

AIRBORNE TECHNOLOGIES
PURCHASE ORDER TERMS AND CONDITIONS



- 1. FORMATION OF CONTRACT.** This proposed purchase order is Buyer's offer to purchase the goods and services (Goods) described in this offer. Acceptance is strictly limited to the terms and conditions in this offer. Unless specifically agreed to in writing by Buyer's Authorized Procurement Representative, Buyer objects to, and is not bound by, any term or condition that differs from or adds to this offer. Seller's commencement of performance or acceptance of this offer in any manner shall conclusively evidence acceptance of this offer as written.
- 2. SCHEDULE**

 - a. Seller shall strictly adhere to the shipment or delivery schedules specified in this purchase order. In the event of any anticipated or actual delay, including but not limited to delays attributed to labor disputes, Seller shall: (i) promptly notify Buyer in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay; (ii) provide Buyer with a written recovery schedule; and (iii) if requested by Buyer, ship via air or other expedited routing to avoid or minimize delay to the maximum extent possible. Unless Seller is excused from prompt performance as provided in the "Force Majeure" article of this purchase order, the added premium transportation costs are to be borne by Seller.
 - b. Seller shall not deliver Goods prior to the scheduled delivery dates unless authorized by Buyer.
 - c. Buyer shall, at no additional cost, retain goods furnished in excess of the specified quantity or in excess of any allowable overage unless, within 45 days of shipment, Seller requests return of such excess. In the event of such request, Seller shall reimburse Buyer for reasonable costs associated with storage and return of the excess. If Goods are manufactured with reference to Buyer's proprietary information or materials, Seller agrees that, pursuant to the "Confidential, Proprietary and Trade Secrets Information and Materials" article of this purchase order, it will not sell or offer such Goods for sale to anyone other than Buyer without Buyer's prior written consent.
- 3. PACKING AND SHIPPING.** Seller shall pack the Goods to prevent damage and deterioration. Unless otherwise specified in this purchase order, Goods sold origin (place of shipment) shall be forwarded collect. Seller shall make no declaration concerning the value of the Goods shipped except on Goods where the tariff rating is dependent upon released or declared value. In such event, Seller shall release or declare such value at the maximum value within the lowest rating. Buyer may charge Seller for damage to or deterioration of any Goods resulting from improper packing or packaging.
- 4. SELLER'S NOTICE OF DISCREPANCIES.** Seller shall notify Buyer in writing when discrepancies in Seller's process or Goods are discovered or suspected regarding Goods delivered or to be delivered under this purchase order.
- 5. ACCEPTANCE AND REJECTION**

 - a. Buyer shall accept the Goods or give Seller notice of rejection or revocation of acceptance ("rejection" herein), notwithstanding any payment, prior test or inspection, or passage of title. No inspection, test, delay or failure to inspect or test or failure to discover any defect or other nonconformance shall relieve Seller of any obligations under this purchase order or impair any rights or remedies of Buyer.
 - b. If Seller delivers non-conforming Goods, Buyer may at its option and at Seller's expense (i) return the Goods for credit or refund; (ii) require Seller to promptly correct or replace the Goods; (iii) correct the Goods; or (iv) obtain replacement Goods from another source.
 - c. Seller shall not redeliver corrected or rejected goods without disclosing the former rejection or requirement for correction. Seller shall disclose any corrective action taken. Repair, replacement and other correction and redelivery shall be completed within the original delivery schedule or such later time as Buyer's Authorized Procurement Representative may reasonably direct.

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- d. All costs and expenses and loss of value incurred as a result of or in connection with nonconformance and repair, replacement or other correction may be recovered from Seller by equitable price reduction or credit against any amounts that may be owed to Seller under this purchase order or otherwise.

