

ROGERSON AIRCRAFT CORPORATION

STANDARD AIRCRAFT TERMS AND CONDITIONS OF SALE

(RAC 101-12)

1. **ACCEPTANCE:** Buyer's purchase order is accepted subject to the following terms and conditions and no others unless the same have been consented to in writing by Seller. The placing of an order by Buyer shall be conclusive evidence of the Buyer's approval of, and consent to, the terms and conditions herein contained. In the event of any contradiction or inconsistency between Sellers's standard terms herein and any terms proposed by Buyer, Seller's terms as detailed herein shall prevail, and shall be the only terms of the order.
2. **PRICES:** All prices are F.O.B. Seller's factory at point of origin, and unless otherwise stated do not include cartage, insurance, taxes, imposts, or any similar charges. (EXWORKS)
3. **PAYMENT:** A completed credit application with banking and credit references will be required. The Seller's credit department will make a determination regarding the offering of payment terms. Otherwise, payment terms are Payment In Advance.
4. **PACKAGING:** Unless otherwise agreed in writing, Seller will package goods in accordance with standard commercial practices.
5. **PERFORMANCE/DELIVERIES:** Seller shall not be liable for delays in delivery, performance, or failure to perform, manufacture or deliver due to (1) causes beyond its reasonable control, or (2) to acts of God, acts of the Buyer, act of civil or military authority, government priorities, fires, strikes, floods, epidemics, war, riot, delays in transportation or shortages, or (3) inability due to causes beyond its responsible control to obtain necessary labor, materials, utilities, components or manufacturing facilities. In the event of any such delay, the date of performance or delivery shall be extended for a period of time as may be reasonably necessary to compensate for any such delay.
6. **SPECIAL TOOLS, TEST EQUIPMENT, DATA, TEST ARTICLES & BUYER'S PROPERTY:** Except as otherwise expressly provided on the face of this order, all rights and title to jigs, dies, fixtures, patterns, drawings, design data, manufacturing aids, tools, test equipment and development and test articles manufactured for or used in the performance of this order shall be the property of and title shall remain in the Seller. Any property of the Buyer in the possession of the Seller shall be held without liability to Seller except wherein the loss or damage is due to negligence of the Seller.
7. **CHANGES:** No change shall be made in drawings and specifications relating to this order without the written consent of the Seller. Subject to the foregoing, Buyer may request in

writing changes in drawings, specifications, shipment or packaging of articles. If any such change increases or decreases the cost of, or the time required for performance of this order, or otherwise affects any of the provisions of this order, and equitable adjustment shall be made in the price or delivery schedule, or both, and in such, other provisions of the order as may be so affected, and the order shall be modified in writing accordingly, any claim for adjustment hereunder may be asserted at any time prior to 180 days after final delivery. Any request of Buyer necessitating use of premium labor costs or material shall be deemed a change under this paragraph. If Buyer's personnel take any action, which Seller considers to constitute a change to the contract without written consent of Seller, Seller is entitled to an equitable adjustment as described above.

8. WARRANTY

- (a) Seller warrants that the articles delivered hereunder conform to final specifications, drawings, and other description agreed in writing to be applicable and are free from defects in materials and workmanship. These warranties, as conditioned below shall run to the Buyer, its successors, assigns or customers.
- (b) The responsibility of the Seller hereunder, and the sole and exclusive remedy of Buyer, its successors, assigns or customers for a breach of any warranty hereunder, is limited to correction or replacement by Seller at its plant without charge for any article or part which has been returned to Seller and which is not in accordance with this warranty; provided, however, (1) Seller must be notified in writing of the defect or nonconformity within the warranty period and the affected article or part returned to Seller within thirty (30) days after discovery of such defect or nonconformity; (2) if Seller is unable to repair or replace defective or nonconforming articles or parts within a reasonable time after receipt thereof, Buyer shall be credited for their value at the original purchase price, and (3) Seller shall not be responsible for costs of removal and reinstallation. **In no event shall Seller be liable for any penalties or damages associated with late deliveries, regardless of excuse or cause.**
- (c) Seller shall have the sole right to determine whether returned articles or parts shall be repaired or replaced.
- (d) Seller's responsibility under these warranties shall expire twelve (12) months after installation and / or first use of the article, or twelve (12) months after shipment of the article to the Buyer, or delivery of the item to the U. S. Government, or any other period of service life or performance granted in writing by Seller, whichever is earlier.
- (e) Unless otherwise agreed, and except as may be necessary to comply with these warranties, the Seller reserves the right to make changes in its products without any obligation to incorporate such changes in any product manufactured theretofore.
- (f) Seller agrees to assume round-trip transportation costs for defective or nonconforming articles or parts in an amount not to exceed normal surface shipping charges within the continental United States, provided however, that if Seller's

