

Andes Global Sourcing, Limited - Sales Terms and Conditions of Sale

All sales of products by Andes Global Sourcing, Ltd. or its subsidiaries or affiliates (collectively, "AGS") are subject to the terms and conditions set forth herein, which shall also be deemed to be incorporated into any and all purchase orders for any such products. The terms and conditions of sale set forth herein constitute a binding agreement (this "Agreement") between AGS and its customer ("Customer"), and AGS shall not be bound by the terms of any Customer's order form or other separate documentation, other than any written purchase order or other agreement which shall have been separately executed by AGS.

1. PRODUCTS

1.1 "Products" shall mean any products or services identified on (a) any of AGS' proposals, quotations or order acknowledgements, (b) any of AGS' invoices or (c) the written purchase order or other document referencing this Agreement, in each case having the AGS specification applicable to the relevant product.

1.2 Alterations to any Product which AGS in its sole discretion deems necessary or advisable to comply with specifications, changed safety standards or governmental regulations, to make a Product non-infringing with respect to any intellectual property or other proprietary interest, or to otherwise improve a Product may be made at any time by AGS without prior notice to, or consent of, Customer and such altered Product shall be deemed fully conforming.

2. **ORDERS:** Customer shall purchase Products by delivering to AGS a written order (a "Purchase Order"). Each Purchase Order shall identify (at a minimum) specific Products quantity, price, total purchase price, requested delivery dates, bill-to and ship-to addresses, and tax exempt certifications. Any contingencies contained on such order are not binding upon AGS. All Purchase Orders are subject to acceptance by AGS, who may accept or reject orders in its sole discretion in accordance with AGS's then current processes. No Purchase Order shall be deemed to be accepted by AGS unless AGS shall have countersigned the Purchase Order or otherwise manifested its acceptance by a signed written document. Order lead times will vary, and AGS shall have no liability for lead times that exceed industry norms or other "standard" lead time measures.

3. **PRICES:** All prices are (a) in the case of a quotation, firm for thirty (30) days from the date of quotation and otherwise AGS may change its prices at any time without prior notice to Customer, but such change shall not affect any previously accepted Purchase Order, (b) Ex-Works AGS factory or warehouse [Incoterms, 2000] (shipping costs and risk of loss from the Ex-Works point of shipment are the responsibility of Customer) (c) exclusive of Taxes (as defined herein) and all handling or other charges including without limitation insurance, brokerage fees, transportation or special packaging ("Charges") and (d) in U.S. currency unless otherwise specified in writing by AGS. All sales are final. Title to Products (excluding services) shall pass from AGS to Customer upon delivery to the shipping carrier at the Ex-Works point. Any tax or other charge which AGS is liable to collect on behalf of any governmental authority ("Taxes") as a result of the sale, use or delivery of Products, including without limitation, duties, value added taxes and withholding taxes, is the responsibility of the Customer, and if paid by AGS shall be charged to Customer as a separate item on the invoice.

4. **TERMS OF PAYMENT:** Upon credit approval by AGS, unless specified otherwise on the Purchase Order, payment terms shall be net thirty (30) days from the date of the shipment, or in the case of services, net thirty (30) days from the date of completion. Notwithstanding the foregoing, AGS may in its sole discretion require alternative payment terms (which may include, without limitation, advance payment requirements, security deposit, letter of credit or other forms of security) based on its own analysis of Customer's creditworthiness and such other factors as it may determine. Payment shall be by business check or certified funds, or credit card or by Electronic Fund Transfer or, upon prior written approval of AGS only, Third Party Intermediary Payment, subject to the provisions set forth below.

Wire and Electronic Fund Transfers, and Third Party Intermediary Payment: Fees and prices set forth on the Invoice are exclusive of fees or costs associated with wire or Electronic Fund Transfer and exclusive of fees or costs associated with Third Party Intermediary Payment (e.g., payment via PayPal non-credit card merchant payment). If Buyer elects to pay by Electronic Fund Transfer, or if AGS approves payment by Third Party Intermediary Payment, Buyer shall be solely responsible for the payment of all fees associated therewith, and shall not deduct the cost of same from any payment to AGS. Buyer shall also be responsible for fees incurred by AGS, if any, for Buyer's payment to AGS by Electronic Fund Transfer or Third Party Intermediary Payment. In the event funds remitted to AGS are less than the total Invoice amount (as a result of any imposed fees or otherwise), the Invoice will be considered delinquent and subject to late payment charges.

