



Purchase Order General Terms and Conditions

ESM Aerospace, Inc.
1203 West Isabel Street
Burbank, CA. 91506
(818) 841-3653
www.esmaerospace.com

As of 1/16/2017

NOTE:	Suppliers are to retain a copy of the most current revision of the document on file. One will NOT be sent with each order.
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Form may be obtained at: <http://www.esmaerospace.com/>

[I. Order of Precedence](#)

[II. Order Acceptance](#)

[III. Changes to the Contract](#)

[IV. Order Requirements](#)

[V. Statutory and Legal Requirements](#)

[VI. Quality System Requirements](#)

I. Order of Precedence

In the event of conflict between these General Terms and Conditions, Special Terms and Provisions set forth herein (such as, but not limited to statements of work, planning, etc.), specifications or drawings applicable thereto, the order of precedence shall be as follows:

- a. Special Terms and Provisions set forth on the face of the Purchase Order and incorporated therein by reference;
- b. Purchase Order General Terms and Conditions (this document);
- c. Specifications; and
- d. Drawings (should any conflict arise, Seller shall contact ESM for clarification in writing)

NOTE:	It is the Sellers responsibility to maintain the most current revision of all Specifications and Drawings.
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II. Order Acceptance

This Order constitutes Buyer's offer to Seller and becomes a binding contract on the terms set forth herein when it is accepted by Seller either by acknowledgement or beginning performance. THIS ORDER MAY BE ACCEPTED ONLY ON THE TERMS SET FORTH HEREIN, INCORPORATED HEREIN BY REFERENCE, OR SET FORTH ON ANY ATTACHMENTS HERETO. TERMS IN SELLER'S ACCEPTANCE IN ADDITION TO OR NOT IDENTICAL WITH SUCH TERMS ARE HEREBY OBJECTED TO AND REJECTED BY BUYER AND WILL NOT BECOME A PART OF THE CONTRACT UNLESS AGREED TO IN WRITING BY BUYER'S AUTHORIZED PERSONNEL.

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SEE:	Next Page



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III. Changes to the Contract

Seller shall comply immediately with such direction and avoid unnecessary costs related thereto. The Seller acknowledges and agrees that certain changes in delivery schedule are normal and anticipated in the course of the program. Seller further agrees that the cost of such changes is included in the fixed prices established herein. Accordingly, Seller shall not be entitled to a price adjustment hereunder for any change to the delivery schedule when deliveries are rescheduled within 12 months of the original delivery date.

Except for delivery schedule changes within the foregoing parameters, if any such change causes an increase or decrease in the cost of or time required for performance of any work under this Order an equitable adjustment in the price and/or delivery schedule shall be made when justified by such change. However, no favorable adjustment of any kind shall be afforded to Seller with respect to changes made necessary, by reason of defects or potential defects in any item for which Seller would be liable under the terms of this Order, Seller's claim for adjustment, stating the amount claimed and reasons therefore, shall be made in writing within 30 days from the date the change was ordered. Seller's failure to assert its claim shall operate as a waiver.

The Parties shall establish through negotiation whether or not any Buyer-directed change is one which in fact authorizes an equitable adjustment under this article, and if so, the nature of such adjustment. Failure to agree with respect to any such negotiations shall be a dispute and either party may pursue its remedies as provided herein. Pending resolution of such dispute, Seller shall diligently pursue the performance of the Order as changed.

No information, advice, approvals or instructions by Buyer's personnel shall affect Buyer's and Seller's rights and obligations hereunder, unless the same is in writing signed by an authorized Representative of the Buyer's Purchasing Department and which expressly states that it constitutes a change to this Order. If Seller

- a. considers that the conduct of any of Buyer's employees has constituted a change hereunder, Seller shall notify Buyer immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Pending direction from Buyer's Purchasing Department, Seller shall take no steps to implement any such change
- b. Seller shall make available for Buyer's examination relevant books and records to verify Seller's claim for adjustment

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SEE:	Next Page



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IV. Order Requirements

(a) Packaging and Crating

All items shall be suitably packaged by Seller to insure protection in shipment and storage. Prices include all charges for Seller's packaging and crating.

