

# **APPLIED TECHNICAL SERVICES, INC.**

## **TERMS AND CONDITIONS OF PURCHASE**

1. The terms and conditions set forth below, together with the Purchase Order, and any attachments, exhibits, specifications, drawings, notes, quality assurance provisions, safety provisions, or other information contained or referred therein, shall apply to the purchase of the goods and/or services described in the Purchase Order (“Contract Documents”). The Contract Documents constitutes the entire agreement between Buyer and Seller, and supersedes any and all prior oral and/or written communication related thereto. Notwithstanding to the contrary in the Contract Documents, in the event of a conflict, the terms set forth herein shall govern.
2. Definitions: The term “Buyer” shall mean Applied Technical Services, Inc. (“ATS”). The term “Seller” shall be the entity to which the Purchase Order is issued. The description in the Purchase Order of the goods and/or services to be provided by Seller to Buyer shall be termed interchangeably as the “Products” or the “Work” and be referred to herein as “Products” or “Work”. The entity with which Buyer has a contract for which Work is being purchased shall be termed the “Customer”.
3. ANY TERMS PROPOSED IN SELLER’S ACCEPTANCE WHICH ADD TO, VARY FROM, OR CONFLICT WITH THE TERMS HEREIN ARE REJECTED AND VOID, UNLESS SPECIFICALLY ACCEPTED BY BUYER IN WRITING. ABSENT SELLER’S WRITTEN ACCEPTANCE OF THE PURCHASE ORDER, ANY PERFORMANCE BY SELLER UNDER THIS PURCHASE ORDER CONSTITUTES FULL ACCEPTANCE OF THE TERMS AND CONDITIONS AS SET FORTH HEREIN.
4. Changes: Buyer shall have the right, by written change order, to make changes, deletions and/or additions to the Product. Seller agrees to comply with such change orders/notices if commercially possible. If the change materially increases or decreases the cost or time for performance, an equitable adjustment will be negotiated in writing and executed between by the parties. Any claim for adjustment must be asserted by Seller within (10) days after receipt of any such change order. Seller shall proceed with the change(s) pending resolution of any dispute.
5. Delivery: Time is of the essence. Seller shall furnish sufficient labor, material, services, management forces, plant and equipment and shall work such hours including night shift, overtime, weekend and holiday work as may be required by Buyer to assure compliance with the established delivery date at no additional charge to Buyer. Seller guarantees delivery by the dates set forth in the Purchase Order. Seller shall promptly notify Buyer of any actual or anticipated delay in delivery and shall take all responsible steps to avoid or end delays without additional cost to Buyer. If Seller does not comply with Buyer’s delivery date(s), Buyer may require delivery by fastest way with all charges associated therewith absorbed by the Seller. In the event Seller fails to make timely delivery to Buyer, or repudiates its obligations to deliver the Products, in whole or part, Buyer shall have the right (but not the obligation), to procure the Product by other vendors and charge all costs associated therewith to the Seller. The rights and remedies of the Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order.
6. Indemnity: Seller hereby agrees to defend, indemnify and hold harmless Buyer, its Customer, and each of their affiliates, employees, officers, directors, and agents (“Indemnified Party”) from and against any and all claims, suits, losses, damages, liability, cost and expense, including but not limited to, consequential and punitive damages, and reasonable attorneys’ fees, arising out of any injury (including death) to any person or damage to any property, or other financial loss (collectively “Claims”), resulting from or in any way connected with the Products, regardless of whether such loss, damage, liability, cost or expense is caused in part by an Indemnified Party. Neither this paragraph nor any other provision herein shall be construed to be an indemnification against any loss, damage, liability, cost or expense to the extent caused solely by the negligence or willful misconduct of such Indemnified Party. Seller also agrees to indemnify, defend, and hold harmless Buyer against all Claims asserted by its Customer arising from or related to the Products.
7. Warranty: Seller hereby warrants the Products will be free from defects and in full conformity with all specifications, drawings and data, and Seller’s sample (if applicable), and that such Products will be merchantable and fit for the particular purpose for which it is required. The Seller shall obtain all sub-tier manufacturers’ warranties in writing and deliver them to the Buyer on or prior to the date of Buyer Acceptance. If a manufacturer offers a warranty on selected Products which is longer than the Seller’s warranty on such Product, such longer warranty shall be passed through to Buyer and Seller will make reasonable efforts to assist Buyer in enforcing such longer warranty. Seller agrees that this warranty shall survive acceptance of the

