

## Terms and Conditions of Sale



Aeroforce Logistics, LLC (Seller) quotation, sale and/or acceptance of Buyer's Purchase Order (Order) for Seller's Goods and/or Services is expressly conditioned upon Buyer's agreement to the below Terms and Conditions. Buyer's acceptance of Seller's Goods is also deemed by the Parties to be Buyer's agreement to such terms.

**Controlling Provisions:** No terms and conditions other than the terms and conditions contained herein shall be binding upon Seller unless accepted by it in writing signed by the Seller's President or Vice-President. All terms and conditions contained in any prior oral or written communication, including, without limitation, Buyer's purchase order, which are different from or in addition to the terms and conditions herein are hereby rejected and shall not be binding on Seller, whether or not they would materially alter this document, and Seller hereby objects thereto. All prior proposals, negotiations and representations, if any, are merged herein. Buyer will be deemed to have assented to all terms and conditions contained herein if any part of the goods and/or services described herein are shipped or an invoice is presented in connection with the said goods and/or services.

**Goods FOB/EX Works Point:** All sales are made for U.S. buyers F.O.B. (and for foreign buyers, EX WORKS, per Incoterms 2000) at Seller's Facility, Milwaukee, WI. U.S.A. Seller's Liability ceases as to delivery and risk of loss ceases upon making delivery of the Goods purchased hereunder to carrier at said shipping point in good condition; the carrier acting as Buyer's agent.

**Acceptance of Goods/Services:** Final acceptance or rejection of the Goods shall be made promptly as practical after the delivery to Buyer; however, unless earlier rejected, the Goods shall be deemed by the parties to be accepted within fifteen (15) days after delivery to Buyer. Upon acceptance of each unit of Goods, Buyer waives any right to revoke such acceptance for any reason, whether known or unknown to Buyer at the time of acceptance. Any defect or nonconformance becoming apparent in the Goods after such acceptance shall be corrected under and subject to, the conditions of the Article herein entitled Warranty.

**Return of Goods:** Buyer may return any product which Seller stocks with no restocking charge if: (i) it is in new condition, suitable for resale in its undamaged original packaging and with all its original parts and (ii) it has not been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged and (iii) meets all Local, State and Federal laws governing the type of product that can be sold or put into transit in the State in which the product is being returned. Buyer's surplus job returns, and those not meeting (i), (ii) and (iii), above, will be evaluated on an individual basis after Buyer has contacted Seller's authorized representative for prior written permission. Special orders or non-stock items may be returned if the manufacturer will accept the return. Except for items Seller stocks which meet (i), (ii) and (iii), above, credit memoranda issued for authorized returns shall be subject to the following deductions: (a) cost of putting items in salable condition; (b) transportation charges, if not prepaid; and (c) handling and restocking charges.

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**Cancellation or Stop-Work Orders:** Cancellations of an Order may be accepted with the specified written approval of the Seller and shall be subject to cancellation charges which will include all expenditures made and committed for the Order with a reasonable allowance for prorated overhead expenses, profit and cost for preparing, submitting and negotiation of Seller's termination claim.

**Terms:** Buyer agrees to pay for the products according to the Seller's payment terms as agreed to by the parties per transaction. In the event Buyer fails to make any payment to Seller when due, Buyer's entire account(s) with Seller shall become immediately due and payable without notice or demand. All past due amounts shall bear interest at a rate of 1.25% per month or 15% per year. The prices for the Products shall be provided for in Seller's invoices and statements of accounts.

**Collection/Payment Disputes:** Should Seller initiate collection (in court or otherwise) against the Buyer by reason of Buyer's failure to make payment in accordance with Seller's payment terms or other disputed contract interpretation, then the prevailing Party in such action shall be paid all costs (including its reasonable attorney fees) actually incurred in connection with such action, or any appeal therefrom, from the other party regardless of any otherwise applicable court schedule used in connection with the determination thereof. In any such action the laws of the State of Wisconsin, U.S.A. shall apply, except for its internal conflict of laws provision.

**Reserve of Right of Ownership:** All merchandise, whether present and future, sold by the Seller to the Buyer shall remain the sole property of the Seller until all sums due to the Seller whether invoiced or not have been fully paid, the whole including interests and costs.

**Warranty:**

(a) The following warranty only applies to "FN" or "NE" items:

(b) Seller warrants all Goods to be furnished under an Order to be free from defects due to faulty workmanship or material for the period of twelve months from the date of delivery to the buyer.

(c) Seller neither expressly nor impliedly warrants against defects in design, workmanship and materials of parts or materials supplied by others and utilized by the seller in such Goods. Seller shall give the Buyer (insofar as it is assignable) the benefits of any express written warranties given to seller by such manufacturer or other vendors. Seller shall have no obligation to process any warranty claim against such manufacturer and supplier for the benefit of the Buyer.

(d) Seller neither expressly nor impliedly warrants, or makes any representation whatsoever, as to service life of such Goods since conditions of usage and experienced service life are neither within the control of nor knowledge of Seller.

