



**EDAC AERO Inc.**  
275 Richard Street  
Newington, CT 06111

Dated 10/8/09

### **TERMS AND CONDITIONS OF SALE**

#### **1.) Subject Matter of Agreement**

Acceptance of Terms and Conditions. By ordering goods and/or services from Seller or accepting the goods or services covered by a quotation from Seller, Buyer agrees to and accepts these terms and conditions of sale as the only terms and conditions applying to the sale of the goods and/or services purchased by Buyer from Seller. For purposes of these terms and conditions, "Buyer" means EDAC (275 Richard St., Newington, CT 06111) as specified in Seller's quotation or acknowledgement. Any quotation accepted by Buyer or any acceptance by Seller of an order from Buyer is expressly limited to these Terms and Conditions of Sale. Any additional or different Terms or Conditions of Sale, including those contained in Buyer's purchase are hereby objected to. These Terms and Conditions of Sale may not be modified, except in writing by an authorized representative of the EDAC Buyer.

This agreement stipulates requirements for work independently performed by Supplier on behalf of EDAC on or off EDAC's company premises. The work to be performed under this agreement will be defined in individual purchase orders. These individual purchase orders shall additionally include, as a minimum requirement, the delivery schedule, i.e. intermediate and final due dates.

All acknowledgements must be responded to within 10 working days to the EDAC Buyer. If not acknowledged by the Supplier within this time frame, it will be considered acknowledged and be a valid contract.

#### **2.) Purchase Order Processing**

Supplier shall perform the work on its responsibility and with its own staff. It shall continuously update EDAC with progress reports on individual purchase orders. EDAC shall, at its discretion, request to be informed at any time of the status and volume of the work done.

Supplier agrees to work exclusively to the specifications and instructions agreed with EDAC. If uncertainties arise in the process, Supplier shall resolve these in consultation with EDAC. Supplier shall not commence work before these specifications and instructions have been clarified in all detail. If Supplier commences work prior to clarification as here specified, any additional costs incurred in the process shall be borne by Supplier. Clarification shall be recorded in writing and such records shall be signed by either party hereto and shall become part of this agreement and will be maintained by the Supplier unless otherwise directed.

**Change or Cancellation of Orders:** Seller may not cancel or modify any order without the written consent of Buyer.

No modification of this order, or to any item contained therein shall be binding on Purchaser unless made by a formal purchase order document signed by an authorized representative of the company.

EDAC shall have a right to request Supplier to incorporate changes in the work also after it has been started. Supplier agrees to implement requested changes whenever reasonable and feasible. If this involves additional cost or schedule slippages in departure from the original purchase order, Supplier shall accordingly advise EDAC before implementing the changes. If EDAC then insists on the changes it requested, it shall accept an appropriate delay in delivery and pay Supplier the additional cost incurred, as applicable.

Supplier shall have a right to terminate an individual purchase order under this Agreement on the grounds of unreasonable cost escalation in the performance of the work and changes in EDAC's specifications and instructions, only provided it is refused special recompense for such cost escalation. In the event of such termination, Supplier shall be entitled to claim no more than a pro rata recompense proportional to the status of the work at the time of termination.

Supplier shall take care to ensure its personnel strictly observe the safety and accident prevention rules prevailing on EDAC's company premises. It shall continuously alert its dedicated personnel to these rules. Supplier shall further take care to ensure its dedicated personnel complies with EDAC's disciplinary rules, does not interfere in labor relations at EDAC, and refrains from disturbing the peace in the plant.

**Assignment:** This order may not be assigned by either party without the prior written consent of the other party; provided, however, that Seller may assign this order to any corporation controlling, controlled by, or under common control with Seller, or to any successor to substantially all of the business of Seller. Normal subcontracting by Seller shall not constitute assignment with the meaning of this paragraph.

**Buyer – Furnished Property:** To the extent Seller is required to perform work on Buyer-Furnished Property, seller shall be responsible for obtaining written authorization prior to performing work.

**Buyer – Furnished Material:** Seller shall have limited liability for the replacement of Buyer – Furnished Material and value added by the seller, and Buyer shall provide material at a reasonable rate.

