



## Apex Tool Group, LLC

**APEX®**, **APEX u-GUARD™**, **APEX Industrial Fastening Tools®**  
**Cleco®**, **Cleco DGD®**, **Cleco Dotco®**, and **Utica®**

### **Terms and Conditions of Sale to All Power Tools Resellers and Distributors USA and Canada Effective: April 1, 2023**

#### **Acceptance**

The following terms and conditions of sale ("Agreement") shall apply to and are the only terms and conditions that govern the sale of goods, materials, supplies, components, drawings, data or other property described herein (the "Products") by Apex Tool Group, LLC and its affiliated entities ("ATG") to the reseller or distributor ("Distributor") listed on the related purchase order for resale and/or distribution to locations in United States of America (including any U.S. Territories or Possessions) and Canada. No purchase order ("Order") placed with ATG shall be considered as accepted until officially acknowledged by ATG in writing. If ATG provides an acknowledgement of an Order that contains terms additional to or different to those contained in Distributor's Order, such additional terms shall be deemed accepted by Distributor if not objected to in writing within ten (10) days from the date of ATG's acknowledgement. Any terms or conditions otherwise referenced or set forth in Distributor's Order shall not apply and the shipment of Products by ATG against an Order will not constitute acceptance of any such terms or conditions. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Products included in this Order, then the terms of that contract shall prevail to the extent they are inconsistent with these Terms and Conditions. On all Orders where delivery dates or a delivery schedule are not specifically set forth, delivery shall be subject to ATG's ability to produce and deliver the Products in ATG's normal course of business.

#### **Title**

Title to the products passes to Distributor upon ATG's delivery of the products to the delivery point. As collateral security for the payment of the purchase price of the Products, Distributor hereby grants to ATG a lien on and security interest in and to all of the right, title, and interest of Distributor in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the North Carolina Uniform Commercial Code.

#### **Minimum Sales Requirements**

ATG reserves the right to suspend or modify terms and conditions for any accounts with less than **\$25,000** in cumulative annual net invoice purchases of Products bearing the brands listed above. This includes, but is not limited to, ATG's right to reject orders, remove discounts and make any other any other provisions or exceptions that deviate from these standard terms and conditions. ATG may exercise these rights in its sole and absolute discretion.

#### **Minimum Order Charges**

Orders must be a minimum of **\$300 (list)** for Apex® branded products or **\$300 (list)** for all other Products. If an order does not meet these minimum order requirements, then no discounts shall be applied to Distributor's order.

#### **Same Day "Air" Orders**

Same Day "Air" Orders will ship by Air freight and will be accepted until 1:00pm ET with the Distributor responsible for freight costs.

#### **Standard Package Quantity**

All Orders must be placed by item number and in standard package quantities. If Order is placed in non-standard package quantities, then order for such Products will be automatically increased to the next highest standard package multiple.

#### **Pricing Policies**

All prices are as stated in ATG's published price list in effect as of ATG acknowledges the Order. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Prices and payment terms are subject to change without notice to Distributor. Prices applicable to an Order (including those applicable under relevant contracts) are those in effect at the time of Order, except that, in the event of a price increase, ATG will honor the price in effect at the time of acknowledgment of the Order, provided that such Order was scheduled for delivery within thirty (30) days after acknowledgment of the Order by ATG and the Order is delivered to the carrier within thirty (30) days after the date of ATG's acknowledgment.

#### **Freight Terms**

The delivery terms for all Products sold are **FOB Seller's Location for shipments within the USA and FCA Seller's Facility (Incoterms® 2010) for international shipments**. Risk of damage or loss shall pass to Distributor upon delivery to the freight carrier at the point of shipment (ATG's location or facility). Specific freight policies for individual Product lines may apply, but for all other orders when shipped within the contiguous United States (which includes the District of Columbia) but excludes Alaska, Hawaii) and any U.S. Territories and Possessions) freight policies are as follows:

- **PREPAID:** Freight is prepaid on **\$500 (net)** for Apex® branded Products or **\$1,000 (net)** for all other Products for Orders shipped within the contiguous United States (including the District of Columbia) plus Alaska and Hawaii (but excluding any U.S. Territories and Possessions). ATG reserves the right to specify carrier and routing of choice. If special routing or expedited transportation is requested, the Distributor will assume the additional expense.
- **BACK ORDERS:** Will be filled according to the same freight terms as those on the originating Order.

