



americanautocoat
Start with the finish.™

PURCHASE TERMS AND CONDITIONS

GENERAL

These terms and conditions are issued on behalf of American Autocoat, Inc. ("AAI") as identified on the face of the Purchase Order ("P.O.") as the "Buyer" and will apply to all orders issued to you as Seller, for the purchases of Goods, Supplies and/or Services ("Supplies"). The reference to P.O. herein shall include a blanket Purchase Order, Tooling Purchase Order, or similar documents issued by Buyer to Seller.

1. OFFER, ACCEPTANCE

- (a) A Purchase Order (or Release against a blanket P.O.) is an offer to Seller by Buyer to enter into the purchase and supply agreement it describes. Seller's commencement of work hereunder will constitute acceptance of the offer.
- (b) Acceptance is expressly limited to the terms of Buyer's offer. Once accepted, such P.O. together with these terms and conditions will be the complete and exclusive statement of the purchase agreement. Any modifications proposed by Seller are expressly rejected by Buyer and shall not become part of the agreement in the absence of Buyer's written acceptance.

2. MODIFICATIONS

The terms of this P.O. may only be modified by way of written notice confirmed, in writing, by the other party.

3. BAILED PROPERTY

Seller bears all responsibility for loss of, or damage to, any property owned by Buyer and in Seller's possession or control for use in performing a P.O., including responsibility for loss and damage which occur despite Seller's exercise of reasonable care, but excluding normal wear and tear. Seller will keep all Buyer furnished real and personal property free and clear of all liens, claims and encumbrances arising out of or resulting from the performance of the work done under any P.O. Seller expressly waives any lien that Seller might otherwise have on any of Buyer's property for work done thereon or otherwise including any lien, claim or encumbrance on any tools, dies, fixtures, jigs, molds or patterns supplied to Seller by Buyer. If any such lien, claim or encumbrance is filed, Seller will promptly cause it to be removed without cost to Buyer.

4. DELIVERY DATES, RELEASES

If delivery dates are not specified in a P.O., Seller will procure materials and fabricate, assemble, and ship Supplies or provide services only as authorized in shipment releases issued to Seller by Buyer. Buyer may return over-shipments in excess of 5% above the quantity ordered by Buyer to Seller at Seller's risk and expense for all packing, handling, sorting, and transportation. Buyer, at any time may change or temporarily suspend shipping schedules specified in a P.O. or shipment release or other written instructions issued by Buyer pursuant to this Section. Time and quantity are of the essence in any P.O. Unless otherwise agreed, delivery times specified are the times of delivery of the Supplies to Buyer's designated place of delivery or destination.

5. PACKING, MARKING AND SHIPPING

- (a) Seller will pack, mark and ship Supplies in accordance with all applicable packaging standards of Buyer and, as appropriate, the carrier transporting such Supplies. Seller will reimburse Buyer for all expenses incurred by Buyer as a result of improper packing, marking, routing, or shipping.
- (b) Buyer may require shipment of any of the Supplies by a more expeditious method of transportation if Seller fails to meet the shipping requirements of a P.O. and Seller will bear the cost difference of such transportation unless such failure is due to an excusable delay as specified in Section 16.
- (c) For Supplies that may contain potentially hazardous materials Seller shall promptly furnish to Buyer a list of all potentially hazardous ingredients in the Supplies and the quantity thereof. Seller shall comply with all applicable federal, state, provincial and local laws and regulations pertaining to product and warning labels.

6. SHIPPING DOCUMENTS

Seller will obtain a straight bill of lading from the carrier of the Supplies and will include on each packing slip and bill of lading the relevant P.O. number and the destination address.

7. INSPECTION

Buyer at its option may reject and return at Seller's risk and expense, or retain and correct, Supplies that fail to conform to the requirements of a P.O. even if the nonconformity does not become apparent until the manufacturing, processing or assembly stage. If Buyer elects to correct the Supplies, it will consult with Seller on the method of correction. Seller will reimburse Buyer for all reasonable expenses resulting from rejection or correction.

