

TERMS AND CONDITIONS OF PURCHASE





Contents

1. Purchase Orders.....	2
2. Scope of supply/service.....	2
3. Supply and service periods/deadlines.....	3
4. Delivery/Title and Risk of Loss/Packing.....	3
5. Force Majeure.....	4
6. Termination for Convenience.....	4
7. Termination for Default.....	5
8. Invoicing, payment, set-off.....	5
9. Warranty.....	6
10. Indemnity.....	6
11. Quality.....	6
12. Applicable Law and Jurisdiction.....	6
13. Compliance with Laws.....	7
14. Confidentiality.....	7
15. General.....	7

Except to the extent superseded by the terms and conditions of an agreement between AvAir, LLC or AvAir, EMEA Limited (individually and collectively referred to herein as “AvAir”) and the entity to which the Purchase Order is issued (“Seller”), these Terms and Conditions of Purchase apply to and form part of each Purchase Order issued by AvAir.

- The Purchase Order is AvAir’s offer to purchase from Seller the materials, parts, articles, products, and services (“Material”) described in the Purchase Order. Seller’s commencement of performance or acceptance of this offer in any manner shall constitute acceptance of this offer as written. Unless specifically agreed to in writing by AvAir’s authorized representative, AvAir objects to, and is not bound by, any additional or different terms or conditions and these Terms and Conditions of Purchase shall apply exclusively and shall constitute the entire agreement between AvAir and Seller relating to the subject matter of the Purchase Order. This offer is expressly limited to and made conditional upon Seller’s acceptance of the terms and conditions contained herein. Seller’s terms and conditions which deviate from AvAir’s Terms and Conditions of Purchase shall not be recognized by AvAir unless AvAir expressly consents to their validity in writing.



1. PURCHASE ORDERS

1. Purchase Orders shall be binding only if they are placed by AvAir in writing. Verbal agreements – including subsequent amendments and additions to these Terms and Conditions of Purchase must be confirmed in writing by AvAir for them to become valid.
2. Documents used by Seller in business dealings with AvAir shall indicate; purchase order number, place of receipt, full article text/item description, volumes, and volume units.

2. SCOPE OF SUPPLY/SERVICE

1. As part of the scope of supply of Material, Seller shall transfer to AvAir ownership of all technical documents pertaining to the Material in Seller's possession. Unless otherwise agreed by AvAir in writing:
 - a. Seller will not provide alternate or FAA-PMA Materials without prior written consent by AvAir;
 - b. Seller will deliver Materials with traceability to a Certificated Organization (FAA Part 121, 129, 135, 145, 91, certificated EASA Equivalents, or OEM) unless approved by AvAir in writing in advance of purchase, and include a completed Material Certification stating condition of Material at time sold to AvAir;
 - c. Seller will deliver all Materials with a non-incident statement from previous Certificated Organization and transfer of ownership documents (i.e. packing slip or invoice, and Material Certification with non-incident statement) from each entity having had ownership of said Material;
 - d. Seller will not deliver Material traceable to or operated by any military, government, or sanctioned source;
 - e. If the Material is in serviceable or overhauled condition, Seller will deliver the original dual release, FAA 8130-3, or EASA Form one and work order/teardown report; and
 - f. Seller shall deliver Material accompanied by documents meeting the AvAir Material Documentation and Certification Requirements located at <http://www.avair.aero/files/mdcr.pdf> or at such other Web address as AvAir may designate.
2. AvAir may, within the general scope of the Purchase Order and by written notice to Seller, change the scope of the supply of Material. If any change under this Clause causes an increase or decrease in the cost of or the time required for performance of Seller's obligations, an equitable adjustment to the price and/or the delivery schedule shall be agreed to in writing by AvAir and Seller.
3. AvAir shall have the right to inspect Material at Seller's facility and upon receipt at AvAir's facility. In the event the Material or the tender of delivery of the Material does not conform to the requirements of the Purchase Order, in addition to any other remedies available pursuant to the Purchase Order, at law or in equity, AvAir, at its sole option, may:
 - a. Hold nonconforming Material after inspection pending a determination to accept or reject any or all of such Material;
 - b. Accept the nonconforming Material at a reasonably reduced price; and/or
 - c. Reject the nonconforming Material and return the nonconforming Material to Seller at Seller's expense for prompt credit, replacement, or correction as AvAir may direct.



Title and risk of loss of nonconforming Material shall revert to Seller upon shipment by AvAir if the nonconforming Material is returned to Seller.

