

## Purchase Order Terms & Conditions

### General / Administrative:

#### **1.0 Acceptance:**

This Order is McGinty Machines offer to Seller, and acceptance is strictly limited to its terms. McGinty Machine shall not be bound by and specifically objects to any term or condition whatsoever which is different from or in addition to the provisions of this Order, whether or not such term or condition will materially alter this Order. Any such term or condition shall be deemed void and of no effect whatsoever, whether or not obtained in any order acknowledgment or acceptance. Seller commencement of performance or acceptance of this Order, in any manner shall conclusively evidence agreement to this Order as written.

#### **2.0 Shipment / Delivery:**

The "Due Date" on the Order is the expected "On Dock" date at The McGinty Machine Co., Inc. Make shipments or deliveries in accordance with the schedule specified on the Order. Ship exact quantities, except for industry standard variances on raw materials. DO NOT SHIP EARLY, without prior approval. Advise the Buyer immediately of any delays that would prevent scheduled deliveries from arriving "On Time."

#### **2.1 Expedite Charges:**

In the event "Expedite Charges" are a part of this Order, the Seller understands and agrees that the following schedule will apply with regard to payment for those charges, unless otherwise modified and agreed to:

On-Time Delivery plus up to 1 day = 100%  
Delivery from 2 days or more after date = None

#### **3.0 Packing / Shipping:**

Seller shall prepare and pack goods or materials in such a manner to prevent damage during shipment. Goods sold F.O.B. Origin shall be shipped Freight Collect via the Carrier specified on the Order, if Motor Freight is used. If no Carrier is specified, contact The McGinty Machine Co., Inc. Purchasing Department for routing instructions. All other modes of transportation are to be Prepaid and added to the invoice, if appropriate.

#### **4.0 Invoice / Payment:**

Seller shall issue invoices for each shipment or delivery made, but not prior to the scheduled delivery stated on the Order. Any invoices issued for shipments or deliveries made prior to the scheduled delivery date will be subject to rescheduling for payment.

#### **5.0 Receipt / Inspection:**

Buyer's acceptance of goods is subject to Buyer's final inspection within a reasonable period of time after actual receipt at The McGinty Machine Co., Inc. Any rejections will be reported to the Seller who will take appropriate actions to correct any discrepancies. If requested by The McGinty Machine Co., Inc. Quality Assurance Manager,

the Seller must complete a Cause / Corrective Action Report. McGinty Machine and the Federal Aviation Administration (if non-domestic, equivalent government agency) may inspect and evaluate Seller's plant, including but not limited to facilities, systems, equipment, testing, data, personnel and all work-in-process and completed goods manufactured for installation on McGinty Machines Customer's commercial airplanes. (a) Inspection, test or prior approval or acceptance, (b) delay or failure to inspect, test or give prior approval, rejection, or acceptance, or (c) failure to discover any defect or other non-compliance, shall neither relieve Seller of any of Seller's obligations nor impair any rights or remedies of McGinty Machine or McGinty Machine's Customers. McGinty Machine's acceptance shall be revocable and not conclusive regarding latent defects, fraud or such gross mistakes as amount to fraud.

#### **6.0 Changes and/or Temporary Stop-Work:**

a. McGinty Machine's Procurement Agent may from time to time in writing direct changes within the general scope of this Order in any one or more of the following: (a) technical requirements and descriptions, specifications, statements of work, drawings or designs; (b) shipment or packing methods; (c) place of delivery, inspection or acceptance, (d) reasonable adjustments in quantities or delivery schedules or both; and Seller shall comply immediately with such direction, and avoid unnecessary costs related thereto. If any such change causes an increase or decrease in the cost of or the time required for performance of this Order, and equitable adjustment in the prices and schedules of this Order shall be made to reflect such increase or decrease and this Order shall be modified in writing accordingly. Unless otherwise agreed in writing, any Seller claim for adjustment must be delivered to McGinty Machine in writing within twenty-five (25) calendar days after Seller receipt of such direction. Seller shall make available for McGinty Machine examination, relevant books and records to verify Seller's claim for adjustment. Failure of McGinty Machine and Seller to agree upon any adjustment shall not excuse Seller from performing in accordance with such direction. If Seller considers that the conduct of any of McGinty Machine's employees has constituted a change hereunder, Seller shall notify McGinty Machine immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Pending direction from McGinty Machine's Procurement Agent, Seller shall take no action to implement any such change.

b. McGinty Machine may at any time, by written order to Seller, require Seller to stop all or any part of the work called for by any Order for up to one hundred twenty (120) days hereinafter referred to as a "Stop Work Order" issued pursuant to this form. Upon receipt of a Stop-Work Order, Seller shall promptly comply with its terms

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and take all reasonable steps to minimize the occurrence of costs arising from the work covered by the Stop-Work Order during the period of work stoppage. Within the period covered by the Stop-Work Order (including any extension thereof), McGinty Machine shall either (i) cancel the Stop-Work Order or (ii) terminate or cancel the work covered by the Stop-Work Order in accordance with Sections 10 or 11 of this form. In the event the Stop-Work Order is canceled by McGinty Machine or the period of the Stop-Work Order (including any extension thereof) expires, Seller shall promptly resume work in accordance with the terms of the Purchase Order.

