



AP+M
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TERMS AND CONDITIONS OF PURCHASE

1. Definitions

- (a) "Buyer" means Aviation, Power & Marine, Inc. (AP+M) as indicated in the Purchase Order.
- (b) "Goods" means all services (including but not limited to consultancies, maintenance) goods or products covered by the Purchase Order, including raw materials, processed materials or fabricated products.
- (c) "Purchase Order" means the Buyer's official purchase order to which these Conditions of Purchase apply, and includes printed purchase orders, whether delivered by hand, mail or facsimile, and purchase orders issued by means of Electronic Data Transfer or otherwise.
- (d) "Seller" means the person, firm, partnership, company or other legal entity to whom the Purchase Order is issued and includes its servants, agents and sub-contractors.
- (e) "Contract" means the contract for purchase of Goods formed upon Seller's acceptance of a Purchase Order which incorporates these Conditions of Purchase.

2. Entire Agreement

2.1 These Conditions of Purchase and the Purchase Order represent the entire agreement between the parties and shall be incorporated in the contract for the purchase of Goods specified on the face of the Purchase Order and the Seller shall, by accepting this Purchase Order, be bound by these Conditions of Purchase. These Conditions of Purchase:

- (a) shall apply to the exclusion of all other terms and conditions, whether contained in the Seller's invoice or conditions of sale or otherwise, proposed by or purported to be applied by the Seller in connection with the Goods or the Purchase Order and these Conditions of Purchase, including those contained or referred to in the Seller's tender, confirmation or acceptance of the Purchase Order or otherwise, which terms and conditions are waived by the Seller to the maximum extent permitted by law; and
- (b) supersede all prior agreements, proposals, tenders, communications or representations in relation to the Goods or the Purchase Order and these Conditions of Purchase.

3. Responsibility for Purchase

The Buyer will not be responsible for any order unless it is issued on a Purchase Order. No variation of a Purchase Order will be effective unless approved in writing by the Buyer. The number appearing on the Purchase Order must be quoted on all invoices, delivery dockets and parcels.

4. Quality

4.1 The Seller must ensure and warrants that the Goods:

- (a) conform with the description provided by the Seller;
- (b) conform with any applicable specifications agreed by the Buyer and the Seller;
- (c) are fit for the Buyer's purposes (if made known to the Seller) and are otherwise fit for the purpose for which they are sold;
- (d) are of merchantable quality;
- (e) are and will remain free of defects in material, workmanship and design for the period of 12 months from the date of delivery;
- (f) are new and unused (unless otherwise specified);
- (g) are free and clear from all liens and encumbrances, charges or third party claims of any kind and the Seller has good marketable title thereto;
- (h) do not infringe any third party intellectual property rights (including moral rights);
- (i) unless a higher standard is required under the Purchase Order, comply with the appropriate International Standards Organization (ISO) Standards; and
- (j) where the Goods include any services to be provided by the Seller, all such services are performed with due care and skill by competent and adequately trained persons.

4.2 The Seller warrants that it has all approvals required by law to perform its obligations under the Contract.

4.3 These warranties are in addition to any other warranties or guarantees contained in the Purchase Order or implied by law or provided by the Seller or any third party.

5. Rejection of Goods and Repair or Replacement

5.1 The Buyer may reject Goods not conforming for any reason whatsoever to the Purchase Order upon delivery of such Goods or within a reasonable time thereafter. Any acceptance of delivery or payment by the Buyer for such Goods shall not prejudice its right of rejection contained herein.

5.2 If, in the opinion of the Buyer (acting reasonably), the Goods (or any part of the Goods) do not comply with the Purchase Order and these Conditions of Purchase, the Buyer may notify the Seller of such failure and, at the Buyer's discretion either:

- (a) return the unsatisfactory Goods to the Seller at the Seller's risk and expense. The Seller shall be indebted to the Buyer for:
 - (i) the Purchase Order sum (or any part of it) paid by the Buyer for the return of the Goods (if paid); and
 - (ii) any costs incurred by the Buyer in connection with the delivery and return of the Goods; or
- (b) require the Seller to repair or replace such Goods, in which case the Seller shall remove the Goods from the site of the Buyer at the Seller's risk and expense and the Seller shall repair or replace such Goods with Goods which are in accordance with the Purchase Order and these Conditions of Purchase within 30 days of notification of such defect or failure from the Buyer.

5.3 Such repairs or replacements shall be subject to the warranties contained in Condition 4 and the liabilities contained herein.

5.4 The rights under this Condition 5 shall not limit the Buyer's other rights under the Purchase Order and these Conditions of Purchase or otherwise at law.

