

Terms & Conditions of Sale – EMP Flight Components, Inc.* (EFC)

1.	Contract:	Purchase order issued by customer (Buyer) is for EFC to build custom parts to Buyer's specifications. The written offer to sell a part at a particular price (Quote) and each purchase order (Order), whether standard or blanket, related to the Quote are subject to these Terms & Conditions of Sale (Terms). These Terms and corresponding Order (when accepted by EFC) constitute the Contract .
2.	Orders and Acceptance:	Orders must be in writing. No Order is binding until accepted by EFC. By sending EFC an Order that agrees with the description of parts, part number and the quantity, current price, and delivery schedule thereof in the Quote, Buyer accepts the Quote and these Terms. EFC is not responsible for the design of any part or the intended use of any part, and makes no representation for any part's merchantability, fitness for duty, or suitability for a particular application.
3.	Delivery:	EFC will endeavor to ship finished parts by the delivery date on the Order, but shipment within 30 days after such date will not give Buyer the right to cancel. EFC may make partial or installment shipments. Acceleration of delivery dates must be approved in advance by EFC, and may include an expedite fee.
4.	Prices:	Prices are subject to change as set forth in these Terms. Prices for any then-known tariff-related inputs (whether direct or indirect) are assessed and charged as of the date of the Order. EFC reserves the right to correct any clerical errors, including those related to pricing, and even if the Order has already been accepted, but not yet shipped. EFC also reserves the right to increase the prices as quoted if there is an increase in its cost of materials, outside services (if applicable), and any tariff-related costs, that occur subsequent to the release of the Quote, or the completion, or shipment of the Order (in the case of long lead-time parts) whether as a result of one large increase or several incremental increases. The price increase is retroactive to the date EFC first was charged the increased cost. Buyer shall issue a revised Order that includes the increased prices, costs, and Taxes (defined in Section 5 below) within 10 days of receiving notice of the increased price, costs, and Taxes. No shipment will be made until the revised Order is received.
5.	Taxes and Other Charges:	Buyer shall pay all taxes, duties, tariffs, and other charges (together, the Taxes) on the raw materials, components, outside services (if applicable), and finished parts, and payment will be due from Buyer in addition to all other amounts due.
6.	Payment:	Payment terms are net 30 from date of invoice, unless otherwise agreed in writing. Because the parts are built to Buyer's specifications, payment is not contingent upon the parts performing the function for which Buyer intended. Interest is charged on all amounts not paid when due at 1.5% per month or the maximum amount allowed by law, whichever is lower.
7.	Title:	Title to the parts and risk of loss transfer to Buyer upon delivery of the parts to the initial carrier at EFC's dock.
8.	Specifications	The parts quoted in the Quote will meet only those specifications stated on the face of the Quote, the Order, and the accompanying engineering drawing(s), which shall specify the applicable revision level.
9.	Recommendations	Buyer is responsible for determining whether any manufacturability recommendations made by EFC, if any, are appropriate for Buyer's parts and agrees that EFC cannot be held liable for any such recommendations.
10.	Right to Subcontract:	Although EFC makes every effort to produce all contracted parts from its Denver, Colorado, facility, EFC reserves the right to subcontract some or all of the work to its parent company in Lakewood, Colorado, and in some instances to third-party shops engaged by EFC specifically for overflow work. Such subcontracting is at EFC's sole discretion but is largely used when necessary to maintain reasonable delivery performance. If EFC has agreed in writing to a site-specific production guarantee, such as operating under Copy Exact or similar requirements, then production will be limited to only EFC's Denver, CO facility and its Lakewood, CO-based parent.
11.	Limitations of Work Performed:	Buyer acknowledges that EFC's manufacturing services are limited to precision manufacturing and assembly of custom parts. As such, any secondary operations beyond this industry classification are subcontracted to third parties. This includes a number of specialties including, but not limited to, plating, anodizing, painting, powder coating, tinning, silk screening, heat-treating, passivating, laser cutting, and welding. In addition, to the extent that certain parts require integration with other components produced elsewhere, Buyer acknowledges that items such as sheet metal, electronics, labels, some tubing configurations, fittings, hardware, and commercial heat exchangers, are produced by third-party suppliers and EFC cannot be held liable for same.
12.	Ownership of Intellectual Property:	Buyer owns all right, title and interest in and to the technology embodied in the parts that are the subject of the Order (except for EFC's pre-existing parts) and the related product designs, specifications and all intellectual property embodied therein. EFC owns all right, title, and interest in and to all proprietary processes and technology developed by EFC and used by EFC in determining the

		manufacturability of parts and in manufacturing the parts including, but not limited to, all intellectual property related thereto. There is no overlap in the intellectual property owned by Buyer and that owned by EFC.
