



BIRDAIR PURCHASE ORDER TERMS AND CONDITIONS

1. This purchase order is an offer by Birdair, Inc. (“**Purchaser**”) for the purchase of the goods specified in Exhibit “A” of this purchase order (the “**Goods**”) from [REDACTED] (the “**Vendor**”) in accordance with and subject to these terms and conditions (the “**Terms**”; together with Exhibit “A” and the terms and conditions enumerated therein, the “**Purchase Order**”).
2. **OFFER AND ACCEPTANCE**
 - a. This Purchase Order is Purchaser's offer to Vendor, and acceptance is conditioned upon acceptance of these terms and conditions without addition, deletion, or other modification. Delivery of any goods by Vendor shall constitute acceptance of this Purchase Order.
3. **ENTIRE AGREEMENT**
 - a. This Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits Vendor's acceptance to the terms of the Order. These Terms prevail over any terms or conditions contained in any other documentation from Vendor and expressly exclude any of Vendor's general terms and conditions of sale or any other document issued by Vendor in connection with this Order.
4. **MODIFICATION**
 - a. No modification of this 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.
5. **DELIVERY: TIME IS OF THE ESSENCE.**
 - a. Shipments or deliveries shall be strictly in accordance with the quantities, schedules, and delivery locations specified. If delivery is not made per the exact specifications, Purchaser shall, at his sole option: (a) have the right, without obligation, to cancel the items ordered or any portion thereof; and/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.
6. **DELIVERY LOCATION AND SHIPPING TERMS.**
 - a. All Goods shall be delivered to the address specified in this Order (the “Delivery Location”) during Buyer's normal business hours or as otherwise instructed by Buyer. Vendor shall give written notice of shipment to Buyer when the Goods are delivered to a carrier for transportation. Vendor shall provide Buyer all shipping documents, including the commercial invoice, packing list, [air waybill/bill of lading] and any other documents necessary to release the Goods to Buyer. The Order number must appear on all shipping documents, shipping labels, [bills of lading,] [air waybills,] invoices, correspondence and any other documents pertaining to the Order.
7. **INSPECTION AND REJECTION OF NONCONFORMING GOODS**
 - a. The Buyer has the right to inspect the Goods on or at any time after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Vendor, to: (a) rescind the Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Vendor shall, at its expense, replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Vendor fails to timely deliver replacement Goods, Buyer may replace them



with goods from a third party and charge Vendor the cost thereof and terminate this Order for cause. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Vendor's obligations under the Order, and Buyer shall have the right to conduct further inspections after Vendor has carried out its remedial actions.

8. RIGHT TO COVER

- a. If Vendor repudiates this Purchase Order or fails to make delivery with the time specified herein, time being of the essence in connection with the Purchase Order or, if no time of delivery has been specified, within a reasonable time after acceptance by Vendor, or if Buyer rightfully rejects the goods or services or justifiably revokes acceptance thereof, then with respect to any and all goods or services involved, Buyer may pursue any remedy available including, without limitation, cancellation of this Purchase Order in whole or in part. In addition to recovering so much of the price as has been paid and irrespective of whether Buyer has cancelled this Purchase Order, Buyer may "cover" and have damages as to all goods and services affected whether or not they have been identified to this Purchase Order. Buyer may "cover" by making, in good faith and without unreasonable delay, any reasonable purchase of or contract to purchase goods or services in substitution for those due from Vendor. Buyer shall recover from Vendor as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Vendor against any amount payable by Buyer to Vendor.

9. TITLE AND RISK OF LOSS

- a. Title passes to Buyer upon delivery of the Goods to the Delivery Location. Vendor bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location.

10. PRICE

- a. The price of the Goods is the price stated in the Order (the "Price"). Unless otherwise specified in the Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties, tariffs, and fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer.

11. INVOICING

- a. 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.

12. CHANGES

- a. 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.

