

1. ACCEPTANCE. The Purchase Order ("PO") and the Purchasing Terms and Conditions ("Terms") of AVS, Incorporated ("Buyer"). comprise the total agreement to procure goods and/or services ("Products") from the Seller ("Seller"). Neither the Buyer nor the Seller shall be bound by oral or any other written agreements, not expressly included in the PO and Terms. Acceptance of the PO by Buyer occurs upon written confirmation, initial delivery or commencement of activities to perform under the PO. The PO and Terms may be amended and altered only in writing, signed by authorized representatives of both Seller and Buyer, expressly referencing the Terms being modified.

2. PRICING : All prices payable by Buyer for the Products are stated in the PO, and include the cost of packaging and handling, with delivery as specified.

3. QUALITY. Seller shall meet all quality requirements of Buyer including, but not limited to, all applicable plans, specifications, and other contract descriptions, as set forth or referenced on the face of the PO. The quality of the Products shall be subject to inspection/satisfaction of the Buyer, who shall be entitled to reject non-conforming Products. The Seller shall retain or reacquire title to, and bear all risks of loss, or other costs of any non-conforming Products and shall at its own expense be responsible for the return and replacement.

**All materials requiring certification and/or inspection reports will not be accepted without specified documents.**

**All materials purchased with Buyer supplied drawings require Seller inspection and dimensional reports for each part.**

4. PACKAGING & SHIPPING. All Products included in this PO, shall be suitably marked and shipped in accordance with the requirements of common carriers. When transportation costs are payable by the Buyer, the Seller shall either ship Products as specified on this PO, or if not specified, contact Buyer to arrange suitable transportation.

5. DELIVERY. a) The Seller shall make delivery to the specified destination by the due date stated on the PO or as otherwise agreed by Buyer and Seller.. Time is of the essence and the Seller shall notify Buyer promptly if it reasonably anticipates that delivery dates will not be met. Delivery more than one week before due date must be approved by Buyer and Seller shall incur all costs related to any unauthorized early delivery. b) The Seller warrants that upon acceptance of delivery at the destination the Seller will convey to Buyer good and marketable title to all Products free of any liens or encumbrances of any kind.

7. WARRANTY. The Seller warrants :

- a) Products strictly conform to the description contained in the PO, the quality and agreed specifications stated or incorporated as a schedule, by reference or otherwise, and are free of defects in material and workmanship.
- b) Any subcontractor or supplier warranty provided to Seller will transfer to Buyer and copies of the warranties will be provided at delivery.

8. INTELLECTUAL PROPERTY. The Seller shall indemnify and hold Buyer and its customers harmless from all claims, losses, suits, damages, liability, and all expenses, (including but not limited to reasonable attorney's fee) arising out of or related to any such actual patent, copyright, trademark or other property rights infringement or alleged direct or indirect infringement by reason of the manufacture, use or sale of the Product. Seller retains all intellectual property rights in all Seller supplied specifications, drawings or any other information conveyed in quotation and PO.

9. INDEMNIFICATION. Seller agrees to indemnify and hold Buyer, its employees, officers and directors from and against any and all claims, libels, suits, judgments, fines, penalties, actions, proceedings, and damages. Including costs and expenses including reasonable fees for attorneys, experts and consultants, settlement costs, incurred in connection with any claims (including lawsuits, administrative claims, regulatory actions, and other proceedings to recover for personal injury or death, property damage or economic losses) that are related in anyway to or arise in anyway from the Buyers or it's customers purchase and/or use of the Product, Seller's representations, Seller's performance or failure to perform obligations under any PO, including claims based on Seller's breach or alleged breach of warranty.

Seller's obligation to indemnify will apply regardless of whether the claim arises in fort, negligence, contract, warranty, strict liability, or otherwise, except to the extent any such liability arises solely out of the gross negligence or willful misconduct of Buyer, its employees or authorized representative.

10. TERMINATION BY THE BUYER. Buyer reserves the right to terminate all or any part of each PO without liability of Buyer to the Seller, in the event:

- a) Seller repudiates, breaches, or threatens to breach any of the Terms of the PO including without limitation, Seller's warranties, or other provisions of the agreement
- b) Seller fails to remedy the breach or violation within Thirty (30) days after receipt of written notice from Buyer, or
- c) Seller makes an assignment for the benefit of its creditors, commits any act of bankruptcy, has a receiver appointed, or otherwise admits of its inability to pay its debts as they mature, and Seller fails to remedy the breach or violation of this section 10c within Sixty (60) days after receipt of written notice from Buyer,
- d) Buyer may terminate for convenience and will pay all reasonable costs incurred to the date of the termination.