6. WARRANTY

- a. Seller warrants that all Goods furnished under this purchase order shall conform to all specifications and requirements of this purchase order and shall be free from defects in materials and workmanship. To the extent Goods are not manufactured pursuant to detailed designs and specifications furnished by Buyer, the Goods shall be free from design and specification defects. This warranty shall survive inspection, test and acceptance of, and payment for, the Goods. This warranty shall run to Buyer and its successors, assigns and customers. Such warranty shall begin after Buyer's final acceptance. Buyer may, at its option, either (i) return for credit or refund, or (ii) require prompt correction or replacement of the defective or non-conforming Goods. Return to Seller of defective or nonconforming Goods and redelivery to Buyer of corrected or replaced Goods shall be at Seller's expense. Goods required to be corrected or replaced shall be subject to this article in the same manner and to the same extent as Goods originally delivered under this purchase order, but only as to the corrected or replaced part or parts thereof. Even if the parties disagree about the existence of a breach of this warranty, Seller shall promptly comply with Buyer's direction to: (i) repair, rework or replace the Goods, or (ii) furnish any materials or parts and installation instructions required to successfully correct the defect or nonconformance. If the parties later determine that Seller did not breach this warranty, the parties shall equitably adjust the purchase order price.
- b. Seller warrants that any hardware, software and firmware Goods delivered under this purchase order shall be able to accurately process date/time data (including, but not limited to, calculating, comparing and sequencing) from, into and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date/time data with it. The duration of this warranty and the remedies available to Buyer for breach of this warranty shall be as defined in, and subject to, the other warranties contained in this purchase order, provided that notwithstanding any provision to the contrary in such warranties, the remedies available to Buyer under this warranty shall include repair or replacement of any non-compliant Goods discovered and made known to Seller in writing. Nothing in this warranty shall be construed to limit any rights or remedies Buyer may otherwise have under this purchase order with respect to defects other than year-2000 performance.

- 7. **TAXES.** Unless this purchase order specifies otherwise, the price of this purchase order includes, and Seller is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by this purchase order except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption.

- 8. **INVOICES AND PAYMENT.** Unless otherwise authorized by Buyer's Authorized Procurement Representative, Seller shall issue a separate original invoice for each delivery of Goods that shall include Buyer's purchase order number and line item number. Seller shall forward its invoice to the address specified elsewhere in this purchase order. Unless freight or other charges are itemized, Buyer may take any offered discount on the full amount of the invoice. Payment due date, including discount periods, shall be computed from the later of the scheduled delivery of Goods date, the actual delivery of Goods date or the date of receipt of a correct invoice. Payment shall be deemed made on the date Buyer's check is mailed or payment is otherwise tendered. Seller shall promptly repay Buyer any amounts paid in excess of amounts due Seller.

9. CHANGES

- a. Buyer's Authorized Procurement Representative may, without notice to sureties and in writing, direct changes within the general scope of this purchase order in any of the following: (i) technical requirements and descriptions, specifications, statement of work, drawings or designs; (ii)

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shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) amount of Buyer-furnished property; (vi) terms and conditions of this purchase order required to meet Buyer's obligations under Government prime contracts or subcontracts; and, if this purchase order includes services, (vii) description of services to be performed; (viii) time of performance (e.g., hours of the day, days of the week); and (ix) place of performance.. Seller shall comply immediately with such direction.

- b. If such change increases or decreases the cost or time required to perform this purchase order, Buyer and Seller shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. Buyer shall modify this purchase order in writing accordingly. Unless otherwise agreed in writing, Seller must assert any claim for adjustment to Buyer's Authorized Procurement Representative in writing within 25 days and deliver a fully supported proposal to Buyer's Authorized Procurement Representative within 60 days after Seller's receipt of such direction. Buyer may, at its sole discretion, consider any claim regardless of when asserted. If Seller's proposal includes the cost of property made obsolete or excess by the change, Buyer may direct the disposition of the property. Buyer may examine Seller's pertinent books and records to verify the amount of Seller's claim. Failure of the parties to agree upon any adjustment shall not excuse Seller from performing in accordance with Buyer's direction.
- c. If Seller considers that Buyer's conduct constitutes a change, Seller shall notify Buyer's Authorized Procurement Representative immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Pending direction from Buyer's Authorized Procurement Representative, Seller shall take no action to implement any such change.

10. DISPUTES. Any dispute that arises under or is related to this purchase order that cannot be settled by mutual agreement of the parties may be decided by a court of competent jurisdiction. Pending final resolution of any dispute, Seller shall proceed with performance of this purchase order according to Buyer's instructions so long as Buyer continues to pay amounts not in dispute.

11. FORCE MAJEURE. Seller shall not be liable for excess procurement costs pursuant to the "Cancellation for Default" article of this purchase order, incurred by Buyer because of any failure to perform this purchase order under its terms if the failure arises from causes beyond the control and without the fault or negligence of Seller. Examples of these causes are (a) acts of God or of the public enemy, (b) acts of the Government in either its sovereign or contractual capacity, (c) fires, (d) floods, (e) epidemics, (f) quarantine restrictions, (g) strikes, (h) freight embargoes and (i) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of Seller. If the delay is caused by delay of a subcontractor of Seller and if such delay arises out of causes beyond the reasonable control of both, and if such delay is without the fault or negligence of either, Seller shall not be liable for excess costs unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedules. Seller shall notify Buyer in writing within 10 days after the beginning of any such cause.

12. TERMINATION FOR CONVENIENCE. Buyer may terminate all or part of this purchase order, effective as of the date specified by Buyer, in accordance with the provisions of Federal Acquisition Regulation ("FAR") 52.249-2 (Sep 96), "Termination for Convenience of the Government (Fixed Price)," which provisions, except for subparagraphs (d) and (j), are incorporated herein by reference. The terms "Government" and "Contracting Officer" shall mean "Buyer," "Contractor" shall mean "Seller," and the phrase "1 year" is deleted each place it occurs and "six months" is substituted in its place. The time for requesting an equitable adjustment under subparagraph (l – lower case letter L) is reduced to 45 days. Settlements and payments under this article may be subject to approval by the Contracting Officer and the Settlement Review Board.

13. CANCELLATION FOR DEFAULT

- a. Buyer may, by written notice to Seller, cancel all or part of this purchase order if (i) Seller fails to deliver the Goods within the time specified by this purchase order or any written extension; (ii) Seller fails to perform any other provision of this purchase order or fails to make progress, so as to endanger performance of this purchase order, and, in either of these two circumstances, does

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not cure the failure within 10 days after receipt of notice from Buyer specifying the failure; or (iii) in the event of Seller's suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of its creditors.

- b. Seller shall continue work not canceled. If Buyer cancels all or part of this purchase order, Seller shall be liable for Buyer's excess re-procurement costs.
- c. Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (i) completed Goods, and (ii) any partially completed Goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (collectively, "Manufacturing Materials") that Seller has specifically produced or acquired for the canceled portion of this purchase order. Upon direction from Buyer, Seller shall also protect and preserve property in its possession in which Buyer or its Customer has an interest.
- d. Buyer shall pay the purchase order price for Goods accepted. Payment for Manufacturing Materials accepted by Buyer and for the protection and preservation of property shall be at a price determined in accordance with the "Termination for Convenience" article of this purchase order, except that Seller shall not be entitled to profit. Buyer may withhold from any amount due under this purchase order any sum Buyer determines to be necessary to protect Buyer or Buyer's customer against loss because of outstanding liens or claims of former lien holders.
- e. If, after cancellation, it is determined that Seller was not in default, the rights and remedies of the parties shall be as if the purchase order had been terminated according to the "Termination for Convenience" article of this purchase order.

14. ASSIGNMENT, DELEGATION AND SUBCONTRACTING. Seller shall not assign any of its rights or interest in this purchase order or subcontract or all or substantially all of its performance of this purchase order, without Buyer's prior written consent. Seller shall not delegate any of its duties or obligations under this purchase order. Seller may assign its right to monies due or to become due. No assignment, delegation or subcontracting by Seller, with or without Buyer's consent, shall relieve Seller of any of its obligations under this purchase order or prejudice any of Buyer's rights against Seller whether arising before or after the date of any assignment. This article does not limit Seller's ability to purchase standard commercial supplies or raw materials.