(b) Packing Lists and C of C (Certificates of Compliance)

Where applicable, Packing Lists and C of C's must include:

- i. Part or Drawing Number with Revision
- ii. ESM Aerospace Inc. Purchase Order number
- iii. Industry recognized standards or specifications, or the superseded specification referenced
- iv. Lot number
- v. Heat number
- vi. Cure date
- vii. Shelf life

(c) Invoices, Price and Payment

1. All invoices shall show Purchase Order number. Taxes to be paid by Buyer must be itemized. Invoices will not be honored unless a certification appears thereon that the goods were produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, and of regulations and orders of the U.S. Department of Labor issued thereunder.
2. Seller warrants that the price to be charged for the items covered by this Order will not exceed prices charged others under comparable conditions. Seller shall refund the excessive amount paid by Buyer.
3. Payment of Seller's invoice may be offset for;
 - i. any damages resulting from breach of contract under any contract between Buyer and Seller,
 - ii. any amount owing at any time from Seller to Buyer, or any adjustment for shortage or rejection and any costs occasioned thereby. The date for the cash discount calculation shall be the date acceptable material is received or the date an acceptable invoice is received, whichever is later. Payment for any shipment in advance of schedule may, at Buyer's option, be made on the basis of the scheduled delivery date.
 - iii.
4. Except as otherwise provided in the Order, the price(s) set forth herein include all applicable taxes, impositions and other similar charges.
5. All payment of Seller's invoice will be made in U.S. currency.

(d) Hazardous Material Information

Seller shall provide a completed Safety Data Sheet for each material which contains hazardous substances as defined by Cal/OSHA General Industry Safety Order 5194. Seller shall indemnify and hold harmless Buyer from and against all losses, costs, fees, liabilities and damages that Buyer may suffer as a result of Seller's failure to comply with the above requirement. Shipments of any hazardous materials or substances must be packaged and transported in compliance with all applicable provisions of Code of Federal Regulations (C.F.R.) Title 49.

(e) Delivery Schedule

Seller agrees to deliver in conformance to the delivery schedule as it appears on the Order, and Seller agrees that Buyer may return at Seller's expense and risk all material shipped otherwise. If Seller's deliveries fail to meet the schedules specified by Buyer with the result that Buyer is compelled to call upon Seller to ship by other than designated routing to expedite delivery, Seller shall assume the difference for the additional cost of transportation. Seller agrees to notify Buyer in writing of any potential delay in schedule. Material delivered under this Order in excess of the amount ordered herein shall be returned to Seller or retained by Buyer at no cost to Buyer. Time is of the essence in performance of this Order by Seller.



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(f) Warranties

Seller warrants that all articles, materials, work or services furnished hereunder shall be free from defects in material and workmanship and that all items furnished will conform to all applicable specifications, drawings, samples and/or other descriptions. Unless manufactured pursuant to detailed design furnished by Buyer, Seller assumes design responsibility and warrants the items to be suitable for the purpose intended. The warranties of Seller together with its service warranties and guaranties shall run to Buyer, its assigns and each successive customer. In addition, Seller agrees to pass any warranty benefits to Buyer that Seller receives from its suppliers of any item ordered hereunder.

(g) Tools and Materials

Title to and the right of immediate possession of all tooling equipment or materials furnished or paid for as a direct charge or called out as a special item for use hereunder shall be and remain in Buyer's possession. Such tooling or material shall not be used in the production of larger quantities than those specified by Buyer. Upon completion or termination of this Order, all such property shall be disposed of as Buyer may direct. All such property shall be segregated by Seller in Seller's plant and clearly marked as belonging to Buyer and shall be used solely in the performance of work ordered by Buyer. If an item fabricated by Seller from material furnished by Buyer is defective or such material is damaged due to Seller's fault or failure to meet specifications, Seller shall reimburse Buyer for all damages sustained. Seller will be charged for damage to Buyer's tools beyond normal wear and tear, while in Seller's possession. Buyer reserves the right to use all tooling which is furnished, acquired or produced especially for use in the performance of this Order. Seller agrees to include a similar provision in all related subcontracts.



