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6636 Variel Avenue Canoga Park, CA 91303  
818.999.1888 Fax# 818.227.0838

**ABP/ASC-**

The following terms and conditions have been established to set forth the way in which ABP/ASC shall conduct business with its suppliers. These terms and conditions are in addition to the written text on the face of all purchase orders. If there are any questions related to any item listed in these terms and conditions, please contact the appropriate individual listed below:

<u>Name</u>	<u>Title</u>	<u>Extension</u>	<u>Fax #</u>	<u>E-mail</u>
Lisa Davis	Purchasing	294	818.227.088	<a href="mailto:ldavis@andwin.com">ldavis@andwin.com</a>
Marla Goldberg	Purchasing	203	818.999.0111	<a href="mailto:mgoldberg@andwin.com">mgoldberg@andwin.com</a>
Erin Meyer	Purchasing	208	818.999.0111	<a href="mailto:emeier@andwin.com">emeier@andwin.com</a>

**1. PURCHASE ORDER CONFIRMATION**

It is the responsibility of the supplier to return a signed confirmation for each purchase order, either by FAX or by mail within 12 hours of receipt. If there are any conditions outlined on the purchase order that the supplier is unable to fulfill, the supplier shall note them on the face of the purchase order and return to ABP/ASC for acceptance or rejection of revised terms.

**2. CORRESPONDENCE**

Once the supplier is in receipt of a purchase order, all communication shall be channeled through the Purchasing Department. Written correspondence by fax, mail, or other electronic form should include part number and purchase order number for reference. If a supplier receives information from any department, other than Purchasing, that will affect the product specifications, price, lead time, or delivery, it is the supplier's responsibility to verify with Purchasing that the changes are reflected on the purchase order. Any unauthorized changes to the purchase order will be at the supplier's risk. ONLY the Purchasing Personnel listed above are authorized to purchase or make changes to a purchase order.

**3. ANDWIN PROPERTY**

All materials, collateral, electronic media, artwork, designs, inventory, dies, plates, molds, patterns, drawings, specifications, and technical information and any other property furnished to Seller, or specifically paid for by ABP/ASC or ABP/ASC Customers (referred to as "Property") for use in performance of a Purchase Order ("Order"), shall be and remain the property of ABP/ASC, will be held by Seller at Seller's risk, be returned to ABP/ASC substantially intact and unencumbered by any adverse interest, and be kept insured within Seller's custody at Seller's

expense. Upon termination of these terms and conditions or upon demand by ABP/ASC, all Property shall be returned to a designated ABP/ASC address in good condition and within five business days of such demand or termination. Seller must contact ABP/ASC before destruction or removal of plates.

#### **4. CONTINGENCIES**

Failure of ABP/ASC to accept any goods or services covered by an Order shall be excused if occasioned by fire, explosion, war, accident, suspension or delay in transportation or utilities, labor trouble, acts of God, governmental regulations, or any other cause beyond ABP/ASC's direct control.

#### **5. PATENTS, COPYRIGHT AND TRADEMARK PROTECTION**

Seller warrants that it will hold ABP/ASC, its employees, agents and customers, harmless from any expense, cost, loss, damage or liability arising out of the use by ABP/ASC or the work and materials covered by an Order which arise from claims under laws relating to patents, trademark, trade-dress, copyrights, or other property rights or which arise under contractual or quasi-contractual claims by others, and agrees at its own expense to defend or assist in the defense of, at ABP/ASC's option, any action in which such claims are alleged.

#### **6. USE OF ABP NAME, LOGOS, or OTHER TRADEMARKS**

The Supplier-ABP/ASC association is a mutually beneficial relationship based upon trust, respect, and the knowledge that each company can achieve more when paired up with a winning partner. As such, it is the policy of ABP/ASC to protect its sources of supply. For this reason, the ABP/ASC name, logos, and trademarks may only be used with prior permission of ABP/ASC.

