

AEROS, Inc.

Standards Terms and Conditions of Sale

The following Terms and Conditions apply to AEROS, Inc. sales transactions and are incorporated by reference into all sales of Goods by AEROS to Customers.

I. **Definitions.** For purposes of these Terms and Conditions, the following definitions apply.

The term "Goods" means the items purchased pursuant to any agreement to which these terms and conditions are applicable.

The term "Customer" means the purchaser of goods from AEROS.

The term "Customer's Address" means the address shown on the transactional documents to which the Goods are destined. This address may belong to the Customer or it may be a different address to which the Customer has asked the Goods to be delivered (all such requests must be in writing).

The term "Order" means any purchase order or any other document or communication issued by Customer to AEROS to offer to purchase, or to accept an AEROS offer to sell, Goods, as well as any other Customer documents incorporated by reference or otherwise associated with the transaction.

II. **Risk of Loss.** Articles are provided F.O.B. AEROS' facility, or if items are shipped directly from another facility to the Customer then they are shipped F.O.B. from the origin facility. Once the Goods have been tendered to the carrier, the Goods are Customer's responsibility. In the event that the Goods are lost or stolen after being tendered at the AEROS' facility or the origin facility, the Customer shall be responsible for paying the full price of the Goods.

III. **Shipping Method.** Unless the parties have signed a written decided any of these factors AEROS may ship the Goods to Customer's address by any commercially reasonable means and may select the carrier and route. The Customer is responsible for all deliver and transportation costs, charges and fees. Delivery of the Goods by AEROS to a carrier at AEROS' facility shall constitute tender of delivery to Customer for all purposes and all risk of loss with respect to the Goods shall pass to Customer at this point. AEROS does not insure Goods against loss or damage in transit.

IV. **WARRANTY.** AEROS DISCLAIMS ALL WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT THOSE THAT ARE PROVIDED EXPLICITLY IN WRITING.

AEROS SHALL NOT BE LIABLE FOR ANY LOSSES OR DAMAGES (INCLUDING BUT NOT LIMITED TO INCIDENTAL, CONSEQUENTIAL, OR ANY OTHER LOSSES OR DAMAGES) RESULTING FROM ANY DELAYS IN SHIPPING OR DAMAGE OCCURRING DURING SHIPPING.

NO REPRESENTATIVE OR AGENT OF AEROS HAS ANY AUTHORITY TO MAKE ANY ADDITIONAL REPRESENTATIONS OR WARRANTIES ON BEHALF OF AEROS.

THE MANUFACTURER OF THE GOODS MAY OFFER ADDITIONAL WARRANTY RIGHTS, FOR WHICH THE MANUFACTURER (AND NOT AEROS) IS RESPONSIBLE.

- V. **Customer Inspection.** Customer shall inspect the goods within 5 business days of delivery (the "Inspection Period"). Customer must notify AEROS in writing, during this Inspection Period, of any discrepancies found.

In the event that Customer notes discrepancies during inspection, Customer may request a Return Merchandise Authorization (RMA) during the Inspection Period. This request should be made in the written notification of discrepancy. If Customer fails to give written notice within the Inspection period, Customer shall be deemed to have irrevocably accepted the Goods. If an RMA is requested, and return is authorized, then the customer shall return the goods in accordance with section VII below or in accordance with other written instructions from AEROS. Goods may not be returned, and they will not be accepted by AEROS, without AEROS' prior written approval.

- VI. **Cancellation.** Customer has no right to cancel orders and Customer shall not be relieved from any obligation to pay without AEROS' prior written consent.

VII. **Returns.**

Customer may not return goods to AEROS unless AEROS has issued an RMA number for the return. RMAs may be issued for discrepancies when reported in accordance with section V of these terms and conditions. RMAs may be issued for returns for credit when the goods are being returned in the original condition, at AEROS' sole discretion.

Goods sold by AEROS that are returned to AEROS for discrepancy must be in unused condition and must be returned with all original documentation/certifications.

