

# Aeronautics

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## GENERAL TERMS & CONDITIONS OF PURCHASE ORDER

### DEFINITIONS

For the purpose of this document, the following definitions shall apply:

**Product(s)** – Any product or item furnished by Supplier to Purchaser and all derivatives thereof, including any integrated system components (which hereinafter shall be referred to as components), accessories and/or spare parts thereof.

**Conditions** - The Terms & Conditions set forth herein.

**Customer** - The end-user of the Product(s) (either as such or incorporated as such in the final product(s) or worked and incorporated in the final product(s)).

**Delivery Date /Due Date** - The agreed date of Product(s) delivery specified in the Order.

**Order** - The Purchase Order and amendments thereto, pursuant and subject to these Conditions.

**Party(ies)** - The Purchaser and/or the Supplier.

**Supplier** – the entity of individual supplying the Product(s) to Aeronautics under the Order to which these Terms and Conditions are attached as an integral part thereof.

**Purchaser** - Aeronautics Ltd.

**Specification** - The written Technical Specification or Requirement or other agreed means of defining the technical requirement of the Product(s), as attached hereto or as attached to the Order.

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## 1. GENERAL

- 1.1. The Conditions are an integral part of the Order. Only an amendment in writing signed by both Parties will prevail and will be able to make an exception to the Conditions. In respect of the supply of the Product(s), these Conditions are exclusive of any other written terms and conditions and incapable of addition or amendment without the prior written agreement of the Purchaser.
- 1.2. The Supplier's conditions of sale (if any), together with any provisions applied by it on its notes, correspondence, any other document or added by it to the Order, whether signed by the Purchaser or not, shall be regarded as null, void and unequivocally excluded.
- 1.3. Only Orders in writing, duly signed and accepted by the Purchaser shall be binding.
- 1.4. Sections headings are merely for convenience and shall not govern the interpretation of these Conditions.
- 1.5. Any concession or waiver, also if reiterated, allowed or to be allowed by the Purchaser to the Supplier at any time, shall not constitute a precedent or invalidate in any way the contractual provisions (including those not applied) or prevent the Purchaser from subsequently exercising its full rights.

## 2. DELIVERY TERMS

- 2.1. Deliveries according to this T&Cs shall be EXW (Ex-Works) per Incoterms 2010, unless specifically stated otherwise in the Order.
- 2.2. Supplier undertakes to strictly adhere to the agreed Delivery Date.
- 2.3. Supplier shall not make partial deliveries unless so approved, in writing, by Purchaser. In the event of delivery in installments, all such installments shall not be separately invoiced.
- 2.4. Purchaser shall have the right at any time to suspend all or any portion of Order and/or make changes within the general scope of the Order.
- 2.5. Purchaser reserves the right to refuse or return at Supplier's risk and expense any shipments made in excess of the quantities stipulated in the Order or received in advance of the required delivery schedule, or to keep the goods received in advance of the required delivery schedule and defer payment as if the delivery was made per the required delivery schedule.
- 2.6. In case of expected late delivery not due to Supplier's fault or not under Supplier's control, the Supplier shall notify Purchaser as soon as practical in writing and request from Purchaser a new delivery schedule and shall make all efforts to minimize such delay and to recommence performance of its obligations as soon as reasonably possible after cessation of the cause of delay.
- 2.7. Should the Supplier fail to deliver any Product ordered under an Order within the Delivery Date for reasons not beyond the Supplier's control or due to reasons other than those set forth in Section 3 (Force Majeure) and Supplier did not cure such

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failure within fourteen (14) days of notice thereof, without prejudice to any other or additional rights to which the purchaser is entitled to, the Supplier shall pay to the Purchaser as liquidated damages, a sum equal to 2% (two percent) of the price of the delayed Product/component for each week or any part thereof of delay, beginning from the end of the 5-day cure period.

2.8. It is hereby unequivocally stipulated that the free title will be transferred to the Purchaser upon delivery of the Product(s).

2.9. Should a Product be subject to export/import license rules, the Supplier shall timely obtain in due time export/import licenses or similar documents from the necessary authorities.

## 3. FORCE MAJEURE

3.1. Nonperformance of a party (including payment of money) shall be excused to the extent that performance is rendered impossible by strike, fire, earthquake, flood, governmental acts or orders or restrictions, terrorist acts, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence, intentional conduct or misconduct of the nonperforming party; provided, however, that the nonperforming party shall use commercially reasonable efforts to resume performance as soon as reasonably practicable and provided, further that, the party affected by such Force Majeure shall promptly notify the other of (i) the existence of such Force Majeure, (ii) its expected duration, (iii) the estimated effect such Force Majeure will have on the affected party's ability to perform its obligations hereunder, and (iv) when such Force Majeure circumstance has ceased to affect its ability to perform its obligations hereunder.

