



TNA Aviation Technologies Terms & Conditions

- 1. APPLICABILITY.** These Global Terms and Conditions of Sale (“Terms”) apply to the purchase of products and ancillary services (collectively the “Products”) by seller (“Seller”) [TNA Aviation Technologies, a division of Turwitt, Nielen & Associates, P.A.] and the buyer (“Buyer”), each of which is identified in applicable quotations, proposals, e-mail correspondence, letters, order acknowledgements, or invoices (the “Sales Confirmation”). These Terms and the Sales Confirmation comprise the entire agreement between the parties (collectively, the “Agreement”). Buyer accepts these Terms automatically by placing an order, accepting Seller’s quotation, or by sending a purchase order in response to the quotation, or by Buyer’s instructions to Seller to ship the Product. No terms, conditions or warranties other than Sellers Terms, and those identified in the quotation, and no agreement or understanding, oral or written, in any way purporting to modify the terms and conditions whether contained in Buyer’s purchase order or shipping release forms, or elsewhere, shall be binding on Seller unless hereafter made in writing and signed by Seller’s authorized representative. Buyer is hereby notified of Seller’s express rejection of any terms inconsistent with this Agreement or to any other terms proposed by Buyer in accepting Seller’s quotation. Neither Seller’s subsequent lack of objection to any terms, nor the delivery of the products or services, shall constitute an agreement by Seller to any other terms.
- 2. CANCELLATION.** Cancellation or modifications of all or part of any order are subject to Seller’s prior written consent in each instance. If cancellation or modification is allowed, Buyer agrees to pay to Seller all expenses incurred and damage sustained by Seller on account of the cancellation or modification, plus a reasonable profit.
- 3. PRICE.** Prices on accepted orders are firm for a period of 90 days from date of acceptance. All stated prices are exclusive of any taxes, fees, duties, and levies, however designated or imposed, including but not limited to value-added and withholding taxes that are levied or based upon the amounts paid under this Agreement (collectively, “Taxes”). Any Taxes related to the Products purchased pursuant to this Agreement are the responsibility of Buyer (excluding taxes based on Seller’s net income), unless Buyer presents an exemption certificate acceptable to Seller and the applicable taxing authorities. If possible, Seller will bill Taxes as a separate item on the invoice presented to Buyer. If any exemption certificate presented by Buyer is held to be invalid, then Buyer will pay Seller the amount of the Tax and any penalties and interest related thereto.
- 4. PAYMENT.** Unless otherwise set forth in the Sales Confirmation, Buyer will pay all invoiced amounts as stated in Seller’s invoice. Unpaid amounts will accrue interest at a rate equal to the lesser of one and one-half percent (1.5%) per month and the maximum rate permitted by applicable law, from due date until paid, plus Seller’s reasonable costs of collection. Seller reserves all other rights granted to a seller under the Uniform Commercial Code (“UCC”) for Buyer’s failure to pay for the Products or any other breach by Buyer of these Terms. In addition to all other remedies available to Seller (which Seller does not waive by the exercise of any rights hereunder), Seller may suspend the delivery of any Products if Buyer fails to pay any amounts when due and the failure continues for five (5) days following Buyer’s receipt of notice thereof. Buyer may not withhold payment of any amounts due and payable as a set-off of any claim or dispute with Seller, regardless of whether relating to Seller’s breach, bankruptcy, or otherwise.

5. DELIVERY & SHIPPING. (a) Seller will deliver the Products within a reasonable time after receiving Buyer's purchase order, subject to their availability. The delivery date provided by Seller for the Products is only an estimate and is based upon prompt receipt of all necessary information from Buyer. If Buyer causes Seller to delay shipment or completion of the Products, Seller will be entitled to any and all extra costs and expenses resulting from the delay. Seller will not be liable for any delays, loss, or damage in transit, and failure to deliver within the time estimated will not be a material breach of contract on Seller's part.

(b) Unless otherwise agreed in writing by the parties, Seller will deliver the Products, EXW (Incoterms® 2010) at the location specified in the Quote and Sales Confirmation (the "Delivery Location"), using Seller's standard methods for packaging and shipping same. Buyer will take delivery of the Products within three (3) days of Seller's notice that the Products are ready for shipment. If Buyer fails to take delivery of the Products within this three (3) day period Buyer will pay Seller for the Products and all storage expenses incurred by Seller. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Products to Buyer. Each shipment will constitute a separate sale, and Buyer will pay for the units shipped whether the shipment is in whole or partial fulfillment of Buyer's purchase order. Buyer is responsible for obtaining any import licenses and other consents required for a Product shipment at its own expense, and will provide the licenses and consents to the Seller before shipment.

