

AIRBUS HELICOPTERS CANADA LIMITED

PURCHASING TERMS AND CONDITIONS – REV “A”

TERMS AND CONDITIONS

1. General: (a) Any Purchase Order placed is subject only to the terms and conditions included in this document. Any reference to proposals from the Seller is only for the purpose of specifying basic information concerning price, the description of the item(s), quantities, terms of payment, and delivery and then only as such terms are consistent with the terms and conditions herein. (b) Any of Seller's Terms and Conditions which are in addition to or are inconsistent with these Terms and Conditions will be construed as proposals for addition to this order and will not be binding unless agreed to in writing by the Buyer. Commencement of performance by the seller in the absence of Buyer's agreement to the proposals will constitute Seller's acceptance of these Purchase Order Terms and Conditions.
2. Price: Seller shall furnish the supplies and services called for by AHCL Purchase Order at the price or prices stated in the Order; any increases or decreases in any stated price will only be reflected through an amendment to the Order. If this Order is placed on an open price basis and in absence of subsequent agreement, then the price to Buyer shall not be higher than Seller's lowest prevailing Price for the same or substantially similar supplies or serves of comparable quantity in effect on the date of the Order.
3. Assignment: Seller may not assign either its rights or obligations under any Order without the prior written consent of Buyer except the claims for monies due or to become due under such Order may be assigned by Seller provided that Seller shall supply Buyer promptly with two copies of any such assignment. Payment to an assignee of any such claim shall be subject to setoff or recoupment against any claim(s) which Buyer may have against Seller and a provision setting forth this right of the Buyer shall be included in each such assignment. Buyer reserves the right to make direct settlements and/or adjustments in price with Seller under the terms of the Order, notwithstanding any assignment of claims for monies due or to become due hereunder and without notice to the assignee.
4. Subcontracts: Except for supplies proprietary to Seller, none of the contemplated work to be performed hereunder may be subcontracted without Buyer's prior written consent and approval. However, Seller's obtaining Parts and materials normally purchased by Seller and required in fulfilling the Order shall not be construed as a subcontract.
5. Facilities; Special Tools and Equipment: The Seller represents that it has, or can readily procure without assistance of the Buyer or the Canadian or U.S. Governments, as the case may be, all facilities necessary for the time performance of the Purchase Order. Unless Section 6 is applicable to certain Seller acquired items, special tools and equipment (e.g. dies, patterns, jigs, molds, fixtures etc.) used in manufacture of the articles herein ordered shall be furnished by, and at the expenses of, the Seller and shall be kept in good condition for follow-on orders, and when necessary, shall be replaced by Seller without expense to Buyer.
6. Buyer's Property and Insurance: (a) All materials (e.g. raw stock components etc, special tools and equipment) furnished by Buyer to Seller in connection with the Order shall remain Buyer's Property in addition, all special tools and equipment either (i) identified as a reimbursable item in the Order, or (ii) specifically acquired for performance of this Order with the cost being fully amortized or otherwise recovered in the price of the supplies to be delivered hereunder, shall upon such payment become Buyer's property. All of Buyer's property shall be (i) used only in filling orders for Buyer, (ii) kept segregated and clearly marked as Buyer's property, (iii) maintained in good condition, normal wear and tear being accepted, and (iv) surrendered to Buyer upon demand. Seller shall not be responsible for replacing bailed materials satisfactorily accounted for in the manufacturing and assembly Process. (b) While Buyer-owned property of whatever kind is in Seller's possession or control, Seller shall be responsible for all loss or damage and shall at its expense, secure or maintain extended insurance coverage in an amount sufficient to cover replacement cost.
7. Inspection: All supplies and services ordered will be subject to final inspection and approval by Buyer after delivery, notwithstanding prior payment, it being expressly agreed that payment shall not constitute final acceptance. Buyer may reject and return any item which contains defective material or workmanship or otherwise does not conform to the Purchase Order, applicable drawings, specifications or samples.
8. Changes: (a) By written Change Order, Buyer may at any time unilaterally (i) suspend the work in whole or in part for a stated time period, and (ii) make changes in one or more of the following elements, designs, drawings or specifications, method of shipment or packaging; place or time of delivery, or quantities to be furnished; however, any acceleration in the delivery rate requires Seller's advanced consent. If such suspension or change causes an increase or decrease in the cost or the time required for furnishing the work (whether supplies or services), an equitable adjustment shall be made in the Purchase Order price, delivery schedule, or both. If the price and/or schedule adjustment is not included in the issued Change Order, no increase in price or delay in delivery will be allowed unless Seller asserts such a claim in writing within 30 days from the date of the Change Order to be followed as soon as practicable with a specification of the claim along with supporting data. Nothing contained in this Section shall relieve or excuse Seller from proceeding without delay in performing this Order as changed. (b) The Buyer's engineering, technical and other personnel may on occasion render assistance, exchange information, or advise to Seller's personnel concerning the supplies of services furnished hereunder. However, such assistance exchange, or advice shall not constitute either a change under this Section or a waiver of the Seller's existing obligations. In order to be valid and binding upon buyer any change, waiver, or amendment to any Purchase Order must be in writing and signed by an authorized representative of the Purchasing Department.
