

# Era Helicopters LLC Purchase Order Terms and Conditions

## **1. ACCEPTANCE**

In the absence of written acceptance of the purchase order, Seller's commencement of work on the services or goods subject to this purchase order, or the shipment of such goods, whichever occurs first, shall be deemed an effective and binding mode of acceptance of this purchase order. ANY ACCEPTANCE BY SELLER OF THIS PURCHASE ORDER IS LIMITED TO ACCEPTANCE OF THESE TERMS AND CONDITIONS WITHOUT MODIFICATION. ANY ATTEMPT BY SELLER TO REPLACE, MODIFY, OR AUGMENT THESE TERMS AND CONDITIONS IN ANY WAY, INCLUDING, BUT NOT LIMITED TO, SENDING BUYER A DIFFERENT SET OF TERMS AND CONDITIONS IN CORRESPONDENCE, IN SHIPMENTS, OR AS PART OF AN INVOICE, IS TOTALLY REJECTED, AND SELLER AGREES THAT SUCH DIFFERING TERMS AND CONDITIONS SHALL NOT BE APPLICABLE TO THIS PURCHASE ORDER. If this purchase order shall be deemed in a court of law to be an acceptance of a prior offer by Seller, then Buyer's acceptance is conditioned upon Seller agreeing that these terms and conditions supersede the terms and conditions contained in Seller's offer. In the event these terms and conditions are provided to Seller as a part of Buyer's annual notification process, then these terms and conditions shall apply to all purchase transactions between Buyer and Seller unless otherwise agreed to in writing between Seller and Buyer.

## **2. DELIVERY**

Time is of the essence. If Seller fails to meet shipping dates, delivery dates, and/or work commencement or completion dates, then Buyer may immediately terminate this purchase order for cause or exercise any other rights and remedies to which it may be entitled, at law or in equity. Except as otherwise provided on the face of this purchase order, title and risk of loss to all goods delivered pursuant hereto shall pass DDP Buyer's facility (Incoterms 2000).

## **3. TERMINATION FOR CONVENIENCE/CHANGES OF BUYER**

Buyer may cancel this purchase order or any part thereof or make changes to the drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation without cause at any time prior to shipment or commencement of the performance of any services pursuant hereto. If Buyer cancels this purchase order, cancellation charges shall be limited to Seller's actual incurred costs as of the cancellation date for goods in process, plus the purchase price for services performed and goods completed as of the cancellation date. Upon such payment, all completed goods, any special tools purchased to fill the order, and all work in process will become the property of Buyer and shall be delivered to Buyer.

## **4. SELLER'S WARRANTIES**

Seller warrants that: (a) all goods delivered pursuant hereto are new and conform to any specifications furnished by Buyer. Nonconforming goods or defective work may, at Buyer's option, be returned for credit or replacement at Seller's expense; (b) all goods delivered pursuant hereto do not infringe on any third-party intellectual property rights (either directly or indirectly), including, but not limited to, patent, design, copyright and trademark rights; (c) all goods delivered or manufactured pursuant hereto and services performed in connection herewith shall comply with all applicable federal, state and local laws and regulations; (d) Seller is in full compliance with any and all applicable federal employment and contract laws, including but not limited to the Equal Employment Opportunity clauses in Section 202 of Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, Section 4212 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, Executive Order 13201 (29CFR part 470), where applicable, and the implementing rules and regulations of the Office of Federal Contract Compliance Programs (41 CFR, Chapter 60), all of which are incorporated herein (e) the prices and terms for the goods or services sold to Buyer hereunder are not less favorable than those currently extended to any other customer for the same or similar goods or services in similar quantities; and (f) all goods delivered pursuant hereto shall be free and clear of all claims, encumbrances, liens, and security interests and shall be free from any defects in workmanship, material or design. The foregoing warranties and such other warranties as may be specifically set out herein, are in addition to all other warranties which may vest in Buyer pursuant to applicable provisions of the Uniform Commercial Code or otherwise by operation of law. Seller shall extend all warranties it receives from its vendors to Buyer, and Seller's warranty shall extend to Buyer's customers. All such warranties shall survive the delivery of the goods and the receipt thereof by Buyer or the performance of the services, as applicable. Seller hereby agrees to indemnify, hold harmless, and defend Buyer from and against any and all liabilities, damages, injuries, claims, suits (including claims and/or suits for infringement), expenses (including reasonable attorneys' fees, court costs, and out-of-pocket expenses) resulting from or arising out of a breach, or alleged breach of the foregoing representations and warranties by Seller.

## **5. INDEMNITY**

Excepting claims arising from Buyer's sole negligence, Seller shall indemnify, hold harmless, and defend Buyer from and against any and all claims, losses, liabilities, lawsuits and expenses (including attorneys' fees) resulting from or arising out of (i) the death of or injury to persons, or destruction of property, caused or alleged to be caused, in whole or in part, by any defect in goods or services purchased hereunder, (ii) any breach or alleged breach of a warranty by Seller, or (iii) any act or omission of Seller and/or Seller's agents.

## **6. PROPRIETARY INFORMATION/CONFIDENTIALITY-ADVERTISING**

Seller shall consider all information furnished by Buyer to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing this purchase order, unless Seller first obtains written permission from Buyer to do so. This paragraph shall also apply to drawings, specifications, or other documents prepared by Seller for Buyer in connection with this purchase order. Unless identified in writing by Seller as confidential, no commercial, financial or technical information disclosed in any manner or at any time by Seller to Buyer shall be deemed secret or confidential, and Seller shall have no rights against Buyer with respect thereto.