8. INVOICES, PAYMENT, CURRENCY

- (a) Seller will operate in accordance with all applicable payment guidelines provided by Buyer that cover invoiced items.
- (b) Payment terms will be as specified in the relevant P.O.
- (c) Seller agrees that all its accounts with Buyer will be administered on a net settlement basis and that Buyer may deduct debit adjustments from its payments on Seller's accounts. In this subsection 8(c) "Buyer" includes Buyer's parent, subsidiaries and affiliates, and "Seller" includes Seller's parent and subsidiaries.

9. SERVICE AND REPLACEMENT PARTS

- (a) At Buyer's request, Seller will sell to Buyer the Supplies necessary to fulfill Buyer's service and replacement requirements for such Supplies at the prices specified in the P.O. plus any actual cost differential for packaging.
- (b) At Buyer's request during the ten-year period after Buyer completes current model purchases, Seller will sell to Buyer Supplies to fill Buyer's past model service and replacement requirements at the prices specified in a P.O. plus actual cost differentials for packaging and manufacturing. During the tenth year of such period, Buyer and Seller will negotiate in good faith with regard to Seller's continued manufacture of service and replacement parts.

10. APPLICABLE TAXES

The total price specified for Supplies on a P.O. will include all elements of freight, duty and tax as specified in the relevant delivery term with the exception of value added tax (if applicable and which shall be shown separately on Seller's Invoice) and Seller's income tax.

11. WARRANTY

- (a) Seller warrants that Supplies under a P.O. will, during the warranty period specified below, conform to the applicable drawings, specifications, or other description furnished pursuant to the P.O., and regulations in force in countries where the Supplies are to be sold, be free of defects in design (to the extent that Seller furnishes the design), title, materials, and workmanship and be suitable for the purpose intended.
- (b) The warranty period for current production Supplies purchased by Buyer for resale to third parties will continue for the same period as the warranty period offered by such third parties to their customers. For Supplies purchased by Buyer as service and replacement parts, the warranty period will be the greater of twelve months from delivery to Buyer or the remainder of the warranty period on the vehicle on which the part is installed as a service or replacement part.
- (c) The warranty period for non-production Supplies shall be the greater of one year after final acceptance by Buyer, or the period specified on Buyer's P.O.
- (d) Seller will indemnify and hold Buyer harmless in respect of the cost of recall campaigns and other corrective service actions that are required to rectify nonconformity's in the Supplies that are the result of defects in design (to the extent that Seller furnishes the design), materials, and workmanship.
- (e) Seller represents and warrants that the prices for the Supplies will be no less favorable than those which Seller presently, or in the future, offers to any other customer for the same or similar goods or services for similar quantities. If Seller offers a lower price for the same or similar goods or services to any other customer during the term of a P.O., then to the extent permitted by law, Seller will immediately offer Buyer the same price for the Supplies on the same terms and conditions as was offered to the other customer.

12. INDEMNIFY

- (a) To the full extent permitted by applicable law, Seller will at its sole expense, defend, indemnify and hold harmless Buyer, its directors, officers and employees for any and all expenses, including attorney fees, settlements, and judgments incurred by Buyer in connection with any and all claims, demands, actions or judgments (collectively "claims") including but not limited to lawsuits, administrative claims, regulatory actions, and other proceedings, to recover for personal injury or death, property damage, economic losses or for any alleged infringement of a patent, copyright, trademark, trade secret, industrial design or property right or any other proprietary right that are related in any way to, or arise out of, Seller's representations, performance or obligations under a P.O. The foregoing indemnity obligation includes but is not limited to, claims based on Seller's breach of warranty and claims for any violations of any applicable law, ordinance or regulation or government authorization or order. Seller's obligation to indemnify under this Section will apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise, provided however, that the amount of Seller's indemnity obligation shall be limited to the extent of Buyer's negligence.
- (b) Promptly upon receipt of notice of a claim, Seller will investigate and defend or otherwise handle every such claim, and at Buyer's request, assist Buyer in Buyer's investigation, defense, or handling of any such claim. Seller shall retain counsel reasonably satisfactory to Buyer. Should Seller fail to diligently discharge its indemnity obligations hereunder, or should said indemnity obligations conflict with the interest of Buyer, Buyer may assume the defense of said claim at Seller's sole expense. Seller will pay all expenses and damages or settlement amounts incurred by Buyer or others selling Buyer's products or using Seller furnished Supplies.

