

AccraFab, Inc. Terms and Conditions of Purchase

1. **Scope and Acceptance.** Unless Supplier and AccraFab, Inc. (AFI) have entered into a separately executed agreement that governs the purchase by AFI and sale by Supplier of goods and services, then AFI's offer to purchase the goods and/or services set forth on this purchase order (collectively, "Items") can only be accepted by Supplier upon these Terms and Conditions of Purchase. Supplier may accept these Terms and Conditions of Purchase by the commencement of performance; or by indicating acceptance in writing or electronically. Upon acceptance these Terms and Conditions of Purchase become the "Agreement" between Supplier and Applied for the purchase of the Items. No change, addition or modification to this Agreement will be effective unless set forth in a record that is signed by a duly authorized representative of AFI.
2. **Proprietary Information and Prohibited Activities.**
 - a. **General.** AFI's "Proprietary Information" means all information obtained by, disclosed to, or developed by Supplier and this is based on, incorporates, constitutes, or is derived from any of the following:
 - i. Samples, schematics, drawings, designs, specifications, manuals, forecasts and other technical, business, financial or trade secret information obtained from or through AFI, and
 - ii. All other proprietary and confidential information (including the terms and existence of this Agreement) provided to Supplier by AFI or obtained by Supplier from AFI's databases or systems during the term of, or in connection with the performance of this Agreement. AFI grants to Supplier the right to use the Proprietary Information solely for the purpose of providing Items to AFI. Supplier will not disclose, discuss or use any Proprietary Information for any other purpose including, without limitation:
 1. Reverse engineering the Items;
 2. Issuing any press releases, advertising, making public statements or in any way engage in any other form of public disclosure;
 3. Developing, designing, manufacturing, engineering, refurbishing, selling or offering for sale, any Items, or parts or components of Items, including derivatives, improvements or equivalents thereof; or
 4. Assisting any third party in any manner to perform such activity.
 - iii. Supplier shall use reasonable care to protect confidentiality of the Proprietary Information, and in any event, Supplier shall use at least that degree of care that Supplier uses to protect its own similar information. If supplier determines that it must consult third parties for providing items to AFI, then Supplier shall ensure that such third parties have entered into an agreement with Supplier that protects AFI's interests in the same manner as set forth in this Agreement, and Supplier shall be responsible and liable for such third parties' compliance with the terms of this Agreement. Upon request, Supplier shall make such agreements available to AFI.
 - b. **Further Information.** On request, and in any event, upon termination of this Agreement, Supplier will return all Proprietary Information to AFI, and will in addition, provide to AFI current and complete specifications, designs, and drawings for each item produced for AFI, and any other information that is based on or incorporates AFI's Proprietary Information or its patents, copyrights or trade or service marks. All such information shall be the sole property of AFI.
 - c. **Prohibited Activities.** Except for delivery of Items to AFI, Supplier will not reverse engineer, develop, design, manufacture, refurbish, sell or offer for sale any Items about which Supplier has received or obtained Proprietary Information or assist any third party to perform any of such activities.
 - d. **Equitable Relief.** Supplier agrees that AFI would suffer irreparable harm for which monetary damages are an inadequate remedy, and that equitable relief is appropriate, if Supplier were to breach or threaten to breach any obligation in this Section.
3. **Warranty.**
 - a. **General.** Supplier warrants that all Items shall:
 - i. Be free from defects in design, workmanship, material, and manufacture;
 - ii. Be of merchantable quality and be fit and suitable for the purpose intended by AFI;
 - iii. Comply with the requirements of this Agreement, including any of AFI's specifications, drawings, or samples
 - iv. Consist of new (not used or recycled) material
 - v. Be delivered with good and marketable title, free and clear of all liens, claims and encumbrances; and
 - vi. To the extent consisting of services, be performed in a workmanlike and professional manner in accordance with the highest industry standards. The foregoing warranties are in addition to all other warranties, express or implied, and service delivery, inspection, acceptance, or payment by AFI.
 - b. **Infringement.** Supplier warrants that all Items, the sale of Items by Supplier, and the use and sale of Items by AFI are and will be free from liability for infringement of, or claim of royalties for, patent rights, copyright, trademark, trade secrets, or encumbrances of any person or entity (collectively "Rights and Encumbrances").
 - c. **Remedies.** If an item does not meet its warranty requirements, then in addition to remedies available under applicable law, AFI may, at its option:
 - i. Require Supplier to replace the Item or repair the Item;
 - ii. Return the Item to Supplier and recover the purchase price;
 - iii. Correct the Item itself and charge Supplier the reasonable cost of correction; or
 - iv. Return the Item to Supplier, purchase a comparable Item in the open market, and charge Supplier with any reasonable cost differential (including expediting manufacturing and delivery charges, if applicable).
