

## Avion Systems Inc

### GENERAL TERMS AND CONDITIONS OF SALE

#### 1. Definitions and Interpretations -

- 1.1. In these General Terms and Conditions of Sale, the following terms will have the meanings given them below, unless the context requires otherwise:
  - 1.1.1. "**Business Day**" means any day other than Saturday and Sunday or public holidays at the country of location of the Buyer / country of delivery of the Goods.
  - 1.1.2. "**Buyer**" means the person or entity, as the case may be, who accepts a quotation or offer of the Seller (as defined below) for the sale of Goods and/or provision of Services or whose order for the Goods and/or Services is accepted by the Seller.
  - 1.1.3. "**Goods**" means the goods and relevant documentation thereof which the Seller may supply in accordance with these General Terms and Conditions of Sale, whether such goods are new, refurbished, repaired or used, including but not limited to, products or parts which are the subject of any Services Seller may supply to Buyer in accordance with these General Terms and Conditions of Sale.
  - 1.1.4. "**Incoterms**" means the international rules for the interpretation of trade terms of the International Chamber of Commerce. Unless the context otherwise requires, any term of expression which is defined by the provisions of Incoterms shall have the same meaning in these General Terms and Conditions of Sale, however in the event of conflict between the provisions of Incoterms and the terms of these General Terms and Conditions of Sale, the latter shall prevail.
  - 1.1.5. "**Manufacturer**" – with respect to new Goods - means the original manufacturer of the Goods, and with respect to repaired or refurbished Goods - means the shop (repair station) in which such Goods were repaired or refurbished, as the case may be. For the avoidance of doubts, it being clear that Goods also include products or parts with respect to which Seller may provide Services hereunder.
  - 1.1.6. "**Seller**" means Avion Systems Inc., its affiliates or anyone on its behalf including distributors and subcontractors.
  - 1.1.7. "**Services**" – means services which the Seller may provide in accordance these General Terms and Conditions of Sale, in respect of a specific product or part, whether such product or part was originally supplied by Seller or not, including but not limited to, repair, overhaul and/or warranty services.
- 1.2. The headings in these General Terms and Conditions of Sale are for convenience only and shall not affect their Interpretation.

2. **Applicability** – These General Terms and Conditions of Sale shall be deemed part of any contract or order for the supply of Goods and/or Services between Seller and Buyer. The deliveries, performance, proposals and offers made by the Seller are subject to these General Terms and Conditions of Sale. These General Terms and Conditions of Sale will also apply to any subsequent orders in the case of ongoing business relations, even if they are not explicitly agreed upon again. Neither Buyer's conditions of purchase, its purchase order terms, nor any of Buyer's other terms or conditions shall apply unless specifically agreed to by Seller in advance and in writing. Deviations from these General Terms and Conditions of Sale shall apply only upon and to the extent of any explicit, written agreement by the Seller. The terms herein shall in all events supersede and control the sale of Goods and/or the provision of Services by Seller.

### **3. Orders and Specifications -**

- 3.1. No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by an authorized representative of the Seller.
- 3.2. The specifications for the Goods and/or scope of Services to be provided shall be those set out in the Seller's written acceptance or confirmation of the order.
- 3.3. Illustrations, photographs or descriptions whether in catalogues, brochure, offers or other documents issued by the Seller are intended as a guide only and the contents shall not be binding on the Seller

