

# EB Airfoils Terms and Conditions

(These Standard terms and conditions are intended for compliance and flow down of the AS 9110 requirements)

These Terms and Conditions of Purchase (hereinafter referred to as "Condition(s)") shall act as a binding agreement between EB Airfoils LLC (hereinafter referred to as "EB AIRFOILS or Buyer") with its principal office at 3591 SW Deggeller Ct. Palm City, FL 34990 and the Receiver of any Purchase Order (hereinafter referred to as "Seller"). For the consideration stated herein, Buyer and the Seller may be referred to herein collectively as "Party" and/or as "Parties."

**The following terms used herein shall have the described meaning:**

(a) Buyer - Shall mean EB Airfoils. LLC and/or the entity identified as Buyer in the Contract or PO.

(b) Contract and/or Purchase Order - Shall mean these Terms and Conditions, the Contract or Purchase Order to which these Terms and Conditions pertain, and any supplementary sheets, exhibits or attachments annexed by the Buyer (hereinafter referred to as "Contract(s) or PO(s)") as well as any relevant technical data (e.g., specifications, drawings, process requirements, work instructions).

(c) Counterfeit Part - Shall mean any fraudulent part that has been confirmed to be a copy, imitation or substitute that has been represented, identified or marked as genuine and/or altered without legal right or with intent to mislead, deceive or defraud.

(d) Fraudulent Part - Shall mean any supplied Goods misrepresented to EB AIRFOILS by the Seller and/or the Seller's Sub tier Suppliers as meeting EB AIRFOILS Contract or PO requirements.

(e) Goods - Shall mean all materials, supplies and or services identified in a EB AIRFOILS Contract or PO (hereinafter referred to as "Goods").

(f) Nonconforming - Shall mean any materials, supplies or services that do not meet EB AIRFOILS Contract, PO or quality requirements which may or may not be related to the Goods intended form, fit or function. Included, but not limited to, are issues related to Supplied Documentation, Quantity, Date/Lot Code Restrictions, Manufacturer Restrictions, Material Composition, Part Numbers, Material Shelf Life, Functional Failures, Cosmetic and/or other physical conditions that may or may not affect the Goods form, fit or functionality.

(g) Seller - Shall mean the Company and/or any of its Authorized Representative(s) that has received and processed an EB AIRFOILS Contract or Purchase Order for the procurement of materials, supplies or services.

(h) Suspect Part - Shall mean any part in which there is an indication by visual inspection, testing or other means that it may meet the definition of Fraudulent or Counterfeit Part.

**Goods Requirements:** Seller agrees to furnish and deliver to EB AIRFOILS all Goods in accordance with the Conditions and terms of the PO. Upon receipt of a PO, the Seller shall be bound by the provisions of these Conditions and terms of the PO, unless Seller objects to any provision in writing prior to the shipment of Goods. Any of the following acts by the Seller shall constitute acceptance and understanding of these Conditions and terms of the PO:

- (a) Signing and returning a copy of these Conditions.
- (b) Signing and returning a copy of the purchase order.
- (c) Shipment or delivery of any Goods referenced on the purchase order; and/or
- (d) Return of Seller's own form of order acknowledgment.

**Guarantee of Goods Source(s):** The Seller shall ensure that only conforming Goods and services are delivered to Buyer. When providing Goods to Buyer, Seller shall endeavor to first procure Goods in compliance with Original Component Manufacturers (OEMs), specifications, the OEM Authorized Distributor, or from Suppliers who has obtained such Goods directly from the OEM or their Authorized Distributors and can provide full supply chain traceability documentation to the OEM. Supply of Goods by the Seller that does not meet these source requirements is not authorized unless first approved in writing by EB AIRFOILS via a signed Contract or PO. The Seller hereby attests that the goods and services provided under this purchase order are in compliance with all technical manuals identified and are unaltered and authentic and have not been altered, reclaimed, otherwise used, or previously rejected for any reason. The Seller hereby agrees they have done their due diligence to prevent the supply of fraudulent/suspect counterfeit parts. The Seller shall preserve the product during processing and delivery in order to maintain conformity to requirements. As applicable, preservation shall (2) include identification, handling, packaging, storage, and protection in accordance with manufacturer specifications and applicable statutory and regulatory requirements providing for the prevention, detection, and removal of foreign objects.

**Guarantee of Services Provided:** The Seller shall ensure that the methods, equipment and personnel performing services are compliant with all technical requirements and that personnel have been trained, equipment maintained, and methods verified to deliver compliant processes and services. The Seller hereby attests that the services provided under this purchase order are in compliance with all technical manuals identified and are unaltered and authentic and have not been altered for any reason. The Seller shall provide written notification to the Buyer of any changes in manufacturing to include change in location, change in subcontractors, change in critical processes.