3.2. As used herein, the term "Force Majeure" shall mean and include any circumstance beyond the reasonable control of the affected party, including, without limitation, the following: any act of God or the public enemy, accident, explosion, fire, storm, earthquake, flood, drought, perils of the sea, strikes, lockouts, labor troubles (whether or not such labor trouble is within the reasonable control of the party affected thereby), riots, sabotage, embargo, war, (whether or not declared and whether or not the country of residence of a party is a participant), any applicable law, regulation, order (including laws, regulations and orders pertaining to protection of the environment, licenses, priority, seizure or requisition), failure or delay of transportation, restrictions and/or prohibitions on transportation and shortage or inability to obtain certain supplies, equipment, fuel or labor, or any decision of the Ministry of Defense (or similar governmental body).

## 4. SHIPMENT, PACKAGING AND DELIVERY DOCUMENTATION

4.1. Shipment shall be performed in accordance with the instructions of the Order. No insurance or premium shipment costs will be allowed unless authorized in writing by Purchaser.

4.2. Supplier will pack the Product(s) for shipment and storage according to acceptable industry standards and in an appropriate manner which will protect the Product(s), taking into account, inter alia, method of transportation, length of transport and weather conditions, as to ensure delivery to the Purchaser's premises undamaged and in a fully serviceable condition.

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4.3. All packages shall be marked with the name of the Purchaser and shall be clearly addressed to the Purchaser as specified in the Order.

4.4. The Supplier shall furnish, at no increase in cost of the Product(s) furnished, copies of the Certificate of Conformity and/ or Supplier's acceptance test report to be identifiable with the Product(s).

4.5. Written shipping notice shall be emailed to the Purchaser, for the attention of the relevant procurement office, at the time of shipment. This notice shall include: type of Product(s) shipped, applicable Order number, quantity of packages, shipped quantity of each Product and invoice number.

## 5. ACCEPTANCE AND DEEMED ACCEPTANCE

5.1. Purchaser's failure to inspect or test any Product shall not relieve Supplier from Warranty (as defined below) or responsibility for any defective or nonconforming Product(s) and shall not be deemed an evidence or consent that the Products are received in good and proper manner. Purchaser reserves the right to reject acceptance of any Product (or part thereof) that was found to be defective and/or which fails to meet its technical specification and may return it to Supplier, at Supplier's own expense.

## 6. WARRANTIES AND GUARANTIES

6.1. The Supplier warrants that the Product(s) comply with the Specifications and if applicable in the Instruction Manual.

6.2. The Supplier further warrants that the Product(s) are merchantable and free from any defects in workmanship, materials or design, and in addition, the Product(s) shall be in proper operating condition for a period of twelve (12) months, or a longer period of time if such is stated in the Order (hereinafter: the "**Warranty Period**") from the acceptance or deemed acceptance date, pursuant to Section 5.1 above (the "**Warranty**").

6.3. The Warranty doesn't cover, and the Supplier shall not be liable for any: (i) normal wear and tear and/or defects which have been caused by wrong and/or negligent and/or abnormal and/or improper operation, overloading, inadequate installation and/or maintenance (except if the installation and maintenance were performed by Supplier); (ii) any unreasonable changes and/or amendments made by the Purchaser or on its behalf, without the prior written consent of the Supplier (unless such changes and/or amendments were made due to safety reason).

6.4. Subject to Section 7.3 above, in case of Product or any component thereof that meet the criteria of the Warranty and which fail to properly operate during the Warranty Period, the Purchaser shall, within 30 days after the discovery of the failure, notify the Supplier in writing. The Supplier shall repair the relevant parts, or at Purchaser's election so indicated in the notice, replace them with new parts or Products. The Supplier will bear the costs of labor and the expenses (including expenses of shipment, insurance and freight) arising from such repair or replacement; It is further agreed that the "Turn-around-time" (i.e. the time lapse from removing of the defective item from the Purchaser's premises until the item was

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repaired or replaced and received by the Purchaser) shall not exceed thirty (30) days.

6.5. This warranty is valid also vis-à-vis the Customers to which the Purchaser has resold the Product(s). The warranties of this Section shall not be affected by the use of the Product(s) by Customers.

6.6. For a Product repaired, overhauled, modified or replaced under Warranty, the Supplier shall specify separately on the documents for customs purposes, the same Product's value as indicated on the Purchaser's documents.

