

# **Barnes Aerospace OEM**

## **GENERAL TERMS & CONDITIONS OF SALE**

(Rev. April 19, 2010)

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### **1. GENERAL**

These General Terms and Conditions of Sale (the “Terms and Conditions”) apply to the sale of goods or services offered by Barnes Aerospace OEM, a strategic business unit of Barnes Group Inc. (“Seller”). Any terms and conditions proposed in buyer’s purchase order that vary, add to or conflict with these Terms and Conditions are objected to and are not binding on Seller. Any modification or addition to these Terms and Conditions will only be effective if accepted in writing by Seller. Seller will not be deemed to have waived these Terms and Conditions if it fails to object to provisions contained in buyer’s forms or otherwise. Buyer’s silence or acceptance of Seller’s Terms and Conditions constitutes its acceptance of these Terms and Conditions. In the event different terms are specifically agreed to in writing, those terms shall be exclusive as to the particular subject covered.

### **2. QUOTATIONS/PRICE LISTS/TERMS OF SALE**

**Quotations:** Unless withdrawn prior to acceptance or otherwise stated on the front of a quotation, price quotations are valid for thirty (30) days from the date of issue. Prices exclude tooling charges unless otherwise indicated on the front of this quotation or purchase order acknowledgment.

**Delivery/Shipment/Insurance:** Title to and risk of loss of such goods sold hereunder by Seller shall pass to buyer upon their delivery, EX WORKS (Incoterms 2000) the Seller’s distribution point designated on the front of this quotation or purchase order acknowledgment by placing the goods at the disposal of the carrier designated by buyer or, in the absence of such designation, the carrier selected by Seller for shipment to buyer.

**Currency:** United States Dollars.

**Payment Terms:** Payment terms are net 30 days from the date of invoice. In the event that buyer fails to pay Seller invoices when due, buyer will be obligated to pay Seller, on all amounts so unpaid, interest, at the lesser of (i) one and one-half (1.5%) per calendar month or (ii) the maximum permissible rate for overdue accounts, from the date such payment was due until the date paid. Interest shall be assessed daily. Buyer’s obligation to make each payment will be without right of set-off.

If, in the sole judgment of Seller, the financial condition of buyer does not support commencement or continuance of any manufacture of goods, shipment of completed goods or performance of services, Seller may make a written demand for full or partial payment in advance. At Seller’s sole option, Seller may suspend performance until such payment is received and cancel if such payment is not received within thirty (30) days of such demand. Seller retains all rights at law pertaining to the collection of unpaid amounts owed by buyer under this Agreement, and buyer shall reimburse Seller for all costs associated with such collection activities including reasonable attorneys’ fees.

**Prices and Surcharges:** Prices do not include sales, value added, use, excise or similar taxes, customs or import duties, freight and handling charges or non-standard packaging. Seller may charge, in its discretion, for any costs of certificates of origin or consular invoices or similar documents. Prices apply only if the quantity ordered hereunder is released for shipment within twelve (12) months (or longer if mutually agreed to in writing) from the date of order. Otherwise, Seller’s pricing shall be subject to certain additional surcharges (“Surcharges”) at Seller’s sole discretion. Such Surcharges may be required to partially offset the increase in costs of certain raw materials and other

commodities including, but not limited to, labor, fuel, electricity, titanium, aluminum and steel. Applicable Surcharges will appear on invoices issued by Seller to buyer and shall be due and payable in accordance with the invoice terms. Seller shall periodically update any applicable Surcharges based upon reported pricing in the respective industry.

**Customer-Supplied Materials:** For any customer-supplied material, parts or hardware, Seller will be held responsible only for the value-added labor and material content provided by Seller during manufacture of the goods or provision of the services, as applicable. Buyer agrees to indemnify and hold harmless Seller and its affiliates, officers, employees, and agents for all claims, costs and damages incurred by Seller as a result of defective, inaccurate or incomplete customer-supplied material, parts, data or hardware. Scrap allowances, if any, are indicated on the front of this quotation or purchase order acknowledgment.

