

A. E. Petsche Company, Inc. Terms and Conditions

1. **SCOPE:** The terms and conditions of sale contained herein apply to all quotations made and purchase orders entered into by A. E. Petsche Company Inc., hereinafter ("Seller"). Therefore, acceptance of the Buyer's order is made only on the express understanding and conditions that insofar as the terms and conditions of this acceptance conflict with any terms and conditions of the Buyer's order, the terms and conditions of this acceptance shall govern, irrespective of whether the Buyer accepts these conditions by a written acknowledgment, by implication, or acceptance and payment of goods ordered hereunder. Seller's failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of the provisions of these terms and conditions. No change in terms and conditions of sale contained herein shall be binding upon Seller unless made in writing and signed by a duly authorized representative of Seller. The Seller shall not be bound by any communication from the Buyer which attempts to impose upon the Seller any obligations or conditions which are different from, or addition to, the Terms and Conditions hereof. The Buyer's acceptance of this order is limited to these Terms and Conditions.

2. **PAYMENT TERMS:** Unless Buyer has made previous credit arrangements satisfactory to the Seller, payment is due Net (30) days from invoice date. Payment for orders accepted on other terms shall be due in strict accordance with the terms quoted. Past due invoices are subject to a service charge of 1.5% per month (18% annual) on the unpaid balance or the maximum legal rate permitted by state law, whichever is lower. The Seller reserves the right, at its sole discretion, to modify or withdraw credit terms offered to Buyer at any time and to require security of payment in advance if the Seller, in its discretion, believes that Buyer will not satisfactorily perform its obligations hereunder or that Buyer's credit is impaired. If Buyer fails to make timely payment of any amount invoiced hereunder, the Seller shall have the right, in addition to any and all other rights and remedies available at law or in equity, to immediately revoke any or all credit extended, or to delay or cancel future deliveries. Buyer is responsible to the Seller for all reasonable attorney fees, court costs, and/or collection agency fees incurred by Seller should Buyer default on payment. Buyer acknowledges that the Seller retains full security interest in all products sold by Seller to Buyer until Buyer renders payment in full.

3. **SECURITY INTEREST:** These terms and Conditions constitute a security agreement under the Uniform Commercial Code and create a security interest in the products which are the subject of the order (the "Security Interest"). Such Security Interest secures payment and performance of all Buyer's obligations under this order. Buyer agrees to take all necessary action to maintain and preserve such Security Interest with respect to such products including, but not limited to, the executing, delivering, filing, re-filing, recording, or re-recording of any financing statements, continuation statements, or other security agreements, and the giving of such instruments of further assurance as Seller from time to time may request to protect the Security Interest. Without limiting the foregoing, Buyer appoints Seller as Buyer's attorney-in-fact to execute, deliver, and file such instruments for and on behalf of Buyer, but Seller shall not be required, and shall not be deemed to be under any duty to Buyer, any guarantor or surety with respect to this order, or any other person to protect, perfect, secure, or insure the Security Interest nor shall Seller have any obligation for, among other things, the filing of any financing statements under the Uniform Commercial Code. The limited power of attorney granted by Buyer in the immediately preceding sentence, being coupled with an interest, is deemed to be irrevocable by Buyer.

4. **SHIPMENT SCHEDULE:** Shipping promises or delivery promises are approximate. The Seller reserves the right to consider the total order and each delivery hereunder complete subject to a tolerance of minus 10% of the quantity ordered, unless otherwise agreed in writing. Goods shipped in excess of quantity ordered may only be returned if the amount returned exceeds 110% of the quantity ordered. In the event that the amount received falls within plus or minus 10% tolerance, the Buyer shall pay for the amount actually delivered. This schedule reflects the Seller's best estimates, in accordance with Buyer's desires, and every effort will be made to meet the schedule barring delays which Seller could not reasonably foresee at the time of establishment of the schedule. Seller assumes no liability, consequential or otherwise, resulting from failure to meet the schedule. In the event of delay in delivery or failure to manufacture, the Seller will not be required to pay premium freight charges.