The delivery and freight terms and charges for all other Product shipments (including shipments to all other locations), shall be as stated on the order acknowledgement sent by ATG.

### Partial Shipments

ATG may, in its sole discretion, without liability or penalty, make partial shipments of Products to Distributor. Each shipment will constitute a separate sale. Distributor shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Distributor's purchase order.

### Additions

ATG cannot make additions to original Orders. Requests for additions to Orders previously received will be processed and invoiced as separate Orders.

### Cancellation

No Order may be cancelled or altered without the express written consent of ATG. In the event of such an approved cancellation, ATG shall be entitled to any costs incurred in connection with such cancellation.

### Shortage and Damage Claims

Shortages: In case of a shortage in the quantity of items received against an Order or the attached packing slip (including missing or incomplete items), Distributor should notify ATG at once and in no event later than fifteen (15) days after receipt of delivery and also promptly file a claim with the delivery freight carrier.

### Damages

If a missing or damaged item is needed, contact your ATG Customer Service Department and they will add the item back to the original Order under the same terms and conditions. Although ATG's responsibility ends upon receipt by the freight carrier, when requested, ATG will assist in filing claims for unusual losses if it receives all required information from Distributor within thirty (30) days after the invoice date. Any discrepancy not reported within thirty (30) days of receipt of a shipment will not be honored.

### Merchandise Displays

Merchandise display packages ("Merchandisers") can be shipped to Distributor or its agreed upon designee and are ordered complete with packaged Products in accordance with the requirements of ATG's current Merchandiser program. No Merchandiser or Product assortments included therein will be accepted for return. All other terms and conditions apply.

### Specifications/Substitutions

ATG reserves the right to change, discontinue, or modify the design, materials, finish, packaging, country of origin, specifications and construction of any Products at any time without notice or to substitute Products equal to or superior to those originally specified in an Order.

### Returned Goods

Products, including those resulting from shipping errors, cannot be returned without a Return Goods Authorization from an ATG Customer Service Representative. Items that have been discontinued prior to the return date are NOT returnable. All returned items must be in resalable condition. **Made-to-Order, Specials, Promotional Items, and some accessories or consumables are NOT returnable.** All authorized returns must be in standard package quantities, where applicable and be in ATG packaging. Credit for all approved returns will be issued according to the pricing reflected on the Return Goods Authorization, which may include a restocking fee of up to **25%** of the item value.

### Limited Warranty –Terms and Warranty Periods

ATG warrants to Distributor that such Products (except as set forth below) are, at the time of delivery to the Distributor and for the applicable period set forth below according to the Product category (the "Warranty Period), free of material and workmanship defects (the "Limited Warranty"). Each Warranty Period is measured beginning on the date of purchase by the original end user or customer ("Original Customer") and in no event shall exceed 2 years after the date of delivery of the Products to the Distributor.

Brands	Product Category	Applicable Warranty Period
APEX®, APEX u-GUARD™, APEX Industrial Fastening Tools®	Universal joints, bits, bit holders, bit sockets and extensions	1 year from date of purchase by Original Customer ("1 Year Warranty") except as noted below.
Cleco®, Cleco DGD®, Cleco Dotco®	Nutrunners, drills sanders, grinders, screwdrivers	1 year from date of purchase by Original Customer ("1 Year Warranty"), except as noted below.
Utica®	Torque limiting screwdrivers, torque wrenches	1 year from date of purchase by Original Customer ("1 Year Warranty") except as noted below.
Any or all brands	Accessories, carrying cases or pouches, tool boxes, and consumable products	1 year from date of purchase by Original Customer ("1 Year Warranty")

### Exceptions to Limited Warranty

- **Torque Products:** Accuracy standards for calibration on Utica® Torque Products are warranted for only ninety (90) days from date of purchase by Original Customer and in no event more than 2 years from date of delivery to Distributor.
- **Products Manufactured by Others.** This Limited Warranty applies only to Products manufactured by ATG and specifically excludes Products manufactured by others. Products not manufactured by ATG are warranted only to the extent and in the same manner warranted to ATG by the manufacturer and then only to the extent that ATG is able to enforce such warranty.