15. PUBLICITY. Without Buyer's prior written approval, Seller shall not, and shall require that its subcontractors at any tier shall not, release any publicity, advertisement, news release or denial or confirmation of same regarding this purchase order or the Goods or program to which it pertains. Seller shall be responsible to Buyer for any breach of such obligation by any subcontractor.

16. PATENT, TRADEMARK AND COPYRIGHT INDEMNITY. Seller will indemnify, defend and hold harmless Buyer and its customer from all claims, suits, actions, awards (including, but not limited to, awards based on intentional infringement of patents known at the time of such infringement, exceeding actual damages and/or including attorneys' fees and/or costs), liabilities, damages, costs and attorneys' fees related to the actual or alleged infringement of any United States or foreign intellectual property right (including, but not limited to, any right in a patent, copyright, industrial design or semiconductor mask work, or based on misappropriation or wrongful use of information or documents) and arising out of the manufacture, sale or use of Goods by either Buyer or its customer. Buyer and/or its customer will duly notify Seller of any such claim, suit or action; and Seller will, at its own expense, fully defend such claim, suit or action on behalf of indemnitees. Seller will have no obligation under this article with regard to any infringement arising from (a) Seller's compliance with formal specifications issued by Buyer where infringement could not be avoided in complying with such specifications or (b) use or sale of Goods for other than their intended application in combination with other items when such infringement would not have occurred from the use or sale of those Goods solely for the purpose for which they were designed or sold by Seller.

17. CONFIDENTIAL, PROPRIETARY AND TRADE SECRET INFORMATION AND MATERIALS. Buyer and Seller shall each keep confidential and protect from unauthorized use and disclosure all (a) confidential, proprietary and/or trade secret information; (b) tangible items and software containing, conveying or embodying such information; and (c) tooling identified as being subject to this article and

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obtained, directly or indirectly, from the other in connection with this purchase order or other agreement referencing this purchase order (collectively referred to as "Proprietary Information and Materials"). Buyer and Seller shall each use Proprietary Information and Materials of the other only in the performance of and for the purpose of this purchase order and/or any other agreement referencing this purchase order. However, despite any other obligations or restrictions imposed by this article, Buyer shall have the right to use, disclose and reproduce Seller's Proprietary Information and Materials, and make derivative works thereof, for the purposes of testing, certification, use, sale or support of any Goods delivered under this purchase order or any other agreement referencing this purchase order. Any such use, disclosure, reproduction or derivative work by Buyer shall, whenever appropriate, include a restrictive legend suitable for the particular circumstances. The restrictions on disclosure or use of Proprietary Information and Materials by Seller shall apply to all materials derived by Seller or others from Buyer's Proprietary Information and Materials. Upon Buyer's request at any time, and in any event upon the completion, termination or cancellation of this purchase order, Seller shall return to Buyer all of Buyer's Proprietary Information and Materials and all materials derived therefrom, unless specifically directed otherwise in writing by Buyer. Seller shall not, without the prior written authorization of Buyer, sell or otherwise dispose of (as scrap or otherwise) any parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of Buyer. Prior to disposing of such parts or other materials as scrap, Seller shall render them unusable. Buyer shall have the right to audit Seller's compliance with this article. Seller may disclose Proprietary Information and Materials of Buyer to its subcontractors as required for the performance of this purchase order, provided that each such subcontractor first agrees in writing to the same obligations imposed upon Seller under this article relating to Proprietary Information and Material. Seller shall be liable to Buyer for any breach of such obligation by such subcontractor. The provisions of this article are effective in lieu of any restrictive legends or notices applied to Proprietary Information and Materials. The provisions of this article shall survive the performance, completion, termination or cancellation of this purchase order.