3. SUPPLY AND SERVICE PERIODS/DEADLINES

1. Time is of the essence in Seller's performance of the Purchase Order.
2. Delivery dates in the Purchase Order are the dates Material is to be delivered to the delivery point stated in the Purchase Order ("Delivery Date"). Any premium freight costs will be borne by the Seller unless approved in writing by AvAir's authorized representative in advance of shipment. Any schedule relief or adjustment must be in writing by AvAir's authorized representative. If Seller tenders Material for delivery more than ten (10) days before the applicable Delivery Date, AvAir may, in its absolute discretion, either: (i) return the Material to Seller and require redelivery on the Delivery Date, all at Seller's expense and risk; or (ii) retain the Material and make payment in accordance with the original delivery/payment schedule set forth in the Purchase Order, regardless of the actual Delivery Date
3. In addition to any other rights or remedies provided in the Purchase Order, at law or in equity, AvAir shall be entitled to the remedies stated below if Seller is late in meeting a Delivery Date, unless the Delivery Date was extended by written agreement of AvAir:
 - a. If AvAir elects to require an expedited method of shipment or delivery to a location different than that originally designated, Seller shall comply with AvAir's instructions and Seller shall be responsible to bear any increase in costs incurred because of the expedited transportation method.
 - b. AvAir may terminate the Purchase Order, in whole or in part, without further obligation or liability, except for the obligation to pay for Material already accepted by AvAir.
 - c. For delays in delivery of Material more than five (5) days after the Delivery Date, AvAir shall be entitled to deduct one percent (1%) from the late Material's purchase price. AvAir shall also be entitled to deduct an additional one percent (1%) from the late Material's purchase price, for each additional day of delay in delivery. The deduction for delays pursuant to this paragraph shall not exceed twenty percent (20%) of the purchase price of the late Material. In view of the difficulty in calculating the actual damages, AvAir shall be entitled to this deduction as liquidated damages, and not as a penalty. The Parties agree this amount is reasonable in the light of the anticipated or actual harm caused by delays in delivery and the difficulties of proof of damages.

4. DELIVERY/TITLE AND RISK OF LOSS/PACKING

1. Insofar as AvAir and Seller agree on the validity of one of the "Incoterms" of the International Chamber of Commerce (ICC) 2020 for the Purchase Order, the currently valid version thereof shall apply. They shall apply only insofar as they do not contradict the provisions of these Terms and Conditions of Purchase. Unless otherwise agreed on the face of the Purchase Order or otherwise in writing, the Material shall be delivered F.O.B. shipping point or EXW (Incoterms 2020) shipping point.
2. Title and risk of loss and damage to Material shall pass to AvAir immediately upon delivery to the point of delivery stated in the Purchase Order.
3. Material must be suitably packed using nonhazardous materials and prepared for shipment to secure lowest transportation rates, comply with carrier regulations, and prevent damage and deterioration. AvAir will not be



charged for packaging unless a packaging charge is expressly stated in the Purchase Order. Damage to any Material resulting from improper packaging will be charged to Seller. Separate packing sheets shall be provided for the hazardous and nonhazardous materials contained in the same shipment. Seller shall package goods and technical data subject to ITAR (International Traffic in Arms Regulations) separate from non-ITAR items. All Materials shipped on the same day via the same route shall be consolidated on one bill of lading, unless AvAir authorizes otherwise. Each container shall be marked to show the Purchase Order number, gross weight, dimensions, final destination, placards as required (such as “fragile”, “top”, and stacking limitations) and consecutively numbered with the number that the container represents in the entire shipment (e.g., box 1 of 2 boxes). The container and Purchase Order numbers shall be listed on the bill of lading. Material sold EXW or FCA (Incoterms 2020) shipping point or F.O.B. shipping point shall be forwarded collect and Seller shall not insure such shipments beyond the shipping point. Seller shall make no declaration concerning the value of the Material shipped, except where the tariff rating is subject to the released or declared value. In such case, Seller shall release or declare such value at the maximum value within the lowest rating. Each shipment shall include (i) an original and two (2) copies of a packing slip containing the Purchase Order number, Material description; the Material part number; the Material serial number (where applicable); and the quantity of Material and (ii) a certificate of conformance or other appropriate inspection certification in conformance with the Purchase Order. In addition, international shipments shall also include an original plus two (2) copies of a commercial invoice complying with the requirements of applicable import laws and supplying AvAir with all applicable international shipping documents, including bills of lading/air waybill, delivery receipts, declarations, manifests and certificates of origin and a clear mark or stamp on the Material and related packaging to indicate the country of manufacture, e.g., “Made in [country].”