This warranty ONLY covers ATG Products purchased from an authorized ATG Distributor. Distributor shall make no representation or warranty about the Product, whether in writing or orally, except as is contained in written materials authorized or delivered to Distributor by ATG expressly for use in promoting the sale of the Product or as may otherwise be agreed to by ATG in advance in a duly authorized writing.

ATG MAKES NO WARRANTY WITH RESPECT TO: (A) ANY PRODUCT THAT HAS BEEN MODIFIED, DISASSEMBLED AND/OR REASSEMBLED OR ALTERED IN ANY WAY OR IMPROPERLY INSTALLED; (B) ANY PRODUCT THAT HAS, IN ATG'S JUDGMENT, BEEN SUBJECT TO NEGLIGENCE, ABUSE, ACCIDENT, MISHANDLING, MISUSE, IMPROPER STORAGE, OR DAMAGE DURING SHIPMENT; (C) ANY PRODUCT THAT HAS NOT BEEN OPERATED AND MAINTAINED IN ACCORDANCE WITH NORMAL PRACTICE AND IN CONFORMITY WITH RECOMMENDATIONS AND PUBLISHED INSTRUCTIONS OR SPECIFICATIONS OF ATG; AND (D) ANY PRODUCTS THAT HAVE BEEN SERVICED OR REPAIRED BY ANYONE OTHER THAN AN AUTHORIZED REPAIR CENTER OF ATG OR MODIFIED BY ANYONE OTHER THAN ATG. NORMAL WEAR AND TEAR OF PRODUCTS ALSO IS EXCLUDED FROM THIS WARRANTY.

#### **Special Requirements to Validate Warranty for 1 Year Warranted Products**

- To validate the warranty for any Product that offers a 1-Year Warranty, the Distributor must furnish the Customer's Proof of Purchase with the delivery date. In addition, Distributor must give ATG written notice of any defect within five (5) days of its discovery by sending an email to [APEX-CSRATGPowerTools@ApexToolGroup.com](mailto:APEX-CSRATGPowerTools@ApexToolGroup.com). ATG shall have the option of requiring the return of the defective Product, transportation prepaid, for inspection and verification of the warranty claim.

**WARRANTY REMEDIES:** CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF THIS WARRANTY IS, AT THE OPTION OF ATG, REPAIR OR REPLACEMENT OF THE DEFECTIVE PRODUCT OR COMPONENT OF A MULTI PIECE SET. NO ALLOWANCE WILL BE MADE FOR REPAIRS WITHOUT ATG'S PRIOR WRITTEN APPROVAL.

**WARRANTY DISCLAIMER:** THESE WARRANTIES SET FORTH HEREIN ARE THE SOLE WARRANTIES APPLICABLE TO PRODUCTS AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY. THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY EXCLUDED.

#### **Terms of Payment**

Terms of payment are **net 30 days** from the date of invoice Full payment is due **thirty (30) days** from the date of invoice. Accepted forms of payment are check, wire transfer and ACH (automated clearing house). All invoices are considered past due after the due date, and are subject to a service charge of **1.5%** per month. ATG shall be under no obligation to make any shipment when distributor is in default hereunder or under any other sales agreement between Distributor and ATG. Distributor agrees to pay ATG the amount which ATG is required to pay on account of any excise, manufacturers payroll, use or sales tax or charges which may be established or levied by any government authority (domestic or foreign) upon products sold hereunder or any part thereof, or the manufacture, use, sales or delivery thereof, or upon the materials entering into the manufacture thereof, as the same may be applicable to the products sold hereunder or the manufacture, use, sales or delivery thereof. Distributor shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with ATG.