### 3.) **Packing**

Unless otherwise specified, standard commercial preservation packing, and packaging is acceptable. Material may be shipped in the original containers as received from EDAC when such containers are in usable condition.

### 4.) **Delivery Schedule**

The delivery dates agreed in the various purchase orders under this Agreement are fixed deadlines. They are actual dock dates for delivery and/or completion of requirements of the order. If Supplier defaults on deliveries, it shall reimburse EDAC for damages suffered through the delay.

If, during the performance of the work, circumstances arise suggesting that specified delivery dates cannot be met, Supplier shall advise EDAC immediately, and in writing, of such circumstances and their effects. Such notification shall not imply EDAC's approval of changes in schedule.

### 5.) **Shipping**

Shipping Point and Title Transfer: Delivery shall be Destination Buyers Plant with title (if applicable) and risk of loss remaining with Seller until delivery is made to EDAC or the service is completed. Seller must show proof of insurance to cover shipments.

The method of shipment shall be designated by the Buyer on the order. Where no such designation is made, the method of shipment shall be at the discretion of Seller with prior approval from buyer.

Quality Assurance: Standard commercial practice shall apply. However, if unique requirements such as FAA or U.S. Government specifications are required by the Buyer, mutual agreement shall be reached and specified in the Order.

Taxes: Prices are exclusive of sales, use, occupational, value-added, and other taxes and duties levied at any time by any Federal, state, municipal, or other government authority including, but not limited to the U.S., all of which will be added to the price and will be payable by the Buyer at time of final payment of the Order.

### 6.) **Acceptance**

Certificates of conformance are requested on the following items as applicable:

**Hardware:** Certification that the subject item(s) meet purchase order specifications.

**Processes:** Certification that parts were processed in accordance with purchase order requirements.

**Raw Material:** Certification of mill tests, physical, and chemical analysis of subject matter (as applicable).

**Fabricated Parts** (EDAC furnished material): Certification that the material used was with exception or substitution of that furnished by the Purchaser. All excess material is to be returned to the Purchaser.

All certifications must reflect the Purchase Order number, date, quantity, and applicable specification numbers including revision letters when applicable and a statement that all requirements of the Purchase Order have been adhered to and met unless noted on the Certificates of conformance.

**Material Safety Data Sheets (MSDS) (DEN 412610):** Material Safety Data Sheets are required for all materials supplied.

EDAC will accept the work upon completion of a purchase order or portions thereof. EDAC's representative, together with a Supplier's representative, shall agree on partial acceptance. Expected completion of a purchase order or portion thereof shall be reported to EDAC in a timely manner.

Acceptance of a completed purchase order or portion thereof shall be by written report. The report shall indicate such deficiencies as may have been revealed during the acceptance of the work. EDAC reserves all rights in respect to other potential defects, even if the report does not explicitly state so.

All non-conforming items shall be positively identified to prevent unauthorized use. Seller is to notify Purchaser for disposition of non-conforming material.

Upon acceptance, the risk for the work passes to EDAC.

If EDAC fails to declare acceptance in a timely fashion, Supplier shall be free to set a reasonable deadline for such declaration. The work shall be deemed accepted when this deadline has passed.

**7.) Inspection**

All goods and/or services purchased hereunder shall be subject to inspection and test by the Buyer and its Customer (which shall include without limitation, the government including its surveillance and/or regulator agencies), to the extent practicable at all times and places during the performance of this order and in any event, prior to final acceptance by the Buyer and its Customer (Ref. ILA FAR 2.246.2). Buyer may perform or witness inspection of goods or services at Supplier's facility when such action is necessary for assurance of product quality.

Government Source Inspection (GSI):

When GSI is indicated in the face of the purchase order, Government inspection is required prior to shipment from your plant. Upon receipt of this order, promptly notify the Government Representative who normally services your plant so the appropriate planning can be accomplished in accordance with applicable specifications. A copy of this Contract shall be furnished to the Government Representative upon receipt.

