



# **AUTOSPLICE NORTH AMERICA TERMS & CONDITIONS OF SALE**

Effective August 1, 2012

## **1. GENERAL**

Autosplice Inc. ("Seller") agrees to sell and Buyer agrees to purchase the products described on the face hereof (the "Products.") No commitment shall be binding on Seller unless accepted in writing by Seller at its home office in San Diego, California. Any terms and conditions in addition to or inconsistent with those specified herein shall not be binding on Seller unless expressly accepted, in writing, by Seller, and failure of Seller to object to any such additional or inconsistent terms and conditions shall not be construed as an acceptance of any such provisions, nor as a waiver of any of Seller's terms and conditions.

## **2. VALIDITY**

Seller's written price quotations are valid for a maximum period of sixty (60) days from date of quote issue. Purchase orders received after this period shall require an updated formal quote from Seller, unless otherwise waived by Seller. Prices are subject to change without notification. Prices may also change under circumstances described in Paragraph 15 below.

## **3. WARRANTY**

Seller warrants, to the Buyer only, that the products furnished to the Buyer hereunder will be free from defects in material and workmanship under normal and proper usage for a period of 90 calendar days from the date of delivery to Buyer (for machines) and 365 calendar days from date of shipment from Seller's factory (for components), and THIS EXPRESS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. Seller's obligation under this agreement is limited to replacing or repairing, as Seller's option, products or parts thereof determined by Seller to be defective. Replacement products shall be shipped subject to all the same terms, conditions, and charges (except for the purchase price) as an original shipment. Seller shall be under no obligation to replace or

repair any product which has been subjected to improper operation, maintenance, storage, accident, alteration, abuse or failure to follow the manufacturer's printed instruction or normal operating procedures. If facts come to light after Seller's replacement or repair that product was misused or abused or not defective at all, Seller may recoup related expenses from Buyer. Alteration or repair by any other than authorized Seller personnel shall invalidate this warranty. Seller does not authorize any person to assume for it any other obligation or liability not specified in this warranty.

#### **4. LIMITATION OF LIABILITY**

Seller's liability for breach or default specifically excludes the legal remedy of "specific performance" and Seller's liability for normal damage for breach or for default under this Agreement shall be limited to pecuniary damage. Seller shall not be liable for delays, deprivation of use, or for other loss or damage directly arising from the use, operation or failure of the product or any other cause, or for special, incidental or CONSEQUENTIAL DAMAGES of any type whatsoever. Seller shall not be responsible for checking or verifying Buyer's drawings prior to estimating the price of the product and Buyer shall reimburse Seller for any loss or increased expense resulting from errors in Buyer's drawings or bills of material.

#### **5. INDEMNIFICATION**

Buyer shall defend, indemnify, and hold Seller harmless against any and all claims, damages, and expenses (including reasonable attorney's fees) of any nature whatsoever which may be made against Seller or which Seller may sustain by reason of injury to, or death of any person or persons, or damage to, or loss of, property arising out of the use of the products.

#### **6. PATENTS**

In the event of a claim against Buyer for infringement of any United States Patents arising out of the sale or use in the form supplied by Seller of products designed and/or manufactured by Seller, Seller, at its option, will modify the product so that it will not infringe, furnish the Buyer with a license to use the product, or defend or hold harmless Buyer against infringement claim. Seller will assume no liability with respect to products specified by either Seller or Buyer, but not designed or manufactured by Seller. Buyer will hold Seller harmless against any liability for infringement of any United States Patent involving products furnished to Buyer hereunder by Seller in accordance with drawings and/or specifications furnished by Buyer. The party assuming liability, as stated above, shall be notified immediately of any assertion of infringement, and shall have the absolute control of the defense thereto, including the right to settle, defend against legal action, or make changes to the products to avoid infringements.

#### **7. DELIVERIES AND DELAYS**

Delivery dates are based on normal expectancy and are approximate. Delay in delivery of any installment of products shall not relieve Buyer of his obligations to accept subsequent deliveries, unless time of delivery is expressly stated herein to be of the essence. Seller shall not be liable for

damages as a result of any delay, whether or not due to any cause beyond Seller's control, including, without limitation, act of God, act of the Buyer or his representative, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown, war, riot, delay in transportation, or inability to obtain necessary labor material, fuel, or manufacturing facilities, or default of suppliers due to any of these causes. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of delay and if such delay is caused by act of the Buyer, or his representatives. Seller shall be reimbursed for any additional costs arising from such delay.