13. TITLE TO AND OWNERSHIP OF INTELLECTUAL PROPERTY

All work product and deliverables including but not limited to, drawings and specifications prepared and/or provided hereunder shall be owned exclusively by Buyer. All work product first prepared under Buyer's P.O. shall be deemed work made for hire. Without limitation, any specifications, drawings, plans, notes, instructions, engineering notices or other technical data (collectively "Technical Data") furnished to Buyer, shall be deemed to be incorporated herein by reference the same as if fully set forth. In addition to the foregoing and to the full extent capital equipment or machinery is or forms part of the deliverables hereunder, Seller shall provide Buyer with a full set of fabrication drawings in detail sufficient to allow Buyer or its designee, to fabricate or manufacture spare or replacement parts.

14. SUBCONTRACTS

In each subcontract of Seller's work performed pursuant to a P.O., Seller will obtain for Buyer the rights and licenses granted in Section 13.

15. ASSIGNMENT

Seller will not assign or delegate substantive duties under a P.O., nor transfer to another any intellectual property right that is licensed to Buyer under Section 13, without written notice of any assignment of Seller's rights to receive payment under a P.O. Any such assignment shall not prohibit Buyer from enforcing any of its rights against the Assignee. Buyer will have the right to assign any benefit or duty under a P.O. to any third party upon notice to, and written acceptance by, Seller.

16. EXCUSABLE DELAYS

Neither Buyer nor Seller will be liable for a failure to perform that arises from causes or events beyond its reasonable control and without its fault or negligence, including labor disputes. Seller shall give notice in writing as soon as possible after the occurrence of the cause relied on and after termination of the condition. In the event any excusable delay continues for 90 days, Buyer may, in its sole discretion, immediately terminate any P.O. in accordance with the termination provisions contained below. In the event of an excusable delay in performance, Buyer at its option may acquire possession of all finished goods, work in process, and parts and materials produced or acquired for the work under a P.O., and Seller will deliver such articles to Buyer, at Buyer's option. Seller at its expense will take such actions as Seller may reasonably determine necessary to ensure the uninterrupted production of Supplies for a period of 90 days during any such delay.

17. REMEDIES, WAIVER

The individual remedies reserved in a P.O. will be in addition to any remedies provided by law. No waiver of any breach of any provision of a P.O. will constitute a waiver of any other breach of such or any other provisions.

18. INSURANCE

Until delivery to AAI, the Seller shall assume the risk for AAI equity in the materials to be supplied under the terms of this Purchase Order. The usual forms of insurance shall be maintained in an amount at least equal to their value and in no event less, at any time, than the aggregate of all the amounts paid the Seller on account thereof. Such insurance policies shall provide that all claims for losses be paid to AAI or the Seller, as interest may appear, and shall be delivered to AAI upon request. If this order deals with constructive repairs or maintenance of any billing equipment or machinery located on the premises of AAI, the Seller shall (i) maintain and carry Public Liability, Workmen's Compensation and Employer's Liability insurance covering all employees engaged in the performance of the work and all other persons who are on the property of AAI at the invitation of the Seller, (ii) save AAI harmless from injury to person or property in connection with the work and premises upon which the work is done and (iii) indemnify AAI against loss arising from workmanship or materials furnished by the Seller.