### **4. Pricing and Delivery –**

- 4.1. The price quoted in a specific quote issued to the Buyer shall be valid for 30 days only or such other time as the Seller may specify in writing.
- 4.2. Prices appearing on this web site or any other Seller web site shall not obligate Seller and/or any service provider and/or Manufacturer and are for information purposes only.
- 4.3. The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods and/or Services to reflect any increase in the costs of the Seller which is due to any factor which is beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation or alteration of duties, any change in delivery dates, quantities or specifications for the Goods and/or Services which is requested by Buyer, or any delay caused by instructions of the Buyer).
- 4.4. Unless otherwise stated, prices include the cost of standard packaging.
- 4.5. Delivery is considered to be EX WORKS Seller in accordance with Incoterms 2000 unless stated otherwise in any Seller proposal.
- 4.6. The price of the Goods and/or the Services is exclusive of any applicable Value Added Tax, sales or taxes of a similar nature which are imposed or charged by any competent fiscal authority is respect of the Goods and/or the Services, as well as of any shipping charges, duties, imposts or other charges which the Buyer shall be solely liable to pay. If Seller has paid any charge on behalf of the Buyer, the Buyer shall reimburse the Seller within no later than 10 Business Days from Seller's request.
- 4.7. Unless otherwise stated, delivery will take place at the warehouse of the Seller at the time Goods are released to the transport company specified by Buyer. If the Buyer fails to take delivery of the Goods or any part thereof on the specified date and/or fails to provide instructions, documents, licenses, consents or authorizations required to enable the Goods to be delivered on that date, the Seller shall be entitled to store or arrange for the storage of the Goods and then delivery shall be deemed to have taken place and the Buyer shall pay the Seller all costs and expenses, including but not limited to, storage charges, incurred by the Seller or arising out of such failure. The Seller shall not be liable for any costs and/or expenses incurred for whatever reason after delivery of the Goods is deemed to have taken place.

### **5. Title and Risk –**

- 5.1. Seller will retain ownership of Goods and/or Services sold until Seller has received payment in full therefore from Buyer, including payment of any applicable interest as well as costs and expenses incurred by the Seller for which the Buyer is liable pursuant to the provisions of the General Terms and Conditions of Sale.
- 5.2. The Buyer shall undertake all necessary measures to safeguard the retention of title. The Buyer shall not mortgage and/or offer the Goods as collateral to third parties or convey their property as a security prior to payment in full.
- 5.3. Buyer also grants a purchase money security interest in the Goods and/or Services to Seller and Seller may execute and file financing statement(s) to record its security interest.
- 5.4. Risk of loss or damage to the Goods shall pass from Seller to Buyer upon delivery of the Goods to the transport company or deemed delivery, as the case may be, in accordance with Art. 4.7 above.
- 5.5. The Buyer shall be entitled, subject to the provisions of these General Terms and Conditions of Sale, including but not limited to, Section 11 below, to resell the Goods in the ordinary course of its business. In the event of the Buyer reselling the Goods prior to making full payment to Seller, Buyer's claims arising from or in connection with such resale of Goods, subject to retention of title, shall be deemed assigned to the Seller to the extent corresponding to the invoiced price for the Goods. Such claims shall serve as a security to the same extent as the Goods subject to retention of title. It is hereby clarified that the Buyer shall be entitled and authorized to resell the Goods, only if it is warranted that the claims arising there from and inuring to its benefit pass to Seller.

**6. Delivery times –**

Delivery times indicated are approximate unless specifically agreed to in writing by Seller. Seller shall not be responsible for consequences of delays in delivery, including lack of notification thereof.

**7. Payment –**

- 7.1. Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall invoice the Buyer for the net sum due on or at any time after delivery of the Goods and/or Services as provided in section 4.6 above.
- 7.2. All payments shall be made to the Seller in the currency of the price stated in the invoice (according to the currency stated in the order acceptance/confirmation), without offset or deduction, within 14 days after date of invoice or as otherwise agreed to in writing at the time of order acceptance/confirmation.
- 7.3. After expiry of the agreed upon payment terms, interest is due based on the US Prime Rate as published in the Wall Street Journal, increased by 5%, without derogating from any other rights and remedies of Seller. Costs associated with the establishment of a Letter of Credit, including any bank charges shall be on the account of the Buyer and may not be deducted from the invoiced amount. Buyer agrees to pay all costs of collection, including reasonable attorneys' fees, if amounts owing to Seller are collected by or through an attorney at law.
- 7.4. The Seller is not obliged to accept order from any customer or buyer who has not supplied the Seller with references satisfactory to the Seller. If at any time the Seller is not satisfied as to the creditworthiness of the Buyer, it may give notice in writing to the Buyer that no further credit will be allowed to the Buyer, in which case the Buyer shall be required to give security deposits in respect of the Goods and/or Services already shipped and/or provided, as the case may be, and no further Goods and/or Services will be delivered to the Buyer other than against cash payments and notwithstanding any payment terms contained in the order acceptance/confirmation, all amounts owing by the Buyer to the Seller shall be immediately payable in cash.
- 7.5. Time is of the essence as to payment obligations of Buyer.

