

# AERO GEAR TERMS & CONDITIONS OF PURCHASE

Revised: October 2014

**APPLICABILITY:** These terms and conditions of purchase (hereinafter “Terms and Conditions”) govern all Aero Gear Purchase Orders (hereinafter “PO”) issued are applicable to purchases made by Aero Gear, Inc., and its subsidiaries or affiliates (hereinafter “Buyer”) from its vendors and/or suppliers (hereinafter “Seller”).

**ACCEPTANCE AND ACKNOWLEDGEMENT:** A PO shall be deemed accepted by Seller’s acknowledging receipt of an order, by Seller’s commencement of services or work on the goods ordered, or by Seller’s shipment of the goods, whichever first occurs. Any acceptance of a PO is limited to acceptance of the express terms and conditions contained within these Terms and Conditions. Additional or different terms in Seller’s form or any attempt by Seller to vary in any degree any of the terms of these Terms and Conditions shall be deemed material and are objected to and rejected, but this shall not prevent the formation of a contract between Buyer and Seller unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods, and the order shall be deemed accepted by Seller without said additional or different terms.

## **GENERAL:**

1. No part of any order may be assigned without prior written approval of Buyer.
2. Buyer’s failure to insist on performance of any of these Terms and Conditions or exercise any right shall not be deemed a waiver unless in writing and signed by Buyer. A waiver on one occasion shall not thereafter operate as a waiver of any other terms, conditions or rights, whether of the same or similar type.
3. Buyer shall have the right to set off against any amounts which are due or may become due to Seller any amounts which Seller may owe to Buyer under any PO or otherwise.
4. The remedies provided herein shall be cumulative and in addition to any other remedies provided by law or in equity.
5. These Terms and Conditions and any documents referred to on the front hereof constitute the entire agreement between Buyer and Seller and may not be modified except by a written document signed by Buyer.

**PRICE:** The prices set forth on a PO are not subject to increase and include all applicable taxes and charges.

**DELIVERY:** If the Seller’s deliveries fail to meet the schedule per any associated PO, Seller will pay the difference between the shipping method specified in the PO and the premium transportation rates. If delivery of goods or services is not completed by the dates specified herein, Buyer may, without liability, terminate this order by notice effective when received by Seller as to goods not yet shipped or services not yet rendered and to purchase substitute goods or services elsewhere and charge Seller with any loss incurred. Buyer reserves the right to refuse delivery of goods which is made in advance of the delivery date specified herein and to return such goods to Seller at Seller’s expense. If Buyer accepts early delivery, invoice payment terms will be calculated from the date of scheduled delivery.

**CHANGES:** Buyer shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation upon written notice to Seller. If any such change causes an increase or decrease in the cost of or time required for the performance hereunder, an equitable adjustment shall be made in the price and/or delivery schedule. Any claim for adjustment by the Seller shall be deemed waived unless asserted in writing within 30 days from receipt by Seller of the change notice.

**PACKING:** No charges shall be allowed for boxing, crating, packaging, or any other handling unless such provisions are agreed to in writing. All goods must be packed appropriately to arrive at destination without damage or as otherwise noted on the PO.

**RECEIVING INSPECTION:** Neither receipt of nor payment for the goods or services ordered hereunder shall constitute acceptance. All goods will be received by Buyer subject to inspection, test, and rejection. If goods received are in non-conformance to specifications, drawings, or PO, at Buyer’s discretion goods may be (1) returned at Seller’s expense and all delivery charges paid by Buyer will be refunded by Seller, (2) corrected,

or (3) replaced at Seller's expense, including transportation both ways. This clause shall not affect any of the rights or liabilities of the parties under the WARRANTY clause. The aforesaid in no way relieves the Seller of its responsibility to inspect and verify that goods in every way meet PO, print, and specification requirements.

**INVOICES:** Seller will send a separate invoice and shipping notice for each shipment. Each invoice must show the Buyer PO number, part number(s), unit price(s), and quantities shipped. Delays in receiving invoice, errors or omissions on invoice, or lack of supporting documentation required by the terms of the order will be cause for withholding settlement without losing discount privilege. Payment terms shall be net 60 days unless otherwise acknowledged in writing by Buyer.

**BUYER'S PROPERTY:** Title to and the right to immediate possession of any property, including without limitation, patterns, tools, dies, equipment or material, furnished or paid for by Buyer shall remain in Buyer or Buyer's customer, as applicable. Seller shall, at its own expense, maintain such property in good condition and shall be responsible for all loss and damage thereto while in its possession and shall use the same only for the production of goods or the performance of services for Buyer. Seller shall maintain insurance on such property covering all risks in amounts equal to the replacement cost and shall indemnify Buyer or Buyer's customer, as applicable, for the full repair or replacement cost, at Buyer's option, of any lost or damaged property.