EXCEPT AS OTHERWISE SET FORTH HEREIN, IN NO EVENT SHALL BUYER BE LIABLE TO THE SELLER FOR ANY SPECIAL, CONSEQUENTIAL, LIQUIDATED OR PUNITIVE DAMAGES INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOST BUSINESS OPPORTUNITY. THE FOREGOING TERMS ARE INTENDED TO APPLY TO THE EXTENT NOT CONTRARY TO APPLICABLE LAW, REGARDLESS OF THE GROUNDS OR NATURE OF ANY CLAIM ASSERTED INCLUDING WITHOUT LIMITATION, BY CONTRACT, STATUTE, ANY FORM OF NEGLIGENCE, INTENTIONAL TORT OR STRICT LIABILITY AND WHETHER OR NOT EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF THE DAMAGE. SUCH TERMS SHALL ALSO CONTINUE TO APPLY IN FULL, DESPITE ANY COMPLETION OR TERMINATION OF THE PURCHASE ORDER. BUYER'S LIABILITY TO SELLER FOR ANY LOSS OR DAMAGE IN ANY WAY CONNECTED WITH, ARISING OUT OF OR RESULTING FROM A PURCHASE ORDER WILL IN NO EVENT EXCEED THE VALUE OF THAT PURCHASE ORDER GIVING RISE TO THE CLAIM. ALL CLAIMS AGAINST BUYER MUST BE BROUGHT WITHIN ONE (1) YEAR FROM THE DATE SELLER KNOWS OR SHOULD HAVE KNOWN OF THE CLAIM.

20. TERMINATION/ EXPIRATION

- (a) Unless a P.O. expressly states otherwise, Buyer may terminate its purchase obligations under a P.O., in whole or in part, at any time upon thirty (30) day written notice of termination to Seller.
- (b) Buyer may terminate a P.O. without liability to Seller if Seller (i) sells, or offers to sell, a substantial portion of its assets used in the production of Supplies for Buyer, or (ii) sells or exchanges, or offers to sell or exchange an amount of its stock that would result in a change in the control of Seller, or (iii) Seller breaches a material provision of the P.O. and said breach remains uncured for thirty (30) days following Seller's receipt of Buyer's written notice of breach. Buyer shall give Seller written notice of the termination at least 30 days prior to the effective termination date. Seller shall notify Buyer no more than ten days after entering into any negotiations for the sale or exchange of its stock or assets that could result in a change of control of Seller.
- (c) Upon receipt of the notice of termination, Seller, unless otherwise directed by Buyer, will (i) terminate promptly all work under a P.O.; (ii) at Buyer's option transfer title and deliver to Buyer the finished goods, the work in process, and the parts and materials which Seller produced or acquired in accordance with a P.O. and which Seller cannot use in producing goods for itself or for others; (iii) verify/settle all claims by subcontractors for actual costs that are rendered unrecoverable by such termination and provided that recovery of materials in Seller's possession is ensured; (iv) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest until disposal instruction from Buyer has been received; and (v) upon Buyer's reasonable request, cooperate with Buyer in transferring production of the Supplies to a different supplier.
- (d) Upon termination by Buyer under this Section, Buyer's obligation to Seller will be (i) the P.O. price for all finished work and completed services which conform to the requirements of a P.O.; (ii) Seller's actual cost of the work in process and parts and materials transferred to Buyer in accordance with subsection (c) (ii) and (iii) hereof; and (iv) Seller's actual cost of carrying out its obligations of subsection (c) (iv) hereof. Unless otherwise stated in a P.O., Buyer shall have no obligation for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, tooling, facilities and equipment rearrangement costs or rent, unamortized depreciation costs, and general and administrative burden charges from termination of a P.O.
- (e) Seller will furnish to Buyer, within sixty (60) days after the effective date of termination, Seller's termination claim, which will consist exclusively of the items of Buyer's obligation to Seller that are listed in subsections (c) and (d) hereof. Buyer may audit Seller's records, before or subsequent to payment, to verify amounts requested in Seller's termination claim.
- (f) Buyer will have no obligation to Seller under (a), (c), (d) or (e) above if Buyer terminates its purchase obligations of a P.O. because of a material default by Seller? Seller and Supplies shall comply with applicable laws, rules, regulations, orders, conventions, ordinances or standards of the country of destination or which relate to the manufacture, labeling, transportation, importation, licensing, approval or certification of the Supplies, including those relating to environmental matters, wages, hours, and conditions of employment, subcontractor selection, discrimination, occupational health/safety, and motor vehicle safety.