**Packaging and Transportation:** Unless otherwise specified in the quotation or purchase order acknowledgement, Seller shall package the goods in accordance with applicable industry standards and transport the goods by a responsible common carrier. If Seller complies with buyer’s request with respect to the use of any agency or method of transportation or any routing other than that which would otherwise be designated by Seller, all packing, marking, shipping, transportation and other charges that are in excess of the charges that would otherwise be incurred by Seller will be for buyer’s account. Seller assumes that packaging used by buyer when transporting parts to Seller’s facility are suitable for reuse for return of processed product to buyer. Any additional packaging requirements that buyer imposes are at buyer’s expense.

**Partial Shipments; Shipping Weights:** Seller may make partial shipments hereunder and may invoice for each such partial shipment separately. Each partial shipment will be deemed to be a separate sale. Delay in delivery of any partial shipment will not relieve buyer of its obligation to accept delivery of remaining shipments hereunder. Seller’s shipping weights will govern for each shipment or partial shipment hereunder. Should buyer dispute the shipping weight of any shipment of partial shipment hereunder, buyer will promptly notify Seller in writing of the reasons for such dispute and provide to Seller all necessary documents to substantiate the difference.

### **3. INSPECTION**

Inspection, acceptance or rightful rejection of goods shall be made within ten (10) days after buyer’s receipt of goods and shall promptly notify Seller of non-conformity.

### **4. CHANGES**

Any changes in orders requested by buyer, including, without limitation, design of goods, scope of work, shipment schedule releases, delivery, or increase or decrease in quantities shall only be effective if accepted in writing by Seller. Such changes may require other terms to be modified, including price terms and Seller reserves the right to make such adjustments. Buyer may not modify release schedules for goods after Seller has shipped goods.

### **5. TAXES**

**United States Sales:** The price does not include any Federal, state or local property, license, privilege, sales, use, excise, gross receipts, value added or other like taxes that may be applicable to, or imposed upon, the transaction, the goods, or the sale, transportation, delivery, value or use thereof, or any services performed in connection therewith. Such taxes are

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for the account of buyer and buyer agrees to pay or reimburse any such taxes that Seller or its contractors or suppliers are required to pay.

**Sales Outside of the United States:** All present and future taxes (other than corporate income taxes imposed on Seller), duties, tariffs, fees and other charges, including, but not limited to excise, import, purchase, sales, use, turnover, added value, consular, gross receipts, gross wages, and similar assessment imposed by the United States or buyer's government (or the government of any country through which the product must pass en route from the country of origin to the country of destination) or any subdivision thereof or any taxing authority or any agencies therein with respect to this quotation or purchase order acknowledgment or the subject matter thereof, shall be the obligation of buyer. Any such items paid by Seller shall be added to the price and buyer shall reimburse Seller for the amount of such taxes, duties, tariffs, fees and other charges and expenses incidental thereto upon presentation of an invoice therefore.

### **6. EXCUSABLE DELAY**

Seller will use reasonable efforts to fill any order in accordance with the estimated delivery or shipping date, but Seller will not be responsible for any delays in filling such an order nor liable for any losses or damages resulting from such delays, and the order will not be subject to cancellation for such delays. Seller shall not be liable for failure to perform or for delay in performance due to any cause beyond its reasonable control, including, but not limited to, fire, flood, strike or other labor difficulty, act of God, epidemic or pandemic, any legal proceeding, act of any governmental authority, act of buyer, war, riot, sabotage, terrorism, civil disturbance, embargo, fuel or energy shortage, wreck or delay in transportation, major equipment breakdown, inability to obtain necessary labor, materials or manufacturing facilities from usual sources, or any act, delay or failure to act of Seller's suppliers and subcontractors of any tier beyond Seller's or such supplier's or subcontractor's reasonable control. In the event of delay in performance due to any such cause, the date of shipment or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay.

