

ALLEGHENY SURFACE TECHNOLOGY (AST)

TERMS AND CONDITIONS OF SERVICE CONTRACT

THESE TERMS AND CONDITIONS APPLY TO THE CONTRACTUAL RELATIONSHIP BETWEEN AST AND ITS CUSTOMER PURCHASING SURFACE FINISHING, REFURBISHMENT, AND/OR RETROFIT SERVICES, UNLESS THE CUSTOMER HAS SIGNED A SEPARATE PURCHASE AGREEMENT WITH AST, IN WHICH CASE THE SPECIFIC TERMS OF THAT SEPARATE AGREEMENT SHALL GOVERN THE PARTIES' RELATIONSHIP.

1. Acceptance and Cancellation of Order: Other than as specifically provided in a separate Purchase Agreement between AST and the Customer, these Terms and Conditions may NOT be altered or amended by any other document, and any attempts to alter the contractual terms of this document or to contract for AST surface finishing, refurbishment and/or retrofit services that are different terms and conditions are null and void, unless otherwise agreed in a written document signed by both AST and the Customer. Each order shall be subject only to the terms and conditions stated herein, which supersede all terms and conditions that may appear on the Customer's order form, purchase order, or other documentation.
 - (a) Acceptance of an order from the Customer by AST is expressly conditioned on the Customer's consent to all terms and conditions stated herein, which consent shall be deemed given unless the Customer immediately notifies AST to the contrary in a writing separate and apart from the Customer's confirmation of the order.
 - (b) No modification of the conditions and terms stated herein will be recognized by or binding on AST unless both parties sign a written modification to these Terms and Conditions, unless Customer immediately notified AST of any changes, and/or unless a separate agreement between the parties has been executed and signed by both parties.
 - (c) Failure of AST to object to provisions that may be on any order form, purchase order or other documentation from the Customer containing different terms and conditions shall not constitute an acceptance of such provisions and shall not constitute a waiver of these Terms and Conditions.
 - (d) The contractual rights and obligations of the parties under this contractual relationship shall be governed by, and construed according to, the laws of the Commonwealth of Pennsylvania.
 - (e) No order that has been accepted by AST may be altered, modified, canceled or terminated by the Customer unless agreed to in writing and signed by AST.
 - (f) In the event that an agreement between the parties were to be canceled or terminated, the Customer agrees to pay to AST a cancellation fee that equitably adjusts the amount of the contract to reflect reasonable charges for AST's work that has been completed, including all of AST's incurred cost and proportional profits associated with that cost.
2. Delivery: AST's delivery of the Customers' products to a carrier at AST's factory or other shipping point as designated by the Customer shall constitute delivery to the Customer, and, regardless of freight payments, all risks of loss or damage in transit shall be borne by the Customer. Said products will be shipped Ex Works. The Customer is responsible for all loading, shipping, taxes, or other assessments associated with this order. AST is not liable for any delays in loading, shipment or any failure to ship by an estimated shipping date. AST is not responsible for any damages or losses incurred while the Customer's product is being loaded, transported by a carrier, or otherwise processed by AST.
3. Transportation Costs: Unless otherwise specified, all finished products will be shipped Ex Works AST's factory or other shipping point as designated by the Customer. Method and route of shipment shall be in the sole discretion of AST, unless the Customer specifies otherwise; any additional expense of the method or route of shipment that is specified by the Customer shall be borne entirely by the Customer.
4. Partial Shipment: AST reserves the right to arrange for the shipment of the Customer's products in installments, unless otherwise expressly stipulated in the parties' specific agreement; such installments shall be separately invoiced and are payable when due per invoice without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve the Customer of its obligation to accept remaining deliveries.
5. Force Majeure. AST shall not be liable for any damages, delays, or failure to perform caused by circumstances beyond its control, including without limitation acts of God, actions of the Customer, embargos, governmental acts, fires, accidents, strikes, slowdowns, wars, riots, terroristic acts, threats of terrorism, pandemics, delays in transportation, unavailability of necessary labor, materials, or manufacturing facilities, and more. In the event of any such delay, the performance by AST and dates of delivery shall be extended for a period equal to, or more than, the time lost by reason of the delay, if performance by AST is feasible, as determined by AST in its sole discretion.
6. Payment Terms: The net amount of an invoice shall be due 30 days after the invoice date unless otherwise stated on the invoice or in the parties' specific agreement. Thereafter, any unpaid balance is subject to a service charge of 1.5% per month. If during the period of performance of an order, AST in its sole discretion concludes that the Customer's financial condition does not justify the payment terms in the parties' existing contract, if the Customer declares bankruptcy or is declared to be otherwise insolvent, if the Customer defaults on a payment, or if the Customer otherwise breaches these Terms and Conditions or the parties' specific agreement, AST may require full or partial payment before proceeding with the order. Invoice price shall be that in effect on date of shipment.
7. DISCLAIMER OF WARRANTIES: AST warrants the service provided to Customer to be free from defects in workmanship for a period of 30 days from shipment. Customer must, immediately upon discovery of an alleged defect, notify AST of such alleged defect. AST makes no express warranties except those stated herein. Any such warranties by AST will only be in effect upon AST's receipt of payment in full for the services rendered. AST DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE. AST'S EXCLUSIVE RESPONSIBILITY FOR SUCH WARRANTY CLAIMS IS LIMITED TO THE REPAIR OR REPLACEMENT OF THE PRODUCTS BEING SERVICED NOT TO EXCEED THE CONTRACT PRICE FOR AST'S SERVICES RENDERED.
8. Limitation on Damages: The exclusive remedy provided herein shall not be deemed to have failed of its essential purpose so long as AST is willing and able to repair, Ex Works its plant, any nonconforming product. AST is not liable beyond the remedies that are set forth herein including liability for damages resulting from the use of the Customer's products following AST's services, lost profits, loss of business or other incidental, indirect, consequential, special, or punitive damages or for any claim by any third party. The Customer further agrees that AST is not liable or otherwise responsible for any damages in any amount above the aggregate amount paid for services under this agreement. These limitations apply regardless of the circumstances giving rise to such loss, damage, or liability, even if it is based on negligence, other torts, or breach of contract. If the Customer's products are negligently damaged as a result of AST's processes or the conduct of AST's employees through no fault of the Customer, AST's liability is limited to, and will not exceed, the contract price for surface finishing, refurbishment and/or retrofit services the products, and in no event will AST be liable for anything beyond the repair of any damage.

