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Purchase Terms and Conditions

Acceptance, Acknowledgment and Limitations The Order will be deemed accepted by Seller on the (a) shipment of goods or rendering of services ordered, in total or in part, or (b) within 15 days of issuance by Advanced Test Equipment Corp; dba. Advanced Test Equipment Rentals (ATEC), absent written notification to ATEC of non-acceptance. Any purported modification or amendment to the purchase order or acknowledgment of order from the Vendor differing from these Terms and Conditions will be binding on ATEC only if such deviation has been accepted in writing. Any general terms and conditions of the Vendor will be binding on ATEC only insofar as they comply with Terms and Conditions as listed on this document or have been expressly approved by Purchaser's authorized representative(s) in writing. The acceptance of products or services or payment by Purchaser will not constitute such approval. (c) Unless otherwise contractually specified, a binary decision rule, utilizing simple acceptance, and simple rejection criteria will be used for the determination of compliance. Vendor shall ensure only authorized and competent personnel perform calibration.

Applicable Law The terms and conditions of this order and all respective rights and duties of the parties, will be governed by the laws of the State of California.

Arbitration In the event of any disputes arising from or in connection with these Terms and Conditions and/or all orders made thereunder, either Party will notify the other Party in writing of the nature of the dispute and Parties agree to discuss within 7 days (or longer period as mutually agreed to by the Parties) to attempt an amicable resolution of the dispute. In the event that the dispute is not resolved in writing 30 days from the discussion mentioned in the paragraph above, or such extended period as mutually agreed to by the Parties, any controversy or claim arising out of or relating to this purchase order or the breach thereof, will be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrators will be binding and may be entered in any court having jurisdiction thereof.

Assignment Seller may not assign this Agreement or any of its rights or obligations under this Agreement, without the prior written consent of ATEC. Any assignment or transfer without such written consent will be null and void. This Agreement will inure to the benefit of, and be binding upon, the successors and assigns of ATEC without restriction. A waiver of any default hereunder or of any term or condition of this Agreement will not be deemed to be a continuing waiver or a waiver of any other default or any other term or condition.

Cancellation Without prejudice to its other rights ATEC may cancel a Purchase Order in whole or in part (i) immediately if there is a breach of these Terms and Conditions, (ii) if the breach is remediable and if it is not remedied within 10 days of ATEC sending notice of it to the Supplier, (iii) at any time prior to the completed delivery of the Goods or performance of the Services in accordance with these Terms and Conditions. Terminating the Purchase Order will not affect those Terms and Conditions which are capable of subsisting.

Compliance with Law Seller will comply fully with all applicable federal, state and local laws in the performance of this Agreement including, but not limited to, all applicable employment, tax, export control and environmental laws. If Goods include hazardous materials, Seller represents and warrants that Seller understands the nature of any hazards associated with the manufacture, handling and transportation of such hazardous materials and will furnish MSDS to ATEC. Upon request, Seller will promptly provide ATEC with a statement of origin for all Goods and United States Customs documentation for Goods wholly or partially manufactured outside of the United States.

Changes ATEC reserves the right to change specifications, such changes to be in writing signed by a duly authorized representative of Purchaser. Any difference in contract price resulting from such changes will be equitably adjusted and the contract will be modified in writing accordingly.

Confidentiality Seller will preserve in strict confidence all confidential, sensitive or proprietary information of ATEC received from ATEC ("Confidential Information"), whether or not marked "Proprietary" or "Confidential," and whether oral or written, using the same degree of care as it takes to preserve and safeguard its own confidential or proprietary information (but in no event less than a reasonable degree of care). Confidential Information will not include information that Seller can demonstrate by written evidence was publicly available at the time of disclosure or was independently developed by Seller without reference to Confidential Information. Seller will not (i) disclose or cause to be disclosed at any time any Confidential Information obtained from ATEC, or (ii) use or cause to be used any of such Confidential Information for any purpose, except as required in the performance of the services required by the Order. Seller represents, warrants and covenants that it will maintain physical, electronic and procedural safeguards designed to (1) insure the security, integrity and confidentiality of all Confidential Information, (2) protect against any anticipated threats or hazards to the security, integrity or confidentiality of Confidential Information, and (3) protect against unauthorized access to use or disclosure of Confidential Information.