9. Termination: (a) For Cause: Buyer reserves the right to terminate any Order, or any part hereof, and to cancel all or any part of the undelivered portion of this order if Seller (i) fails to deliver the supplies or perform the services by the time specified in the Purchase Order, (ii) fails to deliver supplies or perform services that meet the required specifications, or otherwise breaches any of the other Terms of the Order, including the warranties or (iii) so fails to make progress in the work as to endanger performance. Buyer shall also have the right to terminate the Order or any part thereof, and cancel all or any part of the undelivered portion in the event of the happening of any of the following: Insolvency of Seller; filing of a voluntary Petition to have Seller declared bankrupt providing it is not vacated within thirty days of the date of such filing, or the execution by Seller of any assignment for the benefit of creditors. Buyer shall have no obligations to Seller in respect of this cancelled portion of the Order and Buyer's liability shall be limited to payment for the delivered portion of the Order at the rate specified on the face hereof (reflecting quantity prices as thou the Purchase Order had gone to full completion). If as a result of default in performance by the Seller, this order is terminated in whole or in part, and it is necessary to procure any of the specified supplies or services elsewhere, then Seller will be liable for any re-procurement charges which exceed the amount which would have been due to the Seller if it had satisfactorily completed this Order. These remedies shall be cumulative and additional to any other or further remedies provided in law or in equity. (b) For Convenience: Buyer may, for its convenience, terminate work under the Purchase Order in whole or in part at any time by giving notice to seller in writing. Seller shall be entitled to (I) reimbursement for its actual costs incurred up to and including the date of termination, such costs to be determined in accordance with recognized accounting principles, and (II) a reasonable profit on the work done prior to termination at a rate not exceeding the rate used in establishing the original purchase price; provided, however, if it appears Seller would have sustained a loss on the Order, no profit shall be allowed, and reimbursement of costs shall be adjusted to reflect the indicated rate of loss. In no event shall buyers obligations, as a consequence of the termination, exceed the Purchase Order price of the items terminated. At its election, buyers shall have the right to direct the disposition of any or all work in process, parts and materials included in the Sellers' reimbursed costs. Seller will comply with and be reimbursed for reasonable expenses incurred in effecting Buyer's direction. Prior to settlement of sellers termination claim, seller shall make available for inspection (I) all inventory included in the claim, and (II) all directly pertinent books, records, and documents relating to claimed costs. (c) If after the Order has been totally or partially terminated by a "for cause" notice and it is determined that Sellers failure is excused pursuant to Section 12 below then such notice shall be deemed to have been issued "for convenience" and the rights of the parties shall be governed by paragraph (b) above.
10. Patents: (a) Sellers agrees to save Buyer, its customers, and agents harmless from any loss, damage, or liability incurred on account of any alleged infringement of any patent with respect to all supplies furnished under any Purchase Order provided that such supplies are not manufactured pursuant to Buyer's design. Seller also agrees that it will at its own expense, defend any action, suit, or claim in which infringement is alleged provided Seller is dually notified to such suit. In the case of delivered item, or any part thereof, is helped to constitute an infringement and the use of the item, or any part thereof is enjoined, Seller shall, at its own expense either procure, for Buyer the right to continue using the item, or any art thereof, or replace the same with non-infringing, or in the event of the impossibility of the foregoing options grant the Buyer a credit for the purchase price of such item. Seller shall be liable to Buyer if any patent infringement or claim thereof is based upon the use of the item in combination with any materials where such infringement or claim thereof would not have occurred from the normal use for which the item was designed. (b) Where performance under the Purchase Order includes experimental, developmental, or research effort and such work is paid for in whole or in part by Buyer, Seller agrees to disclose to Buyer all confidential process, or know-how, or trade secrets resulting there from and, on request, to assign to Buyer each invention and property right resulting therefrom.