Goods sold by AEROS that are returned to AEROS for credit must be in unused condition and must be returned with original certification and documentation. The Goods must be accompanied by a signed statement certifying that the Goods were not employed, installed, operated, or otherwise used in a manner inconsistent with AEROS' ownership of the Goods. Such parts shall be subject to a restocking fee of the greater of 20% of the sale price or a minimum fee of \$500. Articles that are claimed to be non-functional may be sent to an Authorized Repair Facility for evaluation at AEROS' discretion. If AEROS or the Authorized Repair Facility finds that the part does not meet the terms and condition of this section VII, then Customer shall be liable for the full sales price.

The full cost of returning a unit subject to an RMA to AEROS, including but not limited to all shipping costs from and to the Customer, shall be the sole responsibility of the Customer. Shipping charges will be applied and invoiced accordingly.

- VIII. **Price.** If no price is stated in the transactional documents, then the price for the Goods shall be AEROS' list price in effect at the time of shipment. The price for the Goods does not include charges for freight, packaging, insurance, or federal, state or municipal taxes, all of which are Customer's responsibility.

- IX. **Payment Terms.** The Price is due and payable 30 days after the earlier of the date of the invoice or the date of delivery of the Goods.

- X. **Late Payments.** In the event that Customer fails to pay the Price when it is due and payable, the Customer shall be liable for interest in the amount of 1.5% per month on the unpaid portion of the bill until it is paid.
- XI. **Customer Charge-Backs/Denied Checks.** If Customer elects to pay by credit card and in the event that customer initiates a charge-back, customer shall owe to AEROS the amount subject to the charge-back, any fees or costs charged to AEROS as a consequence of the charge-back, and any fees and/or costs associated with securing payment from the Customer. If Customer elects to pay by check, and the check is not honored upon first presentment or at any time thereafter, customer shall owe to AEROS the amount of the check, any fees or costs charged to AEROS as a consequence of the failure to honor the check, and any fees and/or costs associated with securing payment from the Customer.
- XII. **Security Interest.** Until such time as the contract price for the part is fully paid, AEROS retains a security interest in any parts sold, and Customer shall promptly complete and sign a financing statement representing such interest upon AEROS' written request.
- XIII. **Customer Solvency.** Customer warrants that it is solvent at the time of the transaction.
- XIV. **Default.** In the event of Customer's default, AEROS has the right immediately to cancel any and/or all orders placed by Customer, to refuse to ship or stop delivery of any Goods owed to customer, and to recover any losses or damages incurred by AEROS as a result thereof, as well as seek any other remedy provided by law. Customer's default means (i) Customer's Insolvency or the filing or institution of a proceeding under any bankruptcy, reorganization or similar law, by or against Customer, (ii) an assignment for the benefit of creditors by Customer, (iii) the appointment of a receiver, trustee or custodian for any of the property or assets of Customer, or (iv) any default of any obligation owed by Customer to AEROS.
- XV. **Customer's Remedies.** AEROS' liability for any breach of a sales agreement shall be limited to only the remedies available under this provision, which remedy shall be: (i) repair or replacement of any nonconforming Goods, or (ii) refund of the amount paid upon the return to AEROS (at the customer's cost) of the nonconforming Goods. The selection of remedies under this clause shall be at the discretion of AEROS. AEROS' liability for breach of an agreement of sales shall in no event be greater than the price of the Goods and shall not include any labor, shipping or other costs incurred in connection with any such repair, replacement, reinstallation or reshipment. Any nonconforming Goods returned to AEROS must be accompanied by proof of purchase and the transportation of the Goods must be prepaid. Any Goods that are repaired or replaced by AEROS shall be redelivered to Customer in accordance with the terms of Paragraphs II and III of these Terms and Conditions. Notwithstanding the foregoing, AEROS shall have no warranty obligations unless and until Buyer performs its obligations hereunder, including payment in full of the purchase price of the Goods. **THE REMEDY SET FORTH IN THIS PARAGRAPH SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AGAINST AEROS AND BUYER WAIVES ALL OTHER REMEDIES AGAINST AEROS.**
- XVI. **Product Safety:** Goods sold by AEROS are capable of being used in a safe manner; but AEROS cannot warrant their safety under all circumstances. Customer must install and use the goods in a safe and lawful manner in compliance with applicable health and safety regulations and laws and general standards of reasonable care; and if Customer fails to do so, Customer shall indemnify AEROS from any loss, cost or expense resulting directly or indirectly from such failure. Customer shall be considered to have failed to comply with appropriate standards, and shall be deemed negligent, if Customer does any of the following:
- 1) Fails to maintain the Goods according to the manufacturer's calibration standards;
 - 2) Fails to operate the Goods according to the manufacturer's instructions;

- 3) Fails to provide each person operating the Goods with safety training appropriate to the Goods;
- 4) Uses the Goods in a manner not intended by the manufacturer;
- 5) Uses the Goods without appropriate safety devices;
- 6) Fails to adhere to applicable MSHA or OSHA standards;
- 7) Any other action that tends to be unsafe or fails to meet an appropriate standard of care.