**Supply Chain Traceability:** Seller shall maintain a method of Goods traceability that ensures tracking of the Goods back to the Manufacturer of all Goods being delivered to Buyer. This traceability method shall clearly identify the name and location of all Supply Chain Intermediaries from the Manufacturer to the shipment of Goods to the Buyer. Traceability information shall include, but not limited to, Manufacturer's Part Numbers

and Batch identification such as date codes, lot numbers, serializations, shelf life, material compositions and testing and inspection reports.

**Quality Management System:** EB Airfoils encourages and promotes the implementation of a Quality Management System as well as the importance of ethical behavior to all of their External Providers. Independent External Providers demonstrating these best practices are preferred. Sellers that have obtained certification or registration to a quality management system that complies with the International Organization for Standardization ISO 9001 Quality Management System Requirements, or other equivalent industry recognized standard further warrants that in the event of a change in Certification Bodies, loss of or notice of losing registration shall notify EB AIRFOILS in writing within 5 days of receiving such notification.

**Record Retention:** Seller shall keep and maintain records of this transaction and all related Goods inspection and test records for a minimum of 15 years from date of shipment. All such records shall be made available to the Buyer or Buyer's representatives upon request.

**Price:** Unless otherwise specified, the prices established by this Contract are firm fixed prices. Seller warrants that any unit prices charged herein do not exceed the unit prices charged by Seller to other Customers in substantially similar transactions. If Seller is liable to Buyer for any amounts, Buyer may, at its election, set-off such amounts against any amounts payable to Seller under this Contract.

**Schedule and Delivery;** Notice of Delay: Seller shall strictly adhere to all Purchase Order schedules and shall notify Buyer, in writing, immediately of any actual or potential delay to the performance of this Contract. Such notice shall include a revised schedule and shall not constitute a waiver to Buyer's rights and remedies hereunder.

**Warranty:** Unless stated otherwise in the documents accompanying these terms and conditions, and accepted by Buyer in writing, Seller warrants all Goods against defects in design and performance for a period of one year following delivery. Seller shall observe, comply with and afford Buyer all applicable warranties associated with Goods including Manufacturer's warranties and those contained in the New York Uniform Commercial Code, which shall be in addition to the warranties set forth herein. Seller hereby acknowledges that Buyer does not waive or accept any disclaimer of any such warranties. These warranties shall survive delivery, inspection, acceptance and payment and shall run to Buyer's Customers.

**Inspection and Acceptance:** Buyer's final acceptance of Goods or services is subject to Buyer's final inspection within 90 days after receipt of Goods, notwithstanding payment of Goods. Buyer may designate, at its option, a qualified third party to assist in making a determination in deeming the acceptability of Seller's Goods. SELLER will be responsible for all direct and consequential costs associated with the delivery of non-conforming, counterfeit, suspect counterfeit or rejected products, including but not limited to: (i) replacement costs (ii) corrective or rework costs (iii)

testing costs (iv) additional costs associated with the transport, financing or storage of Goods (v) any additional remedy that is accordance with Buyer's or Buyer's Customer's requirements.

**Product Impoundment and Financial Responsibility:** All product deemed fraudulent, suspect and/or deemed counterfeit by the Buyer shall be impounded in a secure location until such time that the product in question can be definitively deemed authentic either by the OCM or by an Independent Certified Test Facility. Fraudulent or Suspect product that cannot be definitively deemed authentic will not be returned to the Seller and "quarantined" by Buyer until either the parties agree that the parts can be destroyed, or the applicable statute of limitations has run so that Buyer can destroy the parts "with proof of destruction" retained at Buyer's facility. Buyer will have no obligation to make payment for any non-authentic product that cannot otherwise be definitively authenticated. Seller will be required to refund to Buyer any payments made by Buyer for product that is deemed non-authentic.

**Equal Employment Opportunity:** Buyer is an equal employment opportunity employer and is a federal contractor. Buyer and Seller agree that, to the extent applicable, they will comply with Executive Order 11246, the Vietnam Era Veterans Readjustment Assistance Act of 1974 and Section 503 of the Vocational Rehabilitation Act of 1973 and also agree that these laws are incorporated herein by this reference.

**Right of Access:** Buyer and Buyer's representatives shall have the right of access, on a noninterference basis, to any area of Seller's or Seller's supply chain sub-tier premises where any part of the work is being performed. Seller shall flow this requirement down to its sub tier supply chain Suppliers as a condition of this Contract. Seller shall, without additional costs to Buyer, provide all reasonable in-plant accommodations, facilities, and assistance for the safety and convenience of Buyer and Buyer's representatives in the performance of their duties.

