



REVISION: 7

1. DEFINITIONS

- A. "Affiliate" means, with respect to any entity, any other entity that controls, is controlled by, or is under common control with such entity.
- B. "Authorized Purchasing Representative" means the individual whose name appears on the face of the Order, or who is otherwise designated in writing by Buyer as its authorized purchasing representative.
- C. "Buyer" means PCX Aerostructures LLC including its Affiliates or divisions.
- D. "Buyer's Supplier Website" means Buyer's non-secure, non-password protected website that contains supplier non-specific information, located at www.pcx aero.com.
- E. "Contract" means an agreement between the Parties under which the Buyer may purchase Products and/or Services from the Seller by releasing Purchase Orders against it.
- F. "FAR/DFARS Flow-Down Addendum" means Buyer's FAR/DFARS Flow-Down Addendum, as posted on Buyer's Supplier Website.
- G. "Order" means the instrument of contracting as modified by written changes issued by Buyer's Authorized Purchasing Representative, and all referenced documents.
- H. "Parties" means Buyer and Seller collectively.
- I. "Products" means those goods, supplies, reports, computer software, data, materials, articles, items, parts, components or assemblies described in the Order.
- J. "Program Addendum" means certain terms and conditions applicable to the Order which are required by or in connection with a specific customer program designated in the order. Each Program Addendum is posted on Buyer's Supplier Website.
- K. "Proprietary Information" means all information (including, but not limited to, oral, written, printed, and/or stored information used, prepared by, compiled by or in the possession of the disclosing party or its representatives) disclosed, provided, or made available by a party to the other party or otherwise received by the other party in contemplation of or in connection with the Order, and in whatever form or medium disclosed, provided, made available or received, that (1) is considered proprietary or confidential by the disclosing party; or (2) is information received from others that the disclosing party is obligated to treat as confidential. Proprietary Information includes any information about the Order.
- L. "Seller" means the party to whom Buyer is issuing the Order.
- M. "Supplier Quality Codes" means the Quality Assurance Requirements applicable to the specific Order, as posted on Buyer's Supplier Website.
- N. "Terms and Conditions" means these Standard Purchase Order Terms and Conditions, as posted on Buyer's Supplier Website.

2. SELLER'S OBLIGATIONS

A. Seller shall comply with the terms of the Order, which terms include, but are not limited to:

(1) these Terms and Conditions, as follows:

(a) if the Order is issued in support of a commercial procurement, then clauses 1 through 24 of these Terms and Conditions shall apply to the Order; or

(b) if the Order is issued in support of a government procurement, then clauses 1 through 25 of these Terms and Conditions shall apply to the Order.

(2) requirements stated or expressly incorporated therein by reference on the face of the Order;

(3) the Program Addendum (if any) applicable to each customer program designated in the Order;

(4) descriptions, drawings, planning, and specifications, including but not limited to those listed in and transmitted by Buyer's Order;

(5) quality requirements, including but not limited to those set forth in Buyer's Quality Manual, as modified from time to time;

The documents described in subparagraph (3) through (5) above are hereby incorporated by reference into these Terms and Conditions.

B. The terms of the Order are limited to the terms identified above. No additional or different terms shall be binding on Buyer or Seller unless expressly agreed to in writing by the Parties.

3. BUYER AUTHORIZATION

A. Buyer's Authorized Purchasing Representative has sole authority to make contractual commitments on behalf of Buyer, to provide contractual direction, and to change contractual requirements as defined in the Order.

B. Buyer's representatives other than Buyer's Authorized Purchasing Representative may release to Seller information applicable to the Order.

4. CUSTOMER CONTACT

Seller shall not make any contact with or respond to any inquiry from actual or potential customers of Buyer or Buyer's customers on the subject of the Order, without prior written consent of Buyer. Seller shall promptly notify Buyer of any such inquiry.

5. ORDER OF PRECEDENCE

In the event of any inconsistency between the terms of the Order or between the terms of the Order and the terms of any other document regarding the subject matter of the Order, the inconsistency shall be resolved by giving precedence in the following order:

(a) Terms expressly stated on the face of the Order (excluding documents incorporated by reference);

(b) Program Addenda incorporated by reference or referenced in these Terms and Conditions and the Order;

(c) These Terms and Conditions (excluding documents incorporated by reference or referenced herein);

(d) FAR/DFARS Flow-Down Addendum (if applicable);

(e) Any other documents incorporated by reference or referenced in these Terms and Conditions or the Order.