#### **Made-to-Order, Special Products and Services**

If the products are to be prepared or manufactured according to a Customer or Distributor's specifications, non-recurring engineering charges and all charges of a similar nature may be billed to Distributor for work performed by ATG in connection with the sale of such products from ATG to distributor (including but not limited to tooling charges, partial preparation charges, set-up or fit-up charges, and the like). Neither Distributor nor the Customer acquires any right, title or interest in, or license (either express or implied) to any drawings, designs, inventions or intellectual property or any tooling or other tangible property, by virtue of any such charges. Distributor shall defend, indemnify and hold harmless ATG, its agents, officers and employees against any loss, damage, claim or liability for patent or trademark infringement or alleged violation of any other intellectual property rights on account of such customized preparation or manufacture.

#### **General**

##### **(a) Compliance with Laws.**

General. All sales and prices are subject to any local, state and federal laws or regulations, now or hereafter established. Distributor shall at all times comply with all laws applicable to its performance hereunder. Distributor shall undertake that any sub-distributor or reseller that Distributor engages to sell or distribute Products shall comply with this section (*Compliance with Laws*).

Anti-Corruption. Without limiting the generality of the foregoing, Distributor shall not engage in any activity or transaction involving the Products, by way of marketing, promotion, advertising, the solicitation of the sale, lease, use, or otherwise, that violates any applicable law. Distributor is, shall be, and for three (3) years prior to the date of this Agreement has been, in compliance with all applicable laws, rules, and regulations concerning anti-corruption and anti-bribery, including the Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, et seq. and the U.K. Bribery Act 2010 (c. 23, § 7(2) (U.K.)) (collectively, the "Anti-Corruption Laws"). Without limiting the generality of this Section, Distributor shall comply with all applicable Anti-Corruption Laws, including maintaining and complying with all policies and procedures to ensure compliance with this Act, and shall certify compliance to ATG at any time upon reasonable request.

Economic Sanctions Laws. Distributor is, and has been, in compliance with all Laws administered by US Treasury Office of Foreign Assets Control ("OFAC") or any other governmental entity in Europe imposing economic sanctions and trade embargoes ("Economic Sanctions Laws") against designated countries ("Embargoed Countries"), entities and persons (collectively, "Embargoed Targets"). Distributor is not, and has not been, an Embargoed Target or otherwise subject to any Economic Sanctions Law. Distributor shall comply with all Economic Sanctions Laws. Without limiting the generality of the foregoing, Distributor shall not (a) directly or indirectly export, re-export, transship or otherwise deliver the Products or any portion of the Products to an Embargoed Target or (b) broker, finance or otherwise facilitate any transaction in violation of any Economic Sanctions Law.

Antiboycott Laws. Distributor (a) shall comply with all US antiboycott laws and regulations, including, but not limited to, the Export Administration Act and the Internal Revenue Code (collectively, "Antiboycott Laws"; (b) shall not take any action that violates the Antiboycott Laws; and (c) shall not, without limiting the generality of the foregoing refuse, or agree to refuse, to do business with Israel or any other nation or company subject to a boycott not endorsed by the United States; (iv) furnish, or agree to furnish, information about business relationships with or in any nation or company subject to a boycott not endorsed by the United States; (v) implement letters of credit containing terms or conditions prohibited by the Antiboycott Laws.

**Export Regulations.** The Products, including any software, documentation and any related technical data included with, or contained in, such Products, and any products utilizing any such Products, software, documentation or technical data (collectively, "Regulated Products") may be subject to US export control laws and regulations, including the Export Administration Regulations and the International Traffic in Arms Regulations. Distributor shall not, and shall not permit any third parties to, directly or indirectly, export, re-export or release any Regulated Products (i) to any jurisdiction or country to which, or any party to whom, the export, re-export or release of any Regulated Products is prohibited by applicable federal or foreign law, regulation or rule and (ii) except in compliance with all applicable United States and foreign laws and regulations, including without limitation the U.S. Export Administration Regulations, 15 C.F.R. (EAR), and the regulations promulgated by the U.S. Department of Treasury Office of Foreign Assets Control, the U.S. Department of Commerce Bureau of Industry and Security, and the U.S. Department of State Directorate of Defense Trade Controls. Distributor shall use diligent efforts to ascertain the nature of the business and accurate street address of each end user customer, and such other information as the Company may reasonably require, routinely to check the end user customer's identity against the applicable lists indicated in the above regulations and to observe the "red flag" procedures specified in the EAR. Distributor agrees to notify the Company if Distributor is listed on the Denied Parties List published by the U.S. Department of Commerce, or if Distributor's export privileges are otherwise denied, suspended, or revoked in whole or in part. Distributor shall provide prior written notice of the need to comply with such laws and regulations to any person, firm or entity which it has reason to believe is obtaining any such Regulated Products from Distributor with the intent to export. Distributor shall indemnify and hold harmless against any damages, penalties, levies or restrictions that may result from violation of or failure to comply with such laws or regulations. Distributor shall be responsible for any breach of this Section by its, and its successors' and permitted assigns', parent, affiliates, employees, officers, directors, shareholders, members or partners, customers, agents, distributors, resellers or vendors.

