

American Diesel Tube Corporation
TERMS AND CONDITIONS OF PURCHASE

1. **FORMATION OF CONTRACT.** All orders of purchase ("Order") made by American Diesel Tube Corporation ("Buyer") shall be governed solely by these Conditions of Purchase to the exclusion of any terms and conditions of Supplier. Notwithstanding any other provision of this Order, Buyer reserves expressly the right to revoke this Order at any time prior to receipt of notice of acceptance by Seller. Acceptance is limited to the terms stated herein. All terms and conditions contained in any prior proposal or acknowledgment of this Order which are different from or in addition to the terms and conditions of this Order are hereby rejected and shall not be binding on Buyer, and Buyer hereby objects thereto. Seller will be deemed to have assented to all terms and conditions contained herein if any part of the goods and/or service covered by this Order is shipped or an invoice is presented in connection with the said goods and/or services. Orders may only be varied by a supplementary Purchase Order or other document in writing signed by an authorized signatory of Buyer.
2. **PRICE.** The Order price is fixed and shall not be increased nor the terms hereof changed without Buyer's written consent.
3. **PAYMENT.** Buyer shall only be bound to pay for goods and/or services ordered and accepted in accordance with these Terms and Conditions of Purchase. Supplier will render its invoice addressed to Buyer, which will contain particulars of the Order to which it relates. Payment may be withheld or portions thereof deducted or set-offs made against Seller if Seller is not performing work in accordance with the provisions of this or any other Order with Seller.
4. **REJECTIONS.** If any of the goods and/or services furnished hereunder are found at any time to be defective in material or workmanship or otherwise not in conformity with the requirements of Buyer's Order, Buyer, in addition to any other rights which it may have under all applicable warranties or otherwise, may at its option correct or have corrected the nonconformity at Seller's expense, or reject and return such goods and/or discontinue such services at Seller's expense. Buyer may accept, without prejudice, a portion of any shipment, and, at its option, have Seller repair or replace any non-conforming portion of the shipment, at Seller's expense. Items rejected shall be removed promptly by the Seller at its expense and at its risk. Final acceptance shall not be conclusive with respect to latent defects, fraud or such gross mistakes as amount to fraud or with respect to Buyer's rights under the "Warranty" clause below.
5. **WARRANTY.** Seller warrants that it has clear title to all items furnished subject hereto and that they are being delivered free and clear of any encumbrances. The Seller further warrants that all such items shall conform to the Seller's specifications, the requirements of this Order and approved sample or samples, if any, and further, that such shall be merchantable and fit for Buyer's or its customer's intended use and that such items shall be free from defects in design, material and workmanship (collectively, the "Seller's Warranty"). Seller's Warranty shall remain in effect for a one (1) year period after acceptance of the items by Buyer's customers.

If any defect, failure or other non-conformity appears, Buyer shall have the right to take the following actions: (1) retain such defective items and an equitable adjustment will be made in the Order price for such defective items; (2) require Seller to repair or replace such defective items, at the Seller's sole expense, including all shipping, transportation, and installation costs; or (3) correct or replace such defective items with similar items and recover the total cost thereof from the Seller. The aforesaid warranties shall survive acceptance and payment and shall run to Buyer, its customers and their successors in title and shall not be deemed to be exclusive, but shall be in addition to Buyer's other rights under the terms of this Order or at law or equity.

6. **DELIVERY.** Unless otherwise stipulated on the face of Buyer's Order or as modified by written notice by Buyer, goods covered by this Order shall be shipped "FOB destination" with title to said goods to pass to Buyer only upon delivery to Buyer's specified end destination, regardless of risk of loss. Transportation charges on goods delivered FOB destination must be prepaid. No charges for unauthorized transportation will be allowed.

7. **SUBCONTRACTING AND ASSIGNMENT.** Supplier shall not assign the benefit nor subcontract the burden of the Order or any part of it without the prior written permission of Buyer.

8. **NON-INFRINGEMENT.** Supplier warrants that the sale or use of the goods and/or services supplied will not infringe any intellectual property right or any other similar right in any country and shall indemnify and hold harmless Buyer against all and any loss, damage, liability, costs, expenses and claims arising from actual or alleged infringements of the same. However, this warranty and indemnity shall not apply to the extent that such loss, damage, liability, costs or expenses arises by virtue of the goods and/or services having been supplied strictly in accordance with any of Buyer's specifications created by Buyer and supplied to Supplier; provided, however, that Supplier shall warn Buyer if Supplier is aware that subsequent sale or use of the goods and/or services may result in such an infringement.

