

# ASETEK'S TERMS AND CONDITIONS OF SALE AND DELIVERY

## 1. SCOPE

These Terms and Conditions of Sale and Delivery (the "Terms") of Asetek USA, Inc., a corporation registered and existing under the laws of Delaware ("Asetek") shall apply to all quotations and offers made by and purchase orders accepted by Asetek for the sale of any product of Asetek (the "Product"). Further, these Terms apply to all sales made by Asetek except to the extent the Terms conflict with a Sales Agreement signed by Asetek and Buyer.

## 2. CONCLUSION OF SALES AGREEMENT

A final agreement of sale ("Sales Agreement") shall only be deemed to be effective after Asetek has sent a written confirmation of order to Buyer, and the Sales Agreement shall be subject to these Terms.

These Terms may in some instances conflict with some of the terms and conditions affixed to the purchase order or other procurement document issued by Buyer. In such case, the Terms contained herein shall govern, and acceptance of Buyer's order is conditioned upon Buyer's acceptance of the terms and conditions herein, irrespective of whether Buyer accepts these conditions by a written acknowledgement, by implication, or acceptance and payment of Products ordered hereunder. Asetek's failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of the provisions herein. Any changes in the Terms contained herein must specifically be agreed to in writing signed by a duly authorized representative of Asetek before becoming binding on Asetek.

## 3. PRICES AND TAXES

The price payable for the Products ordered by Buyer is set out in the Sales Agreement.

Unless explicitly stated otherwise in the Sales Agreement the prices are exclusive of any present or future sales, revenue or excise tax, sales tax, turnover tax, import duty or other tax applicable to the sale of the Product. Such taxes, when applicable, shall be paid by Buyer unless Buyer provides a proper tax exemption certificate. Unless otherwise agreed to in writing by the parties, prices quoted by Asetek are those current at the date of quotation and shall be subject to change by Asetek.

## 4. TECHNICAL INFORMATION, INSTRUCTIONS, ETC.

Any product information, illustrations, drawings and information on technical data such as volume, performance, uptime, noise level and the like in brochures, PowerPoint presentations, on Asetek's homepage etc. are for guidance only. Information given by Asetek shall only be binding subject to a separate written guarantee being issued as part of the Sales Agreement.

Any drawings and technical documents submitted to Buyer prior or subsequent to the formation of the Sales Agreement shall remain the property of Asetek and may not without Asetek's prior written consent be used for other purposes than the ones stipulated, or copied, reproduced, transmitted or otherwise communicated to a third party.

## 5. DELIVERY

Unless otherwise stated in the order confirmation, delivery takes place Ex Works (INCOTERMS 2010) at the production facility of the contract manufacturer of the Product or warehouse as the case may be as set out by Asetek in the Sales Agreement.

Asetek may deliver Products in one or more consignment and invoice each consignment separately. Asetek reserves the right to ship Products prior to the agreed shipping date.

In some instances, Asetek may be required to care for the transportation from the point of delivery to a location as directed by Buyer. In such case and in the absence of any specific instructions Asetek will select the carrier and ship the Products prepaid and added to the price of the relevant Product. Asetek will not be deemed responsible for any liability in connection with any shipment because of the selection of a carrier or such carrier's failure to maintain an insurance.

Unless otherwise agreed in writing, delivery time is not of the essence, to the effect that any time of delivery stated by Asetek is approximate and is not binding on Asetek. However Asetek will use its reasonable efforts to seek to accommodate any fixed delivery time desired by Buyer.

Except as stated otherwise herein Asetek does not accept liability for any loss arising from delay in delivery of Products.

Where delivery cannot be made due to conditions for which Buyer is responsible, the Products will be stored by Asetek at Buyer's expense and risk. Asetek is entitled to charge storage rent, and to have any costs incurred refunded.

## 6. DELAY

If delivery is delayed, and Asetek is responsible for the delay, cf. section 5, Buyer may give notice to Asetek as to demand of delivery. Such notice must state a final time for delivery of no less than 20 working days from the notice date. If delivery is not effectuated according to agreed upon delivery terms within said notice period Buyer may declare the sales Agreement avoided.

