

**All Sales Made by AeHR Test Systems (ATS) are made with the following Terms and Conditions**

**1. PRICES**

Prices are exclusive of all federal, state, municipal, or other government, excise, sales, use, occupational, or like taxes now in force or enacted in the future. Any such tax, fee, or charge of any nature whatsoever imposed by any government authority on, or measured by, the transaction between ATS and Buyer shall be paid by Buyer in addition to the prices quoted or invoiced. In the event ATS is required to pay any such tax, fee, or a charge, at any time of sale or thereafter, Buyer shall reimburse ATS.

**2. DELIVERY**

a. Delivery shall be made EXW ATS's or one of its supplier's facilities (Incoterms 2000) ("Delivery Point") for all shipments. The time of delivery ("Delivery Date") is the time that ATS notifies Buyer that the product is ready for shipment.

b. ATS shall use reasonable efforts to deliver the product on the date specified. However, ATS shall not be liable for any failure to meet such date.

c. Title to the products (except for licensed products) and risk of loss or damage to the products shall pass to Buyer upon delivery by ATS to the Delivery Point. Products held or stored at the Delivery Point after the Delivery Date shall be held at the risk and expense of Buyer. Such expenses will be invoiced to Buyer.

**3. IMPORT/EXPORT**

It is the Buyer's sole responsibility to obtain all necessary import and export licenses and to fulfill any other requirements imposed by government entities for Buyer to receive the products. Buyer warrants to ATS that any such licenses will be obtained, and any other such requirements will be met, prior to the Delivery Date. ATS shall not be held liable for any loss, damages or penalty resulting from delay or cancellation due to Buyer's failure to obtain or fulfill such requirements. Cancellation shall be subject to the charges set forth in Section 9.

**4. SHIPMENT**

In the absence of specific shipping instructions, ATS will ship by the method it deems most advantageous. Transportation and insurance charges will be paid by Buyer, or if prepaid, will be subsequently invoiced to Buyer. Unless otherwise specified, ATS shall have the discretion to use the type of packaging it deems appropriate. When special or export packaging is requested or, in the opinion of ATS, required under the circumstances, the cost of the same, if not set forth on the invoice, will be separately invoiced.

**5. TERMS OF PAYMENT**

Payment terms are subject to approved credit limits by ATS and are subject to change at any time. ATS will submit an invoice to Buyer requesting payment for each shipment. For standard products and international delivery, Buyer will pay subject to a letter of credit. For custom products and international delivery, Buyer will make payment to ATS as follows: 30% within twenty (20) days after receipt of order, 70% subject to a letter of credit. For standard products and domestic delivery, Buyer will make payment to ATS within thirty (30) days from the invoice date. For custom products and domestic delivery, Buyer will make payment to ATS as follows: 30% within twenty (20) days after receipt of order, 50% at shipment, 20% within thirty (30) days after shipment. Any invoiced amount not received within thirty days of the invoice date shall be subject to a service charge of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is less.

ATS reserves the right to withhold any shipments or its performance if ATS has not been paid in accordance with these Terms and Conditions or as otherwise set forth in the invoice.

**6. WARRANTY AND LIMITATION OF WARRANTY**

ATS warrants that the systems and system upgrades sold of ATS design and manufacture will be free from defects in material and workmanship and perform to applicable ATS specifications for a period of one (1) year from date of shipment. Burn-in Boards (BIBs), Performance Test Boards (PTBs), DiePak<sup>®</sup> carriers, and spare parts of ATS design and manufacture are warranted for a period of 90 days from the date of shipment. The liability of ATS hereunder shall be limited to repairing or, at ATS's option, replacing any defective units which are returned freight prepaid to ATS's plant after receiving return authorization from ATS, or, if not practical, solely at ATS's option, refunding up to the purchase price for such defective units. Products shall not be returned without the prior authorization of ATS. **ATS MAKES NO WARRANTIES ON ASSEMBLIES AND SUBASSEMBLIES USED IN THE PRODUCTS, PURCHASED BUT NOT MANUFACTURED BY ATS, OTHER THAN ASSIGNING ANY WARRANTIES IT HAS COVERING SUCH ITEMS TO BUYER IF APPLICABLE.** ATS will provide, upon Buyer's request, information to purchase extended warranties and service agreements from the original vendor, if such services are available.

Equipment or parts which have been subjected to (a) operating or environmental conditions that do not conform with the applicable ATS specifications, or to (b) abuse, misuse, accident, alteration, neglect, unauthorized repair or installation are not covered by warranty. In addition, a condition of the warranty is the performance of proper preventive maintenance for the equipment as specified by ATS. ATS shall make the final determination as to the existence and cause of any alleged defect. As to items repaired or replaced, the warranty shall continue in effect for the remainder of the initial warranty period, or for 30 days from the Delivery Date of the repaired or replaced parts, whichever period is longer.

Warranties made by ATS may not be assigned or transferred to any third party. No liability is assumed for expendable items such as lamps and fuses. No warranty is made with respect to Buyer furnished components or products produced to Buyer's specifications except as explicitly stated in writing by ATS in the contract for such equipment.

Except as herein above provided, **ATS MAKES NO WARRANTIES, EXPRESSED, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTY OF NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**7. LIMITATION OF LIABILITY**

ATS shall not be liable for any loss, damages, or penalty resulting from delay in delivery when such delay is due to causes beyond the reasonable control of ATS, including but not limited to supplier delay, force majeure, act of God, labor unrest, fire, explosion, flood or earthquake. In any such event, the scheduled date of shipment shall be deemed extended for a period equal to the delay.