**Unless prior authorization has been obtained, the use or display of ABP/ASC products, promotional materials, or packaging at trade shows, conferences, or in catalogs is strictly prohibited.**

**In addition, ABP/ASC private label goods received from suppliers shall be free of marks identifying the manufacturer. This includes, but is not limited to: boxes, bags, labels, stickers, banding, and pallets. Non-conforming goods will be repackaged or returned at the supplier's expense.**

#### **7. WARRANTY**

Seller warrants that the goods and services described herein and any and all components of the goods whether manufactured by Seller or others shall: (a) be merchantable, (b) strictly conform to the conditions of the Order, (c) strictly conform to an authorized ABP/ASC signed specifications, drawings, models, and approved samples, if any, including performance specifications and, if Seller's design, be free from design defect, (d) have been manufactured properly and the material used shall have been carefully chosen to meet the highest quality, (e) be free from defect in materials and workmanship, and (f) be fit strictly for the purposes for which the goods are required by ABP/ASC.

These warranties shall be in addition to any other warranty, express, implied or statutory. All warranties shall be for the benefit of ABP/ASC and/or its customers. These warranties shall adhere to the Order and all replacements, back-orders, reorders and/or subsequent orders of the original Order. These warranties shall be for each and every product named in the Order. Seller, at its own expense, agrees to defend, or at ABP/ASC's option, assist in the defense of any action brought against ABP/ASC, its customers or subsequent owners insofar as such action is allegedly based upon a breach of any of these warranties. Seller agrees to indemnify ABP/ASC, its customers or subsequent owners from all lost business, liabilities, losses, costs and expenses, including reasonable attorney's fees, resulting from any breach of any or all of these warranties, express or implied. Notice of breach of warranty shall be deemed sufficient if given by ABP/ASC within 365 days after the discovery thereof by ABP/ASC.

That no violation of any federal, state, or local law, statute, regulation, or ordinance will result from the manufacture, production, sale, or shipment of any of the goods, including, but not limited to, Consumer Product Safety Commission regulations. MSDS sheets filed under the ABP/ASC trademark are to be provided for all products containing any type of liquid substance or flammable material (inks, glues, paper products, etc). The packaging of hazardous materials must follow all relevant regulations of the U.S. Department of Transportation, which prescribe the proper method of classification, packaging, marking, and labeling of each shipment. Furthermore, where other federal, state, provincial or local standards and/or regulations are in effect, the packaging and labeling must comply.

## **8. DELIVERY**

Seller shall deliver the goods, in the quantities, and within the time frame in accordance with the part specifications to the location and at the prices specified on the purchase order or any attached documentation. Seller's prices for the goods described on the face of the purchase order are the lowest prevailing market prices for such goods and are in conformity with all applicable government laws and regulations. Failure of Seller to comply with such requirements shall entitle ABP/ASC, in addition to any other rights or remedies, to cancel this order and be released of all liability for any undelivered portion. Goods received in advance of ABP/ASC's delivery schedule may at ABP/ASC's option, be returned at Seller's expense or be accepted and payment withheld until the scheduled delivery date.

- Late deliveries are expected to ship via expedited methods to minimize the impact on stock levels. The costs for expedited shipping due to supplier-related delays are the sole responsibility of the supplier. "Supplier-related delays" include production delays, quality delays, and problems with upstream suppliers. Late deliveries are subject to a penalty of 10% of the total purchase price of the late quantity or \$150.00 (whichever is greater) with a maximum fine of \$2000. If a late shipment results in a fine from one of ABP/ASC's customers, the actual fine will be collected from the responsible supplier. If ABP/ASC places a purchase order within the supplier's stated lead-time, the supplier must notify the buyer of the correct delivery date on the order confirmation to avoid these penalties. For the purposes of this section, if a will call is arranged at the supplier location and the product is not available at the scheduled appointment time, this shipment will be considered late.
- All LTL and Truckload shipments require delivery appointments to be made 24 hours in advance. It is the responsibility of the supplier to ensure this policy is communicated and adhered to by all freight carriers. Transportation arranged by our customs broker for international shipments is exempt from this policy, as our broker will coordinate this communication. Suppliers who deliver goods without an appointment will be subject to a \$250 delivery appointment fee. In addition, ABP/ASC will not be liable for any driver wait times charged due to delays in unloading as a result of not following this procedure.
- The supplier is required to ship all line items of a purchase order complete as stated on the purchase order. Partial shipments will be accepted only if pre-approved in writing by the responsible Buyer. If partial shipments are made without this approval, the shipment may be held until it is complete and one payment made per the terms on the purchase order. Partial shipments consume too many man-hours in Receiving, Inspection and Accounts Payable and are discouraged for this reason. Unless prior authorization is received, suppliers shipping a single line item in more than two separate shipments will be subject to an administrative fee of \$150 plus the cost of the actual freight to recoup the costs of the additional handling.
- Packing slips are required for all shipments delivered to ABP/ASC. All packing slips must reference ABP/ASC's purchase order number AND part number AND any other ID the

