



Terms & Conditions

The Terms and Conditions stated herein shall be binding on buyer and American Surplus Inc. ("ASI"). The Terms and Conditions cannot be amended or modified by entries made on Purchase Orders issued to ASI and changes appearing on the Purchase Order will not bind ASI.

Title and Ownership: The title and right of possession of merchandise sold under these terms and conditions shall remain with American Surplus Inc. until full and final payment have been made according to the terms herein agreed. In case of default of any payments, ASI may repossess said merchandise and all additional thereto, wherever found, and shall not be liable in any manner for any such act of repossession nor for the repayment of any monies which may have been received in part payment for said merchandise. Buyer shall afford access to ASI upon demand for recovery of merchandise/equipment. **ALL USED MERCHANDISE/EQUIPMENT SOLD "AS IS/ WHERE IS" NO WARRANTIES OR GUARANTIES IMPLIED OR EXPRESSED.**

A 3% service charge will be added to all orders placed with a credit card.

Assembly & Engineering: Assembly, installation, and alterations to the building, plumbing, or electrical is not included. Customer is responsible for all engineering calculations, architectural drawings, necessary fire and lift safety required drawings and high pile drawings as well as third party inspections. City and State business or contractor licenses and government requests are also not included in quote.

Permits: All permits, permit fees and related charges from the city or town are the responsibility of the customer and not American Surplus Inc. unless otherwise specified.

Returns: Returns will be accepted only with prior written authorization from American Surplus, Inc., which need not be given. All authorized returns will be subject to a minimum twenty five percent (25%) re-stocking charge and any additional freight costs. Pre-owned equipment is returned for pre-owned merchandise credit only and is valid for a maximum of 180 days. No returns will be authorized after ten (10) days of purchase for any reason.

Cancellations: Orders are not subject to cancellation for any reason, except under the consent of American Surplus Inc., which need not be given. Upon consent from American Surplus Inc., orders may only be cancelled under terms which indemnify American Surplus Inc. against all losses related to purchase and subsequent cancellation.

Freight Charges: *FOB American Surplus Inc., 1 Noyes Avenue, East Providence, Rhode Island, 02916 unless otherwise noted.* All collect shipments require confirmation from buyer that a check will be present at time of delivery before any shipment is made. Freight charges are not included

unless stated (partial shipments require full payment). For more detailed shipping terms see the shipping options page on our website at https://www.americansurplus.com/shipping_options.

Detention Charges: Upon confirmation that a customer's order is ready for pickup or shipment, the customer will be notified. Upon notification, the customer will have one (1) week to arrange pickup or shipment with American Surplus Inc.'s traffic manager, after which American Surplus Inc. will charge a storage & handling fee of two percent (2%) of the total cost of the customer's order per week that the customer fails to coordinate fulfillment of their order. This fee will be added as a separate invoice to be paid prior to pick up or shipment of the customer's order.

Suitability of Equipment: Customer is solely responsible for the final determination on the suitability of equipment purchased from American Surplus Inc. for his or her needs. American Surplus holds no responsibility regarding the suitability of any equipment purchased by the customer for any specific application.

Condition of Equipment: We try to describe our used equipment as accurately as possible. All equipment is available for viewing in person, or through digital pictures or the Internet. The customer is responsible for final determination on the suitability of the equipment for his or her needs. Buyer or Buyer's Representative acknowledges and understands that the equipment being purchased is **USED OR NEW IF STATED**. Buyer further acknowledges that Buyer or Buyer's Representatives have been given the opportunity to fully inspect the product being purchased, either in person or via electronic images, and buyer hereby agrees the purchased product conforms to the representations of seller and that the description in the sales order is accurate as to condition and count. Although every attempt has been made to ensure the accuracy of this website, ASI is not responsible for typographical errors. Specifications and prices are subject to change at any time without notice.

Capacities: ASI does not provide written or verbal acknowledgement of weight capacities on any used equipment unless stated. The customer agrees to seek out the manufacturer or visit their website to acquire such information as it relates to new product weight capacities. Pallet rack capacities indicate pallet loading only and does not consider any other factors. Customer may also hire an engineer to calculate such capacities. It is also the responsibility of the customer to post and attach capacity plates to each rack.

No Warranties: Disclaimer: Limitation of Liability: Unless otherwise specifically set forth on the sales order or herein to the contrary. The goods are sold by American Surplus Inc. or Seller to Buyer AS IS WHERE IS with all faults. Seller makes no express, oral, written, or implied warranties of any kind whatsoever, including, but not limited to, warranties of merchantability and fitness for a particular purpose or any other matter. Seller shall not be liable in event for any special incidental and/or consequential damages or expenses of any kind, including, but not limited to, lost profits or revenue. No employee or agent of ASI has the authority to make any representation or warranty with respect to goods sold hereunder. It is the responsibility of Buyer (and not ASI) to determine the suitability of the goods for their intended use or fitness for any particular purpose.