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V. Statutory and Legal Requirements

Compliance with Statutes and Government Regulations:

Seller warrants that in the performance of work under this Order, it has complied with or will comply with all applicable federal, state and local laws and ordinances and all lawful orders, rules and regulations thereunder, including but not by way of limitation, the Fair Labor Standards Act of 1938 as amended (29 U.S.C. Sec. 201-219), the Walsh-Healey Public Contracts Act as amended (41 U.S.C. Sec. 35-45) or the Eight-Hour law of 1912 as amended (40 U.S.C. Sec. 324-326). Copeland Anti Kickback Act (41 U.S.C. Sec. 51-54), Service Contracts Act of 1965 (41 U.S.C. Sec. 351), Davis Bacon Act (40 U.S.C.A Sec. 276(a)), Contract Work Hours Standards Act of 1962 (40 U.S.C. Sec. 327-330) as amended, Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Sec. 651-678) Seller shall indemnify and hold harmless Buyer from and against all losses, costs, fees and damages arising, directly or indirectly, from any actual or alleged failure by Seller to comply with any federal, state or local statutes or other legal obligations.

Risk of Loss, Indemnification and Insurance:

(a) Whenever Seller shall, by virtue hereof, have in its possession property of Buyer or the Government, Seller shall be deemed an insurer thereof and shall be responsible for its safe return to Buyer.

(b) Unless otherwise provided in this Order, Seller shall have title to and bear the risk of any loss of or damage to the items purchased hereunder until they are delivered in conformity with this Order at the F.O.B. point specified on the face hereof and upon such delivery title shall pass from Seller and Seller's responsibility for loss or damage shall cease, except for loss or damage resulting from Seller's negligence or failure to comply with this Order. Passing of title upon such delivery shall not constitute acceptance of the items by Buyer.

(c) Seller shall be an independent contractor and agrees to indemnify and hold harmless Buyer, its officers, directors and employees from any cost damage, expense or other loss or liability incurred or paid, arising out of or on account of claims of or suits whether in law or in equity, which may be asserted or brought against any of the indemnified parties hereunder, for property damage or destruction, personal injury or death or any other damages of whatsoever nature or kind, including claims of consequential loss and breach of contract as a result of the performance of the work, products, or workmanship or the actions or omissions of the Seller or its employees, agents, or Subcontractors except for claims arising through the claimed sole and exclusive negligence of Buyer.

Seller agrees to pay or reimburse Buyer for any expenditures, including reasonable attorney's fees and amounts paid in settlement, that Buyer may make or become liable for in connection with the investigation, settlement, defense or otherwise by reason of such claims or suits and, if requested in writing by Buyer, will defend any such suits with counsel acceptable to Buyer at the sole cost and expense of Seller. Seller agrees to pay and to discharge any judgment, orders or decrees rendered or entered against any of the indemnified parties for any matter indemnified hereunder. Buyer may retain any money due or to become due to Seller sufficient to reimburse Buyer against any such claims, demands, judgments, or liability, Seller shall also maintain at all times during performance of said work adequate workers'-compensation insurance to cover all of its general and special employees engaged in such work and insurance to insure against claims for injury to or death of persons or destruction or damage to property (including Buyer's employees and property) which may arise from Seller's actions or omissions in the performance of said work by Seller, such insurance shall specifically include contractual liability coverage.

Assignment Rights:

Assignment of this Order or any interest herein or any payment due or to become due hereunder, shall be void. Payment to assignee of any claim under this Order shall be subject to set-off or recoupment for any present or future claim or claims which Buyer may have against Seller. Seller agrees that Buyer may assign its rights and/or delegate its duties in whole or in part.



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Termination-Convenience:

Whether or not this Order relates to a Government contract, Buyer may terminate this Order in whole or in part in accordance with the Termination Clause set forth in Federal Acquisition Regulation (FAR) 52 249-2 and the policies and principles set forth in Part 49 of the FAR, as in effect on the date of this Order, which are hereby incorporated herein by this reference, except that in FAR52 249 2:

- (1) the term "Contractor" shall mean "Seller",
- (2) the terms "Contracting Officer" and "Government" shall mean "Buyer",
- (3) the one year period in Paragraph (d) is reduced to 60 days, and
- (4) the 90 day period in Paragraph (k) is reduced to 30 days.

Failure of Seller to file such claim within such period shall constitute a waiver of such claim and will be the basis for a complete denial of the claim by Buyer.

