

General Terms & Conditions for Sale of Products

This Agreement is entered into between Allied Telesis, Inc., ("ATI") and Customer upon the commencement of ATI's fulfillment of the Product or Service. Customer's acceptance of the ATI Product or Service (written or verbal) shall obligate Customer to, and shall constitute Customer's acceptance of, the terms and conditions set forth in this Agreement.

1. Conditions

- a. **Customer Representations:** The person entering into this Agreement represents and warrants that to the extent (s)he has the express authority to enter into this Agreement. In the event of a breach of this representation, the person entering into this Agreement will be responsible for all obligations hereunder.
- b. **Credit Verification:** Based upon information supplied by Customer, ATI may obtain credit information supplied by Customer from trade references and credit reporting agencies, or as ATI deems necessary. Based on this information, and other information ATI deems relevant to Customer's creditworthiness, including without limitation payment history.

2. Prices, Billing and Payment

- a. **Prices:** ATI warrants that the prices to be charged for Products or Services ordered herein are not in excess of prices charged to other customers similarly situated, for similar quantities of goods of like quality. Additionally, ATI reserves the right to modify all other terms and conditions and any pricing at any time, any changes shall automatically and without written amendment become part of this Agreement.
- b. **Billing and Payment:** The terms of payment for any order shall be net thirty (30) days from the date of invoice. All payments must be made in U.S. dollars. The Customer agrees to pay all bills, statements, account and invoices when due, according to the terms. The undersigned agrees that all payments due to ATI will be mailed to the remittance address: Allied Telesis, Inc. Dept CH 19302 Palatine, IL 60055-9302 as shown on each invoice or at such other place as ATI may direct. The Customer agrees to notify ATI in writing of any pending changes in ownership or change of location or any other changes which may materially affect the terms and conditions of sale or payment to ATI.

3. Shipment, Delivery, Acceptance, Reschedule and Cancellation Terms

- a. Each promised delivery date will be ATI's reasonable estimate of when the Product will be delivered. ATI assumes no liability for, and Customer waives any claims based on, loss, damage, or consequential damages due to delivery delays. Unless Customer provides ATI with express instructions to the contrary prior to shipment, ATI may make partial shipments on account of Customer's Orders, to be separately invoiced and paid for when due. Any delay in the delivery of any installment will not relieve Customer of its obligation to accept the remaining deliveries.
- b. **Shipping Terms:** All Products will be shipped FCA, ATI's shipping site (Incoterms 2010). Customer will be responsible for, and will pay, all shipping, freight and insurance costs, unless otherwise agreed by the parties, as well as any taxes, levies, duties or similar charges. All risk of loss or damage to Products will pass to Customer upon delivery by ATI to the appointed freight transportation company, or Customer, whichever first occurs. Customer will bear all risk of loss or damage of Products while in-transit. All claims for shipping damage must be made by Customer with the freight transportation company.
- c. **Acceptance:** Subject to any warranty, failure of Customer to reject any Products shipped to it by ATI within ten (10) days after receipt thereof will constitute complete and conclusive acceptance by Customer of such Products.
- d. **Reschedules:** Customer may, without additional charge, request a one-time deferral of ATI's shipment of the ATI Products under a single Order, provided, however that no deferral shall be allowed less than thirty (30) days prior to the original shipment date. Any such deferral will be for a maximum of thirty (30) days from the original shipment date.
- e. **Cancellation:** Once Customer's Order has been accepted by ATI, cancellations are not allowed.

4. Compliance With Law

Customer, reseller, sub-contractor, distributor or any buyer of Allied Telesis's "ATI" product known as "Customer", hereby agrees to have and maintain all permits and licenses required by any governmental unit or agency and to comply fully with all applicable laws

