

## TERMS AND CONDITIONS OF SALE

### 1. DEFINITIONS

- a. "ADS" means Atlantic Diving Supply, Inc.
- b. "ADS Sales Representative" means the ADS employee responsible for accepting the Purchase Order (defined below) and any modifications thereto and does not include other ADS personnel.
- c. "Agreement" means these Terms and Conditions of Sale, any Purchase Order issued by Buyer (defined below) and accepted in writing by ADS, and ADS's Sales Order (defined below), as well as any documents incorporated by reference in these Terms and Conditions of Sale or the Sales Order. The Agreement does not include any terms provided on or incorporated into a Purchase Order unless expressly agreed to in the Sales Order. ADS objects to and rejects any terms offered by Buyer that are inconsistent with these Terms and Conditions of Sale and its acceptance of any Purchase Order is conditioned on Buyer's acceptance of these Terms and Conditions of Sale in their entirety.
- d. "Buyer" means the entity issuing the Purchase Order to ADS.
- e. "Customer" means the end user or recipient of the Products (defined below) or Services (defined below) with which Buyer has a contract to provide the Products or Services, including Buyer if Buyer is the end user.
- f. "Delivery", for Products, means and occurs when the Products have been made available at ADS's or its Supplier's facility in accordance with INCOTERMS 2020 Ex Works or in accordance with alternative shipping terms expressly stated on the Purchase Order, and for Services, means and occurs when ADS notifies Buyer that the Services are completed and/or ready for inspection.
- g. "Estimated Shipment Date" means the date stated on the Sales Order in the column labeled "Est. Ship Date." The Estimated Shipment Date is ADS's estimate, based on Supplier lead times and market conditions, of when Buyer can expect ADS to make the Products available for shipment to Buyer or its Customer or to complete the Services. Unless specifically stated otherwise on the Purchase Order, early delivery is authorized.
- h. "FAR" means the Federal Acquisition Regulation and any applicable agency-specific supplement (including, but not limited to, the Defense Federal Acquisition Regulation Supplement ("DFARS")).
- i. "Products" mean the products, parts, and/or equipment identified on the Sales Order.
- j. "Purchase Order" means an order issued by Buyer to ADS.
- k. "Sales Order" means the document issued by ADS in response to a Purchase Order and by which ADS accepts a Purchase Order subject to these Terms and Conditions, forming the Agreement. General references to a Purchase Order on the face of a Sales Order are for informational purposes only and shall not be deemed an acknowledgment or acceptance of any particular term of the referenced Purchase Order.

- l. "Services" means the services identified on the Sales Order.
- m. "Supplier" means any person or entity from whom ADS is obtaining (directly or indirectly) all or part of the Products or Services.

## **2. ACCEPTANCE OF PURCHASE ORDER**

ADS does not accept any Purchase Order except in writing through its Sales Order. A verbal acceptance is not valid unless later ratified with a Sales Order. ADS's acceptance of the Purchase Order is conditioned on Buyer's acceptance of these Terms and Conditions and any other terms appearing on the face of the Sales Order. Any other terms proposed by Buyer or included with Buyer's Purchase Order are expressly rejected by ADS unless incorporated by express reference in the Sales Order.

## **3. PACKAGING, MARKING, AND SHIPMENT**

- a. Unless otherwise specifically stated on the Purchase Order or Sales Order, ADS will package and ship Products according to commercially reasonable standards.
- b. Notwithstanding the foregoing, ADS will comply with Buyer's reasonable packaging, marking, and shipment instructions provided they are received by ADS in writing sufficiently in advance of shipment.
- c. ADS is not responsible for and shall have no liability for delays or damage caused by ADS's adherence to Buyer's packing or shipping instructions. ADS reserves the right to adjust the price to account for unusual or special packaging, marking, or shipment instructions.
- d. All sales are INCOTERMS 2020 Ex Works, unless specifically stated otherwise on the Purchase Order or Sales Order.