Buyer's right to cancel as stated in Clause 6.1 shall constitute Buyer's sole remedy against Asetek for delay.

## 7. ORDER CANCELLATION

Asetek shall have the right to declare any Sales Agreement avoided without notice to Buyer in the event that Buyer becomes insolvent, adjudicated bankrupt, petitions for or consents to any relief under any bankruptcy reorganization statute, or becomes unable to meet its financial obligations in the normal course of business or if it is highly likely that one of the aforementioned circumstances will occur in near future.

## 8. PAYMENT TERMS

Unless otherwise agreed in the Sales Agreement, payment terms shall be net thirty (30) days from the date of invoice. Buyer agrees to pay interest on any unpaid balance at a rate of 15% per annum.

Asetek may require payment to be secured by an irrevocable letter of credit or a bank guarantee acceptable to Asetek. Further, Asetek reserves its right to require cash payment.

Unless otherwise agreed in writing, all payments are to be made in the currency stated in the order confirmation without set-off, deduction for processing or counterclaim. Except as expressly accepted in writing by Asetek payment shall be by electronic funds transfer pursuant to Asetek's instructions, or by Asetek's draw upon a letter of credit. Where payment is made based on letter of credit, all costs of the establishment of the letter of credit and the collection shall be for Buyer's account. In the event that Asetek brings legal action to collect delinquent accounts, Buyer agrees to pay reasonable attorneys fees and costs of suit.

## 9. RETENTION OF TITLE

Any Products sold and delivered by Asetek shall remain the property of Asetek, and Asetek is granted a security interest in such Products, until the full purchase price plus any interest and costs have been effectively paid.

## 10. NOTICE OF DEFECTS

Buyer shall notify Asetek of any visible defects, quantity shortages or incorrect Product shipments within seven (7) calendar days from receipt of the shipment. Provided Buyer does not notify Asetek in writing of any visible defects in the Products or of quantity shortages or incorrect shipments within said period Buyer shall be deemed to have waived any and all rights to return the Products on the basis of visible defects, shortages or incorrect shipments. Notices of any alleged defects shall be submitted to Asetek by e-mail ([RMA@asetek.com](mailto:RMA@asetek.com)). Return of any Products which are claimed to be defective may only take place in accordance Asetek's RMA procedures, which are available upon request.

Asetek shall be liable only for original defects.

Any notice of defects of whatever kind shall be given no later than 24 months after the time of delivery. If Buyer fails to give such notice, the right to make any subsequent claim based on the defect shall be forfeited.

If Buyer claims that a Product is defective, and it turns out that there no defect is found for which Asetek is liable, Buyer shall upon request from Asetek compensate any and all reasonable costs and expenses incurred by Asetek in conjunction with the investigation of the claim.

## 11. LIMITED WARRANTY

Except as specified below, Products shall be free from defects in materials and workmanship and shall conform to Asetek's published specifications or other specifications accepted in writing by Asetek for a period of 36 months from the date of shipment of the Products. The foregoing warranty does not apply to any Products which have been subject to misuse, neglect, accident, modification, alteration, or which have been integrated/installed in any of Buyer's finished or semi-finished products without observing any instructions or user manuals issued by Asetek. Asetek shall make the final determination as to whether its' Products are defective.

Asetek's sole obligation for Products that are not in compliance with this warranty shall be to either repair, replace or issue credit for the nonconforming Product

THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ASETEK DOES NOT ASSUME OR AUTHORIZE ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH ITS PRODUCTS.

Buyer shall not grant any warranties to customers of the Product which are more favourable than the limited warranty granted hereunder.

## 12. PRODUCT LIABILITY

Asetek shall be liable for defects in Products pursuant to the mandatory provisions of the applicable law. Asetek disclaims to the widest extent possible any other kind of liability for damage or injury caused by a defective Product cf. clause 0 Asetek's liability shall not exceed the coverage of Asetek's product liability insurance in force from time to time.