5. FORCE MAJEURE

Neither AvAir nor Seller shall be liable for damages for any delay or failure to perform its obligations under the Purchase Order which are due to causes beyond its control, including without limitation, acts of God, acts of public enemies, acts of governments (whether legal or illegal), epidemics, quarantine restrictions, industrial disputes, lock-outs, strikes, work slow-downs, freight embargoes, or severe weather.

6. TERMINATION FOR CONVENIENCE

1. AvAir may, for any reason and at any time, terminate the Purchase Order, in whole or in part, by giving written notice to Seller. Upon receipt of termination notice, Seller shall promptly cease all terminated work under the Purchase Order, in accordance with the notice. Seller shall use best efforts to mitigate its costs and expenses resulting from termination. If Seller has specifically manufactured the Materials to fill the Purchase Order and is unable to make other commercially reasonable disposition of the Materials, AvAir shall reimburse Seller the reasonable cost of raw materials and work in process that could not reasonably be avoided by Seller’s best efforts. AvAir’s liability under this paragraph will not exceed the aggregated price specified in the Purchase Order.
2. Seller shall have no claim for compensation of any nature whatsoever, except as expressly provided above, and shall have no claim for damages or loss of profit, as a result of the termination of the Purchase Order in whole or in part.
3. In the event of a partial termination, the price, delivery schedule and other requirements relating to the remainder of the Purchase Order not terminated shall not be affected by such termination.



7. TERMINATION FOR DEFAULT

1. AvAir may, subject to Clause V (Force Majeure), by written notice of default to the Seller, terminate the Purchase Order, in whole or in part, if the Seller fails to:
 - a. Deliver the Material within the time specified in the Purchase Order or any extension authorized in writing by AvAir; or
 - b. Perform any of the other provisions of the Purchase Order.

AvAir's right to terminate the Purchase Order under subsections a. and b. above, may be exercised if the Seller does not cure such failure within 7 days (or more if authorized in writing by AvAir) after receipt of the notice from AvAir specifying the failure.

2. The Purchase Order will be subject to immediate termination without notice if Seller files a petition in bankruptcy for liquidation or reorganization; makes an assignment for the benefit of creditors; consents to the appointment of a receiver, trustee or other custodian for all or a substantial part of its property; is adjudicated bankrupt; fails to cause to be vacated, set aside or stayed within 30 days any court order appointing a receiver, trustee or other custodian for all or a substantial part of its property or ordering relief against it in any involuntary case of bankruptcy; or admits in writing its inability to pay its debts as they mature.
3. If AvAir terminates the Purchase Order in whole or in part, it may acquire, under the terms and in the manner AvAir considers appropriate, goods or services similar to those terminated, and the Seller will be liable to AvAir for any excess costs for those goods or services. However, the Seller shall continue the work not terminated, and AvAir shall pay the Purchase Order price for completed Materials delivered and accepted.
4. If, after termination, it is determined that the Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of AvAir pursuant to Clause VI.
5. The rights and remedies of AvAir in this Clause are in addition to any other rights and remedies provided by law or under the Purchase Order.

8. INVOICING, PAYMENT, SET-OFF

1. Seller shall not invoice for Material prior to delivering the Material.
2. Invoices shall separately show (i) applicable Purchase Order number, (ii) the price payable by AvAir to Seller as set out in the Purchase Order issued by AvAir, (iii) shipping point, (iv) Material part number, (v) delivery date, and (vi) quantity. If expressly stated in AvAir's Purchase Order as payable by AvAir, taxes, transport, packaging, insurance, and other fees and charges must be itemized in the invoice.
3. Unless expressly stated in the Purchase Order, Seller is responsible for all taxes, transport, packaging and insurance or other fees and charges in connection with the Material supplied by Seller.
4. Payment of Seller's invoices is subject to adjustment for any shortage, rejection, or breach by Seller.



9. WARRANTY

1. Seller warrants that Material shall conform with the specification, age, description, condition, history and part number, as applicable, set forth in the Purchase Order; that all repaired/overhauled Materials must have been repaired/overhauled per OEM specifications and be free from defects in materials and workmanship; that all Material is guaranteed repairable if as removed or guaranteed serviceable if repaired/overhauled; that to the extent the Material is designed by Seller, the Material shall be free from defects in design; and that Seller shall convey to AvAir good title to Material free and clear of any liens (collectively the "Warranty"). AvAir's inspection, acceptance or payment for the Material shall not constitute a waiver, exclusion, or modification of the Warranty. In addition to all other remedies which AvAir may have under the Purchase Order or applicable law, AvAir may, at Seller's expense, require Seller to promptly accomplish any repair or replacement which may be required to make the nonconforming Material conform to the Warranty, all without change to the price and without additional cost to AvAir. Removal and reinstallation costs and testing costs related to the replacement or repair of the nonconforming Material shall be paid by Seller. In the event AvAir supplies its customer with a replacement for nonconforming Material in order to expedite a repair or replacement, Seller shall provide AvAir with a credit for the full price of the Material supplied by AvAir. If AvAir returns Material pursuant to a warranty claim, the delivery shall be EXW AvAir's facility or its customer's facility (Incoterms 2020, as if AvAir were a seller). Delivery to AvAir of repaired or replacement Material shall be DDP (Incoterms 2020, as if Seller were a seller) to the destination designated by AvAir. Title and risk of loss for the replacement Material shall pass upon delivery of the replacement Material. Seller authorizes AvAir to offer the terms of this Warranty to AvAir's customers.

