



AP+M  
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#### TERMS and CONDITIONS of SALE

**NOTICE:** Sale of any Parts and or services identified herein is expressly conditioned on the Buyer's assent to the terms and conditions contained or referred to herein (hereinafter "Terms and Conditions"). Any additional or different terms or conditions proposed by Buyer are expressly objected to and will not be binding upon Seller unless specifically assented to in writing by Seller's authorized representative. Any order for, or any statement of intent to purchase hereunder, or any direction to perform work or any assent to Seller's performance of work shall constitute assent to these Terms and Conditions.

**1. DEFINITIONS:** As used in these Terms and Conditions, "Part(s)" means all equipment, parts, materials, supplies, components, and other goods that Seller has sold or agreed to sell to Buyer. "Seller" means Aviation, Power & Marine, Inc. and its successors and permitted assigns.

**2. APPLICATION:** The Parts sold hereunder are intended for industrial applications only, and shall not be used in connection with any aviation application.

**3. VALIDITY:** Unless otherwise specified in writing by Seller, any quotation by Seller shall expire thirty (30) days from its date and may be modified or withdrawn by Seller prior to receipt of Buyer's acceptance.

**4. PRICES:** Seller reserves the right to correct any obvious errors in specifications or prices.

**5. TAXES:** Any taxes which, under any existing or future law, Seller may be required to pay or collect with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any of the goods or services covered shall, if not separately shown, be added as a separate item to the quoted price and shall be paid by Buyer to Seller on demand. The foregoing shall not apply to any taxes, the payment or collection of which by Seller is excused by reason of delivery to Seller of valid tax exemption certificates.

#### **6. TERMS OF PAYMENT:**

6.1. For Buyers domiciled in the United States, except as otherwise provided in Seller's quotation, Buyer shall pay Seller the agreed purchase price in cash, in U.S. Dollars, without right of set-off. Seller may require payment in U.S. dollars at time of order, in advance of delivery, or for International Shipments by irrevocable documentary letter of credit (sight draft) confirmed by any U.S. bank as a condition of acceptance of any order. For any orders involving a single price but multiple or partial shipments, a pro-rata payment, in an amount reasonably determined by Seller, shall be due prior to or upon each shipment at Seller's sole discretion. Terms of net 30 days from date of invoice may be offered by Seller in its sole discretion, subject to credit approval by Seller. Terms of payment are effective from the actual date of invoice. Payment is considered as having been made on the date payment is received by Seller. The Buyer agrees to pay a service charge on all delinquent accounts in the event Seller it is not paid according to the terms set forth in the invoice or statement Interest on any past-due payment or part thereof shall accrue at the rate of 1.5% per month beginning 30 days from the date of the invoice to the previous month's unpaid balance. All expenses of collection shall be paid by Buyer, including costs and reasonable attorney's fees.

6.2. For Buyers domiciled outside the United States, except as otherwise provided in Seller's quotation, payment shall be made in U.S. Dollars upon presentation of shipping documents against one or more confirmed irrevocable letters of credit issued by a U.S. bank acceptable to Seller ("Letter of Credit"), which Letter of Credit shall (a) be established by Buyer, at Buyer's expense (including confirmation charges), (b) be opened thirty (30) days prior to the earliest scheduled shipment, (c) remain in effect until ninety (90) days after the latest scheduled shipment and (d) expressly waive all other defenses to payment. The Letter of Credit shall provide for partial payments pro rata on partial deliveries and for the payment of any charges for storage, export shipment, price adjustments, cancellation or termination, and all other payments due from Buyer against Seller's invoice and certification of the charges and grounds for such payment. Buyer will increase the amount(s) and/or extend the validity period(s) and make appropriate modifications to any Letter of Credit within thirty (30) days of Seller's notification that such is necessary to provide for payments to become due.

6.3. Buyer authorizes Seller to apply toward payment of any moneys that become due Seller hereunder any sums which may now or hereafter be owed to Buyer by Seller, or by any subsidiary or affiliated company of Seller.

6.4. If in Seller's judgment reasonable doubt exists as to Buyer's financial responsibility, or if Buyer is past due in payment of any amount owing to Seller, Seller reserves the right, without liability and without prejudice to any other remedies, to suspend performance, decline to ship, or stop any material in transit, until Seller receives payment of all amounts, whether or not due, owing to Seller, or adequate assurance of such payment.

**7. DELIVERY, TITLE TRANSFER, RISK OF LOSS:** Seller shall deliver the Parts to Buyer FCA Loaded Seller's facility, place of manufacture or warehouse (Incoterms 2010). Except for those obligations which are consistent with Incoterms 2010 specifically stated above, Seller shall be without liability on any claim asserted by Buyer with respect to such delivery. Partial deliveries will be permitted.

