

Acker Drill Co Inc - Complete Terms & Conditions

Terms and Conditions (the “**Terms**”) govern each quotation, order acknowledgment, sale, and shipment of goods and any related services by **Acker Drill Company, Inc. (“Acker Drill”)** to the purchaser identified in the applicable quotation, order, acknowledgment, invoice, or other sales document (“**Customer**”). Acker Drill and Customer may each be referred to as a “**Party**” and together as the “**Parties.**”

1. Scope; Acceptance; Entire Agreement

1.1 Offer and Acceptance

All orders submitted by Customer are subject to final acceptance by Acker Drill at its office in Lackawanna County, Pennsylvania. Acker Drill may accept or reject any order in whole or in part. No order is binding on Acker Drill unless accepted by Acker Drill in writing, by shipment, or by other written confirmation.

1.2 Governing Sales Documents

These Terms, together with the applicable quotation, order acknowledgment, invoice, and any written specifications expressly accepted by Acker Drill, constitute the entire agreement between the Parties for the applicable transaction (collectively, the “**Agreement**”).

1.3 Rejection of Customer Terms; Battle of Forms

Acceptance of Customer’s order is expressly limited to these Terms. Any terms or conditions contained in any purchase order, vendor portal, release, confirmation, or other document or communication from Customer that are different from, inconsistent with, or additional to these Terms are hereby rejected and shall have no force or effect unless expressly accepted in a writing signed by an authorized representative of Acker Drill. Fulfillment of an order, shipment of Goods, or commencement of work shall not be deemed acceptance of any such different or additional terms.

1.4 No Reliance on Prior Statements

Customer acknowledges that it has not relied on any representation, statement, promise, course of dealing, or usage of trade not expressly set forth in the Agreement.

2. Quotations; Pricing; Changes

2.1 Quotations

Unless otherwise stated in writing, quotations are non-binding and may be withdrawn or revised by Acker Drill at any time before order acceptance. Quoted prices are based on the specifications, quantities, delivery assumptions, and other information available at the time of quotation.

2.2 Prices

All prices are stated in U.S. dollars unless otherwise specified. Prices apply only to the Goods and services expressly identified in Acker Drill’s accepted quotation or acknowledgment.

2.3 Changes

Any change requested by Customer, including changes to design, specifications, quantities, delivery schedules, packaging, shipping instructions, or scope of work, is subject to Acker Drill’s written approval. Approved changes may result in equitable adjustments to price, lead time, and other terms. Customer shall be responsible for all resulting additional costs, expenses, and delays.

3. Payment Terms

3.1 Invoices; Due Date

Unless otherwise stated in writing by Acker Drill, payment is due **net thirty (30) days** from the invoice date.

3.2 Late Charges

Any amount not paid when due shall bear interest from the due date until paid at the lesser of **fifteen percent (15%) per annum** or the maximum lawful rate.

3.3 Suspension Rights

If Customer fails to make timely payment, Acker Drill may, in addition to any other remedies, suspend performance, delay shipment, require payment in advance, revoke credit, or cancel any unshipped portion of an order without liability.

3.4 No Setoff

Customer shall pay all invoiced amounts in full without setoff, recoupment, deduction, withholding, or counterclaim except to the extent prohibited by applicable law or expressly agreed in writing by Acker Drill.

3.5 Collection Costs

If Acker Drill retains a collection agency or legal counsel, or incurs other out-of-pocket costs to collect overdue amounts or enforce the Agreement, Customer shall reimburse Acker Drill for all reasonable collection costs, court costs, and attorneys’ fees.

3.6 Alternative Payment Methods

Alternative payment methods are any method of payment other than bank transfer or certified check. Alternative payment methods may be subject to a four percent (4%) fee.

4. Taxes

4.1 Prices Exclude Transaction Taxes

All prices and other charges are **exclusive** of any applicable **sales, use, excise, value-added, goods and services, gross receipts, transaction privilege, occupational, or other similar transaction-based taxes, duties, fees, or assessments** imposed by any governmental authority in connection with the sale, purchase, delivery, storage, use, or consumption of the Goods or related services (collectively, “**Transaction Taxes**”).