6. ADEQUATE ASSURANCE OF PERFORMANCE

A. If at any time Buyer has reasonable grounds for insecurity whether Seller's performance will be full, timely, and continuing in accordance with the terms of the Order, Buyer may request, by written notice to Seller, adequate assurances in writing that Seller is able or willing to perform all of its respective obligations under the Order.

B. Seller shall provide with its assurance of performance any information, reports, or other materials prepared by Seller as Buyer may reasonably request. Upon Buyer's request and as soon as practicable, Seller shall make available employees, including members of Seller's senior management, to meet with Buyer to discuss those assurances of performance.

C. If Seller does not provide adequate written assurances within thirty (30) calendar days after Buyer's written notice and request, Buyer may, at its option, treat the Order as breached by Seller.

7. INSPECTION AND ACCEPTANCE

A. Representatives of Buyer and Buyer's customers shall have the right to inspect all premises where the Order is being performed and the right to inspect all Products and Services, if any such inspection is required to be made on the premises of Seller or any tier of Seller's suppliers or subcontractors.

B. Unless otherwise specified in the Order, Buyer's final inspection and acceptance shall be at destination. Notwithstanding any prior payment or inspection, Products and Services shall be subject of final inspection and acceptance by Buyer and, subject to any contrary notice from Buyer, acceptance shall be deemed to have taken place thirty (30) calendar days after receipt by Buyer of such Products or Services, unless otherwise specified in the Order.

C. Neither inspection and acceptance of any Products or Services by Buyer, nor failure by Buyer to inspect and accept or reject Products or Services, shall be deemed to alter or affect the obligations of Seller under the Order or the rights of Buyer and its customers under the Non-Conforming Products or Services clause, the Warranty clause, or other provision of the Order or as may be provided by law or equity.

D. Seller shall make its records of all inspection work available to Buyer and Buyer's customers during the performance of the Order and for such longer period as may be specified in the Order or required by law or equity.

8. CHANGES

A. Buyer's Authorized Purchasing Representative may at any time, by written notice to Seller, and without notice to sureties or assignees, if any, make changes within the general scope of the Order in (1) drawings, designs, specifications, planning, and/or other technical documents; (2) method of shipment, packaging; (3) place of delivery; (4) quantity of Product; (5) delivery schedule(s); (6) place of inspection; and (7) place of acceptance. Seller shall comply with such change(s) upon establishment of a mutually agreed to equitable Contract adjustment, if applicable.

B. Any claim shall be unconditionally waived unless asserted in writing and delivered to Buyer within fifteen (15) calendar days after the date of the Buyer's written change notice. Failure to agree to any adjustment shall constitute a dispute within the meaning of the Disputes and Governing Law clause hereof.

9. INVOICING AND PAYMENT

A. The following subparagraphs shall apply to all orders:

(1) The prices set forth in the Order are stated in U.S. Dollars and are not subject to exchange rate adjustments. Buyer's payment to Seller shall be made by Buyer in U.S. Dollars.

(2) Seller's prices include all applicable federal, state and local taxes.

(3) All invoices shall be sent to Buyer at the following address:

ATTN: Accounts Payable

300 Fenn Road

Newington, CT 06111

AP@pcxaero.com

B. To the extent the Order is an order for Products, the following subparagraphs shall apply in addition to those set forth in paragraph A of this Invoicing and Payment clause:

(1) Buyer shall pay Seller the price set forth in the Order for the Products and/or Services received. Payment due dates, including discount periods, will be calculated from the date of receipt of Products and/or Services, the date of receipt of a correct invoice, whichever is later, under terms set forth in the Order. Payment shall not constitute acceptance of Products. Unless otherwise notified in writing, Buyer shall remit payment to Seller's address indicated on the Order.

(2) Seller shall submit a separate invoice per Order and shall include the following information taken from the Order: Order number, item number, part number, quantity, unit price, extended item price, and any discount payment terms. Seller's invoice shall also include: Seller's phone number and address, invoice number, invoice date, ship date, and shipper number or packing slip number. No invoice shall be issued prior to shipment of Products.