## **8. WARRANTY:**

8.1. Parts are warranted to be free from defects in material and workmanship which cause the part to be unserviceable under proper and normal use (a "Defect") for a period of twelve (12) months from the date of installation, or eighteen (18) months from the date of shipment to Buyer, whichever is less (the "Warranty Period"). Seller does not warrant the Parts or any repaired or replacement Parts

(i) against wear and tear including that due to environment or operation, including excessive operation at peak capability, frequent starting, type of fuel, detrimental air inlet conditions or erosion, corrosion or material deposits from fluids or

(ii) which have been involved in an accident. The warranties and remedies set forth herein are further conditioned upon the proper storage, installation, operation, and maintenance of the Parts.

8.2. If at any time during the Warranty Period Buyer asserts a Part covered by this Warranty has a Defect, Buyer shall notify Seller in writing within thirty (30) days of the Defect becoming apparent to Buyer (but in no event after 30 days following the last day of the Warranty Period) specifying the Defect and providing other appropriate details.

8.3. Upon receipt of such notice as described in Section 8.2, Seller will issue to Buyer a Return Material Authorization ("RMA"). Buyer may then, and only then, return the Part, prepaid, to Seller for failure analysis. No returned parts will be accepted by Seller without an RMA.

8.4. If, upon completion of the failure analysis, the Part is determined to have a Defect as described in Section 8.1, above, Seller will, at its sole option and expense, repair or replace the Part.

8.5. If Buyer asserts a warranty claim and as a result of the failure analysis it is established that Seller is not liable for the defects claimed, the costs of the investigation as well as any other costs and expenses connected with such claim shall be borne by Buyer and due and payable upon receipt of the respective invoice.

8.6. The warranties set forth above are given and accepted in lieu of all other warranties, express or implied, in law or in fact, including without limitation any implied warranties of merchantability, fitness for any particular purpose, warranty of non-infringement, warranties created by any affirmation of fact or promise or by any description of goods and services and any other warranties whatsoever contained in or created by applicable law. The remedies of Buyer shall be limited to those provided herein to the exclusion of any and all other remedies, including without limitation, incidental or consequential damages. The total liability of Seller, on all claims of any kind, whether in contract, warranty, indemnity, tort (including negligence), strict liability, or otherwise, arising out of use of any Parts shall not exceed the price allocable to the Parts giving rise to the claim.

**9. COMPLIANCE WITH LAWS:** Any clause required to be included in a contract by any applicable law, or by any administrative regulations having the effect of law, is hereby incorporated herein.

**10. CANCELLATION:** A contract may be cancelled or modified only by written agreement between Buyer and Seller, except as otherwise provided. Seller at its own discretion will charge a restocking fee of returned material of up to 30% to any cancelled order by buyer.

**11. ASSIGNABILITY-CONTINUITY:** Buyer shall not assign this contract or any right or obligation under this contract without the express written consent of Seller and any purported assignment shall be void and ineffective, but the contract shall be binding upon and inure to the benefit of Buyer's and Seller's successors.

**12. FORCE MAJEURE:** Seller shall not be liable for delay or failure to perform in whole or part by reason of contingencies beyond Seller's control, whether herein specifically enumerated or not, including among others, act of God, force majeure, war, acts of war, revolution, civil commotion, riot, acts of public enemies, blockade or embargo, delays of carriers, car shortage, fire, explosion, breakdown of plant, strike, lockout, labor dispute, casualty or accident, earthquake, epidemic, flood, cyclone, tornado, hurricane, or other windstorm, lack or failure of sources of supply of labor, raw materials, power or supplies, or excessive cost thereof, contingencies interfering with the production or with customary or usual means of transportation of the goods, or with the supply of coal or fuel or of any raw material of which said goods are a product or which may be used in their manufacture, delays of vendors, or, where material covered hereby is not manufactured by Seller, then lack or failure of sources of supply of said material, or by reason of any law, order, proclamation, regulation, ordinance, demand, requisition or requirement of any other act of any governmental authority, national, state, or local, including court orders, judgments, or decrees, or any other cause whatsoever, whether similar or dissimilar to those above enumerated, beyond Seller's reasonable control. Quantities so affected may be eliminated by Seller from this contract without liability.

**13. APPLICABLE LAW:** The construction, performance and completion of this contract are governed by the law of the State of Florida. To the extent that the provisions hereof may vary from the Uniform Commercial Code of the State of Florida or any other jurisdiction, the provisions hereof shall govern.

**14. ENTIRE AGREEMENT:** The terms set forth herein constitute the sole terms and conditions of the contract between Buyer and Seller. No other terms, conditions, or understanding, whether oral or written shall be binding upon Seller, unless hereafter made in writing and signed by Seller's authorized representative.

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