

## **BAY ADVANCED TECHNOLOGIES, LLC. – STANDARD TERMS AND CONDITIONS OF SALE**

GOODS AND SERVICES SOLD BY BAY ADVANCED TECHNOLOGIES, LLC. ("BAY") ARE EXPRESSLY SUBJECT TO THE TERMS AND CONDITIONS SET FORTH BELOW. ANY DIFFERENT OR ADDITIONAL TERMS OR CONDITIONS IN BUYER'S PURCHASE ORDER OR SIMILAR COMMUNICATION ARE OBJECTED TO AND SHALL NOT BE BINDING ON BAY UNLESS AGREED TO IN WRITING BY A BAY CORPORATE OFFICER. BUYER'S ACCEPTANCE OF SHIPMENT OR PERFORMANCE AND/OR PAYMENT FOR THE GOODS OR SERVICES CONSTITUTES ACCEPTANCE OF BAY'S TERMS AND CONDITIONS.

**PRICE:** Prices in effect at time of shipment of Materials or performance of services shall prevail. All prices quoted by BAY are subject to correction or change without notice. Prices do not include freight, shipping, handling fees and/or duties, any present or future sales, use, excise, value-added or similar taxes. Where applicable, such taxes shall be billed as a separate item and paid by Buyer. A standard shipping charge is applied to each invoice for Materials to cover the material preparation, packaging, freight and/or any additional costs associated with each shipment based on the value and/or weight of the shipment. Additional charges for local delivery may also apply. Export orders may be subject to other special pricing.

**PAYMENT TERMS:** Unless otherwise agreed in writing, terms of payment are thirty (30) days net, without setoff or deduction, from date invoice was mailed or Materials are delivered, whichever is earliest, if Buyer's credit has been approved prior to sale. A late payment charge of 1 1/2% per month (an annual percentage rate of 18%) shall be charged on all past due accounts and Buyer shall pay BAY all costs incurred by it in collecting any past due account from Buyer, including, but not limited to, all court costs and attorney's fees. However, if the foregoing charges exceed that rate which is the maximum permitted by law, then such charges shall be calculated to be the highest allowable lawful rate. The remittance portion of the invoice shall accompany payment. Alternatively, payments and other adjustments must reference the invoice number to assure proper credit.

**CREDIT BALANCE:** Any credit balance issued will be applied within one (1) year of its issuance. IF NOT APPLIED WITHIN ONE (1) YEAR, THE BALANCE REMAINING SHALL BE CANCELLED, AND BAY SHALL HAVE NO FURTHER LIABILITY EXCEPT AS REQUIRED BY APPLICABLE LAW.

**DELIVERY:** Unless otherwise noted, all sales of Materials are made f.o.b. point of shipment and, in all cases, title shall pass upon delivery to the carrier at point of shipment and thereafter all risk of loss or damage shall be upon Buyer. Delivery dates given in advance of actual shipment of Materials or performance of services are estimates and shall not be deemed to represent fixed or guaranteed delivery dates. Buyer shall notify BAY of any nonconforming Materials within a commercially reasonable time after Buyer becomes aware of such nonconforming products.

**WARRANTIES:** Materials are sold only with such warranties as may be extended by the manufacturer of the product. Services performed by third parties are subject only to those warranties extended by such third parties. Any service beyond distribution of goods manufactured by third parties, including but not limited to maintenance service, repair, design, engineering and programming, will be covered by separate written agreement. BAY MAKES NO WARRANTY AND ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS ARE HEREBY EXCLUDED. Buyer is responsible for installation and use in accordance with manufacturer's instructions. Products are sold for commercial use only and are not intended for use by consumers. BAY specifically disclaims all warranties to those defined as consumers under the Magnuson-Moss Act. BAY personnel are not authorized to alter this policy.