The Suppliers Inspection System shall conform to the requirements of **MIL-I 45208A** and is subject to review and approval at all times by EDAC.

The Suppliers Inspection System shall conform to the requirements of **ANSI/NCSL Z540-1-194** and **ISO 10012** and will be subject to review and approval at all times by EDAC.

**8.) Compensation**

In consideration of the work rendered, Supplier shall be paid the amount of compensation detailed in the annex, plus applicable legal value-added tax.

After acceptance of the work, Supplier shall send an invoice. Value-added tax shall be shown separately on the invoice, and the EDAC purchase order number shall be stated. Compensation shall be due and **payable within Net terms of the Purchase Order** from the date EDAC has received the invoice. The Anti-Kickback Act of February 1987 (FAR 52.203-7) (The Act) shall apply to this order.

**9.) Price Audit**

In the event that the purchase order serves to fulfill government contracts, the following requirements shall apply:

The individual contract is subject to a government price audit, and

The parties assume that the work ordered is marketable work within the meaning of section 4 of the applicable regulations of pricing legislation (VOPR 30/53). They undertake to permit the authorities commissioned to perform the price audit to ascertain that the price is a fair market price.

In the event that the auditing authority determines that the price is not a fair market price, the following shall apply:

Upon request by the cognizant pricing and price auditing authority, Supplier shall allow the authority to review the relevant documents (calculation, internal accounting).

Supplier agrees to acknowledge the decision made by these authorities with respect to the price on the basis of the purchase order documentation pursuant to the regulations of public pricing legislation (VOPR 30/53). With respect to the calculation regulations, Supplier undertakes to accept to be treated in the same way Supplier would be treated were there be a direct contractual relationship between Supplier and the contracting authority, i.e. Supplier agrees to accept the same conditions that apply to EDAC.

If the fair market price determined in the price audit is lower than the amount agreed in the audited order, Supplier agrees to reimburse EDAC the balance for settlement with the contracting authority.

**10.) Warranty**

Supplier warrants to EDAC and EDAC Customers, that at the time of delivery the goods called for by this order will be free of defects in material and workmanship.

Supplier shall be liable for the proper performance of the work under the purchase order. It specifically warrants that its work: complies with the latest state of the art, complies with the practices and technical regulations made known to Supplier in writing, exhibits all warranted characteristics, and is free from defects that cancel or impair its value or utility in normal or contractually agreed services.

If upon receipt, the work does not comply with the above requirements, EDAC may elect to request elimination of the deficiency or deficiencies free of charge. EDAC will allow Supplier a reasonable time to eliminate deficiencies in support of the product delivery schedule, indicating that it will not tolerate such elimination, and will not accept the work, after the lapse of that time. If Supplier defaults on the timely elimination of deficiencies, EDAC shall have a right to have them eliminated by a third party.

In all cases where deficiencies are attributable to Supplier, the latter shall not be allowed to terminate this Agreement on the grounds of excessive cost incurred in the elimination of deficiencies.

EDAC shall be entitled to remediation and shall be free to claim remediation, whenever an objective deficiency becomes apparent in its manufacture.

Apart from its right to elimination of deficiencies, EDAC shall optionally be entitled, upon the lapse of the time allowed for remediation, to revoke the contract (rescission) or reduce the compensation (diminution) if the deficiencies were not eliminated in a timely fashion. In the case of rescission or diminution, the right to elimination of deficiencies is excluded. Rescission is excluded if the deficiency no more than immaterially reduces the value or utility of the work.

If the deficiency in the work is caused by circumstances attributable to Supplier, EDAC may elect to claim damages for non-performance.

The warranty period shall be twelve months or forever, if processing flight hardware and will commence upon acceptance, also where partial deliveries are accepted, of the entire work agreed under and individual purchase order. The statute of limitation will be suspended until the work has been inspected for deficiencies or deficiencies have been eliminated. The statute of limitation will resume from the time the deficiencies are eliminated or Supplier refuses to continue their elimination.

**11.) Insurance**

Supplier shall cover the risks of its activities under this Agreement, also to include through adequate employer's liability insurance and provide EDAC with proof of such insurance.