13.	Confidentiality and Non-use:	If the parties have signed a confidentiality agreement (either before or after these Terms are effective), the signed confidentiality agreement shall supersede this Section 13. Each party shall keep the other party's information confidential and shall not use the other party's information for the benefit of anyone other than the other party to the Contract. Each party shall limit access to the other party's confidential information to those of its employees, agents and, where applicable, third-party subcontractors described in Sections 10 and 11 above who need to know such confidential information to perform their job duties in furtherance of the Contract and who are under a duty of confidentiality at least as restrictive as this confidentiality provision. The obligations of confidentiality and non-use shall survive the termination or fulfillment of the Contract for a period of five (5) years, except the confidentiality and non-use obligations under this Agreement shall survive as to trade secrets for so long as the information remains a trade secret.
14.	Non-Cancellable/ Non-Reschedulable	Upon acceptance by EFC, the Order is Non-Cancellable/Non-Reschedulable by either party except as otherwise provided in accordance with these Terms. This provision may be relaxed under special circumstances as to rescheduling only (move-in's or move-out's), by mutual consent of EFC and Buyer.
15.	Freight:	Where prices include freight, EFC determines the carrier and routing. Delivery, transfer of title, and risk of loss transfer to Buyer upon the freight carrier picking up the shipment at EFC's dock.
16.	Shipping:	Where customer elects to pay freight, parts are shipped FOB EFC's dock in Denver, Colorado. Buyer shall pay all freight, insurance, and other shipping expenses. If there is a delay in shipping caused solely by EFC, EFC shall, upon Buyer's request, make such shipment on an expedited basis and, in that event, EFC shall pay the cost of the difference between regular and expedited shipment.
17.	Inspections:	All parts must be examined by Buyer upon delivery to Buyer's location. Buyer must notify EFC of any shortages in writing within 10 days of receipt of shipment. Buyer must inspect and identify any non-conforming goods and request a return material authorization number (RMA#), within 30 days of receipt. The parts will be deemed accepted if EFC receives no objection within 30 days after Buyer's receipt.
18.	Warranty:	EFC's warranty is based on the fact that all parts sold to Buyer are manufactured to print only. No warranties are made as to the performance of any part, and EFC does not warrant merchantability or any fitness for any particular use. EFC warrants the parts delivered to Buyer will comply with the specifications supplied by Buyer in writing with the Order and will be free from defects in material (to the extent an external inspection can detect same) and workmanship for a period of one year from the date the parts are shipped from EFC's dock (regardless of Buyer's warranty term to its customer). THE FOREGOING EXPRESS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THIS WARRANTY IS STRICTLY AND EXCLUSIVELY LIMITED TO THE REPAIR OR REPLACEMENT OF DEFECTIVE PARTS OR, AT EFC'S SOLE OPTION, CREDIT OR REFUND. EFC will not be liable for any damage to persons, property, equipment, parts or merchandise arising out of any defect in or failure of any parts manufactured by EFC that does not arise solely out of the process used by EFC to manufacture the parts (that is not specified by Buyer). This warranty will be invalidated if any attempted repair or alteration is performed on the parts by anyone other than EFC unless EFC has authorized the repair in advance in writing. Parts that have been the subject of negligence or misuse or are defective due to external factors not caused by or under the control of EFC are not covered by warranty. Buyer is responsible for any damage incurred during return shipment.
19.	Limits on Liability:	IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR OTHER, DAMAGES, LOSSES OR EXPENSES (ALL REFERRED TO AS DAMAGES BELOW) INCLUDING, BUT NOT LIMITED TO, DAMAGE TO PROPERTY, LOST PROFITS, LOST REVENUE, LOST TIME, LOST OPPORTUNITIES, BUSINESS INTERRUPTION, OR INCONVENIENCE ARISING OUT OF A BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF THE PARTY HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES OR COULD FORESEE THE POTENTIAL FOR DAMAGES. A PARTY'S ENTIRE LIABILITY IS LIMITED TO THE AMOUNT OF THE ORDER THAT IS THE SUBJECT OF THE DAMAGES CLAIM EXCEPT THAT THERE IS NO LIMIT ON LIABILITY FOR A BREACH OF SECTION 12, 13, 25, 26, OR 27 OF THESE TERMS. THE FOREGOING LIMITATIONS APPLY EVEN IF THE REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.