4.2 Acker Drill’s Collection Obligations

Acker Drill will collect and remit Transaction Taxes from Customer **to the extent required by applicable law**, including with respect to out-of-state shipments where Acker Drill has a legal duty to collect tax. Shipment of Goods outside Pennsylvania does not, by itself, mean that a sale is exempt from tax.

4.3 Exemption Certificates

If Customer claims any exemption from Transaction Taxes, including a resale exemption, Customer must provide Acker Drill with a valid, properly completed exemption or resale certificate and any other reasonably requested supporting documentation **before invoicing or shipment**, unless Acker Drill agrees otherwise in writing. Acker Drill may rely on any certificate or information provided by Customer unless and until it has reason to know the same is invalid.

4.4 Right to Charge Tax

If Customer does not timely provide acceptable exemption documentation, Acker Drill may charge and collect the applicable Transaction Taxes on the invoice, and Customer shall pay such amounts in accordance with the Agreement.

4.5 Customer Reimbursement for Invalid Exemptions

If any taxing authority later determines that Transaction Taxes were due in connection with a sale based on (a) Customer’s failure to provide a valid exemption certificate, (b) an invalid, expired, incomplete, or improper exemption certificate, or (c) Customer’s representations regarding the taxability of the transaction, Customer shall promptly reimburse Acker Drill for all resulting taxes, interest, penalties, additions to tax, and reasonable accounting, legal, and other professional costs incurred by Acker Drill.

4.6 Seller-Imposed Taxes Excluded

Notwithstanding anything to the contrary, Customer shall not be responsible for taxes imposed on Acker Drill’s **net income, franchise, capital, property, payroll, or general business operations**, except to the extent such taxes are expressly imposed as Transaction Taxes on the sale to Customer.

5. Delivery; Shipment; Risk of Loss

5.1 Shipping Terms

Unless otherwise stated in writing by Acker Drill, all sales are **F.O.B. Acker Drill’s facility in Scranton, Pennsylvania**. Title to Goods and risk of loss or damage pass to Customer upon delivery of the Goods to the carrier at the shipping point.

5.2 Delivery Dates

Any shipping or delivery dates provided by Acker Drill are estimates only. Acker Drill will use commercially reasonable efforts to meet scheduled dates, but time is not of the essence unless expressly agreed in a writing signed by Acker Drill.

5.3 Partial Shipments

Acker Drill may make partial shipments and invoice each shipment separately. Each shipment shall be treated as a separate and independent transaction for payment purposes.

5.4 Shipping Method

Unless Customer provides written instructions accepted by Acker Drill, Acker Drill may select the carrier, route, and method of shipment in its discretion.

5.5 Delays Caused by Customer

If shipment, delivery, or performance is delayed by Customer or by conditions attributable to Customer, Acker Drill may store the Goods at Customer’s risk and expense and invoice Customer as though shipment had occurred. Customer shall reimburse Acker Drill for reasonable storage, handling, demurrage, redelivery, and other related costs.

5.6 Carrier Claims

Claims for loss or damage in transit occurring after risk of loss passes to Customer shall be made by Customer directly against the carrier, subject to Acker Drill’s reasonable cooperation.

6. Inspection; Acceptance; Claims

6.1 Inspection Period

Customer shall inspect the Goods promptly upon receipt.

6.2 Claims for Shortage, Shipping Error, or Visible Nonconformity

Any claim for shortage, shipping error, or visible nonconformity must be made in writing to Acker Drill within **seven (7) days** after Customer’s receipt of the applicable shipment. If Customer does not provide timely written notice, the shipment shall be deemed accepted as delivered with respect to such matters.

6.3 Claims for Latent Defects Covered by Warranty

Claims for defects not reasonably discoverable upon ordinary inspection, but covered by the limited warranty in Section 10, must be made in writing within **seven (7) days** after discovery and, in all events, within the applicable warranty period.

6.4 Required Information

Any claim notice must include the order number, invoice number, shipment date, product identification, a description of the issue, the quantity affected, and reasonable supporting documentation, including photographs if applicable.