## **8. PAYMENT**

Unless otherwise specified herein, the terms of payment shall be Net Cash Thirty (30) days from date of invoice, subject to approved credit rating. If the Buyer fails to make any payments in accordance with this agreement, Seller, in addition to its rights and remedies, but not in limitation thereof, may, at its option, defer shipments or deliveries hereunder or under any other contract with the Buyer, unless Seller receives satisfactory security or payment in full before shipment. Where shipment is delayed at the request or through the fault of the Buyer, Seller may issue its invoice as of the date the products are ready for shipment. All quoted prices and payments shall be in US Dollars, unless specifically stated otherwise by Seller. Each shipment shall be considered a separate and independent transaction and payment therefore shall be made accordingly. Buyer shall not short-pay any invoices nor implement any set-off amounts. If the work covered by this agreement is delayed by Buyer's request, or through the fault of the Buyer, upon demand by Seller, payment shall be made on the purchase price based upon percentage of completion. Such delayed products held for the Buyer shall be at the risk and expense of the Buyer unless otherwise agreed to, in writing, by the Seller. Seller reserves the right to make collection of all or any part of any payment by sight draft, C.O.D., or any other terms.

## **9. WITHDRAWAL OF CREDIT**

Seller may at any time limit or withdraw Buyer's credit and may require full or partial payment prior to shipping without affecting the obligations of the Buyer under this Agreement. In the event of bankruptcy or insolvency of the Buyer or if the Buyer fails to pay Seller any sum when due, or any prepayment on demand as provided above, then upon seven (7) calendar days written notice, Seller may cancel any order then outstanding under this Agreement, sell all of any undelivered product without notice at public or private sale, and hold Buyer responsible for all expenses and losses.

## **10. SECURITY INTEREST**

Seller retains title to and a security interest in all products sold to Buyer hereunder and/or the proceeds thereof until the purchase price and other charges, if any, are paid in full. This Agreement constitutes a Security Agreement within the meaning of the Uniform Commercial Code and Seller shall have all rights and remedies of a secured party thereunder. Buyer authorizes Seller to file continuing financing statements covering Seller's security interest in the products and all after-acquired products. Seller may retake possession of the products with or without legal process, if the terms and conditions

as provided herein or otherwise agreed to by the Buyer are not met by Buyer.

### **11. RISK OF LOSS**

Risk of loss or damage to the products shall pass to Buyer upon delivery per Paragraph 13. Loss for damage to, or destruction of, the product shall not in any manner release the Buyer from the obligation to make payment on any amount owed to Seller.

### **12. TAXES**

In addition to the price indicated on the face hereof, Buyer agrees to bear all taxes, fees, and other impositions or charges which may be demanded or assessed by any country, state, county or municipality including those not specifically imposed by law upon the Seller with respect to products sold by the Seller under this Agreement. All such additional charges shall be for Buyer's account and shall be invoiced to Buyer unless Buyer furnishes valid exemption documentation before shipment. Buyer shall reimburse the Seller promptly upon demand for all such charges paid by Seller.

### **13. DELIVERY AND FREIGHT ALLOWANCE**

All prices are quoted EXW factory of origin, Incoterms® 2010. "Incoterms" is a trademark of the International Chamber of Commerce. Buyer must take delivery of the Product when the Product has been placed at the disposal of the Buyer by the Seller and the Seller has given any required notice to the Buyer.

- Autosplice Incorporated, 10431 Wateridge Circle # 110, San Diego, California 92121 USA
- Autosplice Paramount, 7551 Rosecrans Ave, Paramount, California 90723 USA
- Autosplice México S. de R.L. de C.V., Calle Cartagena No. 18960 1 & 2, Colonia el Porvenir Delegacion La Presa, Tijuana BC 22224 Mexico

All transportation and storage costs beyond point of delivery and any special packing costs will be charged to Buyer. Seller will prepay such charges and add these to the invoice for the products. Absent timely instruction from Buyer, Seller will select the method of transportation and routing of shipment.