10. DELIVERY SCHEDULES

A. The contractually required delivery dates are as set forth in the Order. Such delivery dates are the dates on which the Products and/or Services must be received at the location(s) designated by Buyer regardless of the agreed upon shipping terms.

B. Notwithstanding any provisions herein to the contrary, including, but not limited to, the Termination for Convenience clause and the Changes clause, in no event shall Buyer be liable for any costs or expenses incurred in connection with or as a result of: (1) procurement of materials in advance of Seller's quoted lead time for the Order; and/or (2) commencement of production in advance of Seller's quoted lead time for the product.

11. PROPRIETARY INFORMATION

A. Each party agrees that it shall maintain in confidence and secrecy, and not disclose to any third party or use, directly or indirectly, except as set forth in an Order, all Proprietary Information (including of a competitive sensitive nature) received from or made available by the other party, or received orally or visually. Each party shall protect the other party's Proprietary Information from unauthorized disclosure and use with at least the same degree of care it normally exercises to protect its own Proprietary Information to prevent undesired dissemination and use thereof, and in no case shall the degree of care be less than reasonable care.

12. SUBCONTRACTING

Seller shall not subcontract the whole or any aspect of any Products or Services ordered hereunder, without the prior written approval of Buyer (which approval shall not be unreasonably withheld). Any such approval shall not relieve Seller of responsibility for the performance of its suppliers or subcontractors and all prime customer requirements must be flowed down to subcontractors when available.

13. TERMINATION FOR CONVENIENCE

A. Buyer may terminate performance of work under the Order in whole or, from time to time, in part if Buyer determines that a termination is in its interest. Buyer shall terminate by delivering to Seller a Notice of Termination specifying the extent of termination and the effective date.

B. After receipt of a Notice of Termination, and except as directed by Buyer, Seller shall immediately proceed with the following obligations and any other actions directed or authorized by Buyer's Authorized Purchasing Representative, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause.

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or purchase orders for materials, services, or facilities, except as necessary to complete the continued portion of the Order.

(3) Complete performance of the work not terminated.

(4) Seller shall submit complete termination claim no later than thirty (30) calendar days after the effective date of termination, unless extended in writing by the Buyer upon written request of Seller during this thirty (30) calendar day period.

(5) In the event of a termination under this Termination for Convenience clause, Buyer shall be required to pay (to the extent not already paid) the Order price for completed items delivered and accepted, and Buyer and Seller shall agree on the amount of payment for any work in process and other long-lead material authorized by Buyer to be acquired or produced for the work terminated. Notwithstanding the foregoing, Buyer shall not in any event be required to pay any amounts in excess of the Order total price and no amount will be allowed for profit on the terminated portion of the Order.

14. TERMINATION FOR DEFAULT

Seller:

- (1) Fails to deliver the Products or to perform the Services within the time specified in the Order or any extension granted in writing by Buyer;
- (2) Fails to make progress so as to endanger performance of the Order or to perform any of the other provisions of the Order and does not cure such failure within a period of thirty (30) calendar days after receipt of the notice from Buyer specifying Seller's failure to perform;
- (3) Fails to provide adequate assurance of performance in accordance with the Adequate Assurance of Performance clause herein; or
- (4) Becomes insolvent or makes a general assignment for the benefit of creditors, or files or has filed against it a petition of bankruptcy or for reorganization, or pursues any other remedy under any other law relating to the relief for debtors, or in the event a trustee or receiver is appointed for Seller's property or business.

B. If Buyer terminates the Order in whole or in part, Buyer shall not be required after such notice to accept the tender by Seller of any Products or Services hereunder with respect to which Buyer has elected to terminate the Order.

C. The rights and remedies of Buyer in this Termination for Default clause are in addition to any other rights and remedies provided by law or equity or under the Order.

15. NON-CONFORMING PRODUCTS OR SERVICES

A. To the extent the Order is an order for Products or Services, the following subparagraph shall apply:

Seller shall deliver Products or Services that conform to the terms of the Order as stated in the Seller's Obligation clause. If Seller fails to deliver such Products, or delivers defective or non-conforming Products, Buyer may:

- (1) Return all or any part of a delivery of defective or non-conforming Products at Seller's cost, and debit Seller's account, demand a refund not exceeding the value of the part and/or require delivery of conforming Products;
- (2) Retain all or any part of the defective or non-conforming Products at an equitable price reduction.