## **7. INDEPENDENT CONTRACTOR**

Seller shall fulfill its obligations under this purchase order as an independent contractor. In the event Seller's obligations hereunder require Seller's employees or agents to enter on to or perform services on Buyer's property, Seller agrees that Seller is solely responsible for the safety of its employees and agents, and Seller shall (i) take all necessary precautions to protect all property and persons from damage, injury, or death arising out of the performance of any services performed by it pursuant hereto, (ii) comply with all fire, safety, and other applicable regulations prescribed by any governmental agency and by Buyer, and (iii) be responsible for the observance of similar compliance by its subcontractors and their employees, if any.

## **8. INSURANCE**

Seller shall procure and maintain the insurance coverage necessary to cover Seller's liability exposure under this purchase order, including, but not limited to, commercial general liability coverage, employer's liability coverage, and worker's compensation insurance as required by law. In addition to the above, if Seller is performing services at, or will otherwise have personnel in, Buyer's facility, then to the extent not otherwise agreed in writing, Seller shall procure and maintain the following minimum insurance coverage as follows: Commercial General Liability - \$2,000,000 - per occurrence and in the aggregate / Workers' Compensation - Statutory / Employers' Liability - \$1,000,000 per occurrence and in the aggregate, and / Automobile Liability (owned, non-owned, and hired) - \$1,000,000 per occurrence and in the aggregate. If requested by Buyer at any time and in Buyer's sole and absolute discretion, Seller shall (i) name Era Helicopters LLC and its affiliates and subsidiaries, and their respective officers, directors, employees and agents as additional insureds; (ii) waive all rights of subrogation under all such insurance policies and cause them to be so endorsed; and (iii) shall provide Buyer with a certificate of insurance evidencing the above coverages, and such certificate of insurance shall provide that Buyer shall receive thirty (30) days' prior written notice of the cancellation or any material change in such insurance coverages.

## **9.INSPECTION/TESTING**

Payment for goods delivered hereunder shall not constitute acceptance thereof. Buyer shall have the right to inspect goods and to reject goods that are in Buyer's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for herein may be returned to Seller at its expense and in addition to Buyer's other rights. Buyer may charge Seller all expenses of unpacking, examining, repacking and reshipping nonconforming goods. In the event Buyer receives goods whose defects or nonconformity are not apparent upon examination, Buyer reserves the right to require replacement, as well as payment of damages, if such defect or nonconformity later appears. Nothing contained in this purchase order shall relieve in any way Seller from the obligation of testing, inspection and quality control.

## **10. LIMITATION OF LIABILITY**

Notwithstanding anything to the contrary herein, in no event shall either Buyer be liable to Seller for punitive, special, incidental, exemplary, or consequential damages. Further, in no event shall Buyer be liable for penalties of any description. Seller may not assign or subcontract any portion of this purchase order without the prior written consent of the Buyer, which consent shall not be unreasonably withheld, delayed, denied, or conditioned.

## **11. PARTS/LICENSE**

If this purchase order relates to the purchase of machines or machinery, then Buyer shall have the right to purchase replacement parts, accessories, and supplies for any such machines or machinery, whenever Buyer

desires. As part of the price paid under this purchase order, Seller grants Buyer the license to use any patents and processes required for the use or operation of such machines or machinery. Further, Seller hereby represents and warrants to Buyer, that it is the owner of, or is otherwise authorized to use, all patents, processes, specifications, information, materials, trade secrets, trademarks, and logos, in connection with any machines, machinery, replacement parts, accessories, or supplies sold to Buyer pursuant to this purchase order (the "Sold Products"), and that the use by Buyer of any or all of the Sold Products, as contemplated by this purchase order, will not infringe upon or violate, in any manner or fashion, the rights of any third party, whether located in the United States or any other part of the world.

## **12. GOVERNING LAW AND JURISDICTION**

This purchase order shall be governed by and construed in accordance with applicable United States Federal laws and the laws of the State of Louisiana. No treaties or conventions on the international sale of goods shall apply in any respect. In the event of any unresolved dispute arising out of or in connection with this purchase order, each party shall submit to the exclusive jurisdiction of, and present its case before, an appropriate court in Lake Charles, Louisiana. The parties herewith agree they will not claim the protection of any other law or jurisdiction by reason of its present or future domicile, and Seller hereby irrevocably waives any immunity from said jurisdiction or legal process, as well as any affirmative defenses based upon lack of jurisdiction, attachment prior to judgment, attachment in aid of execution, sovereign immunity, or forum non conveniens, whether Seller possesses same now or at any time in the future.

## **13. MISCELLANEOUS**

This purchase order, and any documents referred to on the face hereof, constitute the entire agreement between the parties relating to the subject matter hereof, and supersedes all prior agreements, proposals or correspondence, whether oral or written, relating to the subject of this purchase order. All claims for money due or to become due from Buyer shall be subject to deduction or setoff by Buyer by reason of any counterclaim arising out of this or any other transaction with Seller. Either party's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or either party's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type. If any of these terms and conditions are found to be invalid or unenforceable by a court of law, the enforceability of the remaining terms and conditions shall not be affected thereby. All amendments must be in writing and signed by both parties hereto. In the event that Buyer is required to enforce this purchase order with the assistance of an attorney, including, but not limited to, the collection of any amounts owed to it, then, in any such event, Seller shall pay Buyer's reasonable attorneys' fees and court costs, if Buyer is the prevailing party. Additional conditions, if attached as Exhibit(s), shall apply to this purchase order.

**This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 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.**