Damages Without limiting ATEC's rights and remedies at law or in equity, ATEC reserves the right to charge Seller for any loss, expense (including reasonable attorneys' fees) or damage sustained as a result of Seller's failure to deliver conforming goods or services or other breach of the Order, including without limitation, expenses incurred in connection with ATEC's purchase of substitute goods, incidental damages and consequential damages resulting from Seller's failure or breach.

Default Neither Seller or ATEC will be considered in default in the performance of its obligations herein to the extent that performance of such is delayed or prevented due to causes beyond the control of said party, including, but not limited to, acts of God, war, revolution, civil commotion, blockade or embargo, any law, order, regulation, ordinance, of any government, fires, floods, unavoidable casualties, strikes, labor disputes, and other causes beyond the reasonable control of either party (Force Majeure), provided that such incapacitated party promptly gives written notice to the other party specifying the matters constituting Force Majeure together with such evidence as it can reasonably give and specifying the period for which it is estimated that such prevention will continue. Notwithstanding the aforementioned, in the sole event that ATEC incurs damages as a result of the Seller's delay in delivering goods subject to this Order, Seller will be liable for such damages notwithstanding that such are due to causes beyond Seller's control or result without fault or negligence of Seller. ATEC may by written notice of default to Seller (a) terminate the whole or any part of this Order in any one of the following circumstances: (i) if Seller fails to perform within the time specified herein or any extension thereof; or (ii) if Seller fails to perform any of the other provisions of this Order, or so fails to make progress as to endanger performance of this Order in accordance with its terms; or (iii) if the Seller will become insolvent or make a general assignment for the benefit of creditors or if a petition under any bankruptcy act or similar statute is filed by or against the Seller, and in any of these circumstances does not cure such failure within a period of ten (10) days or such longer period as ATEC may authorize in writing; and (b) upon such termination ATEC may procure, upon such terms as it will deem appropriate, supplies or services similar to those so terminated, in which case Seller will continue performance of this Order to the extent not terminated and will be liable to ATEC for any excess costs for such similar supplies or services. As an alternate remedy, and in lieu of termination for default, ATEC, at its sole discretion, may elect (a) to extend the delivery schedule and/or (b) to waive other deficiencies in Seller's performance, in which case an equitable reduction in the Order price will be granted. ATEC will have the right at any time to require assurance from Seller. In the event Seller for any reason anticipates difficulty in complying with the required delivery date or performance schedule, or in meeting any of the other requirements of this Order, Seller will promptly notify ATEC in writing. If Seller does not comply with ATEC's delivery schedule or performance schedule, ATEC may require delivery by fastest means and charges resulting from the premium transportation must be fully prepaid and absorbed by the Seller. The rights and remedies of ATEC provided in this clause will not be exclusive and are in addition to any other rights and remedies provided by law or under this Order.

Delivery Time is of the essence in the fulfillment of this Order. This Order is subject to cancellation if not shipped at the specified time. ATEC reserves the right to refuse deliveries made in advance of the delivery schedule. Merchandise shipped after the time specified may be returned at the Seller's expense for full credit. Retention of all or any part of such merchandise will not be considered acceptance of same. Acceptance of such merchandise will not be deemed a waiver of ATEC's right to hold the Seller liable for any loss or damage resulting therefrom, nor will it act as a modification of the Seller's obligation to make future deliveries in accordance with the delivery schedule. ATEC will be reimbursed in full for all merchandise returned. In addition thereto, ATEC will have the privilege, if shipment is not made on time, to purchase similar merchandise in the open market in such quantities as they may find necessary not exceeding the amount called for in this Order and hold Seller responsible for the difference, if any, between the price so paid and the Order price.

Discount Terms If discounts are offered and identified, such discount periods will be computed from the date of delivery of the goods or services ordered; or the date of ATEC's receipt of a correct and proper invoice, whichever is later. Payment or other terms identified on the Seller's invoice which are contrary to those of the Order will have no force and effect unless acted upon or approved in writing by ATEC. ATEC will make every effort to pay invoices within the terms prescribed in the Order, however, in no event will ATEC be obligated to pay late fees or penalties for invoices paid outside the Order terms.

