



# American Technology

COMPONENTS, INCORPORATED

## Customer Purchase Order – Terms & Conditions

The sale of products and services ("Products") by American Technology Components, Inc. and its divisions and subsidiaries ("ATC") are subject to these terms and conditions ("Agreement") regardless of other or additional terms or conditions that conflict with or contradict this Agreement in any purchase order, document, or other communication ("Order"). Preprinted terms and conditions on any document of customer ("Customer") (for example: Orders or confirmations) and/or ATC's failure to object to conflicting or additional terms will not change or add to the terms of this Agreement.

### Acceptance

These Standard Terms and Conditions, together with the terms of any quotation from ATC, constitute the entirety of terms and conditions concerning any such orders or purchases between ATC and you (sometimes "Buyer"). ATC's willingness to conduct any such transaction is expressly conditioned on the purchaser accepting ATC's Standard Terms and Conditions. By placing an order or accepting shipment of goods, the purchaser confirms that they have reviewed ATC's Standard Terms and Conditions, and acknowledges and agrees (1) that ATC's entry into this transaction is conditioned on the purchaser's acceptance of the ATC Standard Terms and Conditions, (2) that ATC's Standard Terms and Conditions will control in the event they conflict with any terms or conditions contained in any purchase order, request for quotation, or other communication from the purchaser, and (3) that any failure by ATC to object to conflicting or additional terms will not change or add to ATC's Standard Terms and Conditions.

### Price

Price and availability of products offered by ATC are subject to change without prior notice. All listed prices are exclusive of federal, state, local and foreign taxes, duties, tariffs, levies and similar assessments and you agree to bear and be responsible for the payment of all such charges, excluding taxes based upon ATC's net income. All amounts due will be grossed-up for any withholding taxes imposed by any foreign government.

### Terms of Payment

Payment terms are specified by ATC. All payments will be made (a) in United States dollars; and (b) in full without set-off or counterclaim, and without deduction for exchange, collection, taxes or other fees that may be imposed by any government or any other charges. If you fail to timely make payment hereunder, ATC may defer shipments or otherwise suspend the sale of any products until all overdue payments are received. All amounts due hereunder will be subject to accrue interest from the first day following the due date until paid in full at a rate equal to the lesser of the highest rate legally permitted in the jurisdiction in which you are located or 1.5% per month. Payment of interest will not foreclose any other right that ATC may have as a consequence of late payment. If ATC is required to take legal action to collect unpaid amounts, and ATC is successful in such action, you will reimburse all costs and reasonable attorneys' fees incurred by ATC in such collection.

### Purchase Orders

No order will be binding upon ATC until it is accepted in writing (which may include electronic transmissions) by ATC. Any change to a purchase order must be in the form of a written or electronic communication acceptable to ATC. Any purchase documents provided by you containing any standard printed terms of purchase/sale will be for administrative purposes only, and such standard printed terms of purchase/sale will be of no force or effect. All Orders including, but not limited to, Electronic Purchase Orders, for products identified by ATC as non-standard or "NCNR", are non-cancelable, non-returnable. ATC may identify products as non-standard or "NCNR" by various means including, but not limited to, quotes, scope of services, products lists, attachments or exhibits.

No accepted orders may be changed, cancelled, or rescheduled without ATC's written consent (which may include electronic transmissions), which may be given or withheld by ATC in its sole discretion. Upon cancellation of any purchase order, you must pay ATC for any products or components thereof ordered pursuant to such purchase order which ATC is not able to cancel or return (in each case without payment or liability) to the applicable product manufacturer. Notwithstanding anything to the contrary herein, NCNR Products are non-cancelable and non-returnable as discussed in the "NCNR Products" section below.

### Availability

ATC will use commercially reasonable efforts to fill each purchase order submitted by you and accepted by ATC; provided that the purchase order has been properly submitted and such products are available to ATC. Notwithstanding any other provision of the Agreement, the obligation of ATC to sell or provide any product to you is subject to the availability of such product. ATC will not be liable for damages caused by failure to ship or delay in shipment resulting from conditions beyond the control of ATC. ATC reserves the right to allocate sales of products among its customers in its sole discretion. ATC reserves the right to change the specifications of any product (including all statements and data appearing in ATC's catalogs, data sheets and advertisements) without notice. If specifications are changed, ATC assumes no obligation to provide the change on products previously purchased or to continue to supply discontinued products or versions. ATC may substitute products manufactured to such modified specifications for those specified herein provided such products substantially conform to the products described in the sale contract. ATC reserves the right to discontinue sale of products at any time.





## Product Information

Product information, including information related to a product's specifications, export/import control classifications, uses or conformance with legal or other requirements, is obtained by ATC from its suppliers or other sources. Such information is provided by ATC on an "AS IS" basis. ATC is not responsible for errors or omissions in product information, makes no representation as to the accuracy or completeness of the product information, and disclaims all representations, warranties and liabilities under any theory with respect to the product information, including any implied warranties of merchantability, fitness for a particular purpose, title and non-infringement. ATC recommends that you validate any product information before using or acting on such information. All product information is subject to change without notice.

## Contingencies

ATC is not liable, either wholly or in part, for non-performance or a delay in performance due to force majeure or contingencies or causes beyond the reasonable control of ATC (each, a **Force Majeure Event**) including, but not limited to, acts of God, wars, acts of terrorism, riots, civil disturbances, strikes, labor disputes, fires, storms, floods, earthquakes, natural disasters, inability to obtain or use raw or component materials or parts, fuel, labor, equipment, facilities, or transportation, or technical or yield failure where ATC has exercised ordinary care in the prevention thereof, and acts of any government or agency thereof. Production and deliveries may be allocated in a reasonable manner in the event of a shortage of goods. Buyer's order will be deemed suspended for so long as any such Force Majeure Event prevents or delays ATC's performance. In the event of any such suspension, ATC shall have the right, at its option, upon notice to Buyer, (a) to terminate its obligation to sell any or all of the Products ordered hereunder, or (b) to resume performance as soon as practicable after the suspension, and reschedule delivery of the Products ordered hereunder to one or more deferred dates to be mutually agreed upon by Buyer and ATC

## Shipping Practices

With each shipment, ATC will include an itemized packing list referencing the part number for each ordered product. ATC may ship orders in installments if it determines that it is commercially reasonable to do so.

## Transportation; Title

Products will be delivered by ATC to a carrier, FOB ATC's shipping facility. Title and risk of shipping loss or damage to products will pass to you when the products are delivered to such carrier. The cost of any handling, shipping and insurance arranged by ATC will be billed as an add-on to your invoice and paid by you. You are responsible for any and all costs of customs formalities as well as all duties, taxes and other official charges payable upon importing or exporting the products and you will be responsible for clearing the products through customs upon arrival, unless ATC notifies you otherwise. ATC may deliver goods in installments. All delivery dates are estimates. ATC shall make reasonable efforts to effect shipment on or before the scheduled shipping date(s) reflected on ATC's acknowledgment or invoice, but shipping deadlines are not guaranteed. If no shipping date is specified, shipment will be made on date(s) selected by ATC. ATC shall not be liable for any loss or expense (consequential or otherwise) incurred by Buyer if ATC fails to meet the estimated delivery dates. Delivery may be made in advance of any scheduled delivery date upon reasonable prior notice to Buyer. All items will be packed for shipment and shipped in accordance with ATC's standard practices. ATC reserves the right to allocate production and deliveries among its various customers at ATC's sole discretion under any circumstances. You must submit to ATC all claims for shortages in shipment or notice of other irregularities within 10 days after receipt of such shipment by you. Any failure by Buyer so to inspect and report shall constitute a waiver by Buyer of any claim or right of Buyer against ATC arising with respect to any such error, shortage, defect or nonconformity.

## Remedies.

If you fail to pay when due any amount owed to ATC for products purchased from ATC, ATC shall have, in addition to any other rights of ATC, the right (without liability of ATC) to repossess such products or to require you to effect (at your expense) return delivery of such products to ATC. In addition, until you have paid to ATC the entire amount due to ATC for such products, ATC shall retain a security interest in such products in the amount of the full purchase price plus all other amounts due hereunder and all costs of collection incurred by ATC (including but not limited to court costs and reasonable attorneys' fees), and ATC shall retain all rights and remedies of a secured party under the Uniform Commercial Code as in effect at the time of delivery of such products. A copy of ATC's invoice may be filed with the appropriate authorities at any time as a financing statement or chattel mortgage in order to perfect ATC's security interest. Upon the request of ATC, you will execute any financing statements and other documents or instruments necessary or appropriate in order for ATC to perfect its security interest.

## NCNR Products

ATC may designate a product as an "NCNR Product". **Notwithstanding any provision of this Agreement to the contrary, orders for special, custom, value-added and other non-standard products, including products to be assembled in kit form, products of manufacturers which do not appear on ATC's line card, works-in-process, and products otherwise identified by ATC as "NCNR" or "Non-Cancelable and Non-Returnable" (or words of similar import) are "NCNR Products".**

You hereby acknowledge that NCNR Products are both non-cancelable and non-returnable and further acknowledge and agree to the following:

- Orders for NCNR Products cannot be cancelled;
- Changes cannot be made to the schedule for such orders without prior written approval by ATC;



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- No release dates can be scheduled beyond one year from the original date of a Purchase Order for NCNR Products;
- NCNR Products cannot be returned to either ATC or the manufacturer (unless defective, and then pursuant ONLY to applicable procedures and warranties, if any);
- You and any other Contract Manufacturers or End Customers associated with the purchase of the NCNR Products are jointly and severally accept full responsibility for the suitability for use of the NCNR Products in your application; and
- You and any other Contract Manufacturers or End Customers associated with the purchase of the NCNR Products jointly and severally accept full responsibility for payment of any invoice(s) issued by ATC concerning the NCNR Products, including for any NCNR Products that are pipelined, ordered, received, or inventoried by ATC, and acknowledge that ATC is entitled to demand full payment from either you or any such Contract Manufacturers or the End Customers.

ATC has no obligation to seek more favorable cancellation or return privileges with the manufacturer for the NCNR Products. However, if ATC is able to negotiate more favorable cancellation or return privileges with the manufacturer for the NCNR Products, then, at its sole discretion, ATC may extend such privileges to you. Also, ATC may waive the above obligations under this Agreement concerning NCNR Products, in ATC's sole discretion, if ATC can sell at a comparable price the full quantity of the NCNR Products to third parties at the time you request such waiver. ATC may charge a restocking fee of up to 25% on any such NCNR Products.

**Warranties;** ATC will warranty products for from date of retail sale on all standard products. Custom products with parts specified by our customer will be subject to review. The warranties set forth in the immediately preceding sentence are sole and exclusive and in lieu of all other warranties whether statutory, expressed, or implied. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, ATC EXPRESSLY DISCLAIMS AND MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, TITLE, NON-INTERFERENCE WITH ENJOYMENT, ACCURACY, INTEGRATION, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES BASED UPON COURSE OF DEALING OR TRADE USAGE, AND ATC WILL HAVE NO OBLIGATION OR LIABILITY FOR THE QUALITY OF THE PRODUCTS. ATC MAY PROVIDE TECHNICAL, APPLICATIONS, OR DESIGN ADVICE, QUALITY CHARACTERIZATION AND RELIABILITY DATA OR SERVICE IN CONNECTION WITH BUYER'S ORDER OR THE PRODUCTS. ATC'S PROVISION OF THESE ITEMS SHALL NOT EXPAND OR OTHERWISE AFFECT ATC'S WARRANTIES SET FORTH ABOVE AND NO OBLIGATION OR LIABILITY SHALL ARISE FROM ATC'S PROVISION OF SUCH ITEMS.

Products to be returned under warranty claim may be returned either (a) to the product manufacturer pursuant to such manufacturer's warranty and return procedures; or (b) subject to the terms of the applicable manufacturer's product warranty, to ATC for credit or replacement at ATC's sole discretion. Prior to returning any product to ATC, you must obtain a return goods authorization number ("RGA") from ATC's customer service department. The RGA must appear on all packages returned to ATC. ATC will issue an RGA within 10 business days after receiving your request. If ATC requests or authorizes return of defective or non-conforming products, you are responsible for paying shipping and insurance costs from its location to ATC; provided that if such return is the result of ATC's negligence in the filling of such order, ATC will be responsible for paying such shipping and insurance costs. No returned packages will be accepted without a valid RGA provided by ATC. As stated above, NCNR Products are non-returnable for any purpose.

ATC requires product located within the Continental United States to be returned to determine that product is defective. Product located outside the Continental United States requires a complete product and defect description and, at American Technology's discretion, a digital photograph submitted either by facsimile transmission to 574-264-9138 or e-mail to [sales@atcomp.com](mailto:sales@atcomp.com). If product is defective credit will be issued within 30 days under the terms of the agreement. If product is **not** defective or is physically damaged, all related, outstanding charges are Buyer's sole responsibility.

For the avoidance of doubt, the disclaimers, restrictions, and limitations set forth in the ATC Legal Statement are incorporated herein and made a part hereof by reference.

#### **USE OF PRODUCTS IN LIFE SUPPORT, NUCLEAR AND CERTAIN OTHER APPLICATIONS.**

Products sold by ATC are not designed, intended or authorized for use in life support, life sustaining, nuclear, or other applications in which the failure of such products could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. If you use or sell products purchased via ATC for use in any such applications: (1) you acknowledge that such use or sale is at your sole risk; (2) you agree that ATC and the manufacturer of the products are not liable, in whole or in part, for any claim or damage arising from such use; and (3) you agree to indemnify, defend and hold ATC and the manufacturer of the products harmless from and against any and all claims, damages, losses, costs, expenses and liabilities arising out of or in connection with such use or sale.

#### **Export Control.**

Products sold by ATC are subject to export control laws and restrictions as prescribed by the United States Government. Buyer agrees to comply with all applicable export laws and restrictions by not directly or indirectly selling, exporting, transferring, or assigning products and associated technical data contrary to these laws and restrictions. Buyer is responsible for obtaining any license or other official authorizations that may be required to export, re-export, transfer, or otherwise assign goods provided by ATC Electronics. Buyer shall defend and indemnify ATC Electronics from and against any damages, fines, penalties, assessments, liabilities, costs and expenses (including reasonable attorneys' fees and court costs) arising out of any claim that ATC Electronics' products and associated technical data were exported in violation of applicable laws and regulations.



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#### **U.S. Government Contracts.**

If the Products are to be used in connection with or under a U.S. Government contract or subcontract, those mandatory clauses, except as noted below, of the applicable U.S. Government procurement regulations for sale contracts of the same type, amount and tier as this sale contract, shall be incorporated by reference, unless ATC takes exception thereto or receives a waiver therefrom. Unless ATC specifically agrees otherwise in writing, ATC takes exception to any and all requirements for certification in writing of cost or pricing data, compliance with Cost Accounting Standards, defective Pricing, and Audit requirements.

#### **Indemnification**

You agree to and will indemnify, hold harmless and defend ATC (and its employees, subsidiaries, affiliates, successors and agents) from and against any and all judgments, liabilities, damages, losses, expenses and costs (including, but not limited to, court costs and reasonable attorneys' fees) incurred or suffered by ATC, which relate to or arise out of (a) your use, handling, marketing, sale or distribution of the products sold hereunder; or (b) the infringement or violation of any third party's intellectual property or other rights arising out of or in connection with your use of specifications, materials or other items provided to ATC by you.

#### **Intellectual Property.**

If an order includes software or other intellectual property, such software or other intellectual property is provided by ATC to you subject to the copyright and user license, the terms and conditions of which are set forth in the license agreement accompanying such software or other intellectual property. Nothing herein shall be construed to grant any rights or license to use any software or other intellectual property in any manner or for any purpose not expressly permitted by such license agreement.

#### **Statements and Advice.**

If statements or advice, technical or otherwise, are offered or given to you, such statements or advice shall be deemed to be given as an accommodation to you and without charge; the ultimate decision regarding any purchase or the selection of any product will be made by you. ATC will bear no responsibility or liability for such decisions.

#### **LIMITATION ON ATC'S LIABILITY**

IN NO EVENT SHALL ATC HAVE ANY LIABILITY TO BUYER, ARISING OUT OF OR IN CONNECTION WITH THE SALE OR USE OF THE PRODUCTS SOLD HEREUNDER OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, NEGLIGENCE, BREACH OF WARRANTY OR OTHERWISE), IN AN AMOUNT IN EXCESS OF THE AMOUNT(S) ACTUALLY RECEIVED BY ATC FROM BUYER AS PURCHASE PRICE FOR THE PRODUCTS WHICH GIVE RISE TO ATC'S LIABILITY. ATC SHALL HAVE NO OTHER LIABILITY, OBLIGATION OR RESPONSIBILITY OF ANY KIND, IN ANY WAY OR TO ANY EXTENT FOR ANY LOSSES, EXPENSES, COSTS, DAMAGES OR LIABILITIES FOR ANY REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO THE PRODUCTS (OR THE PERFORMANCE THEREOF), OR ARISING IN ANY WAY OR IN CONNECTION WITH THE PURCHASE BY OR USE OR SALE OF THE PRODUCTS BY BUYER, EVEN IF ATC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL ATC HAVE ANY LIABILITY, OBLIGATION OR RESPONSIBILITY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING IN ANY WAY IN CONNECTION WITH THE PRODUCTS OR THEIR SALE OR USE, INCLUDING BUT NOT LIMITED TO DAMAGE TO PROPERTY, INJURY TO PERSONS, LOSS OF USE OF THE PRODUCTS OR ANY ITEM WITH WHICH SUCH PRODUCTS ARE USED, LOST PROFITS, OR DELAYS OR INCONVENIENCE.