21. COMPLIANCE WITH LAW

Seller and Supplies shall comply with applicable laws, rules, regulations, orders, conventions, ordinances or standards of the countries of **shipment and receipt** or which relate to the manufacture, labeling, transportation, importation, licensing, approval or certification of the Supplies, including those relating to environmental matters, wages, hours, and conditions of employment, subcontractor selection, discrimination, occupational health/safety, and motor vehicle safety.

22. APPLICABLE LAW AND DISPUTE RESOLUTION

A P.O. shall be governed by the law of the State of Michigan without regard to conflict of law provisions thereof, and litigation arising from or relating to a P.O. shall be brought only in that jurisdiction.

Unless otherwise agreed by the parties in writing, any dispute or controversy involving AAI and any U.S. subsidiary, joint venture or other operation located in the U.S. shall take place in a state or federal court of competent jurisdiction located in the State of Michigan.

THIS PURCHASE ORDER IS EXPRESSLY CONDITIONED ON THESE TERMS AND CONDITIONS. ANY PROPOSAL FOR ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS OR ANY ATTEMPT BY SELLER TO VARY, TO ANY DEGREE, ANY OF THE TERMS AND CONDITIONS OF THIS P.O. IN SELLER'S ACCEPTANCE SHALL NOT OPERATE AS A REJECTION OF THIS P.O. BUT SHALL BE DEEMED A MATERIAL ALTERATION THEREOF, AND THIS P.O. SHALL BE DEEMED ACCEPTED BY SELLER WITHOUT SUCH ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS. ANY ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS WHICH MAY BE CONTAINED IN ANY DOCUMENT FURNISHED BY SELLER IN ACCEPTING THIS P.O. ARE HEREBY OBJECTED TO AND REJECTED. DELIVERY BY SELLER OF THE GOODS OR SERVICES COVERED BY THIS P.O. OR THE COMMENCEMENT OF PERFORMANCE BY SELLER OF THE WORK COVERED BY THIS P.O. SHALL BE DEEMED AN ACCEPTANCE BY SELLER OF THIS P.O. THIS P.O. IS MERELY AN OFFER TO PURCHASE AND IS NOT AN ACCEPTANCE OF ANY OTHER OFFER OR THE CONFIRMATION OF AN EXISTING CONTRACT. NO REFERENCE HEREIN TO SELLER'S QUOTATION, BID, PROPOSAL OR ANY OTHER DOCUMENT PREPARED BY SELLER SHALL CONSTITUTE BUYER'S ACCEPTANCE OF ANY TERM OR CONDITION CONTAINED IN SUCH DOCUMENT. HOWEVER, IF THIS DOCUMENT IS DEEMED TO BE AN ACCEPTANCE OF AN OFFER OR THE CONFIRMATION OF AN EXISTING CONTRACT, SUCH ACCEPTANCE OR CONFIRMATION IS EXPRESSLY CONDITIONED UPON SELLER'S ASSENT TO THE TERMS AND CONDITIONS SET FORTH HEREIN.

23. FAIR LABOR

Seller warrants that the articles ordered will be produced in compliance with the Fair Labor Standard Act of 1938, as amended. All invoices must carry the following certificate in order to be passed for payment: "Seller represents that, with respect to the production of the articles and/or the performance of the service covered by this invoice, it has fully complied with all applicable provisions of the Fair Labor Standards Act of 1938.