6.5 Return Authorization

Customer shall not return any Goods without Acker Drill’s prior written authorization. Authorized returns must be made in accordance with Acker Drill’s instructions.

7. Cancellations and Order Modifications

7.1 Standard Catalog Items

Orders for standard catalog items may be canceled by Customer before shipment only with Acker Drill’s written consent.

7.2 Special, Custom, and Non-Stock Items

Orders for special, custom, made-to-order, or non-stock items may not be canceled or rescheduled without Acker Drill’s written consent. If Acker Drill permits cancellation or rescheduling, Customer shall reimburse Acker Drill for all costs and commitments incurred or reasonably committed in connection with the order, including:

- engineering and design costs;
- materials and components ordered or committed;
- manufacturing and assembly labor;
- work in process;
- supplier cancellation charges;
- testing, packaging, and handling costs;
- storage and disposition costs; and
- a reasonable administrative charge.

7.3 Objective Cancellation Charge Standard

If Acker Drill elects to assess a cancellation charge, the charge shall be based on Acker Drill’s documented costs and commitments, plus a reasonable allocation of overhead and administrative expense related to the canceled order.

7.4 Customer Default

If Customer breaches the Agreement, fails to pay when due, becomes insolvent, or indicates an inability or unwillingness to perform, Acker Drill may cancel any unfulfilled portion of the order without liability and recover all available damages.

8. Force Majeure

Acker Drill shall not be liable for any delay in performance or failure to perform due, in whole or in part, directly or indirectly, to causes beyond its reasonable control, including:

- acts of God;
- fire, flood, storm, earthquake, or other casualty;
- epidemics, pandemics, or public health emergencies;
- war, terrorism, sabotage, civil unrest, or riot;
- labor shortages, strikes, lockouts, or other labor disturbances;
- transportation delays or interruptions;
- shortages of fuel, energy, labor, parts, or raw materials;
- accidents or equipment breakdown;
- acts, omissions, priorities, restrictions, or regulations of any governmental authority; or
- supplier delays arising from any of the foregoing.

In the event of any such delay or failure, Acker Drill’s performance shall be excused for the duration of the event and for such additional time as may be reasonably necessary to recover. Acker Drill may allocate available inventory, production, and capacity among its customers in a commercially reasonable manner.

9. Customer Responsibilities; Proper Use

Customer is solely responsible for:

- selecting Goods suitable for Customer’s intended application;
- ensuring proper installation, operation, maintenance, storage, and use of the Goods;
- using the Goods only in accordance with all manuals, instructions, safety guidance, and applicable laws;
- ensuring that only properly trained personnel use the Goods; and
- complying with all applicable workplace safety and operating requirements.

Any misuse, abuse, neglect, accident, improper storage, improper installation, improper maintenance, unauthorized repair, unauthorized modification, structural alteration, burning, welding, or use of the Goods outside their intended purpose may void applicable warranties and shall release Acker Drill from resulting liability to the fullest extent permitted by law.

10. Limited Warranty

10.1 Covered Goods

Subject to the terms and limitations in this Section 10, Acker Drill warrants that each **new and unused diamond core drill and accessory equipment manufactured by Acker Drill** (collectively, "**Covered Goods**") will be free from defects in material and workmanship under normal use and service.

10.2 Excluded Goods

The limited warranty does **not** apply to:

- items not manufactured by Acker Drill, including power units, pumps, engines, motors, and other third-party accessories or trade items;
- used, refurbished, or previously damaged goods;
- consumables, wear items, and normal wear and tear;
- Goods that have been altered, repaired, modified, or structurally changed without Acker Drill's prior written authorization; or
- damage resulting from misuse, abuse, improper installation, improper maintenance, accident, overloading, improper application, or operation contrary to Acker Drill's instructions. Third-party products, if any, are subject only to the warranty, if any, furnished by the original manufacturer, and only to the extent assignable to Customer.

10.3 Warranty Period

The warranty period for Covered Goods is **ninety (90) days from first use** by Customer, **but in no event longer than six (6) months from the date of shipment** by Acker Drill.

