause

A. Right to Terminate: APS reserves the right to terminate any order, in whole or in part, or suspend future deliveries/services immediately upon written notice to Buyer if:

- Buyer fails to pay any amount when due;
- Buyer breaches any other provision of these Terms (including Safety, Export, or IP clauses);

- Buyer becomes insolvent, files for bankruptcy, or undergoes a change in control.

B. Effect of Termination: Upon termination, all outstanding amounts owed by Buyer to APS for goods shipped or services performed shall become immediately due and payable. APS shall not be liable to Buyer for any damages, production losses, or downtime resulting from such termination.

C. Cumulative Remedies: The right to terminate is in addition to, and not in lieu of, any other legal or equitable remedies available to APS.

12. Indemnification

A. Buyer's Indemnity: Buyer shall indemnify, defend, and hold harmless APS and its officers, directors, employees, agents, and affiliates (collectively, "Indemnitees") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification under this Agreement, arising out of or occurring in connection with:

- Improper Use: Any use, operation, or application of the goods or services by Buyer or any third party that is inconsistent with manufacturer specifications or industry safety standards;
- Negligence: Any negligent or more culpable act or omission of Buyer or its personnel (including reckless or willful misconduct) in connection with the installation, maintenance, or operation of the goods;
- Third-Party Claims: Any claim by a third party (including Buyer's employees, customers, or end-users) for personal injury, property damage, or economic loss arising out of the Buyer's possession or use of the items sold hereunder;
- Modifications: Any unauthorized modification or alteration of the goods by the Buyer or a third party.

B. Procedure: APS shall notify Buyer of any claim for which it seeks indemnification. Buyer shall immediately assume the defense of such claim with counsel reasonably acceptable to APS. APS reserves the right to participate in the defense at its own expense.

13. Governing Law

A. Governing Law: This Agreement and all matters arising out of or relating to it shall be governed by and construed in accordance with the internal laws of the State of Rhode Island, without giving effect to any choice or conflict of law provision or rule. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is specifically excluded.

B. Jurisdiction and Venue: Any legal suit, action, or proceeding arising out of or related to this Agreement shall be instituted exclusively in the federal or state courts located in Providence County, Rhode Island. Each party irrevocably submits to the exclusive jurisdiction of such courts and waives any objection to venue based on *forum non conveniens*.

C. Arbitration Option: Notwithstanding the above, APS may, at its sole and absolute discretion, elect to resolve any dispute, controversy, or claim through binding arbitration in Rhode Island. If APS elects arbitration, the arbitration shall be conducted by the American Arbitration Association (AAA) under its

Commercial Arbitration Rules, and the judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

D. Attorneys' Fees: In the event of any litigation or arbitration to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

10. Force Majeure

A. Excusable Non-Performance: APS shall not be liable or responsible to Buyer, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of APS.

B. Scope of Events: Such acts or circumstances shall include, without limitation:

- Natural Disasters: Acts of God, flood, fire, earthquake, explosion, or other catastrophes;
- Global Health: Epidemics, pandemics, or localized health emergencies;
- Political & Civil: War, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest;
- Governmental: Government order, law, or actions, including embargoes, export/import restrictions, or national emergencies;
- Labor & Supply Chain: Strikes, labor disputes, or "force majeure" events occurring at the level of APS's suppliers or original equipment manufacturers (OEMs);
- Logistics: National or regional shortage of adequate power or transportation facilities, port congestion, or carrier delays.

C. Notice and Resumption: APS shall provide Buyer with notice of the Force Majeure event as soon as reasonably practicable. If the event continues for a period of more than sixty (60) days, APS may terminate the affected order without penalty or liability, except for the refund of any prepayments for goods not yet shipped.

11. Miscellaneous

- A. Entire Agreement: These Terms and Conditions, along with the specific details on the APS invoice or quote, constitute the entire agreement between the parties. This Agreement supersedes all prior or contemporaneous understandings, agreements, negotiations, representations, and communications, both written and oral.
- B. Amendments: No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of APS. No terms or conditions provided in a Buyer's Purchase Order shall vary these Terms unless specifically agreed to in writing by APS.
- C. Severability: If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such invalidity shall not affect any other term or provision of this Agreement.

- D. Waiver: No waiver by APS of any of the provisions of this Agreement is effective unless explicitly set forth in writing. No failure to exercise, or delay in exercising, any right or remedy arising from this Agreement shall operate as a waiver thereof.
- E. Assignment: Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of APS. Any purported assignment in violation of this Section is null and void.
- F. Relationship of the Parties: The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties.