

# Dill

## Purchase Order Terms and Conditions

1. **Acceptance of Order:** Dill Air Controls Products ("Buyer") shall not be bound by this order until Seller executes and returns to Buyer the acknowledgment copy of this order. Seller shall be bound by this order and its terms and conditions when it executes and returns the acknowledgment copy, when it otherwise indicates its acceptance of this order, when it delivers to Buyer any of the items ordered herein or when it renders for Buyer any of the services ordered herein. This order expressly limits acceptance to the terms and conditions stated herein, and any additional or different terms or conditions proposed by Seller are rejected unless expressly assented to in writing by Buyer. No contract shall exist except as herein above provided.

2. **Amendments:** The parties agree that this order, including the terms and conditions on the face and reverse side hereof together with any documents attached hereto or incorporated herein by reference, contains the complete and final contract between Buyer and Seller; that no agreement or understanding to modify this order shall be binding upon Buyer unless in writing and signed by Buyer's authorized representative. All specifications, drawings, and data submitted to Seller with this order or referred to by this order are hereby incorporated herein and made a part of this order.

3. **Changes:** Buyer reserves the right at any time to make written changes in any one or more of the following: (a) Specifications, drawings and data incorporated in this order; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; (e) manner of delivery; and (f) quantities. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this order, Seller shall be entitled to claim an equitable adjustment in the price or delivery schedule, or both. Any claim for adjustment under this article shall be deemed waived unless asserted within twenty (20) days from the date of receipt by Seller of the change order;

provided, however, that Buyer, if it decides in the sole discretion that the facts justify such action, may receive and act upon any such claim submitted at any time prior to final payment under this order. Any claim by Seller for adjustment under this Article must be approved by Buyer in writing before Seller proceeds with such change. Price increases shall not be binding on Buyer unless evidenced by a purchase order change notice or revision issued and signed by Buyer's authorized representative.

4. **Delivery:** Time is of the essence in the performance of this order, and if delivery of items is not made in the quantities and at the times specified, or rendering of services is not completed at the times specified, Buyer reserves the right without liability, and in addition to its other rights and remedies, to take either or both of the following actions: (a) direct expedited routings of items (the difference in cost between the expedited routing and the order routing costs shall be paid by Seller); (b) terminate this order by notice effective when received by Seller as to stated items not yet shipped or services not yet rendered and to purchase substitute items or services elsewhere and charge Seller with any loss incurred. Seller shall be liable for excess transportation charges, delays or claims resulting from Seller's deviation from Buyer's routing instructions. Neither party shall be liable for excess costs of deliveries or defaults due to causes beyond its control and without its fault or negligence; provided, however, that when Seller has reason to believe that deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay will be given immediately to Buyer. If Seller's delay or default is caused by the delay or default of a subcontractor, such delay or default shall be excusable only if it arose out of causes beyond the control of both Seller and warranties shall be deemed disclaimed or excluded unless evidenced by a purchase order change notice or revision issued and signed by Buyer's authorized representative.

5. **Inspection and Acceptance:** Payment for any items under this order shall not constitute acceptance thereof. The date payment is due shall be computed from the later of the date when Buyer receives a correct invoice or the date when Buyer receives conforming items. All items purchased