6.7. In the event of any disputes between the Purchaser and the Supplier as to whether or not a claim falls under the Warranty coverage, the Supplier agrees to repair or replace without delay and free of charge, the defective Products allegedly covered by the contractual warranties or, if the repair or replacement was accomplished by the Purchaser or by a third party (pursuant to the provisions of this Section) reimburse to the Purchaser all demonstrated costs which the Purchaser has to bear or pay due to the accomplishment, repair or replacement. In case it is subsequently proved that the repaired defect is not covered by the Warranty, the Purchaser shall reimburse the Supplier for all costs incurred by it for the repair/replacement already carried out.

6.8. Repair, overhaul or replacement of the part of the Product(s) shall be covered by a warranty period for a minimum 12 (twelve) months period for repairs and replacements and for 24 (twenty-four) months period for overhauls, or for the residual Warranty Period, whichever is longer. This Warranty cannot be requested in addition to any other specific warranty.

6.9. Supplier warrants that the sale, use or incorporation into manufactured products of any machines, parts, components, services, devices, material, software, and rights furnished or licensed hereunder (collectively "**Goods**") shall be free and clear of infringement or misappropriation of any valid patent, copyright, trademark or other third party intellectual property rights. Supplier shall indemnify, defend and save Purchaser and Customers harmless from any and all expenses, liability and loss of any kind (including all costs and expenses including attorneys' fees) arising out of claims, suits or actions alleging such infringement or misappropriation, which claims, suits or actions Supplier agrees to defend with counsel acceptable to Purchaser. .

6.10. Supplier shall indemnify, hold harmless and defend, at Supplier's own expense, Purchaser against all liens, security interests, and/or encumbrances whatsoever asserted against such goods, including claims to said merchandise, asserted by others. Supplier may replace or modify infringing goods with comparable goods acceptable to Purchaser of substantially the same form, fit and function so as to remove the source of infringement, and shall extend this provision to such comparable goods. If the use or sale of any of the above items is enjoined as a result of such claim, suit or action, Supplier, at no expense to Purchaser, shall obtain for Purchaser and Customers the right to use and sell the items.

## 7. PROPRIETARY INFORMATION; PROPRIETARY RIGHTS; LICENSE

7.1. Unless otherwise expressly agreed in writing to the contrary, all specifications, information, data, drawings, software and other items supplied to Purchaser by

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Supplier shall be disclosed to Purchaser on a non-proprietary basis and may be used and/or disclosed by Purchaser without restriction.

7.2. Purchaser acknowledges and agrees that: (a) any pre-existing intellectual property rights subsisting in or related to the Product(s), including but not limited to patents and other know-how and copyright, both registered and unregistered, owned and/or otherwise used by Supplier and all goodwill related thereto (collectively the "**Supplier's IP Rights**") are and shall remain at all times the exclusive property of the Supplier or its licensees; (b) the Supplier's IP Rights may not be exploited, reproduced or used by Purchaser except as expressly permitted in these Conditions, and (c) Purchaser shall not have or acquire any right, title or interest in or otherwise become entitled to any Supplier's IP Rights by taking delivery of, making payment for, or otherwise using or transferring the Product(s). Supplier hereby grants Purchaser a non-exclusive, perpetual, irrevocable, sub-licensable, fully paid-up, royalty-free license to use the Supplier's IP Rights in the Product(s) and all the components thereof (including software) in order to operate all of the Product(s) purchased by Purchaser hereunder (including such Product(s) to be supplied by Supplier in connection with the Warranty or otherwise under the provisions hereof).

7.3. All specifications, information, data, drawings, software and other items which are (i) supplied to Supplier by Purchaser or (ii) obtained or developed by Supplier and paid for by Purchaser under any Order, shall be the exclusive property of Purchaser, shall be maintained by Supplier as proprietary to Purchaser, shall be used only for purposes of providing goods and/or services to Purchaser pursuant to any Order, and shall not be disclosed to any third party without Purchaser's express written consent. All such items supplied by Purchaser shall be promptly returned to Purchaser on request or upon completion or earlier termination of these Conditions..

7.4. Purchaser may sub-license to its Customers the software included in the Product(s) or any portions thereof, subject to the terms of these Conditions.

7.5. Purchaser may affix its trade name, service marks or trademarks, now owned or hereafter acquired by Purchaser (collectively the "**Proprietary Marks**"), to any part of the Product(s). Supplier shall not have or acquire any right, title or interest in the Proprietary Marks, either used alone or in conjunction with other words or names, or in the good will thereof, and shall not use any such Proprietary Marks without the express written consent of the Purchaser.