## **4. DELIVERY**

- a. ADS will use commercially reasonable efforts to deliver Products and Services by the Estimated Shipment Date.
- b. Notwithstanding the foregoing, ADS shall be excused for any delay caused by an occurrence beyond the reasonable control of ADS and without its fault or negligence such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics and pandemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers ("Force Majeure Events"). Delays caused by the effects of a Force Majeure Event on one or more Suppliers shall be deemed Force Majeure Events for the purposes of this Agreement. ADS shall notify the Buyer promptly after the commencement of any Force Majeure Event and shall make reasonable efforts to remedy or mitigate such occurrence.

## **5. ACCEPTANCE OF PRODUCTS OR SERVICES**

- a. Any inspection or testing of Products or Services by Buyer or its Customer shall occur promptly upon Delivery and in any event before any material change in their condition. All Products and

Services shall be deemed accepted if Buyer does not notify ADS of a defect or nonconformity within thirty (30) days of Delivery.

- b. If a defect or nonconformity is alleged within thirty (30) days and if ADS, in its reasonable discretion confirms the defect or nonconformity, ADS shall, at its sole option, either repair or replace the allegedly defective or nonconforming goods. Such repair or replacement is Buyer's sole remedy for alleged defects or nonconformity occurring within thirty (30) days of Delivery. All other alleged defects or nonconformities shall be governed by the Warranty section of this Agreement.

## **6. PRICES**

Unless stated otherwise on the face of the Purchase Order or Sales Order, prices are in accordance with INCOTERMS 2020 Ex Works. Except as otherwise provided in the Sales Order, the price does not include federal, state, or local taxes; assessments; or import duties or other charges imposed by any government (except for taxes based on ADS's net income), all of which shall be paid directly by Buyer. Prices are current as of the date of ADS's quotation and based on INCOTERMS 2020 Ex Works, but are subject to change based on changes to shipping terms, time elapsed between issuance of the quote and receipt of the associated Purchase Order, or changes to the quoted Products or Services at Buyer's request.

## **7. PAYMENT TERMS**

- a. Unless stated otherwise on a valid quote from ADS to Buyer or the Sales Order, payment in full is due upon ADS's acceptance of the Purchase Order.
- b. All past due amounts are subject to interest at a rate of one-and-one-half percent (1.5%), compounded monthly. Buyer shall pay all costs of collection, including but not limited to ADS's reasonable attorneys' fees, of all amounts more than sixty (60) days past due.

## **8. MODIFICATIONS**

The terms of this Agreement may not be amended, changed, waived, extended, or discharged except in a written document signed by the ADS Sales Representative. Buyer shall accept changes to the Products made by a Supplier that do not affect the Products' form, fit, or function, including but not limited to cosmetic changes, administrative part number changes, and changes to packaging. ADS shall provide written notice to Buyer of such changes promptly upon learning that Supplier will make such changes.

## **9. WARRANTY**

ADS will deliver to Buyer the warranty it obtains from its Supplier for the Products or, if such warranty cannot be transferred, take reasonable steps to put Buyer in the same position as if the warranty had been transferred. Such warranty is the sole warranty provided for the Products or Services. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE HEREBY EXCLUDED.

## **10. TERMINATION**

- a. The termination of this Agreement for any reason shall not relieve Buyer of the obligation to accept and pay for Products which have been shipped by ADS or its Supplier, unless ADS terminates this Agreement for Buyer's default and elects, in its sole discretion, not to deliver such Products.
- b. If any part of a Purchase Order is terminated as a result of the termination for convenience of Buyer's Customer of any part of Buyer's contract with that Customer, the rights, duties, and obligations of the parties shall be as determined in accordance with the applicable FAR or other contract provision governing termination for convenience of Buyer's Customer, which provisions shall be made available to ADS upon request.
- c. If ADS reasonably determines that Products are not available, ADS will provide written notice of nonavailability to Buyer. The parties may by written agreement modify the Agreement to replace the unavailable item. The unavailable Products will be deemed deleted from the Purchase Order without cost or liability to Buyer, if: (i) Buyer does not respond to the notice of nonavailability within five (5) business days of the date of the notice; (ii) Buyer expressly accepts deletion of the unavailable items; or (iii) the parties do not agree in writing to replace the unavailable Products within ten (10) business days of the date of the notice of nonavailability.

