



**PROCUREMENT  
TERMS & CONDITIONS**

Document No.  
QF-841.03

Rev.  
A

Release Date  
8/16/23

**Airflow Performance LLC.  
Purchase Order Terms & Conditions**

**1. Acceptance of Terms and Conditions:**

A. These Purchase Order Terms and Conditions may be communicated to Seller by hard copy, by electronic means, or by any other method chosen by Airflow Performance. By accepting any Airflow Performance Purchase Order, including by supplying the goods ordered, Seller accepts all of the following terms and conditions, which are part of all Airflow Performance Purchase Orders.

B. Airflow Performance expressly limits its offer to contract under its purchase orders to these Purchase Order Terms and Conditions and the specifications contained in the Airflow Performance Purchase Order at issue, and expressly rejects any terms and conditions of sale that may be submitted by Seller in acknowledging or accepting Airflow Performance's Purchase Order.

C. These Purchase Order Terms and Conditions, together with the Airflow Performance Purchase Order, constitute the complete, final and entire contract between Airflow Performance and Seller with respect to the goods specified in the Airflow Performance Purchase Order.

D. Any reference to a Seller quotation shall be deemed to be for information purposes only and shall not be construed as acceptance of the Seller's terms and conditions.

E. Any change in the terms and conditions of Airflow Performance's Purchase Order or these Purchase Order Terms and Conditions shall be binding on Airflow Performance only if made by a written revision to the Airflow Performance Purchase Order or these Purchase Order Terms and Conditions signed by an authorized representative of Airflow Performance.

**2. Packing and Shipment:**

A. Deliveries shall be made without charge for boxing, carting or storage unless otherwise specified. Goods shall be suitably packed to insure against damage from weather or transportation and shall be marked and shipped in accordance with common carrier tariffs to permit application of the lowest transport rate. No additional charge shall be made to Airflow Performance for such packing, marking, shipping and freight.

B. Airflow Performance's Purchase Order number must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each shipment showing Airflow Performance's Purchase Order number, item number and description of goods. Shipping receipts, original bills of lading, express receipt and air bills shall be sent to Airflow Performance on the date the goods are shipped.

C. Except as otherwise provided in these Purchase Order Terms and Conditions, the expense of returning good, for whatever reason, shall be borne by Seller with the title and risk of loss passing to Seller at Airflow Performance's facility.

**3. Delivery:**

A. Time is of the essence. Deliveries shall be made both in quantities and at times in accordance with Airflow Performance's delivery schedule requirements. Title and risk of loss shall pass to Airflow Performance upon acceptance at Airflow Performance's facility.

B. Airflow Performance is not obligated to accept any goods provided by Seller in excess of Airflow Performance's Purchase Order. Any overshipment may be returned to Seller at Seller's risk and expense.

C. Airflow Performance may from time to time change delivery schedules or direct temporary suspension of scheduled shipments by notifying Seller in writing. In additions, Airflow Performance has the right to cancel its Purchase Order in whole or in part from time to time by modifying the Purchase Order in writing and notifying Seller of the change. In no event does Airflow Performance have any liability for loss of anticipatory profits of Seller or Seller's suppliers.

Nothing in this clause shall excuse the Seller from proceeding with the delivery schedule or Purchase Order as modified.

D. If, because of failure of Seller to meet the schedule requirements of the Purchase Order, Airflow Performance finds it necessary to require shipment of any of the products covered by the Purchase Order by a method other than originally specified by Airflow Performance, Seller will be solely responsible for the additional expense, if any, by which the cost of the more expeditious method of transport exceeds the cost of the method of transport originally specified.

E. Seller is responsible for all other damages of any kind incurred or suffered by Airflow Performance and by the ultimate purchasers or users of the goods proximately caused by any delay of seller beyond the scheduled delivery date. Airflow Performance may from time to time in advance of shipment dates and at

Airflow Performance's expense, direct that an alternate mode of transportation be used and Seller will promptly comply with such direction.

F. Any shipment that arrives at Airflow Performance's facility prior to the Purchase Order authorized delivery date will be refused and returned to Seller at Seller's risk and expense or, at the sole option of Airflow Performance will be received and stored by Airflow Performance at Seller's sole expense and risk of loss until the Purchase Order authorized delivery date or until such earlier date, if any, as of which Airflow Performance elects to forego further objection to the shipment's premature delivery. Payment terms do not take effect until such time as Airflow Performance has accepted delivery of any shipment.