4. **Inspection and Title Transfer.** Items are subject to inspection and test by AFI at all times and places, including during the period of manufacture, and in any event, at any time prior to final acceptance. Title to an Item will transfer to AFI upon final acceptance by AFI at AFI's delivery destination, unless otherwise specified on the face of the purchase order that is governed by this Agreement. Items are not accepted by reason of any preliminary inspection or payment of any invoice. If rejected or required to be corrected, Items shall be either replaced or corrected by and at the expense of Supplier as directed by AFI.
5. **Disclaimer and Limitation of Liability for Damages.** IN NO EVENT SHALL AFI BE LIABLE TO SUPPLIER OR TO ANY OTHER PERSON OR ENTITY UNDER ANY EQUITY, COMMON LAW, TORT, CONTRACT, ESTOPPEL, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR CONTINGENT DAMAGES, OR ANY DAMAGES RESULTING FROM LOSS OF SALE, BUSINESS, PROFITS, DATA, OPPORTUNITY OR GOODWILL, EVEN IF THE REMEDIES PROVIDED FOR IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE, AND EVEN IF AFI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
6. **Intellectual Property Rights and Licenses.**
 - a. **Transfer to AFI.** As partial consideration for this Agreement, any rights arising under patent, copyright, trade secret, trademark, mask works, moral rights, or other intellectual property rights in any jurisdiction (collectively, "IP Rights"), that are created, conceived, made or reduced to practice by or for supplier that relate to Items are hereby irrevocably assigned and transferred to AFI by Supplier unless such IP Rights
 - i. Were developed independent of, and do not contain or reflect the assistance (financial or otherwise), collaboration, input, involvement, development efforts, or relative or inventive contribution of AFI or AFI employees, consultants, contractors or other suppliers, and
 - ii. Do not reflect or rely upon AFI's Proprietary Information, and are not an improvement, enhancement, modification, or derivative work of any IP Right belonging to AFI or transferred to AFI by this Section. Supplier shall cause its employees, agents, contractors, and sub-tier suppliers (regardless whether they sell directly to Supplier) to also assign and transfer all such IP Rights to AFI consistent with the above terms.
 - b. **License to AFI.** If any Item incorporates or relies upon any IP Rights created, conceived, made or reduced to practice by or for Supplier that are not transferred to AFI by this Section (collectively "Supplier IP Rights"), then Supplier, as partial consideration for this Agreement, grants to AFI an irrevocable, non-exclusive, paid-up, world-wide right and license, with rights of sublicense, to use, distribute, import, improve, sell and have sold such Supplier IP Rights as is necessary for AFI to fully exploit the Items. AFI shall also be entitled to grant licenses to its customers to use such Supplier IP Rights as related to the operation of AFI's products.
 - c. **No Unauthorized Modification of AFI IP Rights.** Supplier shall not (and shall cause its employees, agents, contractors and sub-tier suppliers not to) improve, enhance, or modify IP Rights of AFI without AFI's prior written consent; if such an improvement, enhancement, or modification is nevertheless made, Supplier hereby irrevocably assigns and transfers to AFI, and Supplier shall cause its employees, agents, contractors, and sub-tier suppliers (regardless of whether they sell directly to Supplier) to also assign and transfer to AFI, all IP Rights in each such improvement, enhancement, or modification. If any of the foregoing transfers and assignment are to any extent ineffective, Supplier shall grant to AFI an irrevocable, non-exclusive, paid-up, world-wide right and license with rights of sublicense, to use, distribute, import, improve, sell and have sold, and make and have made such modifications to AFI's IP Rights.
7. **Responsibility for Goods; Risk of Loss.** Notwithstanding any prior inspections, risk of loss with respect to Items shall transfer from Supplier to AFI in accordance with the shipping or INCOTERMS set forth on the purchase order that is governed by this Agreement. Supplier bears all such risks with respect to any Items:
 - a. Rejected by AFI; or
 - b. Required to be corrected; provided, however that AFI shall be responsible for loss occasioned solely by the gross negligence of AFI employees acting within the scope of their employment. Items shall be shipped to AFI by Supplier in accordance with the terms of this Agreement.