5. **TAXES:** The prices quoted herein are subject to any addition which may be necessary to cover any tax or charge now existing or hereafter imposed by Federal, State, Municipal or other taxing authorities upon material or services herein describe, or the production, sale, storage, distribution or delivery thereof, or upon any aspect of this transaction. Prices quoted are exclusive of taxes or license. Seller does not report, pay, or collect any use tax, sales tax, or similar tax which may be imposed upon the Buyer under the laws of the state to which shipment is to be made. Buyer shall report any use taxes or similar taxes, which may be imposed upon Buyer and shall defend, indemnify and hold the Seller harmless therefrom.

6. **FOREIGN SALES:** Buyer is responsible for the entry of products into foreign countries in addition to the payment of import clearance costs, customs duties, fees, and foreign taxes (i.e. GST and VAT) unless otherwise agreed to in writing by the Seller in advance.

7. **PATENTS & TRADEMARKS:** The Buyer shall hold the Seller harmless against any expense or loss resulting from infringement of patents or trademarks arising from compliance with Buyer's designs or specifications or instructions. Seller shall not be liable for any infringement of any patent where infringement arises solely from use of the product with other devices or elements. With respect to all other items for which the buyer furnishes the design as specifications, the Buyer agrees to defend, indemnify and hold Seller harmless from all legal expenses which may be incurred by, and all damages and costs which may be assessed against the Seller in any action for infringement of any United States Letters Patent by such items sold hereunder. The Seller will promptly inform the Buyer of any such claims made against the Seller, and the Seller will cooperate with the buyer in every reasonable way to facilitate the defense of any such claim.

8. **LIMITED RIGHTS:** Buyer, under this contract, does not acquire any rights to Technical Data, Detailed Design Data or Detailed Manufacturing or Process Data Items delivered under this contract including proprietary and/or patented technology or devices. Buyer shall not analyze, evaluate, or reverse engineer to determine composition, formulation, or method of manufacture of any devices or hardware delivered under this contract, nor authorize others to do so. The Buyer may not assign its rights or obligations with respect to this sale to any person or entity without first obtaining the written consent of the Seller.

9. **PROCEDURES AND CLAIMS:** Return Goods Authorization – The Seller will not accept return of material, unless authorized in writing prior to shipment. (1) Granting the Buyer the "Authority" to return goods will not be construed to signify the acceptance of the goods themselves or of the Buyer's claim but will only signify Authority to physically return the goods so that they may be inspected, and so that proper "Disposition" of the Buyer's claim made be made after such inspection. (2) The Seller will reserve the right to return goods to the Buyer, after such inspection, with no credit to the Buyer, and with the Buyer to bear the transportation charges. (3) "Authorization" to a Buyer to return goods implies the use of the cheapest mode of transportation available, unless otherwise specifically indicated on the "Return Goods Authorization". (4) The maximum time lag between the original shipment of the goods and the request for "Authority" to return goods by the Buyer is 45 days, unless a specific exception is authorized by the Seller's Sales Manager. The maximum time lag for "Latent Defects" will be one year unless a specific exception is authorized by the Seller's Sales Manager. (5) No replacement orders will be processed until final "Disposition" has been made for the returned goods by the Quality Assurance Department. (6) No credit will be given or accounting entry made until final Quality Assurance Disposition has been made. (7) A restocking fee will be applied to all merchandise returned for credit unless the return is the result of an error by the Seller.