**WARRANTY:** Seller warrants that all goods delivered under any PO will be merchantable, free from defect in materials and workmanship, and will conform to applicable specifications and drawings. If Seller is responsible for design, Seller warrants that all goods delivered under the PO will be free from defective design and will be fit and sufficient for all purposes for which it is designed. Buyer's approval of designs furnished by Seller shall not relieve Seller of obligations under this warranty. Seller's warranties shall pass on to Buyer and its customers. Without prejudice to any other remedy that Buyer may have, Seller shall be responsible for, and bear the expense of, any necessary correction due to faulty workmanship or materials, or due to faulty design unless such design was supplied by Buyer. Seller further warrants that all aircraft materials and/or components shall be furnished in compliance with all applicable Federal Aviation regulations. All inspection records will be made available to Buyer upon request. Seller further warrants that all goods supplied or services performed shall be in accordance with all applicable federal, state, and local laws including environmental protection and occupational safety and health.

**DEFAULT:** (a) Buyer may, subject to provisions of paragraph (c) below, cancel in whole, or in part, any PO under any one of the following circumstances: (i) if Seller fails to make delivery of the goods or perform the services within the time specified herein or any agreed upon extension thereof; (ii) if Seller fails to perform any of the other provisions of the PO, or fails to make progress so as to endanger performance of the PO in accordance with its terms; (iii) if in either of these two circumstances, failure to cure within a period of ten (10) days (or such longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure, as indicated in (i) or (ii) above. (b) In the event Buyer cancels the PO in whole or part provided in paragraph (a) of this clause, Buyer may procure upon such terms and in such a manner as Buyer may deem appropriate, goods or services similar to those so canceled, and Seller shall be liable to Buyer for any extra costs for such similar goods or services provided that Seller shall continue performance of the PO to the extent not canceled under the provisions of this clause. (c) Except with respect to defaults of subcontractors, Seller shall not be liable for any excess costs if the failure to perform the PO arises from causes beyond the control and without the fault or negligence of the Seller. Such causes may include, but are not restricted to, acts of God or the public enemy, acts of Buyer, acts of Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of Seller. If the failure to perform is caused by the default of a subcontractor and if such default arises out of causes beyond the control of both Seller and subcontractor, and without the fault or negligence of either of them, Seller shall not be liable for any excess costs for failure to perform 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 schedule. (d) If the PO is canceled as provided in paragraph (a) of this clause, Buyer, in addition to any other rights provided in this clause, may require Seller to transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer, (i) any completed goods, and (ii) such partially completed goods and material, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter "manufacturing materials") as Seller has specifically produced or specifically acquired for the performance of such part of the PO as has been canceled, and Seller shall upon direction of Buyer, protect and preserve property in possession of Seller in which Buyer

has an interest. Payment for completed goods delivered to and accepted by Buyer shall be at the PO price. Payment for manufacturing materials delivered to and accepted by Buyer and for protection and preservation of property shall be in an amount agreed upon by Seller and Buyer. (e) If, after notice of cancellation of the PO under the provisions of this clause, it is determined for any reason that the Seller was not in default under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of cancellation had not been issued. (f) The rights and remedies of Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the PO (g) The performance of work under the PO may be terminated in whole, or from time to time in part, by Buyer, for its convenience.

**TERMINATION:** Buyer may terminate any PO or any part hereof for its sole convenience. Upon such termination, Seller shall immediately stop all work and cause any of its suppliers or subcontractors to cease work. Seller shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination, provided it submits proof of such costs within 30 days after notice of termination. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could have reasonably avoided.

Buyer may also terminate this order or any part hereof in the event of any default by Seller, including late deliveries, deliveries of defective or nonconforming goods or services, or failure to provide Buyer, upon request, with reasonable assurances of future performance. In the event of such termination, Buyer shall not be liable to Seller for any amount, and Seller shall be liable to Buyer for any and all direct, indirect, special, incidental and consequential damages sustained by reason of the default.