6.Loss or Damage in Transit

6.1 The Buyer shall advise the Seller of any loss or damage to or defect in the Goods within the following time limits:

- (i) partial loss, damage, defects or non-delivery of any Goods within 60 days of the date of delivery; or
- (ii) non-delivery of Goods within 60 days of the intended date of delivery as specified in the Purchase Order.

6.2 The Seller shall make good free of charge to the Buyer any loss of or damage to or defect in the Goods where notice is given by the Buyer in compliance with this condition

7.Delivery

7.1 The Seller shall deliver the Goods described in the Purchase Order:

- (a) by the due date;
- (b) for the quantities of each item listed;
- (c) to the place of delivery; and
- (d) on the delivery terms stated,
- (e) in the Purchase Order and these Conditions of Purchase unless otherwise agreed in writing between the Buyer and the Seller.

7.2 Time is of the essence hereof insofar as it applies to the obligations of the Seller. If any Goods are not delivered within the time specified in the Purchase Order, the Buyer may either:

- (a) refuse to accept such Goods and terminate the Purchase Order; or
- (b) cause the Seller to deliver the Goods by the most expeditious means, whereupon any additional delivery charges in excess of those which would apply for the usual means of delivery shall be borne by the Seller.

7.3 If any Goods are not delivered to the place specified in the Purchase Order or otherwise agreed between the Buyer and the Seller, without limiting any other rights that the Buyer may have, including under these Conditions of Purchase, the Seller will be responsible for any additional expense incurred in delivering them to their correct destination.

8.Title and Risk

8.1 Risk of loss in the goods shall pass to the Buyer upon delivery to the Buyer in accordance with Condition 7 but without prejudice to any right of rejection or other rights which may accrue to the Buyer hereunder. Risk in any Goods which have been notified by the Buyer as defective or non-compliant will pass to the Seller upon the Buyer returning or otherwise making such Goods available to the Seller until rectification of the defect or replacement of the Goods in accordance with these Conditions of Purchase.

8.2 Title in the Goods shall pass to the Buyer upon payment in respect of the Goods. Until title in the Goods passes, the Buyer is authorized to apply the Goods in the ordinary course of its business.

9.Inspection in Progress and Prior to Dispatch

The Seller agrees that the Buyer or its agents shall have the right of inspection of all work performed pursuant to the Purchase Order while in any stage of engineering, manufacture or installation, and of the Goods prior to their dispatch. The Seller shall make this a condition of any sub-contracted work. The Buyer or its agents shall have the power to reject any work performed or being performed or any Goods that do not conform to the Purchase Order, whereupon the work or Goods rejected shall be re-performed at no additional cost to the Buyer. Any such inspection shall not relieve the Seller of any obligations contained in the Purchase Order or at law.

10.Intellectual Property

The Seller shall:

- (a) grant to the Buyer an irrevocable, royalty-free and perpetual license to use (and allow others to use) the intellectual property in the Goods or any work to be performed by the Seller (including any copyright, patent, trademark and design) for any purpose in connection with the project for which the Goods are to be used by the Buyer; and
- (b) indemnify the Buyer in respect of any loss, damage, expense, claim or liability suffered or incurred by the Buyer as a result of any claim by a third party alleging infringement of any intellectual property rights in relation to the Goods or any work to be performed pursuant to the Purchase Order.

11.Price

11.1 The purchase price of the Goods payable by the Buyer shall be that specified in the Purchase Order and shall be fixed firm, and cannot be varied without the prior written agreement of the Buyer.

12.Terms of Payment

- (a) The Seller must send invoice for payment for the Goods at the times for payment (and in any case not prior to delivery) provided in the Purchase Order.
- (b) Within 30 days from the end of the month following receipt of the Seller's invoice, the Buyer shall pay the amount that is payable to the Seller under the Contract.
- (c) The Buyer may set-off against any amount claimed by the Seller:
 - (i) any amount claimed by the Buyer from the Seller (whether in connection with the Contract or otherwise); and
 - (ii) any amount the Buyer is required by law to withhold or deduct.

13.Sub-Contracting and Assignment

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13.1 The Seller shall not assign its rights or obligations hereunder or sub-contract any work to be performed pursuant to the Purchase Order without the prior written consent of the Buyer which must not be unreasonably withheld.

14.Packaging, Storage and Hazardous Goods

14.1 The Goods shall be properly packed to avoid being damaged during delivery of loading and unloading, and in accordance with any packaging requirements or specifications communicated by the Buyer to the Seller. All packages shall be clearly marked with the Purchase Order number and the location of delivery.

14.2 The Seller shall comply with all applicable U.S. and international laws, regulations and other relevant requirements relating to the transport, packaging, storage, handling and use of the Goods.

14.3 All Goods which are hazardous goods must be accompanied by emergency material in English in the form of written instructions, labels or markings and Material Safety Data Sheets.

