



# Airflow Performance Service and Purchase Agreement

**The Purchaser is advised to read this agreement carefully. This agreement confirms your rights and is a legal and binding contract on Airflow Performance LLC and you, the purchaser, and your heirs.**

In this purchase agreement when we say “we” “our” or “us” we mean Airflow Performance LLC. and its successors and delegates. When we say “you” or “your” we mean the Purchaser and his or her heirs and delegates.

Airflow Performance LLC is the Rebuilder/Manufacturer of the Experimental Fuel Injection systems for experimental aircraft. This fuel injection system has not been approved by the FAA for aircraft use. The purchaser accomplishes installation of the system; therefore, a working knowledge of the fuel injection system is very valuable. Liability insurance is not an accessible commodity for such a small company as we are. The exorbitant rate often limits many companies from being able to purchase such insurance. This is the reason we require this purchase agreement and so we may continue to offer our fuel injection services at reasonable rates. We are willing to negotiate different provisions but this does affect our prices to you.

## **Risks. Overview.**

Flying involves inherent dangers. Adverse weather, darkness, cloud and fog, mechanical or structural failure or mal performance, and- most of all- lapse in judgment; any of these can affect your aircraft and yourself. All of these are risks to consider when flying an experimental amateur-built aircraft. The amateur-built category is an anomaly in the highly regulated world of general aviation; no governmental standard exists for the design, development and testing of these aircrafts. The category was introduced decades ago under the conditions and purpose of education and recreation. Any incorrect judgment on the part of the operator may result in structural failure, hidden damage or even death.

## **Assumption of Risk. Release. Indemnity.**

In summary, flying any aircraft even one with a rebuilt Bendix/Precision Fuel Injection System exposes you to risk of property damage, serious bodily injury, or death. By your execution of this Agreement, you acknowledge that you are aware of and understand those risks, and that you voluntarily assume them. Your signature waives and releases any claims (with the exceptions set forth further on) against Airflow Performance, Inc., its employees, members, agents and subcontractors, which you may have or acquire, arising from the installation, maintenance, or operation of the Fuel Injection System, parts, or component which is the subject of this Agreement, including liability arising from failure to warn of possible dangerous conditions; and you agree to indemnify them from any such claim by a third party. This assumption, release, and indemnity clause is a material factor in determining the price at which your parts and components are sold, and the standard price would be substantially higher without this clause.

## **Modification.**

**Deviation from the AP work and specifications may result in structural, aerodynamic, control and performance characteristics and may create a risk of property damage, severe personal injury or death. The Purchaser should please note that Airflow Performance services and products are not approved for use on certified aircraft. It is the users responsibility for using aircraft approved installation methods and materials to insure correct and safe operation of the engine and aircraft. Information in our installation and service manual DOES NOT supersede any published airframe/engine manufacturer publication. Conflicting information should be directed to Airflow Performance.**

You agree that all components worked on by API will satisfy all requirements specified by API. You will refer to the Bendix literature and instruction manuals, specifically including requirements for engine size, horsepower and make.

## **Limited Warranty and Exclusion of Other Warranties**

It is expressly understood and agreed that the Seller shall in nowise be deemed or held to be obligated, liable or accountable upon or under any guaranties or warranties, express or implied, statutory, by operation of law, or otherwise, in any manner or form beyond its express agreements to deliver material as order by the Buyer, and under no circumstances will Seller be liable for damages or claims for expenses involved in using its product or for any indirect or consequential damages or loss of profits, and liability of Seller does not warrant the merchantability and fitness of delivered material for any particular purpose.

Buyer agrees to hold Seller harmless from, and Buyer hereby assumes the entire responsibility and liability for, any and all damage or injury or any kind or nature whatever, including death, as to all persons, whether Buyer’s employees, agents, or otherwise and as to all property, including Buyer’s own property, caused by, resulting from, arising out of, or occurring in connection with, the use by Buyer himself or any other person, of the fuel injection system.

If any person shall make a claim for any damage or injury, including death, resulting from the use of the work done on the fuel injection system and sold to the Buyer, whether based upon seller’s alleged active use or misuse, or passive negligence, or based upon principles of product liability, or based upon any alleged breach of any

statutory/contractual or common law duty or obligation Seller may have, Buyer shall indemnify and saves harmless Seller, its agents, servants and employees, from against any and all loss, expense, damage or injury that Seller may sustain as a result of any such claim.

Please check this shipment carefully to see that everything listed on your packing list is received. We have checked your order and have tried to make sure it is exactly right. Should anything be wrong or missing, please notify us within five (5) days.

