



## DART Aerospace Company Terms & Conditions of Sale

**Applicability:** These terms and conditions (“Terms”) are the only terms that govern the sale of goods or performance of services by DART Aerospace Company (“Seller”) to or on behalf of the buyer (“Buyer”). Notwithstanding anything herein to the contrary, if a contract signed by both parties exists covering the sale of goods or performance of services covered hereby, the terms and conditions of that contract will prevail to the extent inconsistent with these Terms. Any quotation or confirmation of order accompanying these Terms, or into which these Terms are incorporated by reference (collectively, the “Agreement”), comprises the entire agreement between the parties and supersedes all prior or contemporaneous understandings, representations, warranties, and communications, written or oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless of whether or when Buyer submitted its order or such terms. Fulfillment of Buyer’s order does not constitute acceptance of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

**Delivery and Shipping Terms:** Delivery dates are quoted in good faith on a best effort basis but are not guaranteed. Seller does not assume any risk or liability for any loss (including loss of revenue or loss of profit), costs, damages, charges expenses caused directly or indirectly by any delay in delivery for any reason including, but not limited to, any delay or nonfulfillment of contract due to acts of God, war, strike, breakdown, fires, governmental order or causes beyond the Seller’s control nor will any delay entitle the Buyer to terminate or rescind the order, purchase order, and/or contract, or delay any of Buyer’s obligations arising prior to such delay.

Goods or services will be delivered or performed within Seller’s lead time after receipt of Buyer’s order. Seller is not liable for any delays, loss, or damage in transit. Unless otherwise agreed in writing, Seller shall make the goods accessible EXW (Incoterms 2020) Seller’s facility (the “EXW Point”) using Seller’s standard methods for packaging. Buyer shall take delivery of the goods promptly after receiving notice that the goods have been made accessible by the Seller. Buyer shall be responsible for export procedures and cost, transport to main carrier if applicable, loading the goods, insurance, and delivery costs, import procedures and cost, and delivery from the EXW Point to the final destination. Seller may, in its sole discretion, without liability or penalty, make partial shipments of goods to Buyer. Each shipment will constitute a separate sale and Buyer shall pay for goods shipped, whether such shipment is in whole or partial fulfillment of Buyer’s order. If for any reason Buyer fails to accept delivery of goods on the delivery date or if Seller is unable to deliver goods on the designated delivery date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the goods shall pass to Buyer; (ii) the goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the goods until Buyer picks them up and Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

Seller reserves the right to correct clerical errors and omissions without incurring any liability.

**Title and Risk of Loss:** Title and risk of loss passes to Buyer at the EXW Point. As security for payment of the Price, Buyer grants to Seller a purchase money security interest in and to all right, title, and interest of Buyer in, to and under the goods, wherever located, whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing.

**Inspection and Rejection of Nonconforming Goods:** Buyer shall inspect the goods within 5 calendar days of receipt (“Inspection Period”). Buyer will be deemed to have accepted the goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes documentation reasonably required by Seller. “Nonconforming Goods” means only: (i) goods shipped are different than identified in Buyer’s order; or (ii) the goods’ label or packaging incorrectly identifies its contents.

(a) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming goods or (ii) credit or refund the Price for Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller’s facility. Under no circumstance should any shipment ever be made from Buyer to Seller’s facility without first obtaining permission from Seller in the form of a Return Material Authorization (RMA) issued by Seller’s Customer Service Department. All RMA returns must be properly marked with RMA number before shipment to Seller’s facility. All returns of Nonconforming Goods are subject to inspection by Seller to determine if goods are in their original, new, as shipped condition. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Nonconforming Goods from Buyer, make available to the Buyer the replaced goods at the EXW Point.

(b) The remedies are Buyer’s exclusive remedies for the delivery of Nonconforming Goods. Buyer has no right to return goods purchased under the Agreement.



**Price:** Buyer shall purchase the goods or services from Seller at the prices (the "Price") set forth in Seller's quoted price or published price list in force as of the date that Seller accepts Buyer's order or as otherwise agreed by the parties. Seller's price list is subject to change at any time. All Prices are exclusive of sales, use and excise taxes and any other similar taxes, duties and charges of any kind imposed by a governmental entity on amounts payable by Buyer. Buyer is responsible for all such charges, costs and taxes, but Buyer is not responsible for taxes imposed on or with respect to Seller's income, revenues, receipts, personnel or real or personal property or other assets.

**Cancellation:** The sale is not subject to cancellation, change, reduction in amount, or suspension or deferment of deliveries, except with the written consent of Seller and upon terms which indemnify Seller against loss.

A 100% cancellation charge will apply for orders cancelled whereby parts are due for shipment within 120 business days (working days (Mon.-Fri.)) of the cancellation date. When due for shipment outside of 120 business days, Buyer is 100% responsible for costs incurred for work in progress (WIP) up to the cancellation date.

