

# AIRBORN, INC.

## TERMS AND CONDITIONS OF PURCHASE

### GENERAL PROVISIONS

Seller's acknowledgment, acceptance of payment or commencement of performance, shall constitute Seller's unqualified acceptance of these terms and conditions and the related contract. Unless expressly accepted in writing by AirBorn, additional or differing terms or conditions proposed by Seller or included in Seller's acknowledgment are objected to by AirBorn and have no effect. Seller may not ship under reservation.

### 1. APPLICABLE LAW

The validity, interpretation, and performance of these terms and conditions and any purchase made hereafter shall be governed by the laws of the State of Texas. Where not modified by the terms herein; the provisions of Article 2 of the Uniform Commercial Code shall apply to this transaction.

### 2. COMPLIANCE WITH LAWS

Seller hereby certifies that all supplies and services to be furnished hereunder will be manufactured or furnished by Seller in compliance with all applicable Federal, State and Local laws, executive orders, rules and regulations. Without limiting the scope and generality of the foregoing, Seller, in accepting this order, represents that it will comply with AirBorn ESG6017 (RoHS compliancy) and ESG6023 (Specialty Metals compliancy), unless otherwise specified, and the Fair Labor Standards Act, the Occupational Safety and Health Act (OSHA) and the Toxic Substance Control Act. FAR/DFARs clause flow down requirements for U.S. government contracts are defined in PP-R002.

### 3. EQUAL OPPORTUNITY

Equal Employment Opportunity. Seller hereby agrees to comply with Executive Order 11246, as amended, and its implementing Regulations (including the equal opportunity clause set forth in Section 202 of such Order) and Section 60-1.4 (a) of the Regulations of the Secretary of Labor, Title 41 CFR, Chapter 60, Parts 1-60 which are incorporated into this Purchase Order by reference. In addition, this Purchase Order incorporates by reference the Affirmative Action clauses of the Rehabilitation Act of 1973 at 41 CFR Section 60-741.1 and the Vietnam Era Veterans' Readjustment Act of 1974, at 41 CFR Section 60-2050.4, as amended.

### 4. OFCCP REQUIREMENT

This contractor and subcontractor shall abide by the requirements of 41 CFR sections 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

### 5. ATTACHMENTS

Any attachments referenced on this order shall be deemed for all purposes to be an integral part of this order. In the event of irreconcilable conflict between such referenced attachments and the terms stated herein, the terms of such attachments shall control. It is Seller's responsibility to go to the supplier matrix and forms page on the AirBorn website ([www.airborn.com](http://www.airborn.com)) to ensure that all

needed documents and requirements are adhered to for all purchase orders.

### 6. MODIFICATIONS

Changes, modifications, waiver, additions or amendments to this order shall be binding on AirBorn only if such changes, modifications, waiver, additions or amendments are in writing and signed by a duly authorized representative of AirBorn.

### 7. CHANGES

AirBorn may change from time to time any of the drawings, specifications or instructions for work covered by this purchase order and Seller shall comply with such change notices. If such changes result in a decrease or increase in Seller's cost or in the time for performance, an adjustment in the price and time for performance may be made by the parties in writing, provided, the Seller notifies AirBorn of the request for such adjustments within thirty (30) days after receipt by it of the change notice. Seller (AirBorn Supplier) must obtain approval of AirBorn, in writing, before any change can be made in design, material, process, or sub-tier supplier or facility.

### 8. TERMINATION

AirBorn may terminate the work to be performed hereunder in whole or in part at any time without cause by written notice to Seller. Such notice shall state the extent and effective date of such termination and, upon the receipt of such notice, Seller will comply with the directions pertaining to work stoppage hereunder and the placement of further orders or subcontracts hereunder. The parties shall thereupon employ their best efforts to agree by negotiation, within ninety (90) days, upon the amount of reimbursement, if any, to be paid to Seller for each Termination. Termination under this provision shall not be deemed a breach of contract. The provisions of this paragraph shall not limit or affect the right of AirBorn to terminate this order for cause and shall not apply to a termination with cause. Seller shall mitigate its claim to the maximum extent, and in any event, no claims shall exceed the lesser of fair market value or actual costs of raw materials and work in progress material, which Seller shows, can not be diverted to other uses. No claim shall be asserted or honored for loss on expected profits, or for any consequential or incidental damages, due to cancellation.