Checks. All checks and certified funds must be payable to "AGS Trading Enterprises, Ltd." in U.S. dollars. Buyer shall be responsible for payment of any dishonored check charges incurred by Seller. Buyer's payment of such charges shall not be deemed to waive Seller's right to pursue any and all remedies for breach.

Taxes: Fees and prices are exclusive of tariffs, duties or taxes imposed or levied by a government or governmental agency. In the event funds remitted to AGS are less than the total Invoice amount (as a result of any imposed taxes), the Invoice will be considered delinquent and subject to late payment charges. Some orders may be subject to state and/or local sales/use tax. AGS reserves the right to correct tax rates and/or collect the sales/use tax as required by law. If your organization is subject to any governmental withholding taxes, please send or email us at support@AGStrading.net documentation evidencing your remittance of such governmental withholding taxes when payment is made. If your organization is exempt from any taxes, please send or email us at support@AGStrading.net a copy of the applicable certificate of exemption at the time the order is placed.

If at any time Customer is delinquent in the payment of any invoice or is otherwise in breach of this Agreement, AGS may, at its discretion, stop performance of services or withhold shipment (including partial shipments) of any order and may, at its option, require Customer to pre-pay for further performance or shipments.

All payments not received when due shall be subject to an additional charge of one and one half percent (1.5%) per month (annual rate of 19.56%) of the unpaid amount or the maximum rate permitted by law, whichever is less, until the date of payment. AGS reserves the right at any time to refer any delinquent account to internal or external collections. Customer grants AGS a security interest in Products (excluding services) purchased under this Agreement to secure full payment for those Products purchased. If requested by AGS, Customer agrees to execute such financing statements and other documentation that AGS may request from time to time in order to evidence and perfect such security interest. Customer shall have no set-off or similar rights, all of which are hereby waived.

5. **PERFORMANCE AND SHIPPING:** Performance and shipping dates specified or communicated by AGS to the Customer (whether in writing or otherwise) are approximate dates only, and the failure to perform or ship on such dates shall not be considered a breach by AGS. AGS shall be permitted in its discretion, but shall not be required, to make partial shipments of Products. Delivery shall be deemed made upon transfer of possession to the carrier at the Ex-Works point, and each Product shall be deemed accepted by Customer upon delivery. Unless Customer elects to designate a carrier as provided in the next sentence, the carrier shall be selected by AGS in its sole discretion, and any such carrier shall be deemed to act as Customer's agent, notwithstanding any payment of freight charges or fees that may be made by AGS. Customer may elect to use a carrier of its choosing, provided that Customer makes all pick up and delivery arrangements with respect to such carrier and advises AGS of such arrangements not less than two (2) business days before any scheduled shipping dates. Customer shall be responsible for all freight charges and fees, and any such charges or fees paid by AGS shall be charged to Customer as a separate item on the invoice.

All claims for shortage of Products ordered or for incorrect charges must be presented to AGS in writing within ten (10) days after receipt by Customer of the particular shipment of Products. AGS shall not be liable for damages or penalty for delay in delivery or for failure to give notice of any delay, and in no event shall the carrier be deemed to be an agent of AGS.

6. **CANCELLATION:** The Customer may not cancel, terminate, suspend performance of, or issue a hold on, any Customer order, in whole or in part, without the prior written consent of AGS, which consent may be withheld in AGS's sole discretion and which consent, if given, shall be upon terms that will compensate AGS for any loss or damage therefrom, including but not limited to any work in process or services performed, the price of Products shipped to, manufactured for, or held separately for, the Customer, and loss of profits, incurred costs, and a reasonable allocation of general and administrative expenses relating to the Products.