### **7. CONFIDENTIALITY & INTELLECTUAL PROPERTY**

Unless otherwise agreed to in a separate confidentiality or non-disclosure agreement executed by the parties, Seller will not be bound by any obligations of confidentiality or non-disclosure. Unless otherwise agreed to in writing, no right, title, or interest in and to any development, invention, or work of authorship, conceived or developed by Seller during the course of performance hereunder, is conveyed to buyer. Seller does not grant to buyer, and nothing contained herein will obligate or be construed to obligate Seller to grant to buyer, any license under any patents or other intellectual property owned by Seller. Except for data customarily provided for quality control purposes (which buyer will keep confidential and use solely for such purposes), Seller shall not be required to deliver any data concerning its manufacturing processes, unless such data has been funded in whole by buyer.

### **8. TOOLING**

Title to and ownership of tooling (such as special dies, molds, jigs, tools, test equipment, masks, etc.) that are listed as a line item in an order shall vest in buyer upon full and final payment by buyer for such tooling. In all other circumstances, title to and ownership of tooling shall vest in Seller. Buyer shall be responsible for funding replacement of such tooling or refurbishment of such tooling when the normal life of the tooling is exhausted. If Seller does not receive an order from buyer for the goods requiring the use of such tooling for a period of twelve (12) months, Seller may, by written notice to buyer at buyer's last known address, request buyer to make disposition thereof at buyer's

expense. If buyer fails to issue disposition instructions to Seller within sixty (60) days of such notice, Seller may make such use or dispose of such tooling without liability or obligation to buyer. Seller may remove any embedded intellectual property (including trade secrets) which it either owns or is controlled under applicable export control laws prior to returning any buyer owned tooling.

### **9. INFRINGEMENT**

Buyer agrees to defend, indemnify and hold harmless Seller, its affiliates, officers, employees, and agents from any liability, damages, costs or expenses (including court costs and reasonable attorneys' fees) arising out of a third party claim that alleges, with respect to any design, drawing or specification furnished or approved by buyer and used in the manufacture of the goods sold hereunder, any patent, trademark or copyright infringement or misappropriation of trade secrets.

### **10. WARRANTY**

Seller warrants that the goods delivered to buyer hereunder will conform to buyer's written specifications and will be free from defects in material and workmanship for a period of twelve (12) months from date of shipment of the goods from Seller to buyer. Buyer shall provide Seller with written notice of any non-conformance within sixty (60) days after buyer becomes aware of such non-conformance and, in any case, no later than twelve (12) months from date of shipment of the goods from Seller to buyer. At its election, Seller will repair, correct or replace at no cost to buyer, any goods that prove to be non-conforming with the foregoing warranty provided that Seller is given written notice of any such non-conformance within the warranty period and buyer returns the non-conforming goods to Seller. Seller shall bear all costs of shipping a replacement part. The foregoing is buyer's sole and exclusive remedy for breach of warranty by Seller.

### **11. WARRANTY EXCLUSIONS**

The above warranty does not cover, and Seller will have no responsibility for any failure to meet any warranty caused by any failure of buyer or its agents to store, install, operate, inspect or maintain the goods covered by these Terms and Conditions in accordance with the recommendations of the OEM or its agent manufacturer or in the absence of such recommendations, in accordance with the generally accepted practices of the industry, including, but not limited to, applicable quality assurance procedures relating to the installation of the items covered by these Terms and Conditions or resulting from any defect in any casting, forging part or assembly delivered to Seller by buyer that did not occur as a result of any work performed by Seller. Buyer agrees to indemnify and hold harmless Seller and its affiliates, officers, employees, and agents from any and all such liability. No warranty is offered by Seller on any goods that are developmental. This warranty shall not apply to any goods that have been subject to accident, misuse or unauthorized alteration.

### **12. LIMITATION OF LIABILITY**

Buyer expressly agrees that, notwithstanding any other provision of these Terms and Conditions, under no circumstances shall Seller's aggregate liability resulting from the performance, failure to perform or breach of Seller's obligations herein or from any activity undertaken by Seller with respect to any good or service covered by this contract, whether based on negligence of any kind, strict liability or tort, on the part of Seller or its suppliers or subcontractors of any tier, or otherwise, exceed the value of such good or service as specified on the order or line item thereon.

