

## ***Dukes Aerospace Inc. Terms and Conditions of Sale***

### **1. General**

- 1.1. Unless otherwise specifically agreed in writing signed by an authorized employee of Dukes Aerospace, Inc. (hereinafter "Seller"), these Terms and Conditions of Sale (Agreement) shall apply to all sales of goods ("Products") by Seller.
- 1.2. In the event of conflict or inconsistency between the conditions of Buyer's purchase order and these terms and conditions of sale, these terms and conditions of sale shall govern.

### **2. Offer and Acceptance**

- 2.1. Seller's quotation acknowledgment or invoice constitutes Seller's offer to sell solely in accordance with the exact terms and conditions hereof, and supersedes all previous written and oral quotations, representations and/or agreements. Acceptance can be made by Buyer by any commercially reasonable means, including Buyer's issuance of an order, acceptance of Seller's quotation, acceptance of Products provided hereunder, acknowledgment or return of Seller's acknowledgment form or by electronic transmission. Acceptance hereof by Buyer is expressly limited to the exact terms hereof. If Buyer shall use its own purchase order or other form to order from Seller, such form shall be used for convenience only and shall evidence Buyer's unconditional agreement to these terms and conditions. Any inconsistent or additional terms or conditions contained therein are expressly objected to by Seller.
- 2.2. Where this Agreement is found to be an acknowledgment, if such acknowledgment constitutes an acceptance of an offer, such acceptance is expressly made conditional upon Buyer's assent to the terms of such acknowledgment, and acceptance of any part of Products delivered by Seller shall be deemed to constitute such assent by Buyer.
- 2.3. FAA PMA assistance, if requested from Buyer, is a condition of accepting any new Purchase Order for new business.

### **3. Cancellation**

- 3.1. Orders shall not be subject to the cancellation or modification either in whole or in part without Seller's written consent and then only with terms which indemnify Seller against loss. In any circumstances, Seller's written consent must be given in advance of Buyer's return of Products for credit.
- 3.2. Change orders, including cancellation, division or rescheduling, must be in writing and may be subject to a service charge.
- 3.3. Upon any termination or cancellation of this sales order by Buyer, either in whole or in part, Buyer agrees to pay appropriate termination or cancellation charges invoiced by Seller immediately upon receipt of such invoice.

### **4. Price**

- 4.1. All prices represent those in effect at the time of quotation and are for term specified at the time of quote. Unless prices are bid or quoted as "firm" Seller reserves the right to invoice at prices in effect at date of shipment, regardless of prior bid and whether notice was received by Buyer.
- 4.2. Unless otherwise agreed in writing, prices are stated in United States dollars, are exclusive of sales, use, excise or similar taxes and are subject to any price adjustment necessitated by Seller's compliance with any act of government.

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- 4.3. Any tax or other governmental charge upon the production, sale, shipment or use of the Products which Seller is required to pay or collect from Buyer shall be paid by Buyer to Seller unless Buyer furnishes Seller with a tax exemption certificate acceptable to the appropriate taxing authority.
- 4.4. Any changes as may occur on or prior to dates of shipment in applicable tariffs, freight rates or transportation charges and any prepayment by Seller of freight charges shall be for the account of Buyer and shall be paid by Buyer with and in addition to the purchase price.

### **5. Payment**

- 5.1. Terms of payment for customers with established credit, and in good standing, are net 30 days from date of invoice unless otherwise stated.
- 5.2. Terms of payment for all new customers shall be 50% deposit at time of order and 50% at time of delivery.
- 5.3. Buyer agrees to pay interest on all past due invoices at the rate of one and one-half percent (1½%) per month or the highest rate allowable by law, if lower. Should it be necessary for Seller to institute formal proceedings to collect any past due amounts from Buyer, Seller shall be entitled to recover its attorney fees and other costs associated with the proceedings.
- 5.4. In case Buyer shall fail to make payments on this or any other contract between Buyer and Seller in accordance with Seller's terms, Seller may suspend further shipments until such payments are made, or may, at its option, cancel unshipped balance.

### **6. Shipment**

- 6.1. Shipment of Products shall be F.O.B. Seller's warehouse. In doing so, however, we act in our customer's behalf without responsibility on our part.
- 6.2. Unless instructed on shipping method, placement of values and carrier, Seller will select what is, in its opinion, the most satisfactory routing for the shipment using a commercial carrier in any manner it deems to be commercially reasonable.
- 6.3. Shipping dates are approximate and are based upon conditions existing upon Seller's receipt of Buyer's firm order and full information. Seller will, in good faith, endeavor to ship by the estimated shipping date but shall not be responsible for any delay or any damage arising therefrom. It is agreed that time is not of the essence.

