

**TACTAIR FLUID CONTROLS INC.
TERMS OF SALE**

FORM NO.: FRM-TFS-14 REV: F
EFFECTIVE: 07/25/07

- 1) **ACKNOWLEDGMENT:** A contract between buyer and seller only exists when an order is acknowledged in writing by seller.
- 2) **TERMS AND CONDITIONS:** These terms of sale shall govern, and in conjunction with the seller's Acknowledgment represent the full extent of the contract between buyer and seller.
- 3) **ORDER OF PRECEDENCE:** In the event of an inconsistency between the clauses of this order, the inconsistency shall be resolved by giving precedence in the following order: a) provisions of an existing OEM long term agreement with the seller, if applicable; b) provisions on the seller's Acknowledgment; c) these terms of sale; and d) other provisions of the order as agreed to by seller and attached or incorporated by reference.
- 4) **CHANGES:** Changes to the order may be made only with the written consent of seller. If such changes cause a change in the work due under the order, or in the time required for seller's performance, an equitable adjustment shall be made and the order shall be modified in writing accordingly.
- 5) **ACCEPTANCE:** The buyer may inspect all equipment supplied by seller to determine its conformity with the requirements of the order. Seller may at its discretion, repair or replace any equipment supplied by it found not to meet the requirements of the order. Determination of a defective or non-conforming seller supplied piece of equipment does not alter the buyer's obligations under the order.
- 6) **PAYMENT:** All orders will be shipped FOB seller's plant Liverpool, New York COD or prepaid, unless buyer's credit is approved by seller prior to Acknowledgment, in which case the seller's terms are net 30 days. All payments will be in United States funds.
- 7) **PACKAGING:** Seller's packaging will be per standard commercial practices.
- 8) **DOCUMENTATION:** All shipments by seller will include a packing list, a certificate of compliance, and copies of acceptance test results, where applicable. In addition, overseas shipments will include a commercial invoice and necessary shippers export declaration.
- 9) **QUALITY ASSURANCE:** Seller's quality systems will conform with the requirements of ISO9001-2000 and/or AS9100.
- 10) **DELIVERY:** Seller may ship product anytime on or before the delivery date stated in the Acceptance. Buyer assumes all risks of ownership when the product leaves the seller's facility.

Seller will not be liable for any delay in delivery due to fires, floods, strikes or other labor disputes, accidents to machinery, acts of sabotage, precedence of priorities granted at the request or for the benefit, directly or indirectly, of Federal or State government, or any other cause beyond the control of seller. Seller has no liability for indirect or consequential damages resulting from a delay in delivery.

All purchase orders, shipments and/or reshipments must be in accordance with all US Government export requirements, to include but not limited to, the Department of

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State/ITAR and the Department of Commerce/EAR.

Buyer shall comply with all applicable export and re-export control laws and regulations including the Export Administration Regulations (EAR) Code of Federal Regulations 15 part 300 to 799 maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the U.S. Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations (ITAR) 22 C.F.R. Chapter 1, Subchapter M Parts 120-130 maintained by the U.S. Department of State.

Inc. Specifically, Buyer covenants that is shall not – directly or indirectly – sell, export, re-export, transfer, divert or otherwise dispose of any products, software, or technology (including products derived from or based on such technology) received from Tactair Fluid Controls under this purchase order / agreement to any destination, entity, or person prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations.

Buyer further agrees to hold Tactair Fluid Controls Inc. harmless from any and all export compliance infractions including but not limited to all sanctions, penalties, or fines resulting from any such actions taken by Buyer with any denied persons, countries or entities prohibited under ITAR 22 C.F.R. Parts 120-130.

11) **WARRANTY:** The seller warrants the equipment supplied against defects in material and workmanship for a period of twelve months from the date of shipment, provided the equipment is properly installed, maintained, and operated. Any failure of the equipment and/or damages, due to the hazards of use, are the sole responsibility of the user.

Seller's obligation under this warranty is limited to repairing or replacing, at it's option, any seller supplied equipment found defective at seller's inspection point. This obligation exists only when the user has given seller written notice of any such claimed defect within 15 days of the date of discovery and, in any event, within the time limit of this warranty. Seller shall have the option of requiring the return of the defective part, freight prepaid, to establish the claim.

Under no circumstances shall seller have any liability whatsoever for any indirect or consequential damages.

12) **LIMITATIONS OF LIABILITY:** Notwithstanding any other provision of this order, seller's maximum liability to buyer shall not exceed the purchase price of this order. Any action against seller under this order or related to its subject matter must be brought within one year after the cause of action accrues. Buyer shall not be entitled to any incidental, special or consequential damages if seller breaches or otherwise fails to perform any obligations under this order.

13) **TERMINATION AND DEFAULT:** FAR clauses 52.249-2 and 52.249-8 apply to this order. The terms "Government" and "Contracting Officer" mean buyer and the term "Contractor" means seller, except if this order is terminated as a result of a termination for convenience

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issued by the U.S. Government, the term "Government" does not change in Paragraphs b(4), (6), (8) and (m).

- 14) **SELLER'S DATA AND PATENTS:** Under no circumstances does this contract permit the use or transfer to the buyer of any seller patents, designs, processes, know how, drawings, and/or technical data.
- 15) **TAXES:** Any taxes which seller may be required to pay or collect with respect to materials covered herewith shall be for the account of the buyer.
- 16) **APPLICABLE LAW:** This contract shall be governed by the laws of the State of New York.
- 17) **ASSIGNMENT:** Seller may assign any or all of its rights and responsibilities under this contract, without consent of the buyer.