

# Aviatrix, Inc.

## Terms and Conditions of Sale

### **ACCEPTANCE OF TERMS AND CONDITIONS**

If Purchaser has issued a prior purchase order in connection with this transaction, the following provisions are not intended and shall not be construed as additional terms and conditions with respect thereto within the meaning of the Uniform Commercial Code. Aviatrix, Inc. (hereafter, "Aviatrix") has shipped goods to Purchaser hereunder subject to Purchaser's acceptance of, and agreement that the following provisions exclusively govern this transaction. By accepting goods shipped hereunder, Purchaser agrees to be bound by the following terms and conditions. If Purchaser is unwilling to agree to these terms and conditions then Purchaser's purchase order is hereby rejected and no agreement has been reached with respect to this transaction, and Purchaser is hereby instructed to refuse the shipment and return the goods freight collect.

### **QUOTATIONS**

Quotations are only valid in writing and for 30 days from the date of the quotation unless otherwise stated in the quotation. All quotations by Aviatrix are subject to change or withdrawal without prior notice to Purchaser unless otherwise specifically stated in the quotation. Aviatrix shall have no obligation to sell or deliver Products or Services covered by Aviatrix's quotation unless and until Aviatrix issues a Sales Order or upon the shipment of Products or commencement of Services by Aviatrix.

### **PRICE**

Prices are in U.S. Dollars. Unless otherwise specified, price includes packaging and crating charges, and transportation to the specified FOB point. Purchaser will pay any additional transportation charges. Prices do not include federal, state or local sales, use, excise or similar taxes or assessments or import duties applicable to the sale, production, transportation or use of goods sold. Any such tax or duties shall be separately itemized on Aviatrix's invoice and paid by Purchaser or in lieu thereof, the Purchaser shall furnish Aviatrix a valid Tax Exemption Certificate. In the event Aviatrix is required to pay any such tax or assessments, the Purchaser shall reimburse Aviatrix upon demand. Aviatrix shall be under no obligation to contest the validity of any such tax or assessment or to prosecute any claims for refunds or returns.

### **PAYMENTS**

Payment terms for credit based accounts are net 30 days from the date of each invoice issued. Other payment options are available (e.g. cash in advance, Credit Card, C.O.D.). Open Account terms are available only to customers with established accounts with Aviatrix. Purchaser agrees to pay a late payment charge at the rate of one and a half percent (1.5 %) per month, eighteen percent (18%) per annum, or the highest rate legally permissible, whichever is less, on each delinquent statement balance, commencing on the thirty-first (31st) day from invoice date. All credit based accounts are subject to stop shipment actions by Aviatrix should past due balances or balance in excess of credit limit situations arise. Aviatrix reserves the right at any time to alter or suspend credit, or to change credit terms provided herein, when in its sole opinion the financial condition of the Purchaser so warrants. Where

payments are made by wire transfer, Purchaser is responsible for any bank fees charged by intermediary banks.

## **SUBSTITUTES**

Aviatrix reserves the right to supply substitute parts in lieu of the part ordered when design changes, later specifications, conditions of supply or product improvement make such substitution necessary. Prices on substituted material may be adjusted accordingly.

## **WARRANTY**

**AVIATRIX WARRANTS ONLY THAT THE PRODUCTS OR SERVICES SOLD HEREUNDER (A) WILL CONFORM TO THE DESCRIPTION, IF ANY, ON THE FACE HEREOF, (B) WILL BE CONVEYED FREE AND CLEAR OF ANY LIEN, SECURITY INTEREST OR ENCUMBRANCE CREATED BY AVIATRIX OR ANY PARTY CLAIMING BY, THROUGH OR UNDER AVIATRIX, AND (C) WILL BE FREE FROM SUBSTANTIAL DEFECTS IN MATERIAL AND WORKMANSHIP UNDER NORMAL USE GIVEN PROPER INSTALLATION AND MAINTENANCE FOR A PERIOD OF ONE (1) MONTH FROM THE DATE OF DELIVERY TO THE CARRIER.**

**AVIATRIX SHALL HAVE THE RIGHT EITHER TO REPLACE OR REPAIR ANY DEFECTIVE PRODUCTS, TO REFUND THE PURCHASE PRICE UPON RETURN OF THE PRODUCTS OR TO GRANT A REASONABLE ALLOWANCE ON ACCOUNT OF SUCH DEFECTS, AND AVIATRIX'S LIABILITY AND PURCHASER'S EXCLUSIVE REMEDY FOR DEFECTIVE PRODUCTS SHALL BE LIMITED SOLELY TO REPLACEMENT, REPAIR, REFUND OR ALLOWANCE AS AVIATRIX MAY ELECT.**

**AVIATRIX SHALL BE GIVEN A REASONABLE OPPORTUNITY TO INVESTIGATE ALL CLAIMS AND NO PRODUCTS SHALL BE RETURNED TO AVIATRIX UNTIL AFTER INSPECTION AND APPROVAL BY AVIATRIX AND RECEIPT BY PURCHASER OF A RETURN MATERIAL AUTHORIZATION (RMA).**

## **DISCLAIMER OF FURTHER WARRANTIES**

EXCEPT AS SET FORTH ABOVE, AVIATRIX MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE) WITH RESPECT TO ITS PRODUCTS OR SERVICES.