Assignment of Warranty: If the goods sold hereby are new, ASI makes no warranty of any kind or nature with respect to the same as set forth above. (Item 1), but does hereby assign, convey, transfer, and deliver to Buyer all ASI's right, title and interest in and to any such warranty made by the Manufacturer of the goods sold hereby to the entire extent that any such warranty is/are extended to ASI, by the manufacturer thereof.

Acceptance: Acceptance of ASI's quote / sales order by signature or electronic acceptance relating to the material is expressly made conditional on the Purchaser's acceptance of these terms and conditions, which are in lieu of any additional or different terms contained in Purchaser's purchase order or other documentation or communication pertaining to the Purchaser's order of the materials, which additional or different terms shall be deemed ineffective and rejected. Purchaser assents completely to the Terms and Conditions of this offer by executing an order or otherwise accepting ASI's quotation by signing the Quote / Sales order or electronic acceptance.

Payment Terms: ASI's prices are F.O.B. point of shipment, unless otherwise specified. Terms of payment are as stated on quote. ASI reserves title in products until final payment is received, and Buyer will execute such other documents reasonably required to preserve ASI's right. Buyer agrees to make payment in full without any deduction for claim of set-off or recoupment with respect to this contract or any other contract or matter between parties. Should Buyer delay payment please see section Past Due Account below. These Terms and Conditions and the associated Purchase Order shall be governed by the interpreted consistent with Rhode Island law notwithstanding any choice of law standards of any jurisdiction. Buyer agrees that the courts of the State of Rhode Island or the United States District Court of Rhode Island shall have exclusive jurisdiction over any legal action initiated to enforce rights under these Terms and Conditions and the associated Purchase Order and that any such action shall be venued in Providence County or the United States District Court in Providence, Rhode Island. Buyer expressly agrees that ASI shall be entitled to recover reasonable attorney's fees and costs of suit associated with enforcement of its rights hereunder, together with interest at an annual rate of 10.00% compounded daily or whatever the law will allow.

Installations: Customer agrees by signing the Quote / Sales order to ASI's standard Installation Agreement, which is outlined on our website at <https://www.americansurplus.com/installation-agreement-19/>.

No Cancellations: Orders are not subject to cancellation for any reason, except with the written consent of ASI, which need not be given.

Returned Goods: Goods purchased may not be returned without written permission from ASI; a restocking fee of 25% will be applied to all returned material. Refund will be issued in the form of a merchandise credit (valid for one hundred and eighty (180) days) issued to Buyer.

Refused Goods: Orders refused by Buyer will be subject to a minimum restocking fee of 25%, costs of labor, and return freight charges if applicable.

F.O.B. Point: ASI goods sold hereunder shall be delivered F.O.B. its shipping point and shall be at the risk of Buyer from the time the goods are delivered to the carrier by ASI at the point of shipment (ASI facility) unless other delivery terms and/or conditions are specifically stipulated by ASI and Buyer herein. ASI will assume no responsibility for any loss caused by non-delivery at a specific time or date. See the shipping options page on our website for further details.

Damage in Transit: For your protection, Buyer should examine each shipment carefully to determine if there is any evidence of damage or shortage in transit. Buyer should insist that delivering carrier make appropriate notation on the freight bill before Buyer signs it. If concealed damage is discovered after receipt of shipment, Buyer should immediately notify the carrier, requesting an inspection report to support any claim Buyer may have. Any claim for damages or shortage in transit must be filed with the delivering carrier. ASI will not accept returns of merchandise damaged in transit. Buyer's recourse is with the delivering carrier.

Past Due Accounts: All accounts, if not paid when due, are subject to a 1.8% per month carrying charge or whatever the law will allow until paid in full.

Indemnification: Sellers shall not be liable to Buyer for, and Buyer shall defend, indemnify and hold seller harmless from all liability, claim, loss, damage or expense of any kind or nature including, but not limited to, Attorney's fees, caused or allegedly caused, directly or indirectly by (a) the possession, use or performance of the goods by Buyer, (b) any interruption or loss or service, use or performance of the goods, (c) any loss of business or profits or any special incidental or consequential damages, even if the Seller shall have knowledge of the possibility of such potential loss or damage, (d) damage to the goods or other property under any theory, and (e) injuries to persons occurring due to the acts of negligence of Buyer and/or any third parties governing law. This agreement shall be governed by the laws of the state of Rhode Island and both parties' consent that all controversies are subject to the exclusive jurisdiction and venue of the State of Rhode Island courts. The buyer expressly agrees to pay all court costs and reasonable attorneys' fees of ASI in connection with any legal action brought by or against ASI to either enforce or successfully defend the terms of the Agreement.

