



## ATORAA, TERMS OF SALE

*Updated January 2023*

**THESE TERMS OF SALE ("TERMS") ARE THE ONLY TERMS WHICH GOVERN THE SALE OF THE GOODS ("GOODS") BY ATORAA MANUFACTURING CO., INC. ("SELLER" OR "ATORAA") TO THE BUYER ("BUYER"), (COLLECTIVELY, THE "PARTIES"), UNLESS OTHERWISE AGREED TO IN WRITING BY ATORAA. THESE TERMS PREVAIL OVER ANY ADDITIONAL TERMS SUBMITTED BY BUYER. FULFILLMENT OF BUYER'S ORDER DOES NOT CONSTITUTE ACCEPTANCE OF ANY OF BUYER'S TERMS OF PURCHASE, NOR DOES IT SERVE TO MODIFY OR AMEND THESE TERMS. ANY TERMS OF PURCHASE OF BUYER ARE HEREBY REJECTED UNLESS THEY ARE EXPRESSLY ACCEPTED IN A WRITTEN INSTRUMENT DULY EXECUTED BY ATORAA.**

**1. TERMS OF SALE.** ATORAA performance is expressly limited to the Terms as stated in this document for all sales orders, sales acknowledgements, purchase orders ("Order"), and/or releases pursuant to blanket purchase orders, issued by either ATORAA or Buyer. Any proposal for additional or different terms and any attempt by Buyer to vary the Terms stated in this document are objected to and rejected, whether made before or after the delivery of this document to Buyer. If an Order is deemed to be acceptance of a prior offer or proposal by purchase, such acceptance is conditional on Buyer's assent to all additional or different Terms contained in this document. Any of the following acts by Buyer shall constitute acceptance of this document and of all these Terms: Signing and returning a copy of this document, placing a Buyer Order or release of a blanket purchase order after receipt of this document, acceptance of delivery of any of the goods ordered, requesting ATORAA to commence performance of the Order, making payment for all or a portion of the goods ordered. These Terms cannot be changed in any manner without the express written approval by ATORAA authorized representative in an Addendum to this document executed by both ATORAA and Buyer. No course of dealing by ATORAA or usage of the trade or any delay or omission by ATORAA to exercise any right or remedy granted under this document shall operate as a waiver of any of ATORAA's rights or remedies or add to ATORAA any obligation not in this document.

**2. PRICES.** All Orders are subject to the effective prices and Terms in effect on date of shipment, and are subject to change without notice, unless otherwise authorized and specified by the sales quote or in writing by ATORAA. Written quotations expire 30 days from date of quotation unless otherwise specified in writing by ATORAA.

**3. TAXES.** All prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by a Governmental Authority on any amounts payable to Buyer. Buyer shall be responsible for all charges, costs and taxes; provided that, Buyer shall not be responsible for any taxes imposed on, or with respect to, ATORAA's income, revenues, gross receipts, personnel or real or personal property or other assets.

**4. PAYMENT TERMS.** Net 30 days from date of invoice, unless otherwise specified in writing by ATORAA. ATORAA may charge Buyer interest on all late payments at the rate of 1.5% per month, or the maximum amount permitted by law, starting from the first day payment is late, until the date of receipt of the full amount of payment. Buyer may not withhold payment of any amount due to ATORAA because of any set-off, counter-claim, abatement or other similar deduction. Buyer shall be responsible for the payment of any or all taxes, charges, levies, assessments any other fees of any kind imposed by governmental or other authority in respect of the purchase, importation, sale, lease or other distribution of the Goods.

**5. ORDER CANCELLATION.** An Order may be cancelled by the Buyer only upon payment of all reasonable charges and expenses already incurred by ATORAA for production of the Goods in the Order. In the event any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against the Buyer, or in the event of the appointment, with or without Buyer's consent of an assignee for the benefit of creditors or of a receiver, or if ATORAA in its reasonable judgment concludes that Buyer's financial condition or ability to perform the Order has been adversely affected, then ATORAA shall be entitled to cancel any unfulfilled part of the Order without any liability whatsoever.