7. **LIMITED PRODUCT WARRANTY:** Notwithstanding any provision to the contrary (but subject to the operation of any law to the extent it cannot be excluded), AGS's sole and exclusive obligations to the Customer for any Product (other than Software, as defined and warranted below and services as warranted below) made by AGS and sold hereunder are to repair returned Product or provide a replacement Product, at AGS' sole option, for any Product which has been returned to AGS under the RMA procedure (as defined below) and which in the reasonable opinion of AGS is determined to be defective in workmanship, material or not in compliance with the AGS specification applicable to the Product and has in fact failed under normal use on or before ninety (90) days from the date of original shipment of the Product. All Products which are prototypes, experimental, alpha, beta, field trial or unqualified Products are sold "as-is" and without warranty of any kind. All third parties' Products (including software) sold by AGS carry only such original manufacturer's warranty as may be applicable to Customer. AGS will only accept for repair, replacement or credit under warranty Products made by third parties if expressly authorized to do so by the relevant third party. Any Product repaired or replaced under warranty is only warranted for the period of time remaining in the original warranty for the Product. AGS reserves the right, in its sole discretion, to issue a credit note for any defective Product as an alternative to repair or replacement. The warranty provided herein shall extend to any applicable Product (subject to the exclusions set forth herein) which has proved defective and has failed through normal use, but excludes and does not cover any Product or parts thereof which has been accidentally damaged, disassembled, modified, misused, repaired or reworked by any party other than AGS or its duly authorized agents, improperly stored or handled, used in conjunction with another product that is electronically or mechanically incompatible or of an inferior quality, used in applications which exceed the Product specifications or ratings, neglected, improperly installed or otherwise abused, or used in hazardous activities. Customer must claim under the warranty in writing not later than thirty (30) days after the claimed defect is discovered. AGS warrants that services will be performed in a good and workmanlike manner in accordance with standards reasonably applicable to the services, and will reperform any services which AGS determines are not in compliance with this warranty and which Customer brings to AGS's attention, in writing, on or before thirty (30) days immediately following completion of the applicable service. This service warranty is the only warranty that applies to the provision of contract manufacturing or build to print services to Customer. The Customer must make all claims under these warranties and no claim will be accepted from any third party. The warranties set forth herein are non-transferable. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT OR OTHER RELATED DOCUMENTATION (INCLUDING WITHOUT LIMITATION ANY SPECIFICATIONS) TO THE CONTRARY, THE PROVISIONS OF WARRANTIES SET FORTH HEREIN ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY DEFECTIVE OR NONCONFORMING PRODUCTS OR SERVICES.

8. **RETURN MATERIAL AUTHORIZATION PROCEDURES:** AGS will only accept Products returned under the AGS Return Material Authorization process ("RMA"). Customer shall obtain a RMA number from AGS prior to returning any Product and return the Product prepaid and insured to AGS to the Ex-Works point. Any Product which has been returned to AGS but which is found to meet the applicable specification for the Product and not defective in workmanship and material shall be subject to AGS' standard examination charge in effect at the time which shall be charged to the Customer. Where any Product is returned without an itemized statement of claimed defects, AGS will not evaluate the Product but will return it to the Customer at the Customer's expense.

9. **LIMITATION OF LIABILITY:** EXCEPT FOR THE WARRANTIES STATED HEREIN FOR THE CUSTOMER, NO WARRANTY, CONDITION OR REPRESENTATION, EXPRESS, IMPLIED, ORAL OR STATUTORY, IS PROVIDED TO THE CUSTOMER OR ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY, CONDITION OR REPRESENTATION: (A) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE; (B) THAT THE PRODUCTS WILL BE FREE FROM INFRINGEMENT OR VIOLATION OF ANY RIGHTS,