inspection discloses that the returned article or part does not require repair or replacement, Seller's usual charges will apply and the Buyer shall assume round-trip shipping charges.

- (g) These warranties will not apply if the articles or any parts thereof have been subjected to (1) any maintenance, overhaul, installation, storage, operation, or use, handling or environment which is improper or not in accordance with Seller's instructions; (2) any alteration, modification, or repair by anyone other than Seller or its authorized representative; or (3) any accident, misuse, neglect, or negligence after delivery to Buyer. The warranty shall not apply to any article to the extent that the defect or nonconformity is attributable to any part not supplied by or approved by Seller.
- (h) Seller's obligations under these warranties are conditioned on Buyer's obligation to maintain records which will accurately reflect operating time and maintenance performed on Seller's equipment and to establish the nature of any unsatisfactory conditions of Seller's equipment. Seller, at its request, shall be given access to such records for the purpose of substantiating warranty claims.
- (i) **ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, SUCH AS WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY EXCLUDED AND DISCLAIMED TO THE EXTENT THEY EXCEED THE WARRANTIES GRANTED HEREIN. IN NO EVENT SHALL SELLER BE LIABLE FOR SECONDARY, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND OR NATURE, HOWEVER ARISING.**
- (j) No agreement extending this warranty shall be binding upon the Seller unless in writing and signed by Seller's duly authorized officer or representative.

9. LIMITATIONS OF LIABILITY: Seller's liability on any claim of any kind, including negligence, for any loss or damage arising out of, connected with, or resulting from this order, or from the performance or breach thereof, or from the manufacture, sale, delivery, resale, repair or use of any article covered by or furnished under this order shall in no case exceed the price of the article or part thereof which gives rise to the claim. In no event shall Seller be liable for secondary, special, consequential or incidental damages.

10. BENEFIT: Except as herein expressly provided to contrary, the provisions of this order are for the benefit of the parties to the order and not for the benefit of any other person.

11. PATENT RIGHTS: Seller owns many good and valuable patents and all rights and interests therein and the subject matter thereof shall be and remain the property of the Seller. Buyer agrees it will not infringe upon, in form or fashion, the Seller's patent rights.

12. DATA RIGHTS: Designs, drawings, specifications, reports, computer software,

photographs, instruction materials, and other technical information and data (hereinafter "Data") of Seller relating to this order all proprietary right and interest therein and the subject matter thereof shall be and remain the property of the Seller except as otherwise expressly agreed in writing by Seller. The Buyer agrees that it will not use the Seller's Data for manufacture or procurement of articles which are subject of this order or any similar articles or cause said articles to be manufactured by or procured from any other source, or reproduce said Data and information or otherwise appropriate them without the written authorization of the Seller.

13. **CONFIDENTIALITY:** The Buyer agrees that it will not disclose or make available to any unauthorized third party any Seller's Data or other information pertaining to this order, which is proprietary to Seller without obtaining Seller's prior consent.
14. **TAXES:** The amount of all Federal, State or local taxes applicable to the sale, use, delivery or transportation of the articles sold hereunder and all duties, imposts, tariffs and other similar levies shall be added to the order price and paid by the Buyer except where the Buyer shall furnish appropriate certification of exemption there from.
15. **EXPORT:** If any article sold hereunder is for export, Buyer shall be responsible for arranging for transportation, insurance and export clearance licenses.
16. **ASSIGNMENT:** No right or interest in this contract shall be assigned by either Buyer or Seller without the written permission of the other party, and no delegation of any duty owed, or for the performance of any obligation, by either Buyer or Seller shall be made without the written permission of the other party. Any attempted assignment or delegation shall be wholly void and totally ineffective for all purposes, unless made in conformity with this paragraph.
17. **WAIVERS:** No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver of the claim or right unless the waiver is supported by consideration and is in writing signed by both parties.
18. **PURCHASE ORDER:** If a quotation is accepted and the Buyer's Purchase Order form is used for the purpose, it is expressly understood and agreed that the terms and conditions herein set forth shall prevail and shall supersede any previous order or other writing the Buyer may give and the rights of the parties shall be governed exclusively by the provisions, terms, and conditions hereof.
19. **DISPUTES:**
 - (a) The performance of the parties hereunder shall be controlled and governed by the laws of the State of California. Pending final resolution of any dispute under this order, Seller and Buyer shall proceed in accordance with the terms and conditions set forth in Buyer's purchase order as modified by the terms and conditions