8. **Duty Drawback.** Supplier will provide AFI with documentation acceptable to U.S. Customs and Border Protection (CBP), including CBP entry data and information, and receipts for duties paid, as AFI determines necessary for AFI to qualify for duty drawback. At the time of delivery of the merchandise, but in no event later than thirty (30) days after each calendar quarter, Supplier will provide said documents accompanied by a completed Delivery Certificate for Purposes of Drawback (CBP Form 7552) or other documentation required pursuant to 19 C.F.R. 191, or successor regulations. Supplier specifically transfers any rights to drawback to AFI, and agrees not to file any drawback claims for the delivered merchandise, and further agrees to maintain any and all records required by law which relate to the delivered merchandise and provide them to CBP upon request.
9. **Cancellation.**
 - a. **General.** AFI may cancel this Agreement in whole or in part by written or electronic notice, if Supplier:
 - i. Fails to deliver Items in accordance with specified delivery times, item requirements or other specifications;
 - ii. Fails to replace or correct defective Items as AFI requires;
 - iii. Fails to comply strictly with any provision of or repudiates or anticipatorily repudiates this Agreement;
 - iv. Becomes insolvent, files a petition for relief under any bankruptcy, solvency or similar law, makes an assignment for the benefit of its creditors, or takes any action for (or in anticipation of) any of the foregoing or
 - v. There is a material change in control or ownership of Supplier's business.
 - b. **Upon Cancellation.** Upon cancellation pursuant to this Section, Supplier shall:
 - i. Supply any portion of the Items for which this Agreement is not cancelled;
 - ii. Be liable for additional costs, if any, for the purchase of similar goods and services to cover such default; and
 - iii. At AFI's request, transfer title and delivery to AFI:
 1. Any completed items
 2. Any partially completed items and

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3. All unique materials and tooling. Pricing for partially completed Items and unique materials shall be negotiated, but in no event shall they exceed the price set forth herein. AFI's rights and remedies as described herein are in addition to any other rights and remedies provided at law or in equity.
10. **Indemnity by Supplier.** Supplier shall defend, indemnify and hold harmless AFI (and its officers, directors, agents and representatives) from and against any and all claims, suits, losses, penalties, damages (whether actual, punitive, consequential or otherwise) and associated costs and expense (including attorney's fees, expert's fees, and costs of investigation) and all liabilities that are caused in whole or in part by:
 - a. Any actual or alleged infringement of any Rights and Encumbrances;
 - b. Any breach by Supplier of this Agreement;
 - c. Any negligent, grossly negligent or intentional act, error or omission by Supplier, its employees, officers, agents or representatives in the performance of this Agreement; or
 - d. Any claims that are for, in the nature of, or that arise under warranty, strict liability or products liability with respect to or in connection with the Items.
11. **Force Majeure.** A failure by either party to perform due to causes beyond the control of and without the fault or negligence of such party is deemed excusable during the period in which such cause of failure continues. Such causes may include acts of God, or the public enemy, acts of Government (in sovereign or contractual capacity), fire, flood, epidemic, strike, freight embargo and unusually severe weather. When Supplier becomes aware of any actual or potential force majeure condition, Supplier shall immediately notify AFI of the condition.
12. **Shipping and Delivery.** Time is of the essence. No partial delivery or delivery of added quantities shall be made unless AFI has given prior written consent. Applicable shipping or INCOTERMS shall be as set forth on the purchase order that is governed by this Agreement. All prices for Items shown in this Agreement shall be deemed to include any fees or costs related to handling, packaging, crating, export or other related delivery expenses unless otherwise set forth in this Agreement. If the applicable purchase order indicates AFI will be responsible to pay for the delivery of Items, then Supplier will use the carrier and service level (e.g., ground, air, second-day, next-day) specified by AFI, and adhere to those instructions communicated by AFI as related to such shipment. Unless specifically approved by AFI in advance in writing, AFI shall not be responsible for
 - a. Delivery costs and expenses incurred as a result of Supplier's use of an unauthorized carrier or of a service level that exceeds the service level specified by AFI;
 - b. Any additional delivery costs and expenses incurred because of Supplier's use of expedited delivery methods or failure to comply with AFI's shipping instructions; or
 - c. Any delivery costs and expenses incurred in connection with the transportation of Items between Supplier and a sub-tier supplier or any other supplier. AFI may recover and offset or adjust payment for those delivery costs and expense that AFI incurs, and for which AFI is not responsible under this Section.