hereunder are subject to inspection at Buyer's destination either before or after payment or before or after acceptance, at Buyer's option. Buyer reserves the right to reject and refuse acceptance of items which are not in accordance with the instructions, specifications, drawings and data or Seller's warranties (express or implied). Goods not accepted will be returned to Seller for full credit or replacement at Buyer's option and at Seller's risk and expense, including transportation charges both ways. No replacement of rejected items shall be made unless specified by Buyer in writing. Buyer shall not be liable for failure to accept any of the items, if such failure is the result of any cause beyond the control of Buyer. Among such causes, but not definitive thereof, are fires, floods, Acts of God, strikes, differences with employees, casualties, delays in transportation, shortages of cars, inability to obtain necessary materials or machinery or total or partial shutdown of Buyer's plant for any cause. Acceptance of any of the items shall not bind Buyer to accept future shipments, nor deprive it of the right to return items already accepted. Acceptance of all or any part of the items shall not be deemed to be a waiver of Buyer's right either to cancel or to return at Seller's risk and expense all or any portion of the items because of failure to conform to this order, or by reason of defects, latent or patent, or other breach of warranty, or to make any claim for damages, including manufacturing costs, damage to materials, or articles caused by improper boxing, crating or packing, and loss of profits or other special damages incurred by Buyer. Such rights shall be in addition to any other remedies provided by law. The Seller shall allow the buyer, its customers, and regulator agencies to determine the quality of work, records, and material at any facilities of the Seller.

**6. Packing, Drayage and Containers:** No charges for packing, drayage or containers will be allowed unless specified on the face of this order. Seller shall prepare, at its expense, labels for the boxes and shipping containers containing such information, if any, as Buyer may specify. Seller shall be liable for damage to materials or articles described herein caused by improper boxing, crating or packing.

**7. Seller's Warranties:** Seller hereby warrants that the items furnished hereunder shall be free from defects in material, workmanship and design; of merchantable quality and fit for Buyer's purposes and that they shall conform to Buyer's instructions, specifications, drawings and data. Seller hereby further warrants that the items furnished hereunder shall conform to all representations, affirmations, promises, descriptions, samples or models forming the basis of this order. Seller agrees that these warranties shall survive acceptance of the items. Seller further warrants that all services performed for or on behalf of Buyer will be performed in a competent, workmanlike manner and shall be free from faults and defects. Said warranties shall be in addition to any warranties of additional scope given by Seller to Buyer. None of said warranties and no other implied or express warranties shall be deemed disclaimed or excluded unless evidenced by a purchase order change notice or revision issued and signed by Buyer's authorized representative.

**8. Interchangeability:** All items purchased hereunder (or parts thereof) are to be completely interchangeable with like items (or parts thereof) purchased from Seller previously by Buyer or Buyer's customer. To this end, all designs, processes or procedures used by Seller in supplying like items (or parts thereof) previously are to be used by Seller in supplying the items (or parts thereof) purchased herein. Any deviation to any of Seller's design, processes or procedures require Buyer's prior written approval. Seller shall be liable for all of Buyer's costs associated with the discovery and retrofit of noninterchangeable items or parts thereof resulting from Seller's failure to comply with the requirements of this Article.

**9. Property of Buyer:** Unless otherwise provided in this order or agreed to in writing, property of every description including but not limited to all tooling, tools, equipment and material furnished or made available to Seller, title to which is in Buyer, and any replacement thereof shall be and remain the property of Buyer. Such property other than material shall not be modified without the written consent of Buyer. Such property shall be plainly marked or otherwise adequately identified by Seller as being owned by Buyer and shall be safely stored separately and apart from Seller's property. Seller shall not use such property except for performance of work hereunder or as authorized in writing by Buyer. Such property while in Seller's possession or control shall be kept in good condition, shall be held at Seller's risk, and shall be kept insured by Seller, at its expense, in an amount equal to the replacement cost with loss payable to Buyer. To the extent such property is not material consumed in the performance of this order,

it shall be subject to inspection and removal by Buyer and Buyer shall have the right of entry for such purposes without any additional liability whatsoever to Seller. As and when directed by Buyer, Seller shall disclose the location of such property, prepare it for shipment and ship it to Buyer in as good condition as originally received by Seller, reasonable wear and tear expected.