10. **WARRANTY:** Seller undertakes that products sold hereunder to Buyer shall be free from defects in material and workmanship and shall conform to specifications subject to the 45 day notice period set forth hereafter in this paragraph 10. No other express warranty is given and no affirmation of the seller by words or action shall constitute a warranty. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF. The remedies of the buyer and seller provided in this agreement are the exclusive and sole remedies of the parties. Upon receipt of written authorization and definite shipping instructions from Seller, Buyer shall return all defective material, or material not conforming to specifications, to Seller, after inspection by Seller, or at Sellers election, subject to inspection by Seller. Material can be returned only upon written authorization of Seller and must be returned within (60) sixty days of receipt of such authorization and of definite shipping instructions from Seller in same condition as when received by Buyer. Defective material or material not conforming to specifications, which is so returned shall be replaced or repaired by Seller without any additional charge, or, in lieu of such replacement or repair, Seller may refund the purchase price applicable to such

material. Seller agrees to pay return transportation charges not exceeding those which would normally apply from original destination on all defective material or material not meeting specifications. However, Seller shall not be obligated for such charges when material returned proves to be free from defect and to meet specifications. Seller shall hold material that proves to be free from defect and to meet specifications for shipping instructions and Buyer shall furnish such instructions promptly upon request. Seller's liability shall be limited solely to the replacement or repair or to refunding the purchase price applicable to defective material or material not meeting specifications. Seller shall not be liable for any consequential damages nor for loss, damages or expenses directly or indirectly arising from the use of the material including without limitation warehousing, labor, handling and service charges not expressly authorized by Seller. Anything herein to the contrary notwithstanding, products purchased or obtained by Seller from other manufacturers are warranted only to the extent of the original manufacturer's express warranty to Seller. Products sold by Seller shall not be considered defective or non-conforming to the Buyers' order if they (a) satisfactorily fulfill the performance requirements that were (i) provided by the Buyer to Seller or (ii) as published in the seller's product specification literature, or (b) in accordance with any written or verbal agreement between the Buyer and Seller, or (C) are in accordance with samples approved by the Buyer. This warranty shall not apply to any products or parts thereof which have been subjected to accident, negligence, alteration, abuse, or misuse. Also, disassembly of any Seller product by anyone other than an authorized representative of Seller voids this warranty in its entirety. SELLER'S AGGREGATE LIABILITY IN DAMAGES OR OTHERWISE SHALL NOT EXCEED THE PAYMENT, IF ANY, RECEIVED BY SELLER FOR THE UNIT OF PRODUCT OR SERVICE FURNISHED OR TO BE FURNISHED, AS THE CASE MAY BE, WHICH IS THE SUBJECT OF CLAIM OR DISPUTE. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, HOWSOEVER CAUSED. The Seller warrants only that all material manufactured by it (but not by others) shall be within Seller's standard limits of tolerance and variations or such limits of tolerance and variations as the Buyer and the Seller may agree upon in writing. The Seller, in full satisfaction of its liability hereunder to the Buyer, may replace or repair any material covered by this warranty which is returned by the Buyer (subject always to Paragraph 6 hereof) transportation charges prepaid and which examination proves not to be within the aforesaid limits of tolerances and variations. The Seller's liability for damages, expenses or costs of any kind shall be limited to the value of the material sold hereunder. The Seller shall not be liable for any repair or replacement of material covered by this warranty except those made with the Seller's prior written consent. The Seller shall be liable for breach of this warranty only if it receives written notice of such breach within forty-five (45) days from the date of shipment of the material to which the breach relates. THE SELLER MAKES NO WARRANTIES REGARDING MATERIAL MANUFACTURED BY IT OR BY OTHERS INCLUDING WITHOUT LIMITATION WARRANTIES AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES AGAINST INFRINGEMENT OF ANY PATENT, EITHER EXPRESS OR IMPLIED, EXCEPT AS PROVIDED ABOVE.

11. **PRICING:** AEP reserves the right to adjust pricing on customer orders with scheduled deliveries exceeding 120 days.