- 7. Acceptance** - Complaints, claims and losses regarding the Goods and/or Services or short-shipments are to be made within 10 Business Days after receipt of the Goods and/or provision of the Services, as the case may be. After this period, Goods and/or Services are considered accepted by the Buyer. Replacement, repair or reimbursement is subject to prior written consent of Seller.

- 8. Cancellation** - A purchase order placed by Buyer and confirmed by Seller cannot be cancelled by Buyer without Seller's written consent. Buyer is fully liable and shall indemnify the Seller for any applicable cancellation charges, including but not limited to, restocking fee, not to exceed the full sales price of the Goods and/or parts and/or Services ordered and in any event shall not be less than U.S\$250.

Without derogating from the above, in no case may Goods be returned without Seller's prior written permission. All such approved returns must be shipped with transportation charges prepaid.

**9. Limited Warranty –**

Buyer assumes full responsibility for selection of the Goods and/or Services, their application and use and results there from. The Goods and/or Services are sold AS-IS, without any undertaking or warranty of any kind of Seller. Goods are warranted only in accordance with the limited warranty of the Manufacturer of the Goods supplied and/or repair station, as the case may be, if any. Buyer acknowledges that the Seller is passing through to Buyer only the Manufacturer's warranty for the Goods, if any, and that Buyer shall look solely to the Manufacturer of the Goods for all warranty claims, defects and the like. Buyer hereby waives, releases and renounces all other warranties, obligations and liabilities of Seller and acknowledges that the SELLER MAKES NO WARRANTY EITHER EXPRESS OR IMPLIED AND MAKES NO WARRANTIES OF MERCHANTABILITY, RELIABILITY OR ACCURACY OR NON-BREACH OF INTELLECTUAL PROPERTY RIGHTS OR ANY WARRANTY OF FITNESS FOR PARTICULAR PURPOSE.

**10. Liability and Indemnity –**

- 10.1. In no event shall Seller be liable for, nor shall Buyer and/or any one on its behalf, recover any indirect, special, incidental or consequential losses, liabilities, expenses or damages, including but not limited to, loss of profit or revenues arising out of or in connection with the Goods and/or Services including the use thereof.
- 10.2. Notwithstanding anything to the contrary in the aforesaid, Buyer assumes all risk and liability whatsoever for any and all losses and/or liabilities and/or injuries (including death) and/or damages of any kind whatsoever to any person or property or otherwise resulting from or arising in connection with any regulatory violation, Buyer's possession, use, handling, storage, transportation and/or sale of the Goods, whether used alone or in conjunction with other products, or incorporated in an aircraft and/or that arise out of an aircraft accident, incident, or mishap occurring anywhere for whatever cause or reason, and Buyer shall indemnify, hold harmless and defend Seller and/or its officers and/or directors and/or agents and/or employees and/or assigns and/or affiliates (collectively, "Seller's Indemnities"), harmless from and against any and all claims, losses, suits, liabilities, costs, expenses, damages, fines, penalties, governmental regulatory enforcement actions, and other amounts (including attorney's fees and expenses) arising out of or in connection with any of the foregoing.
- 10.3. Seller's sole and exclusive maximum liability for direct damages, whether based in contract, tort, or otherwise, shall not in any event exceed the purchase price actually paid by Buyer for the particular Goods and/or Services at issue.
- 10.4. It is hereby clarified that in the event of resale by the Buyer of any of the Goods to any third party, Buyer will make, in connection with any such resale, only those warranties and/or representations contained herein. Without derogating from the aforesaid, it is hereby clarified that the Seller shall have no liability whatsoever and Buyer shall be solely liable for any such third party and will indemnify, defend and hold Seller and Seller's Indemnities harmless from and against any claims, causes of action and judgments which arise out of or in connection with the resale of the Goods, including but not limited to, from any representations, warranties or agreement made or entered into by the Buyer other than those specifically contained herein. For the avoidance of doubts, it being clear that, the Seller's liability shall not, in any event, exceed Seller's liability towards the Buyer pursuant to these General Terms and Conditions of Sale.