AVIATRIX MAKES NO WARRANTY AND DISCLAIMS ALL LIABILITY IN CONTRACT OR IN TORT (DELICT), INCLUDING, WITHOUT LIMITATION, NEGLIGENCE AND STRICT TORT (DELICTUAL) LIABILITY, WITH RESPECT TO WORK PERFORMED BY THIRD PARTIES AT PURCHASER'S REQUEST AND WITH RESPECT TO ENGINES, ENGINE ACCESSORIES, BATTERIES, RADIOS, AND AVIONICS EXCEPT AVIATRIX ASSIGNS EACH MANUFACTURER'S WARRANTY TO PURCHASER TO THE EXTENT SUCH MANUFACTURER'S WARRANTY EXISTS AND IS ASSIGNABLE.

## **LIMITATION OF LIABILITY AND REMEDIES**

AVIATRIX SHALL NOT BE LIABLE, AND PURCHASER WAIVES ALL CLAIMS AGAINST AVIATRIX, FOR INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR COMMERCIAL LOSSES, WHETHER OR NOT BASED UPON AVIATRIX'S NEGLIGENCE OR BREACH OF WARRANTY OR STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION. AVIATRIX WILL NOT BE LIABLE TO PURCHASER

FOR ANY LOSS, DAMAGE, OR INJURY TO PERSONS OR PROPERTY RESULTING FROM THE HANDLING, STORAGE, TRANSPORTATION, RESALE, OR USE OF ITS PRODUCTS IN MANUFACTURING PROCESSES, OR IN COMBINATION WITH OTHER SUBSTANCES, OR OTHERWISE. IN NO EVENT WILL AVIATRIX'S LIABILITY UNDER THESE TERMS AND CONDITIONS OR IN CONNECTION WITH THE SALE OF PRODUCTS BY AVIATRIX EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCTS OR SERVICES AS TO WHICH THE CLAIM IS MADE.

## **DELIVERY AND PACKAGING**

Method of transportation desired should be designated by the purchaser. When no such designation is made, Aviatrix will ship by the method deemed most suitable to each instance. Aviatrix reserves the right to choose the carrier when an export license is required, in order to ensure compliance with applicable provisions of said license. Shipments are dispatched FCA, (Free Carrier INCOTERMS 2010), applicable Aviatrix premises. All parts are to be packaged and packed in accordance with standard international commercial practice for Ocean Export Shipment or Air Export Shipment as applicable.

If Purchaser orders goods from Aviatrix that are hazardous, Purchaser is responsible any additional packaging fees Aviatrix determines are required for safe delivery of the goods.

## **EXPORT/IMPORT REQUIREMENTS**

Export of products is subject to U.S. export regulations, including the International Traffic in Arms Regulations and the Export Administration Regulations. Licenses, permits, or other export authorizations may be required prior to the export of products. Aviatrix assumes responsibility for obtaining required U.S. government approvals for international customers. Purchasers are responsible for any export license fees. Purchasers are responsible for complying with all applicable export and import laws and regulations including restrictions against sanctioned countries and denied or designated parties, as well as obtaining the required export authorizations for their own international shipments. Violation of the export regulations can result in severe fines, penalties, imprisonment and loss of exporting privileges.

Where an Import License is required to import material into a foreign country, the Import License must be obtained by the purchaser and/or representative in that country.

## **ACCEPTANCE**

The Purchaser shall inspect all goods immediately upon receipt and shall within ten (10) calendar days give written notice to Aviatrix of any claim that said goods do not conform with the terms of this agreement. If the Purchaser shall fail to give such notice, the goods shall be deemed accepted, and to conform to the terms of this agreement.

## **PARTS RETURN**

Purchaser will have no right to return any Product without Aviatrix's prior written authorization. Any return authorized by Aviatrix must be made in accordance with Aviatrix's return policies then in effect and must be accompanied by a RMA from Aviatrix. Returned Parts are subject to a "Restock Fee" of 20% or more per item. Returned Special Order Parts and Repairs in Process are subject to a 100% Restock Fee. Purchaser will be responsible for all costs and expenses associated with any returns of Products and will bear the risk of loss or damage of such Products, unless Aviatrix agrees otherwise in writing or

determines that the Products do not conform to the applicable terms of sale. Aviatrix, in its sole discretion may reject any return of Product not approved by Aviatrix in accordance with this paragraph or otherwise not returned in accordance with Aviatrix's then current return policies.