10. INDEMNITY

Seller agrees to defend, indemnify, and hold AvAir, its affiliates, directors, shareholders officers, agents, employees, successors and assigns harmless from and against any losses, damages, demands, and/or claims, including without limitation, all costs, expenses, and reasonable attorneys' fees incident thereto, arising out of or in any manner connected with the performance or breach of Seller's obligations under the Purchase Order or breach of a duty imposed by law, including Seller's negligence or strict liability in law. This Clause shall survive the cancellation, termination, or expiration of the Purchase Order.

11. QUALITY

Seller shall comply with the requirements specified in AvAir's Purchasing Quality Clauses, found at <http://www.avair.aero/files/pgc.pdf> and the requirements stated therein or at such other Web address as AvAir may designate. Seller agrees to inspect the Materials to ensure compliance and Seller shall advise AvAir of any nonconformance in the Material delivered to AvAir known or becoming known to Seller.

12. APPLICABLE LAW AND JURISDICTION

The Purchase Order and these Terms and Conditions of Purchase shall be governed by the laws of the State of Arizona, U.S.A. AvAir and Seller submit to the non-exclusive jurisdiction of any U.S. Federal or Arizona State court sitting in Phoenix, Arizona in any action or proceeding arising out of or relating to the Purchase Order, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such Arizona State court or, to the extent permitted by



law, in such Federal court, and hereby waives, and agrees not to assert, as a defense in any such action or proceeding, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that its property is exempt or immune from execution, that the suit, action or proceeding is brought in an inconvenient forum, or that the venue of the suit, action or proceeding is improper. AVAIR AND SELLER EACH, TO THE EXTENT IT MAY LEGALLY DO SO, HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, OR CAUSE OF ACTION ARISING OUT OF THE PURCHASE ORDER OR ANY DOCUMENT EXECUTED IN CONNECTION HEREWITH.

13. COMPLIANCE WITH LAWS

Seller shall comply with all applicable statutes and government rules, regulations and orders including without limitation, (i) all applicable country laws relating to anti-corruption or anti-bribery and (ii) export and import laws, regulations, decrees, orders, and policies of the United States Government and the government of any country in which the Seller conducts business pursuant to the Purchase Order, including but not limited to the Export Administration Regulations ("EAR") of the U.S. Department of Commerce, the International Traffic in Arms Regulations ("ITAR") of the U.S. Department of State.

14. CONFIDENTIALITY

Each party agrees and undertakes that it will keep confidential, and will not use for its own purposes nor without the prior written consent of the other party disclose to any third party, any information of a confidential nature (including specifications, descriptions, and all other technical or business information) which may become known to such party from the other unless such information is public knowledge (other than by breach of this Clause) or is required to be disclosed by a court of competent jurisdiction.

15. GENERAL

1. Seller may not assign all or any of its rights or obligations under the Purchase Order without the prior written consent of AvAir.
2. These terms and conditions shall inure to the benefit of and be binding upon the legal representatives, successors, and permitted assigns and transferees of AvAir and of Seller.
3. Failure by a party to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.
4. Should individual provisions of the conditions become entirely or partly invalid, the remaining provisions shall remain valid. The same shall apply for any corresponding contract.
5. The Purchase Order constitutes the entire agreement between Seller and AvAir and supersedes all communications, oral or written, between Seller and AvAir in relation to the subject matter of the Purchase Order. No agreement, modification, or understanding varying or extending the terms or conditions of the Purchase Order shall be binding without the prior written consent of AvAir.



Terms and Conditions of Purchase

6. The headings and subheadings set forth in these terms and conditions are for the convenience only; in no way define, limit, or describe the scope or intent of the Purchase Order and are to be given no legal effect.
7. Notices or communications pertaining to the Purchase Order may be sent by first class mail, by email, or by telecopy, a recognized overnight messenger, which shall be directed to the addresses of AvAir and Seller set forth on the front of the Purchase Order.