**Flow Down of Applicable Requirements:** The requirements contained within this Contract shall be flowed down the supply chain, as applicable, including any special and/or specific Customer requirements.

(a) Due to the possibility of the materials being utilized for a United States Government Contract and regardless of whether a Government Contract Number is listed on the order, the following Federal Regulations, in effect on the date of the procurement, shall apply:

(b) The Supplier shall be compliant to NIST 800-171 and DFARS 252.204-7012 where designated by Buyer.

**Shipping:** All Goods are to be shipped freight collect, F.O.B. destination by the specified carrier, unless otherwise stated.

(a) Do not charge insurance except upon Buyer's written request.

(b) Regardless of F.O.B. point, Seller agrees to bear all risk of loss, injury, or destruction of Goods ordered herein which occur prior to acceptance by Buyer.

(c) No such loss, injury, or destruction shall release Seller from any obligations hereunder.

(d) Any Goods received in excess of the quantity specified in this Contract may, at Buyer's option, be returned at Seller's sole expense. Buyer's count will be final and conclusive on all shipments not accompanied by a packing ticket.

**Packaging, Shipment, and Transportation:** All charges for boxing, packing, crating, and storage are included in the price stated herein. Goods shall be suitably packed to secure lowest transportation costs and to conform to the requirements of common carriers and any applicable specifications. All packages must bear Buyer's Purchase Order number. If purchase terms are F.O.B. shipping point. Seller will conform to Buyer's established routing and shipping instructions.

**Indemnity:** Seller shall defend, indemnify and hold harmless Buyer, its successors, assigns, Customers and users of items covered by this Contract from and against any and all penalties, liabilities, settlements, losses, damages, costs, charges, claims, reasonable counsel fees, and any other expenses, relating to or arising from any claims: (a) of every nature or character (including, without limitation, claims for personal injury, death or damage to property) based upon or arising out of any defect or alleged defect in the Goods "including, but not limited to the sale of any fraudulent or suspect counterfeit Goods by the Seller to Buyer, and/or due to any actual or alleged negligence of Seller, or any of its employees or agents; (b) of infringement, actual or alleged, of any patent, trademark, copyright, or other tangible or intangible personal or property right; or (c) of violation, actual or alleged, of any applicable law, rule or regulation. Seller expressly warrants that the Goods and the sale of the Goods to Buyer are, in fact, free from any of the conditions set forth in the preceding sentence.

**Assignment:** Neither this order nor any rights or obligations herein may be assigned by Seller nor may Seller delegate the performance of any of its duties hereunder without, in either case, Buyer's prior written consent.

**Goods, Methods, and Processes:** Any knowledge or information which Seller shall have disclosed or may hereafter disclose to Buyer incident to the placing and filling of this Contract shall not, unless otherwise specifically agreed upon in writing by Buyer, be deemed to be confidential or proprietary information, and accordingly shall be acquired free from any restrictions (other than restrictions which may derive from a valid patent.)

**Release of Information to Public:** Seller shall not, without the prior written consent of Buyer, make any release of information concerning this order or any other information related to Buyer (other than to Seller's employees and subcontractors that is required for the performance of their duties), including copies of this order or identifying the items sold by Seller to Buyer, nor use the name of Buyer in any advertising or publicity, except as may be necessary to comply with proper legal demand.

**Changes:** The Seller may not add to, modify, supersede or otherwise alter these Conditions or the terms of the PO, unless such changes are agreed to in writing by an Authorized EB AIRFOILS Representative. The Seller's failure to obtain RESION's prior written approval of changes constitutes a material breach under the terms of this agreement. EB AIRFOILS reserves the right to make and may request changes to these Conditions or the terms of the PO by written amendment for:

- (a) Technical requirements.
- (b) Shipment or packing methods.
- (c) Place of delivery, inspection or acceptance.

- (d) Reasonable adjustments in quantities, delivery schedules or both.
- (e) Amount of Buyer-furnished property.
- (f) Time of performance; and/or
- (g) Place of performance.

If any such changes requested by Buyer cause an increase or decrease in the price of Goods or Goods delivery time, Seller shall promptly notify Buyer and assert its claim for equitable adjustment within 3 days after the change is requested. If applicable Buyer may withdraw the request for change or an equitable adjustment shall be made and reflected in a written amendment signed by both parties. However, nothing in this provision shall excuse Seller from immediately proceeding with the directed change(s) so long as such equitable adjustment, if requested is timely asserted and made.