**6.WARRANTY.** The warranty applicable to ATORAA Goods are found at <http://www.ATORAA.com>. ATORAA warrants to the original consumer purchaser, not for the benefit of anyone else, that the goods at the time of sale by ATORAA are free of defects in materials and workmanship under normal and proper use for one year from the purchase date. ATORAA' only obligation is to correct such defects by repair or replacement, at its option. This warranty excludes and there is disclaimed liability for labor for removal of the goods or reinstallation. This warranty is void if the goods are installed improperly or in an improper environment, overloaded, misused, opened, abused, or altered in any manner, or are not used under normal operating conditions or not in accordance with any labels or instructions. There are no other warranties (express or implied) of any kind, including merchantability and fitness for a particular purpose, but if any implied warranty is required by the applicable jurisdiction, the duration of any such implied warranty, including merchantability and fitness for a particular purpose, is limited to one year. ATORAA is not liable for incidental, indirect, special, or consequential damages, including without limitation, damage to, or loss of use of, any equipment, lost sales or profits or delay or failure to perform this warranty obligation. The remedies provided herein are the exclusive remedies under this warranty, whether based on contract, tort or otherwise.

**7.LIMITATION OF LIABILITY.** IN NO EVENT SHALL ATORAA BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT ATORAA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL ATORAA AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO ATORAA FOR THE GOODS SOLD HEREUNDER. The limitation of liability set forth herein shall not apply to liability or injury resulting from ATORAA' gross negligence or willful misconduct.

**8.SHIPPING TERMS.** ATORAA shall retain a security interest in such goods until the purchase price is paid in full by Buyer. The Goods will be shipped FOB point of shipment and allowed to any point in the United States, except Alaska and Hawaii, provided each shipment has a value of at least \$2,000.00. ATORAA reserves the right to select origin of shipment, routing, and method of transportation. Any premium freight charges (such as air freight) will be at Buyer's expense. If Buyer specifies alternate routing, Buyer must assume all additional transportation charges. Title to and risk of loss shall pass to Buyer upon delivery of the Goods FOB point of shipment.

**9.CLAIMS FOR LOSS OR DAMAGE IN SHIPMENT.** If merchandise is delivered in damaged condition or cartons are missing, a notation must be placed on all papers signed by the receiver. If unreported or concealed damages are noticed after delivery, the carrier should be contacted, with a copy of such request to ATORAA. All requests for credit due to transportation loss or damage should be accompanied by properly signed papers. A claim for loss or damage must be filed with the carrier within 60 days from the shipping date for common carriers. Credit is not allowed for late or improperly substantiated damage claims.

**10.ORDER ACCEPTANCE.** Any Order is deemed accepted by ATORAA unless Buyer receives a written objection thereto within 5 business days after ATORAA' receipt of such Order.

**11.RETURN MATERIALS AUTHORIZATION (RMA).** No Goods may be returned without prior written authorization from ATORAA and then only in accordance with ATORAA' instructions and terms. ATORAA shall not be bound via deductions from remittance due. When return is occasioned due to ATORAA' error other than conditions covered by Warranty, full credit including transportation charges will be allowed. Where the Buyer requests authorization to return goods for reasons of its own, and ATORAA issues approval for return, Buyer will be billed a 15% service charge on full cartons, and a 25% service charge on broken cartons, plus outbound freight, if applicable, and in any event a minimum of \$50.00 service charge. The return shipment is to be freight prepaid by the Buyer.



All goods returned must be in condition to be resold and with ATORAA' current package design. Goods that may be resold are unopened, untampered with, and uninstalled goods. Any defective good returns are subject to ATORAA' warranty. No obsolete items or those items which are not current stock or standard production items will be accepted. No RMA will be issued for less than a credit of \$100.00. Proof of purchase (copy of ATORAA invoice) must accompany all RMA requests. Additional charges may be made if there is an expense in converting the returned goods into a saleable condition. Special goods built to the Buyer's specifications will not be accepted for return. In no event will ATORAA be responsible for goods returned without proper authorization or identification. Any attempt to contravene the above-stated policy will subject Buyer to liability for ATORAA' resulting costs, expenses, attorney's fees and other resulting losses.