## **EXCUSABLE DELAYS**

Aviatrix shall not be held in default for failure to deliver or for delay in delivery arising out of causes beyond its control and without its fault or negligence, including, but not limited to acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes; labor disputes; freight embargoes; and unusually severe weather. If the delay or failure to deliver is caused by such delay or failure of a subcontractor of Aviatrix and if such delay or failure arises out of causes beyond the control of both Aviatrix and the subcontractor, and without the fault or negligence of either of them, Aviatrix shall not be liable to Purchaser for any such delay unless the materials or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Aviatrix to meet the required delivery schedule. Any of the above excusable delays shall not terminate this agreement, and Aviatrix shall deliver the goods as promptly as practical thereafter.

## **PRODUCT USE**

Purchaser is solely responsible for determining whether any Product is fit for a particular purpose and suitable for Purchaser's method of application. Accordingly, and due to the nature and manner of use of Aviatrix's Products, Aviatrix is not responsible for the results or consequences of use, misuse or application of its Products by anyone.

## **OWNERSHIP OF INTELLECTUAL PROPERTY**

All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights and other information or Intellectual Property disclosed or otherwise provided to Purchaser by Aviatrix and all rights therein (collectively, "Intellectual Property") will remain the property of Aviatrix and will be kept confidential by Purchaser in accordance with these terms and conditions. Purchaser shall have no claim to, nor ownership interest in, any Intellectual Property and such information, in whatever form and any copies thereof, shall be promptly returned to Aviatrix upon written request from Aviatrix. Purchaser acknowledges that no license or rights of any sort are granted to Purchaser hereunder in respect of any Intellectual Property, other than the limited right to use the Aviatrix's proprietary Products purchased from Aviatrix.

## **INDEMNIFICATION**

Purchaser hereby releases and agrees to defend, indemnify and hold Aviatrix, its directors, officers, employees and agents harmless from and against any and all liabilities, claims, demands, suits, damages and losses (including, without limitation, all attorney's fees, costs and expenses in connection therewith or incident thereto) for deaths of or injuries to any persons whomsoever (including without limitation Purchaser's employees) and for loss of, damage to, destruction of, or delay in the delivery of any property whatsoever in any manner arising out of or in any way connected with the goods provided by Aviatrix hereunder regardless of the negligence, active or passive, of Aviatrix, its directors, officers, employees or agents. Purchaser will, at the request of Aviatrix, negotiate any claim or defend any action

or suit brought against Aviatrix or in which Aviatrix is joined as a party defendant based upon any matters for which Purchaser has released and indemnified Aviatrix hereunder.

## **SEVERABILITY**

If any provision herein shall be held to be unlawful or unenforceable, the remaining provisions herein shall remain in full force and effect.

## **REMEDIES**

The rights and remedies provided hereunder are cumulative and in addition to any other rights or remedies provided by law. No failure of Aviatrix to insist upon strict performance of these terms and conditions shall be a waiver of any right or remedy of Aviatrix. This agreement shall be governed and construed in accordance with the laws of Oregon.

## **ASSIGNMENT**

Purchaser may not assign this agreement, or any portions hereof without the express prior written consent of Aviatrix. Subject always to the foregoing, this agreement inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors and assigns of the parties hereto.

## **COMPLIANCE WITH STATUTES AND REGULATIONS**

In the performance of this contract, Aviatrix will comply with all applicable statutes, rules, regulations and orders of the United States and of any states or political subdivision thereof, including laws and regulations pertaining to labor, wages, hours and other conditions of employment, applicable price ceilings. The articles delivered hereunder shall be produced in accordance with the Fair Labor Standards Act and the provisions of Executive Orders and the rules and regulations of the President's Committee on Equal Employment Opportunity. Aviatrix will not discriminate against any employee or applicant for employment for reason of race, age, creed, color, or national origin.

## **GOVERNMENT CONTRACTS**

No contract or provision thereof made by the Purchaser with any other party, for any purpose whatever shall be binding upon Aviatrix or affect Aviatrix's contract with Purchaser unless said contract shall be first submitted to Aviatrix and such contract or any specific provisions thereof deemed applicable be first accepted and agreed to by Aviatrix in writing. Aviatrix's books and plants are not and will not at anytime be available for inspection by anyone other than a properly authorized official of a United States Government Department or Agency.

## **CHOICE OF LAW AND JURISDICTION**

This sale shall be interpreted under and governed by the laws of the State of Oregon. In the event of any dispute or claim arising out of this sale, the parties hereby agree that any lawsuit or other legal action shall be filed in the courts of general jurisdiction for the State of Oregon in the County of Multnomah or the Federal District Court of the District of Oregon, Portland Division.