

# FIELD AVIATION GENERAL TERMS AND CONDITIONS FOR SUPPLIERS TO THE MISSISSAUGA FACILITY (FACI-GTC-003)



These General Terms and Conditions, together with the accompanying Field Aviation Purchase Order constitute the terms and conditions for the Agreement between Field Aviation and Seller, and acceptance is strictly limited to the terms and conditions contained herein. **Additional or differing terms or conditions proposed by Seller, whether in a quote, acceptance or delivery document, shall have no effect unless accepted in writing by Field Aviation. In particular, any limitation of liability or disclaimer of warranty by Seller is expressly rejected.** Return of the Field Aviation Purchase Order signed by Seller, or agreement by Seller to furnish the goods or services subject to these terms and conditions, or Seller's commencement of such performance or acceptance of payment shall constitute acceptance by Seller of this Agreement.

**1. Definitions:** The following terms shall have the described meaning:

"Buyer" shall mean Field Aviation.

"Agreement" shall mean the Field Aviation Purchase Order, these General Terms and Conditions, and any special conditions attached hereto or documents incorporated herein.

"Goods" or "Services" or "Product" shall mean those Goods or Services identified in this Agreement, which may be changed, from time to time by the mutual written agreement of the parties.

"Seller" shall mean the party identified as the Seller in this Agreement.

**2. Price:** (a) Unless otherwise specified, the prices established by this Agreement are firm fixed prices and will not exceed the prices stated on the Field Aviation Purchase Order. Should Seller be required to visually examine the Product for repair or overhaul services, then in such cases, the Seller shall provide amended pricing to Field Aviation, which shall be thereafter reflected in a revised and final Field Aviation Purchase Order. Seller warrants that any unit prices charged herein do not exceed the unit prices charged by Seller to other customers in substantially similar transactions.

(b) Prices appearing on the Field Aviation Purchase Order include all packaging and crating required for shipping. For Canadian Sellers, the prices include all applicable federal or provincial taxes which shall be segregated and charged separately if applicable. Non-Canadian Sellers shall charge applicable sales tax in all cases where Buyer has not specified sales tax exemption numbers on the Field Aviation Purchase Order.

**3. Schedule and Delivery; Notice of Delay:** (a) Seller shall strictly adhere to all Field Aviation Purchase Order schedules.

(b) Seller shall notify Buyer in writing immediately of any actual or potential delay in the performance of this Agreement. Such notice shall include a revised delivery schedule which shall not be binding unless and until accepted in writing by Buyer. Buyer's acceptance of Goods or Services delivered after the original delivery date shall not constitute a waiver of Buyer's rights and remedies hereunder.

**4. New Materials; Packaging and Shipping:** (a) All Goods to be delivered hereunder shall consist of materials which shall be free and clear of all liens, claims or encumbrances of every kind. (b) Seller shall prepare and package the Goods in accordance with applicable freight classification standards. (c) Unless otherwise provided on the Field Aviation Purchase Order, delivery shall be made to Buyer's unloading dock at the location specified in the said Purchase Order. All goods are to be shipped freight collect to carrier information indicated on the Purchase Order, FCA destination (INCOTERMS 2010), unless otherwise stated. Buyer shall carry its own insurance on all shipped Goods. Buyer reserves the right to reject C.O.D. shipments. Costs incurred by Buyer that result from Seller's failure to observe these shipping instructions will be billed to Seller. Each shipment under this Agreement shall be accompanied by (a) two (2) copies of the packing slips inside and outside the packaging and one signed certificate of conformance inside the packaging of each shipment which shall include the following information as applicable: Buyer's

name and address, Purchase Order number and item number, Seller's and Buyer's part number, quantity of items delivered, drawing and or specification number and issue (where applicable), shelf life expiry date, serial number, lot/batch number, manufacturing date and certified Seller program stamp and authorized signature; (b) two (2) copies of the bill of lading, express courier receipt or waybill with the Purchase Order number and part number(s); (c) two (2) copies of the commercial invoice (one inside and one outside the package) in addition to the copy sent to Buyer's accounts payable department; (d) two (2) copies of the destination country's properly completed customs invoice (where applicable). Buyer shall notify Seller of any discrepancies detected on shipping documents. Until Seller performs corrective action as required by Buyer, the Goods in question will be held by Buyer with payment delayed. If Seller fails to take prompt corrective action, Buyer shall have the right to return the Goods to the Seller at Seller's cost. Copies of the Seller's export documentation and waybill number shall be faxed by Seller to fax# (905) 676-9583.

