



BIRDAIR PURCHASE ORDER TERMS AND CONDITIONS

1. **OFFER AND ACCEPTANCE:** This Purchase Order, together with these Terms and Conditions (collectively "Purchase Order") is Purchaser's offer to Vendor, and acceptance is limited to its provisions without addition, deletion, or other modification. Delivery of any goods by Vendor shall constitute acceptance of this Purchase Order.
2. **MODIFICATION:** No modification of this Purchase Order, including any addition, deletion, or other modification proposed in Vendor's acceptance, shall be binding upon Purchaser unless expressly agreed to by Purchaser in writing.
3. **DELIVERY: TIME IS OF THE ESSENCE.** Shipments or deliveries shall be strictly in accordance with the quantities and schedules specified. If delivery is not made when specified, Purchaser shall, at his sole option: (a) have the right, without obligation, to cancel the items ordered or any portion thereof; or (b) be indemnified by Vendor for any damages caused by Vendor's failure to meet specified deliveries. If Purchaser determines that Vendor will not meet the specified time or times for delivery, Purchaser may order overtime work or expedited routing to minimize delay, with the added cost, if any, to be borne by Vendor. Purchaser's rights under this provision shall be in addition to any other remedies available.
4. **REJECTION:** Purchaser shall notify Vendor if any goods delivered are rejected, and at Purchaser's election and Vendor's risk and expense, such goods shall be held by Purchaser or returned to Vendor. No replacement or correction of nonconforming goods shall be made by Vendor unless agreed to in writing by Purchaser. If goods are rejected, Purchaser shall have the right to reimbursement by Vendor of any amounts expended by way of payment for materials or transportation, or any other expense incurred as a result of such rejection.
5. **INVOICING:** Vendor shall mail to Purchaser, for each shipment: (a) an original invoice, so marked; and (b) the original Bill of Lading or express receipt, signed by the carrier. No price increase claimed on the basis of prices in effect at the shipping date shall be honored by Purchaser unless Vendor claims such a prerogative in its quotation, and such prerogative is specifically provided for in the Purchase Order. A discount invoice will be payable based on the applicable discount period computed from the date of receipt of the goods or proper invoice, whichever is later, to the date Purchaser's check is mailed. Unless freight and other charges are itemized, the discount will be taken on the full amount of the invoice.
6. **CHANGES:** Purchaser may at any time, by written order, make changes within the general scope of this Purchase Order, in any one or more of the following: (a) drawings, designs, or specifications; (b) method of shipment or packing; (c) place of inspection, delivery, or acceptance; (d) reasonable increases in quantities; and (e) reasonable changes in delivery schedules. Vendor shall proceed immediately to perform this Purchase Order as changed. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of this Purchase Order, whether changed or not changed by any such written change order, an equitable adjustment shall be made in the purchase price or delivery schedule, or both, and this Purchase Order shall be modified in writing accordingly. Any claim by Vendor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt of such written change order or within such further time as may at any time be agreed upon in writing by the parties, or it shall be deemed waived. Failure of the parties to agree upon any adjustment to be made under this clause shall not excuse Vendor from proceeding with the Purchase Order as changed, pending resolution of such dispute.
7. **WARRANTIES:** Vendor expressly warrants that items covered by this Purchase Order: (a) shall conform to specifications, drawings, samples, models or other descriptions or affirmations set forth in this Purchase Order and other documents referenced in it, or otherwise furnished by Purchaser in writing as part of this Purchase Order; (b) shall be of good material and workmanship and free from defects; and (c) shall be fit for their intended use and purpose. Such warranties, however, shall not be deemed to limit any warranties of additional scope given to Purchaser by Vendor. Vendor's warranties (and any more favorable warranties, service policies or similar undertakings of the Vendor) shall be enforceable directly by Purchaser's customers and users of Purchaser's goods, as well as by Purchaser.



8. **INSPECTION:** All goods and workmanship pertaining to the Purchase Order shall be subject, upon request from Purchaser, to inspection and tests by representatives of Purchaser. If this Purchase Order is a subcontract under a federal government prime contract, all property and workmanship pertaining to it shall also be subject, upon request from Purchaser or the federal government, to inspection and tests by representatives of the federal government. All goods, except goods inspected and accepted by the federal government at source for direct shipment to the federal government, are subject to final inspection and acceptance by Purchaser at destination, notwithstanding any payment or prior inspection at source.