A request for changes in delivery schedule and/or quantity ordered within 120 business days of the original scheduled delivery date requires written approval of Seller. Such changes may be subject to equitable price adjustment.

**Payment Terms:** Unless the parties otherwise agree, Buyer shall pay all invoiced amounts to Seller based on the agreed upon payment terms outlined on the quote/ at the time of quote. The extension of credit to Buyer shall be subject to change by Seller at any time. Unless the parties otherwise agree, Buyer shall make all payments by wire or check, in U.S. dollars. Buyer shall pay interest on late payments at the lesser of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for costs incurred in collecting late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller is entitled to suspend the delivery of any goods or services if Buyer fails to pay any amounts when due hereunder. Buyer shall not withhold payment of any amounts due by reason of any set-off of a claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

**Intellectual Property:** Any intellectual property rights (including, without limitation, patents, designs, trademarks, service marks, and copyrights and any applications for any of the preceding) in the goods or in the tools, designs, drawings, or production or design data owned or created by the Seller in the course of fulfilling Buyer's orders or otherwise used in the manufacture, maintenance or repair of the goods shall remain the Seller's property unless otherwise expressly agreed in writing by the Seller. The Seller grants, on full payment for the goods the non-exclusive right for the Buyer and bona fide purchasers from the Buyer to use, for the operation of the goods for their intended purpose only, (a) any software supplied with, or embedded in, the goods, and (b) technical manuals and instructions relating to the operation and maintenance of the goods. The Buyer hereby grants to Seller a non-assignable non-exclusive, royalty-free license to use any intellectual property rights (including, without limitation, patents, designs, trademarks, service marks and copyrights and any applications for any of the preceding) owned or controlled by the Buyer to the extent necessary for the Seller to supply the goods. Except as expressly stated herein, nothing in the contract shall be deemed to have given the Buyer a license or any other right to use any of the intellectual property rights of the Seller unless otherwise expressly agreed in writing by the Seller.

**Restrictions on Use of Seller's Intellectual Property and Proprietary Information:**

(a) Notwithstanding any other provision herein, Buyer may not use Seller's Proprietary Information directly or indirectly to compete with Seller's or in any manner to obtain a competitive advantage over Seller; and

(b) Buyer may not sell, reverse engineer, or copy any of the Seller's product or parts, or assist any third party in the reverse engineering or copying of any of the Seller product or parts, to make a competitive product or parts.

**Limited Warranty:** Seller warrants to Buyer a warranty period from the original date of shipment of the goods or performance of service ("Warranty Period") such goods and services will materially conform to Seller's published specifications in effect as of the date of manufacture and will be free from material defects in material and workmanship. It is the Buyer's responsibility to show qualification evidence that the product is under warranty when the warranty service is requested. The warranty periods are set out below.



(a) New Product Sales- The period of warranty for new goods sales is one (1) calendar year from the date of original shipment to the Buyer.

(b) Services- The period of warranty for repair, overhaul, or exchange services is six (6) calendar months from the date of original shipment to the Buyer.

**THE WARRANTIES, OBLIGATIONS AND LIABILITIES, EXPRESS OR IMPLIED, AND ALL OTHER RIGHTS, CLAIMS AND REMEDIES OF BUYER SET FORTH IN THESE TERMS AND CONDITIONS ARE EXCLUSIVE AND IN SUBSTITUTION FOR ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY NONCONFORMANCE OR DEFECT IN THE GOODS OR SERVICES PROVIDED UNDER THESE TERMS, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS; ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE; ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY ARISING FROM THE NEGLIGENCE OF SELLER AND ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY FOR LOSS OR DAMAGE TO ANY AIRCRAFT.**

Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the goods. Third Party Products are not covered by the warranty, and for the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT.**

Seller is not liable for breach of the warranty set forth unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within the Warranty Period and within 5 calendar days of the time when Buyer discovers or should have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving notice to examine the goods or services and Buyer (if Seller requests) returns such goods or services to Seller's facility at Seller's cost for such examination; and (iii) Seller reasonably verifies Buyer's claim that the goods or services are defective. Under no circumstance should any shipment ever be made from Buyer to Seller's facility without first obtaining permission from Seller in the form of a Return Material Authorization (RMA) issued by Seller's Customer Service Department. All RMA returns must be properly marked with RMA number before shipment to Seller's facility. All returns are subject to Seller's inspection to determine the validity of Buyer's claim, and final determination will be made by Seller after this inspection.

Seller is not liable for breach of the warranty set forth: (i) if Buyer makes any use of the goods or services before or after giving notice; (ii) if the defect arises because of failure to follow Seller's instructions as to storage, installation, use or maintenance of the goods; (iii) if the goods are altered or repaired without Seller's prior written consent; or (iv) for defects caused by negligence, abuse or misuse of the goods, corrosion, fire, heat or normal wear and tear.