### **7. Rejections and Returns**

- 7.1. Claim for errors, deficiencies or imperfections, will not be considered unless made within thirty (30) days after receipt of material. Material found defective when in the hands of original purchaser and when properly used for the purpose for which sold will be replaced or credit will be allowed for the price thereof upon its return, but the Seller shall not be liable for any claims for labor or consequential damages and material must not be returned except by permission of Seller. The remedies to Buyer hereunder are exclusive.
- 7.2. Claims for shortage must be made in writing within ten (10) days after receipt of goods.
- 7.3. Seller accepts no responsibility for breaking, damage or losses occurring after delivery by Seller to carrier. All claims in such regard should be made directly to carrier.

### **8. Errors and Omissions**

- 8.1. Seller reserves the right to correct errors and omissions.

### **9. Force Majeure**

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- 9.1. Seller shall not be liable for any failure to perform its obligations under this Agreement resulting directly or indirectly from or contributed to by any acts of God, acts of Buyer, acts of government or other civil or military authorities, priorities, strikes, or other labor disputes, fires, accidents, floods, epidemics, war, riot, embargoes, delays in transportation, lack of or inability to obtain raw materials, components, labor, fuel or supplies, or other circumstances beyond Seller's reasonable control ("Force Majeure Event"). In the event of the occurrence of a Force Majeure Event, Seller's time for performance shall be extended by a period of time equal to the time lost because of any delays caused by reasons of a Force Majeure Event. If the delay lasts more than ninety (90) days, the parties shall immediately consult with one another for the purpose of agreeing upon the basis for which Seller shall resume production at the end of the delay. If the parties do not agree upon a solution of the problems involved, including adjustments of the purchase price, within one hundred and fifty (150) days from the beginning of the delay, then either party may, by written notice, cancel the portion of the order which is delayed and in such event Buyer shall pay to Seller reasonable cancellation charges.

### **10. Limited Warranty**

- 10.1. Seller warrants that Products manufactured by it are, at the time of delivery to Buyer, free from defects in material and workmanship.
- 10.2. This warranty shall only apply if:
- (1) Written notice of the claimed defect is received by Seller within thirty (30) calendar days after discovery.
  - (2) Buyer delivers the defective products to Seller F.O.B destination, within thirty (30) days if requested by Seller.
  - (3) Seller, in its sole discretion, determines that the product is defective and:
    - (i) has not been subject to accident, abuse, misuse, or combat damage;
    - (ii) has been operated and maintained in accordance with the Seller's recommendations and/or specifications;
    - (iii) there has been no accident, abuse, misuse, or mismanagement of the system into which the product has been incorporated.
- 10.3. Seller's obligation under this warranty is limited to the replacement of, or at Seller's option, the return of the purchase price of any Product which is returned to Seller or its designated representative (at Buyer's expense) within one (1) year from the date of purchase and which, upon inspection by Seller, is found by Seller to be defective in material or workmanship.
- 10.4. Seller shall not be responsible for the cost of labor for removing any defective product or installing any replacement product.
- 10.5. This Warranty does not cover liability for loss, damage, or injury to third parties or to property of Buyer. Seller will have no liability for liquidated damage, or for collateral, consequential or special damages, including but not limited to loss of profits or loss of use, whether resulting from delays in delivery or performance.

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10.6. THIS WARRANTY CONTAINED HEREIN IS IN LIEU OF ALL OTHER WARRANTIES, GUARANTEES, OR PROMISES ARISING BY LAW OR OTHERWISE, AND WHETHER OR NOT ARISING IN CONTRACT OR TORT. BUYER, BY AGREEING TO PURCHASE FROM SELLER, WAIVES ANY AND ALL OTHER WARRANTIES, GUARANTEES, PROMISES, OR REPRESENTATIONS. THE WARRANTY OF SELLER MAY NOT BE MODIFIED IN ANY WAY EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY AN OFFICER OF SELLER. IN THE EVENT ANY PROVISION OF THIS WARRANTY IS HELD TO BE INEFFECTIVE, THE BALANCE SHALL REMAIN IN FULL FORCE AND EFFECT.

