



AVStar Fuel Systems, Inc.
Standard Terms and Conditions of Sale

These terms and conditions of sale ("Agreement") are applicable to any and all Orders placed with and accepted by Avstar Fuel Systems, Inc. ("Supplier").

1. Scope of Agreement: Supplier, upon acceptance of an Order placed by Buyer, will supply the products and services specified in the Order (the "Products") to Buyer, pursuant to this Agreement. Supplier's acceptance of such Order submitted by Buyer is expressly limited to the terms and conditions of this Agreement notwithstanding any contrary provision contained in Buyer's purchase orders, invoices, acknowledgments or other documents. Any variation to the terms and conditions of this Agreement (including any special terms and conditions agreed upon between the parties) are expressly rejected unless agreed upon in writing by the Supplier.

2. Price and Terms:

A. The prices payable by Buyer for the Products to be supplied by Supplier under this Agreement will be Supplier's stated price as set forth on the Supplier price list, excluding shipping and any applicable taxes, unless otherwise agreed in writing between the parties.

B. Credit terms may be offered subject to satisfactory credit vetting of the Buyer by the Supplier. The offer of credit will be at the sole discretion of Supplier.

C. Where credit is offered, payment terms shall be net thirty (30) calendar days from the date of the invoice. If Buyer does not pay an invoiced amount within terms, Buyer will, in addition, pay finance charges of one and one-half percent (1.5%) per month on the late balance. Further, Supplier reserves the right to (1) require payment in advance of delivery in relation to any Products not previously delivered; (2) refuse to make delivery of any undelivered Products without incurring any liability whatsoever to the Buyer for non-delivery or any delay in delivery; and (3) revoke any credit extended to Buyer. In the event that Buyer's account is more than ninety (90) days in arrears Buyer shall reimburse Supplier for the reasonable costs, including attorney fees, of collecting such amounts from Buyer.

3. Delivery:

A. Unless otherwise agreed in writing, delivery of the Products shall take place at the address specified by the Buyer on, or as close as possible to the date required by Buyer. The Buyer shall make all arrangements necessary to take delivery of the Products whenever they are tendered for delivery.

B. If Supplier is unable to deliver the Products because of actions or circumstances under the control of Buyer, then the Supplier shall be entitled to place the Products in storage until such times as delivery may be affected and the Buyer shall be liable for any expense associated with transportation and storage of Products.

C. Any damages, shortages, and over deliveries must be reported to supplier within fourteen (14) days of signed receipt.

D. Unless otherwise specified by Supplier in writing, Products will be delivered FOB Origin and will be shipped to Buyer via carriers selected by Supplier.

E. Title in the Products shall not pass to the Buyer until Supplier has been paid in full for the Products.

4. Limitation of Liability:

A. **General Limitations:** IN NO EVENT SHALL SUPPLIER BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT, OR OUT OF ANY USE OR RESALE OF THE PRODUCTS PROVIDED HEREUNDER EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

B. **Special Limitations:** IN NO EVENT SHALL SUPPLIER'S AGGREGATE LIABILITY FROM ANY WARRANTY, INDEMNITY, OR OTHER OBLIGATION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR FROM ANY USE OR RESALE OF ANY PRODUCT OR PRODUCTS PROVIDED HEREUNDER EXCEED THE TOTAL AMOUNT PAID TO SUPPLIER FOR THE PRODUCTS SOLD UNDER THIS CONTRACT WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED.

C. BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING LIABILITY LIMITATIONS ARE ESSENTIAL ELEMENTS OF THIS AGREEMENT AND THAT IN THE ABSENCE OF SUCH LIMITATIONS THE MATERIAL AND ECONOMIC TERMS OF THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT.

5. Force Majeure: Supplier shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Supplier shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as the Supplier considers unreasonable, it may, without liability on its part, terminate the contract.

6. Warranty: OTHER THAN THE COMMERCIAL WARRANTY POLICIES DESCRIBED IN FULL ON SUPPLIER'S WEBSITE AT WWW.AVSTARDIRECT.COM, WHICH POLICIES ARE INCORPORATED HEREWIT BY REFERENCE, SUPPLIER EXPRESSLY DISCLAIMS AND EXCLUDES ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7. Buyer's Indemnification: Buyer agrees to defend, indemnify and hold Supplier, and its officers, employees, subsidiaries, affiliates, agents, sales representatives and distributors harmless against all claims, costs, damages and expenses, and attorneys' fees and costs arising directly or indirectly out of any claim of personal injury, death or otherwise associated with the Buyer's negligence or misuse of the Products.

8. Confidential Information: Any information the parties receive or otherwise have access to incidental to or in connection with the Order or this Agreement (collectively, the "Confidential Information"), shall be and remain the property of the Disclosing Party. Confidential Information shall not include information which: (1) was in the possession of the Receiving Party at the time it was first disclosed by the Disclosing Party; (ii) was in the public domain at the time it was disclosed to the Receiving Party; (iii) enters the public domain through sources independent of the Receiving Party and through no breach of this provision by the Receiving Party; (iv) was lawfully obtained by the Receiving Party from a third party not known by the Receiving Party to be under an obligation of confidentiality to the Disclosing Party; or (vi) was at any time developed by the Receiving Party independently of any disclosure by the Disclosing Party. Confidential Information may only be used to the extent necessary to perform this Agreement and the parties shall not disclose Confidential Information to any third party, except to its agents as necessary to provide the work hereunder. In no event shall Buyer acquire any right, title or interest in and to any product or process information, including related know how, either existing or developed during the course of the business relationship with Supplier and Buyer, and in no event shall Supplier acquire any right, title or interest in and to any materials or information provided to it by Buyer.

9. Compliance with Law: Each party shall comply with all state, federal and local laws and regulations applicable to its performance hereunder.

10. Waiver: The failure by Supplier to enforce at any time or for any period any one or more of the terms and conditions set forth in this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

11. Severability: If any term or provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the terms and conditions of this Agreement had been agreed with the invalid, illegal or unenforceable provision eliminated.

12. Governing Law: The Order and this Agreement shall be governed by the laws of the State of Florida, without reference to conflicts of law principles. Any legal suit, action or proceeding arising out of or relating to the Order and this Agreement shall be commenced in a federal court in the Southern District of Florida or a state court in Palm Beach County, Florida, and the appellate courts thereof, and each party hereto irrevocably submits to the exclusive jurisdiction and venue of any such court in any such suit, action or proceeding. **WITH RESPECT TO ANY LITIGATION ARISING OUT OF THE ORDER AND THIS AGREEMENT, THE PARTIES EXPRESSLY WAIVE ANY RIGHT THEY MAY HAVE TO A JURY TRIAL AND AGREE THAT ANY SUCH LITIGATION SHALL BE TRIED BY A JUDGE WITHOUT A JURY AND THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER ITS EXPENSES, INCLUDING REASONABLE ATTORNEY FEES, FROM THE OTHER PARTY.**