16. WARRANTY

A. To the extent the Order is an Order for Products, the following subparagraphs shall apply:

- (1) Seller warrants to Buyer and Buyer's customers that all products delivered under the Order will: (i) be free from defects in materials, workmanship, and manufacturing processes; (ii) be suitable for the purposes intended whether expressed or reasonably implied; (iii) conform to all terms of the Order; (iv) be free of all liens and encumbrances. The warranties set forth above shall remain in effect for forty-eight (48) months after delivery to Buyer.
- (2) Buyer's rights under this Warranty clause shall, at Buyer's option, be assignable to and enforceable by Buyer's customers and their customers.
- (3) The rights and remedies of Buyer set forth in this Warranty clause shall be in addition to any other rights or remedies Buyer may have under the Order, or in law or equity.

17. DISPUTES AND GOVERNING LAW

- A. Any dispute arising under or relating to the Order shall be reduced to writing and submitted to the other party.
- B. For any dispute that cannot be resolved to both Parties' mutual satisfaction within sixty (60) calendar days after the initial submission of the dispute, or such additional time as the Parties agree upon in writing, either party may bring suit in federal or state court within the state of Connecticut.
- C. Pending final resolution of any dispute, Seller shall proceed diligently with performance of the order.
- D. Irrespective of the place of performance of the Order, the Order will be construed and interpreted according to the law of the state the purchase order was issued from, accepting that state's laws on conflicts of law.

18. INDEMNITY

In addition to any other indemnification provisions of the Order, Seller shall indemnify, defend, and hold harmless Buyer, its officers, directors, employees, agents and customers from any and all claims, demands, causes of action, liabilities, losses, damages, costs, and expenses, including attorneys' fees, for actual or alleged (1) injury to any person, (2) damage to any property, or (3) violation of any law, ordinance, or regulation, including any penalties or fines, arising from or related to Seller's performance of the Order.

19. EXPORT AND IMPORT COMPLIANCE

Seller shall comply with the laws and regulations of the United States relating to exports, imports, and foreign transactions, including, but not limited to, the International Traffic in Arms Regulations (ITAR), the Export Administration Regulations (EAR), the Arms Export Control Act, the International Emergency Economic Powers Act (IEEPA), Title 19 (Customs Duties) of the Code of Federal Regulations, and regulations and orders administered by the Treasury Department's Office of Foreign Assets Control.

20. ASSIGNMENT

Seller shall not assign (by operation of law, merger or otherwise) the Order or any of its rights or obligations under the Order without Buyer's prior written consent, and any assignment by Seller without Buyer's prior written consent will be null and void.

21. INDEPENDENT CONTRACTOR STATUS

The relationship of Seller to Buyer shall be that of an independent contractor, and nothing herein contained shall be construed as creating any employer/employee, agency, partnership, or other relationship of any kind.

22. PARTIAL INVALIDITY

If any provision in the Order is or becomes void or unenforceable by force or operation of law, all other provisions shall remain valid and enforceable.

23. NON-WAIVER

A party's failure at any time to enforce any provision of any Order shall not constitute a waiver of such provision or prejudice a party's right to enforce such provision at any subsequent time.

24. CONTROL OF RECORDS

The supplier shall maintain product/process records for the purpose of recall for a period of fifty (50) years, unless otherwise stated in a prime contract requirement. Parts is designated as a SCP (Special Control Part) part for Embraer. All SCP parts for Embraer require that product/process records be maintained for a period of fifty (50) years.

25. INCORPORATION OF FAR AND DFARS CLAUSES

Seller shall comply with the terms set forth in Buyer's FAR/DFARS Flow-Down Addendum which is hereby incorporated herein by reference into these Terms and Conditions, as posted on Buyer's Supplier Website.

26. FOREIGN OBJECT ELIMINATION (FOE) DETECTION/DEBRIS (FOD)

Supplier to maintain Foreign Object Elimination (FOE) Detection/Debris (FOD) Program (reference NAS 412) adequate for the process, product or service being performed under the requirements of this PO.

27. CUI SECURITY CLAUSE

Seller must handle any Controlled Unclassified Information (CUI) in accordance with the requirements of DFARS clauses 252.204-7012, 252.204-7019, and 252.204-7020 as applicable.

PCX AEROSYSTEMS

COMPANY HEADQUARTERS



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