Entire Agreement The Order represents the entire agreement between Seller and ATEC with respect to the goods and services described in the Order.

Indemnification To the fullest extent permitted by law, Seller agrees to indemnify, hold harmless, and defend ATEC and its affiliated companies, their customers, directors, officers, employees and agents, from and against any loss, liability, cost, expenses, suits, actions, claims and all other obligations and proceedings whatsoever, including without limitation, all judgments rendered against, and all fines and penalties imposed upon ATEC and any reasonable attorney's fees and any other cost of litigation (hereinafter collectively referred to as "liabilities") arising out of injuries to persons, including death, or damage to property, caused by Seller, its employees, agents, subcontractors, or in any way attributable to the performance and prosecution of the products, services and/or work herein contracted for, including without limitation breach of warranty or product liability except that Seller's obligation herein to indemnify ATEC will not apply to any liabilities arising from ATEC's sole negligence. Seller agrees to expressly waive its immunity, if any, under the applicable workers' compensation law if such immunity may affect this indemnification obligation. Vendors will indemnify, defend and hold A.T.E.C. its affiliates and agents, servants, employees, officers, directors, other officials harmless against all claims, liabilities, losses, damages, costs and expenses (including attorneys' fees and costs) resulting from or arising in connection with any actual or claimed infringement of any patent, copyright (including without limitation brochures, manuals, datasheets, press releases, announcements, images, website content or other content), mask work, or trademark (including without limitation trade dress, design marks, logos, slogans, phrases or other marks).

Inspection All inspections and tests will be made as required by specifications furnished by Purchaser. All materials, services and/or work purchased under this order will be subject to inspection by Purchaser or a representative of Purchaser at all reasonable times and places before, during and after manufacture. It is agreed that no certificate given or payment made on account of this order will be conclusive evidence of delivery and acceptance of the items hereunder either wholly or in part or will be construed as acceptance of defective or improper items. All materials, services and/or work will be received subject to Purchaser's inspection and acceptance. Defective material or material not in accord with Purchaser's specifications may be held for Seller's instructions and at Seller's risk, and if Seller so directs will be returned at Seller's expense. Risk of loss will pass to Seller upon Purchaser's delivery to the common carrier. Goods returned as defective will be replaced only upon issuance of a new Purchase Order.

Insurance In any case where it is necessary for employees or representatives of Seller to go upon the premises of Purchaser, Seller agrees to assume full responsibility for the proper conduct of such employees and representatives while on said premises and to comply with all applicable Worker's Compensation Laws, other applicable government regulations and ordinances, and all project rules and regulations, particularly as to safety precautions and fire hazards. If this order requires Seller to furnish Labor in connection with the erection or installation of the materials at the site, Seller will furnish Purchaser with a certificate, or other evidence satisfactory to Purchaser, indicating that such labor is adequately covered by Workers Compensation Insurance and Employer's Liability Insurance with limits acceptable to Purchaser. Seller will obtain and maintain commercial general liability insurance with a company rated "A- VII" or better by A. M. Best. Such policy will have minimum coverage of \$1,000,000 per occurrence, which can be met through an umbrella or standard policy or any combination thereof. The insurance will be evidenced by a Certificate of Insurance naming ATEC as an "Additional Insured" under its Vendor Broad Form endorsement.

IP Indemnity and Warranty Seller will indemnify, defend and hold ATEC harmless against all claims, liabilities, losses, damages, costs and expenses (including legal fees) resulting from or arising in connection with any actual or claimed infringement of any patent, copyright, mask work, trademark, trade secret or other intellectual property, proprietary or contractual right of any third party, with respect to the goods or services provided under the Order. If at any time and allegation of infringement of any third party Intellectual Property Rights is made or, in Vendor's opinion, is likely to be made, Vendor will at its own expense and upon his choice (a) modify or replace such part of the product as it considers necessary so as to avoid the infringement. Any replacement must offer equivalent performance and not violate and third party intellectual property rights; or (b) procure the right for Purchaser to continue using the product.

