



Terms and Conditions of Purchase

General Provisions

1. Acceptance Of Purchase Order

Agreement by seller to furnish the materials or services hereby ordered, or its furnishing such materials or services in whole or in part, shall constitute acceptance by Seller of subject purchase order subject to these terms and conditions. In the event that subject purchase order does not state price and delivery, Buyer will not be bound to any prices or delivery to which it has not specifically agreed in writing. Any terms or conditions proposed by Seller inconsistent with or in addition to the terms and conditions of herein contained shall be void and of no effect unless specifically agreed to by Buyer. Modifications hereof or additions hereto, to be effective, must be made in writing and be signed by buyer. These terms and conditions, together with such modifications and with such data relating to price and delivery as are accepted in writing by Buyer constitute the entire agreement between the parties.

2. Shipping Instructions

- (a) Seller shall be responsible for ensuring the proper packaging of materials hereunder.
- (b) Unless otherwise directed, all items shipped in one day from and to a single location must be consolidated on one bill of lading or air bill, as appropriate. No charges will be allowed for packing, crating, freight, local cartage, and/or any other services unless so specified in subject purchase order or any authorized changes thereto.
- (c) For material purchased F.O.B. origin, the Seller shall not insure and not declare a value except when transportation rates are based on "released value" in which instance the Seller shall annotate on the bill of lading the lowest released value provided in applicable tariffs.
- (d) Seller shall at all times comply with Buyers written shipping instructions
- (e) Seller shall submit all required shipping papers to Buyer prior to final payment.
- (f) Buyer reserves the right to restate discount payment terms.

3. Delivery: Notice of Delay

- (a) Time is and shall remain a very important element of subject purchase order, and no acts of Buyer, including without limitation modifications of subject purchase order or acceptance of late deliveries shall constitute waiver of this provision. Buyer also reserves the right to refuse or return at Seller's risk and expense shipments made in excess of Buyers orders or in advance of required schedules, or to defer payment on advance deliveries until scheduled delivery dates.
- (b) Seller shall notify Buyer in writing immediately of any actual or potential delay or threat to delay the timely performance of this purchase order.

4. Termination For Convenience

- (a) Buyer may by notice in writing direct Seller to terminate subject purchase order or work under subject purchase order in whole or in part at any time and such termination shall not constitute a default. In such event, unless Seller shall have defaulted or been in default in performance hereof, Buyer and Seller shall have all rights and obligations accruing to it both at law or in equity, including Buyer's rights to title and possession of goods paid for.
- (b) Seller shall be reimbursed for actual, reasonable, and substantiated costs, plus a reasonable profit for work performed to date of termination. Buyer may take immediate possession of all work so performed upon notice of termination.
- (c) Seller's obligation under warranty, patent, and confidentiality provisions of this purchase shall survive such termination.

5. Termination For Default

- (a) Buyer may by notice in writing direct Seller to terminate subject purchase order or work under subject purchase order in whole or in part at any time for breach of any one or more of its terms. Further, the insolvency of the Seller or adjudication of bankruptcy of the Seller or the filing of a voluntary or insolvency petition of bankruptcy by the Seller or the making of an assignment for the benefit of creditors by the Seller shall also be a breach hereof.
- (b) In the event of Seller's default hereunder, the Buyer may exercise any or all rights accruing to it, both at law including those set forth in Article 2 of the Uniform Commercial Code or inequity.
- (c) Seller's obligation under the warranty, patent, and confidentiality provisions of subject purchase order shall survive such termination.

6. Disputes

- (a) Any controversy or claim arising out of or relating to subject purchase order or the breach thereof may be settled at Buyer's sole discretion either by submitting the claim to: (i) a court of competent jurisdiction or (ii) binding arbitration, before a single arbitrator, in the state and under the laws of the state from which subject purchase order is issued, and judgment upon the arbitrator's award may be entered in any court having jurisdiction thereof.
- (b) Pending resolution of settlement of any dispute arising under subject purchase order, Seller will proceed diligently as directed by Buyer with the performance of subject purchase order.

7. Remedies

- (a) The rights of both parties hereunder shall be in addition to their rights and remedies at law or in equity. Failure of Buyer to enforce any of its rights shall not constitute a waiver of such rights or of any other rights
- (b) In no event shall Seller be entitled to anticipatory profits or too special (including multiple or punitive), incidental, or consequential damages.

8. Confidentiality

- (a) Unless otherwise expressly agreed in writing to the contrary, all specifications, information, data, drawings, software and other items supplied to Buyer by Seller shall be disclosed to Buyer on a non-confidential basis and may be used and/or disclosed by Buyer without restriction.
- (b) Unless otherwise expressly agreed in writing to the contrary, all specifications, information, data, drawings, software and other items which are (i) supplied to Seller by Buyer or (ii) obtained by Seller and paid for by Buyer in the performance of subject purchase order shall be maintained as confidential by Seller, shall be used only for purposes of providing goods or services to Buyer pursuant to subject purchase order, and shall not be disclosed to any third party without Buyer's expressed written consent.

