



TERMS AND CONDITIONS OF SALE FOR THIN FILM COATING DESIGN OR TESTING

1. **Applicable Terms**

Sale of any services or related material is conditional upon the terms contained herein. Any additional or different terms proposed by Buyer will not be binding upon General Atomics unless accepted in writing by General Atomics* authorized representative. Any order for, any statement of intent to purchase, or any direction to proceed with the work shall constitute assent to General Atomics terms and conditions.

2. **Delivery, Risk of Loss, and Delays**

Delivery dates are approximate. Unless otherwise agreed, delivery will be made FCA point of shipment to Buyer. Risks of loss or damage will pass to Buyer when items are put into the possession of carrier. In no event shall General Atomics be liable for any delay in delivery or assume any liability in connection with shipment; nor shall the carrier be deemed an agent of General Atomics.

General Atomics will use its best efforts to have the items available for shipment in accordance with the delivery schedule set forth in the Purchase Order or Contract. General Atomics is not liable for damages attributable to delays in delivery.

3. **Payment**

Terms of payment for domestic sales are payment upon receipt of invoice. Terms of payment for foreign sales are by irrevocable letter of credit, acceptable to General Atomics, and confirmed by Bank of the West. If the credit of Buyer should at any time in the judgment of General Atomics become impaired, General Atomics shall have the right to require payment in advance before delivery of the item or the furnishing of any services.

4. **Standards and Remedies**

General Atomics will perform work in accordance with generally accepted engineering and technical standards. If it is determined that General Atomics has failed to comply with this requirement, General Atomics will reperform the noncomplying portion of the work in accordance with such standards. General Atomics shall be compensated for such remedial work at its then current rates.

THE EXPRESS WARRANTIES AND REMEDIES SET FORTH IN THESE TERMS AND CONDITIONS ARE EXCLUSIVE AND NO OTHER WARRANTIES OR REMEDIES OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, IN THIS AGREEMENT OR OTHERWISE (INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND/OR MERCHANTABILITY) SHALL APPLY.

5. **Limitation of Liability**

IN NO EVENT SHALL GENERAL ATOMICS BE LIABLE FOR ANY COMMERCIAL LOSSES, LOSS OF REVENUES, PROFITS OR ANTICIPATED REVENUES OR PROFITS, LOSS OF GOOD WILL, INCONVENIENCE, OR EXEMPLARY, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER, OR CLAIMS OF THIRD PARTIES, REGARDLESS OF THE FORM OF ANY CLAIM, WHETHER IN CONTRACT OR TORT, WHETHER FROM BREACH OF THESE TERMS AND CONDITIONS, OR DEFECTIVE PRODUCTS OR SERVICES, OR ARISING FROM BUYER'S INABILITY TO USE THE PRODUCTS EITHER SEPARATELY OR IN COMBINATION WITH ANY OTHER EQUIPMENT, OR FROM ANY OTHER USE, EVEN IF GENERAL ATOMICS HAS BEEN ADVISED OR SHOULD BE AWARE OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT SHALL GENERAL ATOMICS' LIABILITY FOR LOSS OR DAMAGES EXCEED IN THE AGGREGATE THE AMOUNT PAID BY BUYER FOR THE WORK PERFORMED FROM WHICH SUCH LIABILITY ARISES.

This Limitation of Liability article shall apply notwithstanding any conflicting or inconsistent provision contained in any item or document comprising this Contract or any other contract and to the full extent permitted by law and regardless of fault.

6. **Buyers Actions**

General Atomics shall not be responsible for the acts or omissions of the employees, contractors, subcontractors, or agents of Buyer, and shall not be liable for any property damage or personal injury caused by any act or failure to act by such employees, contractors, subcontractors, or agents.

7. **Taxes**

General Atomics prices do not include sales, use, excise or similar taxes. In addition to the price specified hereof, the amount of any present or future sales, use, excise, or other tax applicable to the work hereunder shall be for the account of Buyer, or in lieu thereof, Buyer shall provide General Atomics with tax-exemption evidence acceptable to the appropriate taxing authorities.

8. **Cancellation**

In the event of bankruptcy or insolvency of Buyer or in the event any proceeding is brought against Buyer, voluntarily or involuntarily, under the bankruptcy or insolvency laws, or if the financial condition of Buyer at any time does not, in the judgment of General Atomics, justify continuance of the work, General Atomics shall be entitled to cancel the contract and shall receive reimbursement for its reasonable and proper cancellation charges.

9. **Assignment**

The delegation or assignment by either party hereto of any or all of its duties or rights hereunder without the other party's prior written consent, which written consent shall not be unreasonably withheld, shall be void.

- 10. Applicable Law**
Performance of this Contract by both parties is conditioned upon observance of the law of their respective countries. This Contract in all other respects shall be interpreted in accordance with and governed in all respects by the laws of the United States and the State of California.
- 11. U.S. Government Approvals, Licenses, and Permits**
General Atomics shall not be required to begin work prior to receipt of any and all required approvals, licenses, and permits from the U.S. Department of Commerce, U.S. Department of State, and other U.S. government agencies having jurisdiction over exports from the U.S. In the event Buyer directs General Atomics to start work prior to such approvals and General Atomics is unable to obtain approvals, licenses, and permits after having expended its best efforts to do so, General Atomics may terminate this Contract and shall receive reimbursement for its reasonable and proper cancellation charges. The delivery schedule may be extended, if required due to delay in receiving such approvals, licenses, and permits.
- 12. Confidentiality**
Any information, suggestions, or ideas transmitted by Buyer to General Atomics in connection with performance hereunder are not to be regarded as submitted in confidence except as may be otherwise provided in a writing signed by an authorized representative of General Atomics. All specifications, data, or other information furnished by General Atomics will be used only for the purpose furnished, and may not be reproduced or further distributed without the prior written consent of General Atomics. These restrictions shall not apply to information (a) known to Buyer prior to receipt from General Atomics, (b) generally known in the industry prior to receipt from General Atomics, or (c) after the same is published or becomes generally available in the industry through no act or failure to act of Buyer.
- 13. Indemnity**
Buyer waives all claims against General Atomics and shall indemnify and hold harmless General Atomics and its subcontractors from any and all claims from third parties arising from performance hereunder. This provision shall apply notwithstanding any provisions of any other agreement to the full extent permitted by law and regardless of fault.
- 14. Disputes**
Any dispute, controversy, or claim arising out of or relating to this Contract shall be settled by arbitration held in San Diego, California, in accordance with the Rules of the American Arbitration Association and judgment upon any award rendered in such proceeding may be entered in any court having jurisdiction as provided by law if the parties to this Contract are both U.S. concerns. The law of the State of California shall apply to the construction and interpretation of this Contract. If the Buyer is not a U.S. Concern, all disputes arising in connection with the present contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.
- 15. Language**
All writing and communications between the parties shall be in English.
- 16. No Waiver**
No waiver of any provision of these Terms and Conditions shall be valid or binding on any party unless agreed to in writing by the party to be bound. The failure of either party to enforce at any time any of the provisions of these Terms and Conditions, or the failure to require at any time performance by the other party of any of the provisions of these Terms and Conditions, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the validity of either party to enforce each and every such provision thereafter.
- 17. Complete Agreement**
This Contract contains the complete agreement between the parties, and no modification, amendment waiver, or other change will be binding upon General Atomics unless assented to in writing by General Atomics* authorized representative.