## **11. INDEPENDENT CONTRACTOR**

The Parties are independent contractors and their employees and agents are not employees or agents of the other Party for any purpose. Neither Party shall have any right, power or authority to create any obligation, express or implied, on behalf of the other Party and shall not have any authority to represent itself as an agent of the other Party.

## **12. INDEMNIFICATION**

Buyer shall defend, indemnify, and hold harmless ADS, its officers, directors, employees, consultants, agents, affiliates, successors, assigns and customers (the "ADS Indemnitees") from and against all losses, costs, claims, causes of action, damages, liabilities, fees, and expenses, including, but not limited to, reasonable attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising out of or related to (i) any action, claim, suit, or demand alleging harm resulting from any act or omission of Buyer, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of Seller's obligations under this Agreement; and (ii) Buyer's breach of any obligation, representation, or warranty under this Agreement.

ADS shall indemnify Buyer against costs and damages incurred by Buyer resulting from Products that are determined to directly infringe a United States Patent, provided: Buyer promptly notifies ADS in writing of any allegation or claim of infringement; Buyer grants ADS the right to defend, and, at ADS's

option, to settle the claim(s); and Buyer provides ADS reasonable cooperation in the defense at ADS's expense. If any Products become, or may become, the subject of any claim of infringement, ADS may, at its option and its expense: (a) procure for the Buyer the right under such United States Patent to use the Products, or (b) replace the Products with non-infringing Products or (c) suitably modify the Products, or (d) accept return of the Products and refund the purchase price, less a reasonable sum for Buyer's use and damage. ADS shall have no liability for any such infringement arising from: (i) the combination of the Products with any other product or part not furnished by ADS, (ii) the modification of the Products, unless such modification was made by ADS or its Supplier, (iii) the furnishing to Buyer of any information, data, service or application assistance, exclusive of maintenance or operational hand-books supplied with the Products, (iv) any third party software included in the Products, or (v) ADS's or its Supplier's compliance with Buyer's designs, specifications or instructions. ADS's indemnity excludes infringement with the Authorization and Consent of the United States. The foregoing states the entire liability by ADS and the exclusive remedy of Buyer for patent infringement by the Products and is in lieu of all warranties, express or implied, in regard thereto. ADS shall not be liable for any collateral, incidental, or consequential, punitive, and multiple damages arising from patent infringement or alleged infringement.

### **13. ASSIGNMENT**

Buyer shall not delegate any duties, nor assign any rights or claims under this Agreement without the prior written consent of ADS, and any such attempted delegation or assignment shall be void.

### **14. SOFTWARE LICENSE & DATA RIGHTS**

If any software is included in the Products, its sale and use shall be subject to the Supplier's end user license agreement ("EULA"), if any. By issuing the Purchase Order, Buyer agrees to the terms and conditions of any EULA to the extent applicable to Buyer and it agrees to provide the EULA to its Customer without modification.

### **15. HANDLING OF INFORMATION**

- a. All drawings, specifications, technical data, and other information furnished to Buyer by ADS or any Supplier in connection with this Agreement are and shall remain the property of ADS or the Supplier, and shall not be copied or otherwise reproduced or used in any way except in connection with performance of this Agreement and in accordance with applicable laws.
- b. Buyer agrees not to generate advertising or publicity or cause any announcements with ADS's name or trademarks or any Supplier's name or information regarding this Agreement without securing the prior written approval of ADS.
- c. Any information provided by Buyer to ADS may be used by ADS for the purposes of ADS's contract with its Supplier(s), if any.