**INDEMNIFICATION:** Seller shall indemnify and hold harmless Buyer, its successors, assigns, customers, directors, officers, employees and agents against any and all liability, costs, expenses (including reasonable attorneys' fees), damages, claims, and causes of action arising out of the manufacture or sale of the goods or services ordered, by any breach of Seller's warranties with respect to such goods or services, by any negligent act or omission of Seller, or arising out of the performance of any work or other activity by Seller, its subcontractors and agents on Buyer's premises, and upon the tendering of any such suit or claim to Seller to defend the same at Seller's expense. The foregoing indemnification shall apply whether Seller or Buyer defends such suit or claim.

**LIMITATION ON LIABILITY:** Any action by Seller arising out of or related to any PO must be commenced within one year after the scheduled date of delivery of the goods or services ordered. Buyer's liability on any claim of any kind arising out of or related to a PO shall in no case exceed the purchase price of the goods or services which give rise to the claim.

**TAXES:** Seller agrees to pay any taxes imposed by law on account of the goods purchased hereunder.

**COMPLIANCE:** Seller agrees to comply with all applicable provisions of federal, state, local and foreign laws, orders, rules and regulations and warrants that all goods and services supplied hereunder will be produced or rendered in compliance with the same. Upon Buyer's request, Seller will provide written certification of compliance. If this order references a government contract number, Seller agrees to comply with all applicable provisions of said contract, and all such provisions are hereby incorporated herein by reference. A copy of the applicable provisions will be provided on Seller's request.

Aero Gear expects that all individuals and companies acting on its behalf, including Seller, will comply fully with its Code of Business Ethics and Conduct ("Code"). Aero Gear's Code sets forth the requirements and expectations for conducting the business of Aero Gear (or the "Company") consistent with applicable laws and regulations, including federal, state, local, and foreign, and the highest standards of business ethics, including Aero Gear's Core Values. The Code is designed to fulfill Aero Gear's responsibilities to comply fully with the both the spirit and letter of Federal Acquisition Regulation ("FAR") 52.203-13 Contractor Code of Business Ethics and Conduct. A link to Aero Gear's Code is provided here:

<http://www.aerogear.com/pdf/AG4011-CodeOfEthics.pdf>

**CERTIFICATION REGARDING RESPONSIBILITY MATTERS:** The Seller certifies, to the best of its knowledge and belief, that the Seller and/or any of its Principals:

- A. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
- B. Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;
- C. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated above; and
- D. Have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

If at any time during the performance of any work for Aero Gear the status of any of the above certifications changes, Seller agrees to immediately and affirmatively notify Buyer of said change in writing.

*All terms used in this certification have the same meaning as the terms defined in FAR 52.209-5.*

**RIGHTS AND RESERVATION:** Rights to all drawings, designs, information, tools, and other items supplied by Buyer are reserved and the same shall not be used or reproduced for any purpose whatsoever except for the performance of work under a PO.

**VENUE SELECTION/CHOICE OF LAW:** This agreement shall be deemed to have been made in the State of Connecticut, U.S.A. and shall be interpreted in accordance with the law of the State of Connecticut without regard to conflict of law principles. Seller consents to the exclusive jurisdiction of the state and federal courts of the state of Connecticut, U.S.A., for determination of any claim or controversy between the parties and arising out of or relating to these Terms and Conditions. In the event that Buyer shall engage an attorney or commence an action against Seller arising out of facts and circumstances related to these Terms and Conditions including, but not limited to, Seller's breach of any of its obligations hereunder, Buyer shall be entitled to recover its reasonable attorneys' fees, costs, and other disbursements incurred in connection therewith.

**CONFIDENTIALITY:** Seller shall keep confidential all drawings, specifications, technical information and data furnished by Buyer and shall not disclose such information except as required for the efficient performance of any PO. Seller shall return all such information and all copies thereof to Buyer upon Buyer's request. Seller shall not, without written consent of the Buyer, use Buyer's name or trademarks or in any manner publish the fact that Buyer has placed or intends to place an order.

**RIGHT OF ENTRY:** Buyer reserves the right to enter Seller's facilities and that of their sub tier suppliers to review parts, processes, tooling, equipment and related paperwork with adequate notice to Seller for review of contracted work. This right will be extended also to Buyer's customers, based upon requirements by said parties to review pertinent information.

**RATED ORDERS:** If a Defense Priority an Allocation System (DPAS) rating appears on this order, the Seller shall comply with all the requirements of 15 CFR Part 700. A person must accept or reject a rated order in writing or electronically within 15 working days after receipt of a DO rated order and within 10 working days after receipt of a DX rated order. If the order is rejected, the person must give reasons in writing (not electronically) for rejection.

**DOCUMENT RETENTION:** Suppliers will maintain all records generated as a result of any PO permanently, unless otherwise specified.