With respect to any such defective goods or services during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such goods (or the defective part) or reperform the services or (ii) credit or refund the price of such goods or services at the pro rata Price but, if Seller requests, Buyer shall, at Seller's expense, return such goods, or services if applicable, to Seller.

**THE REMEDIES SET FORTH ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES AND SELLER'S ENTIRE LIABILITY FOR BREACH OF THE WARRANTY.**

**Limitation of Liability:**

**IN NO EVENT WILL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO NONCONFORMANCE OR DEFECT IN GOODS OR SERVICES OR ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

**IN NO EVENT WILL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNTS PAID TO SELLER FOR THE GOODS SOLD OR SERVICES PERFORMED.**

**Compliance with Law:** Buyer shall comply with all applicable laws, regulations and ordinances and maintain in effect all licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under these Terms. Buyer assumes all responsibility for shipments of goods requiring any government import clearance. Seller may terminate the Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on the goods.



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; the Foreign Trade Regulations (FTR) 15 Part 30 maintained by the U.S. Census Bureau; 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.

Specifically, Buyer covenants that it shall not – directly or indirectly – sell, export, re-export, transfer, divert or otherwise dispose of any goods, products, software, or technology (including goods or products derived from or based on such technology) received from Seller under these Terms or any 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 Seller harmless from any and all export compliance infractions including but not limited to all sanctions, penalties, or fines resulting from any such shipments or transactions taken by Buyer with any denied persons, countries or entities prohibited under ITAR 22 C.F.R. Parts 120-130, EAR Part 300 thru 799, or the FTR Part 30.

**Termination:** Under no circumstances may Buyer cancel any order. In addition to any remedies set forth herein, Seller may terminate the Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due; (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.

**Confidential Information:** 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, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with these Terms is confidential, solely for the use of performing under these Terms and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation hereof. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) obtained by Seller on a non-confidential basis from a third party who was not under an obligation of confidentiality. Seller shall retain all rights and ownership of its intellectual property. Unless expressly set forth to the contrary, no rights under any copyright, trademark, patent are granted, licensed or otherwise conveyed to Buyer. Ownership of any developed intellectual property rights in performing under these Terms shall vest with Seller unless Buyer fully funds development of the goods.

**Force Majeure:** Seller shall not be liable to Buyer, nor be deemed to have defaulted or breached these Terms or any Agreement, for any failure or delay in fulfilling or performing any term of these Terms or an Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond Seller's reasonable control including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage. If, due to any such circumstances, shortages should occur in Seller's supply of any specific goods, Seller may allocate deliveries to its customers as it determines in its sole discretion.

**Amendment and Modification:** These Terms may only be amended or modified in a writing that specifically states that it amends these Terms and is signed by each party.



**Waiver:** No waiver by Seller of any of the provisions of these Terms or an Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from these Terms or an Agreement 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.

**Assignment:** Buyer shall not assign any of its rights or delegate any of its obligations under these Terms or an Agreement without Seller's prior written consent. Any purported assignment or delegation in violation hereof is null and void. No assignment or delegation relieves Buyer of any of its obligations under these Terms or an Agreement.

**Relationship of the Parties:** The relationship between the parties is that of independent contractors. Nothing contained in these Terms or an Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties. Neither party has authority to contract for or bind the other party in any manner whatsoever.

**No Third-Party Beneficiaries:** These Terms or an Agreement are for the sole benefit of the parties and their respective successors and permitted assigns and nothing herein, express, or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

**Governing Law:** All matters arising out of or relating to these Terms or an Agreement are governed by and construed in accordance with the laws and courts of the Province of Ontario, Canada without giving effect to any choice or conflict of law provision or rule (whether of the Province of Ontario, Canada or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Province of Ontario, Canada. The United Nations Convention on the International Sale of Goods does not apply to any matter arising out of or relating to these Terms or an Agreement.

**Submission to Jurisdiction:** Any suit, action or proceeding arising out of or relating to these Terms or an Agreement shall be instituted in the federal courts of the Canada or the courts of the Province of Ontario, Canada, in each case located in the Province of Ontario, Canada, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Buyer waives the right to a trial by jury in connection with any and all claims brought hereunder.

**Notices:** Each notice, request, consent, claim, demand, waiver and other communication hereunder (each, a "Notice") must be in writing and addressed to the parties at the addresses set forth on the face of the order, quotation or confirmation of sale accompanying these Terms or to such other address that the receiving party may designate in writing. All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in these Terms, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

**Severability:** If any term or provision of these Terms or an Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of these Terms or an Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.



**Survival:** Provisions of these Terms or an Agreement that by their nature should apply beyond their terms will remain in force after any termination or expiration of these Terms or an Agreement including, but not limited to, the following: Compliance with Laws, Confidentiality, Governing Law, Submission to Jurisdiction and Survival.