**4. Airflow Performance Payment Terms:** Net 45 days after receipt of complete order at Airflow Performance unless otherwise specified on the Airflow Performance Purchase Order.

**5. Excusable Delays:**

A. Subject to this Section 5, neither Airflow Performance nor Seller is liable for delays in the performance of an Airflow Performance Purchase Order arising out of causes beyond the control and without the fault or negligence of the delayed party. Such causes include, but are not limited to, acts of God or the public enemy, acts of Government, fires, floods, epidemics, quarantine restrictions, strikes and freight embargoes.

B. In the event of a failure of Seller to perform hereunder arising from any of the causes or events set forth in this section, Airflow Performance will be entitled to obtain products or services covered by Airflow Performance's Purchase Order elsewhere for the duration of such failure and to reduce the quantity or amount of products or services ordered from Seller under Airflow Performance's Purchase Order by such amount without any obligation to Seller. If at any reason Seller has reason to believe that deliveries will not be made as scheduled, notice setting forth the cause of delay will be given immediately to Airflow Performance.

C. If Seller does not make deliveries as scheduled or fails to perform any of the other provisions of the Airflow Performance Purchase Order or these Purchase Order Terms and Conditions, or so fails to make progress as to endanger performance of Airflow Performance's Purchase Order in accordance with its terms or breaches any of the terms hereof for any cause not covered by this section, Airflow Performance is entitled to obtain goods or services covered by its Purchase Order and Seller will be liable to Airflow Performance for the amount, if any, by which the cost of elsewhere exceeds the cost specified in Airflow Performance's Purchase Order.

**6. Conformance of Goods:** Seller shall notify Airflow Performance of any out-of-specification condition of any goods proposed to be furnished under Airflow Performance's Purchase Order. Seller shall obtain written approval from Airflow Performance prior to shipment of any nonconforming goods.

**7. Inspection:**

A. All goods ordered are subject to final inspection and approval at destination by Airflow Performance notwithstanding certification of conformance by Seller, prior payment, or inspection at source, it being expressly agreed that none of these events shall constitute final acceptance.

B. Airflow Performance, without limitation to its other rights under the Purchase Order, may reject any goods which contain defective materials or workmanship, or do not conform to specifications, blueprints, drawings, samples or other descriptions furnished or specified by Airflow Performance. Rejected goods may be returned at Seller's risk and expense at the full invoice price plus incoming and return transportation charges, if any, and no replacement by Seller of defective goods shall be made unless specified in writing by Airflow Performance. Any replacement goods furnished by Seller with Airflow Performance's approval shall be new and shall meet all requirements of Airflow Performance's Purchase Order.

C. Acceptance of any item shall not be deemed to alter or affect the obligations of Seller or the rights of Airflow Performance under the terms of the Purchase Order, including, without limitation, Section 8 below.

D. If Airflow Performance reasonably determines that additional work is necessary to cause any goods to come within warranties hereunder expressed, Airflow Performance may elect to perform such work and supply such materials as may be necessary or appropriate therefore, all at the expense of Seller, and performance of such work by Airflow Performance shall in no way invalidate, waive or cause Airflow Performance to waive by election any other remedy at law or in equity whatsoever.

**8. Warranty:**

A. Seller expressly warrants that all goods and work covered by the Purchase Order will conform to the specifications, blueprints, drawings, samples and other



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descriptions furnished or specified by Airflow Performance and will be merchantable, of good material and workmanship and free from defect.

B. Seller further expressly warrants that all goods covered by the Purchase Order that are the product of Seller or are in accordance with Seller's specifications or design shall be fit and sufficient for the purposes intended by Airflow Performance and will be safe when applied to their intended use in the usual and customary manner.

C. The warranties and remedies provided for in these Purchase Order Terms and Conditions shall be in addition to those expressed or implied by law and shall remain effective notwithstanding the acceptance of the goods by Airflow Performance, its successor and assignees, or customers and users of the goods, and shall survive design and test approvals, inspection, acceptance and payment.