## 13. LIMITATION OF LIABILITY

Neither Asetek nor Buyer shall be liable for any indirect or consequential losses such as - but not limited to - operational loss, loss of profit, loss of data or costs related to the recovery thereof, loss of goodwill, mutilation of information, and /or loss of anticipated.

The aggregate liability of Asetek to Buyer shall be limited in respect of any occurrence or series of occurrences to the contractual value of the Products that are the subject of the Sales Agreement.

## 14. INTELLECTUAL PROPERTY RIGHTS

Subject to the limitations herein, Asetek will defend any suit or proceeding brought against Buyer if it is based on a claim that any Product delivered hereunder constitutes an infringement of any third party intellectual property rights. Asetek must be notified promptly in writing and given full and complete authority, information and assistance (at Asetek's expense) for defence of the suit. Asetek will pay damages and costs therein awarded against Buyer but shall not be responsible for any compromise made without its consent. In no event shall Asetek's liability for such damages and costs (including legal costs) exceed the contractual value of the Products that are the subject of the lawsuit. In providing such defence, or in the event that such Product is held to constitute infringement and the use of the Product is enjoined, Asetek, in its discretion, shall (i) procure the right to continue using such Product; (ii) replace the Products with non-infringing Products; (iii) modify the Product so that it becomes non-infringing; or (iv) or recall the Product and grant Buyer a credit for the depreciated value thereof. Asetek's indemnity does not extend to claims of infringement arising from Asetek's compliance with Buyer's design, specifications and/or instructions, or use of any Product in combination with other products or in connection with a manufacturing or other process. The foregoing remedies are exclusive and constitutes Asetek's sole obligation for any claim of intellectual property infringement.

The sale of any Products hereunder does not convey any license by implication, estoppel or otherwise in the intellectual property rights owned by Asetek.

## 15. FORCE MAJEURE

Asetek shall not be held liable for any damage or penalty for delay in delivery or for failure to give notice of delay when such delay is due to acts of god, acts or omissions of Buyer, acts of civil or military authority, war, riots, concerted labor actions, shortages of materials, or any other causes beyond the reasonable control of Asetek. The anticipated delivery date shall be deemed extended for a period of time equal to the time lost due to any delay excusable under this provision.

## 16. ELECTRONIC WASTE

Buyers who buy electrical and electronic equipment from Asetek for resale in the United States of America are responsible for providing means of waste disposal and scrapping of such equipment in accordance with applicable state and federal laws and regulations.

## 17. SEVERABILITY

If any provision(s) of these Terms is/are finally determined to be invalid or unenforceable, the remaining provisions of these Terms shall remain in effect. In this case the invalid or unenforceable provision(s) shall be replaced by such valid and enforceable provision(s) that most closely resemble the purpose and legal position of the invalid or unenforceable provision(s).

## 18. WAIVER

Failure by Asetek to exercise or enforce any rights hereunder shall not be deemed to constitute a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

## 19. NOTICES

Any notice hereunder shall be deemed to have been given if sent by registered mail or by courier to the party concerned at its last known address. Apart from notices concerning alleged defects cf. clause 1, notices to Asetek shall be sent to Asetek USA, Inc., 5285 Hellyer Ave., Suite 110, San Jose, CA 95138 or by e-mail to [Legal@asetek.com](mailto:Legal@asetek.com).

## 20. APPLICABLE LAW AND VENUE

Any dispute arising out of the parties' Sales Agreement, these Terms, and questions pertaining to product liability, shall be settled in accordance with California law without regard to its conflicts of law principles and without application of the United Nations Convention on the International Sale of Goods.

With respect to any disputes arising out of or related to this Agreement, the parties consent to the exclusive jurisdiction of, and venue in, the state courts in Santa Clara County in the State of California, USA (or in the event of exclusive federal jurisdiction, the courts of the Northern District of California). Claims against Buyer may, at Asetek's sole discretion, be brought for any of the following venues: 1) The competent Court within Buyers' jurisdiction in the United States; or 2) To initiate arbitration procedures according to the rules of "American Arbitration Association". Each of the parties shall be entitled to nominate one arbitrator. The place of arbitration shall be San José, California. The proceedings shall be conducted in the English Language.