**5. Inspection and Acceptance:** (a) Transfer of title from Seller to Buyer, shall occur after delivery by Seller to the FCA destination point and final acceptance by Buyer.

(b) Buyer's final acceptance of Goods or Services is subject to Buyer's final inspection within ninety (90) days after receipt at Buyer's facility or such other place as may be designated by Buyer, notwithstanding any payment or prior test or inspection. Seller shall provide all required material certifications.

(c) Seller and its suppliers shall establish and maintain a quality control and inspection program (where applicable) and furthermore Seller shall deliver the quality certification documents required and specified in the Field Aviation Purchase Order. Subject to applicable national security regulations, Buyer and Buyer's representatives shall have the right of access, on a non-interference basis, to any area of Seller's or Seller's supply chain sub-tier premises where any part of the work is being performed. Seller shall flow this requirement down to its sub-tier supply chain suppliers as a condition of this Agreement. Seller shall, without additional costs to Buyer, provide all reasonable in-plant accommodations, facilities, and assistance for the safety and convenience of the Buyer and the Buyer's representatives in the performance of their duties.

(d) Seller shall keep and maintain inspection, test and related records for a period of ten (10) years after delivery of Goods or Services, which records shall be available to Buyer or Buyer's representative upon request. Seller shall allow copies to be made and shall furnish all information required by the Buyer or Buyer's representative concerning the performance of this Agreement.

(e) Without limiting the generality of the foregoing, Seller agrees that, if a special production run is made, the first item produced is subject to first article acceptance prior to further fabrication. If the first item submitted fails to meet the inspection acceptance requirements, a new first item will be submitted for approval. This procedure will be continued until an acceptance first article has been approved. Acceptance of the first article shall not be considered acceptance of subsequent part production.

**6. Rejection and Supplier Notice of Non-Conformance and/or Changes:** (a) If Seller delivers nonconforming Goods or Services, Buyer may, at its option and Seller's expense, and within ninety (90) days: (i) return the Goods for refund or credit; (ii) require Seller to promptly correct or replace the Goods or Services; (iii) correct the nonconformance; or, (iv) require Seller to make delivery to Buyer as is with a reduction in the price as may be mutually agreed; (iv) obtain conforming Goods or Services from another source; or (v) terminate this Agreement, in whole or in part, for default. Buyer shall specify the reason for any return or rejection of nonconforming Goods or Services and/or shall describe the action taken. Seller shall be liable for any increase in costs, including procurement costs, attributable to Buyer's rejection of the nonconforming Goods or Services. Repaired items shall be tagged and conveyed with

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appropriate service documentation, meeting the repair criteria consistent with the quality requirements set out by Buyer in the Field Aviation Purchase Order. The Seller shall test the exchanged, or repaired items to their original specifications. The seller shall ship the product within ten (10) working days from receipt at the Seller's facility.

(b) In the event that Supplier identifies a non-conformance in its Products and/or Services, Supplier shall provide immediate notification to Buyer, in writing, of such non-conformance, and no later than fifteen (15) days after issuance of such non-conformance notice, Supplier shall confirm to Buyer the disposition and all corrective actions to address the non-conformance for the specific Products and/or Services.

(c) In addition, Supplier shall immediately notify Buyer of any changes within the Supplier's organization including but not limited to management changes, industry approvals, facilities and/or any changes to Supplier's Products and/or Services, including but not limited to Product specifications, processes and supply chain partners.

(d) Supplier shall flow down the requirements set forth in this Article 6 to all organizations, vendors and suppliers within its supply chain.

**7. Tooling:** (a) Title to any tooling or equipment provided to Seller by Buyer or paid for by Buyer shall remain with Buyer. All Buyer owned tooling, including any jugs, dies, fixtures, molds, patterns, special gauges, special test equipment or other items shall be stamped by the Seller and shall be stored separately when not in use. All parts made from any Buyer tooling shall be supplied only to Buyer. (b) Buyer shall at any time enter Seller's facility to inspect or remove Buyer owned tooling or equipment. (c) Seller shall protect and maintain all tooling and equipment owned by Buyer which is provided to Seller except for normal wear and tear.