- 18. FINANCIAL RECORDS AND AUDIT.** Seller shall retain all financial records and documents pertaining to the Goods for a period of no less than three years after final payment. Such records and documents shall date back to the time this purchase order was issued and shall include without limitation, catalogs, price lists, invoices, underlying data and basis for cost estimates, and inventory records. Buyer shall have the right to examine, reproduce and audit all such records related to pricing and incurred costs.
- 19. GRATUITIES.** Seller warrants that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to Buyer's employees, agents or representatives for the purpose of securing this purchase order or securing favorable treatment under this purchase order.
- 20. RIGHTS AND REMEDIES.** Any failures, delays or forbearances of either party in insisting upon or enforcing any provisions of this purchase order, or in exercising any rights or remedies under this purchase order, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect. Except as otherwise limited in this purchase order, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the parties may have at law or in equity. If any provision of this purchase order is or becomes void or unenforceable by law, the remainder shall be valid and enforceable.
- 21. COMPLIANCE WITH LAWS.** Seller shall comply with all applicable statutes and government rules, regulations and orders, including those pertaining to United States Export Controls.
- 22. GOVERNING LAW.** This purchase order shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. No consideration shall be given to Virginia's conflict of laws rules. This purchase order excludes the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods.

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- 23. GOVERNMENT CLAUSES.** The following government clauses applicable to this purchase order are incorporated herein.
- a. Utilization of Small Business Concerns (Small Business Act, 15 U.S.C. § 637(d), FAR 52.219-8)
 - b. Equal Opportunity (Exec. Order 11246, as amended by Exec. Order 11375; FAR 52.222-26)
 - c. Affirmative Action for Special Disabled and Vietnam Era Veterans (Vietnam Era Veterans' Readjustment Assistance Act of 1974, 38 U.S.C. § 4212(A); FAR 52.222-35) (> \$100K)
 - d. Affirmative Action for Workers with Disabilities (Rehabilitation Act of 1973, 29 U.S.C. § 793; FAR 52.222-36) (> \$10K)
 - e. Notification of Employee Rights Concerning Payment of Union Dues or Fees (FAR 52.222-39) (> \$100K)
 - f. Service Contract Act of 1965 (41 U.S.C. § 351, FAR 52.222-41) (> \$2500)
 - g. Combating Trafficking in Persons (22 U.S.C. § 7104(g), FAR 52.222-50 Alt. 1)
 - h. Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements (41 U.S.C. § 351, FAR 52.222-53)
 - i. Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. Appx. 1241 and 10 U.S.C. § 2631, FAR 52.247-64)
 - j. Restriction on Acquisition of Certain Articles Containing Specialty Metals (10 U.S.C. § 2533b, DFARS 252.225-7009)
 - k. Restriction on Acquisition of Ball and Roller Bearings (Section 8065 of the Fiscal Year 2002 DoD Appropriations Act (Pub. L. 107-117) and the same restriction in subsequent DoD appropriations acts, DFARS 252.225-7016)
- 24. SUSPENSION OF WORK**
- a. Buyer's Authorized Procurement Representative may, by written order, suspend all or part of the work to be performed under this purchase order for a period not to exceed 100 days. Within such period of any suspension of work, Buyer shall (i) cancel the suspension of work order; (ii) terminate this purchase order in accordance with the "Termination for Convenience" article of this purchase order; (iii) cancel this purchase order in accordance with the "Cancellation for Default" article of this purchase order; or (iv) extend the stop work period.
 - b. Seller shall resume work whenever a suspension is canceled. Buyer and Seller shall negotiate an equitable adjustment in the price or schedule or both if (i) this purchase order is not canceled or terminated; (ii) the suspension results in a change in Seller's cost of performance or ability to meet the purchase order delivery schedule; and (iii) Seller submits a claim for adjustment within 20 days after the suspension is canceled.
- 25. ACCESS TO PLANTS AND PROPERTIES.** Seller shall comply with all the rules and regulations established by Buyer for access to and activities in and around premises controlled by Buyer or Buyer's customer.
- 26. SELLER FINANCIAL REVIEW.** Buyer may engage commercial services or other means to determine the financial capability of Seller. Should Buyer question Seller's financial capability, Buyer may request seller to provide additional financial information, such as annual reports, or other books and records.
- 27. ENTIRE AGREEMENT.** This purchase order contains the entire agreement of the parties and supersedes any and all prior agreements, understandings and communications between Buyer and Seller related to the subject matter of this purchase order. No amendment or modification of this purchase order shall bind either party unless it is in writing and is signed by Buyer's Authorized Procurement Representative and an authorized representative of Seller.