



AIR CRUISERS TERMS AND CONDITIONS OF PURCHASE

1. ACCEPTANCE: This order is for the purchase and sale of the goods and services described on the front side hereof, therein referred to as “the Article”, and is Buyer’s offer to Seller. It is subject to Seller’s acceptance only by Seller’s execution and return of the acknowledgment copy hereof without exception. No contract shall exist until Buyer’s receipt of such acknowledgment copy. In the absence of Buyer’s receipt of such acknowledgment, Buyer’s acceptance of the Articles shall constitute a contract on the terms and conditions hereof, and no others. Terms and conditions contained in any acknowledgment of this order which are different from or in addition to the terms and conditions of the order shall not be binding on Buyer, whether or not they would materially alter this order and Buyer hereby objects thereto.

2. PACKING: The Articles shall be packed and shipped by Seller in accordance with Buyer’s instructions and good commercial practice and so as to insure that no carnage shall result from weather and transportation, and the cost thereof shall be included in the price of the Articles.

3. CHARGES, TAXES AND DELIVERIES: Unless otherwise stated, all deliveries and prices are f.o.b. Buyer’s facility. Seller, unless otherwise directed, is required to follow the transportation routings specified on this order. Failure to do so may subject Seller to debit for any excess freight charges. Sales, excise or taxes imposed by governmental authority upon the sale to be paid by Buyer shall be separately stated on the invoice. Unless authorized in writing to the contrary by Buyer, Seller shall not manufacture, produce or deliver the Articles in advance of the schedule or otherwise anticipate Buyer’s requirements.

4. INSPECTION: Buyer, its customer and/or any regulatory agency shall have the right to inspect all Articles, raw materials, work in progress, and all applicable records at any time during normal business hours either at the manufacturing facilities or the storage facilities of Seller. Notwithstanding any prior payment or inspection by Buyer, all Articles shall be subject to final inspection and acceptance by Buyer at Buyer’s plant. Without limiting other rights Buyer may have under this Agreement or by law resulting by Seller’s delivery of Defective Articles, Articles not conforming to this order or otherwise defective may be rejected by Buyer and the unit price thereof debited against the invoice covering the shipment in which such projects were included. Articles rejected will be held at Seller’s risk and subject to Seller’s disposal at Seller’s expense, for a reasonable time and, if not disposed of by Seller will be sold or otherwise disposed of by Buyer for Seller’s account.

5. LANGUAGE: All documentation supplied by Seller shall be in the English language.

6. SELLER’S NOTICE OF DISCREPANCIES: It shall be Seller’s obligation to advise Buyer in the event Seller discovers potential or actual non-conformances to Buyer’s drawings, specifications, and standards prior to delivery, and/or subsequent to delivery of product under this contract. Notification shall be made in accordance with [QSP 610](#), Deviation/Concession of Purchased Material, and submitted on [Form No. 021490](#), Deviation/Concession Approval Form.

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7. SHELF LIFE: All age limited items must have $\frac{3}{4}$ shelf life remaining when received at Buyer's facility

8. WARRANTY PRODUCT: In addition to all warranties which may be prescribed by law or the schedule of this order, the Articles shall conform to specifications, drawings, and other description and shall be free from defects in materials and workmanship. Seller also warrants to the extent the Articles are not manufactured pursuant to detailed designs furnished by Buyer, that they will be free from defects in design. Such warranties, including warranties prescribed by law, shall run to Buyer, its successors, assigns, and customers, and to users of the Articles, for a period of thirty-six (36) months after delivery unless otherwise stated.

9. WARRANTY PRICE: Seller warrants that the prices charged Buyer, as indicated on the schedule of this order, are no higher than prices charged on orders placed by others for similar quantities on similar conditions during the sixty (60) day period prior to the execution hereof. In the event Seller breaches this warranty, the prices of the Articles shall be reduced accordingly.

10. PATENT INDEMNITY: Seller shall indemnify and hold Buyer, its successors or assigns, and its customers and users to the extent such customers and users are indemnified by the Buyer, from any claimed infringement of any United States patent, trademark or copyright with respect to the articles, except those manufactured to Buyer's detailed designs which are rendered infringing by Buyer's requirements for design or manufacture differing from Seller's normal practice, and Seller shall defend same at its expense, provided that Buyer promptly notifies Seller of such infringement.