(b) **Reseller Policies:** To the extent permitted by relevant law, Distributor shall comply with ATG's current reseller policies (including any minimum advertised pricing policy) that apply to the purchase of the Products, which policies are available at <http://www.apextoolgroup.com/page/reseller-policies>.

(c) **Indemnification:** Distributor agrees to indemnify, defend and hold harmless ATG, its agents, officers and employees, from and against any and all losses, claims, demands or liabilities of every kind or nature, whether in contract or in tort, including claims of negligence or strict liability, in favor of any person or entity, from injury, illness or death of any person or party, or for any property damage (including loss of income, profits, sales or down time) arising out of or incident to the Products.

(d) **Limitation on Actions:** Any action for breach of contract hereunder (whether based on warranty, late delivery, failure of delivery or otherwise) must be commenced by Distributor within one (1) year after the cause of action has accrued.

(e) **Force Majeure:** Neither ATG nor Distributor shall have any liability hereunder arising from a default, late performance or nonperformance caused by any strike, accident, fuel availability, act of God, or any other circumstance of force majeure beyond such party's control.

(f) **Limitation of Liability:** TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL ATG BE LIABLE FOR ANY LOST REVENUES, LOST PROFITS, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ECONOMIC LOSS, OR PROPERTY DAMAGE INCURRED BY DISTRIBUTOR, CUSTOMER, OR ANY OTHER PARTY. WITH THE EXCEPTION OF INDEMNIFICATION OBLIGATIONS, ATG'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE TOTAL PRICE PAID FOR ALL PRODUCTS SOLD HEREUNDER TO DISTRIBUTOR OR CUSTOMER DURING THE IMMEDIATELY PRECEDING 12 MONTH PERIOD. THIS LIMITATION ON ATG'S LIABILITY SHALL APPLY TO ANY LIABILITY FOR DEFAULT UNDER OR IN CONNECTION WITH THE PRODUCTS OR PARTS DELIVERED HEREUNDER, WHETHER BASED ON WARRANTY, LATE DELIVERY, FAILURE OF DELIVERY, OR OTHERWISE. THIS CLAUSE SHALL SURVIVE THE FAILURE OF AN EXCLUSIVE REMEDY.

(g) **Governing Law, Jurisdiction and Venue:** This Agreement shall be governed by the laws of the State of North Carolina, without regard to any conflict of law principles that would require the application of the laws of any other jurisdiction. The UN Convention on Contracts for the International Sale of Goods shall not apply to this Agreement or any sales under this Agreement. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal or state courts located in Mecklenburg County, State of North Carolina, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

(h) **Currency:** All references in this Agreement to dollar amounts means U.S. Dollars or the equivalent amount in another lawful currency if the sale transaction occurs outside of the United States of America.

(i) **Language:** The parties have expressly required that these terms and conditions and the Order be prepared in the English language. Les parties aux présentes ont expressément exigé que les présents termes et les bons de commandes émis aux termes des présentes soient rédigés en langue anglaise.

**Send Order To:**

Email: [customerorder@apextoolgroup.com](mailto:customerorder@apextoolgroup.com)  
Fax: 866-331-4025

**Sales and Administration Information:**

Apex Tool Group, LLC 910 Ridgebrook Road, Suite 200, Sparks, MD 21152  
Telephone: 800-845-5629; Fax: 866-331-4025