10.4 Exclusive Warranty Remedy

If Acker Drill determines, after inspection, that a Covered Good failed to conform to the limited warranty during the warranty period, Acker Drill shall, at its option, either:

- repair the nonconforming Covered Good;
- replace the nonconforming Covered Good or defective part; or
- credit or refund the portion of the purchase price allocable to the nonconforming Covered Good. This is Customer's **sole and exclusive remedy** for any breach of warranty.

10.5 Warranty Claim Procedure

As a condition to any warranty remedy:

- Customer must provide written notice within the time required by Section 6.3;
- Customer must discontinue use of the allegedly defective Good if continued use could worsen the condition or create a safety risk;
- Customer must provide reasonable evidence of the defect and permit inspection by Acker Drill; and
- if requested by Acker Drill, Customer must return the affected Good or part, freight prepaid, to Acker Drill or to a location designated by Acker Drill.

Repaired or replacement parts may be new, reconditioned, or remanufactured items of equivalent performance.

11. Disclaimer of Other Warranties

EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH IN SECTION 10, ACKER DRILL MAKES **NO OTHER WARRANTY WHATSOEVER**, EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS OR ANY RELATED SERVICES, AND DISCLAIMS ALL IMPLIED WARRANTIES TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING ANY IMPLIED WARRANTY OF **MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ANY WARRANTY ARISING FROM COURSE OF DEALING, USAGE OF TRADE, OR PERFORMANCE.**

Customer acknowledges that Acker Drill has not made any affirmation of fact or promise beyond the express warranty in Section 10, and that Customer is solely responsible for determining whether the Goods are suitable for Customer's intended use.

12. Limitation of Liability

12.1 Excluded Damages

TO THE FULLEST EXTENT PERMITTED BY LAW, ACKER DRILL SHALL NOT BE LIABLE, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE, OR OTHERWISE, FOR ANY:

- CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES;
- LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE, LOSS OF PRODUCTION, LOSS OF BUSINESS OPPORTUNITY, LOSS OF GOODWILL, OR LOSS OF ANTICIPATED SAVINGS;
- COST OF SUBSTITUTE GOODS, RENTAL EQUIPMENT, OR PROCUREMENT OF REPLACEMENT SERVICES;
- CLAIMS OF CUSTOMER'S CUSTOMERS OR OTHER THIRD PARTIES; or
- DAMAGE ARISING FROM CUSTOMER'S IMPROPER INSTALLATION, OPERATION, MAINTENANCE, MODIFICATION, OR MISUSE OF THE GOODS.

12.2 Aggregate Liability Cap

TO THE FULLEST EXTENT PERMITTED BY LAW, ACKER DRILL'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO ANY CLAIM, TRANSACTION, OR SERIES OF RELATED TRANSACTIONS SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER TO ACKER DRILL FOR THE SPECIFIC GOODS OR SERVICES GIVING RISE TO THE CLAIM.

12.3 Basis of the Bargain

Customer acknowledges that the pricing of the Goods reflects the allocation of risk in the Agreement and that the limitations of liability and exclusive remedies set forth herein are an essential basis of the bargain between the Parties.

12.4 Insurance

Customer is responsible for maintaining adequate insurance for risks associated with Customer's possession, handling, installation, use, storage, resale, and operation of the Goods after risk of loss passes to Customer.

13. Indemnification by Customer

Customer shall defend, indemnify, and hold harmless Acker Drill and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any third-party claims, demands, actions, damages, liabilities, losses, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to:

- Customer's misuse, improper installation, improper operation, improper maintenance, alteration, or unauthorized repair of the Goods;
- Customer's combination of the Goods with other products, equipment, or systems not supplied or approved in writing by Acker Drill, to the extent the claim would not have arisen but for such combination;
- Customer's breach of the Agreement; or
- Customer's negligence or willful misconduct.

This Section does not require Customer to indemnify Acker Drill for claims finally determined by a court of competent jurisdiction to have been caused solely by Acker Drill's gross negligence or willful misconduct.