- 11. Insurance** - Buyer shall procure and maintain such aircraft liability, aircraft hull, and comprehensive general liability insurance policies that Buyer may carry on its own business, and/or any aircraft owned, leased, chartered, maintained or managed by Buyer, naming Seller and Seller's Indemnities as additional insured or waiving subrogation rights against Seller and Seller's Indemnities. The failure or refusal of Buyer to adhere to the terms and conditions of this Article 11 in no way relieves the Buyer from its duties under these General Terms and Conditions of Sale and/or at any applicable law to hold harmless, indemnify, and defend the Seller and/or and Seller's Indemnities from all alleged liabilities arising out of an aircraft accident, incident or mishap as described elsewhere in these General Terms and Conditions of Sale.
- 12. Force Majeure** - The Seller shall not be liable to the Buyer and/or any one on its behalf or be deemed to be in breach of contract by reason of any delay in delivery or in performing, or any failure to perform any of the Seller's obligations in relation to the Goods and/or Services, if the delay or failure was due to any cause beyond the reasonable control of the Seller. Without derogating from the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control: natural disasters, acts of war and terrorism, acts of governmental authorities or courts, any delays caused by variations or amendments to any authorization required in order to place the Goods in the territory in which the Buyer is to import, use or sell the Goods, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or a third party).
- 13. Confidentiality** - All pictures, samples, documents and/or pricing submitted to Buyer and/or anyone on its behalf in any form whatsoever, including hardcopy or electronic medium, in connection with quotations or orders, will remain property of the Seller. Under no circumstances is it allowed to show, hand, copy or submit such information to third parties without express prior written consent by Seller.

**14. Changes** - Any change to these General Terms and Conditions of Sale must be in writing and issued/published by Seller. Buyer should consult Seller's web site prior to submitting any order to check if these General Terms and Conditions of Sale have been modified or updated.

**15. General -**

16.1. When placing an order, Buyer must advise the Seller in writing of any special, legal, administrative or regulatory requirements applying in the territory in which the Buyer is to import, use or sell the Goods as to composition, labeling and/or sale of the Goods and the Buyer must advise the Seller immediately of any change made in such requirements.

16.2. Buyer shall be deemed to have accepted these General Terms and Conditions of Sale. In any event, Buyer's acceptance of delivery of the Goods or any part thereof shall be deemed to constitute Buyer's consent to these General Terms and Condition of Sale and Buyer's waiver of all terms and conditioned proposed by Buyer in writing or otherwise or that are different from or additional to those set forth in these General Terms and Conditions of Sale.

16.3. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for payment of any duties thereon.

16.4. No claims for money due or which become due to Seller and/or any of its affiliates from Buyer and/or anyone acting on its behalf and/or its affiliates, shall be subject to deduction or setoff by Buyer by reason of any counterclaim arising out of or in connection with the transaction hereunder or any other transaction with Seller and/or any of its affiliates. Buyer shall have no right to withhold any amounts due to Seller for any reason whatsoever, except with the prior written consent of the Seller.

16.5. The Seller may assign these General Terms and Conditions of Sale and it rights and obligations hereunder whether in whole or in part and reserves the right to subcontract its obligations under these General Terms and Conditions of Sale or any part thereof.

These General Terms and Conditions of Sale is personal to Buyer, who shall not, without the prior written consent of the Seller assign, mortgage, charge or dispose of its rights hereunder, or subcontract any of its obligations hereunder.

16.6. If any part of any provision of these General Terms and Conditions of Sale shall be held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these General Terms and Conditions of Sale and the remainder of the provision in question shall not be affected and remain in full force and effect.

**16. Applicable Law and Jurisdiction**

17.1. These General Terms and Conditions of Sale shall be governed by, and construed in accordance with the laws of the State of Florida USA, without giving the effect to any conflict of laws rule that may require the application of the laws of another jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these General Terms and Conditions of Sale or to any Goods and/or Services supplied by the Seller.

17.2. Any and all matters and disputes arising under or in connection with these General Terms and Conditions of Sale and/or the Goods and/or the Services shall be subject to the exclusive jurisdiction of the competent courts of Ft. Lauderdale, Florida USA. Notwithstanding anything to the contrary in the aforesaid, the Seller reserves the right to initiate proceedings against the Buyer and/or anyone acting on its behalf in any other court of competent jurisdiction.