Products and shall run to Buyer and its Customer, and all successors, assigns, owners, and users thereof. Said warranty shall be in addition to any warranties of additional scope given to Buyer by Seller. If the Products are found to be defective or otherwise not in conformity with the Quote or Purchase Order, or with the drawings and/or specifications, Seller shall promptly undertake all corrective action necessary to bring the Products into conformity at Seller's sole expense. In the event of a material non-conformity in the Products, Buyer may also take any of the following actions, at its discretion, by written notice to Seller: (i) Require Seller to immediately correct and repair the Product and all affected areas (ii) reject the Products and require immediate delivery of replacement Products; (iii) return Products freight collect and Seller refund all sums paid. If Seller fails to deliver such required replacement within 10 days of receipt of notice of the request, Buyer may (i) replace the Product and charge Seller with all costs related to the replacement, including reasonable charges for administration or (ii) terminate the Agreement for default. No inspection, test, or acceptance of product by Buyer shall relieve Seller of its warranty obligations or other obligations to meet the requirements hereof. Rights granted to Buyer herein are in addition to any other remedies provided by law.

8. Liability: In no event shall Buyer be liable to the Seller (in contract or in tort, including negligence) for special, indirect incidental, punitive or consequential damages including, but not limited to, interest or carrying charges on its investment, expenses arising from costs of capital, loss of profits on work not performed, or for loss of use of, or under utilization of labor, equipment or facilities.
9. Patents: Seller shall at its sole expense indemnify, hold harmless and defend the Indemnified Party from and against, any suit or proceedings based on a claim that the manufacture, use or sale of any Product, or any part thereof, constitutes infringement of any patent, copyright, trademark, or propriety information right of others, and Seller shall pay all damages and costs awarded therein against any Indemnified Party. If any Product or any part thereof is in such suit held to constitute infringement or the sale or use of said product or parts enjoined, regardless of whether such determination constitutes a final judgment, Seller shall, at its expense, either procure for Buyer the right to sell and use said Product, or replace same with substantially equal by non-infringing Products; or if approved by Buyer, remove said Product and refund the purchase price and the transportation and the installation cost thereof
10. Confidential Information: All designs, drawings or other written information obtained by Seller from Buyer in connection with this Purchase Order are received in confidence and shall remain the property of Buyer ("Confidential Information"). Seller shall not use or disclose any such Confidential Information details to any third party or internally other than to the extent necessary for the performance of this Purchase Order, without obtaining the prior written consent of Buyer. Buyer does not grant or convey to Seller by virtue of this Purchase Order any reproduction rights to the Confidential Information.
11. Risk of Loss: Deliveries shall be made FOB destination unless otherwise specified in the body of the Purchase Order. Risk of loss of Work shall pass to Buyer upon final acceptance.
12. Shipment and transportation: Seller's quoted prices shall include packing, freight and transportation to FOB location as directed by Buyer, unless a different term is stated on the face of the Purchase Order. All Work shall be properly marked for identification purposes in accordance with good commercial practices to obtain lowest transportation rates and accompanied by an itemized packing list. Upon delivery to the Buyer's designated location, risk of loss shall pass from Seller, provided, that any loss or damage which results from Seller's non-conforming packaging or crating shall be borne by the Seller. Seller shall not make partial shipments or deviate from the shipping instructions herein without written consent of Buyer. Buyer may return or store at Sellers expense any Work delivered in advance of delivery dates shown herein or called for by Buyer. The obligations of Seller and Buyer under the terms of delivery stipulated in the Purchase Order shall be as defined in either the Uniform Commercial Code or "Incoterms 2010".
13. Subcontracting: Seller shall not subcontract any portion of Work without prior written approval of Buyer. Assignment by Seller of the Purchase Order or any interest therein or any payment due or to become due hereunder without prior written consent of Buyer, shall be void.
14. Substitution: No substitutions of Products or Work or accessories shall be done without prior written permission from Buyer.

