



## ATI Firth Sterling Terms & Conditions

1. **EXCLUSIVE TERMS, CONDITION AND LIMITATION OF OFFER.** These Terms and Conditions qualify and set forth the terms and conditions of Firth Sterling (“Seller”) offer (or counteroffer, as the case may be) to sell the goods and/or services described on the face hereof or otherwise referred to in a quotation, sales order acknowledgment or invoice. No quotation, sales order acknowledgment, invoice or any commencement of work necessary to sell such goods and services is an acceptance of any offer to buy of Purchaser. Any acceptance deemed to be contained herein is expressly made conditional on Purchaser’s assent to the additional and different terms, if any, contained herein. Acceptance or acknowledgment by Purchaser of this offer (which constitutes the agreement of Seller to sell and Purchaser to buy) is expressly and exclusively limited to their terms, conditions and limitations herein and on the face hereof such terms, conditions and limitations being the only terms, conditions and limitations to which Seller will agree, which supersede all prior statements, proposals, negotiations, representations and agreements and shall constitute the entire agreement between Seller and Purchaser and shall take precedence over all other terms, conditions and limitations on Purchaser’s purchase order and other forms and documents of the Purchaser’s purchase order and other forms and documents of the Purchaser or any other person or entity which are inconsistent herewith or in addition hereto. These Terms and Conditions serve as a written objection to all such inconsistent or additional terms, conditions and limitations. The terms, conditions and limitations herein can be modified, altered or added to only by a subsequent written instrument signed by an authorized officer of Seller which shall set forth with particularity and not through incorporation by reference the precise terms, conditions and limitations of this offer which are modified, altered, or added to. No prior inconsistent course of dealing, course of performance or usage of trade, if any, shall constitute a waiver of or serve to explain or interpret these terms, conditions and limitations. Any references by Seller to Purchaser’s specifications and similar requirements are only to describe the goods and/or services provided under this agreement and no warranties and/or other terms or conditions contained in Purchaser’s specifications shall have any force or effect.

2. **PRICES.** The price shown on the reverse side thereof is F.O.B. Seller’s point of shipment, and is exclusive of the following charges which shall be paid by Purchaser to Seller in addition to the price (to the extent that such charges are paid or payable by Seller): All federal, state and local taxes which are in the nature of excise, sales, use, retailers occupation taxes and freight, carriage and insurance. Any additional cost incurred in packing or making any special test or inspection which is requested by Purchaser, and is in addition to those regularly supplied by Seller, will be added to the price as a special charge. Such tests and inspections will be made only at the place of manufacture before the date of shipment.

3. **PAYMENT.** The price shall be due and payable, regardless of whether or not Purchaser has inspected the merchandise, at Seller’s office as appears on the reverse side hereof, and in accordance with the terms stated without deductions, set-offs, counterclaims, back charges or any other charges whatsoever.

4. **DELIVERY.** Delivery of the merchandise to Purchaser shall be made at F.O.B. Seller’s point of shipment, unless otherwise stated on the face hereof. Delivery of the merchandise to a carrier for transportation to Purchaser shall constitute delivery to Purchaser, and the carrier is Purchaser’s agent for this purpose. Seller shall promptly obtain and deliver or tender to Purchaser, in due form, any documents necessary to enable Purchaser to obtain possession of the merchandise from the carrier, but failure so to do is not a ground for rejection by Purchaser.

All stipulated shipment and delivery dates are approximated and unless a delay in shipment or delivery is unreasonable and without notice, Purchaser or its agent shall not have the right to reject the shipment or delivery.

If Seller's production or supply of the merchandise is curtailed, suspended, or interrupted for any reason, deliveries hereunder may, as its option be canceled (the contract being deemed to be rescinded with respect to such deliveries) or may be prorated during the period of curtailment, suspension of interruption and thereafter resumed until delivery is made in full.

The taking of possession of the merchandise by Purchaser shall constitute a waiver of all claims arising out of any delay in delivery by Seller.

Purchaser shall be responsible for filing and pursuing claims with carrier for loss or damage in transit.

Responsibility for obtaining necessary transportation permits, if any, shall be with Purchaser unless otherwise assumed by Seller.

5. **ACCEPTANCE.** The acceptance of the merchandise by Purchaser shall constitute acceptance of the terms and conditions set forth herein, notwithstanding any terms or conditions made in preceding negotiations or communications at variance with these said terms and conditions.

6. **WARRANTY; LIMITATION OF LIABILITY.** Seller warrants that all materials sold pursuant hereto will upon shipment conform to the description on the face hereof, subject to Seller's standard manufacturing and commercial tolerances, variations and practices.