**ATS'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT AND/OR SALE OR BREACH THEREOF SHALL BE LIMITED TO REFUND OF THE PURCHASE PRICE OF THE GOODS GIVING RISE TO SUCH LIABILITY. IN NO EVENT SHALL ATS BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS. IN NO EVENT SHALL ATS BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR OTHER DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT) WHETHER OR NOT ATS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, AND ON ANY THEORY OF LIABILITY. THE ESSENTIAL PURPOSE OF THIS PROVISION IS TO LIMIT THE POTENTIAL LIABILITY OF ATS ARISING OUT OF THIS AGREEMENT AND/OR SALE, AND THIS PROVISION SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.**

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**8. SUBSTITUTION AND MODIFICATIONS**

ATS shall have the right to make substitutions and modifications in the specifications or products sold by ATS provided that such substitution or modifications will not affect overall product performance.

**9. CANCELLATION**

This contract may be canceled by Buyer only upon payment of cancellation charges as follows:

Days Prior to Scheduled Shipment	Cancellation Charges
>119 days	30% of purchase price
90-119 days	40% of purchase price
60-89 days	60% of purchase price
30-59 days	80% of purchase price
Less than 30 days	100% of purchase price

In case of special products or standard products with special modifications, this contract may only be canceled by Buyer upon payment of a cancellation charge which equals 100% of purchase price.

**10. PATENT INFRINGEMENT**

ATS agrees that it will, at its own expense, defend all suits or proceedings instituted against Buyer that are based on any claim that the equipment or any part furnished under this contract constitutes an infringement of any patent of the United States, provided Buyer gives to ATS immediate notice in writing of the institution of the suit or proceedings and permits ATS to defend the same and gives ATS all needed information, assistance, and authority to do so. ATS, however, shall not be held responsible for infringements of combination patents or process patents covering the use of this equipment in combination with other equipment or materials not furnished by ATS. In case the equipment furnished by ATS in such suit is held in and of itself to constitute infringement and its use enjoined, ATS, within a reasonable time will, at its option, secure for Buyer the right to continue using said equipment by suspension of the injunction by procuring for Buyer a license or otherwise, or replace such equipment with non-infringing equipment, or remove the enjoined equipment and refund the sums paid, less a reasonable sum for use and damage. These provisions, however, shall not apply to any patented equipment, device, or parts specified by Buyer but not manufactured by ATS. **THE FOREGOING STATES THE EXCLUSIVE LIABILITY AND OBLIGATION (EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE) OF ATS ARISING OUT OF ANY INFRINGEMENT OR CLAIM OF INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT.**

**11. ACCEPTANCE OF SOFTWARE LICENSE**

If the product contains any software or firmware packages licensed by ATS, Buyer agrees to abide by the terms of the applicable ATS software license. Such applicable license may not be transferred, assigned, or sublicensed to any third party.

**12. SECURITY INTEREST**

ATS reserves a purchase money security interest in goods sold and the proceeds thereof, in the amount of the purchase price. In the event of default by Buyer in any of its obligations to ATS, ATS shall have the right to repossess the goods sold hereunder without liability to Buyer. These security interests will be satisfied by payment in full. A copy of the invoice may be filed with appropriate authorities at any time as a financing statement and/or chattel mortgage to perfect ATS's security interest. On request of ATS, Buyer shall execute financing statements and other instruments that ATS may request to perfect ATS's security interest.

**13. DATA AND PROPRIETARY RIGHTS IN DATA**

Portions of the data supplied are proprietary to ATS. ATS retains for itself all proprietary rights in and to all designs, engineering details, and other data pertaining to any product sold unless such rights are assigned under written agreement by a corporate officer of ATS. Buyer shall not disclose ATS proprietary data to any third party without prior written consent from ATS, and Buyer shall only use such data in connection with the ATS products.

**14. SALE CONVEYS NO LICENSE**

The products are offered for sale and are sold by ATS subject in every case to the condition that such sale does not convey any license, expressly or by implication, estoppel or otherwise, under any patent claim with respect to which ATS can grant licenses covering complete equipment, or any assembly, circuit combination, method or process in which any such products are used as components. ATS expressly reserves all its rights under such patent claims.

**15. COMPLIANCE WITH LAWS**

Unless specifically included herein, ATS does not represent that its products meet any local, state, or Federal laws, ordinances, regulations, and the like. Compliance with such requirements is the responsibility of Buyer.

**16. ENTIRE AGREEMENT**

The terms and conditions as set forth herein shall constitute the entire agreement between ATS and Buyer. ATS shall not be bound by any terms of Buyer's order which are inconsistent with the terms herein set forth. Acceptance by Buyer of these terms may be made either by written acceptance, or by Buyer taking delivery of any products described on the ATS invoice.

This contract may not be modified, supplemented, qualified or interpreted by any trade usage or prior course of dealing not made a part of the contract by its express terms. Buyer hereby acknowledges that he has not entered into this agreement in reliance upon any warranty or representation by any person or entity except for the warranties or representations specifically set forth herein.

**17. WAIVER**

The failure by ATS to enforce at any time any of the provisions of this contract, or to exercise any election or option provided herein, shall in no way be construed as a waiver of such provisions or options, nor in any way affect the validity of this agreement or the right of ATS to enforce each and every such provision.

**18. DISPUTE RESOLUTION**

This contract shall be construed and the legal relations between the parties determined in accordance with the laws of the State of California, United States of America, applicable to contracts made and to be performed therein. The state courts of the County of Santa Clara, State of California (or if there is exclusive federal jurisdiction, the United States District Court for the Northern District of California) shall have exclusive jurisdiction over any dispute under or arising out of this Agreement, and Buyer hereby consents to the jurisdiction of such courts. In the event of any legal action to enforce any right under this Agreement, the prevailing party shall be entitled to collect its reasonable attorney's fees and costs.