15. Suspension: Buyer may, at any time, by written notice to Seller, suspend performance of the Work. Said notice of suspension shall specify the date of suspension and estimated duration of suspension. Upon receiving any such notice, Seller shall promptly suspend further performance of this Purchase Order to the extent specified, and during the period of such suspension shall properly care for and protect all Work in progress and materials, supplies and equipment Seller has on hand for performance of this Purchase Order. Buyer may, at anytime, withdraw the suspension or performance of Work as to all or part of the suspended Order by written notice to Seller specifying the effective date and scope of withdrawal, and Seller shall resume diligent performance of the Purchase Order for which the suspension is withdrawn and the specific effective date of withdrawal.
16. Termination for Convenience or Default: (a). Buyer shall have the right to terminate this Purchase Order for its convenience, in whole or in part, at any time by written notice whenever it determines such termination to be in its best interest. In such event, Seller shall promptly comply with the directions contained in such notice and shall, subject to such direction, (1) take necessary action to terminate the Work as provided in the notice, minimizing costs and liabilities, (2) protect, preserve and deliver any property related to this Purchase Order which is in Seller's possession pursuant to Buyer's direction; and (3) continue the performance of such Work, if any, not terminated by the notice. Seller will be paid the cost of all Work properly performed up to the date of termination. (b). Buyer shall have the right to terminate the Purchase Order for default, in whole or in part, by written notice to the Seller if: (1) Seller fails to deliver the Products (including the performance of any services) within the time or manner provided under the Purchase Order, or (2) Seller becomes insolvent or makes an assignment for the benefit of creditors, commits an act of bankruptcy or files or has filed against it a petition in bankruptcy or reorganization proceedings; or (3) Seller fails to comply with any material term of this Agreement. In the event Buyer terminates this Order, in whole or in part, for default, Buyer may procure, upon such terms as Buyer may deem appropriate, Products similar to those so terminated and Seller shall be liable to Buyer for any excess cost (including but not limited to lost profits, administrative overhead, and the like) incurred to procure such similar Products in a timely manner. Buyer has the right to withhold all payments until the issue is finally resolved. If the cost to procure substitute Products exceeds the unpaid balance owed to Seller, Seller shall pay the difference within 10 days of receipt of Buyer's invoice. In addition, Buyer may, at its option, require Seller to deliver to Buyer any completed or partially completed Products related to this Purchase Order.
17. Customer Change, Suspension or Termination: In the event that a change, suspension or termination for convenience occurs at the Customer's direction, Seller agrees that its sole recourse for such termination will be to recover whatever amounts Buyer receives from its Customer for the Products.
18. Waiver of Terms: Any waiver of terms and conditions of this Agreement shall not prevent Buyer from thereafter insisting upon complete compliance therewith, with respect to subsequent deliveries of Products and shall not constitute a waiver.
19. Work on site: If Seller's Work under this Purchase Order involves operations by Seller on the premises of Buyer or of its Customer(s). Seller shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and shall defend and indemnify Buyer against any claim which may result in any way from any act or omission of the Seller, its agents, employees, or subcontractors.
20. Insurance: Seller shall maintain Comprehensive General Liability Coverage, including Contractual Liability Coverage insuring the liabilities assumed herein and Automobile Liability and Employer's Liability insurance with limits of at least \$1 million general aggregate and \$2 million each occurrence, as well as appropriate Workers' Compensation insurance as will protect Seller and its Customer from all claims under any applicable Workers' Compensation and Occupational Disease Act, and Professional Liability E & O if Seller is performing professional services as part of the Work of at least \$1 million. Seller shall furnish to Buyer a Certificate of Insurance completed by its insurance carrier(s) certifying that required insurance coverage is in effect and will not be canceled or materially changed without prior written notice to the Buyer. Applied Technical Services, Inc., its Customer, and their Subsidiaries, Affiliates, Members, Partners, Shareholders, Officers, Directors, Managers, Agents and Employees shall be named as additional insured with respect to General Liability, Auto Liability and E&O Professional Liability. Waiver of subrogation is applicable to General Liability, Auto Liability, E&O Professional Liability and Workers Compensation, coverage is Primary and Non-Contributory. Seller will issue policy endorsements in favor of the Buyer guaranteeing the foregoing coverage. Any failure of Buyer to object to the sufficiency of Seller's certificate of insurance shall in no way relieve Seller of its insurance obligations under this Section 20. In no event shall Seller's liability for the Work be limited by any of the insurance required under this Section.