Purchase order states. Failure to comply with this requirement will result in a \$250 charge back to the supplier to cover the additional research and handling costs.

- Carton/Pallet labels identifying the ABP/ASC part number and quantity are required on each carton. If a pallet contains only one part number, a single pallet label is acceptable. This labeling is critical as it prevents a wide array of transaction errors caused by receiving personnel guessing the ABP/ASC part number. Non-compliance with this requirement will subject the supplier to a \$250 administrative charge back.
- Original documents for international sea freight shipments must be sent to ABP/ASC for arrival at least 7 days in advance of the vessel's arrival.
- ABP/ASC pallet racks and material handling systems are designed for 48" X 40" 2-way pallets (see example below). Pallets should be free from damage and made completely of wood. Plastic and corrugated pallets will not be accepted. Unless the product size requires a different size or type of pallet and is approved in advance by the ABP/ASC purchasing agent, this is the only acceptable pallet. Non-conforming shipments will be palletized correctly at ABP/ASC and the supplier will be charged for the actual labor plus a \$500 administrative fee.



## **9. LEAD-TIME**

The supplier's "stated lead-time" must be accurate. Lead-time shall include procurement of raw materials, process time at supplier, subcontractors (assembly, printing, packaging, etc.), and transit time.

This lead-time will be used as an offset from the date product is needed at ABP/ASC per the customer requirements and used in the placing of purchase orders. If for any reason a suppliers standard lead-time changes, the supplier shall notify ABP/ASC in writing immediately, noting the revised lead time and the duration of this revision.

## **10. VENDOR CHARGE BACK POLICY**

Charge back types and amounts are detailed throughout this document. Any vendor non-compliance to purchase order requirements, other than those specifically outlined in this document, which result in ABP/ASC incurring additional labor expense will be charged back to the supplier plus a \$500 administrative fee. All disputes must be communicated within 90 days from notification of the violation. Disputes received after 90 days from the notification date will not be addressed. When disputing a charge back, the following steps must be followed:

- Forward the original violation notification and attached documentation to [purchasing@andwin.com](mailto:purchasing@andwin.com)

- with an explanation as to why the violation is under dispute. Include any supporting documentation

## **11. INSPECTION**

Goods and services purchased hereunder are subject to inspection, test, and approval by ABP/ASC who shall be allowed a reasonable time to inspect said goods and services after delivery to ABP/ASC or its designated customers before acceptance but not less than 90 days from date of delivery. ABP/ASC may reject any goods or services, which do not comply with the warranties herein set forth or with ABP/ASC's plans, specifications, and drawings.