### 7.0 Rejection

In the regular course of its business, McGinty Machine may reject, refuse acceptance or revoke acceptance ("rejection" herein) of any or all of the Goods or any tender thereof which are not strictly in conformance with all of the requirements of this Order, and by notice, rejection tag or other communication, notify Seller of such rejection. At Seller's risk and expense, all such Goods will be returned to Seller for immediate Seller repair, replacement and other correction and redelivery to McGinty Machine; provided, however, that with respect to any or all such Goods and at McGinty Machine's election and at Seller's risk and expense, McGinty Machine may: (a) hold, retain or return such Goods, without permitting any repair, replacement or other correction by Seller; (b) hold or retain such Goods for repair by Seller or, at McGinty Machine's election, for repair by McGinty Machine with such assistance from Seller as McGinty Machine may require; (c) hold such Goods until Seller has delivered conforming replacements for such Goods; (d) hold such Goods until conforming replacements are obtained from a third party; or (e) return such Goods with instructions to Seller as to whether the Goods shall be repaired or replaced and as to the manner of redelivery. All repair, replacement and other correction and redelivery shall be completed within such time as McGinty Machine may require. All costs and expenses and loss of value incurred as a result of or in connection with nonconformance and repair, replacement or other correction may be recovered from Seller by equitable price reduction, set-off or credit against any amounts which may be owed to Seller under this Order or otherwise.

### 8.0 Warranties

Unless otherwise agreed to in writing by the parties, Seller warrants that Goods (a) ordered to specifications will conform thereto and to any drawings, samples or other description furnished or adopted by McGinty Machine, or, if not ordered to specifications, will be fit and sufficient for the purpose intended, and that all articles will be merchantable, (b) will be of good material and workmanship, and free from defect, and (c) to the extent not manufactured pursuant to detailed designs

furnished by McGinty Machine, will be free from all defects in design and fit for the intended purpose. Such warranties, together with Seller's service warranties and guarantees, if any, shall survive inspection, test, acceptance of, and payment for the Goods and shall run to McGinty Machine, its successors, assigns and Customers. Except for latent defects, fraud, or such gross mistakes of Seller as amount to fraud, notice of any defect or nonconformity must be given by McGinty Machine to the Seller within one (1) year after delivery, or one (1) year after receipt of satisfactory qualification test reports, if required hereunder, whichever is later. McGinty Machine may, at its option, either return for credit or refund or require prompt correction or replacement of the defective or nonconforming article or part thereof. Return to Seller of any defective or nonconforming article and delivery to McGinty Machine of any corrected or replaced articles shall be at Seller's expense. Defective or nonconforming articles shall not be corrected or replaced unless specified on McGinty Machine's written order. Articles required to be corrected or replaced shall be subject to the provisions this Section and Section 5 of this form, in the same manner and to the same extent as Goods originally delivered under this Order, but only as to the corrected or replaced part or parts thereof.

### 9.0 Indemnity/Infringement

Seller shall indemnify, defend, and save McGinty Machine and Customers harmless from all claims, suits, actions, awards (including but not limited to awards based on intentional infringement of patents known to Seller at the time of such infringement and those exceeding actual damages and/or including attorney's fees), liabilities, damages, costs and attorney's fees related to the actual or alleged infringement of any United States or foreign intellectual property right (including but not limited to any right in a patent, copyright, industrial design or semiconductor mask work, or based on misappropriation or wrongful use of information or documents) and arising out of the manufacture, sale, or use of Goods by McGinty Machine or Customers. McGinty Machine and/or Customers shall duly notify Seller of any such claim, suit, or action; and Seller shall, at its own expense, fully defend such claim, suit, or action on behalf of McGinty Machine and/or Customers. Seller shall have no obligation under this Section with regard to any infringement arising from: (a) Seller's compliance with formal specifications issued by McGinty Machine where infringement could not have been avoided in complying with such specifications or (b) use or sale of Goods in combination with other items when such infringement would not have occurred from the use or sale of those goods solely for the purpose for which they were designed or sold by Seller. For purposes of this Section, the term McGinty Machine shall include

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McGinty Machine and all officers, agents, and employees of McGinty Machine

### 10.0 Termination – Convenience

McGinty Machine may terminate this Order in whole or from time to time in part, effective as of the date specified by McGinty Machine, in accordance with the provisions of FAR 52.249-2, TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE), which provisions are incorporated herein by reference; however, in FAR 52.249-2, "Contractor" shall mean Seller, "Contracting Officer" and "Government" shall mean McGinty Machine; throughout paragraph (e) substitute nine (9) months for one (1) year; in paragraph (l) substitute seventy-five (75) days for ninety (90) days; and paragraphs (c) and (j) are deleted.