(c) The quantity of any installment of the Products, as recorded by Seller on the dispatch from Seller's place of business, is conclusive evidence of the quantity received by Buyer upon delivery, unless Buyer provides conclusive evidence to the contrary. Seller will not be liable for any non-delivery of the Products to the Delivery Location, unless Buyer gives written notice to Seller of the non-delivery within five (5) days following the date that Buyer would, in the ordinary course of business, have received the Products. Seller's liability for any non-delivery of the Products will be limited to replacing the Products within a reasonable time or adjusting the invoice for the Products to reflect the actual quantity delivered.

6. TITLE & RISK OF LOSS. (a) Risk of loss or damage passes to Buyer passes upon delivery to the carrier. If Buyer fails to accept delivery of any of the Products on the date set forth in Seller's notice that Seller has delivered the Products to the Delivery Location, or if Seller is unable to deliver the Products to the Delivery Location on the date because Buyer has failed to provide appropriate instructions, documents, licenses, or authorizations, then: (i) risk of loss to the Products will pass to Buyer; (ii) the Products will be deemed to have been delivered to Buyer; and (iii) Seller, at its option, may store the Products until Buyer takes possession of them, at which time Buyer will be liable for all costs and expenses resulting from the failure (including but not limited to the cost of storage and insurance).

(b) Title passes to Buyer upon Buyer's payment in full for the Products.

7. INSPECTION & REJECTION OF PRODUCTS. (a) As used in this Section 7, "Nonconforming Products" means only the following: (i) the items shipped are different from those identified in Seller's Sales Confirmation; or (ii) the labels or packaging of the items incorrectly identifies them. Buyer will inspect the Products within two (2) days following receipt thereof (the "Inspection Period"). The Products will be deemed accepted at the end of the Inspection Period unless Buyer notifies Seller in writing of any Nonconforming Products and furnishes Seller with written evidence or other documentation reasonable required by Seller.

(b) If Buyer timely and properly notifies Seller of any Nonconforming Products, and only after Seller has agreed to the nonconformity claim, then Seller will, in its sole discretion, (i) replace the Nonconforming Products with conforming Products or (ii) credit or refund the purchase price for the Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Buyer.

At Seller's request, Buyer will dispose of the Nonconforming Products or return the Nonconforming Products to Seller at Seller's expense. Upon receipt of the Nonconforming Products, Seller will promptly refund the monies owed or ship the replacement Products to the Delivery Location at Seller's expense, with Seller retaining the risk of loss until delivery.

(c) Buyer acknowledges and agrees that the remedies set forth in this Section 7 are Buyer's exclusive remedies for the delivery of Nonconforming Products, and except as set forth in this Section 7, Buyer has no right to return the Products to Seller without Seller's written authorization.

8. RETURN OF PRODUCTS (a) Buyer cannot return any products without Seller's approval. Merchandise or products returned without a return authorization will not be accepted by Seller. Used, discontinued, and certain custom made products cannot be returned for credit. These custom items include non-catalog products (specials).

(b) Items returned must be in new condition and packaged in their original carton or crate. Freight charges must be prepaid on all return shipments. When a return is authorized, a credit may be allowed pending an examination of the returned goods. The amount of the restocking charge will depend on the condition of the equipment. The minimum restocking charge for products and accessory parts is 20%.

(c) Seller is liable and responsible for all repair and reconditioning cost applicable if the product is not returned in new condition and if the product is returned in damaged and untended condition. Those charges will be applied in addition to the restocking charge.

(d) Seller is liable and responsible for all shipping charges, including original shipping charges occurred when the product was initially sent to Buyer. Those charges are not refundable and are always the Buyers responsibility.

9. LIMITED WARRANTY. (a) Seller warrants to Buyer that the Products will be free from defects in material and workmanship for a period of twelve (12) months following the date of delivery to the Delivery Location (the "Warranty Period"). Notwithstanding the foregoing, the Warranty Period for consumable Products will in no event exceed recommended replacement intervals set forth in the published specifications and instructions provided by Seller or its suppliers or subcontractors Instructions ("Instructions"). If, prior to the expiration of the Warranty Period, Buyer informs Seller in writing of any breach of this limited warranty, then Seller may repair or replace the Products that gave rise to the breach or, in Seller's sole and exclusive discretion, refund the amounts that Buyer paid for the Products.

(b) The foregoing limited warranties do not apply to (i) any defect in Products not manufactured by Seller; and (ii) any Products manufactured according to Buyer's specifications.