13. WARRANTIES

- a. 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 free from any defects in workmanship, material and design; and (c) shall be fit for their intended use and purpose; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. Such warranties, however, shall not be deemed to limit any warranties of additional scope given to Purchaser by Vendor. Vendor's warranties shall survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer. 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. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods with the foregoing warranties. If Buyer gives Vendor notice of noncompliance with this Section, Vendor shall, at its own cost and expense, replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Vendor and the delivery of repaired or replacement Goods to Buyer.

14. INSPECTION

- a. 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.

15. TERMINATION

- a. 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.

16. TAXES

- a. 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.



17. INDEMNIFICATION

- a. To the fullest extent permitted by law, Vendor agrees to indemnify, defend and hold harmless the Buyer, its customers and additional Indemnitees, if any, their officers, directors, agents, employees and partners (hereafter collectively "Indemnitees") from any and all claims, suits, damages, liabilities, professional fees, including attorneys' fees, costs, court costs, expenses and disbursements in any way related to the Vendor's Goods including death, personal injuries or property damage (including loss of use thereof) brought or assumed against any of the Indemnitees by any person or firm, arising out of or in connection with or as a result of or consequence of the Goods purchased by Buyer from Vendor. The parties expressly agree that this indemnification agreement contemplates 1) full indemnity in the event of liability imposed against the Indemnitees without negligence and solely by reason of statute, operation of law or otherwise; and 2) partial indemnity in the event of any actual negligence on the part of the Indemnitees either causing or contributing to the underlying claim in which case, indemnification will be limited to any liability imposed over and above that percentage attributable to actual fault. Under no circumstance shall this agreement be interpreted to require Vendor to indemnify and hold harmless Indemnitees for Indemnitees' negligence or wrongdoing. Where partial indemnity is provided under this agreement, costs, professional fees, attorneys' fees, expenses, disbursements, etc. shall be indemnified on a pro rata basis. Indemnification under this paragraph shall operate whether or not Vendor has placed and maintained the insurance specified herein. Attorneys' fees, court costs, expenses and disbursements shall be defined to include those fees, costs, etc. incurred in defending the underlying claim and those fees, costs, etc. incurred in connection with the enforcement of this indemnity agreement.

18. INTELLECTUAL PROPERTY INDEMNIFICATION

- a. Vendor shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party.

19. INSURANCE.

- a. Vendor specifically agrees to maintain the following insurance coverage in the limits provided below:
 - i. Vendor shall provide Commercial General Liability insurance on an occurrence basis covering bodily injury, personal injury and property damage of at least \$2,000,000 (two million) per occurrence and \$4,000,000 (four million) in the aggregate.
 - ii. Vendor shall provide Worker's Compensation and Employer's Liability Insurance which includes statutory workers' compensation (including occupational disease) and employers' liability coverage with limits in accordance with the law but in no event less than \$1,000,000 on an occurrence basis.
 - iii. Vendor shall provide Worker's Disability Insurance with limits in accordance with the law.
 - iv. Vendor shall provide Automobile Liability Insurance covering owned, non-owned and hired automobiles used in the performance of the work with a combined single limit for bodily injury and property damage of at least \$2,000,000 (two million) on an occurrence basis.
 - v. Vendor shall provide product liability insurance in connection with the Goods provided under this Order with a combined limit of not less than \$2 million per occurrence and \$5 million in the aggregate.
 - vi. Vendor shall provide Umbrella/Excess Liability insurance on an occurrence basis with limit of at least \$3,000,000 occurrence (three million) and \$3,000,000 (three million) in aggregate.
 - vii. Vendor may achieve the required limits and coverage for Commercial General Liability, Automobile Liability and Umbrella/Excess Liability through a combination of primary, umbrella and/or excess liability insurance, provided such primary, umbrella and/or excess insurance policies result in the same or greater limits.