9. Buyer Property

- (a) All confidential information plus all drawings, tools, jigs, dies, fixtures, materials, and other items supplied by Buyer shall be and remain the property of Buyer, and Buyer shall have the right to enter Seller's premises and remove them at any time without being guilty of trespass or liable to Seller for damages of any sort.
- (b) All such items shall be used only in the performance of the work under subject purchase order unless Buyer consents in writing.
- (c) Material made in accordance with Buyer's specifications and drawings shall not be furnished or quoted to any other person or concern without Buyer's prior written consent.



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10. Release Of Information

Seller shall not publish any information developed under subject purchase order nor distribute it nor make any news release about the subject matter of this purchase order without prior approval of the Buyer.

11. Order Of Precedence

In the event of conflict between specifications, drawings, samples, designated type, part number, or catalog description, the specification shall govern over drawings, drawing over samples, whether or not approved by the Buyer and samples over designated type, part number, or catalog description. In cases of ambiguity in the specifications, drawings, or other requirements of subject purchase order, Seller must, before proceeding, consult Buyer, whose written interpretation shall be final.

12. Subcontracting

No lower-tier subcontract or purchase order valued at (i) \$100,000 or more or (ii) 10 percent of the indicated value of subject purchase order, whichever figure is less, shall be issued by the Seller to any party for furnishing any or the completed or substantially completed supplies (except spare parts) or other work herein contracted for without the written approval of the Buyer.

13. Warranty

- (a) Seller warrants the materials delivered or services rendered on subject purchase order to be free from defects in workmanship, materials, and design and to be in accordance with Buyer's specifications, drawings, and/or samples in all respects. These warranties shall survive final acceptance and payment pursuant to UCC2-601 and 2-608.
- (b) This warranty entitlement covers both Buyer and Buyer's customer.
- (c) Seller shall be liable for and save Buyer harmless from any loss, damage, or expense whatsoever that Buyer may suffer from breach of any of these warranties. Remedies include replacement (if Buyer elects) of nonconforming goods.

14. Inspection

- (a) All material and workmanship shall be subject to inspection by Buyer before, during performance, and after delivery. The Buyer may require Seller to repair or replace rejected material or Buyer may accept any materials and upon discovery of nonconformance, may reject or keep and rework any such materials not so conforming. Cost of repair, rework, replacement, inspection, transportation, repacking, and/or reinspection by Buyer shall be at Seller's expense.
- (b) If inspection and test are made on the premises of seller or Seller's lower tier subcontractors, Seller shall furnish without additional charge all reasonable facilities and assistance for the safe and convenient inspection and tests required by the inspectors in the performance of their duty. The foregoing provisions of the article are supplementary to and not in lieu of the provisions of (a) above
- (c) Buyer's failure to inspect does not relieve Seller of any responsibility to perform according to the terms of subject purchase order.

15. Changes

Buyer shall have the right by written order to suspend work or to make changes from time to time in the services to be rendered or the materials to be furnished by Seller hereunder or the delivery date. If such suspension or changes cause an increase or decrease in the cost of performance of this purchase order or in the time required for its performance, an equitable adjustment shall be negotiated promptly and the purchase order shall be modified in writing within 5 days from the date of receipt by Seller of notification of the change or suspension and shall be followed as soon as practicable with specification of the amount claimed and supporting cost figures. However nothing herein shall excuse the Seller from proceeding with this purchase order as changed pending resolution of the claim.

16. Patents

Seller warrants that the sale, use or incorporation into manufactured products of all machines, parts, components, services, devices, material, and rights furnished or licensed hereunder which are not Buyer's design, composition, or manufactured shall be free and clear of infringement of any valid patent, copyright, trade mark, or other proprietary rights. Seller shall save Buyer and its customers harmless from any and all expenses, liability, and loss of any kind (including all costs and expenses including attorney's fees) growing out of claims suits, or actions alleging such infringement, which claims, suits, or actions Seller, hereby, agrees to defend. Seller may replace or modify infringing goods with comparable goods of substantially same form, fit, and function so as to remove the source of infringement

17. Taxes

Seller agrees to pay all local, state, and federal excise, sales, and use taxes when applicable (unless otherwise agreed in writing).

18. Assignments

Seller may not assign any rights or obligations due or to become due under subject purchase order without the prior written consent of Buyer. Buyer shall have the right at any time to set off any amount owing from Seller to Buyer or Buyer's subsidiaries and/or affiliates against any amount due and owing to Seller or any of its subsidiaries pursuant to subject purchase order or any other contractual agreement between Buyer and Seller or their respective subsidiaries and/or affiliates.