13. **Termination for Convenience.** AFI may terminate this Agreement for its convenience in whole or in part at any time by written or electronic notice. Upon such termination, Supplier shall, to the extent practicable and at the time specified by AFI, stop work and terminate outstanding orders under the Agreement, protect all property in which AFI has or may acquire an interest, and transfer title and make delivery to AFI of all Items, materials or other property held or acquired by Supplier in connection with the terminated portion of this Agreement. AFI's maximum liability for Items related to such termination shall be a pro-rata amount of the total Agreement price, less advances or other payments, based upon the price for Items delivered or completed prior to termination, and the actual costs (including a reasonable profit) for work in process incurred by Supplier which are allocable to the terminated portion of this Agreement. AFI shall have no liability at law or in equity under this Section unless Supplier submits a detailed claim to AFI within six months after AFI's notice of termination.
14. **Change Orders.** By written notice, AFI may suspend performance under this Agreement, change the quantities of Items, extend or shorten delivery requirements or make other changes within the general scope of this Agreement, including without limitation:
 - a. Applicable specifications, drawings, and other documents;
 - b. Method of shipment or packing; and
 - c. Place or date of delivery, inspection or acceptance.
 - d. If such a change causes an increase in the cost of or time required for Supplier's performance, an equitable adjustment shall be made in the price or other terms of this Agreement if requested by Supplier prior to change implementation. Supplier shall continue with performance of this Agreement in accordance with the notice of change or amendment. A change by AFI pursuant to this Section shall not constitute a breach or default by AFI.
15. **Invoices; Payment Terms.** Invoices shall contain purchase order number, a description of Items, quantities, unit prices, extended totals, applicable taxes and any other information specified by AFI. Payment of an invoice shall not constitute acceptance of Items and shall be subject to adjustment for errors, shortages, defects, or other causes. AFI may set off any amount owed by AFI against any amount owed by Supplier or any of its affiliated companies to AFI. Payment in connection with a any discount term will be calculated from:
 - a. Scheduled delivery date,
 - b. Actual delivery date, or
 - c. The date an acceptable invoice is received, whichever is latest;
 - d. Payment under a discount term is deemed made on the date of mailing of AFI's check. If payment is made electronically, payment shall be deemed made when the Supplier's depository institution receives or has control of the payment. AFI makes payments based on a weekly schedule where AFI designates one day per week (the "Weekly Payment Date") for payments due to Supplier. If the due date for payment to Supplier falls between Weekly Payment Dates, the Supplier will be paid on the next Weekly Payment Date.
16. **Import and Export.** Both parties shall comply with all applicable import and export control laws or regulations of any country (including the United States) with jurisdiction over the Parties or transactions occurring under this Agreement ("Import/Export Laws"). Neither party shall export, re-export or disclose Items or data to persons or destinations in violation of Import/Export Laws. Whichever party is responsible for the design of an Item must provide the other party with the information required to comply with Import/Export Laws. Supplier must provide all documentation required by U.S. Customs Regulations.
17. **Miscellaneous.**
 - a. Assignments. No right or obligation under this Agreement may be assigned by Supplier without the prior written consent of AFI. AFI may assign the rights or obligations or both of this Agreement in whole or part at any time.
 - b. Waiver. If AFI fails to insist on performance of any term or condition, or fails to exercise any right or privilege hereunder, such failure shall not constitute a waiver of such term, condition, right or privilege.
 - c. Survival of Obligations; Severability. The obligations of the following sections shall survive cancellation, termination or expiration of this Agreement: 1, 2, 3, 5, 6, 7, 8, 9b, 10, 12, 13, 15, and 16. Any provision of this Agreement that is held unenforceable or invalid for any reason shall be severed and the remainder of the Agreement shall continue in effect.
18. **Compliance with Laws.** Supplier warrants and represents that no law, rule, regulation, order or ordinance of the United States, a state, any governmental agency or authority of any country has been violated in supplying the Items ordered herein. Further, the parties hereby incorporate the requirements of 41 C.F.R. 60-1.4(a) (7), 60-300.5 and 60-741.5, if applicable, relating to equal opportunity clauses pertaining to government contracts.
19. **Governing Law, Exclusive Forum.** The Agreement shall be interpreted, enforced and governed by the laws of the State of Washington, excluding its choice of law rules. The exclusive forum for any dispute related in any way to this Agreement or the Parties' relationship shall lie in the courts, state or federal, of Washington, and venue shall lie in the courts of Spokane County. Items deemed and shall qualify as goods under the Uniform Commercial Code as adopted in Washington. Each Party consents to personal jurisdiction in the above courts
20. **CISG.** With respect to transactions to which the 1980 United Nations Convention on Contracts for the International Sales of Goods ("CISG") would otherwise apply, the rights and obligations of the parties under the Agreement shall not be governed by the provisions of the CISG.