## **12. REJECTION**

If the goods shipped or to be shipped and/or services rendered or to be rendered under an Order are rejected, in whole or in part, by ABP/ASC, due to Seller's failure to comply with any of the terms, conditions, and/or specifications contained in an Order (including but not limited to delivery date), ABP/ASC may, after so notifying Seller, do any of the following in addition to pursuing ABP/ASC's other legal remedies: (a) return the rejected portion of such goods and/or the rejected portion of such services to Seller at Seller's expense or hold the same for such prompt disposal as Seller shall indicate, without invalidating the remainder of such Order and/or (b) reject the entire shipment of such goods and/or reject the entire services and/or (c) cancel such Order for any undelivered balances of goods and/or unrendered services. As to rejected goods or services, the risk of loss shall at all times remain with Seller. If goods shipped or to be shipped and/or services rendered or to be rendered under an Order are rejected, Buyer may purchase like goods elsewhere and/or obtain like services elsewhere and charge Seller with any loss or damage (either direct or indirect) sustained by ABP/ASC (including, but not by way of limitation, any difference between the price paid by ABP/ASC for such like goods and/or services and the price specified on such Order) plus all costs of collecting the same (including, but not by way of limitation, attorney's fees and court costs).

## **13. COMPLIANCE WITH LAWS**

In performing the Order, Seller will comply with all Federal, State, and local laws and ordinances, and all government and administrative orders and regulations applicable to the goods and services covered by the Order. Seller warrants that the goods covered by an Order may be sold, shipped and used in a customary manner without violation of any such law, ordinance, order or regulation. Seller covenants to hold ABP/ASC harmless from and to reimburse it for, any and all costs, damages and expenses (including attorney's fees) suffered by ABP/ASC, directly or indirectly, through the failure of Seller to comply with any such law ordinance or regulation, and to defend any action against ABP/ASC caused or claimed to be caused by such failure.

## **14. CONFIDENTIALITY**

The term "Confidential Information" means any and all information or Property disclosed to Seller by ABP/ASC, either directly or indirectly, in writing, orally or by inspection of tangible objects, including without limitation documents, prototypes, samples, software, inventions, processes, formulas, technology, drawings, engineering, marketing, financial, the identity and contact-information for ABP/ASC's customers, pricing, ordering, specifications, artwork, designs, identify of ABP/ASC's employees, costs, plans, trade secrets and requirements. Confidential Information may also include information or Property disclosed (a) to Seller by third parties and/or (b) by ABP/ASC on behalf of a third party. Confidential Information shall not, however, include any information which Seller can establish (i) was publicly known and made generally available in the public domain prior to the time of disclosure to Seller by ABP/ASC; (ii) becomes publicly known and made generally available after disclosure to Seller by ABP/ASC through no action or inaction of Seller; (iii) is obtained by Seller from a third party without a breach of such third party's obligations of confidentiality; (iv) is required by law to be disclosed by Seller, provided that Seller gives ABP/ASC prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure.

## **15. NON-USE AND NON-DISCLOSURE**

Seller agrees not to use any Confidential Information for any purpose except to carry out the performance of Seller's duties under an Order. Seller agrees not to disclose any Confidential Information to third parties or to employees of Seller except to those employees who are required to have the Confidential Information in order to fulfill the Order. Seller shall be responsible for its employees, representatives and agents maintaining the confidentiality of such Confidential Information.

## **16. NON-SOLICITATION AND NON-CIRCUMVENTION**

Seller agrees not to directly or indirectly contact ABP/ASC's customers without these written terms and conditions of ABP/ASC. Seller agrees not to directly or indirectly attempt to sell product to ABP/ASC's customers. Seller agrees not to introduce ABP/ASC's customers to any third party with the intent of circumventing the obligations contained in these terms and conditions. Seller agrees that it shall not target and/or initiate contact with any of ABP/ASC's employees for eventual purposes of making an offer of employment nor shall it refer any third party to do the same.

## **17. NO LICENSE**

Nothing in these terms and conditions is intended to grant any license or other rights to Seller under any patent, trademark, copyright or other proprietary right of ABP/ASC nor shall these terms and conditions grant Seller any rights in or to Confidential Information except as expressly set forth herein.