and regulations in its performance under this Agreement and with respect to the Products and Services, including without limitation to export control and other regulations maintained by the U.S. Department of Commerce/ Bureau of Industry and Security (“BIS”) and the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”), international boycotts regulations and all applicable anti-bribery and anti-corruption laws, including without limitation the U.S. Foreign Corrupt Practices Act (the “FCPA”). Customer shall not, directly or indirectly, sell, provide, export, reexport, transfer, divert, loan, lease, consign, or otherwise dispose of any equipment, product, services, software, source code, technical data, or technology received from Allied Telesis under this Agreement to or via any person, entity, or destination to embargoed countries, or for any activity or end-use restricted by the laws or regulations of the United States or any other applicable jurisdiction without first obtaining all required government authorizations. Customer understands that U.S. Government authorization may be required to export the commodity/software/technology to re-export or retransfer the commodity to a third-country, another end-user or another end-use. Customer agrees that it has the sole responsibility to determine any export and reexport license requirements, to obtain any export or reexport license or other official authorization, and to carry out any customs formalities for the export or reexport of Products or Services purchased from ATI. If this Agreement or any transaction or act contemplated herein is legally required to be approved, registered, notified or recorded with or by any government agency applicable to customer’s activities hereunder, Customer will assume all such obligations. Upon written notice from ATI, customer shall provide promptly such information as ATI shall reasonably consider necessary to verify customer’s compliance with this Section.

5. License

- a. Grant of License: To the extent that any Product contains or consists of software or firmware (“Software”), ATI only grants to Customer a nonexclusive, nontransferable, non-assignable License.
- b. Limitations: ATI licenses and does not sell any of its Software. In order to protect ATI’s proprietary rights, Customer will not: (a) duplicate, disassemble, decompile or reverse engineer any Product or Software or permit any other person or entity commissioned or controlled by Customer to do so, except and only to the extent that applicable law expressly requires that such activities be permitted; or (b) use, distribute or otherwise dispose of Products or Software, except as expressly permitted under this Agreement. ATI reserves all right, title and interest in and to Products not expressly granted under this Agreement.

6. Intellectual Property Indemnification Rights

ATI represents and warrants that the Products do not infringe any Intellectual Property Right of any third party.

Both parties shall indemnify and hold harmless the other party against any and all claims, suits, actions, demands, liabilities, damages, losses, costs and expenses (including without limitation attorney’s fees) arising directly or indirectly from any claim by third parties.

7. Limitations of Liability

IN NO EVENT NEITHER ATI NOR ITS EMPLOYEES, DIRECTORS, OFFICERS OR AGENTS WILL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR SPECIAL DAMAGES, LOSSES OR EXPENSE (INCLUDING, WITHOUT LIMITATION, SUBSTITUTE GOODS OR SERVICES, LOST PROFITS OR LOST BUSINESS) ARISING, DIRECTLY OR INDIRECTLY, UNDER THIS AGREEMENT, OR FROM THE PURCHASE, USE OR SALE OF PRODUCTS, WHETHER OR NOT ATI WAS ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES OR EXPENSES. IN NO EVENT WILL ATI’S TOTAL LIABILITY TO CUSTOMER UNDER THIS AGREEMENT DURING ANY ONE-YEAR TERM EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER TO ATI UNDER THIS AGREEMENT DURING SUCH ONE-YEAR TERM.

8. Customer Indemnity

CUSTOMER AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND ATI AGAINST ANY CLAIMS RELATING TO CUSTOMER’S MISUSE OF THE ATI PRODUCTS AND OR SERVICES. CUSTOMER AGREES TO REIMBURSE ATI FOR ANY AND ALL COSTS AND REASONABLE ATTORNEYS’ FEES INCURRED BY ATI IN DEFENDING ANY CLAIMS RELATING TO CUSTOMER’S MISUSE OF THE PRODUCT OR SERVICE.

9. Product Return

Return Procedure, for return of defective Products to ATI, Customer must request a Return Material Authorization (RMA) number from ATI prior to making any returns, indicating part number, quantity and a written description of the Product defect. All freight, duties, customs and similar charges for return of Products to ATI under this Agreement will be paid by Customer. ATI will pay the cost of shipping and insurance to return repaired or replaced Products to the original sending location in the USA.