Limitation of Liability In no event will ATEC be liable to seller or seller's assistants, agents, or any third party for any incidental, indirect, special or consequential damages arising out of, or in connection with this agreement, whether or not ATEC was advised of the possibility of such damage.

Notice Unless otherwise agreed, notices to ATEC regarding Order will be in writing and addressed to the Buyer, Advanced Test Equipment Corp. 10401 Roselle Street, San Diego, CA 92121. and to the Supplier at its address as given on invoices, the Purchase Order or other official document.

Payment As full consideration for the performance of the Services, delivery of the goods, services and/or work and the assignment of rights to ATEC as provided herein, ATEC will pay seller the amount agreed upon and specified in the applicable purchase order, or seller's quoted price on date of shipment whichever is lower. Applicable taxes and other charges such as shipping costs, duties, customs, tariffs, imposts and government imposed surcharges will be stated separately on Seller's invoice. Unless otherwise agreed, payment for products and/or services will be within 60 days from date of acceptance or receipt of invoice, which ever is later. Payment will not constitute acceptance. All personal property taxes assessable upon the goods prior to receipt by ATEC of goods conforming to the purchase order will be borne by Seller. Seller will invoice ATEC for all goods delivered. Each invoice submitted by seller must be provided to ATEC within ninety (90) days of completion of services and/or work or delivery of goods and must reference the applicable purchase order. ATEC reserves the right to return all incorrect invoices. ATEC will receive a 2% discount of the invoiced amount for all invoices that are submitted more than ninety (90) days after completion of the services and/or work or delivery of the goods.

Severability If any provision of the Order is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain valid, binding and enforceable.

Termination ATEC will have the right for and at its convenience to terminate this Order in whole or in part at any time, and from time to time, by written or telegraphic notice effective upon receipt by Seller, even though Seller is not in breach of any obligation hereunder. Upon receipt of notice of termination, Seller will immediately discontinue performance and will comply with ATEC's instructions concerning disposition of completed and partially completed items, work in progress and materials acquired pursuant to this Order. In the event of such termination, Seller will be paid an amount in settlement to be mutually agreed upon by the parties which will cover Seller's reasonable costs of performance incurred prior to termination in connection with the items for which this Order is terminated plus a reasonable profit based upon such costs. However, said payment will not exceed the price specified herein for such items. In no event will the Seller be entitled to recover incidental or consequential damages. Seller will advise ATEC, in writing, of Seller's claim, if any, for termination costs within ten (10) days after receipt of the notice of termination

Title and Risk The title and risk in the goods and/or services will remain with the supplier until they are delivered at the point specified by ATEC in the Purchase Order or any other relevant document, and transferred to ATEC's possession, at which time title and risk in the Goods and/or Services will transfer to ATEC.

Waiver ATEC's failure to insist upon strict compliance will not be deemed to be a waiver of any right granted ATEC herein. ATEC will not be deemed to waive any such right unless such waiver is in writing signed by ATEC; such waiver will not constitute a waiver of any other default under this Order.

Warranties Unless otherwise agreed, vendor warrants that all products and services purchased will conform to the applicable specifications as agreed with purchaser and will be free from defects in material, workmanship, function and title for a minimum period of 12 months from the date of acceptance. Vendor will remedy any defects discovered by and notified by purchaser by either, at purchaser's option, correcting the defects at vendor's expense or by furnishing new products or services free of defects. Defective products will be returned to vendor and repaired and/or replaced by vendor at its own expense and risk. Repaired or replacement products will be warranted for 6 months or to the end of the original warranty period, whichever is longer. If vendor refuses, fails or is otherwise unable to correct a defect, or to furnish new product or services within 30 days or such other reasonable period of time set by purchaser dependent in part on the urgency of the repair, purchaser will be entitled to terminate the whole or any part of the order without payment to vendor, demand a reduction in price, make its own repairs or replacements, or engage a third party to carry out repairs or replacements and recover such costs from the vendor, or claim damages for non-performance or poor performance of the contract.