



AEROFLEX / KDI, Inc.
Terms and Conditions of Sale
(Acknowledgement)

- 1.) PRICE. Price is F.O.B. Shipping point.
- 2.) PAYMENT. Upon approval of credit, payment is due on or before 30 days after date shipped. Partial payment is required on the basis of partial shipments of the total order.
- 3.) DELIVERY. Estimates as to time of delivery are based on conditions prevailing at the offer date and apply from the date of receipt of a definitive contract or purchase order. All agreements as to delivery are subject to the contingencies of strikes, fires, accidents, or causes of delay beyond the control of AEROFLEX. Where a delay in delivery or failure to deliver is caused by factors beyond the control of AEROFLEX, such delay or failure to deliver shall not be deemed a breach or default of this Agreement and AEROFLEX shall have no liability for any damages, injury, costs or expenses incurred by the Buyer as a result of such delay or failure to deliver.
- 4.) ACCEPTANCE. Buyer shall be deemed to have accepted items sold hereunder when such items are delivered to the carrier for shipment to Buyer.
- 5.) RISK OF LOSS. The risk of loss for any items sold hereunder shall pass to Buyer at that time when such items are delivered to the carrier for shipment.
- 6.) NON CONFORMING DELIVERY. All claims for shortages or other non-conformity of delivery or of the items shipped must be made in writing within ten (10) days of Buyer's receipt of shipment. AEROFLEX shall have an unqualified right to cure any non-conformity. In no event shall AEROFLEX be liable for incidental or consequential damages arising from or relating to a non-conforming shipment. Buyer shall not return any items hereunder as non-conforming without the prior consent of AEROFLEX.
- 7.) Shipment shall be made using the carrier specified on the purchase order, with freight pre-paid and added to the invoices submitted to Buyer for payment or charged directly to buyer's account. When a carrier is not specified, shipment shall be made by the carrier selected at the discretion of AEROFLEX.
- 8.) WARRANTY. AEROFLEX warrants its products from its date of shipment and for the period of 1 year to be free from defects caused by faulty materials or poor workmanship, provided:
 - a.) AEROFLEX is notified in writing by Buyer of such defect prior to the expiration of the warranty period; and
 - b.) After receiving return authorization from AEROFLEX, the defective item is returned to AEROFLEX, Whippany, New Jersey, with transportation charges prepaid by Buyer; and
 - c.) AEROFLEX's examination of such unit shall disclose to its satisfaction that such defect(s) exist and have not been caused by misuse, neglect, improper installation, improper storage, repair alteration or accident; and
 - d.) An Evaluation Fee will be charged to Buyer to cover inspection and testing costs for any item returned by Buyer under this paragraph which is found to be within specifications and/or otherwise not the responsibility of AEROFLEX under the terms and conditions of this paragraph or any other part of this Agreement.

THE LIABILITY OF AEROFLEX UNDER THIS WARRANTY IS LIMITED TO REPLACING, REPAIRING, OR ISSUING A CREDIT, AT ITS OPTION, FOR ANY SUCH ITEM RETURNED BY BUYER UNDER THE TERMS OF THIS WARRANTY. IN NO EVENT SHALL AEROFLEX BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE. THIS IS THE SOLE WARRANTY MADE BY AEROFLEX. NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE MADE BY AEROFLEX. AEROFLEX SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES.

- 9.) **PRODUCT IMPROVEMENT AND/OR DESIGN CHANGES.** AEROFLEX expressly reserves the right to make product improvements and/or design changes to any of its products without incurring any obligation or liability to make the same changes or improvements to any items sold previously.
- 10.) **PRODUCT SPECIFICATIONS.** Published specifications whether contained herein or in any other materials or documents distributed to Buyer by AEROFLEX do not become final or binding on AEROFLEX until approved by AEROFLEX. AEROFLEX expressly reserves the right to change or modify specifications at any time without prior notice.
- 11.) **SPECIAL TOOLING.** Any and all special tooling that is purchased, designed, or constructed by AEROFLEX, for the purpose of filling this order shall be and shall remain the property of AEROFLEX.
- 12.) **TAXES.** Any state, local or use tax, or other governmental charge imposed upon the items sold hereunder shall be paid by the Buyer. Buyer shall also make any and all necessary reports and filings required in connection with any such taxes or charges. Failure of the Buyer to comply with the terms of this paragraph shall be a breach of this entire Agreement.
- 13.) **ASSIGNMENT AND DELEGATION.** Buyer may not assign any of its rights nor delegate any of its duties hereunder without the express written consent of AEROFLEX.
- 14.) **SELLER S AGENTS.** The Buyer acknowledges that he has been advised that no agent, employee, or representative of the Seller has any authority to bind the Seller to any affirmation, promise, representation, or warranty is specifically set forth in this Agreement. It does not form a basis of this agreement and shall not be enforceable against the Seller.
- 15.) **CANCELLATION.** This Agreement may not be cancelled in whole or in part without the written consent of AEROFLEX. Such consent shall in no event be given unless Buyer pays to AEROFLEX, AEROFLEX s costs and expenses (including without limitation, the cost of materials, labor, engineering expense, overhead and all commitments to its suppliers and subcontractors) plus profit, all as determined by AEROFLEX.
- 16.) **ENTIRE AGREEMENT.** This Agreement states and constitutes the entire agreement between the parties, hereto and all prior communications, representations and agreements, written or oral between Buyer and AEROFLEX are superseded by this Agreement. No other statements, representation, covenant or warranty not contained herein shall be binding on AEROFLEX.
- 17.) **AMENDMENT AND MODIFICATION.** No provision, term or condition of this Agreement may be waived, modified, amended, varied or supplemented in any respect except in writing signed by an authorized representative of AEROFLEX. No invoice, purchase order, voucher or other documents or materials submitted to AEROFLEX by Buyer shall amend, modify, vary or supplement this Agreement. AEROFLEX s failure to object to any provision that conflicts with any provision, term or condition of this Agreement, whether contained in Buyer's purchase order or other documents or materials supplied to AEROFLEX by Buyer, shall not be construed as an acceptance thereof or as a waiver of any provision, term or condition contained herein.
- 18.) **NO IMPLIED WAIVERS.** The failure of either party at any time to require performance by the other of any provision hereof shall in no way affect the right to require performance at any time, thereafter, nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.
- 19.) **SEPARABILITY AND SAVINGS.** If any part of this Agreement is held invalid under the laws of New Jersey; such part shall be waived and the balance of the Agreement shall continue in full force and effect.
- 20.) **APPLICABLE LAW.** Unless expressly modified or contradicted herein, all the rights and obligations of the parties shall be governed by the Uniform Commercial Code as enacted in the State of New Jersey .