**12.PATENT INDEMNIFICATION.** ATORAA shall defend any lawsuit or court legal proceeding brought against Buyer, so far as based upon a claim that the furnishing of any goods or any part thereof constitutes an infringement of any United States patent, but only if: (1) ATORAA is notified in writing by Buyer promptly after Buyer learns of same; (2) ATORAA is given authority, information and assistance from Buyer for the defense and control of same. In the event ATORAA' furnishing hereunder of said goods or any part thereof is held in such a suit to constitute infringement of a valid and enforceable patent by a court of last resort from which no appeal has been perfected, and the use of said goods by Buyer is enjoined by such court, ATORAA shall at its own expense attempt to: (a) produce for the Buyer the right to continue using said goods; or (b) replace such goods with what ATORAA and its counsel believe to be non-infringing goods; or (c) modify such goods so that, in the opinion of ATORAA and its counsel, the goods become non-infringing; or (d) accept the return of such goods and credit the purchase price and the reasonable transportation costs of such return toward future sales from ATORAA. ATORAA shall have no liability for any costs, losses or damages resulting from Buyer's willful acts, or any settlement or compromise incurred or made by Buyer without ATORAA' prior written consent. ATORAA shall have no obligation to defend and no liability for any costs, losses or damages, to the extent that an infringement allegation is based upon: (i) Buyer's use of the goods in combination with any other good, software or equipment; (ii) Buyer's use of the goods in a manner or for an application other than for which they were designed or intended, regardless of whether ATORAA was aware of or had been notified of such use; (iii) Buyer's use of the goods in a manufacturing or other process; (iv) Buyer's modifications to the goods; (v) ATORAA' compliance with Buyer's particular design, instructions or specifications; or (vi) ATORAA' compliance with any industry or proprietary standard or Buyer's use of the goods to enable implementation of any industry or proprietary standard (such claims - i.e. those set forth in (i) through (vi) above - are individually and collectively referred to herein as "Other Claims"). The foregoing states the entire liability of ATORAA for patent infringement of a valid and enforceable U.S. patent. Buyer shall indemnify and hold ATORAA harmless against any damages, liabilities or costs finally awarded against ATORAA or agreed to by Buyer as settlement or compromise, and will defend any claim, suit or proceeding brought against ATORAA insofar as such claim, suit or proceeding is based on an allegation arising from Other Claims. Buyer will not enter into any settlement or make admissions or concessions to claimants concerning infringement or validity of an asserted patent without prior written consent from ATORAA, which shall not be unreasonably withheld.

**13.INSPECTION.** Any claim by Buyer for non-conforming goods shall be deemed waived unless asserted in writing within 30 days after delivery of the Goods.

**14.SUBSTITUTES.** ATORAA may furnish substitutes for materials unobtainable because of priorities or regulations established by governmental authority or because of non-availability of materials from suppliers, provided such substitutes will not adversely affect the technical soundness of the goods or operability of the goods.

**15.SHIPPING SCHEDULES.** ATORAA will not be responsible for deviations in meeting shipping schedules nor any losses or damages to Buyer (or any third persons) whether occasioned by deviations in performance or the nonperformance of any of ATORAA' obligations under the Order or loss or damage to the goods when caused directly or indirectly by or in any manner arising from any casualty, riots, acts of Buyer, strikes or other labor difficulties, shortage of labor, supplies and transportation facilities or any other cause or causes beyond its reasonable control or the control of its suppliers.



**16. HEADINGS.** Headings used in these Terms are for convenience only and shall not be considered in construing or interpreting these Terms.