## 8. SUB-CONTRACTING

8.1. Subject to the prior consent of the Purchaser, which includes specific consent as to the identity of sub-contractor, the Supplier will be entitled to subcontract its obligations hereunder. The Supplier shall be fully responsible for any delay or any failure in the performance of any Order, even where directly or indirectly attributable to the responsibility of any of its Sub-Contractors.

## 9. ASSIGNMENT

9.1. Except as otherwise set out herein, Supplier may not assign any Order to a third party without Purchaser's prior written consent, provided that Supplier may assign payments due from Purchaser in its sole discretion, provided that it gives prior written notice to Purchaser.

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## 10. TERMINATION AND TERMINATION FOR DEFAULT

10.1. Purchaser may terminate these Conditions or any Order for any reason by providing Supplier with a 30 days prior notice, and such termination shall not constitute a default.

10.2. Purchaser may, by written notice of default to Supplier, terminate these Conditions or any Order in whole or in part if Supplier fails: (i) to deliver the Product(s) within the time specified in the Order or any extension thereof, (ii) to perform any of the other provisions or meet any of the requirements of these Conditions or any Order, or (iii) to make progress so as to endanger performance of any Order in accordance with its terms and, in either of the second or third circumstances, does not cure such failure within five (5) days after receipt of written notice from Purchaser specifying such failure, and the provisions of Section 2.7 shall apply, mutatis mutandis.

10.3. The provisions of Sections 7 (Warranties and Guarantees), 10 (Proprietary Information; Proprietary Rights; License), 14 (Termination and Termination for Default), 15 (Public Liability) and 18 (Applicable Law and Jurisdiction) shall survive the termination of these Conditions.

10.4. The rights and remedies of Purchaser in this Article are in addition to any other rights and remedies provided by law or in equity, or under these Conditions.

## 11. PUBLIC LIABILITY

11.1. Supplier shall indemnify and hold Purchaser harmless from and against any and all liabilities, claims and damages of any nature whatsoever which it, its agents or third parties may sustain or incur by reason of any act of willful misconduct or negligence of Supplier, and provided further that Supplier is immediately notified by Purchaser of any such action or proceeding. Without derogating from the aforesaid, Supplier will be responsible for labor safety and any personal damage or body injury caused due to labor accidents of all kinds, at the site, in which work is being performed on behalf of the Purchaser, all in accordance with the applicable law.

11.2. Subject to the provisions of these Conditions, under no circumstances shall either party be liable for any special, indirect, incidental or consequential damages (however arising), including but not limited to, loss of profit, loss of use, loss of revenues or damages to business or reputation arising from the performance or non-performance of any aspect of this contract whether or not a Party shall have been made aware of the possibility of such loss.

## 12. TAXES AND OTHER CHARGES

12.1. The price for all Products is all-inclusive and encompasses any manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever, imposed by any governmental authority, on or measured by any transaction between Supplier and the Purchaser. In the event Purchaser shall be required to pay any such tax, fee or charge on account of the Supplier, the Supplier shall reimburse Purchaser therefore (including any interest and penalties relating thereto), or, in lieu of such payment, the Supplier shall provide Purchaser at the time the order is submitted with an exemption certificate or other document acceptable to the authority imposing the same.

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## **13. EXPORT LICENSES**

13.1. The Product(s) included in the Order are either of Israeli manufacture and subject to Israeli export control regulation or include components of U.S. origin and as such, are subject to U.S. export and foreign transactions control regulations. Supplier has the responsibility of obtaining all necessary permissions and approvals or authority for the performance of its obligations hereunder and the export to [\_\_\_\_\_] under such regulations. Purchaser shall fully cooperate with Supplier and be responsible for providing Supplier with all documents required by the applicable authorities for complying with the provisions of this Section.

## **14. APPLICABLE LAW AND JURISDICTION**

14.1. These Conditions, Orders, and all terms and conditions relative thereto, all the agreements, controversies, disputes and disagreements arising from or with connection to these Conditions shall be governed, construed, and performed solely and exclusively in accordance with the laws of the State of Israel. Application of the Uniform Law on the International Sale of Goods and the Uniform law on the Formation of Contracts for the International Sale of Goods – both dated July 17, 1973 – and of the UN agreement on the sale of good of April 11, 1980 are hereby excluded.

14.2. All disputes arising out of or in connection with these Conditions, unless settled amicably by the Parties, shall be finally settled solely, utterly and exclusively by the competent courts of Tel-Aviv-Jaffa, Israel in accordance with their competency. The Parties deliberately denies jurisdiction from any other court or tribunal.