11. ASSIGNMENT. The Seller shall not assign, transfer or otherwise dispose of any rights or obligations to any third party without the prior written consent of Buyer. All rights and obligations shall inure to the benefit of and be binding on any permitted assignee or successor of each Party.

12. PAYMENT. Payment terms are N45 unless otherwise stated on the PO., based on the later of: actual dock receipt date or requested date as stated on the face of the PO. Buyer may accept discount terms offered, based on actual dock receipt date.

13. CONFIDENTIALITY. Any specifications, samples, designs, formulations, trade secrets, patents, financial data, or other information that Buyer identifies as or otherwise deems confidential ("Buyers Confidential Information") and discloses to the Seller in connection with the PO shall remain the exclusive property of the Buyer and shall, along with any information derived from the same, be kept confidential, for a period of 5 years by the Seller and its employees and agents and shall not, without Buyer's prior written consent, be disclosed to any third party or used except for purposes of the PO. Notwithstanding the foregoing, such information shall not be deemed confidential to the extent that the Seller can demonstrate by written record that it was previously known by the Seller, became generally available to the public through no fault of the Seller, was disclosed to the Seller by a third party without breach of any confidentiality obligation, or is specifically required to be disclosed by law or legal process.

The Buyer and Seller agree that the covenant of confidentiality and nondisclosure set forth above shall survive termination of this Agreement and shall remain in effect for 5 years after termination. The Parties agree that this covenant shall supersede any contrary duration term set forth in any previously executed Confidentiality Disclosure Agreement.

14. REMEDIES. In the event Seller fails to perform in accordance with the PO ("Breach"), without limiting the generality of the foregoing, should any Products fail to conform to the warranties, or should Seller or any Products provided by Seller fail to meet any of the conditions or specifications set forth, and without prejudice to any other rights or remedies it may have under applicable law or in equity, Buyer shall have the right, after any applicable cure period, to recover from the Seller any and all mitigated losses and reasonable additional expenses incurred by Buyer arising from Seller's Breach, and at Buyer's option:

- a) require the Seller promptly cure such Breach with conforming delivery at no additional charge or expense to Buyer and/or,
- b) reject any non-conforming Products and cancel any and all outstanding POs.

15. INSURANCE. The Seller agrees to maintain insurance covering the Product and its performance under the PO including but not limited to comprehensive commercial general liability (including Products liability completed operations and third party liability coverage) for not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

16. FORCE MAJURE. Seller's failure to deliver Product as provided in the PO by reason of any of the following and such event shall not constitute an event of default or breach of any Terms: fires, floods, freeze, accidents, war (whether or not declared), revolution, riots, insurrections, acts of God, acts of government (including without limitation any agency or department of the United States of America or any other country), acts of the public enemy, or other causes which are reasonably beyond the control of the defaulting Party. Seller shall promptly notify the Buyer of any such delay and its cause. Provided that if any such cause that continues for more than Thirty (30) days the Buyer may at its own option cancel this PO and all its obligations to Seller.

17. GOVERNING LAW AND JURISDICTION. The formation and performance of the contract shall be governed by the internal laws of the State of Massachusetts without regard to any applicable conflict of law provisions.

18. MISCELLANEOUS.

- a) Failure of Buyer to insist upon performance of any provisions of these Terms or to exercise any rights hereunder shall not be construed as a waiver or relinquishment of the future performance of any such Terms or the future exercise of such right.
- b) Any enforceable term, provision, undertaking or restriction contained in these Terms are held by a court of competent jurisdiction to be invalid, void or unenforceable (in whole or in part), the remainder of the Terms, provisions undertakings and restrictions will remain in full force and effect and will in no way be affected, impaired or invalidated.
- c) Any notice or request required or permitted to be given in connection with these Terms shall be sent by mail, prepaid, return receipt requested, or by express delivery service to the address set forth on the PO. The date of notice shall be deemed to be the date on which such notice has been received by mail or by express delivery service.
- d) Buyer PO number must appear on all packing slips and invoices.
- e) All NRE charges, tools, jigs and fixtures charged to Buyer are to remain Buyer's property and are to be used exclusively for Buyer requirements and returned promptly to Buyer upon completion of this PO as requested.
- f) Section headings are for convenience only and are not to be construed as part of this Agreement.