THE PROVISIONS OF THE FOREGOING WARRANTY ARE IN LIEU OF ANY OTHER WARRANTY WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL (INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR TITLE OR NON-INFRINGEMENT). SELLER'S LIABILITY ARISING OUT OF THE MANUFACTURE, SALE OR SUPPLYING OF THE PRODUCTS OR THEIR USE OR DISPOSITION, WHETHER BASED UPON WARRANTY, CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE ACTUAL PURCHASE PRICE PAID BY PURCHASER FOR THE PRODUCTS. IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER OR ANY OTHER PERSON OR ENTITY FOR, AND PURCHASER AGREES TO INDEMNIFY AND SAVE SELLER HARMLESS WITH RESPECT TO CLAIMS OR ACTIONS FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, LIQUIDATED OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF DATA OR LOSS OF USE DAMAGES) ARISING OUT OF THE MANUFACTURE, SALE OR SUPPLYING OF THE PRODUCTS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

UNLESS OTHERWISE AGREED BY SELLER, THE FOREGOING WARRANTY RUNS ONLY TO PURCHASER AND IS NON-TRANSFERABLE AND NON-ASSIGNABLE EITHER DIRECTLY, INDIRECTLY OR BY OPERATION OF LAW. Purchaser, its employees, agents and representative shall not claim, represent, imply nor permit its purchasers, distributors, processors or others to claim, represent or imply that such warranty extends or is available to persons or entities other than Purchaser and shall indemnify and save Seller harmless from all claims and actions of other persons or entities irrespective of whether such claims or actions are based upon contract, tort, negligence, strict liability or otherwise. To the limit of its legal right to do so, Purchaser shall cause any third party to cease and desist from making any such representation. In the event of any resale of any of the goods sold hereunder in whatever form, Purchaser will include the following, or substantially similar, language in a conspicuous place in the agreement covering such resale:

"Warranties by manufacturers and sellers of goods sold hereunder are limited to such written warranties as may be applicable to the individual items sold hereunder, which warranties are limited to repair or replacement of the goods or to the refund of the purchase price, at the manufacturer's or Seller's option

with the time limits specified. MANUFACTURERS AND SELLERS MAKE NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, AS TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE GOODS SOLD HEREUNDER. Manufacturers and Sellers shall not be liable for any defect in the goods sold hereunder and Purchaser releases Manufacturers and Sellers from any and all liability or otherwise, other than liability for repair, replacement or refund as set forth above, which shall be PURCHASER'S SOLE AND EXCLUSIVE REMEDY hereunder. Purchaser acknowledges that it alone has determined that the goods purchased hereby will suitably meet the requirements of their intended use. MANUFACTURERS AND SELLERS WILL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, LIQUIDATED, PENAL OR OTHER DAMAGES, OTHER THAN REPAIR, REPLACEMENT OR REFUND AS SET FORTH ABOVE."

7. **TECHNICAL DATA, ADVICE, SPECIFICATIONS.** Any technical data, production data, production estimates and performance figures, advice, drawings and specifications furnished by Seller with respect to goods and/or services supplied and the use of such goods and/or services is given without charge, and Seller assumes no obligation or liability for any damages, consequential, incidental, special, liquidated, penal or otherwise, for such data, estimates, advice, drawings and specifications given or result obtained irrespective of whether claims or actions with respect to such are based upon contract, tort, negligence, strict liability, warranty or otherwise. All of such data, estimates, figures, advice, drawings and specifications shall be given and accepted at Purchaser's risk. Catalogs, circulars and similar pamphlets of the Seller are issued for general information purposes only and shall not be deemed to modify the provisions hereof or create any warranties. In the event that Seller is providing goods hereunder which are experimental or are made or produced by an experimental process, then Purchaser shall treat as confidential any technical data, specifications, and information of Seller relating thereto and not disclose to others or use the same for any other purpose.

8. **CLAIMS.** In order to insure prompt inspection by Purchaser and to eliminate improper methods of storage and other abuse of goods sold, Seller must be notified in writing concerning the nonconformity of the goods to the description on the face hereof as soon as practicable and in no event later than ninety (90) days after Purchaser receives the goods or should have discovered such nonconformity, whichever occurs first. Such written notice shall set forth with particularity the nature and extent of the nonconformity complained of. All claims for shortages must be made in writing within twenty (20) days after receipt of the goods by Purchaser or its agent and specify with particularity the exact shortage complained of.

In no event shall Seller be responsible for claims resulting in whole or in part, directly or indirectly, from the use or abuse of nonconforming goods or for the costs of labor and/or materials expended on any such goods.

Failure to furnish such written claim within such prescribed period of time shall terminate all liability of Seller. Seller must be given the opportunity upon written demand to inspect the material claimed to be nonconforming to description.

Nonconforming goods, except for samples, will be returned to Seller upon receipt of Seller's authorization to do so. All transportation costs with respect to such returns shall be paid by Seller.

Purchaser must demonstrate to the reasonable satisfaction of Seller that any nonconformity to description alleged was solely caused by a breach by Seller of its warranty of description.

9. **FORCE MAJEURE.** This contract shall not be subject to rescission or cancellation by Purchaser in whole or in part, by reason of, and Seller shall not be liable to Purchaser for any loss or damage incurred by Purchaser arising out of, any failure of performance by Seller which results from any cause beyond its reasonable control. Such causes (without limiting the generality of the foregoing) include fire, strike, inability to procure raw material, labor difficulties, government orders or regulations, insurrection, riot, flood, epidemics, embargoes, quarantine restriction, war, acts of God, acts done or suffered to be done by Purchaser, acts, regulations or orders of civil or military authority, car shortages or

other delays or interruption of transportation, and inability to obtain necessary labor, materials, or manufacturing facilities, whether such causes affect Seller or suppliers of the Seller.