#### **Termination and Cancellation.**

Without prejudice to any rights or remedies ATC may have under these Terms or at law, ATC may, by written notice to Buyer, terminate these Terms, or any part thereof, without any liability whatsoever, if: (i) Buyer fails to make payment for any Products to ATC when due; (ii) Buyer fails to accept conforming Products supplied hereunder; (iii) a voluntary or involuntary petition in bankruptcy or winding up is filed against Buyer, any proceedings in insolvency or bankruptcy (including reorganization) are instituted against Buyer, a trustee or receiver is appointed over Buyer, or any assignment is made for the benefit of creditors of Buyer; or (iv) Buyer violates or breaches any of the provisions of these Terms. Upon occurrence of any of the events referred to above under (i) through (iv), all payments to be made by Buyer under the Agreement shall become immediately due and payable.

In the event of any default by Buyer, ATC may decline to make further shipments. If ATC elects to continue to make shipments, ATC's action shall not constitute a waiver of any default by Buyer or in any way affect ATC's legal remedies for any such default.

#### **GENERAL PROVISIONS.**

**Notices.** All communications under these Terms shall be in writing or by confirmed fax, and shall be deemed to have been duly given (i) upon personal delivery, (ii) upon deposit in the mail if mailed by certified mail, return receipt requested, postage prepaid, (iii) upon deposit with a recognized courier with next-day delivery instructions, or (iv) upon confirmation of transmission, if sent by confirmed fax, to the address or fax number set forth below or such other address or fax number as either party may specify by notice sent in accordance with this Section.



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**Severability.** In the event that any provision of these Terms shall, in whole or in part, be determined to be invalid, unenforceable or void for any reason, such determination shall affect only the portion of such provision determined to be invalid, unenforceable or void, and shall not affect in any way the remainder of such provision or any other provision of these Terms. The parties agree that they will negotiate in good faith or will permit a court or arbitrator to replace any provision of these Terms so held invalid, unenforceable or illegal with a valid provision that is as similar as possible in substance to the invalid, unenforceable or illegal provision.

**Waiver.** The waiver by ATC of a breach or a default of any provision of these Terms by you shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of ATC to exercise or avail itself of any right, power or privilege that it has, or may have hereunder, operate as a waiver of any right, power or privilege by ATC.

**Governing Law; Jurisdiction & Venue; Attorneys' Fees.** These Terms and the transactions contemplated hereby shall be governed by and construed in accordance with the laws of the State of Indiana without taking into account its principles on conflicts of law. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms. Exclusive jurisdiction and venue for any litigation arising under these Terms is in the federal and state courts located in or nearest Elkhart County, Indiana and both parties hereby consent to such jurisdiction and venue for this purpose. In any such action, suit or proceeding, the successful or prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs incurred in connection with that action, suit or proceeding, in addition to any other relief to which such party may be entitled.

**Relationship of the Parties.** Nothing contained in these Terms shall be deemed to constitute either party as the agent or representative of the other party, or both parties as joint ventures or partners for any purpose. Neither party shall have the authority to make any statements, representations or commitments or to take any actions which shall be binding on the other party, except as may be explicitly authorized in writing by such other party.

**Entire Agreement; Amendment; Assignments.** These Terms, together with information contained in ATC's written product order acknowledgment and written invoice, (a) constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersede all prior understandings and agreements, whether written or oral, as to such subject matter; (b) may be amended or modified only by a writing executed by an authorized officer of the party against whom enforcement is sought; (c) may not be assigned by you without the written consent of ATC; and (d) shall be binding upon and shall inure to the benefit of the respective successors and permitted assigns of the parties hereto.