contained in this acceptance.

- (b) In the event Seller's claim, or any portion thereof, against Buyer is the proper subject for a claim by the Buyer against a higher-tiered contractor under the terms of the Buyer's contract with a higher-tiered contractor ("Buyer's Contract") or (2) Buyer's claim against Seller, or a portion thereof, is based upon a corresponding claim against Buyer by a higher-tiered contractor, then the dispute may be litigated pursuant to the Disputes clause in Buyer's contract. Buyer will cooperate fully with Seller in drafting and documenting any claim to be presented to the higher-tiered contractor or in responding to any claim by a higher-tiered contractor. Buyer shall notify Seller of a claim of a higher-tiered contractor or a decision of a higher-tiered contractor on a claim by Seller within ten (10) days after Buyer's receipt thereof. Within fifteen (15) days of such notice, Seller shall advise Buyer in writing whether Seller decides to appeal the action pursuant to Buyer's contract to litigate. Buyer agrees to provide full cooperation and assistance in any instance when Seller chooses to appeal or litigate. For such an appeal or litigation, Buyer and Seller shall bear their own expenses. Buyer agrees it will take no action to settle or prejudice Seller's claim without Seller's consent.
- (c) In the event of a dispute involving the provisions of this order, either Buyer or Seller shall have such rights and a court of competent jurisdiction may determine remedies as. However, neither shall resort to the courts unless it has presented to the other a formal written claim at least sixty (60) days prior thereto.

- 20. INDEMNITY AND INSURANCE:** Buyer shall indemnify and hold Seller and its employees harmless from any property damage, personal injury, or death arising out of Seller's (or its subcontractors) work or performance hereunder and shall procure and maintain insurance against such risks.
- 21. INSPECTION AND TESTING:** Payment for the goods delivered hereunder shall constitute acceptance thereof. Buyer shall have the right to inspect such goods and to reject any or all of such goods, which are defective. Buyer shall have fifteen (15) days from date of receipt in order to identify any defects or nonconformities, which are not apparent upon initial examination.
- 22. NON-WAIVER/SEVERABILITY:** No waiver of any provision or failure to perform any provision of this order shall be effective unless consented to by Seller in writing nor shall any such waiver constitute a waiver of any other provision or failure to perform.
- 23. REMEDIES:** The rights and remedies of Buyer provided herein should be the exclusive rights or remedies allowed.
- 24. SET OFF:** Buyer may not set off from any amount due to Seller, whether or not under this order, any amount due Buyer under this or any other order.

25. **SPECIFICATION:** Unless otherwise directed in this order, Seller shall manufacture the article called for in the Buyer's purchase order in accordance with specifications, drawings and designs for that article provided by the Buyer. Seller is not responsible for validating that the specifications, drawings and designs are the current revisions. If Buyer determines that any of the specifications, drawings or designs is not the most current revision, Buyer shall notify Seller immediately.
26. **TERMINATION:** The only ground upon which Buyer may terminate this order is an unexcused delay in delivery for more than 90 days.
27. **APPLICABLE LAW:** This Agreement shall be governed by the law of the State of California as effective and in force on the date of this Agreement.
28. **ENTIRE AGREEMENT, AMENDMENT:** Buyer's purchase order as modified herein constitutes the entire agreement and supersedes all previous communications, representations, either verbal or written, between the parties hereto with respect to the subject matter hereof. This agreement may not be changed, altered, supplemented or added to at any time except by supplemental written contract.