10. **PARTICULARS OF PERFORMANCE.** The particulars of performance, not otherwise set forth in this contract, shall be specified by Seller.

11. **CANCELLATION.** Purchaser may not terminate or cancel its order made herein without the written consent of Seller and then, only upon payment of a cancellation charge, to be set by Seller, which represents Seller's cost in processing and preparing Purchaser's order.

12. **TITLE AND RISK OF LOSS.** Purchaser hereby grants to Seller a security interest in all goods subject to these Terms and Conditions until the merchandise is fully paid for by Purchaser. All risk of loss or damage to the merchandise rests with Purchaser from and after delivery of the merchandise to Purchaser or Purchaser's agent.

13. **EXPORT ORDERS.** All orders for export are subject to special export quotations.

14. **CREDIT APPROVAL.** Payment terms as herein provided, work to be performed by Seller as set forth on the face hereof and shipments shall at all times be subject to the approval of Seller's Credit Department and in case Seller shall have any doubt as to Purchaser's responsibility, or if Purchaser fails to fulfill the terms and conditions of payment herein and on the face hereof, Seller may decline to perform any further shipment or delivery hereunder, except upon receipt of satisfactory security including, but not limited to, full or partial prepayment. In the event of anticipatory breach by the Purchaser, or if the financial condition of Purchaser at any time does not in the reasonable judgment of Seller, justify continuance of the work to be performed by Seller hereunder on the terms of payment originally specified, Seller may require full or partial payment in advance or may cancel any agreement and work then outstanding and Purchaser shall reimburse Seller for its cancellation charges.

15. **DEFAULT IN PAYMENT.** If Purchaser shall fail to make payments on this or any other agreement between Purchaser and Seller in accordance with the terms hereof or thereof, Seller may defer further shipments and defer rendering further services until such payments are made or, at its option, cancel this contract with respect to any balance. If pursuant to this provision Seller shall defer any shipments or services or cancel in whole or in part this contract. Purchaser shall be liable for and reimburse Seller for all damage, including any and all direct and consequential damages incurred by Seller by reason of such deferment or cancellation.

16. **NO WAIVER.** Failure of Seller to enforce any of the terms, conditions and limitation of this contract shall not be construed as a waiver thereof or a waiver of any other terms, conditions or limitations herein or on the face hereof, and the failure of Seller to exercise any rights arising from default of Purchaser or otherwise shall not be deemed to be a waiver of such right or any other right. The terms, conditions and limitations herein and on the face hereof may be enforced and the rights of Seller may be enforced at any time in whole or in part.

17. **BINDING AGREEMENT.** These Terms and Conditions will be deemed to have been accepted by Purchaser if Seller has not been notified to the contrary in writing within fifteen (15) days of Purchaser's receipt hereof, or by the action of Purchaser in accepting or tendering full or partial payment for all or any part of the goods and/or services covered by these Terms and Conditions. Any goods delivered and/or services rendered shall be subject only to the terms, conditions and limitations herein and on the face hereof. Upon acceptance by Purchaser, Purchaser consents to and accepts all of the terms, conditions and limitations herein and on the face hereof. Purchaser may not thereafter assign its obligations hereunder to any other person or entity without the written approval of Seller.

18. **PATENTS; TRADEMARK; UNPATENTED INFORMATION.** If any goods sold hereunder are to be prepared or manufactured according to Purchaser's specifications, Purchaser shall indemnify and save harmless the Seller against any claims or liability for patent or trademark infringement on account of such preparation or manufacture. Any unpatented knowledge or information concerning

Purchaser's products, methods or manufacturing processes which Purchaser may disclose to Seller incident to the manufacture or sale of the goods and/or performance of the services covered by this offer shall, unless otherwise specifically agreed in writing, be deemed to have been disclosed as part of the consideration hereunder, and Purchaser agrees not to assert any claim (other than a claim for patent infringement) against Seller by reason of Seller's use or alleged use thereof. The sale of goods covered by this offer shall not expressly or by implication grant to Purchaser any right or license of any kind under any patent, patent application or other industrial property right owned or controlled by Seller or its affiliates, but the foregoing shall not be understood to limit in any way the right of Purchaser to use and sell such goods, in the event such goods, as sold hereunder, are covered by any such patent. There is no warranty that the use of any services, materials, goods, or information supplied by Seller hereunder are supplied free of the rightful claim or any third party by way of infringement of any patent right.

19. **APPLICABLE LAW.** The law of the State of Tennessee shall apply in interpreting the terms, conditions and limitation of this contract. The United Nations Convention on Contracts for the International Sale of Goods shall not apply in any manner to the interpretation or enforcement of this contract. Any controversy, dispute or claim arising out of or relating to this contract may be submitted to a court of law having competent jurisdiction to resolve the dispute.

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