19. Compliance with Law Gratuities

- (a) Seller warrants that the materials to be furnished and the services to be rendered under subject purchase order shall be manufactured, sold, and used in compliance with all relevant Federal state, and local laws and regulations. All invoices must carry the following certificate "Seller certifies that with respect to the production of the articles and/or the performance of the services covered by the invoice, it has fully Complied with section 6, 7, 12 and 15 of the Fair Labor Standards Act of 1938, as amended, and of Regulations and orders of the United States Department of Labor under section 14 thereof.
- (b) Seller certifies that all equipments and materials delivered under subject purchase order are in conformance with the latest OSHA requirements.
- (c) The Seller certifies that in the performance of subject purchase order, it will comply with all applicable U.S. Department of Transportation regulations on hazardous materials and any other pertinent Federal, state, or local statutes, laws, rules, or regulations and Seller further agrees to save Buyer harmless from any loss, damage, fine, penalty, or expense whatsoever that Buyer may suffer as a result of Seller's failure to comply with this certification. The foregoing is in addition to and not in mitigation of any other requirements of subject purchase order.
- (d) Seller warrants that it has not offered or given and will not offer or give to any employee, agent, or representative of Buyer any gratuity or any kickback within the meaning of the Anti Kickback Act of 1986 with a view towards securing any business from buyer or influencing such person with respect to the terms, conditions, or performance of any contract with or purchase order from Buyer, Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller.



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(e) For all government related purchase orders, the following clauses set forth in the FAR in effect as of the date of the Prime Contract are incorporated herein by reference. In all clauses listed herein the terms “Government” and “Contractor” shall be revised to identify properly the contracting parties under the purchase order.

a Officials Not to Benefit	52.203-1
b Gratuities	52.203-3
c Covenant Against Contingent Fees	52.203-5
d Variation in Quantity	52..212-9
e Convict Labor	52.222-3
f Contract Work Hours and Safety Standards Act – Overtime Compensation – General	52.222-4
g Equal Opportunity	52.222-26
h Affirmative Action for Handicapped Workers	52.222-36
i Service Contract Act of 1965 as Amended – Contract of \$2,500 or Less	52.222-40
j Service Contract Act of 1965 as Amended	52.222-41
k Buy American Act – Supplies	52.225-3
l Payments	52.232-3
m Discounts for Prompt Payment	52.232-8
n Disputes	52.233-1
o Changes – Fixed Price	52.243-1
p Termination for Convenience of the Government (Fixed Price (Short Form))	52.249-1

20. Indemnity Against Claims

- (a) Seller shall defend, indemnify, and hold harmless Buyer and Buyer’s directors, officers, employees, and agents from any liability, claim of liability, expense, cause of action, loss or damage whatsoever including attorneys’ fees arising out of or in any way connected with Seller’s performance or failure to perform subject purchase order or that of Seller’s agents, employees, or subcontractors. Seller shall be responsible for the actions and failure to act of all parties retained by, through, or under Seller in connection with the performance of this purchase order. Seller shall also maintain such Public Liability, Property Damage, Employer’s Liability, and Compensation Insurance and Motor Vehicle Liability (Personal Injury and Property Damage) Insurance as are specified in subject purchase order or if none are specified such amount as will protect Seller (or its subcontractors) and Buyer from said risks and from any claims under any applicable Workers’ Compensation, Occupational Disease, And Occupational Safety and Health statues including the Occupational Safety and Health Act.
- (b) Seller shall without limitation as to time indemnity and save Buyer harmless from all claims which may be asserted against property covered hereunder, including without limitation mechanic’s liens or claims arising under Worker’s Compensation or Occupational Disease laws and from all claims for injury to persons or property arising out of or related to such property unless the same are caused solely and directly by Buyer’s negligence.

21. Counterfeit Parts

- a) Aero Electronics requires that the Supplier have policies and procedures to identify potential Counterfeit Parts from suppliers. Seller shall immediately notify Aero Electronics with the pertinent facts if Supplier becomes aware of or suspects that Counterfeit Parts may have been used in a product delivered to Aero Electronics. In the event that products delivered under this order constitutes or includes Counterfeit Parts, Supplier shall, at its expense, promptly replace such Counterfeit Parts with genuine parts conforming to the requirements of this order. Notwithstanding any other provision in this order, Seller shall be liable for all costs relating to the removal and replacement of Counterfeit Parts.

22. Product Safety

- a) Seller shall handle and pack the Goods to prevent damage and deterioration. Buyer may charge Seller for damage to or deterioration of any Goods resulting from improper handling, packing or packaging.

23. Ethics

- a) Seller shall demonstrate their awareness and importance of ethical behavior in all aspects of conducting business with Aero Electronics.