9. **INTELLECTUAL PROPERTY RIGHTS.** All patents, copyrights, know-how and all other intellectual property rights in any of Buyer's specifications, designs, drawings or other information of a proprietary or confidential nature, and all material in whatever medium supplied by Buyer in connection with the supply of the goods belong to, shall vest in and shall remain vested in, Buyer. Supplier and its subcontractors are authorized to use these rights for the purpose only of the work required of Supplier under the Purchase Order. Supplier will not either during the period of the Contract or at any time thereafter manufacture or procure to be manufactured for any person, firm or company other than Buyer any goods to the specifications or other instructions of a proprietary or confidential nature originating from, created for, or commissioned or owned or part owned by Buyer.

Any dies, tools, patterns, plates, drawings, specifications or other documents or items in the possession or under the control of Supplier which have either been supplied by Buyer to Supplier, or in respect of which Buyer has provided the whole of the cost, to enable Supplier to execute the Contract (the "Buyer's Property") shall become and/or remain the exclusive property of Buyer who may retake possession thereof at any time without notice, and shall otherwise be dealt with in accordance with a separate tooling agreement between the parties. Buyer's Property shall not be used by Supplier for any purpose other than for the supply of goods to Buyer.

Supplier shall cause its subcontractors to likewise comply with the obligations set forth above to preserve and maintain Buyer's rights of exclusive ownership and confidentiality to its intellectual property rights, including but not limited to Buyer's specifications, designs, drawings, dies, tools, patterns, etc.

10. **TRADEMARKS AND LOGOS.** Supplier shall make no use of Buyer's trademarks or logos other than in accordance with the written instructions of Buyer and in connection with the supply of the goods and/or services to Buyer.

11. **INDEMNIFICATION.** Supplier shall be liable to Buyer to indemnify and hold Buyer harmless against any loss, damage, liability, claims, costs or expenses caused by any breach by Supplier of the Contract or by any alleged defect in any goods and/or services supplied by Supplier, any delay in Supplier's performance or interruption in performance or late delivery or non-delivery or other breach of Supplier's obligations.

12. **INSURANCE.** Supplier will maintain in effect adequate insurance against any defects in the design, manufacture, delivery, installation and use of the goods and/or services which gives rise to a claim or demand for damages, or foreseeable loss, or damage to property, business or persons and shall, upon demand, deliver to Buyer a certified copy of an appropriate certificate of insurance.

13. **SET-OFF.** Buyer shall be entitled at all times to set-off any amount owing at any time from Seller to Buyer or any of its affiliates against any amount payable at any time by Buyer in connection with this Order or any other Order.

14. **TERMINATION UPON DEFAULT BY SELLER.** Buyer may by written notice of default to Seller 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 shall 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 Buyer may authorize in writing. The rights and remedies of Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Order.

15. **TERMINATION FOR CONVENIENCE.** Buyer shall have the right at its convenience to terminate this Order in whole or in part at any time, and from time to time, by written or electronic notice effective upon receipt by Seller, even though Seller is not in breach of any obligation hereunder. Upon receipt of notice of termination, Seller shall immediately discontinue performance and shall comply with Buyer'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 shall be paid an amount in settlement to be mutually agreed upon by the parties which shall 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 shall not exceed the price specified herein for such items. In no event shall the Seller be entitled to recover incidental or consequential damages. Seller shall advise Buyer, in writing, of Seller's claim, if any, for termination costs within ten (10) days after receipt of the notice of termination.

16. **FORCE MAJEURE.** Neither Seller or Buyer shall 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 that party.

17. **WAIVER.** Buyer's failure to insist upon strict compliance shall not be deemed to be a waiver of any right granted Buyer herein. Buyer shall not be deemed to waive any such right unless such waiver is in writing signed by Buyer's General Manager; such waiver shall not constitute a waiver of any other default under this Order.

18. **APPLICABLE LAW.** This Order shall be governed in all respects by the laws of the State of Illinois and all actions commenced pursuant hereto shall be brought in a court of competent jurisdiction in the State of Illinois.

**American Diesel Tube Corporation
1240 Capitol Drive
Addison, IL 60101
Tel. (630) 628-1830**