14.4 All information held by or reasonably available to the Seller regarding any potential hazards or special requirements known or believed to exist in the transport, packaging, storage, handling or use of the Goods shall be immediately communicated to the Buyer.

14.5 Where required by the Buyer or at law, the Seller shall provide all necessary Certificates of Conformance, Certificates of Analysis and Test Certificates together with the Goods delivered pursuant to the Purchase Order.

15.Insurance and Indemnity

The Seller shall affect and maintain adequate insurance including, without limitation, public liability, worker's compensation (including common law liability), automotive and other means of transportation/freight liability insurance and products liability insurance upon such terms and for such amounts acceptable to the Buyer as are reasonable in the circumstances of the Purchase Order. All payment of moneys by the Buyer in connection with the supply of the Goods will be conditional upon the Seller providing the Buyer with evidence of the currency of such insurance if reasonably requested by the Buyer.

The Seller indemnifies the Buyer, its agents, owners, directors and employees against all claims, costs, expenses, damages, loss or other amounts arising from or contributed to by third party property loss or damage or personal injury or death arising out of or in connection with the supply of Goods (and services, where applicable) by the Seller, except to the extent directly caused by the breach or negligence of the Buyer.

16.Force Majeure

Neither the Seller nor the Buyer shall be liable to the other for default or delay in performing its obligations under the Purchase Order caused by any occurrence beyond its reasonable control, provided that the party affected by such occurrence gives written notice thereof to the other party within 7 days of the commencement of that occurrence and use all reasonable efforts to end or overcome that occurrences soon as possible.

17.Buyer's Rights in Specifications, Plans, Process Information etc.

Any specifications, plans, drawings, process information, patterns, designs or any other information supplied by the Buyer to the Seller in connection with the Purchase Order shall remain the property of the Buyer, and any information derived therefrom or otherwise communicated to the Seller in connection with the Purchase Order shall be kept confidential and shall not, without the written consent of the Buyer be published or disclosed to any third party, or made use of by the Seller except for the purpose of implementing the Purchase Order or as required by law. Any specifications, plans, drawings, process information, patterns, designs or other information supplied by the Buyer to the Seller must be returned to the Buyer on request by the Buyer. Any invention or improvement made by the Seller attributable in whole or in part to such specifications, plans, drawings, process information, patterns, designs or other information shall be the property of the Buyer.

18.Work on Buyer's Site

If, in providing the Goods, the Seller requires access to, or must carry out work on, a site of the Buyer, the Seller shall only reasonably access and use the Buyer's site subject to, in addition to the conditions of the Purchase Order and any conditions imposed by law, the lawful requirements and on-site safety policies, rules and directions of the Buyer.

19.Applicable Law; Jury Trial Waiver

19.1 The Purchase Order shall be governed by, subject to and construed in accordance with the laws of the State of Florida and the parties accept the jurisdiction of the courts in the State of Florida. The Buyer and the Seller waive any and all right to trial by jury of any claim or cause of action in any proceeding arising out of or related to the Purchase Order.

20.Termination

20.1 If a party ("defaulter"):

(a) fails to comply with any of its obligations under the Contract (and, where the failure is capable of rectification, does not rectify this failure within 14 days of written notification from the other party ("non-defaulter")); or

(b) is insolvent, becomes bankrupt or becomes subject to any official management, receivership, liquidation, voluntary administration, winding up or external administration, then the non-defaulter may terminate the Contract by notice in writing and such termination will be without prejudice to the non-defaulter's rights under the Contract or otherwise at law, including the right to be reimbursed by the defaulter for any additional costs incurred in obtaining the Goods from another source of supply.

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20.2 The Buyer may at any time for any reason (including for its convenience where there is no default by the Seller) terminate the Contract by two (2) days prior notice in writing to the Seller in which case:

- (a) the Seller shall cease performing its obligations under this Contract to the extent set out in the Buyer's notice and mitigate any costs incurred by the Seller consequent upon the termination;
- (b) the Buyer shall pay the Seller for the value of the Goods provided to the Buyer (to the Buyer's satisfaction) in accordance with the Contract;
- (c) the Seller shall have no claim of any kind whatsoever for any loss (including loss of profit), damages or other amounts; and
- (d) any rights of the Buyer arising from prior breaches by the Seller shall not be affected.

21. General

21.1 Conditions 10, 15, 17, 19, 20 and 21 of these Conditions of Purchase are continuing obligations and survive termination of the Contract for any reason.

21.2 The failure or omission of a party at any time to enforce the strict compliance with any of these Conditions of Purchase is not a waiver of the rights of a party. Any waivers granted by a party must be in writing.

21.3 If any part of these Conditions of Purchase is or becomes illegal, invalid or unenforceable in any relevant jurisdiction then they will be read as if that part had been deleted in that jurisdiction only and the remainder shall remain in full force and effect and the intent carried out in full by each party.