**THE WARRANTIES SET FORTH ABOVE ARE THE ONLY WARRANTIES APPLICABLE TO GOODS OR SERVICES SUPPLIED BY SELLER. THERE ARE NO OTHER EXPRESSED OR IMPLIED WARRANTIES OF ANY KIND INCLUDING, BUT NOT LIMITED TO,**

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IMPLIED OR EXPRESS WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WHICH ARE HEREBY DISCLAIMED. THE REMEDIES FOR BREACH OF WARRANTIES SET FORTH ABOVE ARE EXCLUSIVE REMEDIES AND SELLER SHALL NOT BE RESPONSIBLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, TEAR DOWN OR REBUILD OF ENGINES OR OTHER HIGHER ASSEMBLIES.

### **13. TRADE COMPLIANCE**

Goods, services and information supplied under this order are subject to U.S. import and export laws and regulations and may be subject to European Union and other applicable countries' export and import laws and regulations. For shipments outside of the United States and unless otherwise agreed to by Seller in writing, buyer will be responsible for obtaining the appropriate export and import license(s) necessary to permit shipment of the ordered goods, including applications for agreements relating to defense services, and Seller will cooperate with buyer's reasonable requests for information in connection with buyer obtaining such licenses. Seller will have no liability to buyer in the event that an export license is not approved or is later withdrawn or suspended. Buyer agrees to comply with applicable import and export regulations whether administered by the Office of Defense Trade Controls, US Department of State, Bureau of Export Administration, the Department of Commerce, Office of Financial Asset Control (OFAC) or any other agency of the United States Government which provide, among other things, that the equipment shall not be re-sold, diverted, re-exported or disposed of in other than the country of ultimate destination without the prior approval of the United States Department of State or Commerce or other Agency of the United States Government, whichever is applicable. Buyer agrees to provide Seller any documentation that Seller reasonably requests to comply with applicable laws or regulations. For shipments within the United States, it is the responsibility of buyer or other exporter to comply with all United States export control laws and regulations.

### **14. GENERAL**

**Applicable law:** The contract arising pursuant to this order shall be governed by the laws of the State of Connecticut without giving effect to its conflict of law principles and excluding the International Convention on Contracts for the International Sale of Goods. The parties hereto irrevocably commit to venue of the Federal District Court for the District of Connecticut or the state courts in Hartford County in any action brought by the parties hereto concerning goods and services sold to buyer hereunder and the parties hereby irrevocably commit to the jurisdiction of these courts.

**Waiver:** The remedies provided herein shall be cumulative and in addition to any other remedies provided by law or equity. Either party's failure to insist on performance of any of these Terms and Conditions or exercise any right shall not be deemed a waiver unless in writing signed by the party waiving performance. A waiver on one occasion shall not thereafter operate as a waiver of any other terms, conditions or rights, whether or not the same or similar type.

**Assignment:** These Terms and Conditions, and any accepted order, shall be binding on buyer. The order may not be assigned by buyer without the written consent of Seller.

**Amendment:** These Terms and Conditions and the terms of any accepted order may be modified only by a writing signed by Seller.

**Severability:** The invalidity, in whole or in part, of any provision will

not affect the remainder of such provision or any other provision. If any provision or application of these Terms and Conditions is invalid or unenforceable, then a suitable and equitable provision will be substituted for such provision in order to carry out, so far as may be valid and enforceable, the intent and purpose of these Terms and Conditions, including the invalid or unenforceable provision.

**Access:** Buyer may enter Seller's facility(ies) that are performing the order only on reasonable notice during normal business hours, subject at all times to Seller's safety rules and rules pertaining to limitations necessary to comply with applicable import and export regulations and protection of the confidential and proprietary information of Seller or its customers.

**Survival:** The provisions entitled or regarding Confidentiality & Intellectual Property, Infringement, Warranty Exclusions, Limitation of Liability, Trade Compliance, and all other terms and conditions providing for limitation of or protection against liability of Seller shall survive termination, cancellation or expiration of the contract or any accepted order.

**Government Orders:** It is recognized by the parties that in instances where work is being performed under orders for the U.S. Government or prime contractors contracting with the U.S. Government, applicable FAR/DFARS or other Government regulatory clauses may apply if accepted by Seller expressly writing.