### **Intellectual Property**

It is the business of Airflow Performance LLC to make and sell fuel injection systems, its parts, components and services for all experimental aircraft. The knowledge of the design and specifications of the API Fuel Injection System provide a competitive advantage to Airflow Performance, which makes efforts to keep them confidential. In selling you a fuel injection system, parts and components, it is our mutual purpose to enable you to make and operate a single aircraft, and not to enable you to enter into a competing business. You agree to prevent any information proprietary to Airflow Performance from being diverted from this intended use. Specifically, you agree not to (a) copy or permit others to copy any portion of the API assembly manual, instructions or other written materials; (b) duplicate or permit others to duplicate any parts supplied by Airflow Performance or (c) trace, photograph or otherwise record dimensional information from parts supplied by Airflow Performance or permit others to do the same; without the express written consent of Airflow Performance.

### **Payment, Taxes, Shipment, Delivery and Refund**

Airflow Performance accepts orders services, parts and components upon receipt of a completed and signed Purchase Agreement. Only Visa, MasterCard, wire transfer, or check drawn on a U.S. BANK in U.S. Funds may make payment. You are solely responsible for any required reporting, filing and payment of any sales, use, personal property, customs or other taxes and excises. You agree to inspect and inventory all shipments from Airflow Performance against supplied packing documentation, and to notify us within thirty days (30) of your receipt of shipment of any discrepancy. Airflow Performance bears no obligation to make adjustments for discrepancies after thirty days (30) from the date of shipment. You also understand that liability for shipping damage is solely that of the shipping company, and that you will be solely responsible to pursue any claims arising from such damage delivery dates are assigned in the order in which order forms are accepted by Airflow Performance. Assigned delivery dates are our best estimate, but are not guaranteed. Actual delivery may be advanced or delayed, without liability to Airflow Performance for any costs or damages, direct or indirect, associated with changes in delivery schedule. We will make good faith efforts to accommodate delivery advances or postponements requested by the purchaser.

### **Other Matters of Agreement**

This agreement is not intended to deprive either party of any rights, or to require any waivers or releases, where that would be prohibited by law or public policy. Any provision of this agreement, which is invalid or non-enforceable, shall be ignored, and the remainder of the Agreement shall continue in force. This agreement may be amended, but only by writing signed by both parties. Either party may waive or release rights under this Agreement, but only by a writing signed by that party. This is our entire and complete agreement, which supersedes all prior discussion, conversations and negotiations, and you are not relying on any representation, statement or information outside this Agreement. It is binding on your and our successors, heirs, and assigns.

### **Dispute Resolution.**

You and we agree that the laws of South Carolina, as to all matters, shall govern this Agreement including matters of validity, construction, effect, performance, and remedies. Any and all disputes arising out of or relating to the interpretation, performance or breach of this agreement, or the transactions contemplated hereby, at the request of either party or notice to the other, shall be submitted to binding arbitration before a single neutral arbitrator, with hearings to be held in Spartanburg, South Carolina. If the parties have not appointed an arbitrator within twenty-five days after a notice of arbitration, either party may proceed to cause an arbitrator to be appointed by the Undisputed/JAMS (“the arbitration agency”) or the parties shall thereafter comply with all procedures established by the arbitration agency. The arbitrator shall have the power to order the parties to exchange information prior to hearing, including but not limited to production of documents and tangible objects, summaries of testimony expected from witnesses, and statements of contention of fact and law. The arbitrator shall apply the substantive law of South Carolina and shall have the power to award all legal and equitable remedies, including provisional remedies, which a South Carolina court of general jurisdiction could give; provided, however, that each party waives the right to receive consequential, punitive or exemplary damages or any other from of damages however denominated other than compensatory damages. The arbitrator may award to the prevailing party such party’s costs of the arbitration, including reasonable attorney’s fees. The written award of the arbitrator may be enforced as a judgment by any court having jurisdiction.

**The parties acknowledge and understand that this provision constitutes a waiver of the right to a trial by jury.**

By My signature below, I certify that I have read, understood, and agree to the terms, and conditions of the Purchase Agreement above.

PURCHASER

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Individual

\_\_\_\_\_  
Name (Please Print)

\* Individual Signatures Required. No corporate Signature accepted. If a partnership, all partners must sign a purchase agreement.

**Any special instructions concerning contact:**

Accepted by Airflow Performance

BY: \_\_\_\_\_

Date: \_\_\_\_\_

**Please return all pages with your parts.**

**CUSTOMS:** As we have no control over any country's customs office. You will be responsible for all duties and taxes, into and out of the US and your country. If you are buying a new system or parts we will fill out the Commercial Invoice for new aircraft parts. If you send parts to us to repair and return, we will send a Commercial Repair Invoice stating Repaired Aircraft Goods Returned. It will be your responsibility to work with your custom office. We will be glad to assist you in any way we can, but we will not lie or de-value the invoice amount.