Costs of Collection: In the event that all or any part of the amount due hereunder is not paid as required, all costs of collection of the same (including Attorney fees and costs of litigation) incurred by ASI shall be paid by Buyer to ASI.

Governing Law: The validity, interpretation, and legal effects of all contracts, agreements, and sales/purchase orders shall be governed by, and the rights and liabilities of the parties thereto shall be determined in accordance with, the laws of the State of Rhode Island, and, for the purpose of resolving any issue pertaining to conflicts of laws, all acts to be performed and/or observed thereunder shall be deemed to be fully and solely performed and/or observed within the State of Rhode Island.

Electronic Communications: When you visit americansurplus.com or send emails to us, you are communicating with ASI electronically. You consent to receive communications from ASI electronically. We will communicate with you by email or by posting notices on our

<https://www.americansurplus.com/>

website. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

Substitution: ASI reserves the right, without prior notification, to substitute an alternative product of like kind, quality and function. If the Buyer will not accept a substitute, the Buyer must specifically declare that no substitution is allowed when the buyer requests a quote or when placing an order with ASI.

Requested Delays: In the event manufacture of Buyer's order has proceeded and Buyer requests a delay in shipment, buyer assumes full responsibility for the product, expenses incurred and reasonable storage charges. Payment shall be made by Buyers as through shipment had moved as originally scheduled.

CAD Data: The proposed conceptual drawings and/or specifications of any quotation are confidential data and represent ASI's investment in development and remain the property of ASI. Such are submitted with the understanding that the information will not be disclosed to anyone other than the Buyer's employees who have a need to know or used for any purpose except for the subject quotation or order or used in any manner detrimental to ASI.

Taxes and Freight: Buyer shall be solely responsible for payment to applicable local, State and Federal taxes, and all freight bills required for this purchase unless otherwise specified. If sales, use or State or Municipal taxes in addition to any listed specifically as part of the stated purchase price, are imposed to ASI, the Buyer agrees to pay the same or reimburse ASI upon demand.

Period of Quotation: Unless otherwise specified by ASI, if not accepted by Buyer within Ten (10) days from the hereof, ASI's quotation shall be void unless otherwise noted on the quote.

Delivery: **Shipping and delivery dates are approximate and are not guarantee of shipment or delivery on any date. Time shall not be of the essence of the contract unless specifically stated in agreement.** ASI shall not be liable for delays in or failures of delivery due to strikes or labor troubles, suppliers' delays, accidents, fire, flood, acts of God, action by governmental authority, changes requested by Buyer, or any other causes. If shipment is delayed at the request of Buyer, payment shall be made by Buyer as though shipment had been made and for any expenses incurred by ASI due to Buyer's actions or request in delaying shipment; and the material shall be stored at the Buyer's risk and subject to reasonable detention storage charges.

IMPROPER USE- Improper loading or configuration of warehouse storage systems and material handling equipment can result in serious injury, death, or property damage. Seller **CANNOT BE RESPONSIBLE** for any injury, death or damage resulting from the Buyer or Buyer's Representatives improper use, loading, installation, or reconfiguration of storage or material handling equipment.

BUYER'S ACKNOWLEDGEMENT FOR ENGAGEMENTS RELYING ON LAYOUT AND DESIGN

DRAWINGS- Material and/or services quoted by Seller shall be per the drawing and specification provided to Seller by the Buyer. If Seller is requested by the Buyer to provide a layout or design, Buyer (or its employees, architect and/or engineer retained by the Buyer, hereinafter, "Buyer's Representatives") is responsible for verification of the layout or design's compliance with all local, State, and Federal laws, codes, ordinances, rules, and regulations bearing on the layout or design of the project. The Buyer, including Buyer's Representatives, will be responsible for checking all applicable codes as they pertain to the project, making modifications to the design as required, and ensuring that the final layout or design meets all applicable codes and regulations. Buyer, or Buyer's Representative, is responsible for the accuracy and verification of building and material dimensions, including, but not limited to the locations of conveyors, sprinkler systems, lighting, heating units, and other obstructions. The Buyer will provide proper equipment necessary to unload and install material and a secure area sufficient to allow for proper and safe storage of materials, unless otherwise agreed upon with the seller. All necessary architectural and engineering fees, impact fees, construction permits licenses and any other fee, including taxes imposed on Seller and other taxes are the total responsibility of the Buyer.