D. Seller is liable for and will save Airflow Performance harmless any loss, damage or expense whatsoever that Airflow Performance may suffer as a result of Seller's breach of any of these warranties, including, but not limited to replacement (if Airflow Performance so elects) of any nonconforming goods, reimbursement of all costs incurred by Airflow Performance in connection with any product recall, retrofit, inspection, rework, disassembly or reassembly, and payment of any other costs or expenses resulting from Seller's breach.

#### 9. Intellectual Property/Confidential Information:

A. Seller agrees to indemnify and hold harmless, protect and defend Airflow Performance, its successors, assigns, customers and those selling or using Airflow Performance products from and against all loss, damage, liability, claims, demands and suits at law or in equity arising from sale or use of the goods sold by Seller to Airflow Performance for actual or alleged infringement of any letters patent, copyright, trademarks or other intellectual property rights, whether foreign or domestic, unless and only to the extent said goods are produced in accordance with the designs or specifications furnished by Airflow Performance.

B. Information, including drawings and data submitted at any time by Seller to Airflow Performance relating to material covered by this order, is not submitted in confidence and may be used by Airflow Performance in any way in the conduct of its business. Seller's rights with respect to use of such information by Airflow Performance its successors, assigns, licensees or affiliates, are limited to any valid patent rights of Seller with respect to goods covered by this Purchase Order.

#### 10. Charge-Backs:

Supplier non-conforming material may cause scrap, sorting, Airflow Performance customer returns, and/or warranty claims. If it is determined by Airflow Performance in its sole discretion that a supplier's non-conforming product is the cause of these additional costs, Seller is subject to be debited for cost recovery.

#### 11. Changes:

A. Airflow Performance has the right to cancel this Purchase Order in whole or in part from time to time by modifying this Purchase Order in writing and notifying Seller of the change. In no event does Airflow Performance have any liability for loss of anticipatory profits of Seller or Seller's suppliers. Nothing in this clause shall excuse the Seller from proceeding with this Purchase Order as changed.

B. Seller may not make any changes in the design or composition of any supplies ordered hereunder without the prior approval of Airflow Performance. Seller shall notify Airflow Performance of any requested design changes by in writing. Approval shall be evidenced by Airflow Performance's revised Purchase Order incorporating the change and the related drawing or other technical data as may be specified by Airflow Performance, and may be granted, withheld or conditioned in Airflow Performance's discretion.

**12. Cancellation:** Airflow Performance reserves the right to cancel all or any part of the Purchase Order if Seller does not make delivery as specified in the schedules, if Seller fails to perform any of the other provisions of the Purchase Order, or so fails to make progress as to endanger performance of Airflow Performance's order in accordance with its terms, or if Seller breaches any of the terms hereof, including the warranties of Seller. Airflow Performance also has the right to terminate its Purchase Order or any part thereof in the event of the insolvency of Seller, appointment of a receiver or trustee for Seller, or the execution by Seller of an assignment for the benefit of creditors.

**13. Termination for Convenience:** Airflow Performance may by notice in writing direct Seller to terminate its Purchase Order, or work under the Purchase Order, in whole or in part at any time and such termination shall not constitute a default. If Airflow Performance's Purchase Order is for services or specially-produced goods, in the event of such termination (a) Seller will be reimbursed for actual, reasonable and substantiated costs incurred prior to the date of termination, plus a reasonable profit for work performed to date of termination, and (b) Seller

and Airflow Performance will negotiate cost to be reimbursed and the disposition of any work in progress. Claims by the seller under contract must be made within 30 days from the date the claim arises or within such longer period as Airflow Performance may allow. Seller's obligations under the warranty, intellectual property, and confidentiality provisions survive any termination.

The provisions of this clause do not limit or affect the rights or remedies of Airflow Performance stated in other clauses of these Purchase Order Terms and Conditions or provided by law in the event of the default or breach by Seller.

#### 14. Construction of Contract and Airflow Performance's Rights:

A. Airflow Performance's Purchase Order and the Purchase Order Terms and Conditions incorporated therewith are governed and construed according to the laws of the State of South Carolina without application of its conflict of laws provisions.

B. All rights and remedies of Airflow Performance as are herein specified are cumulative and additional to any other or further rights and remedies provided in law or equity.

C. Airflow Performance is entitled at all times to set off any amount owing at any time from Seller to Airflow Performance against any amount payable at any time by Airflow Performance in connection with its Purchase Orders.