**10. Special Tooling:** The term "special tooling" as used in this Article shall be deemed to include all jigs, dies, fixtures, molds, patterns, special cutting tools, special gauges, special test equipment, other special equipment and manufacturing aids, and drawings and any replacements of the foregoing, acquired or manufactured or used in the performance of this order, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of the items or parts thereof or performance of the services of the type required by this order. The term does not include (a) items of tooling or equipment heretofore acquired by Seller, or replacement thereof, whether or not altered or adopted for use in the performance of this order, (b) consumable small tools, (c) general or special machine tools or similar capital items, or (d) tooling, title to which is in Buyer. Seller agrees that special tooling shall be retained and not used or reworked except for performance of work hereunder or as authorized in writing by Buyer. While in Seller's possession or control, Seller warrants that it will keep the special tooling in good condition fully covered by insurance, and will replace it when lost, destroyed, or necessary for performance of work hereunder. Upon cessation or termination of the work under this order for which the special tooling is required, Seller shall furnish Buyer a list of the items, parts, or services for the manufacture or performance of which such special tooling was used or designed and a list indicating where each item of the special tooling is located, and shall transfer title to and possession of the special tooling to Buyer for an amount equal to the unamortized cost thereof, or dispose thereof as Buyer may direct in writing. In addition, Buyer shall have the right to take possession of, including the right of entry to such purpose, any special tooling, title to which Buyer acquires hereunder, without any additional liability whatsoever to Seller.

**11. Confidentiality, Inventions:** All information furnished or made available by Buyer to Seller or to Seller's employees or subcontractors in connection with the items or services covered by this order shall be treated as confidential and shall not be disclosed by Seller, its employees and subcontractors to any third party either in whole or in part, without Buyer's prior written consent. Seller agrees not to assert any claim against Buyer with respect to any information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the items or services covered by this order. Seller agrees that all designs, drawings, processes, compositions of material, specification, software, mask works or other technical information made or furnished by Seller in connection with the items or services covered by this order, including all rights thereto, shall be the sole and exclusive property of Buyer, free from any restriction, and Seller shall protect same against unauthorized disclosure to or use by any third party. Seller agrees that, as to all inventions and improvements in such designs, drawings, processes, compositions of material, specifications, software, mask works or other technical information made or furnished by Seller in connection with the items or services covered by this order, Seller will promptly identify and disclose such inventions or improvements to Buyer and execute or obtain the execution of any papers as may be necessary to perfect ownership of the inventions or improvements in Buyer or as may be necessary in the obtainment, maintenance, or enforcement by Buyer of any patent, trademark, copyright, trade secret, mask work right or other proprietary right pertaining to the inventions or improvements. The confidentiality provisions and the obligations of the paragraph shall survive termination or completion of this order.

**12. Intellectual Property Indemnification:** Seller agrees (a) to defend, indemnify and hold harmless Buyer, its successors and customers against all claims, demands, losses, suits, damages, liability and expenses (including reasonable attorney fees) arising out of any suit, claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright, mask work or other proprietary right by reason of the manufacture, use or sale of the items or services covered by this order, including infringement arising out of compliance with specifications furnished by Buyer, or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from Seller's actions, (b) to waive any claim against Buyer under the Uniform Commercial Code or otherwise, including any hold harmless or similar claim, in any way related to a claim asserted against Seller or Buyer for patent, trademark, copyright or mask work right infringement or the

like, including claims arising out of compliance with specifications furnished by Buyer, and (c) that Buyer shall have a worldwide, nonexclusive, royalty free, irrevocable license to use, sell and have sold, repair and have repaired, and reconstruct and have reconstructed the items covered by this order. Seller assigns to Buyer all right, title and interest in and to all trademarks, copyrights, and mask work rights in any material created for Buyer in connection with this order. The obligations of this paragraph shall survive termination or completion of this order.

**13. Indemnification:** Seller further agrees to indemnify and save Buyer harmless from any and all losses, liabilities, damages, claims, demands, suits, actions, proceedings, subrogation's and expenses, including court costs and reasonable attorney fees, related in any way to this order, or the services performed or items delivered under this order, except for items manufactured entirely to Buyer's specifications, which are claimed or made by any person, firm, association or corporation, including employees, workers, servants or agents of Seller and his subcontractors arising from any cause or for any reason whatsoever. Seller further agrees, upon receipt of notification, to promptly assume full responsibility for the defense of any and all such suits, actions, or proceedings which may be brought against Seller or against Buyer. In the event Buyer's machinery or equipment is used by Seller in the performance of any work that might be required under this order, such machinery or equipment shall be considered as being under the sole custody and control of Seller during the period of such use by Seller.