**12.) Protective Rights**

The industrial property rights in connection with any and all products and inventions made within the framework of the work performed on behalf of EDAC shall be the exclusive property of EDAC. Supplier agrees to inform EDAC without delay of products and inventions eligible for such industrial-property-right protection.

Supplier shall transfer to EDAC the exclusive right to all work performed, documents, and products created under this Agreement, without there being any limitation in respect of space, time, and content. EDAC shall have the right to copy, transfer to video, sound, or data media, process, edit, modify, or translate, and exploit in either modified or original form such work, documents, and products without approval of Supplier.

The provisions outlined above shall equally apply to products or parts thereof arising from work for EDAC on, e.g., computer programs, flowcharts, schedules, source and machine code, system and program designs, system and program descriptions, as well as maintenance and application documentation generated in the execution of purchase orders under this Agreement.

Supplier shall itself not be entitled to exploit products or parts thereof created by it or make them available to third parties without prior written approval by EDAC.

Inventions made by Supplier's personnel during their work for EDAC shall be unconditionally claimed by Supplier in accordance with § 6 ArbEG (employee inventions legislation) and assigned to EDAC upon EDAC's request. When such inventions are assigned to EDAC, EDAC shall hold Supplier harmless of any claims made on Supplier by Supplier's personnel under the employee invention legislation.

Supplier warrants that the products developed by it under this Agreement are free from rights held by third parties. If it, nevertheless, should become apparent that the contractually agreed use of such products infringes upon the protective rights of third parties, Supplier shall modify the product such that infringement upon third parties' rights is eliminated and the continued use of the products by EDAC is assured. Further, Supplier shall hold EDAC harmless of infringement claims made by third parties.

**13.) Confidentiality**

Supplier shall, during as well as after completion of its work under this Agreement, refrain from disclosing to third parties any transactions that come to its notice in connection with its work for EDAC, and shall keep such information confidential.

Without prior written approval by EDAC, Supplier shall not:

Remove objects and business documents, drawings, records of any nature from EDAC's business locations

Copy and/or use at third parties, for their own purpose, documents prepared by or for EDAC.

Supplier agrees to communicate the substance of this Agreement and the individual purchase orders to third parties only when and to the extent necessary to fill a purchase order.

**14.) Property**

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Plans, drawings, and other documents made available to Supplier shall remain the property of EDAC and shall after their use, or at the latest upon completion of the work, be returned to EDAC upon Supplier's own initiative. EDAC has a title to the property rights to all scientific or technical documents created by Supplier in the performance of the work under this Agreement.

Title to any tooling and equipment furnished by EDAC shall remain in EDAC or the government. (Ref. FAR 542.245.17)

#### **15. Term of Agreement**

This Agreement shall become effective from the Purchase Order date, and continue for the duration of the contract.

The provisions stipulated in sections 12, 13, and 14 of this Agreement shall survive also upon termination of the contractual relationship.

This Facility will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, or National origin, Seller shall comply with executive order 11246, as amended, Sec. 502 of the Rehabilitation Act of 1973 and the Vietnam Era Readjustment Assistance Act of 1947.

We hereby certify that these goods were produced in compliance with all applicable requirements of Section 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of the Regulations and Orders of the United Department of Labor issued under Section 14 thereof.

#### **16. Export Licensing**

Products manufactured by Seller, as well as technical data related thereto, are subject to export licensing controls under the U.S. Export Administration Regulations and/or the U.S. International Traffic in Arms Regulations, which require licensing for and/or prohibit export or diversion of the Seller's products to certain countries. If Buyer is responsible for obtaining export approvals, Buyer warrants that it will not assist or participate in any export of Seller's products or related technical data without first obtaining the required export license and will not knowingly assist or participate in any such diversion or other violation of applicable U.S. laws and regulations. If Seller is responsible for obtaining export approvals, Buyer shall assist Seller, as necessary, in obtaining such approvals.

#### **17. Final Provisions**

In the event of conflict between the provisions of this Agreement and the provisions of the individual purchase order, the latter shall take precedence.