Neither AST nor the Customer may institute any action in any form arising from their specific agreement and/or these Terms and Conditions more than eighteen (18) months after a cause of action has arisen or in the case of nonpayment more than eighteen (18) months from the date of the last payment.
9. Returns: If there is any problem with the service that is provided by AST, the Customer must obtain a Return Material Authorization (RMA) number from AST for the return to be processed. The RMA number is necessary for appropriate processing, and no product will be accepted by AST without a RMA number. If product is shipped or delivered to AST without an RMA number, the material will be shipped Ex Works back to the Customer, delaying the process. The product must be returned and delivered to AST within thirty (30) days of its original ship date from AST. The Customer must provide complete information about the specific condition that caused the product to be returned. AST will determine the reason underlying the return and, depending on the timeliness of, and the reason for, the return, will contact the Customer about any assessment of cost for remediation.
10. Claims: Claims for loss or damage to the Customer's product in transit must be made to the carrier promptly and not to AST. In the event of a claim for missing product, shortages or other errors (exclusive of problems in transit), the Customer must make a claim in writing to AST within ten (10) days after delivery. Failure to give such notice shall constitute acceptance of the products as is and a waiver of any such claims by the Customer.
11. Indemnification: The Customer agrees to indemnify, to defend, and to hold AST harmless from and against claims or associated losses arising from bodily injury, death, tangible property damage resulting from the Customer's acts or omissions as well as a breach by the Customer of these Terms and Conditions or the parties' specific agreement as well as any violation of intellectual property or proprietary rights attributable to the Customer's provision of its products to AST for surface finishing, refurbishment and/or retrofit services. If the Customer's products are damaged as a result of AST's processes or willful negligence of AST employees and through no fault of the Customer, the Customer will be indemnified, and AST will correct the problem or repair the damage, as limited by Paragraphs 7 and 8 above. In the event that AST's services per the parties' agreement occur at the Customer's facility, the Customer agrees to indemnify, to defend, and to hold AST harmless against all claims or associated losses arising from any action, other than the actual work AST has done.
12. Disclosure of Chemicals (MSDS): The Customer must provide AST with a complete list of chemicals, which may be present on the products to be electropolished, passivated, refurbished and/or retrofitted prior to work by AST or that may be hazardous to AST personnel or its processes. If AST concludes that such chemicals may contaminate its processes, AST in its sole discretion can terminate the parties' agreement without costs or penalties, and, if applicable, the Customer's product will be returned Ex Works to the Customer and at no cost to AST. If chemicals that are present on the Customer's products contaminate AST's solutions that are used in the electropolishing or passivation process, the Customer agreed to be responsible for, and liable for, the cost of replacing contaminated AST solutions that are necessitated by the lack of such notification. If the project is performed on-site and if upon arrival AST concludes that the Customer has not provided complete or accurate information about chemicals that may be a hazard to AST personnel, equipment or solutions, AST in its complete and sole discretion may terminate the parties' agreement without penalty or costs, and the Customer shall reimburse AST for its costs plus its proportional profit on the job.
13. Taxes and Other Charges: Any manufacturer's tax, retainer's occupation tax, use tax, excise tax duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever that is imposed by any government authority on, or measured by, any transaction between AST and the Customer shall be paid by the Customer in addition to the prices quoted or invoiced unless AST specifically agrees and states that such taxes, fees or charges are included in those prices. In the event that AST shall be required to pay any such tax, fee, or charge, the Customer shall reimburse AST for the same or, in lieu of such payment, the Customer shall provide AST when the order is accepted by the Customer with an exemption certificate or such other document acceptable to the taxing authority imposing the same.