9. **TERMINATION:** Purchaser may, by written notice, terminate this Purchase Order and the performance of work hereunder in whole or, from time to time, in part, by reason of default of Vendor (including, but not limited to, suspension of Vendor's business, insolvency of Vendor, institution of bankruptcy or reorganization proceedings by or against Vendor, appointment of a trustee or receiver for Vendor's property or business, or any assignment by Vendor for the benefit of creditors), or whenever, for any reason, Purchaser deems such termination to be in its best interests. If this Purchase Order is a subcontract under a federal government prime contract, Purchaser may also terminate this Purchase Order whenever, for any reason, Purchaser deems such termination to be in the best interests of the federal government. Upon receipt of a termination notice, Vendor shall terminate work when and to the extent specified in the notice, terminate all orders and subcontracts to the extent to which they relate to the work terminated, continue work not terminated, and take all necessary actions for protection of property in Vendor's possession in which Purchaser or the federal government has or may acquire an interest. The amount of fair compensation to be paid to Vendor in the event of termination shall be negotiated by Vendor and Purchaser, subject in the case of a subcontract under a federal government prime contract to approval of the federal government.

10. **TAXES:** Unless otherwise indicated in this Purchase Order, the prices herein shall not include any federal, state, or local sales, use, or other taxes from which Vendor or this procurement exempt, or for which Purchaser furnishes certification of exemption.

11. **GENERAL INDEMNITY:** To the fullest extent permitted by law, Vendor shall defend, indemnify, and hold harmless Purchaser and its officers, directors, shareholders, employees, agents, and sureties, and all persons or entities Purchaser is required to indemnify by contract or law, for, from, and against any and all claims, demands, causes of action, damages (liquidated or unliquidated), liens, costs, penalties, fines, liabilities, and expenses, including, without limitation, reasonable attorney's fees, that Purchaser may at any time suffer, sustain, or become liable for by reason of, but not limited to: (a) any damages or injury either to person (including death) or property in any manner arising out of or relating to acts or omissions of Vendor or its subcontractors or suppliers, or anyone employed by any of them or anyone for whose acts they may be liable, even though such damages or injury may have resulted from the joint, concurring, or contributory act, omission, or negligence, whether passive or active, of Purchaser, any other party hereunder indemnified, or any other person or entity, unless such damages or injury are caused solely by the negligence or willful misconduct of Purchaser or such other parties; (b) any damage to or delay in prosecution of the project, if any, for which this Purchase Order is issued, arising out of or relating to acts or omissions of Vendor; (c) any liens, stop notices, or bond claims filed against Purchaser or the project for which this Purchase Order is issued, arising out of acts or omissions of Vendor; or (d) failure of Vendor to comply with any federal, state, or local law, regulation, or ordinance pertaining to Vendor's obligations under this Purchase Order. If any of the foregoing indemnity provisions are made void or otherwise impaired by any statutory or decisional law controlling their construction, such indemnity provision(s) shall be deemed to conform to the indemnity permitted by such statutory or decisional law. The foregoing indemnity obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that otherwise exist as to any party or person described therein.

12. **PATENT INDEMNITY:** Vendor shall defend and indemnify Purchaser, Purchaser's customers, and users of Purchaser's goods from and against all claims and proceedings alleging infringement of any United States or foreign patent by any goods delivered under this Purchase Order, and Vendor shall hold them harmless from any resulting liabilities and losses, provided Vendor is reasonably notified of such claims and proceedings. Vendor's foregoing obligation shall not apply to goods manufactured pursuant to detailed designs furnished by Purchaser, nor to any infringement arising from the use or sale of goods in combination with goods not delivered by Vendor, if such infringement would not have occurred from use or sale of such goods solely for the purpose for which they were designed or sold to Purchaser. Vendor's obligation shall also extend to the federal government only if and to the extent Purchaser has agreed to indemnify the federal government.



13. **COMPLIANCE WITH LAW:** Vendor warrants that its performance and all articles furnished under this Purchase Order shall be in compliance with all applicable federal, state, and local laws and ordinances and all lawful orders, rules, and regulations thereunder. Without limiting the foregoing, Vendor represents and warrants that the items sold under this Purchase Order, when used in conformity with the instructions furnished, will be in conformity with the provisions of the Occupational Safety and Health Act and the rules, regulations, and standards promulgated thereunder.