(c) Buyer will bear the costs of access, de-installation, re-installation and transportation of the Products to Seller and back to Buyer. Any repair or replacement pursuant to this limited warranty will not extend the Warranty Period. Seller does not warrant the Products, or any repaired or replacement parts, against normal wear and tear or corrosion. This limited warranty and remedy are expressly conditioned upon: (i) Buyer's payment of the purchase price in full, (ii) Buyer giving written notice of the defect, reasonably described, to Seller within ten (10) days of the time when Buyer discovers or ought to have discovered the defect, (iii) the storage, installation, operation, use, and maintenance of the Products in compliance with the Instructions, (iv) the existence of proper records of Buyer's operation and maintenance of the Products during the Warranty Period, (v) Buyer providing Seller with a reasonable opportunity to examine the Products and the aforementioned records, and (vi) the absence of any unauthorized modification or repair of the Products, including without limitation the removal or alternation of any serial numbers or warranty date decals.

(d) Before any test may be used to evaluate the Products, Buyer will: (i) provide Seller with reasonable written notification of the test, (ii) allow Seller to be present during the test, and (iii) receive Seller's consent to the conditions of the test, which consent will not be unreasonably withheld. If a test is performed on the Products, and Seller has not consented to the conditions of the test, then this limited warranty will be void.

(e) THE REMEDIES SET FORTH IN THIS SECTION 8 ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY FAILURE OF SELLER TO COMPLY WITH ITS OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THIS SECTION 9. SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, OF ANY KIND, AND SELLER DISCLAIMS ALL OTHER WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

10. INDEMNIFICATION. (a) Buyer will defend, indemnify, and hold harmless Seller and its parent company, their respective subsidiaries, affiliates, successors, and assigns and their respective directors, officers, shareholders, and employees from and against any loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, fees (including import and export customs fees), or expense (including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers) ("Claims") arising out of or occurring in connection with the negligence or willful misconduct of Buyer or its employees or agents, including but not limited to: (i) any misuse or modification of the Products by Buyer or its employees or agents, (ii) any act (or failure to act) by Buyer or its employees or agents in contravention of any safety procedures or instructions that Seller provides to Buyer or its employees or agents, or (iii) the failure to store, install, operate, or maintain the Products in accordance with the Instructions.

(b) Seller will defend, indemnify, and hold harmless Buyer and its subsidiaries, affiliates, successors, and assigns and their respective directors, officers, shareholders, and employees from and against any Claims arising out of or occurring in connection with the negligence or willful misconduct of Seller or its employees or agents.

11. COPYRIGHT & TRADEMARK. The content of Sellers website as well as all other brochures and documentation published by Seller is owned and copyrighted by TNA Aviation Technologies, a Division of Turwitt, Nielen & Associates, P.A. Seller hereby authorizes users and readers to electronically download documents published herein solely for the purpose of transmitting or viewing the information. Except as expressly provided above, none of the materials may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means including, but not limited to, electronic, mechanical, photocopying, recording or otherwise, without the prior written consent of Seller. You also may not "mirror" any material contained on Sellers website without expressed written consent from TNA Aviation Technologies. In addition, nothing contained herein shall be construed as conferring any license or right under any TNA Aviation Technologies copyright, patent or trademark. Any unauthorized use of any material contained on this site may violate copyright laws, trademark laws, the laws of privacy and publicity, and communications regulations and statutes.

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12. LIMITATIONS OF LIABILITY. (a) IN NO EVENT WILL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE OR UNDER-UTILIZATION OF LABOR OR FACILITIES, LOSS OF REVENUE OR ANTICIPATED PROFITS, LOST DATA, AND COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES.

(b) EXCEPT FOR DEATH OR BODILY INJURY RESULTING FROM SELLER'S NEGLIGENCE OR WILLFUL MISCONDUCT, SELLER'S TOTAL LIABILITY FOR ALL CLAIMS ARISING OUT OF, OR RELATING TO, THE GOODS WILL BE LIMITED TO GENERAL MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL PURCHASE PRICE FOR THE GOODS GIVING RISE TO THE CLAIM.

(c) SELLERS PRODUCTS HAVE BEEN DESIGNED TO BE OPERATED BY PROFESSIONAL, TRAINED, AND AUTHORIZED PERSONNEL. ONLY COMPETENT, EXPERIENCED AND PROPERLY TRAINED OPERATORS MAY USE THOSE PRODUCTS. ALL PRODUCTS AND SYSTEMS ARE UTILIZED AND OPERATED AT THE BUYERS AND OPERATORS OWN DISCRETION AND RISK. SELLER ACCEPTS NO LIABILITY WHATSOEVER, WHETHER IMPLIED OR EXPLICIT FOR ANY INCIDENTS OR ACCIDENTS THAT MAY OCCUR.

13. CHANGES. Seller reserves the right to alter, modify, or redesign its products without any obligation to replace previous shipments to Buyer. All product specifications are subject to improvement or change without notice.