### 9. MATERIAL OBSOLESCENCE / END OF LIFE (EOL)

For commercial items (material not having AirBorn custom part number), seller shall notify AirBorn of EOL plans 12 months in advance of obsolescence and provide AirBorn the opportunity for last time buy.

### 10. TOOLING

Seller shall preserve all special drawings, dies, patterns, tooling or other items supplied or paid for by AirBorn in good condition, and they are the property of AirBorn unless otherwise specified, and the same such items shall be returned in good condition when the work on the order has been completed or terminated, or at any other time as requested by AirBorn. No special drawing, die, pattern, tool or other item supplied by AirBorn or made by Seller for the use of or delivery to AirBorn, or for use by Seller in supplying AirBorn, shall be used by Seller for any purpose other than supplying AirBorn, without Seller's first obtaining the written consent of AirBorn thereto. If AirBorn furnishes material, equipment, special drawings, dies, patterns, or other items for performance of this purchase order, all risk of loss thereof or damage thereto shall be

upon Seller from the time of shipment to Seller until redelivery to and receipt by AirBorn.

#### **11. PATENTS AND COPYRIGHTS**

Seller agrees to indemnify and to save AirBorn, its officers, agents, employees, and vendors (mediate and immediate) harmless from any and all loss, expense, damage, liability, claims or demands either at law or in equity for actual or alleged infringement of any patent invention, design, trademark, or copyright arising from the purchase, use or sale of materials or articles required by this purchase order, except where such infringement or alleged infringement arises by reason of designs for such materials or articles originally furnished to Seller by AirBorn.

#### **12. ASSIGNMENTS**

Performance obligations shall not be assigned or transferred by Seller without prior written approval by AirBorn, and any attempted assignment or transfer without such consent shall be void. Seller shall not subcontract any substantial portion to the work to be performed by it under this order without the prior written consent of AirBorn.

#### **13. EXCUSED PERFORMANCE**

If Seller is prevented from delivering, or AirBorn is prevented from receiving the materials or articles referred to in this order as a result of governmental actions or regulations, except as hereinafter provided, or of fires, strikes, accidents, and other unforeseeable causes beyond the control of either party, the obligation to receive or deliver shall be suspended for a reasonable time during which such cause continues to exist.

#### **14. PACKING AND SHIPPING INSTRUCTIONS**

Unless AirBorn stipulates specific packaging or shipment instructions, all items shall be suitably prepared for shipment (a) to secure the lowest transportation and insurance rates, (b) to meet carrier's requirements, and (c) to avoid any damage in transit.

A. IDENTIFICATION- All shipments shall contain an easily located packing list describing the shipped material and shall clearly indicate the purchase order number on outside all packages, boxes, kegs, bails or bundles to expedite the receiving of said shipments.

B. PACKING- Unless otherwise provided herein, no charges shall be made by Seller for containers, crating, boxing, bundling, dunnage, drayage, storage or other packing requirements. All material shall be packed, packaged, marked and otherwise prepared for shipping in accordance with sound commercial practices to meet requirements for obtaining the lowest transportation rates, or as otherwise specified herein.

#### **15. DELIVERY**

The obligation of Seller to meet the delivery dates, specifications, and quantities set forth herein is of the essence in the contract. Deliveries are to be made both in quantities and at times specified herein or such quantities and items specified pursuant to AirBorn's written instructions.

A. EARLY DELIVERY – AirBorn may at its option, either retain items received in advanced of requested delivery schedule or return them to Seller at Seller's risk and expense. If retained, payment and discount shall be based on the schedule delivery dates.

B. LATE DELIVERY – In the event that Seller fails to deliver as and when specified, AirBorn reserves the right to cancel this order, or any part thereof, without prejudice to its rights or remedies; and Seller agrees that AirBorn may return part or all of any so shipment made, and if the order calls for partial shipments, the balance may be cancelled or suspended upon notice and AirBorn may charge Seller with any expedited routing charges or any loss or expense sustained as a result of such failure to deliver as specified.

C. OVERSHIPMENTS – AirBorn reserves the right to return the portion of shipment in excess of the quantity ordered, at Seller's expense.