**14. Insurance:** If this order covers the performance of labor for Buyer, Seller agrees to indemnify and protect Buyer against all liability, claims or demands for injuries or damages to any person or property growing out of the performance of this order. Seller further agrees to furnish an Insurance Carrier's Certificate showing that Seller has and will maintain adequate insurance coverage during the life of this order in the following minimum amounts: (a) Worker's Compensation. Statutory limits for state(s) in which the work is to be performed. (b) Comprehensive General Liability, including Contractual Liability; Completed Operations/Products; Broad Form Property Damage, and Contractor's Protective Liability, if subcontractors are used. Minimum limits Personal Injury, including death and Property Damage \$250,000 each occurrence, \$500,000 aggregate. (c) Automobile Liability, including Owned, Hired and Non-owned vehicles. Minimum limits Bodily Injury \$250,000 each person \$500,000 each occurrence and Property Damage \$250,000 each occurrence. Said certificate must set forth the name of insurer, policy number, expiration date, limits of liability and a Article providing for at least ten (10) days written notice of cancellation. If Seller is a self-insurer, the Certificate of the Department of Labor and Industry of the State in which said labor is to be performed must be furnished by such Department directly to Buyer. Compliance by Seller with insurance requirements does not in any way affect Seller's indemnification of Buyer under Article 13 above.

**15. Cancellation:** Buyer shall have the right to cancel for default all or any part of this undelivered portion of this order if Seller fails to make reasonable progress towards completion of the order at the times specified, if Seller does not make deliveries as specified in the delivery schedule, if Seller breaches any of the terms hereof including warranties of Seller, if Seller makes an arrangement, extension or assignment for the benefit of creditors, if Seller dissolves or other wise ceases to exist or liquidates all or substantially all of its assets, if Seller becomes insolvent or if Seller generally does not pay its debts as they become due. If this order is canceled for default, Buyer may require Seller to transfer title and deliver to Buyer any (1) completed items, and (2) partially completed items and materials, part, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights that Seller has specifically produced or acquired for the terminated portion of this order. Upon direction of Buyer, Seller shall also protect and preserve property in its possession in which Buyer has an interest. The rights and remedies of Buyer set forth in this Article are in addition to, and not in lieu of, any other remedies of Buyer may have in law or equity or pursuant to other Articles of this order. If, after cancellation pursuant to this Article, it is determined by a court of competent jurisdiction, or otherwise, that the Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued pursuant to Article 16 hereof.

**16. Termination:** Buyer may terminate performance of work under this order in whole or from time to time in part by written notice of termination. Whereupon Seller will stop work in the date and to the extent specified in the notice and terminate all orders and subcontracts to the extent they relate to the