D. The failure of Airflow Performance to enforce at any time any of the provisions of its Purchase Order Terms and Conditions or to exercise any option herein provided or to require at any time performance by Seller of any of the provisions herein shall not in any way be construed to be a waiver of any provisions nor in any way to affect the validity of these Purchase Order Terms and Conditions or any part thereof, or the right of Airflow Performance thereafter to enforce each and every such provision.

E. Seller shall indemnify and hold Airflow Performance harmless from and against all liabilities, losses and incidental damages and expenses, including Airflow Performance's reasonable attorney fees, resulting from the breach of any of the terms and conditions hereof, whether negligent or otherwise, specifically including, but not limited to, the breach of any of Seller's warranties.

F. Seller and Airflow Performance agree that all warranties made hereunder explicitly extend to the future performance of the goods covered by Airflow Performance's Purchase Orders and agree that a cause of action for breach of warranty made hereunder will accrue when the breach is discovered rather than when the goods are tendered.

**15. Compliance with Applicable Laws:** Seller warrants that the goods to be furnished and the services to be performed under Airflow Performance's Purchase Order comply with all applicable federal, state and local laws and Airflow Performance may suffer as a result of Seller's breach of this or any other warranty.

#### 16. Federal, State and Local Taxes:

A. Unless otherwise specified, the subject material of Airflow Performance's Purchase Order is exempt from federal excise tax.

B. Unless otherwise specified, the subject material of Airflow Performance's Purchase Order is for use in manufacturing or resale and is exempt from sales and use tax.

C. All prices stated herein include all federal, state, and local taxes that may be levied or assessed as a result of Airflow Performance's Purchase Order, or are otherwise applicable to Airflow Performance's purchase.

#### 17. Liability for Injury or Damage:

A. Seller shall indemnify, hold harmless, and defend Airflow Performance from and against any and all damages, liabilities, losses, claims, diminution in value, obligations, liens, assessments, judgments, fines, penalties, reasonable costs and expenses (including, without limitation, reasonable fees of counsel representing Airflow Performance), as the same are incurred, of any kind or nature whatsoever (whether or not arising out of third-party claims and including all amounts paid in investigation, defense, or settlement of the foregoing) that may be sustained or suffered by Airflow Performance based upon, arising out of, or by reason of any product liability claim asserted against Airflow Performance relating to goods sold to Airflow Performance by Seller.

B. Seller is required to provide evidence of product liability insurance coverage satisfactory to Airflow Performance in its sole discretion.

**18. Airflow Performance's Proprietary Information:** Any information that Seller receives or otherwise has access to incidental to or in connection with Airflow Performance's Purchase Order (the "Confidential Information") shall be and remain the property of Airflow Performance. Confidential Information may only be used to the extent necessary to perform Airflow Performance's Purchase Order and Seller shall not disclose Confidential Information to any third party,

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except to its agents and employees as necessary to perform the Purchase Order. In no event shall Seller acquire any right, title or interest in and to any product or

process information, including related know how, either existing or developed during the course of the business relationship with Airflow Performance, and in no event shall Seller acquire any right, title or interest in and to any materials or information provided to it by Airflow Performance.

**19. Addenda:** In the event an addendum is attached to the Purchase Order, such addendum is hereby made a part of Airflow Performance’s Purchase Order and shall have equal importance to the terms and conditions set forth herein. In the event that any such addendum contains terms and conditions that conflict with any of the terms and conditions set forth herein in such a way that they cannot be construed together, then the provision contained in the addendum shall control over the provision contained in the terms and conditions set forth herein.

**20. Disputes/Governing Law:**

A. If any dispute between Airflow Performance and Seller arises under a Purchase Order or these Purchase Order Terms and Conditions, Seller agrees to proceed with the performance of the Purchase Order, including the delivery of goods. In the event of resolution of the dispute in favor of Seller the Purchase Order will be equitably adjusted to reflect such resolution.

B. The state courts of South Carolina located in Spartanburg County, shall have exclusive jurisdiction to adjudicate any dispute arising out of Airflow Performance Purchase Orders. Airflow Performance and Seller hereby consent to the personal jurisdiction of, and laying of venue within the foregoing courts, and hereby knowingly and voluntarily waive any objection or defense to suit in such courts based upon lack of personal jurisdiction, venue or *forum non conveniens*.