INCLUDING INTELLECTUAL PROPERTY RIGHTS, OF THIRD PARTIES; OR (C) THAT THE OPERATION OF ANY SOFTWARE SUPPLIED BY AGS WILL BE UNINTERRUPTED OR ERROR FREE. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY HEREIN FAILS OF ITS ESSENTIAL PURPOSE. THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES HEREUNDER AND THE ONLY LIABILITY OF AGS IS EXPRESSLY LIMITED TO THE TERMS OF THE AGREEMENT. AGS SHALL NOT BE LIABLE TO THE CUSTOMER, OR ANY THIRD PARTY, FOR ANY OTHER SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR INDIRECT COSTS OR DAMAGES, INCLUDING WITHOUT LIMITATION, LITIGATION COSTS, INSTALLATION AND REMOVAL COSTS, LOSS OF DATA, PRODUCTION OR PROFIT ARISING FROM ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES. FOR PURPOSES OF THIS PROVISION, AGS INCLUDES AGS'S DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AFFILIATES, SUBCONTRACTORS AND SUPPLIERS. IN NO EVENT SHALL THE TOTAL COLLECTIVE CUMULATIVE LIABILITY OF AGS, ITS DIRECTORS, EMPLOYEES, OFFICERS, AGENTS, REPRESENTATIVES, AFFILIATES, SUBCONTRACTORS AND SUPPLIERS EXCEED THE AMOUNT PAID TO AGS FOR PRODUCTS FROM WHICH SUCH LIABILITY AROSE DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE MOST RECENT CLAIM.

10. EXPORT RESTRICTIONS: Customer shall obtain all licenses, permits and approvals required by any government and shall comply with all applicable laws, rules, policies and procedures of the applicable government and other competent authorities. Customer will indemnify, defend and hold AGS harmless from and against any violation or alleged violation by Customer or any other party (other than AGS) of such laws, rules, policies or procedures. Customer shall not transmit, export or re-export, directly or indirectly, separately or as part of any system, the Products or any technical data (including processes and services) received from AGS, without first obtaining any license required by the applicable government, including without limitation, the United States Government and/or any other applicable competent authority. Customer also certifies that none of the products or technical data supplied by AGS will be sold or otherwise transferred to, or made available for use by or for, any entity that is engaged in the design, development, production or use of nuclear, biological or chemical weapons or missile technology.

11. RIGHTS IN INTELLECTUAL PROPERTY AND TOOLING: Customer acknowledges that the Products contain proprietary technical know how embodied in the Products, hardware, software or technical information or some combination thereof, and that, the ownership of all patents, copyrights, derivative works, mask work rights, trademarks, trade names and all other intellectual property rights to the Products ("Intellectual Property") shall remain solely the property of AGS or its suppliers, as applicable. Customer understands and agrees that a sale of the Products does not constitute a sale or other transfer of any Intellectual Property rights; except that Customer shall receive a limited, non-exclusive right to use such Intellectual Property solely for the purpose of, and only to the extent necessary for, use of the Products in accordance with AGS's specifications and user documentation. Customer is not authorized by this Agreement to act as a wholesaler or re-seller of the Products and may not convey the limited non-exclusive right to use such Intellectual Property except to the extent incorporated as functional components of products of Customer. Customer shall not copy, make extracts from, translate or otherwise modify any of the Products or related documentation provided by AGS. All right, title and interest in and to any inventions, discoveries, improvements, methods, ideas, computer and other apparatus programs and related documentation, other works of authorship fixed in any tangible medium of expression, mask works, or other forms of intellectual property, whether or not subject to statutory protection, which are made, created, developed, written, conceived or first reduced to practice by AGS, or its suppliers, as applicable, solely, jointly or on its behalf, in the course of, arising out of, or as a result of work performed under an order, and any related tooling, set-up, fitting-up and preparation charges whether or not invoiced, shall belong to and be the sole and exclusive property of AGS, or its suppliers, as applicable. Customer agrees not to reverse engineer all or any portion of any Product nor allow or assist others to do so. Customer acknowledges the goodwill associated with trademarks of the Products, and shall not obscure, remove or alter of any trademarks, patent numbers, labels, serial numbers affixed to any Product, related documentation or packaging, without the express prior written consent of AGS.