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(d) This warranty will apply only on the condition that:

- (1) Buyer delivers written notice of its claim under this clause to seller within such warranty period, but not later than fifteen (15) days after discovery of the defect which is the basis for its claim;
- (2) Buyer delivers such goods to Seller at its plant, FOB or EX WORKS, as applicable, to Milwaukee, WI, USA within thirty (30) days after such written notice;
- (3) Seller determines (in its sole discretion) that such goods are defective and have not been subject to accident, abuse or misuse, and have been operated and maintained in accordance with the manufacturer's recommendations and specifications; and
- (4) The goods have not been the subject of a replication (i.e., reverse engineering) program, either formal or informal, sponsored or supported by the U.S. Government or any other entity.

(e) The obligations and liabilities of Seller under this Warranty are expressly limited to the replacement or the repair by Seller of such Goods, and shall not include any removal, disassembly, failure analyzing fault isolation, inspection, retrofit or reinstallation costs incident to such correction or replacement.

(f) Buyer may effect warranty repairs of the Goods at its facility only with the Seller's prior written approval. Seller will reimburse Buyer for such repair at labor rates to be mutually agreed upon, but not exceeding Seller's own rates.

(g) THE WARRANTY PROVIDED IN THIS ARTICLE 14, AND THE OBLIGATIONS AND LIABILITIES OF SELLER AND THE RIGHTS AND REMEDIES OF BUYER HEREUNDER, ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND SELLER HEREBY DISCLAIMS, AND BUYER HEREBY WAIVES, ALL WARRANTIES AND LIABILITIES OF SELL AND ALL CLAIMS AND REMEDIES OF THE BUYER, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY DEFECT IN ANY GOODS, INCLUDING WITHOUT LIMITATION, ANY (A) IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR USE OR FOR A PARTICULAR PURPOSE, (B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE, (C) RECOVERY BASED UPON TORT, WHETHER OR NOT ARISING FROM SELLER'S NEGLIGENCE, AND (D) ANY RECOVERY BASED UPON DAMAGED PROPERTY, OR OTHERWISE BASED UPON LOSS OF USE OR PROFIT OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES. THIS WARRANTY SHALL NOT BE EXTENDED, ALTERED OR VARIED EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY SELLER AND BUYER. IN THE EVENT THAT AN PROVISIONS HEREOF SHOULD FOR ANY REASON BE HELD INEFFECTIVE, THE REMAINDER OF THIS WARRANTY SHALL REMAIN IN FULL FORCE AND EFFECT.

**Export and Import Compliance:** Buyer and Seller (hereafter also known collectively as "Parties") shall comply with the laws and regulations of the United States of America (U.S.A.) relating to exports and foreign transactions, including but not limited to, the International Traffic in Arms Regulations (ITAR) (22 C.F.R. Parts 120-130), the Arms Export Control Act (22 U.S.C. 2778), the Export Administration Regulation (EAR) (15 C.F.R. Parts 730-774) and the Export Administration Act of 1979, as amended (50 U.S.C. 2401 et. Seq.). In particular, the Parties shall not disclose any technical data nor deliver, export,

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re-export or re-transfer any Goods out of the U.S.A., or to foreign persons or entities within or outside the U.S.A., without the proper written authorization and/or licenses from the U.S. Government. Buyer hereby indemnifies and agrees to hold Seller harmless from any costs, damages, penalties, attorney's fees and similar expenses of Seller due to Buyer's breach (or threatened breach) of such obligation. The parties shall reasonably cooperate with each other in obtaining all required export and import licenses, approvals and/or notifications pursuant to such U.S. laws.

**Taxes and/or Duties:** Buyer shall reimburse the Seller for all taxes, excises or other charges which the Seller may be required to pay to any domestic government (national state or local) upon the sale, production or transportation of the Goods sold hereunder, and for international operations (export sales). Additionally, all taxes, licenses, duties, and governmental exactions by whatever name known which may be levied or assessed on or account of the Goods sold hereunder, or their documents.

**Seller's Extent of Liability:** The Buyer shall at its own expense apply for and obtain any permits and inspections required for the installation and/or use of the products. Seller makes no promise or representation that the products or services will conform to any federal, state or local laws ordinances, regulations, codes or standards, except as particularly specified and agreed upon in writing by an authorized representative of Seller. The Seller's products are not for use in or with any nuclear facility unless specifically so stated by Seller in writing.

Seller shall not be responsible for any losses or damages sustained by the Buyer or any other person as a result of improper installation or misapplication of the products. Buyer shall defend, indemnify and hold harmless Seller and its agents and employees against any loss, damage, claim, suit, liability, judgment or expense (including, without limitation, attorney's fees) arising out of or in connection with any injury, disease or death of persons (including, without limitation, Buyer's employees and agents) or damage to or loss of any property or the environment, or violation of any applicable laws or regulations resulting from or in connection with the sale, transportation, installation, use, or repair of the products by Buyer or of the information, designs, services or other work supplied to Buyer, whether caused by the concurrent and/or contributory negligence of Buyer, Seller, or any of their agents, employees or suppliers. The obligations, indemnities and covenants contained in this paragraph shall survive the consummation or termination of this transaction.

**Entire Agreement:** This document constitutes the entire, complete, and exclusive agreement between the parties with respect to the subject matter hereof and contains all the agreements and conditions of sale; no course of dealing or usage of the trade shall be applicable unless expressly incorporated herein. The terms and conditions contained herein may not be added to, modified, superseded or otherwise altered except by a written modification signed by the Seller's President or Vice President. All transactions shall be governed solely by the terms and conditions contained herein.