If so requested by EDAC, Supplier shall attend meetings concerning the subject mater of this Agreement.

To satisfy any of its claims, Supplier shall have no lien rights in the products created under this Agreement.

The involvement of subcontractors shall require the prior written approval of EDAC.

If any of the provisions of this Agreement are invalid, their omission shall not affect the remaining provisions. If a provision proves invalid, it shall be replaced with a new arrangement that maximally approximates the legal and economic action of the omitted provision.

Amendments and supplements to the Agreement shall be in writing.

The accompanying instructions for outside firms as well as EDAC's general purchase conditions form part of this Agreement and shall apply unless otherwise stipulated. Supplier's general terms and conditions shall be excluded.

**This Agreement shall be governed by and construed in accordance with the internal laws of the State of Connecticut (without regard to the conflict of law provisions thereof).**

**Governing Law:** This order shall be governed and construed in accordance with the law of the state in which Seller's plant is located, without reference to any applicable conflicts of law rules, and shall be subject to all applicable U.S. laws and regulations, including but not limited to, laws and regulations relating to exports, and all administrative acts of the U.S. government pursuant to such laws and regulations.

**Disputes:** In the event of any dispute over the terms of this Agreement, the parties will make an effort to resolve the matter before commencing any legal proceedings and to resolve such dispute or issue exclusively by the process identified in this Article. This Article shall remain effective in the event that a petition in bankruptcy is filed by or against a party to this Agreement, or if a party makes an assignment for the benefit of creditors, or if any other insolvency proceeding is commenced against a party.

As a condition precedent to the institution of legal proceedings, except in any case in which injunctive relief is necessary to avoid irreparable harm, any dispute which cannot be settled promptly by the parties shall, upon written notice, be referred to a senior management representative with authority to settle the matter from each of the parties, who will confer to attempt to resolve the matter. The party sending the first written notice (the "Initial Notice") shall (1) set forth in detail all of its claims or issues in dispute and (2) designate its representative. The other party shall have fifteen (15) business days to send a responsive notice (the "Responsive Notice") designating its senior management representatives and adding any other issues or claims for resolution not identified in the Initial Notice. The designated senior management representatives of the parties shall meet in an attempt to resolve the dispute within sixty

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(60) days after the date of the Initial Notice. In preparation for the meeting of the designated senior management representatives, either party may, at the time it sends the Initial Notice or the Responsive Notice, have the right to request an opportunity to present a limited adversarial statement not more than two hours in duration of its position to the designated senior management representative of the other party. Such statements shall be made at the place of business of the other party's designated senior management representative or at such other location as the parties may agree. Each party shall be afforded the opportunity to make such statement within forty-five (45) days after the date of the Initial Notice.

All offers, promises, conduct, documents, statements, whether oral or written, made or delivered in the course of such resolution efforts shall be confidential and shall be subject to provisions of Federal Rule of Evidence 408 and similar state rules and shall be inadmissible and not discoverable for any purpose in subsequent litigation; provided, however, that evidence existing independently of such resolution efforts that would have otherwise been admissible or discoverable shall not be rendered inadmissible or nondiscoverable as the result of its presentation or use during the resolution efforts.

If the designated senior management representatives of the parties to whom any dispute has been referred for resolution are unable to resolve such dispute within thirty (30) days after their initial meeting to resolve the dispute or such longer period of time as they may agree, the dispute shall be finally resolved by resort to such legal proceedings as may be available to the parties. The parties agree, however, to consider the use of alternative forms of dispute resolution, including mediation and arbitration.

Any actions, suits, or legal proceedings of any nature relating to this Agreement shall be initiated and maintained only in the Federal District Court for the District in which Seller's plant is located or, if such court does not have jurisdiction, in a state court located in the District in which Seller's plant is located. The court shall have exclusive jurisdiction over the matter and parties submit and subject themselves irrevocably to the personal jurisdiction of such courts in the state in which Seller's plant is located.

The parties may, by written mutual consent, agree to dates and times other than those set forth in this Article.