terminated work. Seller will promptly advise buyer of the quantities of applicable work and material on hand or purchased prior to termination and the most favorable disposition that Seller can make thereof. Seller will comply with Buyer's instruction regarding transfer and disposition of title to the possession of such work and material. Within sixty (60) days after receipt of such notice of termination, Seller will submit all its claims resulting from such termination. Buyer will have the right to check such claims at any reasonable time or times by inspecting and auditing the records, facilities, work or materials of Seller relating to this order. Buyer will pay Seller without duplication, the order price for finished work accepted by Buyer and the cost to Seller of work in process and raw material allocable to the terminated work, based on any audit Buyer may conduct and generally accepted accounting principals; less, however, (a) the reasonable value or cost (whichever is higher) of any items used or sold by Seller without Buyer's consent, (b) the agreed value of any items used or sold by Seller with Buyer's consent; and (c) the cost of any defective, damaged, or destroyed work or material. Buyer will make no payments for finished work, work in process or raw material fabricated or procured by Seller in excess of any order or release. Notwithstanding the above, payments made under this Article shall not exceed the aggregate price specified in this order less payments otherwise made or to be made, and adjustments shall be made reducing the payments hereunder for cost of work in process and raw material to reflect on a pro rata basis any indicated loss on the entire order had it been completed. Payment made under this Article constitutes Buyer's only liability in the event this order is terminated hereunder. Except as otherwise provided in this order, the provisions of this Article will not apply to any cancellation by Buyer for default by Seller or for any other cause allowed by law or under this order. Except as otherwise provided in Article 15, the provisions of this Article will not apply to any cancellation by Buyer for default of Seller. In no event shall Seller be entitled to anticipatory profits or to special or consequential damages under this order.

**17. Compliance with Applicable Laws:** Seller agrees that, in the performance of this order, it will comply with all applicable laws, statutes, rules, regulations or orders of the United State government or of any state or political subdivision thereof. Without limiting the generality of the foregoing. Seller agrees that it will include on all invoices, and that all invoices in order to be approved for payment must include the following statement: "Seller represents that, with respect to the production of the items covered by this invoice, it has fully complied with all provisions of the Fair Labor Standards Act of 1938, as amended."

**18. Executive Orders:** Agreement and Certificate pursuant to Executive Orders 11246, as amended by Executive Order 11375, 11625, 11701 and 11758. Seller agrees that the representation and provision required by Executive Order 11246, as amended by Executive Order 11375 (Equal Opportunity), Executive Order 11625 (Minority Business Enterprises), Executive Order 11701 (Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era), and Executive Order 11758 (Employment of the Handicapped) are hereby incorporated into and made a part of this order.

**19. Waiver:** The failure of Buyer to insist, in any one or more instances upon the performance of any of the terms, covenants or conditions of this order or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenants or conditions or the future exercise of such right, but the obligation of Seller with respect to such future performance shall continue in full force and effect.

**20. Assignment:** None of the sums due or to become due nor any of the work to be performed under this order shall be assigned nor shall Seller subcontract for completed or substantially completed material called for by this order without Buyer's prior written consent.

**21. Remedies:** The remedies provided for herein shall be cumulative and in addition to any other or further remedies provided by law or equity. Buyer shall have the right to set off against any amounts payable by Buyer to Seller under this order or any other agreements between Buyer and Seller any amounts which Seller owes to Buyer under this order or otherwise. In the event of any disputes arising under this order, Buyer and Seller shall proceed diligently with the performance required hereunder pending resolution of any such dispute. If any portion of this order is invalid or unenforceable, the remaining portion of this order shall remain valid and enforceable.

**22. Dispute Resolution:** In the event of a dispute between the parties arising out of or related to this order which solely concerns monetary damages or money due, the parties agree that a meeting shall be held promptly attended by representatives of each party having decision-making authority regarding the dispute to attempt in good faith to negotiate a resolution of the dispute. If within thirty (30) days after such meeting the parties have not succeeded in negotiating a resolution of the dispute, the parties shall use their best efforts to select an alternative dispute, the parties shall use their best efforts to select an alternative dispute resolution procedure ("ADR"), such as a "mini trial" or mediation, to resolve the dispute if the parties are unable to agree upon a form of ADR within fifteen (15) days after the thirty (30) day negotiation period, then either party may pursue other available remedies upon seven (7) days written notice to the other party of its intent to do so, if the parties are able to agree upon a form of ADR, they shall pursue its implementation in good faith and in a timely manner. In the event the ADR does not result in a resolution of the dispute, then either party may pursue other available remedies upon seven (7) day written notice to the other party specifying its intended course of action.

**23. Governing Law:** This agreement shall be governed, interpreted and construed by, and in accordance with, the laws of the State of North Carolina.