### **11. Patent Indemnification**

- 11.1. If any Product manufactured by Seller and furnished under this Agreement is to be made in accordance with drawings, samples or manufacturing specifications designated by Buyer, Buyer agrees to indemnify and hold Seller harmless from any and all damages, costs and expenses (including attorney's fees) relating to any claim arising from the design, distribution, manufacture or use of the Product or arising from a claim that such Product furnished to Buyer by Seller, or the use thereof, infringes any letters patent, foreign or domestic, and Buyer agrees at its own expense to undertake the defense of any suit against Seller brought upon such claim or claims.
- 11.2. In the event any Product to be furnished under this Agreement is not to be made in accordance with drawings, samples, or manufacturing specifications designated by Buyer, but rather is the design of Seller, and Product has not been modified by Buyer or its customers. Seller agrees to hold Buyer and its customers harmless against any damages awarded by a court of final jurisdiction in any suit or suits for the infringement of any United States letters patent by reason of the sale or use of such Product furnished by Seller under this Agreement, provided that Seller is notified promptly in writing of any claim or suit and is permitted to assume the full direction and control of the defense against such a claim and of any suit brought thereon and is given authority, information and assistance by Buyer (at Seller's expense) for such defense and authority to settle. In case any judgment rendered in such suit shall become final (beyond right of appeal), and where Buyer has complied with the foregoing provisions of this paragraph to Seller's satisfaction, Seller agrees to pay all damages and costs thereby awarded against Buyer.
- 11.3. If, subject to the above limitations, said Products, or any part thereof, should be finally held in suit to constitute an infringement, Seller shall have the right at its own expense either (i) to procure for Buyer rights to the patent, or (ii) to modify or replace said Product with a non-infringing Product accomplishing the same purposes as the replaced Product, or (iii) to withdraw such Product and refund to Buyer the purchase price thereof.
- 11.4. Seller shall have the right to settle any claim at its own expense (i) by procuring for Buyer the right to continue using said Product without liability for infringement of such patent, or (ii) by modifying or replacing said Product with a non-infringing Product accomplishing the same purposes as the replaced Product, or (iii) by removing said Product and refunding to Buyer the purchase price thereof.
- 11.5. Buyer's remedies for damages resulting from the infringement or claimed infringement of any patent by the Products are exclusively limited to the provisions of this paragraph.

### **12. Design Change and Material Review Board Authority**

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- 12.1. Buyer grants Seller design change authority for all "Class II" changes (minor changes; changes that have no impact on form, fit, function, reliability, weight – as defined in 14 CFR 21.93) for the Product that Seller has designed, qualified, built, and delivered to Buyer and/or end user. Seller will make available copies of all changes upon request.
- 12.2. Buyer grants Seller Material Review Board (MRB) authority for all minor non-conformances (as defined for all Product that Seller has designed, qualified, built, and delivered to Buyer and/or end user. This authority is limited to minor non-conformances. All nonconformances will be documented, filed and made available upon request in accordance with 14 CFR 21.125.

### **13. Assignment**

- 13.1. Buyer shall not assign this Agreement, or any rights therein, without the prior written consent of Seller.

### **14. Waiver**

- 14.1. The waiver by Seller of any term, provision, or condition hereof shall not constitute a waiver of any other term, provision, or condition hereof, nor shall such waiver be deemed a waiver of a subsequent breach of the same term or condition.

### **15. Other Laws**

- 15.1. Any clause required to be included in a contract of this type by any applicable law or administrative regulation having the effect of law shall be deemed to be incorporated herein. Seller represents that with respect to the production of the Products, it has fully complied with Section 12(A) of the Fair Labor Standards Act of 1938, as amended. Acceptance and execution of order accepted by reason of any law or administrative regulation having the effect of law, or in order to carry out the intent or purpose of any such law or regulation or to acquiesce in a request by a government agency or official thereof, or contingent upon the continuance in effect of such law, regulation or request, may be canceled by Seller upon the expiration or withdrawal of such law, regulation or request, provided, however, that Seller, at its option may complete such order.

### **16. Export**

- 16.1. All items are subject to U.S. Export Regulations. By acceptance of Seller's product, Buyer is accepting full responsibility for complying with applicable export and import control laws and regulations, including the United States Export Administration Regulation (EAR) and the United States International Traffic in Arms Regulations (ITAR), and will retain documentation evidencing such compliance. Buyer is aware that U.S. export law may impose restrictions on Buyer's use of the goods, services, or technical data, or on their transfer to third parties.

### **17. Severability**

- 17.1. If any provision or provisions of this Agreement, or parts thereof, shall be held to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

### **18. Governing Law and Limitation of Actions**

- 18.1. All matters relating to the interpretation and effect of this Agreement shall be governed by the laws of the State of California.

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18.2. No action for breach of this Agreement or any covenant or warranty arising therefrom shall be brought more than one (1) year after the cause of action accrued.

**19. Complete Agreement**

19.1. The complete agreement between Seller and Buyer is contained herein, and no additional or different terms or conditions stated by Buyer shall be binding upon Seller unless agreed to in writing. No course of dealing or usage of trade shall be relevant to supplement or explain any terms used in this Agreement.