**8. Invoices:** (a) In addition to being included with each shipment, invoices, in duplicate, shall be mailed to the attention of Buyer's Accounts Payable Department when Goods are shipped, but the time for payment shall not commence until Buyer's actual or scheduled receipt, whichever is later, of Goods at their destination or upon satisfactory completion of Services. (b) All invoices need to include a purchase order number, the part number, the description of goods, the unit price, the quantity of goods, the extended price, packing slip number, number of packages, articles or containers shipped. (c) Buyer shall promptly pay Seller the amount due within 60 days, except if identified elsewhere in the Agreement, unless the invoiced amount is in dispute. Buyer may withhold payment for shortages and/or non-conforming Goods or Services.

**9. Changes:** (a) Buyer may from time to time make changes regarding and without limitation : (i) technical requirements; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) quantities, delivery schedules or both. (b) should any such change cause an increase in the price or a decrease in the time required for its performance, Seller shall promptly notify Buyer thereof and assert its claim for equitable adjustment within thirty (30) days after the change is ordered. However, nothing in this provision shall excuse Seller from proceeding immediately with the directed change(s). Changes shall not be binding upon Buyer except when specifically confirmed in a written Field Aviation Purchase Order or other amendment document.

**10. Force Majeure:** The following events, inclusively, shall constitute force majeure under this Agreement: acts of God or of a public enemy, acts of Government, fires, floods, epidemics, quarantine restrictions, strikes or freight embargoes. In each case, the failure to perform must be entirely beyond the control and without the fault or negligence of the Seller. Seller shall give Buyer immediate notice of any event that Seller claims is a *Force Majeure* condition which would prevent Seller from performing its obligations hereunder, and of the cessation of the condition. Seller's notice under this Section shall include Seller's good faith estimate of the likely duration of the *Force*

*Majeure* condition. Notwithstanding the foregoing, Buyer shall have the right to cancel this Agreement or the corresponding Purchase Order, in whole or in part, if Seller is unable or fails to complete performance in accordance with the original delivery date or such later date as may be mutually agreed, in writing, by both parties. Any such cancellation shall be without cost to Buyer.

**11. Termination for Convenience:** (a) Buyer may, by notice in writing, direct Seller to terminate work under this Agreement, in whole or in part, at any time, and such termination shall not constitute default. In such event, Buyer shall have all rights and obligations accruing to it either at law or in equity, including Buyer's rights to title and possession of the Goods, Services and materials paid for. Buyer may take immediate possession of all work so performed upon notice of termination.

(b) Seller shall immediately stop work and limit costs incurred on the terminated portion of the work.

(c) If such termination is for the convenience of the Buyer, Buyer, after deducting any amount(s) previously paid, shall reimburse Seller for the actual, reasonable, substantiated and allowable costs (but not profit) for all work performed or in progress and accepted by Buyer, however, payment to Seller, taken together with any payments already made or owing to Seller under the Purchase Order, shall, in no event, exceed the total amount payable under the Purchase Order.

**12. Termination for Default:** (a) Buyer may at all times and upon written notice to that effect to Seller, terminate the Purchase Order, in whole or in part if: (i) Seller is in default of carrying out any of the terms and conditions of the Purchase Order (ii) if Seller is insolvent, bankrupt, or proceedings have been made by, or against, Seller pursuant to the Bankruptcy Act or similar statute, or: (iii) if an order is made or decision is taken for the winding up or liquidation of Seller. Seller shall not be entitled to payment for work not completed at the time of the notice sent pursuant to this article.

(b) If Buyer terminates a Purchase Order pursuant to the provisions of this article and in addition to any other rights or remedies provided to Buyer under the Purchase Order or at law, Buyer may procure, upon terms and in such manner as Buyer seems appropriate, supplies or services similar to those so terminated, and Seller shall be responsible for any excess costs for these supplies or services.

(c) Seller hereby grants to Buyer title to that portion of technology and tooling pertaining to the Goods which does not already belong to Buyer. In the event that Seller does not have title to such portion of technology and tooling, Seller shall automatically grant to Buyer a perpetual, unconditional and royalty-free license, with a right to sub-license or transfer, to exploit, for internal purposes anywhere in the world to such portion of technology and tooling which does not already belong to Buyer. It is agreed that Seller shall carry out all necessary actions related to such grant of title or license as requested by Buyer.