### **14. CANCELLATION**

In any instance where Buyer is legally entitled to cancel this Agreement, such cancellation shall be by written notice to Seller and, if applicable, subject to the following conditions:

- A) Any part of this Agreement which can be completed by Seller within thirty (30) days after receipt of such notice may, at Seller's option, be shipped and shall be paid for in full; and
- B) All work in process, and all materials and supplies ordered by Seller to fill all or any part of this Agreement, as of the date of receipt of such notice by Seller shall, at Seller's option, become property of Buyer requiring payment in full by Buyer on the basis of Seller's cost plus ten percent (10%) thereof, which cost shall include, without limitation, general administrative, selling, and manufacturing

expenses; and

C) Buyer shall accept all releases under a blanket order scheduled for shipment within sixty (60) days from the date of cancellation. Buyer shall also be responsible for any price quantity differential.

## **15. PRICES AND PRICE ADJUSTMENTS**

All quoted prices are valid for 60 days from date of formal quote (fax, email or hard copy). Quotations shall incorporate these terms and conditions by reference.

Buyer's purchase orders shall include an additional line item for price adjuster(s) to accommodate for fluctuations in the metal, precious metals and resin markets. All assumptions of base cost and calculation of price adjusters shall be clearly identified on Seller's quotes and Buyer's purchase orders. Should Buyer and Seller enter into an Annual Contract Price Agreement, the contract pricing shall take effect provided:

- I. Buyer issues a purchase order for the contract quantity, which includes rolling releases for 13 weeks (one quarter year) worth of product.
- II. Material liability has been incorporated into the Annual Contract
- III. Metal and precious metal price adjusters are identified, where applicable, with agreement on invoice and payment adjusters as applicable.
- IV. Buyer agrees to accept the contract quantity within a twelve (12) month period, from date of Buyer's purchase order.
- V. Maximum contract term is one (1) year, and may be extended upon written agreement by both Buyer and Seller.
- VI. Prices for products quoted for delivery beyond one (1) year from date of Buyer's order are subject to adjustment based on Seller's new quoted base price(s).

Prices and terms of payment shall not be subject to any offset or counterclaim of the Buyer unless agreed to, in writing, by Seller. In the event that Buyer delivers a check to Seller in payment for the product in an amount less than the prices quoted on the face hereof, and all other additional charges, Seller expressly reserves the right to demand the balance due and Seller's negotiation of said check will not affect an accord and satisfaction, notwithstanding the fact that the words 'Final Payment' or any similar words are inscribed thereon. Buyer agrees to hold Seller harmless from any damage, loss or expense as a result of its use of such restrictive endorsement on a negotiable instrument.

## **16. GOVERNMENT CONTRACTS**

In the event this order is for products to be furnished by Buyer under any government contract or purchase order, Seller shall have all rights of Buyer that are available to Buyer under such government contract or purchase order, whether or not Buyer is a prime contractor or supplier to the government, or is a subcontractor at any tier.

**17. REGULATORY LAWS OR STANDARDS**

Seller does not warrant or represent that its product will conform to any federal, state or local laws, ordinance, regulations, codes or standards, except as particularly specified and agreed upon for compliance, in writing, as part of this Agreement between Buyer and Seller. Seller's prices do not include the cost of any related inspections or permits.

**18. MODIFICATION OF AGREEMENT**

This Agreement contains the entire Agreement of the parties, and no prior or contemporaneous negotiations, correspondence, conversations, prior course of dealing or usage of trade shall in any way affect the specific terms and conditions hereof. No subsequent modification of, or addition to, this Agreement shall be effective unless in writing, signed by both parties.

**19. ASSIGNMENT**

This Agreement may not be transferred or assigned by the Buyer without prior written consent of Seller.

**20. JURISDICTION**

The laws of the State of California shall govern this Agreement and its performance. The parties hereto agree to waive trial in any action or any such proceedings arising out of, or relating to the products or this Agreement.

**21. NO WAIVER OF CONDITIONS**

Failure of Seller to insist upon strict performance of any of the terms and conditions of this Agreement shall not constitute a waiver of such terms and conditions or the waiver of any default.