11. Warranties: Seller warrants that all supplies furnished under any Order will: (I) be free from defects in materials and workmanship, (II) conform to the applicable specification, drawings, samples or other descriptions (III) be free from defects in design except to the degree such supplies are manufactured to Buyer's design (IV) be suitable for the intended purpose, if the purpose is made known to the Seller and Buyer relies on Seller's judgement and selection, and (V) be free of defects in title. Seller further expressly warrants that all services performed under any Order will be free from defects in workmanship. These warranties shall remain in effect, as to each item furnished, serviced and/or repaired here under, for a period of time consistent with the warranty life normally offered by the Seller. All warranties shall be construed as conditions as well as warranties and shall not be deemed to be exclusive. Benefits of this warranty shall accrue to Buyers, customers, and assigned to the same extent they shall accrue to Buyer. Articles ordered to Government specifications shall comply with such specifications as are current at the date of the Order unless otherwise particularly specified by the Buyer. Under circumstance of Breach of Warranty, buyer shall be entitled to avail itself cumulatively of all remedies provided in law or in equity. Seller shall make timely responses to Buyer's notifications of Breach of Warranty and shall respond with the understanding (and Seller agrees) that time will be of the essence in all instances.

12. Excusable Delays: (a) Except with respect to defaults & subcontractors, Seller shall not be liable for failures or delays that arise out of causes beyond its control and without its fault or negligence. If the failure or delay is caused by the default of a subcontract at any tier, and it arises out of causes beyond the control of both Seller and the Subcontractor, and without the fault or negligence of either of them then Seller shall not be liable to Buyer unless the supplies or services to be furnished by the subcontractor or obtainable from other sources is sufficient time to permit Seller to meet the Purchase Order requirements. In either circumstance as a precondition to being excused, Seller shall give immediate written notice to Buyer, setting forth the cause, when Seller has reason to believe that deliveries will not meet the schedule. (b) Buyer shall be excused for failures or delays due to causes beyond its control and without its fault or negligence.

13. Liability for Injury: Seller shall indemnify and hold Buyer harmless against all loss and liability on account of claims of personal injury, death, and property damages resulting from an act or omission of Seller (including its agents, employees and subcontract(s) in the course of performing the order, including the supplies delivered or services performed hereunder. Seller shall maintain such Public Liability, Property Damage, Employees Liability and Compensation Insurance as will protect Seller and Buyer from the aforementioned risk and from claims under applicable Workmen's Compensation statutes. Upon request, Seller shall provide Buyer with certificates of Insurance and evidence of registration under any applicable Workmen's Compensation statute.

14. Advertising: Advertising of any Purchase Order (including the supplies or services hereunder and pictures, descriptions, or samples thereof) by Seller is prohibited except with Buyer's approval.

15. No charges will be allowed for boxing, crating or cartage unless previously agreed. Unless otherwise specified, packing will be best commercial pack. Mark all packages, cases, bundles, etc. with Purchase Order number. Packing slip must accompany each shipment. Invoices must show our order number, terms and full description of merchandise shipped. Invoices: Individual Invoices must be issued for each shipment applying against the Purchase Order. Freight and other charges must be shown if discount is not allowed or full amount of invoice. Delay of receiving an invoice, invoicing for supplies shipped ahead of the specified schedule or invoices rendered with errors and omissions will be considered just cause for Buyer to withhold payment without losing discount privileges. Discount privilege will apply from date of scheduled delivery, the date of receipt of the supplies or services, or the date of invoice, whichever is later. Invoices to be acceptable must reference the Buyer's Order number. Foreign Sellers must supply in quintuplet-copies invoices compiled and certified accordance with Canadian Customs Regulations. All such invoices must be mailed directly to the Buyer not later than the day shipment is made otherwise the Seller will be responsible for storage of demurrage.

16. This Purchase Order shall be construed in accordance with and governed by the laws of the Province of Ontario, Canada and constitutes the entire agreement between Buyer and Seller with respect to goods and/or services covered by the Purchase Order.

17. The order of precedence for this contract shall be :-First: Purchase Order. Second: Buyer's drawings or specifications. Third: Seller's drawings or specifications.