#### **16. ACCEPTANCE AND WARRANTY**

Final acceptance of material by AirBorn will not be until after arrival at the AirBorn facility from which this order originates, unless otherwise specified herein. Seller warrants that all articles, material and work supplied by Seller under this order conform to the requirements, specifications, drawings, samples, or other descriptions furnished or adopted by AirBorn and that are of good material and workmanship and free from defects in manufacture or design, and are of merchantable quality and fit for their intended purchase. Such warranties by Seller shall run to the benefit of AirBorn, its employees and purchasers from AirBorn. AirBorn's approval of designs furnished by Seller shall not relieve Seller of its obligation under this warranty. Seller's warranty shall be effective for a period of time as set forth on the face of this purchase order, the warranty shall be effective for a period of five years from the date of acceptance of goods by AirBorn, or for such longer period specified by Seller. Seller will make process control data, inspection and test reports covering the articles or goods and their parts available for review and subject to examination by AirBorn or its authorized representative(s) to verify conformance to such applicable specifications and drawings. A Certificate of Conformance must accompany individual shipments when so specified on applicable drawings, or on the front of this purchase order.

#### **17. INCOMING INSPECTION**

Any article or materials not accepted by AirBorn may be returned to Seller at Seller's expense for full credit of the purchase price. Inspection may be performed at AirBorn's option on a statistical sampling basis. The entire lot may be rejected on defects revealed by such sampling. At AirBorn's option, the rejected lot will be either returned to seller for replacement or credit or 100% screened by AirBorn with cost of screening paid by Seller. The initial inspection performed at AirBorn on receipt of material is a conditional acceptance, and shall not waive the right of AirBorn to return material to Seller which exhibits or develops defects due to latent causes during or after installation or testing of the end product. Replacement material shall be sent freight prepaid from seller, who will absorb the burden of premium transportation when defect or replacement material places critical time or delivery schedule constraints on AirBorn.

#### **18. WAIVER**

Any failure of AirBorn to enforce at any time, or for any period of time, any of the provisions of this purchase order shall not constitute a waiver of such provisions nor of AirBorn's right to enforce each and every provision.

#### **19. PAYMENTS**

Seller shall send all invoices to AirBorn at the address shown on the reverse side, Attn: Accounts Payable. All invoices shall include (a) the purchase order number, (b) AirBorn's applicable part number, (c) a description of each item as it appears on each order, and (d) Seller's part number. Payment of invoice shall not constitute acceptance of supplies or services and be subject to adjustments for error, shortages, rejects or any other failure of Seller to meet the requirements of this order. Payment due dates, including discount periods, will be computed from date of receipt of goods.

#### **20. PRICE ADJUSTMENT**

AirBorn will not accept shipment at any increase in price above that indicated on this order. Any general price decrease announced by Seller in classification of equipment and/or materials similar to

the items described on this order shall automatically reduce the priced thereof by a comparable percentage.

## **21. PAYABLES OFFSET**

AirBorn shall be entitled at all times to offset any amount owing, for any reason, at any time, from Seller to AirBorn against any amount payable at any time by AirBorn in connection with this order.

## **22. RIGHT OF ACCESS**

Seller agrees to permit AirBorn, AirBorn's customer, regulatory authority, or Government representative(s) if this purchase order is for a U.S. Government contract or subcontract, to verify the quality of supplies and services being provided under this purchase order at any production stage in the Seller's facility. Verification may consist of a physical assessment/ surveillance of the Seller's facilities and quality programs and/or a source inspection. The applicable quality program requirements may be as defined, documented, and furnished by AirBorn. Deficiencies identified during such verification shall be positively corrected by the Seller in the most expeditious manner possible. The Seller shall provide all reasonable facilities and assistance for the safety and convenience of personnel engaged in such verification. Seller agrees to include into each subcontract Seller might make hereunder appropriate provisions to the same effect.

## **23. SALES AND USE TAX EXEMPTION**

If indicated on the face hereof that the goods ordered herein are exempt from the Texas Sales And Use Tax, then AirBorn hereby certifies that such property purchased for resale or become an ingredient or component part of, or be incorporated into or used or consumed in the manufacturing process of a product produced for ultimate sale at retail.

## **24. NOTICES**

Any notices required or permitted to be given herein shall be in writing and shall be valid and sufficient dispatched by registered or certified mail, postage prepaid, at any post office in the United States.