12. **TITLE - F.O.B. POINT:** All sales are made F.O.B. point of shipment. In the absence of written agreement to the contrary, the means of packaging, shipment, or delivery of goods shall be at the discretion of Seller. Buyer assumes all risk for loss or damage upon delivery by Seller of goods to carrier in good condition at F.O.B. point. Buyer shall be responsible for making claim against carriers for any loss, and for any damage, visible or concealed to goods while in transit. Any such loss or damage shall not relieve Buyer of any obligations hereunder. Any claims for loss or damage after risk of loss has passed as herein provided shall be filed with the carrier. Items held or stored for the Buyer shall be at the risk and expense of the buyer. If at the request of the Buyer, shipments are postponed more than thirty (30) days, the amount due thereon shall become due thirty (30) days after notice that the items are ready for shipment. The Seller shall not be liable for loss or damage for delay in delivery or failure to manufacture due to causes beyond its reasonable control

13. **TOOLING:** Unless otherwise specified in writing on the face of this order, the Seller shall retain title to and possession of any models, patterns, dies, moulds, jigs, fixtures, and tools made for or obtained for use in connection with this order.

14. **MODIFICATIONS:** Unless controlled by Buyer's specification, Seller reserves the right to modify product specifications of products ordered by Buyer herein providing that the modification will not materially affect form, fit or function.

15. **GOVERNMENT CONTRACTS:** If the goods to be furnished under this contract are to be used in performance of a US government contract or subcontract and a government contract number shall appear on Buyer's purchase order, the clauses of the applicable government procurement regulation(s) which are required by Federal Statute to be included in government subcontracts shall be incorporated herein by reference. Buyer agrees to provide progress payments to the maximum extent permissible under the prime contract.

16. **EXPORT LICENSE:** Foreign sales of products offered hereunder require a validated export license from either the US Department of State or the US Department of Commerce. Order acceptance and delivery is contingent upon receipt of this validated license, and the delivery period quoted is weeks receipt of said license. Buyer agrees to assist Seller in obtaining said license by providing, in writing, complete End Use Information and End User Agreements as required by law.

17. **APPLICABLE LAW AND JURISDICTION AND VENUE:** The validity, construction and interpretation of this order and any other documents relating to the sale of the materials specified herein, and the rights and duties of the parties resulting from this sale shall be governed by the laws of the state of Texas. Furthermore the parties agree that the jurisdiction of any litigation commenced pursuant to, or related to, directly or indirectly, to this order or these terms and conditions by either party hereto shall lie in the state or federal courts of Tarrant County Texas and the parties hereto consent to venue in Tarrant County, Texas. IF ANY PART OF THE TERMS AND CONDITIONS STATED HEREIN ARE HELD VOID OR UNENFORCEABLE, SUCH PART WILL BE TREATED AS SEVERABLE, LEAVING VALID THE REMAINDER OF THE TERMS AND CONDITIONS NOTWITHSTANDING THE PART OR PARTS FOUND VOID OR UNENFORCEABLE.

18. **TERMINATION, CANCELLATION, AND REDUCTION:** No order accepted by Seller may be terminated, canceled or reduced by the Buyer except by mutual agreement of the Buyer and Seller. Buyer agrees that in the event the Seller agrees to allow complete or partial cancellation Buyer shall pay a 20% cancellation fee computed on the amount of the order cancelled, and the price paid for the portion of the order accepted by Buyer shall be adjusted upward to offset any quantity discounts which were previously given based upon the size of the order.

19. **NON-RETURNABLE, NON-CANCELABLE MATERIAL:** In any event, Buyer will assume full financial liability for all material purchased by Seller to comply with Buyer's purchase order. Seller identifies all material as non-returnable or non-cancelable unless otherwise agreed to in writing by the Seller. In the event of termination of Buyer's purchase order to Seller, Seller will make commercially reasonable efforts to return such material in order to minimize Buyer's financial liability. Seller's efforts are considered completed after a period of thirty (30) calendar days from date of cancellation. Buyer will provide payment to Seller for non-returnable, non-cancelable material within 60 days of cancellation of Buyer's purchase order or portion thereof.

20. **CORRECTIONS:** The Seller reserves the right to correct all typographical or clerical errors, which may be present in the prices or specifications contained herein.

21. **EXCLUSION STATEMENT:** This order, including the terms and conditions, constitutes the final, complete and exclusive statement of representations made by the Seller and the Seller shall not be bound by any representation, promise or inducement of any kind unless set forth herein, nor shall it be bound as to any representations made herein except to the designated receipt of this order.