### 11.0 Cancellation – Default

a. McGinty Machine may cancel this Order in whole or from time to time in part, effective on the date specified by McGinty Machine, in accordance with the provisions of FAR 52.249-8, DEFAULT (FIXED-PRICE SUPPLY AND SERVICE), which provisions are incorporated herein by reference, in the event (a) of Seller default, (b) the Seller is or has participated in the sale, purchase or manufacture of airplane parts without the required approval of the FAA, (c) of Seller's suspension of business, insolvency, reorganization or arrangement or liquidation proceedings, assignment for the benefit of creditors, or actual or constructive rejection by a bankruptcy trustee, or appointment of a receiver for Seller's property, or (d) the Seller or the Seller's parent company is listed in (i) the United States Department of Commerce Bureau of Export Administration Denied Persons List, (ii) the United States General Services Administration List of Parties Excluded from Federal Procurement and Non-procurement Programs, or (iii) the United States Environmental Protection Agency List of Violating Facilities. In FAR 52.249-8 "Government" and "Contracting Officer," except in paragraph (c), shall mean McGinty Machine, "Contractor" shall mean Seller, and all references to a "Disputes" Section will be deemed to be references to Section 16 of this form. If McGinty machine and Seller fail to agree on the amount to be paid for manufacturing materials referred to in paragraph (f) of FAR 52.249-8, the amount shall be the reasonable value thereof but not to exceed that portion of the price of this Order, which is reasonably allocable to such materials.

b. In the event of a termination for cause, McGinty Machine may require Seller to transfer title and deliver to McGinty Machine part or all of the materials, work-in-process, tooling and manufacturing drawings and data produced or acquired by Seller specifically for the performance of any Order. Spirit may require Seller to assign to McGinty Machine any or all subcontracts issued

for the performance of any Order. Seller is entitled to reasonable compensation for all such items delivered to and accepted by McGinty Machine; however, McGinty Machine is not obligated to pay Seller any such compensation until there has been a full accounting and reconciliation of all costs, expenses and other obligations resulting from Seller's default.

### 12.0 Responsibility for Performance

a. McGinty Machine issuance of this Order is based in part on McGinty Machine's reliance upon Seller's ability, expertise and awareness of the intended use of the Goods, and Seller's continuing compliance with all applicable laws and regulations during the performance of this Order. Further, Seller shall not, by contract, operation of law, or otherwise, assign any of its rights or interest in this Order, including but not limited to any right to monies due or to become due, or delegate any of its duties or obligations under this Order, or subcontract all or substantially all of its performance of this Order to one or more third parties, without McGinty Machine's prior written consent. No assignment, delegation or subcontracting by Seller with or without McGinty Machine's consent shall relieve Seller of any of its obligations under this Order or prejudice any of McGinty Machine's rights against Seller whether arising before or after the date of the assignment, including but not limited to set off and recoupment.

b. The review or approval by McGinty Machine of any work or Goods hereunder or of any designs, drawings, specifications or other documents prepared hereunder shall not relieve Seller of any of Seller's obligations under this Order, nor excuse or constitute a waiver of any defects or nonconformities in any Goods furnished under this Order, nor change, modify or otherwise affect any of the provisions of this Order, including, but not limited to, the prices and delivery schedules contained herein.

### 13.0 Publicity

Seller shall not, and shall require that its subcontractors and suppliers of any tier shall not, cause or permit to be released any publicity, advertisement, news release, public announcement, or denial or confirmation of same, in whatever form, regarding any aspect of this Order or the Goods or program to which they pertain without McGinty Machine's prior written approval.

### 14.0 Responsibility for Property

Unless otherwise specified, upon delivery to Seller or manufacture or acquisition by Seller of any materials, parts, tooling, data or other property, title to which is in McGinty Machine, Seller assumes the risk of and shall be responsible for any loss thereof or damage thereto. In accordance with the provisions of this Order, but in any event upon completion thereof, Seller shall return such property to McGinty Machine in the condition in which it

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was received except for reasonable wear and tear and except for such property as has been reasonably consumed in the performance of this Order.