21. Compliance with laws: Seller and all of its covered subcontractors shall abide by the requirements of 29 CFR Part 471, Appendix A to Subpart A, 41 CFR 60-1.4(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based upon their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability
22. Payment Terms: Payment shall be made as stated in the PO, payable when an acceptable invoice is received and all Work delivered in accordance with the requirements of this Purchase Order.
23. Taxes: All prices in the Purchased Order are inclusive of Federal, State, Municipal or other States sale or use tax with respect to the Product(s).
24. Title and Lien Waiver: Title to and right to possession of the Work shall transfer to Buyer upon the earlier of the date when Work is delivered to Buyer or the date of payment of Seller's invoice(s). Seller warrants full and unrestricted title to Buyer and Customer for all Work furnished by Seller under the Purchase Order, free and clear of any and all liens, restrictions, reservations, security interest, and encumbrances. Seller hereby waives for itself, its successors, assigns, subcontractors, or anyone performing services for Seller in connection with the Purchase Order, any and all claim or right of lien which it may use as a result of the performance of the Purchase Order, against the property of Buyer or the Customer. If requested by Buyer, Seller will provide Buyer with written waivers of lien, for itself and for the other parties referenced above, prior to its receiving payment on any invoice or at any other time requested by Buyer.
25. Arbitration, Jurisdiction, Venue and Governing Law: In the event a dispute should arise between the parties, or a breach occurs, and if said dispute cannot be settled through negotiation, the Parties agree to settle the dispute by Arbitration in State of Georgia, County of Cobb in accordance with the Commercial Rules of the American Arbitration Association. The award rendered by the Arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal. The entering into, construction, interpretation, performance, and discharge of the Terms and Conditions set forth under this PO shall be governed in accordance with the laws of the State of Georgia.
26. Entire Agreement: These terms may not be modified or amended, except in writing, signed by the authorized representative of both Buyer and Seller. Trade custom and/or usage are superseded by the Purchase Order and shall not be applicable in the interpretation of the Purchase Order.

## **IMPORTANT INVOICE PAYMENT GUIDELINES**

To insure timely payment of invoices, ensure the following requirements are met:

- 1). All invoices shall indicate Invoice Number and Invoice Date and be sent to:

Applied Technical Services, Inc  
Attn: Accounts Payables  
Department 1049 Triad Ct  
Marietta, GA 30062

Or via email at [invoices@atslab.com](mailto:invoices@atslab.com)

- 2) All invoices shall indicate the applicable Buyer Purchase Order Number and specific Purchase Order Line item(s) for which the invoice applies.
- 3) All invoices shall indicate specific dollar amount(s) matched to the Purchase Order Line Item. Should the invoice dollar amount(s) be less than the Purchase Order Line Item amount(s), the invoice shall include brief explanation and brief Line Item Description. In the event the invoice dollar amount(s) is greater than the Purchase Order Line amount(s), ATS will pay the Purchase Order amount(s). Seller's performance and/or shipment in excess of the Purchase Order amount(s) is done so at its own risk. Seller's Point of Contact is to be indicated on invoice with contact phone number and email.
- 4) Invoice Payment Terms are as stated on the face of the Purchase Order.
- 5) All Freight Invoices for Pre-pay and Add Freight cost shall include a copy of Freight Bill and Bill of Lading.
- 6) Final Invoices shall always include an executed Waiver of Lien Form if required by the terms of the Purchase Order.
- 7) Transfer of property title will take place once Seller's invoice is issued to ATS.
- 8) Seller should ensure that data or document items have been provided to the Buyer's recipient as indicated within the Purchase Order