(d) Buyer may require Seller to transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer, any partially completed goods and raw material, parts, tools, dies, jigs, fixtures, plans, drawings, services, information and Agreement rights (collectively "Materials") as Seller has produced or acquired for the performance of this Agreement. Seller further agrees to protect and preserve property in the possession of Seller in which Buyer has an interest. Payment for completed Goods or Services delivered to and accepted by Buyer shall be at the Agreement price. Payment for unfinished Goods or Services, which have been delivered to and accepted by Buyer and for the protection and preservation of property, shall be at a price determined in the same manner as provided in the Termination for Convenience provision hereof. Buyer may withhold from Seller moneys otherwise due Seller for completed Goods, Services and/or Materials in such amounts as Buyer determines necessary to protect Buyer against loss due to outstanding liens or claims against said Goods, Services and Materials.

(e) Seller shall have no claim for damages whether incidental, indirect, consequential, punitive or otherwise, or for any compensation, loss of

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profit, allowance or otherwise, by reason directly or indirectly, arising out of any action taken or notice given by Buyer, under or pursuant to the provisions of this article, except and to the extent so provided for.

**13. Compliance with Law:** Any Purchase Order or disputes arising thereof, shall be governed by and interpreted in accordance with the internal laws of the Province of Ontario, Canada. The parties hereby irrevocably agree to submit any action, suit or proceeding arising out of, or in connection with this Purchase Order to the appropriate courts within the city of Toronto, Province of Ontario, Canada. The parties hereto expressly exclude the application of the United Nation Convention of the Sale of Goods to any Purchase Order herein.

**14. Proprietary Information and Rights:** (a) Seller shall sign a non-disclosure agreement with Buyer at any time upon Buyer's request.

(b) Seller shall not, during the performance of, or before or after completion of, the work outlined in this Purchase Order, divulge to anyone other than Seller's personnel having a need to know nor, except in the execution of this Purchase Order, make any use of any information or knowledge relating to: (i) this Purchase Order; or (ii) Buyer's business or that of its affiliates or suppliers, which shall have been obtained before, during or after the term of this Purchase Order, and which is not generally known; or (iii) any plans, drawings, specifications, technical, financial information or other information or data, patterns and tools supplied by Buyer and any information derived there from and methods and processes conceived or developed or first actually reduced to practice before, during or after the term of this Purchase Order; or (iv) any copyright, trademark, patent or any other intellectual property right resulting from this Purchase Order (hereinafter collectively referred to as "Proprietary Data"). The existence of any such copyright, trademark, patent or any other intellectual property right shall be promptly and fully disclosed to Buyer and shall remain confidential and the property of Buyer and shall be returned to Buyer upon its request. Seller agrees to use at least the same degree of care in maintaining confidentiality of such information or knowledge as it would normally use to protect its own proprietary or confidential information. (c) Any modification, improvement, addition or other made by Seller to Proprietary Data as agreed to or requested by Buyer shall be considered as Proprietary Data and title thereto shall vest in Buyer. (d) Buyer shall have title to any portion of the work prepared and developed by Seller, either alone or jointly with Buyer, which Buyer has paid for under this Purchase Order.

**15. Intellectual Property:** (a) Seller shall fully protect, indemnify and hold harmless Buyer and its customers from and against any and all claims, liability, losses, costs, damages and expenses (including without limitation, reasonable attorney fees and costs of settlement) of whatsoever cost and amount, based upon, or resulting from, infringement by Buyer, or its customers, or by Seller, of any patent, copyright, trademark or other intellectual property right arising out of the design, manufacture, sales, installation, use, service, maintenance, operation or enjoyment of the Goods or any feature, part, accessory or equipment thereof.

(b) In addition to and without restricting Seller's obligation pursuant to this article, in the event of the infringement of an intellectual property right, or if the use, lease, or sale of the Goods are enjoined, Seller shall, at its option and expense: (i) procure for Buyer and its customers the right under such intellectual property right to use the Goods; (ii) replace the Goods with goods of similar nature or quality; or (iii) modify the Goods to make same non-infringing.

(c) Seller shall not use any of Buyer's trade name or trademarks without first obtaining Buyer's prior written approval.

**16. Warranty:** Seller warrants:

(a) That all Goods delivered will be merchantable, suitable for the intended purposes and free from defects in design, material and workmanship for a period of one (1) year or Seller's standard warranty period (whichever is greater) following delivery and acceptance by Buyer and application to the intended use. Where incorporated into a product of Buyer to be delivered to its customer, the above warranty shall run from the date of delivery to the customer.