- b. Vendor shall, by specific endorsements to its primary commercial general liability, umbrella/excess liability and product liability policies, name Buyer, its customer, and all other entities required to be named under the Prime Order as Additional Insureds thereunder.
 - i. The additional insured endorsements shall be on a form at least as broad as ISO Form CG2010 (1985) and CG2037 and shall not include any exclusions that limit the scope of coverage beyond that provided to the named insured.
 - ii. This requirement applies to all policies under which the above parties are required to be named as Additional Insureds.
 - iii. The additional insured coverage shall include ongoing and completed operations coverage on a primary and noncontributory basis for the Additional Insureds for a period of not less than 24 months after completion of the project.
 - iv. Vendor shall, by specific endorsement to its primary commercial general liability policy, automobile liability policy and product liability policy, cause the coverage afforded to the Additional Insureds thereunder to be primary to and not concurrent with any other valid and collectible insurance available to the Additional Insureds.
 - v. Vendor shall, by specific endorsement to its umbrella/excess liability policy, cause the coverage afforded to the Additional Insureds thereunder to be first tier umbrella/excess coverage above the primary coverage afforded to the Additional Insureds as set forth in paragraph (d) above and not concurrent with or excess to any other valid and collectible insurance available to the Additional Insureds whether provided on a primary or excess basis.
 - vi. To the fullest extent permitted by law, all insurance subcontractor furnishes in compliance with this exhibit shall include a waiver of subrogation in favor of the additional insureds and subcontractor waives all rights against the additional insured to the extent that the damages are covered by the insurance furnished in compliance with this exhibit
- c. Vendor shall, by specific endorsement to its primary, umbrella/excess liability and product liability policies, cause the coverage afforded thereunder to include blanket written contractual liability covering all indemnity agreements set forth in this Order including but not limited to the indemnity agreement set forth herein;
- d. Vendor shall, by specific endorsement to its primary, umbrella/excess liability and product liability policies, cause the coverage afforded thereunder to include products liability and completed operations, with the provision that coverage shall extend for a period of at least 24 months after completion of the project;
- e. Vendor shall, by specific endorsement to its primary and umbrella/excess liability policies, provide that defense costs are not to be considered as damages so as to erode the policy limits required herein.
- f. All policies required under this Order shall be provided by carriers licensed and authorized to do business in the State of New York carrying minimum A.M. Best ratings of A-VII. Policies written on a surplus lines or non-admitted basis are not acceptable.
- g. Certificates evidencing the foregoing insurance coverage must be furnished by Vendor to, and be approved by Buyer, before Vendor will be permitted to do any work under this Order or Purchase Order issued in connection therewith. Certificates, Notices of Cancellation, or changes, etc., are to be sent by Vendor, directly to Buyer at the address indicated above. Vendor, Vendor's agent and Vendor's insurance carrier(s) must reconcile all policy requirements to the satisfaction of Buyer. Vendor shall provide certified copies of all policies required under this Order within 5 days after receipt of request by the Buyer for such information.
- h. Before delivery of Goods, Vendor shall furnish Buyer with certificates from Vendor's insurance carriers showing that Vendor has complied with the above list and that said insurance policies will not be cancelled or changed except upon thirty (30) days prior written notice to Buyer. Except as otherwise provided above, Vendor agrees that the aforesaid insurance will be maintained until all goods have been delivered as required by this Order and accepted by Buyer. If, at any time during the term of this Agreement, Vendor does not provide insurance coverage as aforesaid, Buyer shall have the right, at its option, to procure same, and deduct from any sums due or to become due to Vendor hereunder the cost of such coverage procured by Buyer.



- i. Any failure by the Vendor or its agent to procure the coverage outlined above shall be considered a material breach of the Vendor's obligations, and the Buyer expressly reserves the right to seek direct remedy against the Vendor and its agent for all costs and expenses incurred as a result of the breach. Direct remedy as referenced above shall include but is not limited to, the withholding of payments due to the Vendor under this Order and any Order issued in connection therewith.
- j. The insurance policies required herein shall not contain any exclusions relating to injuries to employees, Vendors, or employees of Vendors' employees.
- k. The carrying of such insurance shall not be deemed to release or relieve the Vendor from or in any way diminish its liability hereunder by way of indemnity or otherwise as assumed by it under any provisions of this Order.
- l. It shall be a condition precedent to the Buyer's obligation to make payment to Vendor that Vendor has delivered to Buyer all insurance certificates and if requested insurance policies which fully comply with the requirements set forth in the Prime Contract and this Order.
- m. Buyer and Vendor hereby release each other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise, whether for negligence or otherwise, in connection with a loss covered by any insurance policies which the Buyer and Vendor carry with respect to this Order, but only to the extent that such loss is collected under said insurance policies.