10. Product Defect and Warranty

- a. ATI warrants that all Products shall (i) conform strictly to specifications of the Product and its packaging (including general specifications and quality requirements), descriptions, drawings, samples, and other requirements referred to which ATI and Customer otherwise agree. (ii) be free from defects in design, material and workmanship, and (iii) be free from all liens, encumbrances, and other claims against title.
- b. Limited Warranty: ATI provides a limited warranty to End Users for each Product. ATI reserves the right to engage agents and third parties to provide services to End Users under its warranties.

- c. If ATI determines that customer is not using certified SFP module with ATI product, ATI reserves the right to void the product warranty and/or service and/or support agreement.
- d. Disclaimer: ATI MAKES NO WARRANTIES OR REPRESENTATIONS TO CUSTOMER OR ANY OTHER PARTY REGARDING THE PRODUCTS. ATI MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT. ATI DOES NOT WARRANT THAT THE OPERATION OF ANY PRODUCTS OR SOFTWARE PROVIDED UNDER THIS AGREEMENT WILL BE UNINTERRUPTED OR ERROR-FREE.

11. General

- a. Assignment: Customer may not assign this Agreement, nor any of its rights and obligations hereunder, to any other person, firm, agency, corporation or other legal entity without the prior approval of ATI.
- b. Successors and Assigns: This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their permitted assigns. This Agreement is entered into solely for the benefit of such parties. Nothing contained herein will be deemed to create any third-party beneficiaries or confer any benefit or rights on or to any person not a party hereto, and no person not a party hereto shall be entitled to enforce any provisions hereof or exercise any rights hereunder.
- c. Force Majeure: Neither party shall be liable under this Agreement because of any failure or delay in the performance of its obligations on account of strikes, shortages, riots, fire, flood, storm, earthquake, acts of God, hostilities or any other cause beyond its reasonable control; provided, however, such party gives the other party prompt written notice of the failure to perform and the reason therefor and uses its reasonable efforts to limit the resulting delay in its performance.
- d. Affiliates: This Agreement shall extend to any corporation, partnership or other entity controlling, controlled by or under common control with ATI, and shall continue to extend to such entity during the term of the Agreement, regardless of whether such control continues. For purposes of this Section, "control" of an entity means ownership, directly or indirectly, of at least fifty percent (50%) of the voting rights in such entity (or, in the case of a non-corporate entity, equivalent rights).
- e. Governing Law: This Agreement shall be interpreted and governed in all respects according to the laws of the State of California.
- f. Waiver and Severability: (1) Neither the waiver by either of the parties hereto of a breach of or a default under any of the terms and conditions of this Agreement nor the failure of either of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder shall thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any provisions, rights, or privileges hereunder. (2) In the event that any one or more of the provisions of the terms and conditions of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable in any respect, such invalidity and unenforceability shall not affect any other provision of this Agreement.
- g. Notice: In the event Customer desires to provide written notice to ATI, as required by any of the terms and conditions herein or for any other reason, INCLUDING ANY COMMUNICATION FROM CUSTOMER REGARDING DISPUTED DEBTS, AND ANY INSTRUMENT TENDERED AS FULL SATISFACTION OF A DEBT MUST BE SENT CERTIFIED MAIL to: Allied Telesis, Inc., Legal Department, 3041 Orchard Parkway, San Jose CA 95134.
- h. ATI reserves the right to make changes to these Terms & Conditions at any time without notice.
- i. Relationship of the Parties: This Agreement shall not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the parties, and the parties shall at all times be and remain independent contractors. Except as expressly agreed by the parties in writing, neither party shall have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.
- j. Import /Export: Each party shall comply with all applicable foreign and domestic laws and regulations relating to the importation or exportation of the Products.
- k. Severability: If any term, provision, covenant or condition of this Agreement is held by a court or arbitral panel of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- l. Construction: This Agreement shall be deemed to have been drafted by all parties and, in the event of a dispute, no party hereto shall be entitled to claim that any provision should be construed against any other party by reason of the fact that it was drafted by one particular party.
- m. Entire Agreement: This Agreement contains the entire understanding of the parties with respect to the subject matter of this Agreement. To the extent that there are any inconsistencies or conflicts arising between the provisions of this Agreement and any other agreements entered into between the parties, the provisions of this Agreement shall control unless otherwise expressly provided in such other agreements.