## **16. COMPLIANCE WITH LAWS AND REGULATIONS**

ADS does not agree to comply with the provisions of any FAR or related agency supplement flowdown clauses unless those provisions have been provided to ADS in writing with the Purchase Order or earlier. To the extent ADS accepts any flowdown provisions, it accepts them only to the extent that they appear in Buyer's contract with its Customer and are applicable by their own terms to ADS and the relevant Purchase Order. Except for reasonable adjustments to deadlines necessary for Buyer to fulfill its obligations to its Customer, nothing in this Agreement or any flowdown provision shall impose any obligation or requirement on ADS that is to any degree more burdensome or extensive than Buyer's obligation to its Customer under the same flowdown provision and ADS objects to and does not accept any flowdown provision modification that would result in such expanded obligations between ADS and Buyer.

## **17. EQUAL EMPLOYMENT OPPORTUNITY**

- a. ADS and Buyer shall comply with all applicable laws, regulations, and executive orders concerning nondiscrimination in employment. The following are incorporated herein by reference, as applicable: (i) Executive Order 11246, as amended; (ii) Executive Order 13496 (and its implementing regulations at 29 C.F.R. Part 471); (iii) 41 C.F.R. Part 60-1.4(a); (iv) 29 C.F.R. Part 471, Appendix A to Subpart; (v) 41 C.F.R. 60-300.5(a); and (vi) 41 C.F.R. 60-741.5(a).
- b. **ADS and Buyer shall abide by the requirements of 41 C.F.R 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**
- c. **ADS and Buyer shall abide by the requirements of 41 C.F.R 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.**

## **18. OFFICE OF FOREIGN ASSET CONTROL**

Buyer represents and warrants that (i) Buyer has not been designated as a "specifically designated national and blocked person" on the most current list published by the Office of Foreign Asset Control of the U.S. Department of the Treasury ("OFAC") (the "List"); (ii) Buyer is currently in compliance with and will at all times during the term of this Agreement remain in compliance with the regulations of OFAC and any statute, executive order (including Executive Order 13224 - Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto; and (iii) Buyer will not transfer or permit the transfer of any controlling interest in Buyer to any person or entity who is, or any of whose beneficial owners are, listed on the List.

## **19. EXPORT COMPLIANCE**

Buyer shall comply with all applicable U.S. export control laws and regulations, to include the International Traffic in Arms Regulations (ITAR), 22 C.F.R. 120 et seq.; the Arms Export Control Act, 22 U.S.C. 2751-2794; and the Export Administration Regulations, 15 C.F.R. 730-774.

Buyer represents that it and its directors, officers, and majority equity owners are not listed on any excluded or denied party lists maintained by the U.S. Government. Buyer shall notify ADS immediately if any such party becomes listed on any such lists.

## **20. INSURANCE**

Buyer agrees to maintain general liability insurance at its own expense, including products liability and completed operations liability, that is acceptable to ADS and, at a minimum, commercially adequate. In addition, Buyer agrees to name ADS as an additional named insured on such policies. Buyer shall provide ADS with certificates of insurance for all applicable insurance policies upon request.

## **21. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regard for conflicts of law provisions.

## **22. JURISDICTION AND VENUE**

For purposes of all claims brought under this Agreement, each of the parties hereby irrevocably submits to the exclusive jurisdiction of the federal and state courts located in Norfolk, Virginia.

## **23. ORDER OF PRECEDENCE**

Any inconsistencies in the documents that make up this Agreement shall be resolved in accordance with the following descending order of precedence: (i) each Sales Order, including its attachments and documents incorporated by reference in the Sales Order; (ii) these Terms and Conditions of Sale; and (iii) each Purchase Order, including its attachments and documents incorporated by reference in the Purchase Order.

## **24. WAIVER**

The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

## **25. SEVERABILITY**

If any provision of this Agreement is or becomes void or unenforceable by operation of law, the remaining provisions shall be valid and enforceable.

**26. SURVIVAL**

The provisions of sections 1, 4, and 7-27 of these Terms and Conditions of Sale shall survive completion of or termination of the Purchase Order and remain in full force and effect thereafter.

**27. ENTIRE AGREEMENT**

This Agreement, including attachments and documents incorporated into it by reference, constitutes the entire agreement between ADS and Buyer, and supersedes all prior representations, agreements, understandings, and communications between ADS and Buyer related to the subject matter of each Purchase Order.