20. COMPLIANCE WITH LAW

- a. 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.

21. GOVERNMENT SUBCONTRACTING

- a. 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.

22. RIGHT OF OFFSET; ASSIGNMENT

- a. 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.

23. SUBCONTRACTING

- a. 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.

24. PACKING AND SHIPPING

- a. 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.

25. DISPUTE RESOLUTION

- a. Vendor agrees that any dispute of any kind, nature or description between the parties hereto with respect to, relation to or arising out of the provisions of this Order, or the breach thereof, shall, at the Buyer's election, which election may be made at any time prior to the commencement of a judicial proceeding by the Buyer, or in the event instituted by the Vendor at any time prior to the last day to answer and/or respond to a summons and/or complaint made by the Vendor, be submitted to arbitration before the American Arbitration Association, in accordance with its Construction Industry Rules then pertaining. Venue for arbitration and/or court proceedings shall be in Westchester County, New York, or at such other location as the Buyer may select within the State of New York. Vendor expressly waives any and all rights the said Vendor might have to commence any action, whether in law or in equity against the Buyer. No action or proceeding shall lie or be maintained by the Vendor or any one claiming under the Vendor upon any claim arising out of or based upon this Order, or by reason of any act or omission or requirement of the Buyer unless such action or proceeding shall be commenced within one (1) year after the date that Vendor delivers the Goods under this Order.

26. TERMINATION

- a. Buyer may terminate this Order, in whole or in part, at any time with or without cause for undelivered Goods on 7 days' prior written notice to Vendor. In addition to any remedies that may be provided under these Terms, Buyer may terminate this Order with immediate effect upon written notice to the Vendor, either before or after the acceptance of the Goods, if Vendor has not performed or complied with any of these Terms, in whole or in part. If the Vendor becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then the Buyer may terminate this Order upon written notice to Vendor. If Buyer terminates the Order for any reason, Vendor's sole and exclusive remedy is payment for the Goods received and accepted by Buyer prior to the termination.

27. LIMITATION OF LIABILITY

- a. Buyer's liability to pay any amount to Vendor for any reason shall not exceed the amount Buyer has agreed to pay Vendor for the goods or services. BUYER SHALL NOT BE LIABLE TO VENDOR FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES OR COMMERCIAL LOSSES ARISING FROM THE PURCHASE OF GOODS AND/OR SERVICES REGARDLESS OF THE CAUSE OF ACTION OR THE FORM OF THE CLAIM



FOR DAMAGES, AND EVEN IF BUYER IS INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. BUYER SHALL NOT BE LIABLE FOR MARKET FLUCTUATIONS IN PRICE OR AVAILABILITY OF ANY GOODS AND SERVICES.

- b. Nothing in this Order shall exclude or limit (a) Vendor's liability herein, or (b) Vendor's liability for fraud, personal injury or death caused by its negligence or willful misconduct.

28. FORCE MAJEURE

- a. Failure of Buyer to take shipments of goods or receive services hereunder, if occasioned by fire, explosion, flood, war, tariff, pandemic, act of God, accident, interruption of or delay in transportation, labor trouble, governmental regulation, or any other circumstances of like or different character beyond Buyer's reasonable control, or if occasioned by partial or complete suspension of operations at any of Buyer's offices or other business locations, shall not subject Buyer to any liability to Vendor by reason thereof, but, at Buyer's option, the total quantity covered by this Purchase may be reduced by the extent of omitted shipments or services, or the specified delivery may be extended by time equal to that during which shipments or services shall be so omitted and such shipments shall then be made or services performed during the period of extension.

29. SEVERABILITY

- a. If any term or provision of this Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

30. SURVIVAL

- a. Provisions of this Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order.

31. NO THIRD-PARTY BENEFICIARIES

- a. This Order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

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.
5500 Main Street, Suite 206
Williamsville, NY 14221-6753

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