**LIMITATION OF LIABILITY:** BAY's liability on any claim for loss or damage arising out of this contract or from the performance or breach thereof, or connected with any Materials or services supplied hereunder, or the sale, resale, operation or use of Materials, whether based on contract, warranty, tort (including negligence) or other grounds, shall not exceed the price allocable to such Materials or services or part thereof involved in the claim, REGARDLESS OF CAUSE OR FAULT. This limitation of liability reflects a deliberate and bargained-for allocation of risks between BAY and Buyer and constitutes the basis of the parties' bargain, without which BAY would not have agreed to the price or terms of this contract. BAY shall not under any circumstances, be liable for any labor charges without its prior written consent. BAY SHALL NOT IN ANY EVENT BE LIABLE whether as a result of breach of contract, warranty, tort (including negligence) or other grounds FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES including, but not limited to, loss of profits or revenue, loss of use of Materials or associated products, cost of capital, cost of substitute products, facilities or services, downtime costs, or claims of customers of Buyer for such damage. If BAY furnishes Buyer with advice or other assistance regarding any Materials or services supplied hereunder, or any system or equipment in which any such Materials may be installed, and which is not required pursuant to this contract, the furnishing of the advice or assistance will not subject BAY to any liability, whether based on contract, warranty, tort (including negligence) or other grounds.

**SUBSTITUTIONS/INTERCHANGEABILITY:** Unless specifically restricted on a purchase order, BAY reserves the right to interchange an equivalent available product in place of the product ordered where the interchangeability of the product is based on form, fit, and function.

**EQUAL OPPORTUNITY AND LABOR PRACTICES:** The contract provisions in Section 202 of Executive Order 11246, as amended, and the regulations promulgated thereunder are incorporated by reference as if fully written with respect to any order. BAY certifies that the Materials covered by this invoice have been produced in accordance with the Fair Labor Standards Act of 1938, as amended.

**MATERIAL SAFETY DATA SHEETS ("MSDS"):** MSDS for applicable products sold by BAY are prepared by the manufacturers and available online at [www.bayat.com](http://www.bayat.com). Unless requested, BAY will not furnish paper copies of MSDS for those products for which an MSDS is not electronically available. Paper copies of MSDS for all products are immediately available upon demand via facsimile or U.S. mail. Please contact your local BAY service center to obtain a copy of any MSDS via facsimile or U.S. mail or to continue receiving paper copies of MSDS for all shipments of applicable products.

**NUCLEAR OR OTHER HAZARDOUS ACTIVITIES:** Unless specifically agreed to in writing by an authorized officer of BAY, Materials sold hereunder are not intended for use in connection with any nuclear facility or any other application or hazardous activity where failure of a single component could cause substantial harm to persons or property. If so used, BAY disclaims any and all liability for any nuclear damage, contamination or other damage or injury and Buyer shall indemnify and hold BAY harmless from such liability whether as a result of breach of contract warranty, tort (including negligence) or other grounds. BAY and its suppliers shall not be liable to Buyer or its insurers based on contract, warranty, tort (including negligence), or other grounds for onsite damage to property located at a nuclear facility.

**CANCELLATION AND RETURNS:** Buyer may cancel an order by mutual agreement based upon payment to BAY of reasonable and proper cancellation charges. Materials shall not be returned by Buyer without BAY's prior written authorization and payment by Buyer of a minimum restocking charge of 15%. Authorized returns shall be returned at Buyer's sole expense, freight prepaid. There are NO returns of special order or made-to-order items. No returns shall be accepted following 60 days after delivery. No credit will be issued for shipping charges or other special expenses.

**SHORTAGE/OVERAGES:** All shortages and/or overages must be identified within 14 days of the date of shipment.

**FORCE MAJEURE:** BAY shall not be liable for failure to deliver or for delay in delivery or performance due to: (i) a cause beyond its reasonable control; (ii) an act of God, act or omission of Buyer, act of civil or military authority, governmental priority or other allocation or control, fire, strike or other labor difficulty, riot or other civil disturbance, insolvency or other inability to perform by the manufacturer, delay in transportation; or, (iii) any other commercial impracticability. If such a delay occurs, delivery or performance shall be extended for a period equal to the time lost by reason of delay.