## **25. U.S. GOVERNMENT FUNDS**

Seller hereby acknowledges that United States Government (USG) funds may be used to finance this order. Acceptance of this order will constitute acknowledgement of such notification of USG financing, if applicable.

## **26. IMPROPER PAYMENTS**

Acceptance and implementation of the subcontract constitutes a declaration and agreement by the principal executive officers of the subcontractor that no bribes, rebates, gifts, kickbacks, or gratuities to secure the Purchase Agreement or the subcontract, or for favorable treatment under such agreements, or for any other purpose relating to the Purchase Agreement or the subcontract have been or will be directly or indirectly offered or given to, or have been or will be arranged with officers, officials or employees of the Purchaser by the subcontractor, its employees or agents.

## **27. COUNTERFEIT WORK**

A. The following definitions apply to this clause:

"Counterfeit Work" means work that is or contains unlawful or unauthorized reproductions, substitutions, or alterations that have been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used work represented as new,

or the false identification of grade, serial number, lot number, date code, or performance characteristics.

"Suspect Counterfeit Work" means work for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the work part is authentic.

B. Seller shall not deliver Counterfeit Work or Suspect Counterfeit Work to AirBorn under this order.

C. Seller shall only purchase products to be delivered or incorporated as work to AirBorn directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. Seller may use another source only if (i) the foregoing sources are unavailable, (ii) Seller's inspection and other counterfeit risk mitigation processes will be employed to ensure the authenticity of the work, and (iii) Seller obtains the advance written approval of AirBorn.

D. Seller shall maintain counterfeit risk mitigation processes in accordance with industry recognized standards and with any other specific requirements identified in this order.

E. Seller shall immediately notify AirBorn with the pertinent facts if Seller becomes aware that it has delivered Counterfeit Work or Suspect Counterfeit Work. When requested by AirBorn, Seller shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM. Seller, at its expense, shall provide reasonable cooperation to AirBorn in conducting any investigation regarding the delivery of Counterfeit Work or Suspect Counterfeit Work under this order.

F. This clause applies in addition to and is not altered, changed, or superseded by any quality provision, specification, statement of work, regulatory flowdown, or other provision included in this order addressing the authenticity of work.

G. In the event that work delivered under this order constitutes or includes Counterfeit Work, Seller shall, at its expense, promptly replace such Counterfeit Work with genuine work conforming to the requirements of this order. Notwithstanding any other provision in this order, Seller shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including without limitation AirBorn's costs of removing Counterfeit Work, of installing replacement work and of any testing necessitated by the reinstallation of work after Counterfeit Work has been exchanged. The remedies contained in this paragraph are in addition to any remedies AirBorn may have at law, equity or under other provisions of this order.

**28. CONFIDENTIALITY** From time to time during the term of this agreement, AirBorn may disclose or make available to the Seller information about its business affairs, products or services, confidential intellectual property, trade secrets, third-party confidential information and other sensitive or proprietary information, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" (collectively, "Confidential Information"). Confidential Information shall not include information that, at the time of disclosure and as established by documentary evidence: (i) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this section 28 by Seller or any of its representatives; (ii) is or becomes available to Seller on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was known by or in the possession of Seller or its representatives before being disclosed by or on behalf of AirBorn; (iv) was or is independently developed by Seller without reference to or use, in whole or in part, of any of the Confidential Information; or (v) is required to be disclosed under applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction. Seller shall: (A) protect and safeguard the confidentiality of the

Confidential Information with at least the same degree of care as Seller would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (B) not use the Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this agreement; and (C) not disclose any such Confidential Information to any person or entity, except to Seller's representatives who need to know the Confidential Information to assist Seller, or act on its behalf, to exercise its rights or perform its obligations under the agreement. Seller shall be responsible for any breach of this section 28 caused by any of its representatives. At any time during or after the term of this agreement, at AirBorn's written request, Seller shall promptly return, and shall require its representatives to return to AirBorn all copies, whether in written, electronic or other form or media, of the Confidential Information, or destroy all such copies and certify in writing to AirBorn that such Confidential Information has been destroyed. In addition to all other remedies available at law, AirBorn may seek equitable relief (including injunctive relief) against Seller and its representatives to prevent the breach or threatened breach of this section 28 and to secure its enforcement.