Suspension of Work:

Buyer may order the suspension of all or part of the work for a period of ninety (90) days. Within such period, or any extension thereof to which the parties shall have agreed, Buyer shall either;

- (i) cancel the stop work order,
- (ii) let such order expire, or
- (iii) terminate the work covered by such order pursuant to Clause 11 herein.

If a stop work order is cancelled or the period of any extension expires, Seller shall resume work. If the suspension has a material effect on cost or delivery, and equitable adjustment shall be made in price (excluding profit) and/or delivery. No claim shall be allowed unless made in an amount stated within twenty (20) days after the suspension ends.

Default:

(a) Buyer may terminate this Order in whole or from time to time in part in any of the following circumstances:

- (i) if Seller refuses or fails to deliver the items or any installment thereof or perform any service required by this Order, or
- (ii) if Seller suspends its business or becomes insolvent or subject to any law relating to bankruptcy, insolvency or relief of debtors. If Buyer requests assurance of performance, Seller shall provide same within seven (7) working days.

(b) In the event of such termination, Buyer may purchase or manufacture similar items without further payment and/or require Seller to transfer title and deliver to Buyer in the manner and to the extent directed by Buyer:

- (i) any completed items and
- (ii) such partially completed items and materials, parts, tools, dies, plans, drawings, and other property

Buyer's liability to Seller shall be limited to payment to Seller at the contract price for items delivered pursuant to

- (i) above (equitably reduced if they are nonconforming) and for items delivered pursuant to
- (ii) above, the smallest of;
 - (a) its fair market value,
 - (b) its cost to Seller

(c) Seller shall continue performance of this Order to the extent not terminated. Buyer's rights as set forth herein are in addition to all other remedies provided in law or equity. If after notice of termination of this Order under the provisions of this clause it is determined that for any reason Seller was not in default, the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to the Termination-Convenience as listed above



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Labor Disputes:

Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of this Order, Seller shall immediately give notice thereof to Buyer.

Waiver and Severability:

Any action or inaction by Buyer shall not constitute a waiver of any right or remedy herein. The failure of Buyer to enforce at any time any of the provisions of this Order or to exercise any option herein provided, or to require at any time performance of any of the provisions hereof, shall in no way be construed to be a present or future waiver of such provisions, nor in any way to affect the validity of this Order or any part thereof, or the right thereafter to enforce each and every such provision.

Confidential Disclosure:

Seller shall protect as proprietary and keep confidential all proprietary information including but not limited to, designs, processes, drawings, specifications, reports, data, and other technical or business information and the features of all parts, equipment, tools, gauges, patterns, and other items furnished or disclosed to Seller by Buyer. Unless otherwise provided herein or authorized by Buyer in writing, Seller shall use such information and items and the features thereof only in the performance of this Order, thus Seller shall not sell, or otherwise dispose of as scrap or otherwise any completed or partially completed or defective proprietary goods without defacing or rendering such goods unsuitable for use. All CAD/CAM data supplied to Seller in electronic form is included within this provision.

Upon completion or termination of this Order, Seller shall, at Seller's expense, make such disposition of all such proprietary information, items and goods as herein required or as may be subsequently directed by Buyer. Buyer shall have the right to audit all pertinent books and records of Seller in order to verify compliance with this clause. In all subcontract for performance of work related to this Order, Seller shall include provisions which provide to Buyer the same rights and protections as provided in this clause.

VI. Quality System Requirements

Seller is to maintain a quality system that adheres to the principles of a recognized international standard. Seller is responsible for adhering to the requirements as specified in this document, as specified on the Purchase Order, and of AS9100/ISO9001, where specified.

Quality Clauses:

Q1. FAIR (First Article Inspection Report):

Supplier shall use an AS9102 compliant format when a FAIR is a requirement of the contract.

Q2. Unique Lot:

Material should be purchase from ONE lot and have ONE cure date ONLY. Should this not be possible, a written authorization is required.

Q3. Domestic Origin:

Materials ordered are to be of "DOMESTIC ORIGIN" (made in United States of America) unless otherwise specified.

Q4. Retention of Documented Information:

Supplier agrees to retain ESM Aerospace Inc. Documented Information (a.k.a. 'Records') for a minimum of TEN (10) years from time of sale.