**CHANGE IN BUYER'S FINANCIAL CONDITION:** BAY reserves the right by written notice to cancel any order or require full or partial payment or adequate assurance of performance from Buyer without liability to BAY in the event of: (i) Buyer's insolvency, (ii) the filing of a voluntary petition in bankruptcy by Buyer, (iii) the appointment of a receiver or trustee for Buyer, or (iv) the execution by Buyer of an assignment for the benefit of creditors. BAY reserves the right to suspend its performance until payment or adequate assurance of performance has been received. BAY also reserves the right to cancel Buyer's credit at any time for any reason. Buyer, in order to provide security for the payment of the full price of Materials furnished hereunder, grants BAY a security interest in the Materials and the proceeds thereof. Title to the Materials shall remain in BAY, and Materials furnished by BAY shall not become a fixture by

reason of being attached to real estate, until paid in full. Buyer agrees to execute any documents or furnish information necessary to perfect this security interest. A copy of the invoice may be filed at any time as a financing and/or chattel mortgage, in order to perfect BAY's security interest. BAY may, in its sole discretion require, and Buyer hereby grants to BAY, a continuing purchase money security interest in all inventory, equipment, and Materials sold by BAY to or for the benefit of Buyer, wherever located, and all accessions and products and all proceeds from the sale thereof; and all accounts and accounts receivable which may from time to time hereafter come into existence during the term of this Security Agreement. BAY's purchase money security interest is explicitly limited to outstanding obligations between BAY and Buyer.

**ASSIGNMENT OR DELEGATION:** Buyer shall not assign or delegate any or all of its duties or rights hereunder without BAY's prior written consent.

**WAIVER, CHOICE OF LAW AND DISPUTE RESOLUTION:** The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition will not constitute a waiver of that right or excuse any subsequent nonperformance of any such term or condition by the other party. All transactions shall be governed by the laws of the State of Ohio, United States of America, excluding conflict of law rules. Any dispute arising out of or relating to transactions hereunder shall be settled by binding arbitration in Cleveland, Ohio under Ohio law administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The arbitrators will have the powers a state court judge would have had if the matter had been filed in such court, including equitable powers, except for the power to award punitive damages, which they shall not have. Actions by BAY for nonpayment by Buyer of the purchase price of Materials or services sold, may be brought by BAY, at BAY's option, before any court of competent jurisdiction in Cuyahoga County, Ohio and to the extent permitted by applicable law. Trial by jury is hereby waived. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply.

**COMPLIANCE WITH LAWS:** BAY shall take reasonable steps to ensure Materials sold by it are in conformity with various nationally recognized standards and such regulations as may affect the Materials; however, Buyer recognizes the Materials are utilized in many regulated applications and that from time to time standards and regulations are in conflict with one another. BAY makes no promise or representation that the Materials will conform to any federal, state or local laws, ordinances, regulations, codes or standards, except as particularly specified and agreed upon, in writing as part of the contract between Buyer and BAY. BAY prices do not include the cost of any related inspections, permits or inspection fees.

**GENERAL:** All orders are subject to acceptance by BAY. The terms and conditions in BAY's forms are incorporated herein by reference, and constitute the entire and exclusive agreement between Buyer and BAY. Any representation, affirmation of fact and course of dealing, promise or condition in connection therewith or usage of trade not incorporated herein, shall not be binding on either party. If any provision hereof shall be unenforceable, invalid or void for any reason, such provision shall be automatically voided and shall not be part of this agreement and the enforceability or validity of the remaining provisions shall not be affected thereby.

**SPECIAL TOOLS:** Unless specifically agreed in writing by BAY, and unless paid for by Buyer as shown on the invoice, all special tools, dies, jigs, patterns, machinery and/or equipment needed by BAY for the performance of this sale are, and shall remain, the property of BAY.