20.	Returns:	No returns are permitted without an RMA# obtained from EFC's Customer Service Dept. All returned parts must be unused and in new condition. Handling charges will apply. All authorized return shipments

		must be made as directed by EFC and with transportation charges prepaid to point of origin of EFC's shipment unless instructed otherwise. Transportation charges may be reimbursed if EFC determines the defect is due to EFC. All returns must be shipped in their original packaging, with adequate protection provided for a safe return to EFC. EFC is not responsible for damage incurred as a result of inadequate packaging for return shipment nor damage during return shipping. Shipments of parts returned without proper authorization or prepayment will be refused and returned to shipper.
21.	Insurance:	Each party shall maintain insurance, including general commercial liability, in an amount and coverage that are customary and reasonable in their respective industries. The parties acknowledge that EFC's obligation to insure the parts ends upon delivery of the parts to the initial carrier at EFC's dock, and Buyer's obligation to insure the parts begins upon delivery to the initial carrier at EFC's dock.
22.	Export Controls:	Accompanying each Order, Buyer shall provide written notice to EFC if any disclosure or transfer of information or products is subject to export control and sanctions laws, regulations, and orders under ITAR, EAR, CBP, OFAC, FAR, DFARS, etc. and provide EFC with the applicable flow-down regulation numbers, and USML classification or ECCN, as applicable, of the end-products into which the parts purchased from EFC will be incorporated to enable EFC to comply with export control laws.
23.	Governing Law; Venue; Attorneys' Fees:	Colorado law governs the Contract without regard to conflicts of laws principles. The parties hereby expressly disclaim application of the United Nations Convention on the International Sale of Goods. Any action to interpret or enforce the Contract shall be brought only in the state or federal courts located in or having jurisdiction over City & County of Denver, Colorado USA. Buyer hereby irrevocably waives any objection to personal jurisdiction and venue of these courts. The prevailing party in such action shall be awarded its legal costs, attorneys' and expert witness fees.
24.	Force Majeure:	EFC is not liable for any failure or delay in performance of its obligations under the Contract to the extent the failure is a result of a Force Majeure not existing as of the date of this Contract. Force Majeure means an unexpected and disruptive event beyond EFC's reasonable control including, but not limited to, strikes, labor disputes, boycotts (whether with respect to EFC, or any of its suppliers, subcontractors or other third parties), civil disturbances, riot, rebellion, revolution, invasion, war, hostilities (regardless of whether war is declared), acts of terrorism, third party causing a material change (and therefore delay) in a transportation route, embargo, natural disaster, acts of God, government laws, regulations, orders or sanctions, power failure, casualty, accident, theft, fire, flood, sabotage, national health crisis declared by the U.S. federal, state or local government, shortage of materials or equipment, catastrophic breakdown of equipment, failure of a supplier or subcontractor to perform, inability to obtain or delay in obtaining raw materials, delays in transportation, delays in clearing customs, inability to access electronically stored data, or other circumstances beyond EFC's reasonable control. If EFC asserts Force Majeure as an explanation for failure to perform, then EFC shall take reasonable steps to minimize delay or damages, and fulfill all obligations not excused by this section, and, if foreseeable, it shall timely notify Buyer of the likelihood or actual occurrence of the Force Majeure.
25.	Indemnity (other than as set forth in Section 26):	Buyer shall defend, indemnify, and hold harmless EFC from any costs, expenses, losses, damages or liabilities whatsoever (including reasonable attorneys' and expert witness fees) arising from or related to any third party's claim, demand, threat, suit or proceeding (each a Claim) (a) based on Buyer's design of any product, including, but not limited to, product liability; or (b) personal injury, death, or property damage proximately caused by the design of any product or by the negligence or willful acts or omissions of Buyer. EFC shall indemnify Buyer only for EFC's acts of gross negligence or willful misconduct.
26.	Indemnity as to Intellectual Property:	Each party shall defend, indemnify, and hold harmless the other from any third party Claim of actual or alleged infringement of a third-party's patent, copyright, trade secret, trademark, registered design, maskwork or other right arising from or related to the use or sale related to (a) with respect to Buyer, the design, any specifications, material, processes or information supplied to EFC by Buyer or on Buyer's behalf or any items to be incorporated into the parts; or (b) with respect to EFC, any materials, processes or information incorporated into, used in or for the manufacture of the parts by EFC provided or performed by EFC, not including anything supplied or specified by Buyer or a third party such as described in Sections 10 and 11 above.