12. GENERAL TERMS:

12.1 GOVERNING LAW AND DISPUTE SETTLEMENT.

All disputes related to this Agreement shall be governed by the laws of Hong Kong, without regard to conflicts of laws provisions. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. All disputes relating to this Agreement, or the breach, termination, or invalidity thereof, shall be referred to and finally resolved by arbitration located in Hong Kong, in accordance with the Hong Kong International Arbitration Centre Administered Arbitration Rules (the "HKIAC Rules"). The number of arbitrators shall be one and he or she shall be appointed in accordance with the HKIAC Rules. The language of the arbitration shall be English. Upon request from one of the parties, the arbitrator shall have an emergency telephonic hearing to determine whether immediate preliminary injunctive relief is required to protect that party's interests and, if such an arbitration order is issued, that party may immediately request the courts in any applicable jurisdiction to enforce such award. All awards of the arbitrator shall be made in writing and shall be final and binding on the parties. To the extent possible, the final award shall be made within 6 months from the appointment of the arbitrator, or as soon as possible thereafter. In the event of any dispute, the prevailing party shall be entitled to recovery of its reasonable attorneys' fees and costs, and the arbitrator shall specifically identify the "prevailing party" for this purpose in the arbitration award. The parties agree to keep confidential the existence and details of any proceedings under this clause, including the parties' submissions and evidence, and any awards (their content, reasons and result), except to the extent that such documents or information are in the public domain or their disclosure is required by a statutory duty or is reasonably necessary to protect or pursue a legal right or remedy arising out of or in connection with any award or this Agreement.

12.2 AGS shall not be liable for delay or failure in performance whatsoever due in whole or in part to acts of God, shortage of supplies, transportation difficulties, labor disputes, riots, war, terrorism, fire, explosion, epidemics, quarantine restrictions, failure of power or brownouts, floods, storms, failure or delay of supply of fuel, raw materials, equipment, containers and transportation or any other occurrences beyond AGS's reasonable control or due to unforeseen circumstances.

12.3 Waiver by AGS of any provision herein must be in writing and shall not be deemed to be a waiver of such provision or other provision in the future.

12.4 Customer shall hold confidential and shall not use, disclose or permit others to use any confidential information identified as such in writing or orally by AGS or information which Customer knows or reasonably would be expected to know is confidential, proprietary or trade secret information of AGS, including, without limitation, trade secrets embodied in Products.

12.5 Neither this Agreement nor any rights under this Agreement nor any interest herein shall be assigned or otherwise transferred by Customer (by operation of law or otherwise) without the prior written consent of AGS. This Agreement shall bind and inure to the benefit of the successors and permitted assigns of the parties.

12.6 In the event that any of the terms of this Agreement, apart from payment, become or are declared to be illegal by arbitration or by a court of competent jurisdiction, such terms shall be null and void and shall be deemed deleted from this Agreement, but only to the extent that such term is illegal, it being the intent and agreement of the parties that the Agreement shall be deemed amended by modifying such term to the extent necessary to make it legal while preserving its intent or, if that is not possible, by substituting therefore another term that is legal and achieves the same objective. All remaining terms of this Agreement shall remain in full force and effect.

12.7 Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever. AGS neither assumes nor authorizes any third party, person or entity to assume or accept any liability or obligation, or to make any commitment for AGS with regard to AGS services or the Products.

12.8 This Agreement, together with the applicable Purchase Order, constitutes the entire agreement between the parties hereto concerning the subject matter of this Agreement, apart from any existing non-disclosure agreements, and there are no understandings, agreements, representations, conditions, warranties, or other terms, express or implied, which are not specified herein. This Agreement may only be modified by a written document executed by authorized representatives of each of AGS and Customer.

12.9 AGS may in its sole discretion and without Customer's prior consent enter into a subcontract for any part of any order, including completed or substantially completed items or major components thereof, without Buyer's prior written consent.

12.10 Wherever possible, the terms of this order shall be construed and interpreted to be valid and enforceable under the governing law. If any provision of this order shall be determined to be invalid or unenforceable, such provision shall be invalid or unenforceable only to the minimum extent required, and the parties shall promptly attempt in good faith to agree on a legally enforceable modification that gives effect to the commercial objectives of the invalid or unenforceable provision, and every other provision shall remain in full force and effect.