**ADDITIONAL TERMS AND CONDITIONS RELATED TO EXPORT OF BAY PRODUCTS - IN ADDITION TO THE STANDARD TERMS AND CONDITIONS ABOVE, EXPORT SALES OF BAY PRODUCTS WILL BE GOVERNED BY THE FOLLOWING ADDITIONAL TERMS AND CONDITIONS ("ADDITIONAL TERMS"). IN THE EVENT OF A CONFLICT BETWEEN BAY'S STANDARD TERMS AND CONDITIONS AND THE ADDITIONAL TERMS, THE ADDITIONAL TERMS SHALL PREVAIL FOR EXPORT SALES OF BAY PRODUCTS.**

**ORDER ACCEPTANCE:** Buyer acknowledges that no order shall be deemed accepted unless and until it is verified and accepted by BAY, or any of its U.S. affiliates, subsidiaries and divisions, at a continental U.S. facility or at any of its websites. Buyer further consents that submission of its order shall subject Buyer to the jurisdiction of the federal courts of the United States of America and of the State where acceptance occurred in the United States of America.

**EXPORT CONTROLS AND RELATED REGULATIONS:** Buyer represents and warrants that it is not on, or associated with any organization on the United States Department of Commerce's Bureau of Industry and Security's Denied Persons List or Unverified List; or the United States Department of the Treasury's Office of Foreign Assets Control lists, Specially Designated Nationals, Specially Designated Global Terrorists, Specially Designated Narcotics Traffickers, Specially Designated Narcotic Traffickers-Kingpin, or Specially Designated Terrorists List; or the United States Department of State's Designated Foreign Terrorist Organizations, Embargoed Countries list, or Debarred Persons List; or is subject to a denial order issued by the United States Department of Commerce. Buyer shall comply with all relevant laws and regulations of governmental bodies or agencies, including but not limited to all applicable export control laws of the United States or other governing agencies and their successors. BUYER AGREES TO INDEMNIFY AND HOLD BAY HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO NON-COMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.

**FOREIGN PRINCIPAL PARTY IN INTEREST; FREIGHT FORWARDER AND DOCUMENTATION:** It is specifically agreed that Buyer shall be the foreign principal party in interest and/or that its freight forwarder shall act as Buyer's agent in such capacity for Export Administration Act or other applicable purposes; and Buyer and freight forwarder shall assume responsibility for all export or routed transactions documentation. At BAY's request, Buyer or its freight forwarder shall provide copies of any export, shipping, or import documentation prepared by Buyer or its freight forwarder related to sales to them by BAY.

**U.S. FOREIGN CORRUPT PRACTICES ACT:** Buyer states that it is an independent contractor, and represents, warrants, and covenants that it has not paid, offered or agreed to pay, authorized the giving of, or caused to be paid, directly or indirectly, money or anything of value to any foreign official (as defined in the U.S. Foreign Corrupt Practices Act, as amended), in connection with the purchase and resale of the products ordered from BAY.

**COUNTRY OF IMPORTATION AND ANTI-DIVERSION:** Buyer represents that it is purchasing products from the U.S. and importing them to the country specified in the Buyer and BAY documentation. Buyer agrees that the products will be shipped to the specified destination in compliance with the laws of such destination and the U.S., and that the products will not be directly or indirectly sold, exported, transferred, assigned, used, or otherwise disposed of in a manner which may result in any non-compliance with applicable U.S. laws and regulations relating to the product purchased by Buyer. Any commodities, technology and software will be exported from the U.S. in accordance with the U.S. Export Administration Regulations and other applicable laws or regulations. Diversion contrary to U.S. law is prohibited. If requested by BAY, Buyer shall provide documentation satisfactory to BAY verifying delivery at the designated country. Buyer further agrees to inform BAY at the time of order of any North American Free Trade Agreement or other applicable documentation, packaging or product marking or labeling, but BAY shall not be responsible for providing any such documentation, packaging, marking or labeling other than such documents that are necessary under U.S. export laws and regulations for export, unless BAY expressly agrees, in writing, to do so.

**PERMITS, EXPORT, AND IMPORT LICENSES:** Buyer shall be responsible for obtaining any licenses or other official authorizations that may be required by the country of importation and/or under the Export Administration Regulations, International Traffic in Arms Regulations, Toxic Substances Control Act, or other applicable laws or regulations.