## **18. INSURANCE**

Seller represents that it is and will continue to be fully insured for all risks, with reputable and high quality insurers for all activities reasonably connected with each Order, including but not limited to the following insurance: (a) commercial general liability (minimum \$1,000,000 coverage per occurrence, with a commercially reasonable deductible, and including products and contractual liability coverage), (b) property insurance all risks (at lease replacement value coverage), (c) automobile liability (at least \$1,000,000 per occurrence), (d) workers' compensation (statutory limits). If Seller fails to maintain the insurance in these amounts then Seller shall, in addition to any other remedies available to ABP/ASC, be liable to ABP/ASC for any loss or cost resulting from such failure.

## **19. TERMINATION WITHOUT CAUSE**

In addition to other rights provided by law, ABP/ASC shall have the right to cancel a purchase order in whole or in part if:

- (a) The parts are back ordered.
- (b) There is a deviation or substitution from the quantities, prices, terms, or conditions as stated on the face of the purchase order unless authorized in writing by the purchasing agent.
- (c) The parts received are not in accordance with the specification, warranty, drawing, sample, standard, or description previously supplied by Seller.
- (d) There is any defect in workmanship or quality of the goods or their packaging.
- (e) There is any delay in delivery or any other breach of Seller's obligations.
- (f) Seller becomes insolvent, makes an assignment for the benefit of creditors, or if there is instituted by or against Seller any proceeding under any bankruptcy, reorganization, adjustment, or insolvency law in any jurisdiction. In any such event, cancellation would

be without liability to the Seller and without waiving any rights to recover damages with respect thereto.

ABP/ASC shall have the right to terminate this order at its convenience for any reason, in whole or in part, by written notice at any time prior to the acceptance of goods. ABP/ASC's liability for termination of an order without cause shall be limited to Seller's actual cost for work and materials applicable solely to the terminated order which shall have been expended at the time notice of cancellation was received.

Waiver by ABP/ASC of any failure to perform or breach of any provision contained herein, shall not be deemed a waiver of future compliance. All terms, conditions, and specifications on all other orders placed with Seller by ABP/ASC shall remain in full force. If any provision of these terms and conditions is adjudicated void or unenforceable, such declaration shall not affect any other provision herein.

All claims for monies due from ABP/ASC shall be subject to deduction by ABP/ASC for any set-off or claim arising out of this or any other of ABP/ASC's orders placed with the seller.

## **20. APPLICABLE LAW – VENUE**

These terms and conditions is entered into at ABP/ASC's principal place of business located in Canoga Park, California. In the event that it shall become necessary for Seller to file legal action to collect any outstanding obligations from ABP/ASC, the venue of said actions shall be with the Los Angeles County Superior Court. These terms and conditions shall be governed by the laws of the State of California without reference to conflict of laws principles.

## **21. VALIDITY**

The invalidity in whole or in part of any term or condition of these terms and conditions shall not affect the validity of the rest of these terms and conditions or any other term or condition herein. Any failure to enforce any provision of these terms and conditions shall not constitute a waiver thereof or of any other provision hereof. The obligations under these terms and conditions shall survive any expiration or termination of these terms and conditions or any Order and shall apply to the overall business relationship between ABP/ASC and Seller.

## **22. REMEDIES**

Seller acknowledges and agrees that in the event of any breach of these terms and conditions, including without limitation the actual or threatened disclosure of any Confidential Information without the prior written consent of ABP/ASC, ABP/ASC shall, in addition to all other rights and remedies available under applicable laws, be entitled to seek and obtain injunctive relief (without having to post any bond, security or proof of damages), including a temporary, preliminary and/or permanent injunction restraining Seller from disclosing Confidential Information in contravention of these terms and conditions. In the event that any legal action is brought by either party with respect to the breach, interpretation or enforcement of any of the provisions hereof, the prevailing party in such action shall be entitled to recover from the losing party all reasonable costs of litigation, including reasonable attorney's fees, including with respect to matters on appeal. All other disputes between the parties shall be submitted to binding arbitration and a competent arbitration board mutually agreeable to both parties. Both parties hereby waive their right to a trial by jury.

## **23. AMENDMENT**

This document contains the entire terms and conditions between the parties with respect to the subject matter hereof. These terms and conditions may not be amended, changed or altered, except in writing, signed by Seller and Buyer.