**Force Majeure:** The following events, and only the following events, shall constitute force majeure under this Contract: (a) acts of God or of a public enemy; (b) acts of Government; (c) fires; (d) floods; (e) epidemics; (f) quarantine restrictions; (g) strikes; (h) freight embargoes; and (i) unusually severe weather. In each case, the failure to perform must be entirely beyond the control and without the fault or negligence of the party claiming to be so affected. Each party shall give the other immediate notice of any event that such party claims is a Force Majeure condition that would prevent the party from performing its obligations hereunder, and of the cessation of the condition. A party's notice under this Section shall include the party's good faith estimate of the likely duration of the Force Majeure condition.

**Termination for Convenience:** Buyer may, by notice in writing, direct Seller to terminate work under this Contract in whole or in part, at any time, and such termination shall not constitute default. In such event, Buyer shall have all rights and obligations accruing to it either at law or in equity, including Buyer's rights to title and possession of the Goods and materials paid for. Buyer may take immediate possession of all work so performed upon notice of termination. Seller shall immediately stop work and limit costs incurred on the terminated work. Buyer, after deducting any amount(s) previously paid, shall reimburse Seller for the actual, reasonable, substantiated and allowable costs with the total amount to be paid by Buyer being determined by negotiation.

**Termination for Default:** Buyer may, by written notice of default to Seller, terminate this Contract in whole or in part, or, at Buyer's sole discretion, require Seller to post such financial assurance as Buyer deems reasonably necessary, if Seller fails to:

- (a) deliver the Goods or to perform the services within the time specified in this Contract or any extension.

- (b) make progress, so as to endanger performance of this Contract; or,
- (c) Perform any of the other provisions of this Contract.

Buyer may require Seller to transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer, any partially completed Goods and raw material, parts, tools, dies, jigs, fixtures, plans, drawings, services, information and contract rights (Materials)

as Seller has produced or acquired for the performance of this Contract, including the assignment to Buyer of Seller's subcontracts. Seller further agrees to protect and preserve property in the possession of Seller in which Buyer has an interest. Payment for completed Goods delivered to and accepted by Buyer shall be at the Contract price. Payment for unfinished Goods or services, which have been delivered to and accepted by Buyer and for the protection and preservation of property, shall be at a price determined in the same manner as provided in the Termination for Convenience provision hereof except that Seller shall not be entitled to profit. Buyer may withhold from Seller moneys otherwise due Seller for Goods completed, and services performed in such amounts as Buyer determines necessary to protect Buyer against loss due to outstanding liens or claims against said Goods. Seller shall promptly notify Buyer if Seller is the subject of any petition in bankruptcy. In the event of Seller's bankruptcy, Buyer may require Seller to post such financial assurance, as Buyer, in its sole discretion, deems necessary. Failure to post such financial assurance upon 10 days written notice shall constitute a default under this Contract. The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by law or under this Contract.

**Applicable Law; Jurisdiction; Legal Fees; Mandatory Mediation:** All questions concerning the interpretation, construction, performance, and enforcement of this Contract and remedies in the event of default shall be resolved in accordance with the laws of the state of New York without resort to said state's conflict of law rule, and in accordance with its fair meaning and not strictly against either party based on which party drafted this Contract. If a dispute arises out of or relates to this contract or breach thereof and if said dispute cannot be settled through negotiation, the parties agree first to try, in good faith, to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association before resorting to arbitration. Said mediation shall last a minimum of four hours and the parties agree to share equally in the cost of the mediator. Any legal proceeding arising out of the terms of this Contract will be commenced in the courts located in Nassau or Suffolk County, New York. Each of Seller and Buyer irrevocably and unconditionally submits to the exclusive jurisdiction of such courts, waives any objection to the laying of venue of any action, suit or proceeding arising out of this Contract or the transactions contemplated hereby in the State of New York, and waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. The prevailing party in any dispute will be entitled to recover from the losing party its costs (including reasonable costs of collection, attorneys' fees).

**Disputes:** Pending final resolution of a dispute hereunder, Seller shall proceed diligently with the performance of this Contract and in accordance with all the Terms and Conditions contained herein and with Buyer's direction thereof.

**Compliance with Law:** Seller has complied with all applicable federal, state and local laws, regulations and other requirements, including those pertaining to regulatory and environmental matters, in its performance of this Contract.

**Complete Agreement:** The Contract contains the complete and entire agreement between the parties with respect to the subject matter of this Contract, when accepted by acknowledgement, commencement, or performance. It supersedes any other communications, representations or agreements whether verbal or written. This Contract may be accepted only on all the terms and conditions herein stated. No acceptance by Buyer of or payment for Goods ordered hereunder shall be deemed a waiver of the foregoing or an acceptance of any additional or different terms contained in any acknowledgement, invoice, or other form sent or delivered by Seller to Buyer. This Contract shall be deemed a notification of and objection to any inconsistent, additional and/or different terms contained in Seller's invoice or other form and constitutes a rejection thereof.