11. TERMINATION:

(A) For Default.

- (1) Buyer may terminate this order or any part thereof by telegraphic or written notice of default to Seller under any of the following circumstances:
 - a. If Seller refused or fails to make deliveries or perform the services within the time specified or extension thereof.
 - b. If Seller fails to comply with other provisions of this order, or so fails to make progress as to endanger performance of this order in accordance with its terms, and does not cure any such failure within a period of ten (10) days for such longer period as Buyer may authorize by written notice after receipt of notice from Buyer specifying such failure.
 - c. If Seller becomes insolvent, or makes a general assignment for the benefit of creditors, or pursues any remedy under any law relating to relief for debtors, or in the event a receiver is appointed for Seller's property, and to the extent Buyer may lawfully exercise such right of termination.
- (2) In addition to all remedies available to Buyer under applicable law Buyer may in the event of such termination purchase or manufacture supplies and/or require Seller to transfer title and deliver to Buyer any and all property produced or procured by Seller under this order, and Seller shall be liable to Buyer for any excess cost to Buyer.

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- (B) Buyer may terminate this order in whole or in part, at any time for its convenience, by notice to Seller in writing. On receipt by Seller of such notice, Seller shall to the extent specified therein, stop work and the placement of subcontracts hereunder, terminate work under subcontracts outstanding hereunder, and take any necessary action to protect property in Seller's possession in which Buyer has or may acquire an interest. In such event, Buyer shall pay to Seller, without duplication the
- (1) Amounts due for Articles delivered and accepted or services completed in accordance herewith prior to the effective date of termination; plus
 - (2) Actual costs incurred by Seller if properly allocable or apportionable under recognized commercial accounting practices to the terminated portion of this order including valuables to subcontractors which are so allocable, and excluding any charges for interest or material or parts which may be delivered to other orders; plus
 - (3) A reasonable profit on work actually done by Seller prior to such termination; plus
 - (4) The reasonable costs of settlement; provided that the total settlement shall not exceed the order price, and provided further, that it appears that the Seller would have sustained a loss on the entire order had it been completed. No profit shall be included or allowed and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss. Such termination claim shall be submitted to Buyer within sixty (60) days after the effective date of the termination.
- (C) Any termination by Buyer, whether for default or otherwise, shall be without prejudice to any claims for damages of other rights of Buyer against Seller.
- (D) Buyer shall have the right to audit all element of any termination claim and Seller shall make available to Buyer on request all books, records, and papers relating thereto
- (E) Seller shall continue performance of this order to the extent not terminated. Any provisions for delivery or acceptance of the Articles in installments shall not make reversible the obligations of Seller.

12. STOP WORK: Seller shall stop work for a period of up to ninety (90) days in accordance with the terms of a written notice received from Buyer, and shall take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within said ninety (90) day period, Buyer shall either terminate or continue the work by written order to Seller in the event of a continuation, equitable adjustment shall be made to the price, delivery, schedule, or other provision affected by the work stoppage, provided the claim for equitable adjustment is made within thirty (30) days after said continuation.

13. CHANGES:

- (A) Buyer may at any time by written and/or telegraphic order to Seller signed by a representative of Buyer's Purchasing department and without notice to sureties if any, make changes in the quantities ordered or in the specifications or drawings or in the delivery schedule relating to the Articles, or may change or amend any other term of condition of this order.

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- (B) Seller shall proceed promptly to make such changes in accordance with the terms of such written and or telegraphic order. An equitable adjustment shall be made to any price, time of performance, or other provisions of this order required to be changed thereby and this order shall be amended in writing accordingly. Any claim for adjustment under this clause must be made in writing within thirty (30) days from the date of receipt by Seller of such change. In absence of such notification, Buyer shall not be obligated to consider Seller's claim for an equitable adjustment resulting from a change. Nothing in this clause shall excuse Seller from proceeding with the order as changed.
- (C) Except as may be directed or agreed to in writing by a representative of Buyer's Purchasing department, Seller shall not make any changes in any aspect of the work to be performed under this order, including, but not limited to design drawings, specifications, materials, production processes, quantity of Articles ordered and delivery schedules.