14. NO LICENSE. The sale of the Products will not confer upon Buyer any license, express or implied, under any patents, trademarks, trade names, or other proprietary rights owned or controlled by Seller, its subsidiaries, affiliates, or suppliers; it being specifically understood and agreed that all the rights are reserved to Seller, its subsidiaries, affiliates, or suppliers. Without limiting the foregoing, Buyer will not, without Seller's prior written consent, use any trademark or trade name of Seller in connection with any the Products, other than with respect to the resale of the Products pre-marked or packaged by or on behalf of Seller.

(b) If software is provided by Seller under the Agreement, Buyer agrees that the software may only be used in accordance with the terms and conditions of the software license agreement that accompanies the software. Buyer agrees not to directly or indirectly decompile, disassemble, reverse engineer or otherwise derive the source code for the software. If Buyer is a U.S. Government agency, Buyer acknowledges that the software licensed under the Agreement is a commercial item that has been developed at private expense and not under a Government contract. The Government's rights' relating to the software are limited to those rights applicable to Buyer's as set forth herein and is binding on Government users in accordance with Federal Acquisition Regulation 48 C.F.R. Section 12.212 for non-defense agencies and/or Defense FAR Supplement 48 C.F.R. Section 227.7202-1 for defense agencies.

15. TERMINATION. In addition to any other remedies that Seller may have, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and the failure continues for five (5) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

16. **CONFIDENTIALITY.** All non-public, confidential, or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, that Seller discloses to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and regardless of whether marked, designated, or otherwise identified as "confidential," in connection with the Agreement is confidential, solely for the use of performing the Agreement, and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer will promptly return all documents and other materials received from Seller. Seller will be entitled to injunctive relief for any violation of this Section 15, without having to post bond or establish the insufficiency of a remedy at law. This Section 15 does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Seller on a non-confidential basis from a third party.

17. **FORCE MAJEURE.** Seller will not be liable for any failures or delays caused by strikes, differences with workers, or any causes beyond the reasonable control of Seller, including but not limited to fires, floods, accidents, action of any governmental authority, war, insurrection or riots, or shortages of labor, energy, raw materials, production facilities, or transportation. Where delays or failures are caused by labor difficulties, Seller will not be obligated to seek or obtain any settlement that, in Seller's sole judgment, is not in Seller's best interest.

18. **COMPLIANCE.** Each party will comply with all applicable laws, regulations, and ordinances, and Buyer will comply with the export and import laws and regulations in effect as of the date of shipment of the Products of any country involved in the transactions contemplated by the Agreement.

19. **GOVERNING LAW; VENUE; DISPUTE RESOLUTION.** (a) All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Florida without giving effect to any choice or conflict of law provision or rule (whether of the State of Florida or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Florida. Any legal suit, action or proceeding arising out of or relating to these Terms will be instituted in the federal or State courts located in the City of Jacksonville, Florida. Each party irrevocably submits to the exclusive jurisdiction of the courts in any the suit, action or proceeding.

(b) Seller will have the sole and exclusive right to determine whether any dispute, controversy or claim arising out of or relating to the Agreement, or the breach thereof, will be submitted to a court of law or arbitrated. The venue for any the arbitration will be in Jacksonville, Florida. The arbitrator's award may be confirmed and reduced to judgment in any court of competent jurisdiction. In the event the matter is submitted to a court, Seller and Buyer hereby agree to waive their right to trial by jury and covenant that neither of them will request trial by jury in any the litigation.

20. **CHOICE OF LANGUAGE.** It is by the express intention of the parties hereto that the present Agreement and all its related documents be drafted in English.

21. **SURVIVAL.** In addition to any other term whose context may so require, the terms contained in all Sections will survive any cancellation of the purchase order.

22. MISCELLANEOUS. Buyer acknowledges that he has not been induced to purchase any of the Products from Seller by any representation or warranty not expressly set forth in this Agreement. These Terms and the Sales Confirmation constitute the entire agreement of the parties and supersede all existing agreements and all other oral or written communications between them concerning its subject matter. None of the Terms may be added to, modified, superseded, or otherwise altered, except by a written document signed by an authorized representative of Seller that specifically references these Terms and states that it modifies them. If there is a conflict between the provisions of the Sales Confirmation and these Terms, then the terms of the Sales Confirmation will govern. No waiver by Seller of any of the provisions of these Terms is effective unless explicitly set forth in writing that specifically references these Terms and is signed by Seller. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from these Terms operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The Section headings contained in these Terms are for convenience only and will not affect the interpretation of any provision. If any provision of this Agreement is held to be prohibited or unenforceable, the provision will be changed and interpreted to accomplish the objectives of the provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Buyer will not assign any quotation or accepted order for the Products, in whole or in part, without Seller's prior written consent.