### 15.0 Confidential, Proprietary, and/or Trade Secret Information and Items

McGinty Machine and Seller shall each keep confidential and protect from disclosure all (a) confidential, proprietary, and/or trade secret information; (b) tangible items containing, conveying, or embodying such information; and (c) tooling obtained from and/or belonging to the other in connection with this Order (collectively referred to as "Proprietary Materials"). McGinty Machine and Seller shall each use Proprietary Materials of the other only in the performance of and for the purpose of this Order. Provided, however, that despite any other obligations or restrictions imposed by this Section, McGinty Machine shall have the right to use and disclose Seller's Proprietary Materials for the purpose of testing, certification, use, sale, or support of any Good delivered under an Order or any airplane including such Good; and any such disclosure by McGinty Machine shall, whenever appropriate, include a restrictive legend suitable to the particular circumstances. The restrictions on disclosure or use of Proprietary Materials by Seller shall apply to all materials derived by Seller or others from McGinty Machine's Proprietary Materials. Upon McGinty Machine's request at any time, and in any event upon the completion, termination or cancellation of this Order, Seller shall return all of McGinty Machine's Proprietary Materials, and all materials derived from McGinty Machine's Proprietary Materials, to McGinty Machine unless specifically directed otherwise in writing by McGinty Machine. Seller shall not, without prior written authorization of McGinty Machine, sell or otherwise dispose of (as scrap or otherwise) any materials containing, conveying, embodying, or made in accordance with or by reference to any Proprietary Materials of McGinty Machine. Prior to disposing of such materials as scrap, Seller shall render the materials unusable. McGinty Machine shall have the right to audit Seller's compliance with this Section. Seller may disclose Proprietary Materials of McGinty Machine to its subcontractors as required for the performance of this Order, provided that each such subcontractor first assumes, by written agreement, the same obligations imposed on Seller under this Section, relating to such Proprietary Materials; and Seller shall be liable to McGinty Machine for any breach of such obligation by such subcontractor. The provisions of this Section, are effective in lieu of, and will apply notwithstanding the absence of, any restrictive legends or notices applied to Proprietary Materials; and the provisions of this Section, shall survive the performance, completion, termination or cancellation of this Order. This Section, supersedes and replaces any and all prior agreements and understandings between the parties to the extent that such agreements or

understandings cover confidential, proprietary, and/or trade secret information, or tangible items containing, conveying, or embodying such information, related to any Goods, regardless of whether disclosed to the receiving party before or after the effective date of these Purchase Order Terms and Conditions.

### 16.0 Governing Law

a. This order and the performance thereof shall be governed by the laws of the State of Kansas, United States of America, exclusive of the choice of law rules thereof.

b. Any dispute arising under this order, which is not settled by agreement of the Parties may be settled by appropriate legal proceedings. Pending any decision, appeal or judgment in such proceedings or the settlement of any dispute arising under this order, Seller shall proceed diligently with the performance of this order in accordance with the decision of McGinty Machine.

### 17.0 OSHA Hazard Communication

Seller will comply with 29CFR 1910.1200, if applicable. Seller shall send Material Safety Data Sheets (MSDS) with shipments, when applicable.

### 18.0 Compliance with Laws

Seller shall be responsible for complying with all laws including, but not limited to, any statute, rule, regulation, judgment, decree, order or permit applicable to its performance under this Order. Seller further agrees (1) to notify McGinty Machine of any obligation under this Order which is prohibited under any applicable environmental law, at the earliest opportunity but in all events sufficiently in advance of Seller's performance of such obligation so as to enable the identification of alternate methods of performance, and (2) to notify McGinty Machine at the earliest possible opportunity of any aspects of its performance which become subject to additional environmental regulation or which Seller reasonably believes will become subject to additional environmental regulation during performance of this Order.

### 19.0 Gratuities

a. Seller warrants that neither it nor any of its employees, agents or representatives has offered or given any gratuities to McGinty Machine's employees, agents, representatives, Customers, or regulators with a view toward securing this order or securing favorable treatment with respect thereto.

b. Seller warrants that during the performance of this Order, neither it nor any of its employees, agents or representatives will offer or give any gratuities to McGinty Machine's employees, agents, representatives,

The McGinty Machine Co., Inc.  
222 N. Hydraulic  
Wichita, KS 67214-4218

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Customers, or regulators with a view toward securing favorable treatment with respect to this Order.

#### **20.0 Entire Agreement:**

This Order sets forth the entire agreement between Buyer and Seller as it relates to the subject matter of this Order. No amendment or modification of this Order is binding upon the Buyer unless set forth in writing and accepted by the Buyer. The rights and remedies afforded the Buyer pursuant to any provisions of this Order are in addition to any other rights or remedies by any provision of the Order, by law, or otherwise.