**17. GOVERNING LAW.** All matters arising out of or relating to these Terms shall be governed by and construed in accordance with the laws of Summit County, State of Ohio, without giving effect to its conflict of laws rules. Any dispute shall be adjudicated solely in federal or state courts within the State of Ohio, Summit County. Buyer consents to the venue and jurisdiction of such courts and waives any claim or defense based on forum non convenient or personal jurisdiction.

**18. CONFIDENTIAL INFORMATION.** All non-public, confidential or proprietary information of ATORAA, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by ATORAA to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with these Terms is confidential, solely for the use in connection with the sale of goods under these Terms and may not be disclosed or copied unless authorized in advance by ATORAA in writing. Upon ATORAA's request, Buyer shall promptly return all documents and other materials received from f.

ATORAA shall be entitled to injunctive relief for any violation of this section. This section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

**19. FORCE MAJEURE.** ATORAA shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached these Terms, for any failure or delay in fulfilling or performing any obligations of these Terms, including without limitation delivery dates, when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of ATORAA. Such circumstances may include, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorism, terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

**20. ANTI-BRIBERY.** ATORAA is committed to conducting its business ethically and in compliance with its anti-bribery policy, and all applicable laws and regulations, including the U.S. Foreign Corrupt Practices Act, the UK Bribery Act, and any other applicable laws that prohibit improper payments to obtain a business advantage.

**21. EXPORT COMPLIANCE.** Buyer shall comply with all export and import laws of all countries involved in the resale of goods by Buyer, including the export regulations of the United States. Buyer is in compliance with all laws administered by the United States Treasury Department's Office of Foreign Assets Control (OFAC) or any other entity imposing economic sanctions and trade embargoes ("Economic Sanctions Laws") against designated countries ("Embargoed Countries"), entities, and persons (collectively, "Embargoed Targets"). The Buyer is not and has not been, an Embargoed Target or otherwise subject to any Economic Sanctions Law. Without limiting the generality of the foregoing, the Buyer shall not (a) directly or indirectly export, re-export, transship, or otherwise deliver the Goods or any portion thereof to an Embargoed Target or (b) broker, finance, or otherwise facilitate any transaction in violation of any Economic Sanctions Law. Buyer assumes all responsibility for shipments of goods requiring any government import clearance. ATORAA may terminate the Order if any governmental authority imposes antidumping or countervailing duties or any other penalties on the Goods.

**22. COMPLIANCE WITH LAWS.** Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under these Terms and any Order subject to these Terms.

**23. WAIVER.** The failure of either party to require performance of any term or conditions or the waiver by either party of any breach of the same shall not prevent subsequent enforcement of such term or condition nor be deemed a waiver of any subsequent breach. Any change in, addition to, renewal of, or waiver of these Terms shall be binding upon either party only if in writing signed by such party's officer or other authorized agent.





**24.SEVERABILITY.** If any term or provision of these Terms is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.

**25.SURVIVAL.** The provisions of these Terms relating to payment, confidentiality, disclaimers, warranties, limitation of liability, indemnification, governing law and jurisdiction, severability, and this paragraph shall survive the fulfillment of the Buyer's Order.

**26.MODIFICATION.** These Terms may only be modified in writing signed by authorized representatives of ATORAA and Buyer.

**27.PUBLIC ANNOUNCEMENT.** Buyer shall not publicly disclose, issue any press release or make any other public statement, including publication on its website, concerning the existence of ATORAA's sale of good(s), or the subject Order(s), without ATORAA's prior written consent.

**28.ASSIGNMENT.** Buyer shall not assign any of its rights or delegate any of its obligations under this Order without ATORAA's prior written consent. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under its Order.

**29.RELATIONSHIP OF THE PARTIES.** Nothing in these Terms shall be deemed to constitute either party as an agent, representative, employee, or create an agency relationship for any purpose. Neither party has the authority to bind the other party. Furthermore, these Terms do not constitute a franchise or establish a franchise relationship, and do not grant a trademark or any other express or implied license.