14. Compliance with Laws

Each Party shall comply with applicable laws and regulations in performing its obligations under the Agreement. Customer shall be responsible for all permits, licenses, approvals, and compliance obligations relating to Customer's installation and use of the Goods, except to the extent expressly assumed by Acker Drill in writing.

15. Notices

15.1 Permitted Methods

Any notice required or permitted under the Agreement must be in writing and delivered by one of the following methods:

- nationally recognized overnight courier;

- certified U.S. mail, return receipt requested;
- personal delivery; or
- email to the business contact or designated notice address provided by the receiving Party.

15.2 When Effective

Notices are effective:

- upon delivery, if personally delivered;
- one (1) business day after deposit with a nationally recognized overnight courier;
- three (3) business days after deposit in certified U.S. mail, postage prepaid; or
- upon transmission by email, provided no delivery failure notice is received, and if sent after 5:00 p.m. recipient local time, on the next business day.

15.3 Notice Addresses

Notices shall be sent to the addresses or email contacts stated in the applicable quotation, acknowledgment, or other writing most recently designated by the receiving Party.

16. Governing Law; Venue

The Agreement shall be governed by and construed in accordance with the laws of the **Commonwealth of Pennsylvania**, without regard to conflicts of law principles. The **United Nations Convention on Contracts for the International Sale of Goods** does not apply. Any legal action or proceeding arising out of or relating to the Agreement shall be brought exclusively in:

- the **Court of Common Pleas of Lackawanna County, Pennsylvania**, or
- if federal subject matter jurisdiction exists, the **United States District Court** sitting in or serving Lackawanna County, Pennsylvania.

Each Party irrevocably submits to the personal jurisdiction of such courts and waives any objection based on improper venue or forum non conveniens.

17. Limitation Period

No action arising out of or relating to the Agreement may be brought by Customer more than **one (1) year** after the cause of action accrues, except to the extent a shorter period is not permitted by applicable law.

18. Assignment

Customer may not assign, delegate, transfer, or subcontract any of its rights or obligations under the Agreement without Acker Drill's prior written consent. Any purported assignment in violation of this Section is void. Acker Drill may assign the Agreement to an affiliate or successor in connection with a merger, reorganization, or sale of substantially all relevant assets.

19. Waiver; Amendment

No waiver of any provision of the Agreement shall be effective unless in writing and signed by the Party granting the waiver. No failure or delay by Acker Drill in exercising any right or remedy shall operate as a waiver. The Agreement may be amended only by a writing signed by authorized representatives of both Parties.

20. Severability

If any provision of the Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in full force and effect, and the invalid, illegal, or unenforceable provision shall be enforced to the maximum extent permitted by law so as to reflect the Parties' original intent as closely as possible.

21. Survival

Any provisions which by their nature should survive expiration, cancellation, termination, or completion of the Agreement shall survive, including provisions relating to payment, taxes, warranty limitations, disclaimers, limitation of liability, indemnification, governing law, venue, notices, collection costs, limitation periods, and confidentiality if separately agreed.

22. Relationship of the Parties

The Parties are independent contracting parties. Nothing in the Agreement creates any partnership, joint venture, agency, fiduciary, employment, or franchise relationship between the Parties.

23. Headings; Interpretation

Section headings are for convenience only and do not affect interpretation. The Agreement shall be interpreted fairly and not strictly for or against either Party as drafter.

24. Priority of Terms

If there is a conflict among the components of the Agreement, the order of precedence shall be:

1. a written amendment signed by both Parties;
2. Acker Drill's order acknowledgment;
3. Acker Drill's quotation, to the extent accepted by Acker Drill in writing; and
4. these Terms.

Customer-issued forms and portal terms shall not alter this order of precedence unless expressly accepted in a signed writing by Acker Drill. Acker Drill Company, Inc. Standard Warranty and Sales Terms Acknowledgment

Customer's submission of an order, acceptance of delivery, payment of any invoice, or acceptance or use of any Goods constitutes Customer's acceptance of these Revised Terms and Conditions.

ACKNOWLEDGMENT

Customer's submission of an order, acceptance of delivery, payment of any invoice, or acceptance or use of any goods constitutes acceptance of these Terms.