14. **GOVERNMENT SUBCONTRACTING:** If this Purchase Order is a subcontract under a federal government prime contract, the following paragraphs of the Armed Services Procurement Regulations ("ASPR"), and clauses referred to therein, are made part of this Purchase Order, if applicable: Renegotiation Act (7-103.13); Soviet Controlled Areas (6-403); Work Hours Act of 1962 – Overtime Compensation (12-203); Non-Discrimination in Employment (12-802); Officials Not to Benefit (7-103.19); Covenant Against Contingent Fees (7-103.20); Authorization and Consent (9-102); Notice and Assistance Regarding Patent Infringement (9-104); Buy American Act (6-104.5); Notice to the Government of Labor Disputes (7-104.4); Filing Patent Application (9-106); Patent Rights (9-107); Reporting of Royalties (9-110); Excess Profits (7-104.11); Utilization of Small Business Concerns (1-707.3); Gratuities (7-104.16); Convict Labor (12-203); Priorities, Allocations and Allotments (7-104.18); Utilization of Concerns in Labor Surplus Areas (1-805.3); Quality Control System (7-104.28); Price Reduction for Defective Cost or Pricing Data (7-104.29); Audit and Records (7-104.41); Subcontractor Cost and Pricing Data (7-104.42); Examination of Records (7-105.14 and 7-203.7); and Walsh-Healy Act (12-605). In addition, where any of the foregoing provisions of the ASPR relate to specific statutes, and are in furtherance of the provisions of such statutes, such statutes shall also be applicable to the extent required. Where necessary to make the context of the above regulations applicable to this Purchase Order, the term "Government" or "Contracting Officer" and equivalent phrases shall mean Purchaser, the term "Contractor" shall mean Vendor, and the term "Contract" shall mean this Purchase Order.

15. **RIGHT OF OFFSET; ASSIGNMENT:** Purchaser shall have the right to offset amounts now or hereafter owing (whether or not due and payable) by Vendor to Purchaser, under this Purchase Order or otherwise, against amounts which are then or may thereafter become due and payable to Vendor under this Purchase Order. No obligations, rights, or monies due or to become due hereunder shall be assigned by Vendor in whole or in part without Purchaser's prior written consent. Failure to secure such consent shall give Purchaser the option to cancel this Purchase Order without obligation to make any further payments hereunder, and the purported assignee in such cases shall acquire no rights or remedies against Purchaser.

16. **PACKING AND SHIPPING:** All goods shall be prepared for shipment and packed to prevent damage or deterioration, secure lowest transportation rates, and comply with carrier tariffs. No charges will be paid by Purchaser for preparation, packing, boxing, crating, or cartage unless specifically stated in the Purchase Order. The packing slip prepared by Vendor shall make no declaration of price. Shipments not accompanied by a proper packing slip shall be subject to counting or weighing by Purchaser, whose determination shall be conclusive. Purchaser's Purchase Order number, Vendor's name, packing slip number, piece number, and other identification Purchaser may require shall appear on all containers, invoices, correspondence, bills of lading, and other shipping papers, and where Vendor and shipper are not the same, the names of both shall be shown thereon. Vendor shall not make COD shipment or issue drafts against this Purchase Order. Except as otherwise required by law or government regulation, all containers to be returned to Vendor shall be shipped on a no-charge basis with Vendor's name, address, and demand for return plainly marked thereon, and will be paid for by Purchaser only if so marked and not returned within a reasonable time.

17. **DISPUTE RESOLUTION:** In the event of an unresolved dispute between Purchaser and Vendor, Purchaser may elect at its sole option to arbitrate such dispute or to litigate such dispute in court, regardless of which party initiates either such action. Any such arbitration so elected shall be under the auspices of and governed by the American Arbitration Association Construction Industry Arbitration Rules then in effect, with hearings to take place in Erie County, New York, and the award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. Any such litigation so elected shall be in a state or federal court with proper subject matter jurisdiction in Erie County, New York. This Purchase Order shall be governed by the laws of the State of New York, excluding any decisional or statutory law as to conflict of law principles that might result in application of any different law. Vendor waives any objection it might otherwise have to such governing law or to the specified venues for arbitration or litigation, and further agrees that such governing



law and venues, as well as Purchaser's right of forum election, apply to any surety bond(s) against which Vendor may claim, superseding and regardless of any contrary provisions in such bond(s). If the right of forum election herein afforded Purchaser as to arbitration or litigation is found not enforceable by order of any state or federal court in Erie County, New York with proper subject matter jurisdiction of such issue, then Vendor and Purchaser shall be bound to arbitrate any disputes in which the aggregate principal total at issue is less than \$20,000 USD (under the American Arbitration Association Construction Industry Arbitration Rules then in effect), and shall litigate any disputes involving a higher aggregate amount, in either case still subject to the governing law and venue provisions previously set forth.

18. SUBCONTRACTING: No goods to be delivered under this Purchase Order shall be procured by Vendor from a third party in completed or substantially completed form without Purchaser's prior written consent.

ACKNOWLEDGEMENT - PLEASE COMPLETE AND RETURN AT ONCE

VENDOR HEREBY ACCEPTS THE ABOVE PURCHASE ORDER AND ITS TERMS AND CONDITIONS, WITHOUT EXCEPTION

Birdair Purchase Order No. _____
SHIPMENT WILL BE MADE FROM:

TO: BIRDAIR, INC.
6461 Main Street
AMHERST, NEW YORK 14221

VIA _____ ON OR BEFORE _____
COMPANY _____
BY _____ DATE _____