Q5. Right of Access:

Seller grants to Buyer, or his authorized representative, and by extension the Buyer's Customer or regulatory authorities, the right to examine facilities, books, records, documents and other supporting data which will permit adequate evaluation of the price and compliance to contractual requirements. This right may be exercised at any time subsequent to award of contract.



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Q6. Notification of Changes:

Seller shall notify the Buyer of changes in product, processes, and/or changes in company ownership, changes of suppliers, changes of manufacturing facility location and, where required, obtain organization approval, and flow down to the supply chain the applicable requirements including customer requirements.

Q7. Changes to Order:

Buyer may at any time, by written order, and without notice to sureties, if any, make changes within the general scope of this Order in any one or more of the following;

- a. drawings, designs, specifications or other technical documents,
- b. method of shipment of packing,
- c. place of delivery, inspection or acceptance,
- d. quantity of items,
- e. delivery schedules,
- f. amount of Buyer-furnished property, and
- g. unit price of items.

Q8. Verification of Purchased Products or Services:

Work performed under this Order is subject to inspection at Seller's plant by representatives of Buyer or its customers. The Government shall have similar rights when a Government contract number appears on the face of this Order. Seller shall provide reasonable facilities for the safety and convenience of said representatives. Each item ordered will be subject to final inspection and acceptance by Buyer at destination notwithstanding that title may have passed to Buyer, that Buyer may have made a prior payment or that Buyer, its customer or the Government may have performed some type of source inspection. If at any time any of the items are found to be defective in material or workmanship or not in conformity with the drawings, specifications, samples, or other requirements of this Order, Buyer may, in addition to any other rights it may have under this order or otherwise;

- i. correct or have corrected the nonconformity at Seller's expense or reject and return said item to Seller, and
- ii. recover by offset or otherwise any and all costs, expenses and damages paid, incurred or suffered by Buyer as a result of or relating to holding, return, replacement, correction or rejection of nonconforming items.

Rejected articles may be returned at Seller's risk and expense. The Seller shall be responsible for the cost of transportation related to the return and re-shipment of any articles rejected by Buyer for failure to meet specifications. Delivery of defective parts shall not be deemed to satisfy the delivery schedule required herein nor shall acceptance of any item be deemed to alter or affect the obligation of Seller or the Rights of Buyer under the Warranties article of this Order. The inspection, review or approval by Buyer of any work, drawing, design or other document shall not relieve Seller of any of its obligations under this Order or constitute a waiver of any defects or nonconformities in any articles.

Q9. Non-Conforming Outputs:

Supplier to maintain a Non-Conforming Outputs program as per AS9100/ISO9001 or equivalent. The seller shall notify buyer of nonconforming outputs. Disposition of Nonconforming Product is the determination of ESM Aerospace, Inc.

Q10. Customer Owned Property:

Seller shall protect and keep confidential all proprietary information including but not limited to; designs, processes, drawings, specifications, reports, data, and other technical information.

Unless otherwise provided herein or authorized by Buyer in writing, Seller shall use such information and items and the features thereof only in the performance of this Order. Upon completion or termination of this Order, Seller shall, at Seller's expense, make such disposition of all such information, items and goods as herein required or as may be subsequently directed by Buyer.

Buyer shall have the right to audit all pertinent books and records of Seller in order to verify compliance with this clause. In all subcontract for performance of work related to this Order, Seller shall include provisions which provide to Buyer the same rights and protections as provided in this clause.



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Q11. Qualification of Personnel:

Seller to have established policies regarding the qualifications of personnel performing work affecting product.

Q12. Quality Management System Requirements:

Supplier to maintain a management system in compliance or certified a recognized standard such as AS9100 or ISO 9001.

Q13. Identification and revision status:

Specifications, inspection/verification instructions and other relevant technical data, drawings, process requirements, or organizational work order travelers must indicate the revision and/or configuration status, where applicable.

Q14. Requirements for design, test, inspection, verification:

Where applicable, critical items and key characteristics will be inspected, per print and specification, unless waived in writing.

Q15. Counterfeit Parts Avoidance Program:

Where applicable, supplier must maintain a Counterfeit Parts Avoidance Plan IAW AS9100 Rev. D **8.1.4 Prevention of Counterfeit Parts.**