XVII. **Indemnification.** Customer shall defend, indemnify and hold harmless AEROS and its shareholders, directors, officers, affiliates, predecessors, successors and assigns, from and against any and all claims, actions, causes of action, liabilities, liens, losses, and costs (Including, without limitation, litigation costs and attorneys' fees), relating to the Goods or any device, material or thing to which the Goods are attached or are made a part or within which the Goods are enclosed, regardless of whether AEROS may be wholly, concurrently, partially, jointly or solely negligent or otherwise at fault.

XVIII. **Limitation of Liability in General.** Except as provided herein, in no event whatsoever shall AEROS or any its shareholders, directors, officers, affiliates, predecessors, successors and/or assigns, be liable to Customer or any of its shareholders, employees or agents, directors, officers, affiliates, predecessors, successors and assigns, for any loss or damage of any kind, whether direct, incidental, consequential, exemplary, special or otherwise relating in any way to this Agreement or acts or omissions in connection herewith, regardless of whether AEROS and/or others may be wholly, concurrently, partially, jointly or solely negligent or otherwise at fault.

XIX. **Export Law Compliance.** If Customer intends to export the Goods, then Customer is solely responsible for compliance with all applicable export and import laws. Customer shall not export the Goods, or any technical data associated therewith, in violation of any law of the United States.

XX. **Jurisdiction and Limitations on Actions.** All agreements made by AEROS are made in Kansas and shall be interpreted under the laws of Kansas, not including the state's conflict of laws provisions. Both parties agree that any suit brought in relation to this agreement, or to enforce any clause of this agreement, shall be brought in a trial court in Kansas. Both parties agree to be subject to the personal jurisdiction and venue of that court. Customer shall not bring a court action relating to this Agreement or the Goods unless that court action is initiated no later than 11 months after tender of the Goods to the carrier for delivery to the Customer. If Buyer fails to commence any such action within such period, the action shall be deemed barred and AEROS shall have no liability whatsoever.

XXI. **Costs and Attorneys Fees.** In the event that AEROS needs to hire a collection agent or attorney or make use of an arbitrator, mediator, court system or other mechanism in order to secure a payment owed to AEROS or otherwise enforce a right enjoyed by AEROS under these terms and conditions or under any Agreement subject to these terms and conditions, Customer shall be liable to AEROS for all costs and fees (including attorneys fees) in addition to the base liability.

XXII. **Customer's Assent to Terms and Conditions.** These Terms and Conditions are a condition of sale, and AEROS will not enter into a sales transaction unless these Terms and Conditions are a part of the agreement. By entering into the transaction, Customer consents to all of these Terms and Conditions. AEROS hereby objects to and rejects any and all different or additional terms and/or conditions contained in any Order submitted to AEROS by or on behalf of Customer unless AEROS has specifically consented in an AEROS-signed writing to the different or additional terms and/or conditions.

XXIII. **Force Majeure; Adjustments.** If performance by AEROS is delayed or made impracticable or unduly burdensome by any cause beyond AEROS' control, including, without limitation, acts of governments, acts of quasi-governmental bodies, acts of God or acts of nature, fire, flood,

explosion, vandalism, sabotage, riot, insurrection, curtailment or termination of AEROS' regular sources of supplies, inability to obtain or a delay In obtaining needed licenses or permits, or acts or omissions of the Customer, its agents or its representatives, shipping delays, strikes or other disputes involving AEROS or its subcontractors or suppliers then (i) AEROS shall be excused from performance to the extent that and for so long as such performance Is delayed or made impracticable or burdensome by such cause, and (ii) AEROS may adjust the price of the Goods to reflect the changed circumstances.