27.	All Indemnity Obligations:	Indemnification of a party includes such party's directors, officers, employees, shareholders, agents, successors and assigns. In addition to the above, indemnity will be available if any Claim is the result of joint negligence, joint misconduct, or joint fault of Buyer and EFC, but in such case the amount of the Claim for which a party is entitled to indemnification will be limited to that portion of such Claim attributable to the negligence, misconduct or other fault of that party. The indemnifying party shall not enter into any settlement that affects the indemnified party's rights or interests without the indemnified

		party's prior written consent unless the settlement provides for a full release of the indemnified party. The indemnity obligations are conditioned on (i) the indemnified party's prompt notification in writing to the indemnifying party of the existence of a relevant Claim, (ii) the indemnified party's permitting the indemnifying party to control the defense, settlement, adjustment or compromise of any such Claim. The indemnified party may employ counsel, at its own expense (provided that if such counsel is necessary because the indemnifying party does not assume control, the indemnifying party will bear such expense), to assist it with respect to any such Claim.
28.	Remedies:	Except where otherwise specifically addressed in these Terms, the rights and remedies of the parties under the Contract are not exclusive, and each party may exercise all rights and remedies available to such party under the Contract, at law or in equity.
29.	No Additional Terms:	EFC hereby objects to and rejects any additional or different terms on any Order or other document submitted, incorporated into, or referenced by Buyer (whether consistent or inconsistent with these Terms). This is a continuous objection and no further notice of objection is required.
30.	Failure to Object to Additional Terms:	Failure of EFC to object to any additional terms or provisions contained, referenced or incorporated in Buyer's Order or other documentation in addition to the objection set forth in Section 29 above or other communications will not constitute a waiver of the Quote or these Terms, nor constitute acceptance of such additional or different terms or provisions. No delay in or failure to exercise any right or remedy will constitute a waiver of such right or remedy.
31.	Modifications:	Except as otherwise expressly provided in these Terms, any modification (including additions) to the Contract or any other document related to the Contract must be in a writing signed by both parties.
32.	Waiver:	No delay in enforcing an obligation under the Contract will be deemed a waiver. Any waiver must be in writing, will apply only to that particular circumstance, will not be a continuing waiver, and will not be a waiver of any other provision in the Contract.
33.	Entire Agreement:	The Quote, these Terms, the Order (subject to Sections 29 and 30 above) and the specifications and engineering drawings provided by Buyer corresponding to the Quote or Order constitute the entire agreement between EFC and Buyer with regard to each Order and supersede any prior agreements, representations and warranties, whether written or oral. These Terms may change from time to time and these Terms supersede the prior version. Past practice and terms of dealing between EFC and Buyer, or the industry in general, shall not be used to interpret the Contract or result in any additional obligations of a party to these Terms. The section headings are for ease of reference only and are not to be used in the interpretation or construction of the Contract.
34.	Severability:	If any provision of the Contract is found by a court of competent jurisdiction to be invalid or unenforceable, then the court shall modify such provision to the extent necessary to make such provision valid and enforceable to the fullest extent of the law in a manner which reflects, as nearly as possible, the Parties' intent and economic effect of the invalid or unenforceable provision.
35.	Binding Agreement; Assignment:	The Contract is binding upon and benefits the parties and their respective successors and assigns. Buyer guarantees payment to EFC of all amounts due EFC on the effective date of any assignment of the Contract by Buyer. Each signatory to the Contract hereby warrants they have the authority to enter into the Contract and bind the party on whose behalf they sign to the terms of the Contract.
36.	Relationship of Parties:	The relationship of the Parties is that of independent contractors. Nothing in the Contract (a) constitutes the Parties as partners, joint venturers, co-owners, or otherwise as participants in a joint or common undertaking or as employers/employees, and (b) gives either party authority to direct or control the activities of the other party or bind the other party.
37.	Termination:	Either party may terminate an Order if the other party materially breaches the Order and does not cure such breach within 30 days of receiving written notice of such breach. Additionally, either party may terminate the Contract if the other party files for bankruptcy or any other type of protection against creditors, including but not limited to, assignment for the benefit of creditors.
38.	Survival:	The following sections of these Terms shall survive the termination of the Contract: 5-9, 12-14, 16-20, 23-39 and any other section or provision that is reasonably construed to support survival.
39.	Superseded:	These Terms will be superseded if the parties have in effect a written master supply contract that contains a separate section therein or incorporates an attachment thereto in both cases entitled "Terms and Conditions."