14. COMPLIANCE WITH LAWS:

- (A) Seller shall comply with all federal, state and local laws, executive regulations and orders. Seller shall certify that the Articles were produced in compliance with all applicable requirements of The Fair Labor Standards Act, including sections 6, 7 and 12 thereof, and the regulations and order of the US Dept. of Labor issued under section 14 thereof.
- (B) The Equal Employment Opportunity Clause in Section 202 of Executive Order 11246, as amended, the Affirmative Action Clauses in Section 402 of the Vietnam Era Veterans Readjustment Assistance Act and Section 503 of the Rehabilitation Act, and the implementing rules and regulations of the Office of Federal Contract Compliance Programs relative to equal employment opportunity are incorporated herein by specific reference.

15. INDEMNITY AND INSURANCE: Seller shall indemnify and hold Buyer and its employees harmless from any property damage, personal injuries, or death arising out of Seller's (or its subcontractors work or performance hereunder and shall procure and maintain insurance against such risks.)

16. SETOFF: Buyer may set off any amount due from Seller whether or not under this order, against any amount due Seller hereunder.

17. NON ASSIGNMENT: Seller shall not assign this order or any interest herein, including any payment due or to become due with respect thereto, without Buyer's prior written consent.

18. SUBCONTRACTING: If any Articles are to be made to Buyer's design, all subcontracting by Seller with respect thereto shall be subject to Buyer's prior written approval.

19. REQUIREMENTS FLOW DOWN: It shall be Seller's obligation to flow to sub-tier suppliers the applicable requirements in the purchasing documents, including key characteristics where required.

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20. ADVERTISING: Seller shall not advertise or publish the fact that the Buyer has placed this order without Buyer's prior written consent except as may be necessary to comply with a proper request for information from an authorized representative of the Government.

21. CONTROLLING LAW: This order and the performance of the parties hereunder shall be controlled and governed by the law of the state shown in Buyer's address on the front side hereof.

22. NOTICE OF LABOR DISPUTES: Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, Seller shall immediately give notice thereof, including all relevant information with respect thereto, to Buyer. Any subcontract, hereunder as to which a labor dispute may delay the timely performance of this order, shall provide that in the event its timely performance is delayed or threatened to be delayed by any actual or potential labor dispute, the subcontractor shall immediately notify Seller of all relevant information with respect to such dispute.

23. NON WAIVER: No waiver of any provision or failure to perform any provision of this order shall be effective unless consented to by Buyer in writing nor shall any such waiver constitute a waiver of any other provision or failure to perform.

24. MANDATORY CLAUSES REQUIRED UNDER GOVERNMENTAL CONTRACTS OR SUBCONTRACTS: If a government contract number is shown on the reverse side, clauses contained in the Armed Services Procurement Regulation, or other applicable federal law or regulation and which the government makes mandatory for a contractor under a government contract to include in its subcontracts hereunder, will apply to this order."

25. ENTIRE AGREEMENT AMENDMENT: Provisions contained herein constitute the entire agreement and supersede all previous communications, representations, either verbal or written, between the parties hereto with respect to the subject matter hereof. This agreement may not be changed, altered, supplemented or added to at any time except by supplemental written contract.

26. ARBITRATION: Any controversy or claim arising out of or relation to this order or the performance or breach thereof shall be settled by arbitration in the City of Wall, County of Monmouth, State of New Jersey in accordance with the rules and procedure then obtaining of the American Arbitration Association, and judgment on the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof.

27. RECORDS: All product records, including but not limited to certificate of conformity, test records, statistical records, process control records, shall be maintained for a minimum of 10 years. Records for DOT approved steel pressure vessels maintained for 24 years and composite pressure vessels for 15 years. Records shall be stored by any protection method that maintains the records as legible, readily identifiable, and retrievable for the retention period.

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28. ZODIAC AEROSPACE REQUIREMENTS: The seller shall be in compliance with Zodiac Aerospace [ZA-Q-1030](#), Requirements Applicable to Suppliers.