(b) The foregoing express warranties are in addition to any other warranty customarily made by Seller of its Goods or Services or implied by law. All warranties shall survive delivery of the Goods or performance of the Services and be fully enforceable thereafter. No modification or other change of this warranty shall be valid unless evidenced by Buyer's written agreement.

**17. Extension to Buyer's Customers:** All warranties furnished pursuant to this Agreement extend not only to Buyer but also to Buyer's customers, successors and any third party ultimately using any Goods or Services furnished hereunder.

**18. Safety:** (a) Seller warrants that at all times it shall remain in good standing with, and promptly pay when due, all amounts required by any board or authority having jurisdiction over the work or Seller, with respect to health and safety matters, workmen's compensation and other employee related matters, and shall, upon Buyer's request, provide a certificate of good standing from such board or authority. Failure by Seller to make its payments or to provide any certificate of good standing or equivalent document shall in addition to any other rights or remedies that Buyer may have in the circumstances, entitle Buyer to withhold from any payment due to Buyer such amounts as Seller may consider necessary to protect itself from any liability real or contingent which Buyer may have because of Seller's default or failure to observe the provisions of this article.

(b) The employees of Seller and Buyer shall remain employees of their respective companies for all purposes during the carrying out of activities under the Purchase Order. Each party shall carry workmen's compensation and employer's liability insurance with respect to its respective employees only.

(c) Each party shall be responsible to the other party and to third parties for losses or damages that it causes in connection with the performance of this Purchase Order.

**19. Indemnification:** Seller shall indemnify, hold harmless, and at Buyer's request, defend Buyer, its officers, directors, customers, agents and employees, against all claims, liabilities, damages, losses and expenses of any kind whatsoever, including legal fees and collection costs, arising out of or in any way connected with the Goods or Services provided under this Agreement, including, without limitation: (i) the breach of any warranty contained herein; (ii) any claim based on the death of or bodily injury to any person, destruction or damage to or loss of property, or contamination of the environment and any associated clean up costs; and (iii) any claim based on the negligence, omissions or willful misconduct of Seller or any of Seller's agents, subcontractors, employees or anyone acting on behalf of Seller.

**20. Release of Information:** Seller shall not publish any information developed under this Agreement, nor disclose, confirm, or deny any details about the existence or subject matter of this Agreement, or use Buyer's name in connection with Seller's sales promotion or publicity without prior written approval of the Buyer.

**21. Export Regulations- Controlled Goods:** (a) if any Goods delivered or disclosed to Buyer under this Agreement are subject to any Canadian export law or regulation, the Export Administration Regulations administered by the United States Department of Commerce, or any other export requirement or law of any country (collectively "Export Regulations"), then Buyer shall not export or re-

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export such Goods except in compliance with such Export Requirements. (b) Seller shall provide to Buyer a complete list of all controlled or dual use parts or components that Buyer will acquire and incorporate in the Goods, as per the requirements of any governmental agency having authority over such parts or components including, without limitation, the U.S. Department of Commerce, U.S. Department of State, U.S. Department of Defense, Public Works and Government Services of Canada and the Canadian Department of Foreign Affairs and International Trade. To this end, Seller shall complete and update the list with respect to any items that are identified as being controlled goods in accordance with ITAR and ECCN.

**22. Assignment and subcontracting:** Seller shall not assign or subcontract this Purchase Order without Buyer's written consent other than the subcontracting necessary for obtaining raw materials, parts, or processes for which the Seller is not equipped and which Seller does not make, or which are portions of Work normally subcontracted in the execution of similar contracts.

**23. Order of Precedence:** In the event of a conflict between these General Terms and Conditions and other portions of the Agreement, the order of precedence shall be: (a) any typed provisions on the face of the Field Aviation Purchase Order specifically modifying the terms of this Agreement; (b) these General Terms and Conditions; and, (c) any other provisions set forth in the Field Aviation Purchase Orders, including any terms and conditions stated or referenced therein.

**24. Survival:** All of the provisions of this Agreement shall survive the termination (whether for convenience or default), suspension or completion of this Agreement unless they are clearly intended to apply only during the term of this Agreement.

**25. Audit Rights:** Buyer reserves the right to audit Seller's records to assure compliance with the terms of this Agreement. Seller shall make available all data reasonably requested by Buyer.